TRANSDIGEST

Transportation & Logistics Council, Inc.

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GUEST EDITORIAL

WHAT MAKES UP THE PRICE OF A GALLON OF DIESEL?

We, as transportation professionals, are directly impacted by diesel fuel prices. If you are a carrier, fuel costs make up your second largest expense category, as reported in 2019.* If you are a shipper, fuel surcharges account for an estimated 17 to 22% of your total freight costs. Since diesel is such a large part of our cost of doing business it is important to understand what attributes to the price of a gallon of diesel fuel.

When a consumer purchases a gallon of diesel fuel that retail price is based on the cost and profits for production and delivery through the fuel pump. The U.S. Energy Information Administration ("EIA") says the retail price of a gallon of diesel has four main categories. The cost of crude oil, the cost and profit margin to refine the fuel, distribution/marketing (including markup by the fuel station), and taxes.

Crude oil represents the largest component of the cost of a gallon of diesel fuel, about 47% calculated April 2021. The price of crude oil, like any commodity, is impacted by supply and demand. We often see oil supplies constrained by weather, equipment failures, and even conflict between nations. Any of these and a host of other factors can reduce supply and rapidly raise prices. The demand for crude oil has been trending higher since the mid 1980's, with the exception of 2020. Most experts agree the demand for crude oil should return to pre-pandemic levels in the second half of 2022. Crude oil prices can be volatile with swings in supply and demand and that certainly drives the price of diesel.

The costs associated with refining crude oil to produce diesel fuel accounts for about 13% of the total cost per gallon. The process of refining crude oil is very sophisticated and requires equipment that can move it through heat that captures liquid and vapors based on increasing boiling points. Refining facilities must be able to receive and store raw material, then process it, and store and ship finished products. These facilities operate 24/7 and can occupy as much space as several hundred football fields. These large facilities and their operating costs contribute significantly to the price of a gallon of diesel.

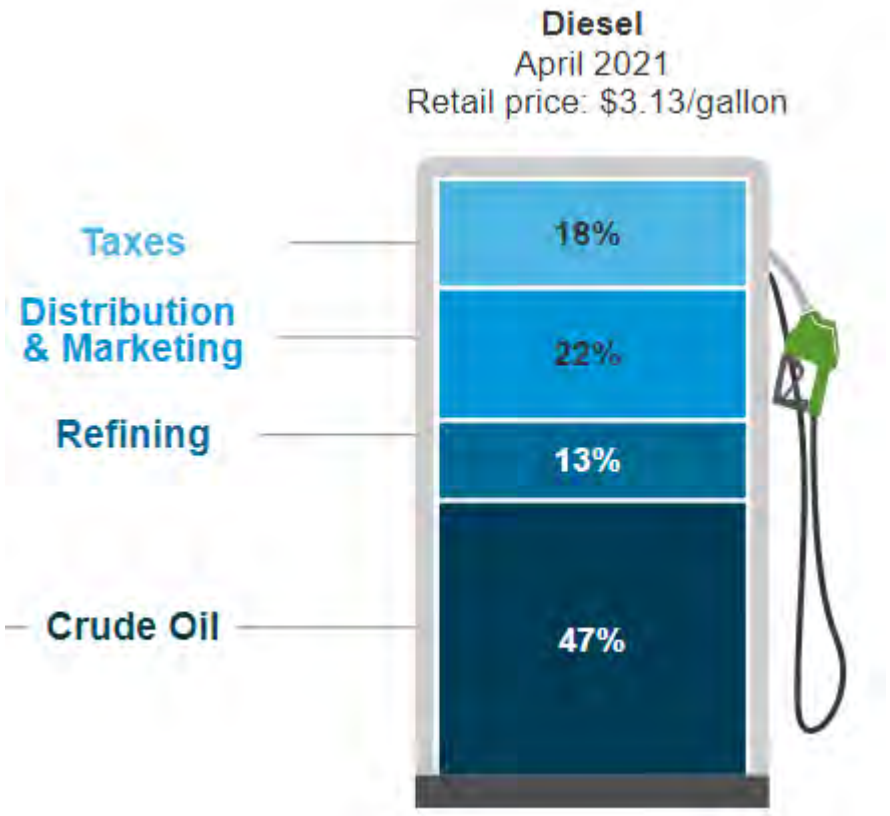
Distribution and marketing makes up about 22% of the cost of a gallon of diesel fuel. The fuel delivery industry has been impacted by the driver shortage, as we all have. Trucks, pipelines, railcars, and ships transport fuel but trucks move the majority of this product from refiners to distribution points. Marketing fuel to customers includes the labor, utilities, and equipment used for the promoting and selling of products.

* https://www.transportdive.com/news/trucking-operational-costs-atri-driver-truck-trailer-fuel-insurance/591974/

Getting diesel fuel to truck stops and fueling points plus the operational costs of those facilities comprise a significant portion of distribution and marketing costs.

Taxes make up about 18% of the cost of a gallon of diesel fuel. Federal taxes are 24.4 cents per gallon on diesel as of January 1, 2021. States have varying tax amounts ranging from 8.95 cents to 74.1 cents per gallon, using 2020 numbers (https://igentax.com/gas-tax-state/). Federal taxes support the Highway Trust Fund, which in turn is responsible for federal spending on highway and mass transit. Federal funds are normally allocated to the states and combined with state fuel taxes to build and repair our roads. Tax on diesel fuel will total an estimated $10.5 billion in 2020, per the Congressional Budget Office.

Diesel prices account for a significant portion of the overall cost for any of us moving goods via truck. The better we understand what comprises the cost of a gallon of diesel the better we can explain this volatile portion of our expenses. There are a number of resources available to help learn about and monitor fuel price. The EIA is a terrific resource and can be a great tool to keep us informed concerning changes in diesel fuel prices. (https://www.eia.gov/petroleum/gasdiesel/).



eia Source: U.S. Energy Information Administration, *Gasoline and Diesel Fuel Update*

ASSOCIATION NEWS

VIRTUAL WORKSHOPS - LTL PRICING-WHAT YOU NEED TO KNOW!

June 30, 2021 at 1:00 EST – 60 Minutes
Density, Dimensional or Classification?
Presented by Don Newell, Newell Enterprises, LLC

The LTL trucking industry continues to move toward new pricing methodologies. Major LTL carriers have instituted dimensional weight or density-related pricing. The NMFC continues to reclassify more articles with density-based classifications. Don Newell, a leading expert, will explain how these pricing methods work, their potential impact on freight rates and charges, and what shippers need to know to avoid surprises when the freight bill arrives.

Who should attend?

- Shipper personnel in charge of LTL traffic and rate negotiation
- 3PL personnel who advise shippers on LTL and/or negotiate on their behalf
- Carrier personnel that need to know what is going on with LTL costing and rating

What will you learn?

- Tech advances that support density-based initiatives
- Where dimensional pricing stands and where might it be going
- How the NMFC is changing and how that will impact LTL rates

Visit https://files.constantcontact.com/9683842c001/b5ececad-d18d-4ab6-8419-222e84ec287d.pdf to register or see form attached below.

At the conclusion of the formal presentation there will be our optional Bring Your Own Cheese and Crackers Q & A and networking event.

FREIGHT CLAIMS Q&A – ROUND 2

Wednesday, July 14th at 1:00pm EST – 90-minute Special Edition Virtual Workshop

As a follow up to the Council's Special Edition Virtual Workshop "Freight Claims - Questions & Answers" on January 27th, the panel of experts will tackle some of the "Tough Questions" that claims professionals have to deal with, including:

- SL&C – Dropped Trailers
- Delay & Special Damages
- What is "Actual Loss"
- Paperless & No-Touch Deliveries
- Food Security - Broken or Missing Seals
- Reefer Shipments.

Moderator:

Brendon Arnold, Vice President, Operations, Intelligent Logistics, LLC

Panelists:

Ray Selvaggio, Esq., Pezold Smith Hirschmann & Selvaggio
Eric Zalud, Esq., Benesch Friedlander Coplan & Aronoff
Deena Walechka, FedEx Trade Networks
Darryl Gash, Dillard's Logistics

See the attached Registration Form for further details.

At the conclusion of the formal presentation there will be our optional Bring Your Own Cheese and Crackers Q & A and networking event.

Special Thanks to our Gold Sponsors for the above Seminars (see below)
CARGO SALAVAGE CLAIMS
AMTR
NTA

T&LC SPONSORSHIP OPPORTUNITIES

You can help the Transportation & Logistics Council grow, succeed & fulfill its educational mission by sponsoring our Virtual Workshops!

Gold - $1000

- Your logo on our website with a link
- Your logo included in all advertising emails
- Your company listed in our monthly TRANSDIGEST

Silver - $750

- Your logo on our website with a link
- Your logo included in all advertising emails

Bronze - $500

- Your logo included in all advertising emails

Sponsorships are for 5 T&LC Virtual Workshops. Sponsors will also be announced during the live seminar. See form attached or visit Link to **Sponsorship Form**

For more information contact:

Diane Smid or Katie Woerner - Transportation & Logistics Council
diane@transportlaw.com
631-549-8984

NEW MEMBERS

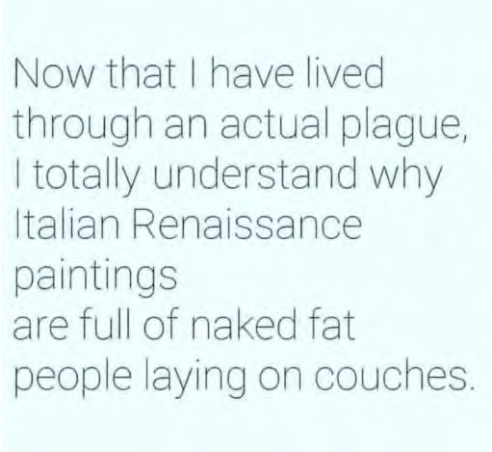
Regular Members

Tammy Peters
MoveIt Specialized Logistics
103 MoveIt Drive
Breda, IA 51436
tammy@moveit.com

HUMOR

I'm tired. It's not funny anymore and I am no longer amused. Let's get outside.

Welcome to Summer!



AIR

AIRLINES IMPROVISE FOR CARGO SPACE

Traditionally a significant portion of airfreight travels in the belly of passenger flights. Last year as the pandemic essentially shut down air passenger travel, we reported on how airlines were removing seats to create cargo space in order to utilize those aircraft to keep goods moving and generate revenue.

Now, as travel restrictions are lifted, some airlines are continuing to utilize unoccupied passenger space to move cargo in passenger cabins. While the economics are not as favorable as moving cargo in the belly and there are physical and regulatory limitations, the transport of light weight high value cargo can help the bottom line. Emirates, Air Canada, Asiana, Cathay Pacific, Korean Air and KLM are some of the airlines that continue to use the cabin for auxiliary cargo space.

There are some caveats to transporting cargo in the passenger cabin. Putting cargo in overhead bins, seats and other cabin areas allows airlines to carry more goods per flight, but it also is very labor intensive because boxes have to be handloaded through narrow doors and carefully placed to minimize damage to interior features.

Cabin loading also requires approval from national aviation authorities. Ground crews must be trained on the most efficient and safe way to load and secure cargo inside passenger cabins. Airlines and aviation authorities set the maximum weight and dimensions of individual packages, as well as the types of cargo that are permitted inside the cabin, and have extra fire-safety procedures.

The International Air Transport Association ("IATA") provides the following guidance:

> **Transport of cargo in passenger cabin**
>
> We are supporting the industry in executing cargo operations using passenger aircraft to enhance shipper connectivity options. In response to industry inquiries IATA, in cooperation with various stakeholders, has developed guidance on how to safely transport cargo in the passenger cabin with no presence of passengers.
>
> • Download the Guidance for Safe Transport of Cargo in Passenger Cabin (pdf)
>
> For additional information, please check the documentation below:
>
> • FAA Regulations for Carriage of cargo in passenger compartments
>
> • CAAC Operational Certification Rules
>
> • IOSA Standards Manual
>
> • European Union Aviation Safety Agency (EASA) guidelines (pdf)
>
> Please note that there are many considerations to be made when loading cargo into the passenger cabin, such as fire protection and suppression, weight and balance, securing of loads and loading limitations, and many more. Refer to the regulatory documentation available and guidance from your State. Also, note that passenger compartments on passenger aircraft may or may not support the transport of dangerous goods in response to shipper needs.

https://www.iata.org/en/programs/cargo/

INTERNATIONAL

CHINA – SUPPLY CHAIN PROBLEMS

The world does a lot of business with China and disruptions there have widespread effects. Last year the pandemic shut down or restricted many operations with resulting shortages in supply chains. For some businesses it became glaringly clear just how critical the smooth flow of global trade is.

As the pandemic eased, China led in recovery and manufacturing got back online, but subsequent events, like the blockage of the Suez Canal, show how fragile global logistics can be.

It is now being reported that there is a resurgence of Covid in Guangdong province in southern China, impacting the critical trading ports of Shenzhen and Guangzhou. Guangdong, a major shipping hub, accounts for about 24% of China's total exports. The ports of Shenzhen and Guangzhou are the third largest and the fifth largest in the world by container volume, according to the World Shipping Council.

Authorities have moved to shut down districts and businesses to prevent the virus from spreading rapidly, but that's causing massive shipping delays in major Chinese ports, and jacking up already-high shipping costs as waiting times at berth increased dramatically. Yantian, a port about 50 miles north of Hong Kong, handles goods that would fill 36,000 20-foot containers every day. It was shut down for nearly a week late May after infections were found among dock workers. While the port has reopened, it is still operating below capacity, creating a huge backlog of containers waiting to leave and ships waiting to dock. It was also reported that waiting times for vessels to berth at the Yantian International Container Terminal in Shenzhen jumped from an average of 0.5 days to 16 days.

While Chinese authorities are working to resolve this problem, the impacts will last beyond the ports getting back to normal and have a ripple effect throughout the global economy.

To further compound the issue, this comes on top of the past year's disruptions from COVID-19 and increasing political tensions between the U.S. and China. U.S. companies operating in China and elsewhere overseas are becoming acutely aware of the risks of global operations as the pandemic has shut down countries, and how quickly vital trade lanes can be disrupted as how the Suez Canal was blocked by an errant ship.[*]

As expressed in a recent virtual event on global economic recovery hosted by the U.S. Chamber of Commerce, multinational companies need to carefully monitor the political situation in China and have contingency plans to move people and operations to other countries if they can't navigate between Chinese demands and U.S. expectations.

Companies are under pressure to take stands on ideological issues such as the new national security law in Hong Kong or treatment of Muslim minorities in western Xinjiang Province while trying to operate without interference from Chinese authorities. Additionally, the Chinese government is harnessing the resources of U.S. companies for its own purposes by requiring them to censor online activity and store data in China, potentially making it available to the government.

A replay of the Chamber of Commerce event is available at https://www.uschamber.com/on-demand/international/how-the-u-s-and-china-can-cooperate-and-coexist?autoplay=1.

MOTOR

DRIVER CLASSIFICATION – CALIFORNIA COURTS DENIES AB5 REHEARING

On June 21, 2021 the U.S. Court of Appeals for the Ninth Circuit declined the California Trucking Association ("CTA") petition for a rehearing "en banc" of the April 28th three judge panel decision ruling on California's Assembly Bill 5 ("AB5").

For anyone not familiar with this issue, enforcing AB5 would have the effect of virtually eliminating the "gig" economy by making it almost impossible to qualify as an independent contractor. For our purposes we

[*] It should be noted that while the Ever Given was freed and the Suez Canal unblocked after only six days, the ship has been arrested and is being held in the Great Bitter Lake with all its cargo onboard pending the resolution of claims by the Suez Canal Authority that total almost a billion dollars. Shippers, consignees, beneficial cargo owners are all in limbo as product expires, seasons change and shipments become stale while the ship sits in the desert sun.

focus on the transportation industry, which makes widespread use of independent contractors, usually in the form of owner-operators.

The problematic provision of AB5 is the second prong of a three part test. Because the B prong says that "a worker engaged in the same occupation as his or her employer cannot be an independent contractor" it essentially outlaws motor carriers' use of leased owner operators within the state. In addition, there is the concern that because such a large part of U.S. trucking relies on business going to and from California, the implementation of AB5 would have far-reaching negative effects on a large part of the country's economy.[*]

The immediate result of this decision is not clear at this time. The CTA has announced that it will petition the U.S. Supreme Court to take up the matter, but what is unknown is whether the current preliminary injunction of the application of AB5 to the trucking industry will remain in place pending the CTA's petition to the Supreme Court. The CTA has made that request in an effort to protect the some 70,000 independent truck drivers in California and is waiting the court's decision.

COST OF TRUCKING

On May 26, 2021 the American Transportation Research Institute ("ATRI") issued a call for motor carriers to participate in ATRI's annual update to its Operational Costs of Trucking report.

According to the announcement:

> Now in its 13th year, ATRI's annual *Operational Costs of Trucking* collects cost information derived directly from trucking fleets and owner-operators, and is among the most requested ATRI research studies. ATRI's annual analysis is used as a key benchmarking tool by motor carriers of all sizes. Public sector agencies also utilize ATRI's real-world data analysis to make better-informed transportation planning and infrastructure investment decisions. Most recently, ATRI's Operational Costs of Trucking data was used to quantify impacts from the I-40 bridge closure in Memphis.
>
> . . .
>
> Among the for-hire fleet metrics being requested by ATRI are driver pay, fuel costs, insurance premiums and lease or purchase payments. Carriers and owner-operators are asked to provide full-year 2020 cost per mile and/or cost per hour data using the easy-to-use online data entry form.
>
> . . .
>
> For-hire motor carriers are encouraged to provide operational cost data to ATRI by Friday, August 20, 2021. ATRI's data collection form, which protects all confidential information, is available **here**. Participating motor carriers will receive an advance copy of the full report.

Visit https://truckingresearch.org/2021/05/26/atri-issues-call-for-motor-carriers-to-participate-in-annual-operational-costs-data-collection/ for more information.

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[*] As discussed last month in TRANSDIGEST 279, there is the grave concern that the Biden Administration might be successful in passing a national equivalent of California's AB5 in the "PRO Act". The Transportation & Logistics Council, Inc., in conjunction with other trucking groups and interests, have expressed their objections to Congress in a letter to Congress.

Visit http://transportationlaw.net/articles/2021.06.03SenatorLetterSupportOOICModel%26Appendices.pdf to view a copy of the letter to Congress with supporting statements.

TRUCK PARKING INFORMATION SYSTEMS

On June 14, 2021 the American Transportation Research Institute ("ATRI") released their research on how truck drivers currently use truck parking availability systems, and their perspectives on how truck parking information is distributed.

Visit https://truckingresearch.org/2021/06/14/atri-releases-white-paper-on-truck-driver-perspectives-on-truck-parking-information-systems/ for more information and access to the report.

ATRI 2021 RESEARCH AGENDA

The American Transportation Research Institute ("ATRI") Board of Directors has approved the 2021 Top Research Priorities as identified by ATRI's Research Advisory Committee ("RAC"). ATRI's RAC developed the list of recommended research topics at its meeting held in Atlanta May 4-5, and the ATRI Board reviewed and approved the list of recommended topics at its recent meeting.

ATRI's RAC selected research topics that examine workforce, infrastructure, legal, and operational issues, which align with multiple top concerns identified in ATRI's annual Top Industry Issues Survey. Additionally, given the heightened attention on electric vehicles, two of the top priority studies will examine specific trucking impacts arising from increased deployment of electric trucks.

The 2021 ATRI Top Research Priorities are:

Understanding How to Best Integrate 18-20-Year Olds into the Trucking Industry. This research will utilize a case-study approach to document best practices for recruiting, training and retaining younger individuals into trucking careers.

Charging Infrastructure Considerations for Electric Trucks. From examining power demand scenarios to availability of grid connectivity and vehicle charging requirements, this research will be a trucking industry-focused assessment that identifies the electrical infrastructure issues associated with deploying electric trucks.

Marijuana and Other Drugs: Impacts of Decriminalization on the Trucking Industry. As more states move to decriminalize marijuana and other drugs, this study would update ATRI's 2019 report by examining roadway safety and workforce impacts in those states changing their controlled substance laws.

Quantifying the Impacts of Driver-Facing Cameras on Fleets and Drivers. This analysis will focus on safety, litigation, and workforce impacts from deployment of driver-facing cameras.

Understanding the Environmental Impacts of Zero Emission Trucks. This research will be a comparative environmental impact study of the full lifecycle – manufacturing, operations and disposal – of electric versus diesel Class 8 trucks.

To follow the progress of these studies and other critical ATRI research, **sign up here** to receive updates.

ACCESSORIAL CHARGES

It has been reported that J.B. Hunt and Schneider are raising accessorial charges in an attempt to incentivize shippers to reduce dwell time on containers and trailers. According to the carriers the average dwell time on containers has increased 30 percent and 50 percent on trailers year over year as of mid-May.

As of June 14, 2021 J.B. Hunt raised its accessorial fees from $50 to $100 per day for the first three days that equipment is held after the end of three free days. J.B. Hunt also added escalating levels of charges — $150 per day after four days past the free window and $200 per day for nine days or more. The prior equipment dwell fees of $50 per day came without any escalation.

Schneider raised its accessorial fees from $50 to $125 per day once its 48-hour free clock expires, effective June 15. Schneider also increased the second- and third-tier of detention fees to $150 per day four days beyond the free time expiration and $200 per day after nine days, to match J.B. Hunt.

In addition, when a driver is supposed to pick up an empty when it drops off a load and there is no empty available, forcing the driver to "bobtail" out of the shipper's facility, the carriers are imposing fees. J.B. Hunt will charge a $200 fee and Schneider will charge $150. If the driver has to travel more than a certain distance to the next job, the fee will increase.

Other carriers are also raising accessorial fees to incentivize shippers to keep things moving.

SHIPPER RATE REPORT

The Shipper Rate Report—presented in partnership with U.S. Bank—is a quarterly publication using freight payment data from U.S. Bank in conjunction with FreightWaves SONAR data sets to create the most in-depth rate and demand outlook for shippers. The insights within this paper are curated by the market experts at FreightWaves and backed by the proprietary data and analytics housed in FreightWaves' SONAR platform.

Featured insights for Q2 2021 include:

- Q1 review of load volumes and Q2 demand forecast
- Rate review for Q1 and forecast for Q2
- Outlook and anticipated challenges for shippers

Visit https://www.freightwaves.com/news/white-paper-2021-q2-shipper-rate-report to request a copy.

OCEAN

OCEAN RATES CONTINUE TO RISE WITH NO END IN SIGHT!

by Tony Nuzio, ICC Logistics, Inc.

As we have been accustomed to seeing over the past year and a half, additional ocean freight rate increases are on the way again; this time beginning in the third quarter of 2021. So, as we get closer to Peak shipping season, we can be assured that this trend is now officially the norm, rather than the exception. And, what we have been learning over the past year and a half is that all importers' freight budgets will be tested to the limit and beyond. At what point will we see companies cutting back on imports especially for those products with small margins of profit? On the other hand, will this trend now entice more and more companies to source their goods closer to home? Only time will tell!

Effective July 1, 2021, a General Rate Increase (GRI) has been filed for all cargo imported from Asia ports of loading, to U.S.A., Canada, and Mexico ports/ramps of discharge.

The proposed increases are as follows:

USD 900 / 20′
USD 1,000 / 40′
USD 1,125 / 40′ HQ
USD 1,125 / 40′ Reefer
USD 1,266 / 45′
USD 1,600 / 53′

PARCEL EXPRESS

USPS PROPOSES RATE CHANGES

by Tony Nuzio, ICC Logistics, Inc.

As part of "Delivering for America," its 10-year plan to achieve financial sustainability and service excellence, the United States Postal Service filed notice last Friday [6/4/21] with the Postal Regulatory Commission (PRC) proposing price changes to take effect Aug. 29, 2021 that are in accordance with the rules recently established by PRC last year.

The proposed price changes would raise overall Market Dominant product and service prices by approximately 6.9 percent. First-Class Mail prices would increase by 6.8 percent to partially offset declining revenue due to First-Class Mail volume declines. In the past 10 years, mail volume has declined by 46 billion pieces, or 28 percent, and is continuing to decline. Over the same period, First-Class Mail volume has dropped 32 percent, and single piece First-Class Mail volume — including letters bearing postage stamps — has declined 47 percent.

"For the past 14 years, the Postal Service has had limited pricing authority to respond to changing market realities," said Postmaster General and CEO Louis DeJoy. "As part of our 10-year plan to achieve financial sustainability and service excellence, the Postal Service and the Board of Governors are committed to judiciously implementing a rational pricing approach that helps enable us to remain viable and competitive and offer reliable postal services that are among the most affordable in the world."

The proposed Mailing Services price changes include:

Product	Current Prices	Proposed Prices
Letters (1 oz.)	.55 cents	.58 cents
Letters additional ounce(s)	.20 cents	.20 cents (unchanged)
Letters (metered 1 oz.	.51 cents	.53 cents
Domestic Postcards	.36 cents	.40 cents
Flats (1 oz.)	$1.00	$1.16
Outbound Int'l Letters	$1.20	$1.30

Under the current pricing model and the proposed rate change, the Postal Service still has some of the lowest letter-mail postage rates in the industrialized world and continues to offer a great value in shipping.

The Postal Accountability and Enhancement Act (PAEA) of 2006 capped price increases for mailing services at the Consumer Price Index (CPI). The PAEA also required the PRC to evaluate the price cap system 10 years after the date of enactment and to modify or replace the system if it was not meeting the objectives of the law. The PRC recognized the price cap was a barrier to the Postal Service's financial sustainability in December 2017, resulting in cumulative lost gross revenue opportunity of $55 billion. In May, the Postal Service reported a net loss of $82 million for the second quarter of 2021.

In November 2020, the PRC announced new rules on market-dominant prices, allowing above-CPI price increases on the basis of certain factors and allowing the Postal Service more flexibility in establishing prices for mailing services.

"November's PRC ruling allows the Postal Service higher rate authority in establishing prices for mailing services," said Chief Financial Officer and Executive Vice President Joseph Corbett. "Aligning our prices for market-dominant products will allow us to grow revenue and help achieve financial sustainability to fulfill our universal service mission."

With full implementation, the Postal Service's 10-year plan is designed to reverse a projected $160 billion in operating losses over the next 10 years. The Plan's growth and efficiency initiatives, including the proposed pricing changes, together with necessary legislation, should allow the Postal Service to make investments totaling approximately $40 billion over the next 10 years to modernize and improve our infrastructure to become more efficient and service responsive.

In 2020, the Postal Service delivered approximately 129.2 billion pieces of mail and packages to customers located in every state and territory, county, city, town and rural area in the nation at over 161 million delivery points.

FEDEX FUEL SURCHARGES

Effective June 21, 2021 FedEx updated their fuel surcharge tables to better reflect current market conditions. According to FedEx:

> Fuel surcharge percentages and associated trigger points are subject to change without notice. See the FedEx Express U.S. Terms and Conditions and the FedEx Express International Terms and Conditions for more details. If the USGC [US Gulf Coast] fuel surcharge index value falls below $1.36 or rises above $2.01, the fuel surcharge index as outlined here will be extended.

The listed fuel surcharge ranges from 6.25% to 9.25% on package services.

Visit https://www.fedex.com/content/dam/fedex/us-united-states/services/fuel_surcharge_effective_6-21-21.pdf to view the tables.

QUESTIONS & ANSWERS

FREIGHT CLAIMS – WHO SHOULD FILE CLAIM?

Question: We are a vendor warehouse location. Our customer has contracted freight with a carrier. There is damage to the delivered product. Who files the freight claim?

Answer: Normally either party to the bill of lading (the shipper or the consignee) can file a claim for loss or damage. I would note that under the Uniform Commercial Code the risk of loss depends on the terms of sale. If the shipment is "FOB Origin" or equivalent the risk of loss is on the buyer and that party should file the claim. Conversely, if the shipment is "FOB Destination" the risk of loss is on the shipper and that party should file the claim. Regardless of the terms of sale, shippers often file claims as an accommodation to the customer.

FREIGHT CLAIM – DELIVERY FRAUD

Question: I had a shipment that was to be delivered to the customer's residence. The customer contacted the carrier and said they needed it sooner than when it was scheduled to be delivered. The carrier gave them the option to pick it up at the terminal. I, as the shipper was never notified or requested any disposition to

give authority to do so. It turned out to be fraud. Is the carrier liable for not delivering to the residence? Is the carrier liable for changing the delivery method on their own?

Answer: I would characterize this as an "unauthorized reconsignment" and/or a "misdelivery". I don't think there is any law, regulation or actual caselaw directly on point. However it could be argued that this is a breach of the contract of carriage - namely the Uniform Straight Bill of Lading which states:

> RECEIVED, subject to individually-determined rates or contracts that have been agreed upon in writing between the carrier and shipper, if applicable, otherwise to the rates, classifications and rules that have been established by the carrier and are available to the shipper, on request; the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown) marked, consigned, and destined as shown below, WHICH SAID CARRIER AGREES TO CARRY TO DESTINATION, if on its route, or otherwise to deliver to another carrier on the route to destination. Every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on the back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Since the "destination" is that shown on the bill of lading (the correct consignee and its address), failure to deliver there would be a breach of the contract.

RAIL

RAIL INTERMODAL SURCHARGES

Similar to the efforts by J.B. Hunt and Schneider reported above to incentivize shippers to keep trailers and containers moving, railroads are tightening the free time allowed on containers and chassis. Norfolk Southern Railway (NS) tightened its free time clock May 15 from two days to one day at all Tier 1 terminals, including Atlanta, Chicago, Cincinnati, and Kansas City. Subsequently, on May 27 NS eliminated all free time except for the hours between notification to the shipper and 11:59 p.m. local time at Detroit, Louisville, Kentucky, and Birmingham, Alabama.

In a similar move, BNSF Railway (BNSF) eliminated the industry-standard 5 p.m. cutoff for calculating free time clock at all its facilities, effective June 7.

It is anticipated that other railroads may follow suit as the surge in imports creates a capacity crunch.

To view NS update, visit http://www.nscorp.com/content/nscorp/en/shipping-tools/shipping-news-and-alerts/failure-to-provide-chassis-for-international-units--on-car-charg.html

Visit https://www.bnsf.com/bnsf-resources/pdf/ship-with-bnsf/intermodal/intermodal-r-and-pg.pdf for the BNSF Rules.

RECENT COURT CASE

CLAIMS AGAINST BROKERS

Reprinted from Henry E. Seaton, Esq.'s June 2021 *Regulatory and Legislative Update:*

Supreme Court asked to rule on preemption of common law claims against brokers

C.H. Robinson has asked the U.S. Supreme Court to overturn a U.S. Court of Appeals for the Ninth Circuit ruling that the "safety exception" to federal preemption under the Federal Aviation Administration Authorization Act of 1994 (F4A) includes common law damage claims against brokers. The appeals court in September had reversed a lower court ruling concluding that a common law negligent selection claim against C.H. Robinson did not fall within the safety exception. (*See Regulatory Update, October 2020*.)

In its petition for a writ of certiorari, C.H. Robinson argued that the appeals court ruling "badly misinterprets" the safety exemption contained in F4A. "A common-law tort claim against a freight broker is not an exercise of the 'safety regulatory authority of a State'," C.H. Robinson said. "By its plain text, the safety exception preserves the State's authority to enact and enforce positive-law rules and regulations; it does not encompass private claims brought by private parties to compensate for past injuries." The broker further argued that a safety regulation would not apply to brokers in any event because they neither own or operate motor vehicles nor hire or employ drivers operating those vehicles.

C.H. Robinson's petition has received support from several "friend of the court" briefs filed last month. In addition to the Transportation Intermediaries Association and a separate brief filed by 10 major brokers, parties filing in support of the writ include a group of about a dozen major truckload carriers and a joint brief submitted by the National Association of Manufacturers, the U.S. Chamber of Commerce, and the National Retail Federation.

One common theme in the "friend of the court" briefs is that freight brokers are not appropriate parties to determine the safety of individual motor carriers. "This Court has the opportunity to clarify once and for all that the federal motor carrier and broker regulatory scheme established by Congress in the Motor Carrier Act vests in the FMCSA – not brokers, shippers or other users of transportation – the duty to qualify and register applicants as fit for operating as interstate motor carriers," the dozen trucking companies said in their brief.

If the Supreme Court decides to hear the case, the decision could have wide-ranging implications for other ongoing litigation, including California's ABC test for worker classification as it applies to motor carriers. The questions presented are distinct. The C.H. Robinson case addresses specifically the scope of the "safety exception" while the AB 5 litigation centers on whether a generally applicable state labor law can also be considered regulation of a carrier's rates, routes, and services. Even so, a decision in the C.H. Robinson case would reflect the first opportunity the Supreme Court has had to rule on F4A's scope since President Trump's appointees took the bench. For links to C.H. Robinson's petition and the supporting briefs, visit http://bit.ly/CHRvMiller.

TECHNOLOGY

SELF-DRIVING VEHICLES

Self-driving vehicles are slowly starting to make their appearance, in limited capacity. One of the latest developments is the announcement from the National Park Service that it has launched TEDDY, **T**he **E**lectric **D**riverless **D**emonstration in **Y**ellowstone at Canyon Village. From the NPS announcement:

> "We're very pleased to participate in this shuttle pilot and test this evolving technology," said Superintendent Cam Sholly. "As visitation continues increasing in Yellowstone, we are looking at a range of visitor management actions that focus on protecting resources, improving the visitor experience, and reducing congestion, noise and pollution. Shuttles will unquestionably play a key role in helping achieve these goals in many of the busiest areas of the park."
>
> Yellowstone National Park launched TEDDY, **T**he **E**lectric **D**riverless **D**emonstration in **Y**ellowstone at Canyon Village June 9! Visitors can opt to ride one of two low-speed, electric automated shuttles free of charge through August 31 within the Canyon Village campground, visitor services and adjoining visitor lodging area. The goal is to understand how automated vehicle shuttle technology can be used in parks and how visitors perceive and engage these services. The data from this pilot will help guide long-term management decisions regarding transportation in national parks.

Visit https://www.nps.gov/yell/learn/management/automated-shuttle-pilot.htm for more information.

TEDDY has been developed by Beep, a provider of multi-passenger, electric, autonomous mobility solutions in partnership with Local Motors, a leader in the design and manufacturing of autonomous vehicles, which will be providing services aboard its Olli vehicle – the world's first 3D-printed autonomous vehicle.

Beep provided the full turnkey solution for the project by planning, managing and deploying with the NPS. Up to August 31, Beep will enable two routes, seven days a week at Yellowstone, collecting vital information such as ridership, route optimization and overall vehicle operations. Learnings and data gathered will help inform potential future deployments in national parks across the country.

TEDDY will be navigating through the Canyon Village area of Yellowstone National Park through the peak summer season, with the Lodge Route operating from June 9 to July 12 and Campground Route from July 4 to August 31. Both routes will deliver a safe, unique rider experience.

CCPAC NEWS

CCPAC NEWS

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.

CCPAC ANNOUCES NEW ON-LINE CCP EXAM: According to the announcement:

> CCPAC announces the programming stages of the CCP Exam On-Line version have been completed and we are currently testing the "Purchase/Cart" functions. We hope to launch the program on-line around the first of July. After the exam has been implemented live on-line, programing for the CCP Exam Primer Classes will begin. Initial plans called for rollout of the CCP Exam Primer Class first as the natural order of things, but we had to reverse the implementation due to programmer expertise availability. Check this section of TRANSDIGEST each month and/or our website www.ccpac.com for updates for anticipated roll-out dates of the CCP Exam and eventually the CCP Exam Primer Class.

MEMBERSHIP RENEWAL AND ANNUAL DUES ARE NOW DUE FOR ALL MEMBERS

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 600249, Jacksonville, FL 32260.

For further announcements visit www.ccpac.com for general information and membership in CCPAC or email director@ccpac.com

CCPAC also has the following online presence:

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Website www.ccpac.com

CLASSIFICATION

FUTURE FREIGHT CLASSIFICATION DEVELOPMENT COUNCIL ("FCDC") DATES

Additional future meeting dates and locations are currently scheduled as follows:

October 5, 2021	Westin Alexandria Old Town, Alexandria VA
February 8, 2022	Omni Royal Orleans, New Orleans LA
June 14, 2022	Westin Portland Harborview, Portland ME
October 18, 2022	Hilton Alexandria Old Town, Alexandria VA

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

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VIRTUAL WORKSHOP REGISTRATION FORM

LTL Pricing – What You Need to Know!

Density, Dimensional or Classification?

Presented by Don Newell, Newell Enterprises, LLC

	MEMBER		NON-MEMBER	
Wednesday June 30, 2021 - 1:00pm - 2:00pm EST	☐	**$40**	☐	**$60**

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

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- **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.
- Access to the **Members Only** section of the website.

New Members also receive:

- A complimentary copy of "**Shipping & Receiving in Plain English, A Best Practices Guide"**
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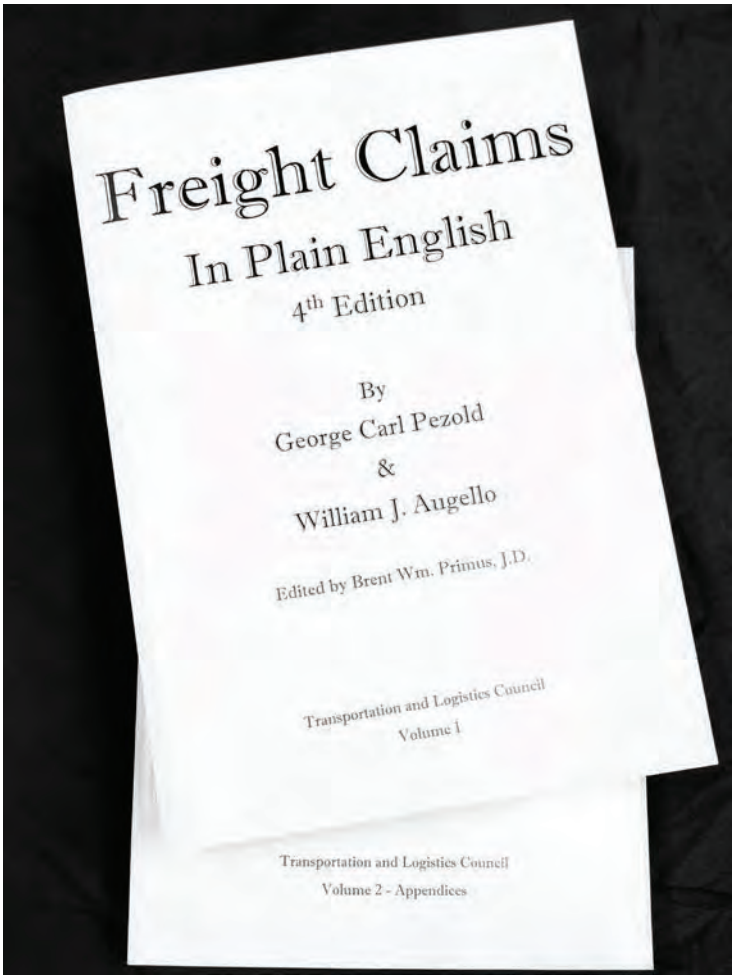

Freight Claims in Plain English (4th Ed.)

The hard-cover edition of Freight Claims in Plain English (4th 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.

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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.

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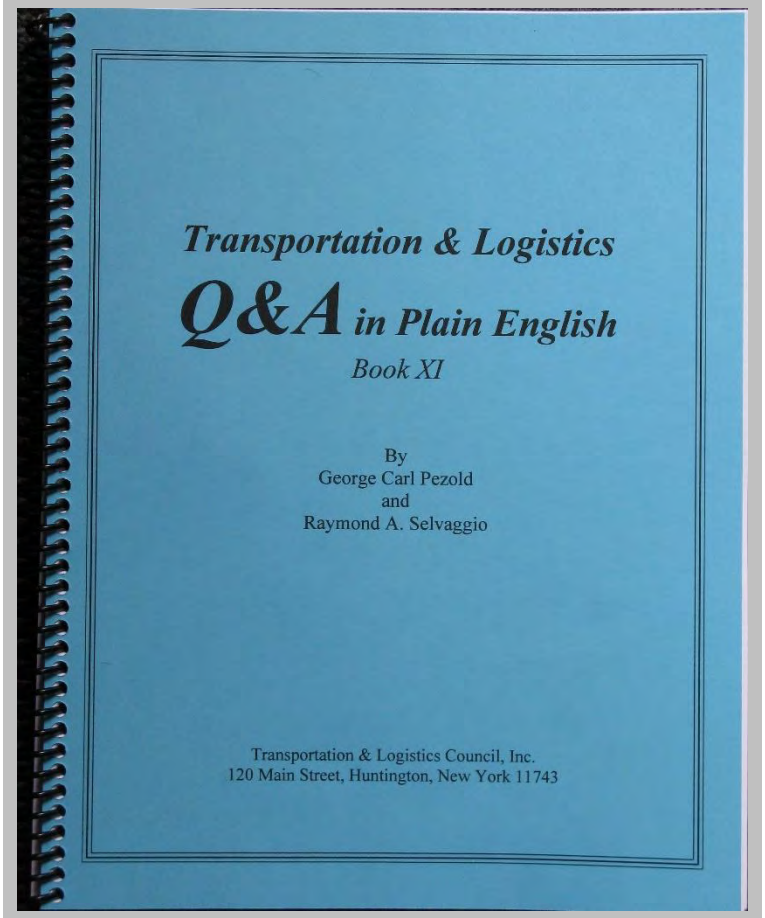

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Transportation & Logistics Q&A in Plain English – Book XI

"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.

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