



## Bill of lading

### Part 373

As a contract, the bill of lading serves the same purpose as any other contract entered into between two parties. The face of the bill of lading provides for the entry of information required for the transportation of the freight. The reverse side usually contains the terms and conditions of carriage. However, the bill of lading does differ from the ordinary contract in one respect: The terms and conditions, primarily dealing with claims and liability issues, are prescribed by statute. These terms and conditions are part of the bill of lading contract, whether they are actually printed on the form or not. Participants in the bill of lading contract are assumed to be familiar with these terms and conditions.

There are three distinct functions served by the bill of lading:

1. A receipt issued by a carrier to a shipper for goods received for transportation. It states the place and date of the shipment, describes the goods, their quality, weight, dimensions, identification marks, condition, etc., and sometimes their quality and value.
2. A contract naming the parties involved, the specific rate or charge for transportation, and the agreement and stipulations regarding the limitations of the carrier's common law liability in the case of loss or injury to the goods. It also lists other obligations assumed by the parties or to matters agreed upon between them.
3. Documentary evidence of title to the goods. "Negotiable" bills of lading are made out "to the order of" a consignee and the carrier may only deliver the cargo to the person in possession of the original bill of lading. When a negotiable bill of lading is negotiated, the person to whom it is negotiated receives title to the goods. Non-negotiable bills of lading, commonly known as straight bills of lading, do not convey title to the goods.
  - ✓ ***Straight (uniform) bill of lading***: Non-negotiable document used to provide that the shipment is to be delivered directly to the party whose name is shown as consignee. The carrier does not require its surrender upon delivery except when needed to identify consignee. It is clearly marked "non-negotiable."
  - ✓ ***Order bills of lading***: Negotiable bill of lading that consigns the goods "to the order of" the person named. It differs from the "straight" bill of lading because it is assignable and negotiable. This bill of lading is printed on yellow paper to distinguish it from a straight bill of

lading. The use of order bills of lading is quite limited in the United States

Contract carriers are not required by regulation to issue a bill of lading. The claims and liability conditions mandated by statute for bill of lading contracts are not automatically part of motor carriage under contract. The claims and liability stipulations agreed upon by the parties are included in the contract, and disputes are resolved based upon the conditions included in the contract. Parties to the contract may incorporate the statutory claims and liability provisions into the contract carrier agreement, or include provisions agreed upon between the parties. However, in the absence of a clear written contract between the parties defining the terms and conditions of liability, the statutory liability under the bill of lading will become the basis for resolving the dispute.

A bill of lading may be drafted subject to a master contract, or it may serve as the only contract for the transportation. A carrier is not able to avoid liability if it fails to issue a bill of lading.

### **Bill of Lading Preparation**

Bills of lading must be legibly written in ink, indelible pencil, or preferably, typed. It is important that all information be written or typed in the exact space provided for it. It is a good idea to number bills of lading consecutively.

Regulations found in [§373.101](#) specify that bills of lading issued by common carriers must include:

1. Names of consignor and consignee.
2. Origin and destination points.
3. Number of packages.
4. Description of freight.
5. Weight, volume, or measurement of freight (if applicable to the rating of the freight).

**Address**—the street address of the consignee should always be shown. If the destination is a city of considerable size, the consignee's full address should always be listed in the space provided. The carrier is only responsible for delivering, or sending notice on arrival, to the address shown on the bill of lading. A post office box will not allow prompt delivery.

**Destination**—the destination should be accurate. An error or an illegibly written or misspelled destination can cause a great deal of trouble and expense. If there are two

destinations of the same name in the same state, insert the name of the county to indicate the correct destination clearly.

**Date**—the date on bills of lading should be the exact date of delivery of the merchandise to the carrier. This can help prevent misunderstandings regarding what rate of tariff applies to the shipment.

**Description of goods**—the description of the goods covered by the bill of lading should be complete and exact regarding quantity and quality. Other information may be necessary to allow the carrier to classify and properly rate the shipment. The law, both Federal and states, require shippers to furnish the correct description of property to be transported by the carrier. The carrier is also required to use proper and reasonable diligence when determining that the correct description of the property has been provided.

If, through error, the shipper describes the shipment incorrectly, and therefore is subject to a higher rate than he would have been responsible for under another description, a corrected bill of lading may be issued. There are heavy penalties for intentionally describing a shipment incorrectly to obtain lower freight rates and charges.

**Special markings and instructions**—special marks shown on the shipping units should be reproduced on the bill of lading. Special instructions, i.e. freezables, transit privileges, pick-up allowances, etc. should be included.

**Payment of freight charges**—carriers may require prepayment of freight charges on certain commodities or on freight consigned to certain points, and they have the right under the law to require prepayment on all freight as long as they avoid discrimination. Generally, it is the option of the shipper to determine who will pay the charges and at what point.

Bill of lading forms must indicate the liability for transportation charges. Some forms require the words “to be prepaid” to be inserted. Other forms require that the “collect” box be checked.

**Section 7**—the box on the face of the bill of lading referring to “Section 7 of conditions,” sometimes known as the “no recourse clause,” deals with the payment of freight charges. It is fully explained in Section 7 of the terms and conditions, (see 49 C.F.R. 1035) but basically provides:

- ✓ that the owner of the goods or the consignee must pay the freight charges, and
- ✓ Except where the carriers lawfully authorized to do so, it must not deliver or relinquish possession at destination of the property until all tariffs and charges on it have been paid.

- ✓ The consignor shall be liable for the freight and all other lawful charges unless space provided for stipulating otherwise on the face of the bill of lading has been signed.
- ✓ The carrier has the right to require prepayment or guarantee of the charges at the time of shipment.
- ✓ If inspection reveals the articles shipped are not correctly described in the bill of lading, the freight charges on goods actually shipped must be paid.

Shippers who leave the Section 7 area blank, or unsigned, in effect are telling the carrier that if they do not, or are unable to collect the charges from the consignee, the carrier may return to the shipper (consignor) for payment of the freight charges, even though the terms for payment of freight charges on the bill of lading are collect on delivery.

Whether or not Section 7 is executed has a direct impact on the carrier's ability to collect freight charges from the consignor when the charges are due and uncollectible from the consignee.

***Unilateral Amendments***—amendments, or changes, to the bill of lading contract made by only one party to the contract are not binding upon the parties. Any changes or amendments must be accomplished by both parties, with amended copies of the contract provided.

***Bill of lading retention period***—to satisfy FMCSA requirements, a bill of lading must be retained by a motor carrier, broker, household goods freight forwarder, or water carrier for a period of one year from the date of the document, or until any claim or dispute involving the transportation of freight based upon the document is resolved. (Part 379)