

# **TRANSDIGEST**

**Transportation & Logistics Council, Inc.**

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## **T&LC's New Virtual Workshops**

- **TLC Welcomes New Board Member**
- **Cross-Border Freight Handbook**
- **Destination Accessorial Charges**
- **Driver Classification**
- **LTL Fuel Surcharges**
- **FMC Reviewing Demurrage/Detention Charges**
- **Global Parcel Shipping Challenges**
- **More Q & As**

***NEW! IN A SOFT COVER EDITION!***

***FREIGHT CLAIMS IN PLAIN ENGLISH (4<sup>TH</sup> ED.)***

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## GUEST EDITORIAL

### “CAN DO ATTITUDE” AND THE PANDEMIC

By David Nordt, CCP

As life-long learners, we are learning each and every day, even though we are often unaware of this phenomenon. I have recently reflected on this pandemic and how I relate it to the lessons learned during my 42 years in the transportation industry.

It all started after I returned home from serving in the U. S. Army some 42 years ago. I found a job as a clerk at Eazor Express on Dell Ave., North Bergen, NJ. It seems that I was hired because of my military service since the office management team had all served in the military. On day one, my direct supervisor defined me with words that I have never forgotten, “You're sharp and you have a Can Do Attitude.” I have come to realize that having a “Can Do Attitude” is a reflection of who you are and what you are, and 42 years later I still deliver the most positive performance possible at my job.

Throughout my career I have visited many trucking and breakbulk facilities. In a second I was able to identify whether or not these facilities had and followed a mission statement by observing their operation and the dynamic it projected. Well, in our business, whether back in 1978 or present day, a pickup is made at a shipper, a freight bill is cut for that amount, a delivery in that amount is made without an exception, and a freight bill charge is paid. This of course is trucking 101...but everything else has changed. Your people need to understand your mission statement and it must have a “Can Do Attitude” in it. I believe that everyone wants to do a great job. Clearly, no one comes to work looking to do a poor one. Sometimes we must step out of our comfort zone to address the needs of our employer. I have mopped floors and directed traffic in frigid winter weather for the benefit of my company, and I would do it again if needed.

Surely the transportation industry has been hit with an unbelievable jolt with this pandemic and there must be concern over what it will do to our industry. First and foremost at this time is safety by wearing a mask to protect yourself and others. But in reality, I have been telling drivers, agents, customers, and vendors to protect themselves for 42 years. How so? I have always stressed their obligation to protect their company assets by working safe and smart.

The pandemic has given us the opportunity to take a deeper look at ourselves, our loved ones, and yes, also our business. I have always worked like I owned the business. So for 42 years it has been my business to have a “Can Do Attitude” and to work like I am the president of my business. If we had more people working like it was their business we would knock out the pandemic. We have to own a “Can Do Attitude” to bring about an end to this disease, thus requiring us to step out of our comfort zone and be inconvenienced for a time.

My career has been a wonderful journey and I would tell youngsters at the start of their careers what my mother told me before going into the U.S. Army, “Keep your head down and keep going.” I have been blessed to be employed by The Gilbert Company for over 25 years now and I “keep my head down and keep going” led by a “Can Do Attitude.” Please check out a few websites: [www.tlcouncil.org](http://www.tlcouncil.org), [www.gilbertusa.com](http://www.gilbertusa.com), [www.ccpac.com](http://www.ccpac.com).

Remember what the good book said, “you reap what you sow!” Stay safe!

## ASSOCIATION NEWS

### T&LC’S NEW “VIRTUAL WORKSHOP” PROGRAM

As you know, we had been looking forward to the Council’s 46<sup>th</sup> Annual Conference, “Education for Transportation Professionals” and the awesome program that had been planned for the end of April. As events unfolded, the Council’s Board of Directors became increasingly aware of the ominous cloud that was approaching. Although this was one of the most difficult decisions that the Council has had to make in our forty-six years of successful conferences, we made the right decision and canceled the Conference. We had optimistically explored the possibility of rescheduling the Conference in the Fall, but even that is no longer a viable option.

To be true to our Mission, the “Education of Transportation Professionals”, we are currently presenting what would normally be full-day seminars as intensive, interactive “webinars” and within the next weeks the Council will be initiating a series of “Virtual Workshops” on various topics similar to those in our traditional live annual conferences.

As a “kickoff” to the program we are pleased to announce “NEW DIMENSIONS”, presented by Don Newell, a leading expert on less-than-truckload (“LTL”) pricing.

Until his recent retirement Don had some 43 years of experience in the less-than-truckload industry. Prior to joining National Motor Freight Traffic Association (“NMFTA”) in 2004, where he was a member on the Commodity Classification Standards Board, he spent 28 years with a major national LTL carrier.

An expert in providing classification interpretations to shippers, 3PLs and carriers, Newell developed and implemented their Weighing & Research educational programs and represented the NMFTA through numerous public appearances at major transportation Conferences and other gatherings.

Following his retirement Don established his own consulting firm, Newell Enterprises, LLC. Don specializes in helping carriers, 3PLs and shippers with anything involving the National Motor Freight Classification (“NMFC”) and offers training to aid those interested in learning how LTL Rates are determined, whether using the NMFC or alternate methods such as density costing.

Who should attend?

1. LTL transportation buyers (Logistics Managers, Shipping Personnel, etc.)
2. 3PL’s and Brokers who serve LTL transportation buyers.
3. LTL Executives or personnel who need to be informed on latest Dimensioning Technology.

What will you learn?

1. Understanding of various costing methods used by LTL Carriers to price their services.
2. Familiarity with NMFC procedures and how to stay up to date with Classification changes.
3. Insight into the technology used in LTL to verify dimensions and weight of shipments.

Don's workshop will discuss how the LTL trucking industry has been moving toward new pricing methodologies. For example, the National Motor Freight Classification ("NMFC") has reclassified hundreds of articles with density-based classifications. Major LTL carriers have instituted dimensional weight rating with cubic scanners. As a result, shippers are finding billing errors, reweighs, reclassifications and getting balance due bills. Don will discuss how these pricing methods work, their impact on freight rates and charges, and suggest procedures for avoiding problems.

"New Dimensions" will be presented on November 4, 2020, from 1:00 - 2:00pm EST.

**SIGN UP NOW!** Use the attached virtual workshop registration form or contact T&LC headquarters at (631) 549-8962.

## **SAVE THE DATE – T&LC'S 47<sup>TH</sup> ANNUAL CONFERENCE**

The Transportation & Logistics Council, Inc. has scheduled its 47<sup>th</sup> Annual Conference to be held April 19-21, 2021 at the Catamaran Resort Hotel & Spa, located at 3999 Mission Blvd, San Diego, CA 92109.

Pre-conference Seminars will be offered the Sunday before the conference on April 18, 2021.

## **NEW BOARD MEMBER**

The Transportation & Logistics Council would like to welcome Michael Carlisle to the T&LC Board of Directors.

### **Michael Carlisle**

Michael Carlisle is the Director of Logistics Operations at United States Cold Storage. He has been with USCS for 2 years and is responsible for the Cold Share Consolidation program across the United States. Michael is also responsible for carrier procurement and management within USCS.

He has 17 years of logistics experience in both warehousing and transportation.

Michael holds a BS from Northern Illinois University, and lives in Bolingbrook, Illinois with his wife (Jennifer) and two children (Mikey and Morgan). He enjoys spending time with his family and golfing.



## **NEW MEMBERS**

### **Regular Member**

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## HUMOR

The year in retrospect:



"2020 is almost over. We're in the homestretch!"

The homestretch...



## INTERNATIONAL

### CROSS-BORDER FREIGHT HANDBOOK

FLS Transport has published a free "handbook" on everything you need to know about shipping between the U.S. and Canada. According to their announcement:

**The last thing you want to hear is, "stuck at the border."**

It's true, when it comes to cross-border shipping, one small slip up could cost your business thousands.

And that's why we put together this guide...

**It's the step-by-step handbook to flawless, stress free, cross-border freight.**

It's got everything you need to know if you're shipping between the US and Canada.

**Here's what's inside:**

- The 3 golden rules of cross-border shipping
- The step-by-step process for cross-border freight
- A detailed description of all cross-border shipping forms and documents
- Downloadable and printable cross-border forms and documents
- Updates for the new NAFTA 2.0 rules (USMCA-CUSMA-TMEC)
- Links to the border points of entry and current wait status
- Key contacts, resources and links for cross-border shipping
- Our recommended list of customs brokers
- FAQs for cross-border shipping

The guide provides a complete breakdown of the processes and procedures you need to follow when moving freight between the US and Canada.

One of the most helpful sections is the insert on cross-border paperwork and documentation. We've included all the cross-border forms and documents you'll need in one place.

The best part is that it's also NAFTA 2.0 compliant. We've included everything you need to know about the new USMCA – CUSMA – TMEC rules that went into place on July 1, 2020.

Visit <https://www.flstransport.com/the-complete-guide-to-cross-border-freight-for-shippers/> to download the Guide.

<b>LOGISTICS</b>
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## **TIA SEEKS RULEMAKING TO END TRANSACTION REPORTING MANDATE**

On August 4, 2020 the Transportation Intermediaries Association (“TIA”) filed a petition for rulemaking with the Federal Motor Carrier Safety Administration (“FMCSA”) to eliminate the requirements of 49 CFR §371.3(c), which obligates brokers to maintain detailed records on transactions and to make those details available to parties to the transaction upon request. TIA also asks the FMCSA to promulgate guidance to the public on what constitutes a legitimate “dispatch service” and remove unethical and unscrupulous actors from the marketplace. TIA said it believed that there are many illegal dispatch services that are operating illegally as unlicensed brokers and that FMCSA should prohibit these companies from offering such a service without a license.

TIA said the proposed modifications and clarifications “would eliminate an outdated regulation that dates back to 1980 that is not applicable to the current marketplace.” FMCSA currently is inviting comments on separate petitions for rulemaking that would require brokers to distribute routinely the records required by 371.3.

FMCSA has yet to publish TIA’s August 4 petition for comment. The petition has been posted in the federal docketing system and is available at <https://www.regulations.gov/docket?D=FMCSA-2020-0194>.

## MOTOR

### DESTINATION ACCESSORIAL CHARGES

By George Carl Pezold

We have been hearing complaints from shippers about being billed for destination accessorial charges such as for “liftgate” and “inside delivery” services that have not been requested or authorized and sometimes have not actually been provided. Here is a recent example:

Question: Extra Charges / Disputing the charge

I’ve been running into the problem of carriers charging inside delivery and liftgate delivery. On the bill of lading (“BOL”) it states in the special instructions “Any extra services/charges need to be approved by (the appropriate party).” The carriers will always come back and say that they have the right to not acknowledge the special instructions and charge what they “feel is necessary to successfully deliver”. Consignees 90% of the time state that these services were not used and the carrier is charging for a service they never performed. Other than videoing each delivery, is there anything we can do to fight the carrier on the charges because they’re false?

We thought it would be interesting to survey some of the Transportation & Logistics Council (“TLC”) members that are engaged in freight bill audit services - and here are responses:

#### **From ICC Logistics (Tony Nuzio)**

Since the bill of lading is the contract between the shipper and the carrier, I do not see how the carrier(s) can just ignore the "special instructions" which are an integral part of the contract of carriage.

In addition to billing for the line-haul services rendered, assessing charges for inside delivery and lift gate delivery, I believe the carrier has an obligation to prove these additional services were actually performed.

What is not totally clear is the shipper’s statement that the special instructions need to be approved by the “appropriate party.” Is that always the shipper, consignee, or does it relate to who is responsible for payment of the freight charges?

#### **From TransAudit (Vikki Van Vliet)**

The response from one of our expert analysts is below.

All you can do is either short pay these invoices at the time of payment or file a claim if the invoice has already been paid. If your claims are denied, you may present a stronger argument or perhaps ask your client to contact their carrier's sales rep to help negotiate a fair settlement.

Accessorial charges such as inside delivery and lift gate delivery are generally noted as an instruction listed on the bill of lading at the time of pick up granting the carrier the right to bill and perform such services and are usually supported by the delivery receipt. The delivery may or may not indicate that such service(s) were actually performed by the driver. In addition, some carriers now rely on an electronic delivery receipt where the consignee just signs a handheld device.

Also, there may be instances in which a carrier is asked to perform a service at the time of delivery, even though no instructions were provided on the bill of lading. Depending on the carrier, they may or may not perform the service, and may bill with or without your approval. Common sense tells me if the service is not rendered then the carrier should not be entitled to compensation. Unfortunately nothing is ever that simple,

as an example: in the case of liftgate delivery, some carriers may argue that not all of the trailers in their fleet are equipped with a liftgate and if they provide a liftgate trailer for delivery then they would be entitled to bill for that service even if the service was not performed.

The only solution is to negotiate a clearly written pricing agreement addressing accessorial services, read and understand the carrier's rules tariffs, ensure your special instructions on your bill of lading coincide with your pricing agreement and your carrier's rules tariff, and ultimately to instruct the carrier to provide a written delivery receipt indicating the service rendered at the time of delivery.

### **From American Truck & Rail Audits (Niki Bolton)**

First off, know you are not alone and that this problem is not uncommon. As an after-payment freight cost audit firm, our truck auditors see this, and similar situations, quite often as we work for our clients. Before suggesting a solution, it is helpful to look at the various elements of your question that have a bearing on the situation.

***“Any extra services/charges need to be approved by (the appropriate party).” The carriers will always come back and say that they have the right to not acknowledge the special instructions...***

If a shipment is subject to the carrier's rules tariff, then the rules' notation about whom is responsible for freight charges would apply—shipper, consignee, service(s) requesting party, or the freight bill-to party can be listed options. Therefore, a carrier would revert to the rules tariff rather than following the required approval notation on the bill of lading.

***...and charge what they “feel is necessary to successfully deliver”.***

While researching the rules and the language about who will be responsible for charges, it is beneficial to review all language included. There could be exceptions to when the charges would not be applicable, such as shipment service type, other performed accessories, or situational factors. Also, rules may contain language that specifies the requirements of different parties involved in a shipment. These requirements will determine if there was a proper request for the service or if the requirements are met to consider the service as being indicated as performed.

***Consignees 90% of the time state that these services were not used, and the carrier is charging for a service they never performed. Other than videoing each delivery, is there anything we can do to fight the carrier on the charges because they're false?***

As far as documentation, a shipper can consider the bill of lading (“BOL”) and delivery receipt (“DR”) of the shipment. Review the BOL to determine if the accessorial/service was requested or required. If it was not properly requested or noted as required on the BOL, this is a good indicator the service might not have been performed. Also review the DR for notes, checked boxes, or initials that annotate the accessorial/service was performed. If the DR is not marked, this could also be another good indicator a service was not performed. These can be submitted to the carrier as documents of proof against their service charges.

***Any suggestions for shippers with the same problem?***

Given our experience in successful overcharge recoveries and partnering with shippers and carriers in similar situations, we would like to offer two suggestions. First, start with a proactive measure. Request that when your consignees sign for the freight that they make a note on the DR that no accessorial services were performed. This will ensure proper documentation to present to the carrier if they are billing when the service is not being performed. If that doesn't work on the front-end consistently, securing an after-payment freight cost audit, such as we offer, can help recover those overcharges on the back end. By leveraging the experience, knowledge and partnerships of our experts, such overcharges can be recovered.

**From Williams & Associates (Gil Williams)**

I checked with some of my auditors that day in and day out deal with this issue. They tell me that more often than not the service was not performed. They refuse to pay it. They also tell me that if the carrier still insists, they send it to our on-line client approval process asking if we should pay, and the client always states we should not pay.

Special instructions not to provide services without approval prior to delivery are binding and part of the Contract for Carriage.

**T&LC's comments**

First of all, it would seem that charging for a service that is not provided would be at least dishonest and very likely amount to commercial fraud.

That said, one of the problems for a shipper on "freight prepaid" shipments is that it is usually difficult to know what the circumstances are and what actually happens at the time of delivery. In fact, the shipper usually doesn't find out about any destination accessorial charges until it gets the freight bill for payment – which can be quite some time after the fact. The consignee may have no record or recollection of the services that were performed, or may not want to be bothered or cooperate, since it is not the payor of the freight bills.

As noted above, in the absence of a formal Transportation Agreement, the bill of lading is considered to be the "contract of carriage" between the shipper and the carrier. Thus, it would certainly seem that if the shipper places a special instruction on the face of the bill of lading that says: "Any extra services/ charges need to be approved by (the appropriate party)", it should be an enforceable part of the contract. And, if the shipper does not prepare the bill of lading it should be equally valid to apply the instruction with a stamp on the carrier's bill of lading.

Some thoughts on special instructions on the bill of lading. One suggestion might be: "Notice: Any destination accessorial services must be noted on the bill of lading or delivery receipt and signed by the consignee at the time of delivery or the accessorial charges will not be paid".

Someone asked about signing "Section 7" on the bill of lading. Most major less-than-truckload ("LTL") carriers use some version of the Uniform Straight Bill of Lading as published in the National Motor Freight Classification ("NMFC"), which contains "Section 7" or "Non-Recourse" provision. Essentially, if the non-recourse box on the face of the bill of lading has been signed by the shipper, it should shift the liability for destination accessorial charges to the consignee. It should be noted that, although the current version of the NMFC bill of lading says "For Freight Collect Shipments", the older court decisions also applied the same rule on a "prepaid" shipment. In any event, regardless of whether a shipment is "prepaid" or "collect", entering the name of the shipper in the box might, *in theory*, protect the shipper against destination charges such as liftgate, inside delivery, detention, redelivery, etc. and the carrier would bill the consignee for these charges.

As suggested above, the best way to protect against or limit unreasonable accessorial charges is to have a formal Transportation Agreement that deals with these issues. Many shippers include their own schedule of maximum accessorial charges and/or include provisions regarding notification or authorization for billing such charges.

Lastly, a good freight bill audit service can help by carefully reviewing your freight bills, challenging improper charges and recovering overcharges.

## **TRUCK DRIVERS AND INDEPENDENT CONTRACTOR STATUS**

The question of whether a worker is an independent contractor or an employee has been ongoing for many years and has been the subject of discussion in numerous prior articles in the TRANSDIGEST. California's passage of Assembly Bill ("AB") 5 brought this issue to the forefront because of its broad impact on the "gig" economy. Although AB 5 itself only applies in California, other states are considering similar legislation.

In the litigation in California involving ride-hailing companies Uber and Lyft, a California court of appeals recently upheld an injunction against them, and asked the ride-hailing companies to classify their drivers as employees under California's AB 5 law within 30 days, if voters decide against Proposition 22. This ballot measure, to be voted on November 3<sup>rd</sup>, is a measure backed by the two companies that could exempt them from the state's labor law.

The U.S. Department of Labor's Wage and Hour Division ("WHD") is weighing in on the matter of worker classification, seeking to clarify the definition of employee under the Fair Labor Standards Act ("FLSA") as it relates to independent contractors. On September 25, 2020 the WHD issued a notice of proposed rulemaking ("NPRM") and request for comments that was published in the Federal Register. The WHD is revising its interpretation of independent contractor status under the FLSA in order to promote certainty for stakeholders, reduce litigation, and encourage innovation in the economy.

WHD's proposed rule would:

- Adopt an "economic reality" test to determine a worker's status as an FLSA employee or an independent contractor. The test considers whether a worker is in business for himself or herself (independent contractor) or is economically dependent on a putative employer for work (employee);
- Identify and explain two "core factors," specifically the nature and degree of the worker's control over the work, and the worker's opportunity for profit or loss based on initiative and/or investment. These factors help determine if a worker is economically dependent on someone else's business or is in business for himself or herself;
- Identify three other factors that may serve as additional guideposts in the analysis:
  - The amount of skill required for the work;
  - The degree of permanence of the working relationship between the worker and the potential employer; and
  - Whether the work is part of an integrated unit of production;
- Advise that the actual practice is more relevant than what may be contractually or theoretically possible in determining whether a worker is an employee or an independent contractor.

The NPRM discusses the background and history of the employer-employee relationship from the enactment of the FLSA in 1938 to California's AB 5, and the various approaches and factors that have been used with some detail.

It should be noted that the rule likely is on a very fast track, especially if the presidential election results in a change in administration. An incoming president can vacate any final rule issued within 60 days before the inauguration, so expect a rule by November 20 if that happens. It should also be noted that this proposal applies to the general workforce, and not to any specific industry, such as trucking.

Comments were due by October 26, and as of October 24 there had been some 1440 comments submitted, including those of the Transportation & Logistics Council, Inc. ("T&LC").

The T&LC submitted the following comments:

First, we note that the Motor Carrier Regulatory Reform (MCRR) Coalition has submitted its comments regarding this matter, which we endorse, and will try to avoid duplicating their comments.

The Council is specifically interested in and concerned about the status of “owner operators” which, pursuant to the FMCSA regulations, lease their equipment with drivers to federally-regulated motor carriers. (See 49 C.F.R. 376.)

For many years these independent contractors have fulfilled a vital role in the transportation of goods. They handle shipments that cannot be handled by licensed carriers due to capacity or equipment shortage, peak season traffic, points that the carrier cannot serve directly, one-way trips without return freight, etc. And, in fact, there are many licensed carriers that are “non-asset based”, i.e. do not actually own or operate their own trucks. This long-established practice has promoted efficiency and lower costs to shippers and receivers – as well as providing a livelihood for thousands of these independent contractors, many of which are small “Mom and Pop” operations.

Efforts by certain states and agencies to treat owner-operators as “employees” may in some instances be well-intentioned, but they are misguided and have adversely affected the nation’s transportation of goods and merchandise.

In conclusion, we strongly ask that any new Department of Labor interpretation of the Fair Labor Standards Act should not only recognize the unique need for consistent treatment of laws affecting owner-operator classification across federal agencies, but the rights of the thousands of small business persons to contract with any regulated motor carrier that wishes to retain their services.

The NPRM is available online at <https://www.federalregister.gov/d/2020-21018>.

NOTE: What is not clear at this time regarding the WHD’s NPRM is whether, to the extent it would conflict with AB 5 or other similar state legislation, it would preempt those state laws.

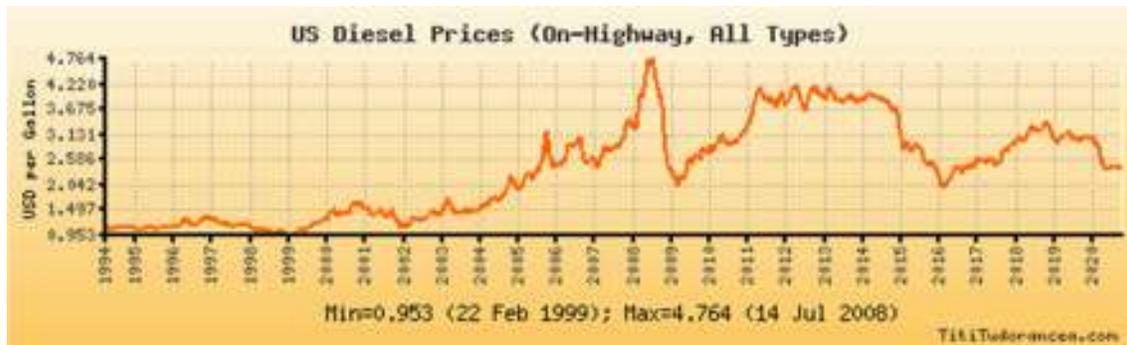
## **LTL FUEL SURCHARGES**

By George Carl Pezold

Almost everyone that ships “LTL” (less than truckload) freight is familiar with seeing a “Fuel Surcharge” (or “FSC”) as a separate line item on their freight bills. But, really, what are these charges and where did they come from?

The expenses of operating a business are often categorized as either “fixed” or “variable”. Fixed expenses typically include wages, benefits, rent, taxes, repairs and maintenance of facilities, etc. For a motor carrier fuel costs are considered “variable” since prices can fluctuate due to market conditions.

Prior to 1999 the national average price for diesel fuel typically ranged from about \$1.00 to \$1.10 per gallon, with a low price of \$0.953 on February 22, 1999. Then, by the end of 1999 the price was up to \$1.30 and kept fluctuating and rising. Prices peaked to \$4.76 in July of 2008 and now are back down to \$2.394 as of October 1, 2020.



It was around 1999 that a number of LTL carriers instituted fuel surcharges in response to the fluctuating prices – for example Southeastern Freight Lines implemented its fuel surcharge effective September 15, 1999. Typically these fuel surcharges were “pegged” at a specific price or benchmark like \$1.50 with a surcharge if the prices were higher and a refund if the prices were lower, and many of the tables or schedules of fuel surcharges in use today basically date back for twenty years.

We reviewed the fuel surcharges published by a number of major LTL carriers on their websites and/or tariffs. All of the fuel surcharges are applied as a percentage of the freight charges on the freight bill, i.e. the discounted “line-haul” rates and/or charges, excluding other “accessorial charges”. All percentages are indexed according to the U.S. Department of Energy’s (“DOE”) National Average On-Highway Diesel Fuel Price. For example, as of October 1, 2020, the DOE’s Diesel Fuel Price Index reflected a price of \$2.394 per gallon, and the corresponding fuel surcharge published by the surveyed major LTL carriers applicable to fuel at this price was:

<u>CARRIER</u>	<u>LTL (percent)</u>	
AAA COOPER (AACT)	19.34	
ESTES EXPRESS (EXLA)	20.60	
FEDEX FREIGHT (FXFE/FXNL)	21.10	
USF HOLLAND (HMES)	20.60	
NEW PENN (NPME)	21.90	
OLD DOMINION (ODFL)	20.22	
REDDAWAY (RETL)	23.20	
SAIA (SAIA)	18.12	
SOUTHEASTERN (SEFL)	20.45	
*UPS GROUND FRT (UPGF)	21.10	*(Density-Based Rated Shipments 11.0%)
XPO LOGISTICS FRT (CNWY)	23.65	
YFS (RDWY)	20.60	

On a side note, we were quite surprised to see how similar these fuel surcharge percentages were among these carriers (competition?).

Shippers rarely question a fuel surcharge on a freight bill, but is the surcharge realistic and justified based on the actual operating costs of transporting an LTL shipment?

Fuel consumption (MPG) is based on a number of factors. LTL freight is typically picked up, taken to a local terminal, cross-docked, transported over the road, cross-docked and then delivered. Fuel consumption varies depending on the type of vehicle, the distance each travels, the type of highway, e.g. local road or interstate, rural or urban pickup or delivery locations, etc. New equipment, even with more strict state and federal environmental regulations, is more fuel efficient and achieves better mileage. Fuel prices vary significantly by region and state (like California where fuel prices are among the highest in the nation) which

affects where fuel is purchased. Lastly, many carriers have contracts with truck stops for discounts, and some purchase in bulk for their own fueling stations.

Given shippers' general apathy toward fuel surcharges and the foregoing fuel consumption factors leads to several questions, such as whether a carrier's fuel surcharges are actually taking into account these fuel consumption factors, and can their published fuel surcharges can be supported and justified?

Another question is why carrier fuel surcharges should be based on a "peg" or "benchmark" like \$1.50 per gallon, when the price has never been lower than \$1.50 per gallon for at least 20 years. Does this distort the calculations upon which the surcharges were based?

But most significantly, the overriding question is whether these fuel surcharges are at all reasonable. As noted above, these surcharges are applied as a percentage of the freight charges on the freight bill, i.e. the "line-haul" rates and/or charges, excluding other "accessorial charges". While freight charges have increased continually since these surcharges were first introduced some 20 years ago, fuel consumption has improved and prices are now down to about \$2.40 per gallon. How can it be reasonable to apply the same percentage to a much higher freight charge?

One might also ask if a different type of the freight carried should be taken into account. For example is the fuel consumption or cost of fuel different if the freight is rated Class 100 or Class 200? Is it twice as high for the higher rated freight? Not likely.

It appears that the practice of assessing fuel surcharges is likely to remain with us for some time. Obviously most shippers do not have access to the information and data to question or contest these charges. So what can shippers do?

For starters, when negotiating pricing it would behoove shippers to question whether fuel surcharges should be "pegged" or "benchmarked" at a more realistic starting point, rather than \$1.50 per gallon. Additionally, shippers may want to question whether the fuel surcharge percentages applied by carriers are an accurate measure of the carrier's fuel costs in light of the factors discussed above.

Some larger shippers (who tend to have more clout) published their own fuel surcharge tables as part of their Transportation Agreement. Of interest, here are two samples of contract surcharges for the same DOE price and date as above (U.S. Department of Energy's National Average On-Highway Diesel Fuel Price \$2.394 per gallon as of October 1, 2020.)

Shipper A	4.50%
Shipper B	12.50%

As a word of caution to shippers that might want to include their own fuel surcharge tables in their transportation contracts, it is still the total of the discounted "line haul" rates and charges PLUS the fuel surcharge that determines what you have to pay!

## **NO ELD EXEMPTIONS FOR DRIVERS TRAVELING WITH PETS**

In the October 16, 2020 Federal Register, the Federal Motor Carrier Safety Administration ("FMCSA") published its denial of a March 11, 2020 application by the Small Business in Transportation Coalition ("SBTC") requesting an exemption from the electronic logging device ("ELD") requirements for commercial motor vehicle ("CMV") drivers traveling with domestic animals in interstate commerce. In its petition, the SBTC also asked that drivers traveling with pets be permitted to add two hours to their driving time and overall workday.

"FMCSA should reward these drivers for their safe operation by extending their day so they can take multiple rests for the comfort and convenience of their pets and to avoid fatigue," the coalition wrote in a 10-

page, March 2 letter to Transportation Secretary Elaine Chao. “Please eliminate the ELD requirement for them as it only causes them anxiety.”

FMCSA said the coalition failed to make a case that dropping the ELD requirement and extending drivers’ time on the road and workday would be safe.

The FMCSA noted that 130 of the 165 public comments that they received were in favor of SBTC’s proposal. However, the 35 commenters who opposed the proposal included the American Trucking Associations (ATA), the Commercial Motor Vehicle Safety Alliance (CVSA), and the Truckload Carriers Association (TCA).

“Despite some research that shows how domestic animals can improve driver feelings of companionship, and, anecdotally, safety, SBTC’s application does not support the agency’s obligation of ensuring an equivalent or greater level of safety than exists under the current regulation,” FMCSA said.

Visit <https://www.federalregister.gov/documents/2020/10/16/2020-22890/hours-of-service-hos-of-drivers-small-business-in-transportation-coalition-sbtc-application-for> to view the Federal Register denial.

## OCEAN

### **FMC EXAMINING OCEAN CARRIERS’ DEMURRAGE/DETENTION BILLING**

On October 7, 2020 the Federal Maritime Commission (“FMC”) published a “Notice of Inquiry” (“NOI”) because it wants to hear from supply chain stakeholders about whether ocean carriers sometimes charge the wrong parties for detention and demurrage. From the NOI Summary:

to solicit public comment on the practice of vessel-operating common carriers (“VOCCs” or carrier) defining “Merchant” in their bills of lading to apply to persons and entities with whom the VOCCs may not be in contractual privity. Generally, the Commission seeks public comment as to 1) how VOCCs apply the term “Merchant” in their bills of lading; 2) whether the definition, as applied, subjects third parties who are not in contractual privity with the carrier to joint or several liability; and 3) whether carriers have enforced the definition of merchant against third parties that have not consented to be bound by, or otherwise accept, the terms and conditions of the bill of lading.

Visit [https://www2.fmc.gov/readingroom/docs/20-16/20-16\\_NOI\\_Final\\_for\\_posting.pdf](https://www2.fmc.gov/readingroom/docs/20-16/20-16_NOI_Final_for_posting.pdf) to view the FMC NOI and the deadline to submit comments is November 6, 2020.

## PARCEL EXPRESS

### **GLOBAL PARCEL SHIPPING CHALLENGES**

by Tony Nuzio, ICC Logistics Services, Inc.

The fact that Global Parcel Shipments have skyrocketed in 2020 should come as no surprise to anyone. The impact of the Global Covid-19 Pandemic has been the main driving force behind this explosive growth for sure. The real questions are will the pace continue in the coming years or is this just a short-lived blip on the radar screen? And perhaps even more important is the question of how do the major global parcel carriers meet the delivery needs of their shipper customers?

First, let's take a look at some of the facts based on research recently reported by Pitney Bowes from their **2019 Parcel Shipping Index**, released just last week and reported by [Supply Chain Dive](#).

- Shippers sent 103 billion parcels globally in 2019. That represents an amazing 3,248 parcels per second
- China increased its lead in the global parcel shipping race in 2019 with more than 63 Billion packages shipped. That represented a 26% increase from the prior year and made up more than half of the global parcel shipping volume
- China, Japan, and US parcel shipments combined represents 84% of the global parcel shipping volume
- Pitney Bowes predicts global parcel shipping annual volume will reach between 220-262 billion packages by the year 2026

These are very significant numbers and there is every reason to believe that even after the Covid-19 Global Pandemic is behind us, these trends will continue putting significant additional strain on the global carrier networks to meet these expected growth demands.

The volume increases we have seen in the first nine months of 2020 alone indicate several divergent concerns for global parcel carrier networks, including how best to handle capacity; how to continually ensure profitability as volumes increase and finally, how to ensure defined service levels are continually maintained.

If one looks at the recent financial reports for UPS and FedEx, they see a very bright picture with growing package volumes along with large profits. All this as a direct result of being more selective in the business they want to handle, as well as adding a variety of new surcharges to ensure profitability. Add in the fact of elimination of Guaranteed Service Refunds by both UPS and FedEx and it's easy to see how profits have been skyrocketing and there is every reason to believe these trends will continue for the foreseeable future.

To drive this point home, UPS' new CEO, Carol Tome, stated that their motto would be "Better not Bigger" signifying the company's goal to be more selective about what volumes they would accept. In addition, USPS, FedEx and UPS have recently, as they always do, implemented price increases and various surcharge applications to ensure their profitability.

Significant business growth and improved profitability are trends every business wants to see, however, in the current global parcel business environment both shippers and carriers will be hit with challenges that must be met to ensure these positive conditions do in fact continue.

Here are some of today's challenges:

- Operational constraints brought on by the need to avoid the spread of the Covid-19 virus within each global parcel carriers' network, as well as the challenges of remote working conditions for both shippers and carriers
- Regional parcel carriers were always a potential solution for shippers to increase shipping capacity, however some, including LaserShip have been turning away potential new customers to ensure they can meet their service commitments to their current customers
- UPS has told some of their major customers that Peak Season pick-ups might be delayed due to the lack of capacity to handle the increased volumes. It's clear the same conditions will apply to FedEx as well as other parcel carriers
- Delayed pick-ups and later than normal deliveries will be around for a while as parcel volumes increase and capacity remains tight

- UPS and FedEx shippers have lost their ability to file and receive refunds for Guaranteed Service Refunds when these carriers fail to meet their service guarantees. These refund programs were initially suspended in March and still have not been reinstated
- As parcel carriers focus on profits over growth, shippers will be challenged to maintain their parcel shipping budgets intact and may have to continually adjust those budgets to meet the constantly changing marketplace, more of a rolling forecast as opposed to traditional budgeting

Yes, 2020 will certainly go down as “The Year That Was.” However, for parcel shippers and their global parcel carrier partners, 2021 may be even more challenging, if that’s possible. Only time will tell.

## QUESTIONS & ANSWERS

by George Carl Pezold, Esq.

### FREIGHT CLAIMS – RELEASE FOR PROPERTY DAMAGE

**Question:** I need the help of the greatest minds in transportation. In 20 years of claims work, I have never seen a property release. I have now received one that was for a total loss, as the truck was in an accident. How should I proceed?

**Answer:** It appears that this release relates solely to the damage to the vehicle that was involved in the accident. The insurance company has paid the owner of the vehicle for the damage and just wants to avoid any other claims – possibly a bank or finance company that may have a lien on the truck. I don’t think you would have any claim against the vehicle, although you may have a claim for cargo loss or damage for the goods that were in the vehicle at the time of the accident.

In any event, just to make sure I would suggest adding “relating solely to damage to the vehicle involved in the accident” before signing.

## CCPAC NEWS

### CCPAC HEADLINE NEWS

The Certified Claims Professional Accreditation Council (“CCPAC”) announced that due to the Pandemic and for the safety of applicants, proctors and students, all Certified Claim Professionals (“CCP”) Exams and CCP Primer Classes originally scheduled during 2020 are canceled.

The next CCP Exam will be conducted after the close of the Transportation & Logistics Council’s (“T&LC”) Annual Conference Wednesday afternoon, April 21, 2021, from 12:30 PM to 3:30 PM at the Catamaran Hotel, 3999 Mission Blvd., San Diego, CA 92109. A CCP Exam Primer Class will be held prior to the T&LC Annual Conference on Sunday, April 18, 2021, at the same location as the exam.

Candidates must apply and pre-qualify to take either or both the CCP Exam and/or the CCP Exam Primer Class. Additional information, including exam fees, preparation materials, registration to sit for the exam and registration for the celebrated exam primer class, is all available at [www.ccpac.com](http://www.ccpac.com), under Headline News section.

David Nordt, CCP and CCPAC Council President, has announced that the CCPAC Annual Membership Meeting will be held Monday Afternoon, April 19, 2021, at 5:30 P.M. (Pacific Time) at The Catamaran Hotel, 3999 Mission Blvd. San Diego, CA 92109. The meeting immediately follows the end of the first day of the T&LC Annual Conference. The CCPAC Annual Membership Meeting is open to all CCPAC members, guests and anyone interested in learning more about CCPAC and meeting its officers and board members present.

ALL CCP's and CCPAC Associate Members are reminded that to maintain their membership in "Active" status, annual dues and membership are now due and renewable on-line or by mail. Dues can be paid with a major credit card on-line or a check by mail made payable to CCPAC, Inc. Checks should be mailed to CCPAC, Inc., Membership Dept., P.O. Box 550922, Jacksonville, FL 32255-0922.

Established in 1981, Certified Claims Professional Accreditation Council (CCPAC) is a nonprofit organization comprised of transportation professionals with manufacturers, shippers, freight forwarders, brokers, logistics, insurance, law firms and transportation carriers including air, ocean, truck and rail. CCPAC seeks to raise the professional standards of individuals who specialize in the administration and negotiation of cargo claims. Specifically, CCPAC gives recognition to those who have acquired the necessary degree of experience, education, expertise and have successfully passed the CCP Certification Exam covering domestic and international cargo liability and to warrant acknowledgment of their professional stature. Only those who have passed the CCP Exam and maintain continuing education requirements may use the "CCP" professional designation following their name.

For further announcements visit [www.ccpac.com](http://www.ccpac.com) for general information and membership in CCPAC or email [director@ccpac.com](mailto:director@ccpac.com).

CCPAC also has the following online presence:

- FaceBook: [www.facebook.com/certifiedclaimsprofessional](http://www.facebook.com/certifiedclaimsprofessional)
- FaceBook Blog: [www.facebook.com/groups/410414592821010/](http://www.facebook.com/groups/410414592821010/)
- LinkedIn Group: [www.linkedin.com/groups/4883719/](http://www.linkedin.com/groups/4883719/)
- Twitter: [twitter.com/ccpac\\_1](https://twitter.com/ccpac_1)
- Website [www.ccpac.com](http://www.ccpac.com)

<b>CLASSIFICATION</b>
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### **FUTURE COMMODITY CLASSIFICATION STANDARDS BOARD ("CCSB") DOCKETS**

	<b>Docket 2021-1</b>	<b>Docket 2021-2</b>
Docket Closing Date	November 25, 2020	April 8, 2021
Docket Issue Date	January 7, 2021	May 6, 2021
Deadline for Written Submissions and to Become a Party of Record	January 29, 2021	May 27, 2021
CCSB Meeting Date	February 9, 2021	June 8, 2021

Dates are as currently scheduled and subject to change. For up-to-date information, go to <http://www.nmfta.org>.

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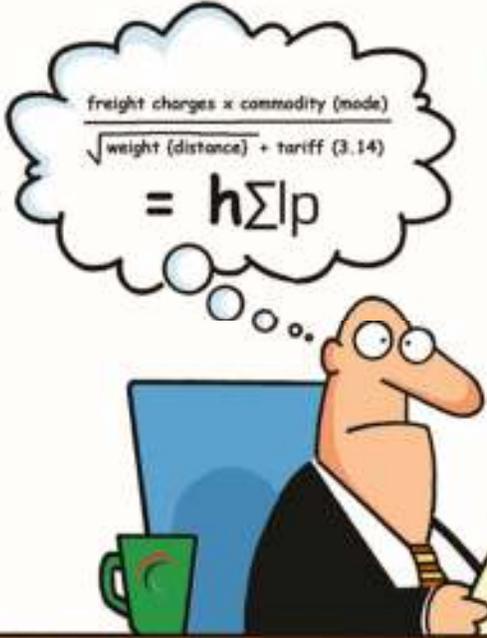


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**TRANSPORTATION & LOGISTICS COUNCIL  
2020 VIRTUAL FALL SEMINARS REGISTRATION FORM**

**Transportation, Logistics & the Law**

Tuesday, October 13 <sup>th</sup> & Thursday, October 15 <sup>th</sup> – 1:00pm – 4:30pm EST	MEMBER		NON-MEMBER	
		\$425		\$525

**Freight Claims in Plain English**

Monday, October 26 <sup>th</sup> through Thursday, October 29 <sup>th</sup> - 2:00pm - 4:00pm EST	MEMBER		NON-MEMBER	
		\$550		\$650

**Contracting for Transportation & Logistics Services**

Tuesday, November 10 <sup>th</sup> & Thursday, November 12 <sup>th</sup> - 2:00pm - 4:00pm EST Tuesday, November 17 <sup>th</sup> & Thursday, November 19 <sup>th</sup> - 2:00pm - 4:00pm EST	MEMBER		NON-MEMBER	
		\$550		\$650

**HOW TO REGISTER FOR SEMINARS**

Fax Form to: 631-549-8962 ♦ Email Form to: [diane@transportlaw.com](mailto:diane@transportlaw.com) ♦ Mail Form to: TLC at address below

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120 Main Street, Huntington, NY 11743

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E-Mail: [diane@transportlaw.com](mailto:diane@transportlaw.com)

## APPLICATION FOR ANNUAL MEMBERSHIP

Membership in the Council is open to anyone having a role in transportation, distribution or logistics. Membership categories include:

- **Regular Member** (shippers, brokers, third party logistics and their representatives);
- **Multiple Subscriber** (non-voting additional representatives of a **Regular Member** firm); and
- **Associate Member** (non-voting members – carriers and freight forwarders).

All members receive:

- An email subscription to **TRANSDIGEST** (TLC's monthly newsletter). NOTE: To receive the printed version of the **TRANSDIGEST** by First Class Mail a fee of \$50, in addition to applicable membership fee, will apply.\*
- **Reduced rates** for **ALL** educational programs, texts and materials.

New Members also receive:

- A complimentary copy of "Shipping & Receiving in Plain English, A Best Practices Guide"
- A complimentary copy of "Transportation Insurance in Plain English"
- A complimentary copy of "Transportation & Logistics – Q&A in Plain English Books 4, 5 & 6 on CD Disk"

If you are not presently interested in becoming a member, but would like to subscribe to the **TRANSDIGEST**, you can opt for a 1-Year/Non-member subscription to the newsletter by making the appropriate choice below.

How did you hear about TLC?

- Internet**  **Email**  
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*Please return completed Membership Application Form along with your payment to:  
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Associate Member [includes email subscription to <b>TransDigest</b> ]		\$345.00	\$
Non-Member Introductory Subscriber [email subscription to <b>TRANSDIGEST</b> only]		\$150.00	\$
* <i>Optional</i> : Printed version of <b>TRANSDIGEST</b> by USPS [added to membership fee]		\$50.00	\$
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# It's Back Again! Now in Soft Cover

## Freight Claims in Plain English (4<sup>th</sup> Ed.)

The hard-cover edition of Freight Claims in Plain English (4<sup>th</sup> Ed.) was out of stock, so the Council has arranged to have it reprinted in a soft-cover edition.

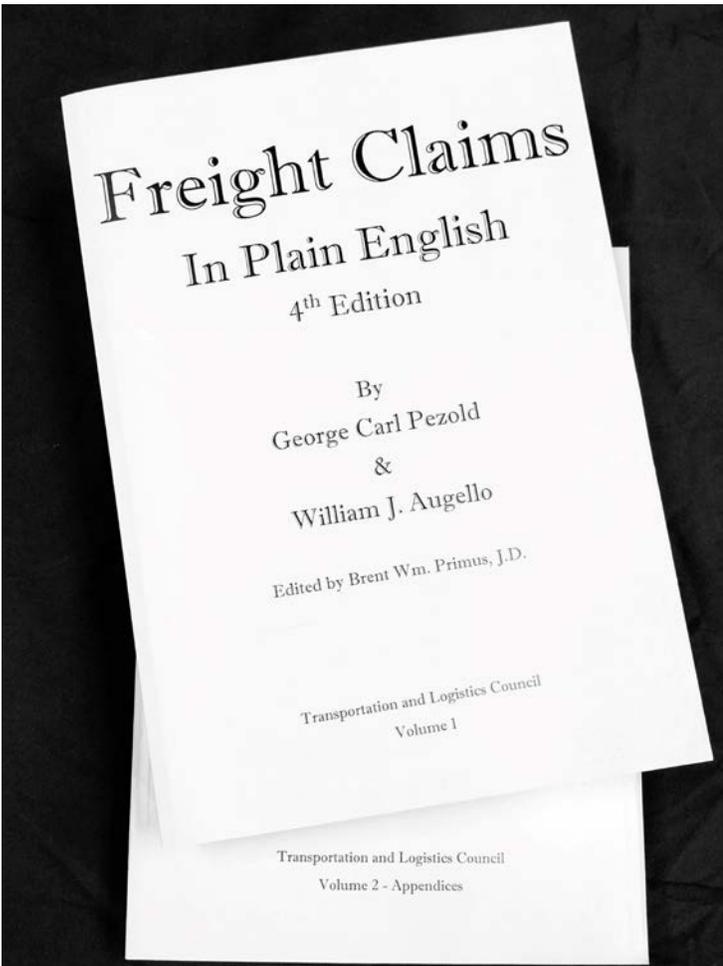
Often referred to as “the Bible” on freight claims, as the title suggests it remains the most readable and useful reference on this subject for students, claims professionals and transportation attorneys.

The new soft-cover edition comes in two volumes in a handy 7” x 10” format. Volume 1 consists of 592 pages including full text, a detailed table of contents, topical index and table of authorities. Volume 2 consists of 705 pages with 161 useful appendices – statutes, regulations, forms and other valuable reference materials.

[Click here to see the Table of Contents](#)

Best of all, the soft-cover edition is reasonably priced – formerly \$289 but now only \$149 for T&LC members and \$159 for non-members. Free shipping in the contiguous U.S.

*New York State residents sales tax applies.*

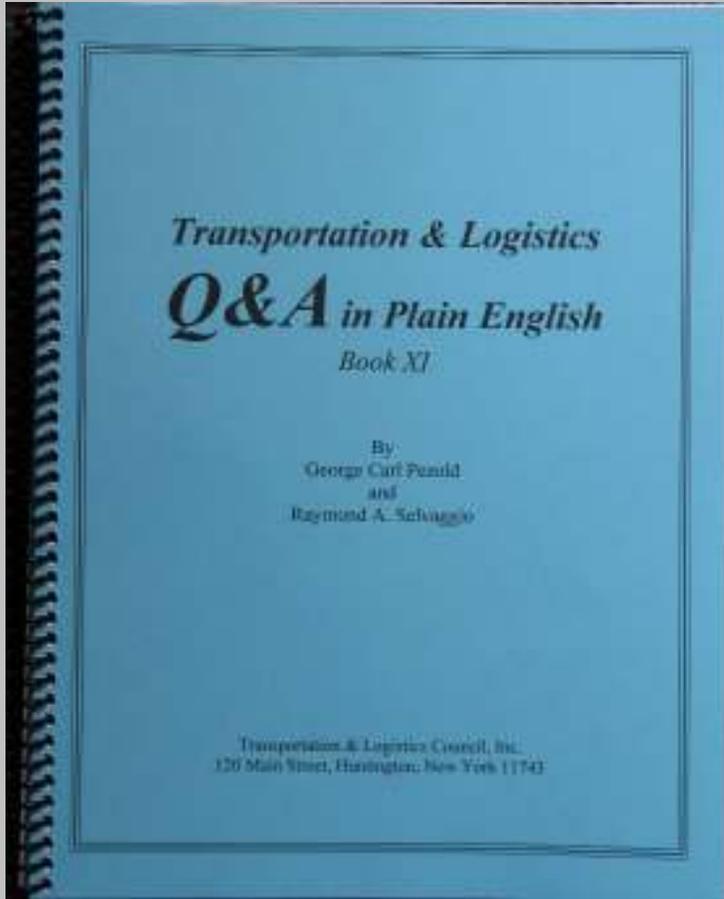


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## Transportation & Logistics Q&A in Plain English – Book XI

"*Transportation & Logistics - Q&A in Plain English - Book XI*", by George Carl Pezold and Raymond A. Selvaggio, is the eleventh in this series of the Transportation & Logistics Council's popular texts, and is a compilation of 275 of the most recent questions submitted to the Council's "Q&A" forum and published in the TransDigest,

What is unique about this compilation of questions and answers is that the questions reflect the real problems that actually come up every day, and that the people actually doing the work - shippers, carriers, brokers, intermediaries and even truck drivers - need help with.

The answers range from simple advice to thorough explanations of the legal principles based on the authors' extensive experience in transportation law.

Transportation & Logistics - Q&A in Plain English is excellent resource of advice and knowledge about everyday problems in transportation and logistics, and a great training tool for anyone starting out in the transportation and logistics profession.

Between this new eleventh edition and the previous ones, the authors have created a virtual encyclopedia of almost every conceivable question that can come up. You can't find this kind of information anywhere else.

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