

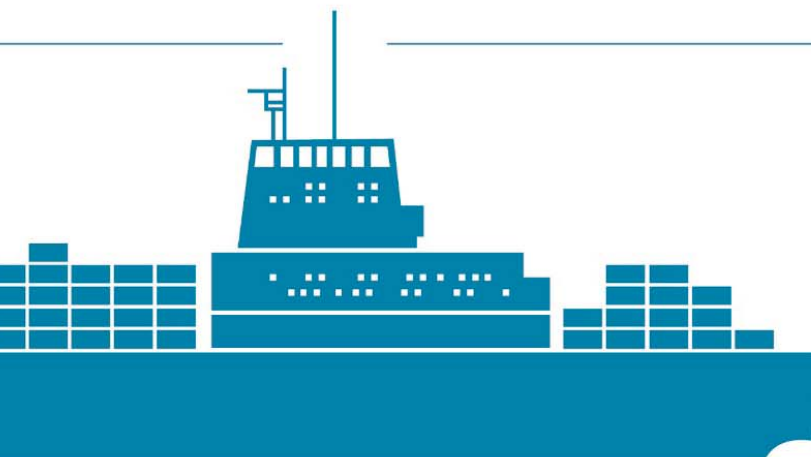


# Charter Party Disputes & Cargo Claims

**LeRoy Lambert**  
General Counsel

**Hannah Morris**  
Underwriting Director

**Clement Lehembre**  
Claims Executive





**STANDARD CLUB New York Forum**

**7 June 2018**

<b>Charter party disputes / cargo claims roundtable</b>	
<b>1</b>	Letters of indemnity – what’s the big deal?
<b>2</b>	Reefer cargoes
<b>3</b>	Clause paramount—should your charter always include one?
<b>4</b>	Safe port / safe berth: warranty / due diligence / <i>The Athos</i> / decision / right to refuse orders
<b>5</b>	Abandoned / overboard cargoes: what’s an owner to do?
<b>6</b>	Description of goods in bills of lading—preserve your right to limit!
<b>7</b>	Recent English cases: “always accessible” / bulk cargoes – limitation of liability / “within port limits” / who is your agent?
<b>8</b>	Recent FD&D matters in the New York office
<b>9</b>	The Both to Blame Collision Clause: what's that about?
	AOB







## **Letters of indemnity**

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Letters of indemnity are issued every day – what's the big deal from a club perspective?

- 1 Rule 3.13 contains the terms upon which the club provides cover for liabilities arising out of the carriage of goods by a member. Unless the board otherwise determines, there is no cover if a liability arises out of
  - a. delivery of cargo without production of original bill of lading
  - b. a bill of lading which records the date of shipment on a date other than the date on which the cargo was in fact loaded
  - c. a bill of lading issued with the knowledge of the member "with an incorrect description of the cargo or its quantity or its condition"
  - d. Liabilities arising out of the above scenarios are commercial/operational decisions taken by a member; the law does not oblige the member to deliver cargoes in these circumstances or to issue incorrect bills of lading; indeed, the law prohibits the latter; liability arises as a matter of choice by a member; not a mutual risk shared by all.
- 2 Scenarios
  - a. When master knows the quality or quantity is not correctly described in the bill of lading
  - b. When the original bill of lading has not arrived at the discharge port
  - c. When the cargo is to be delivered at a port other than the one named in bill of lading
  - d. Commingling
  - e. Blending
  - f. "Switch" bills
  - g. One original on board
- 3 Charterers and cargo owners, however, have long pressured members to issue incorrect bills of lading and/or deliver cargoes without production of original bills of lading.
  - a. The International Group recognized the practice and approved the text of "letters of indemnity" (LOI's) which addressed SOME (not all) of these scenarios, namely, (b) and (c) above
  - b. BUT using these forms does NOT "reinstate" cover. If a claim arises, the member is NOT covered for the liability unless the board in its discretion agrees
  - c. There are no IG forms for scenarios (a), (d), (e), (f) and (g) above, although there is ongoing discussion about (d) and (e).
- 4 Additional cover as a solution? Cargo deviation cover (attached).



Enclosures to Tab 1:

- Circulars: 9 March 2001 and 20 Oct 2010
- IG approved form for delivery without production of bill of lading
- IG approved form for change of destination
- Unapproved form: commingling/blending
- Web alert 16 December 2015: re delivery of cargo against one original bill of lading retained on board
- Cargo deviation cover



# club circular

TO ALL MEMBERS

9<sup>th</sup> March 2001

Dear Sirs,

## BILLS OF LADING - DELIVERY OF CARGO

Standard forms of letters of indemnity to be given in return for:

- (A) Delivery of cargo without production of the original bill of lading
- (B) Delivery of cargo at a port other than that stated in the bill of lading
- (C) Delivery of cargo at a port other than that stated in the bill of lading and without production of the original bill of lading

In December 1998, the clubs in the International Group issued a circular to members recommending revised wordings of the standard form Letters of Indemnity for use by members in circumstances where they are requested to deliver cargo without production of the original bill of lading and/or to deliver cargo at a port other than that stated in the bill of lading.

As a result of comment from shipowners and shipowners' organisations, a further review of the wordings has been undertaken and further modifications to the standard wordings have now been made. Moreover, discussions have taken place between the International Group and the British Bankers Association (BBA) and a separate standard wording has been agreed on the basis of which banks members of the BBA will now be prepared, in principle, to join in the Letters of Indemnity while, through the auspices of the International Chamber of Commerce, the BBA will endeavour to promote this agreed standard wording within the international business community. The BBA has also given its general approval to this circular.

In consequence of the agreement reached with the BBA, the three recommended standard form Letters of Indemnity are now issued in two versions: INT GROUP A (for delivery of cargo without production of the original bill of lading), INT GROUP B (for delivery of cargo at a port other than that stated in the bill of lading against production of at least one original bill of lading), and INT GROUP C (for delivery of cargo at a port other than that stated in the bill of lading and without production of the original bill of lading) for use when the commercial party requesting delivery (the "Requestor") will alone be signing the Letter of Indemnity, and INT GROUP AA, INT GROUP BB and INT GROUP CC for use when a bank will be joining in the Letter of Indemnity and which forms incorporate, in addition to the same indemnities given by the Requestor under INT GROUP A, B and C, the separate standard wording agreed with the banks.

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Registered in England No 2561548

The Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Limited

The principal features of the new wordings are explained below.

#### **Financial Limit**

The liability of the Requestor should generally not be limited. However, where a bank is to join in the Letter of Indemnity it will generally insist upon a fixed monetary limit. The amount of the limit must be a matter for negotiation in order that it properly reflects the potential exposure in the particular circumstances, taking into account, *inter alia*, the sound market value of the cargo at the time of delivery, but it is recommended that the limit should be a minimum of 200% of the sound market value of the cargo at the time of delivery.

#### **Duration of security**

**Under INT GROUP A and AA**, the liability of the Requestor (and, hence, the bank under AA) terminates upon the delivery of all original bills of lading to the shipowner. If the original bills of lading are not delivered to the shipowner, the Requestor's liability under the Letter of Indemnity continues.

Subject to delivery of all original bills of lading as stated, and to the two exceptions described below, the bank's liability under INT GROUP AA is for an initial period of six years, but which is automatically renewable from time to time for further periods of two years at the request of the shipowner. The exceptions are (1) that, rather than agree to an extension of its liability, the bank has the option of discharging its liability by paying the maximum amount payable under its indemnity and (2) that, in the event of a demand being made by the shipowner to the bank for payment under the indemnity before the termination date, or in the event of the bank being notified by the shipowner of the commencement of legal proceedings against the shipowner before the termination date, the liability of the bank will continue until the demand has been paid or the legal proceedings have been concluded, the bank, if called upon so to do, paying the amount of any judgment or settlement payable by the shipowner if the Requestor has failed to do so.

**Under INT GROUP B, C, BB and CC**, since it is possible for a claim to be pursued against a shipowner for delivering cargo at a port other than that stated in the bill of lading despite cargo being delivered against production of the original bill of lading, or all original bills of lading being subsequently delivered to the shipowner (in particular, in circumstances where a charterer may require a cargo owner to receive his cargo at such other port against his wishes and request the shipowner to accommodate his request), the liability of the Requestor will continue until it can be established to the satisfaction of the shipowner that no such claim will be made.

Accordingly, unless the shipowner is satisfied that no claim of this nature will be made, the liability of the bank under INT GROUP BB and CC will be as described under INT GROUP AA above.

#### **Scope of security**

The Requestor is obliged to provide bail or other security not only to prevent or lift the arrest of the ship the subject matter of the indemnity, but also any other ship in the same or associated ownership, management or control. In addition, the Requestor is obliged to provide bail or other security to prevent interference in the use or trading of the ship, such as a caveat being entered on the ship's registry to prevent the sale of the ship the subject matter of the indemnity.



Where a bank joins in the Letter of Indemnity it will generally not agree to provide bail or other security. However, the bank will pay any amount up to the limit of its liability under the Letter of Indemnity in order to enable the shipowner to arrange the provision of security if the Requestor fails to provide bail or other security.

#### **Tankers**

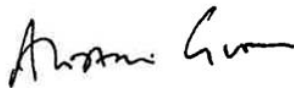
A provision designed to give greater security to tankers has been incorporated, whereby requested delivery of a bulk liquid or gas cargo to a terminal or facility, or to another ship, lighter or barge is to be deemed to be delivery to the party to whom delivery has been requested.

Members are again reminded that, unless the Board otherwise determines, there is no cover in respect of liabilities arising out of the delivery of cargo without production of the original bill of lading and/or delivery at a port other than that stated in the bill of lading and that, in such circumstances, members are strongly advised to ensure that they are fully satisfied with the financial standing and authority of those who are to issue and sign these indemnities.

The standard form Letters of Indemnity are designed to cover a broad range of trades and operations, and members may wish to modify the standard forms to suit particular requirements. However, in this event, it must be appreciated that if a bank is to join in the Letter of Indemnity there may be limited scope for amendment, and that the Requestor's bank will have to be consulted if any material change is contemplated. The Managers will be pleased to advise members regarding any proposed modification.

Finally, it is not uncommon for members to be requested by charterers to agree clauses in charter parties which expressly provide for the delivery of cargo without production of bills of lading and/or at ports other than those stated in the bills of lading against Letters of Indemnity. Members are strongly advised not to accept such clauses and it is recommended that members seek advice from the Managers before responding to such requests.

Yours faithfully,



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Chief Executive  
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# CIRCULAR

SETTING THE STANDARD FOR SERVICE AND SECURITY

TO ALL MEMBERS

20 October 2010

Dear Sirs

## **INTERNATIONAL GROUP STANDARD FORM LETTERS OF INDEMNITY AND DELIVERY OF CARGO WITHOUT PRODUCTION OF BILLS OF LADING**

The purpose of this circular is to:

- 1 remind members of the implications for club cover of delivering cargo without production of the bills of lading and of the International Group of P&I Clubs (IG) standard form letters of indemnity and
- 2 advise members of new precautions to be taken when accepting a letter of indemnity for delivery of cargo without production of the original bill of lading

### **Club cover and letters of indemnity**

If cargo is delivered without production of the original bill of lading there may be an allegation that the cargo has been delivered to the wrong party. Members are reminded that, unless the board otherwise determines, there shall be no recovery from the club in respect of liabilities arising out of the delivery of cargo without production of the original bill of lading and/or delivery at a port other than that stated in the bill of lading. If they cannot produce the bill of lading, cargo claimants may offer a letter of indemnity. In such circumstances, members are strongly advised to ensure that they are fully satisfied with the financial standing and authority of those who are to issue and sign these indemnities.

The standard form letters of indemnity are designed to cover a broad range of trades and operations, and members may wish to modify the standard forms to suit particular requirements. However, in this event, it must be appreciated that if a bank is to join in the letter of indemnity there may be limited scope for amendment, and that the bank will have to be consulted if any material change is contemplated. The managers will be pleased to advise members regarding any proposed modification.

Members may be requested by charterers to agree clauses in charter parties which expressly provide for the delivery of cargo without production of bills of lading and/or at ports other than those stated in the bills of lading against letters of indemnity. Members are strongly advised not to accept such clauses and it is recommended that members seek advice from the managers before responding to such requests.

.. / ...

**The Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Limited**

[www.standard-club.com](http://www.standard-club.com)

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**CTC**  
CHARLES TAYLOR  
CONSULTING



The IG has previously recommended three standard forms of letters of indemnity to be issued when the party requesting delivery is to sign the letter of indemnity. These letters are given in return for:

- (A) delivery of cargo without production of the original bill of lading (INT GROUP A wording)
- (B) delivery of cargo at a port other than that stated in the bill of lading (INT GROUP B wording)
- (C) delivery of cargo at a port other than that stated in the bill of lading and without production of the original bill of lading (INT GROUP C wording).

A second version of each of these letters of indemnity was drafted for use when a bank counter signs (INT GROUP AA, INT GROUP BB and INT GROUP CC wordings respectively).

#### **Delivery of cargo without production of bills of lading – new additional precautions**

Following a recent English court decision (Farenco Shipping Co Ltd –v- Daebop Shipping Co Ltd (LLR (2009) Vol 1 81 (the 'BREMEN MAX')) the club recommends that members take two further precautions if they choose to accept a letter of indemnity for delivery of cargo without production of the original bill of lading.

##### **1. *The identity of the party to whom delivery is to be made***

The opening paragraph of the letter of indemnity includes several items of information that should be inserted when the letter of indemnity is issued. It is recommended that as well as inserting the name of the specific party to whom delivery is to be made, members should request that the wording is extended to include that party's representatives (in the INT GROUP A, AA, C and CC wordings). For example, if the member is asked to deliver the cargo to XYZ Ltd, the letter of indemnity should expressly state the party to whom delivery is to be made is:

*"XYZ Ltd or to such party as you believe to be or to represent XYZ Ltd or to be acting on behalf of XYZ Ltd".*

If a specific party only is named in the letter of indemnity, the member may be assuming the burden of properly identifying that party. If the member then mis-identifies the party, and delivers to a different party, there is then the risk that the member is not entitled to an indemnity, because he has not satisfied the pre-conditions in the letter of indemnity for delivery to the named party. The wording suggested above is designed to ensure so far as possible, that if the member believes that the party to whom physical delivery of the cargo is given is XYZ Ltd or is acting on behalf of XYZ Ltd, he can rely on the letter of indemnity.

##### **2. *Timing of demands for security under the letter of indemnity***

If a member delivers cargo without production of the bill of lading (in return for a letter of indemnity) and it is alleged that it has mis-delivered the cargo, the claimant may demand security. If so, the member should immediately give notice to the issuer of the letter of indemnity that:

.. /...

- (a) a claim has been notified,
- (b) security has been demanded from the member, and
- (c) the member now requires to be secured by the issuer in accordance with paragraph number 3 of the letter of indemnity.

It is essential that this is done before the member provides any security to the claimant. The member may prejudice his right to demand and receive security under the letter of indemnity if he provides security to the claimant before making his own demand for security under paragraph number 3 of the letter of indemnity.

All clubs in the International Group have issued circulars on this subject.

Yours faithfully



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G19 (A)

**STANDARD FORM LETTER OF INDEMNITY TO BE GIVEN IN RETURN FOR DELIVERING CARGO WITHOUT PRODUCTION OF THE ORIGINAL BILL OF LADING**

[insert date]

To : [insert name of Owners]  
The Owners of the [insert name of ship]  
[insert address]

Dear Sirs

**Ship:** [insert name of ship]  
**Voyage:** [insert load and discharge ports as stated in the bill of lading]  
**Cargo:** [insert description of cargo]  
**Bill of lading:** [insert identification numbers, date and place of issue]

The above cargo was shipped on the above ship by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bill of lading is made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bill of lading] but the bill of lading has not arrived and we, [insert name of party requesting delivery], hereby request you to deliver the said cargo to [insert name of party to whom delivery is to be made] or such party as you believe to be or to represent \_\_\_\_\_ or to be acting on behalf of \_\_\_\_\_ at [insert place where delivery is to be made] without production of the original bill of lading.

added  
in 2019 →

In consideration of your complying with our above request, we hereby agree as follows :-

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of delivering the cargo in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the ship (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.

/Cont ...

4. If the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter or barge, then delivery to such terminal, facility, ship, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.
5. As soon as all original bills of lading for the above cargo shall have come into our possession, to deliver the same to you, or otherwise to cause all original bills of lading to be delivered to you, whereupon our liability hereunder shall cease.
6. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
7. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully  
For and on behalf of  
*[insert name of Requestor]*  
The Requestor

.....  
Signature

G19 ⑧

**STANDARD FORM LETTER OF INDEMNITY TO BE GIVEN IN RETURN FOR  
DELIVERING CARGO WITHOUT PRODUCTION OF THE ORIGINAL BILL OF LADING  
INCORPORATING A BANK'S AGREEMENT TO JOIN IN THE LETTER OF INDEMNITY**

[insert date]

To : [insert name of Owners]  
The Owners of the [insert name of ship]  
[insert address]

Dear Sirs

**Ship:** [insert name of ship]  
**Voyage:** [insert load and discharge ports as stated in the bill of lading]  
**Cargo:** [insert description of cargo]  
**Bill of lading:** [insert identification numbers, date and place of issue]

The above cargo was shipped on the above ship by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bill of lading is made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bill of lading] but the bill of lading has not arrived and we, [insert name of party requesting delivery], hereby request you to deliver the said cargo to [insert name of party to whom delivery is to be made] or such party as you believe to be or to represent \_\_\_\_\_ or to be acting on behalf of \_\_\_\_\_ at [insert place where delivery is to be made] without production of the original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows :-

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of delivering the cargo in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
4. 3. If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.

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4. If the place at which we have asked you to make delivery is a bulk liquid or gas terminal or facility, or another ship, lighter or barge, then delivery to such terminal, facility, ship, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.
5. As soon as all original bills of lading for the above cargo shall have come into our possession, to deliver the same to you, or otherwise to cause all original bills of lading to be delivered to you, whereupon our liability hereunder shall cease.
6. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
7. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully  
For and on behalf of  
[insert name of Requestor]  
The Requestor

.....  
Signature

We, [insert name of the Bank], hereby agree to join in this Indemnity providing always that the Bank's liability:-

1. shall be restricted to payment of specified sums of money demanded in relation to the Indemnity (and shall not extend to the provision of bail or other security)
2. shall be to make payment to you forthwith on your written demand in the form of a signed letter certifying that the amount demanded is a sum due to be paid to you under the terms of the Indemnity and has not been paid to you by the Requestor or is a sum which represents monetary compensation due to you in respect of the failure by the Requestor to fulfil its obligations to you under the Indemnity. For the avoidance of doubt the Bank hereby confirms that:-
  - (a) such compensation shall include, but not be limited to, payment of any amount up to the amount stated in proviso 3 below in order to enable you to arrange the provision of security to release the ship (or any other ship in the same or associated ownership, management or control) from arrest or to prevent any such arrest or to prevent any interference in the use or trading of the ship, or other ship as aforesaid, and

/Cont ...

- (b) in the event that the amount of compensation so paid is less than the amount stated in proviso 3 below, the liability of the Bank hereunder shall continue but shall be reduced by the amount of compensation paid.
- 3. shall be limited to a sum or sums not exceeding in aggregate [*insert currency and amount in figures and words*]
- 4. subject to proviso 5 below, shall terminate on [*date six years from the date of the Indemnity*] (the 'Termination Date'), except in respect of any demands for payment received by the Bank hereunder at the address indicated below on or before that date.
- 5. shall be extended at your request from time to time for a period of two calendar years at a time provided that:-
  - (a) the Bank shall receive a written notice signed by you and stating that the Indemnity is required by you to remain in force for a further period of two years, and
  - (b) such notice is received by the Bank at the address indicated below on or before the then current Termination Date.

Any such extension shall be for a period of two years from the then current Termination Date and, should the Bank for any reason be unwilling to extend the Termination Date, the Bank shall discharge its liability by the payment to you of the maximum sum payable hereunder (or such lesser sum as you may require).

However, in the event of the Bank receiving a written notice signed by you, on or before the then current Termination Date, stating that legal proceedings have been commenced against you as a result of your having delivered the said cargo as specified in the Indemnity, the Bank agrees that its liability hereunder will not terminate until receipt by the Bank of your signed written notice stating that all legal proceedings have been concluded and that any sum or sums payable to you by the Requestor and/or the Bank in connection therewith have been paid and received in full and final settlement of all liabilities arising under the Indemnity.

- 6. shall be governed by and construed in accordance with the law governing the Indemnity and the Bank agrees to submit to the jurisdiction of the court stated within the Indemnity.

/Cont ...

It should be understood that, where appropriate, the Bank will only produce and deliver to you all original bills of lading should the same come into the Bank's possession, but the Bank agrees that, in that event, it shall do so.

The Bank agrees to promptly notify you in the event of any change in the full details of the office to which any demand or notice is to be addressed and which is stated below and it is agreed that you shall also promptly notify the Bank in the event of any change in your address as stated above.

Please quote the Bank's Indemnity Ref ..... in all correspondence with the Bank and any demands for payment and notices hereunder.

Yours faithfully

For and on behalf of

*[insert name of bank]*

*[insert full details of the office to which any demand or notice is to be addressed]*

.....  
Signature

G18 (A)

**STANDARD FORM LETTER OF INDEMNITY TO BE GIVEN IN RETURN FOR DELIVERING CARGO AT A PORT OTHER THAN THAT STATED IN THE BILL OF LADING**

(insert date)

To: [Insert name of Owners]  
the Owners of the [insert name of ship]

Dear Sirs,

**Ship:** [insert name of ship]  
**Voyage:** [insert load/discharge port, as stated in the bill of lading]  
**Cargo:** [insert description of cargo]  
**Bill(s) of lading:** [insert identification number, date, place of issue]

The above cargo was shipped on the above ship by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bill of lading is made out, as appropriate] for delivery at the port of [insert name of discharge port stated in the bill of lading] but we, [insert name of party requesting substituted delivery], hereby request you to order the ship to proceed to and deliver the said cargo at [insert name of substitute port or place of delivery] against production of at least one original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows:-

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of the ship proceeding and giving delivery of the cargo against production of at least one original bill of lading in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the ship proceeding and giving delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the ship (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.

/Cont ...



4. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
5. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully,  
For and on behalf of  
*[insert name of Requestor]*  
The Requestor

.....  
Signature



**STANDARD FORM LETTER OF INDEMNITY TO BE GIVEN IN RETURN FOR DELIVERING CARGO AT A PORT OTHER THAN THAT STATED IN THE BILL OF LADING INCORPORATING A BANK'S AGREEMENT TO JOIN IN THE LETTER OF INDEMNITY**

(insert date)

To: *[Insert name of Owners]*  
the Owners of the *[insert name of ship]*

Dear Sirs,

**Ship:** *[insert name of ship]*  
**Voyage:** *[insert load/discharge port, as stated in the bill of lading]*  
**Cargo:** *[insert description of cargo]*  
**Bill(s) of lading:** *[insert identification number, date, place of issue]*

The above cargo was shipped on the above ship by *[insert name of shipper]* and consigned to *[insert name of consignee or party to whose order the bill of lading is made out, as appropriate]* for delivery at the port of *[insert name of discharge port stated in the bill of lading]* but we, *[insert name of party requesting substituted delivery]*, hereby request you to order the ship to proceed to and deliver the said cargo at *[insert name of substitute port or place of delivery]* against production of at least one original bill of lading.

In consideration of your complying with our above request, we hereby agree as follows:-

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of the ship proceeding and giving delivery of the cargo against production of at least one original bill of lading in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the ship proceeding and giving delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the cargo as aforesaid, the ship, or any other ship or property in the same or associated ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise howsoever), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.
4. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.

/Cont ...

5. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully,  
For and on behalf of  
*[insert name of Requestor]*  
The Requestor

.....  
Signature

We, *[insert name of the Bank]*, hereby agree to join in this Indemnity providing always that the Bank's liability:-

1. shall be restricted to payment or specified sums of money demanded in relation to the Indemnity (and shall not extend to the provision of bail or other security)
2. shall be to make payment to you forthwith on your written demand in the form of a signed letter certifying that the amount demanded is a sum due to be paid to you under the terms of the Indemnity and has not been paid to you by the Requestor or is a sum which represents monetary compensation due to you in respect of the failure by the Requestor to fulfil its obligations to you under the Indemnity. For the avoidance of doubt the Bank hereby confirms that:-
  - (a) such compensation shall include, but not be limited to, payment of any amount up to the amount stated in proviso 3 below in order to enable you to arrange the provision of security to release the ship (or any other ship in the same or associated ownership, management or control) from arrest or to prevent any such arrest or to prevent any interference in the use or trading of the ship, or other ship as aforesaid, and
  - (b) in the event that the amount of compensation so paid is less than the amount stated in proviso 3 below, the liability of the Bank hereunder shall continue but shall be reduced by the amount of compensation paid.

/Cont ...

3. shall be limited to a sum or sums not exceeding in aggregate *[insert currency and amount in figures and words]*
4. subject to proviso 5 below, shall terminate on *[date six years from the date of the Indemnity]* (the 'Termination Date'), except in respect of any demands for payment received by the Bank hereunder at the address indicated below on or before that date.
5. shall be extended at your request from time to time for a period of two calendar years at a time provided that:-
  - (a) the Bank shall receive a written notice signed by you and stating that the Indemnity is required by you to remain in force for a further period of two years, and
  - (b) such notice is received by the Bank at the address indicated below on or before the then current Termination Date.

Any such extension shall be for a period of two years from the then current Termination Date and, should the Bank for any reason be unwilling to extend the Termination Date, the bank shall discharge its liability by the payment to you of the maximum sum payable hereunder (or such lesser sum as you may require).

However, in the event of the Bank receiving a written notice signed by you, on or before the then current Termination Date, stating that legal proceedings have been commenced against you as a result of your having delivered the said cargo as specified in the Indemnity, the Bank agrees that its liability hereunder will not terminate until receipt by the Bank of your signed written notice stating that all legal proceedings have been concluded and that any sum or sums payable to you by the Requestor and/or the Bank in connection therewith have been paid and received in full and final settlement of all liabilities arising under the Indemnity.

6. shall be governed by and construed in accordance with the law governing the Indemnity and the Bank agrees to submit to the jurisdiction of the court stated within the Indemnity.

It should be understood that, where appropriate, the Bank will only produce and deliver to you all the original bills of lading should the same come into the Bank's possession, but the Bank agrees that, in that event, it shall do so.

The Bank agrees to promptly notify you in the event of any change in the full details of the office to which any demand or notice is to be addressed and which is stated below and it is agreed that you shall also promptly notify the Bank in the event of any change in your address as stated above.

/Cont ...

- 4 -

Please quote the Bank's Indemnity Ref ..... in all correspondence with the Bank and any demands for payment and notices hereunder.

Yours faithfully

For and on behalf of

*[insert name of bank]*

*[insert full details of the office to which any demand or notice is to be addressed]*

.....  
Signature



**LETTER OF INDEMNITY  
FOR BLENDING/COMMINGLING CARGOES ON BOARD  
AND SUBSTITUTING BILLS OF LADING**

Date [ ]

[Insert name of shipowner]  
[insert address]

Dear Sirs

Ship: [insert name of ship]  
Voyage: [insert details]  
Charterparty dated [insert date] between [insert name of parties]  
Bills of Lading [insert identification numbers, dates and places of issue]

The above vessel has loaded the following cargo(es):

- a) at [place] on [date], [insert quantity loaded] m/t of [type of cargo]
- b) at [place] on [date], [insert quantity loaded] m/t of [type of cargo]

and bills of lading have been issued as follows:

Bills of lading [insert identification numbers, dates and places of issue]

Further to the above, the vessel is to load/ has loaded [delete as appropriate] the following cargo(es):

- c) at [place] [date], [insert quantity loaded] m/t of [type of cargo]
- d) at [place] [date], [insert quantity loaded] m/t of [type of cargo]

and bills of lading were to be/have been [delete as appropriate] issued accordingly.  
Bills of lading [insert identification numbers, date and place of issue]

We, [insert name of requesting party], Charterers of the above vessel under the above charterparty, now wish the cargo(es) referred to in (...[a, b, c or d]) and ([a, b, c or d]) above to be blended/commingled on board the vessel and hereby request you order the vessel to perform the said blending/commingling of the cargo(es).

We also request you to substitute the original bills of lading for the cargo(es) referred to in ([a, b, c or d]) and ([a, b, c or d]) above with new bills of lading for cargo(es) referred to in ([a, b, c or d]) and ([a, b, c or d]). The new bills of lading are to be issued in the same form and content as the substituted bills, except as follows:

(i) [insert details of changes, e.g., to issue date, shipper, consignee, etc.]

(ii) they will contain in description of the cargo the following statement: "[insert quantity] m/t of [type of cargo] blended/commingled on board from [insert quantity] m/t of [type of cargo] loaded at [loading port] on [date] and [insert quantity] m/t of [type of cargo] loaded at [loading port] on [date]"

(iii) they will contain the following exclusion of carrier's liability: "the carrier shall not be liable for any loss or damage to the cargo whatsoever and howsoever arising from the blending/commingling, whether or not arising from negligence on the part of the carrier, their servants or agents"

In consideration of your complying with our above request, we hereby agree as follows:

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature and howsoever arising, including but not limited to any liability in connection with change of quantity, quality or pumpability and/or any damage to the vessel including tanks, pumps and lines, and which you may sustain by reason of blending/commingling cargo(es) on board and/or by issuing bills of lading in accordance with our request.

2. To accept full responsibility and risk for the success or otherwise of the blending/commingling operation and the consequences of any failure of whatsoever nature and howsoever arising from the operation, whether or not arising from your, your servants' or your agents' negligence.

3. To pay you on demand the amount of any loss, damage or expense of whatsoever nature and howsoever arising which you, your servants or agents may incur or be faced with incurring by reason of blending/commingling cargo(es) on board and/or by issuing bills of lading in accordance with our request.

4. To treat all time used during or arising from blending/commingling cargo(es) on board and/or by issuing bills of lading as time on hire/laytime or time on demurrage [delete as appropriate].

5. To provide to your satisfaction, and as a pre-requisite to the commencement of any blending/commingling operation, the following:

(a) A letter of indemnity in these terms, with authorised signatures.

(b) Surrender of all of the original bills of lading for the cargo(es) referred to in ([a, b, c or d]) and ([a, b, c or d]) together with written confirmation from the holders/transferees of those bills of lading that they have lawful title to the cargo(es) and are authorised in their own right and by the owners of the cargo(es) to:

(i) Authorise the blending/commingling operation and substitution of those original bills of lading as requested herein.

(ii) Accept substitution of those bills of lading by new bills of lading in the terms stated above, such substitution taking effect at the time of issue of the new bills of lading.

6. In the event of any proceedings being commenced against you or any of your servants or agents in connection with blending/commingling cargo(es) on board and/or issuing bills of lading in accordance with our request, to provide you or them on demand with sufficient funds to defend the same.

7. If, in connection with blending/commingling cargo(es) on board and/or issuing bills of lading in accordance with our requests, the ship or any other ship or property in the same or associated ownership, management or control should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or interference may be justified.

8. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to

or liable under this indemnity.

9. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice in London.

Yours faithfully,  
For and on behalf of  
[insert name of Requestor]  
The Requestor

.....

For and on behalf of  
[insert name of bank]  
Bankers

.....

[insert full details of the office to which any demand or notice is to be addressed.]



## **Web alert: delivery of cargo against one original bill of lading retained on board - A reminder**

*16 December 2015*

### **Background**

Members will be aware that traditionally bills of lading are signed and issued in sets of three and presentation of any one original to the master at the discharge port is sufficient for the bill of lading to be 'accomplished'.

On occasion the charterer or shipper, or their agents, may take only two originals and leave one original bill of lading on board with the master<sup>[1]</sup> for on-carriage to the discharge port and with the instruction to hand it to the end consignee on arrival, to avoid the possibility of there being no original bill of lading for presentation at the discharge port. The consignee then presents the original bill of lading back to the master and claims delivery of the subject goods.

The bill of lading carried on board can contain the consignee's name or be a 'to order' bill of lading. If the bill of lading is 'to order', so does not contain the *name of the consignee*, then such a person can obtain legal title to the goods by way of endorsement.

This practice, of keeping an original bill of lading in the ship's bag and onboard the ship to the discharge port, is a commercial attempt to find a workaround to the problem which can arise when there is no bill of lading available at the discharge port (say, because it is stuck in the banking chain) and the master is asked to deliver cargo without the production of an original bill of lading.

A shipper / charterer may argue that this commercial practice enables the master to safely deliver the cargo having sighted an original bill of lading at the discharge port. In reality, however, the position is much more complicated especially where the subject bill is made 'to order'. Here the master is presented at the discharge port with a dilemma as to whether the party claiming delivery of the cargo is, in fact, so entitled (for example, the other bills of lading left in circulation may have been endorsed to another party whilst the ship was en-route). Even if the bill of lading is 'straight' (i.e. the consignee is specifically named on the bill) where the bill of lading is carried in the 'ship's bag' to discharge the master is under increased pressure (which doesn't ordinarily exist) to ensure the person to whom he is delivering the bill of lading, and the cargo, is the so named consignee.

### **Consequences**

It should be stressed that when an original bill of lading is carried on board the utmost care remains with the master to correctly identify the party to whom the bill of lading should be handed over at the discharge port. As members may appreciate, there are considerable risks involved with cargo mis-delivery in such circumstances.

Members can face claims by lawful holders of bills if the bill of lading carried on board is delivered to the wrong person and, therefore, so is the cargo. If the other negotiable bills of lading remain with the shipper, they can be stolen or lost or even transacted/endorsed (sometimes several times) while the goods are still in transit. In such cases, the carrier is likely to be held fully liable for wrongful delivery of the cargo with the inevitable aftermath of compensating the rightful cargo owner for the full value of the subject cargo.



### Club's advice

The club therefore advises its members to resist such requests to carry one of a set of original bills of lading on board, for surrender at the discharge port. If, notwithstanding this recommendation, the member feels under pressure to accommodate such a request, or they have previously contractually agreed to the same in the relevant charterparty provisions<sup>[2]</sup>, then the club recommends that the following wording be endorsed on all of the (three) original bills of lading:

*"One original bill of lading retained on board against which delivery of cargo may properly be made on instructions received from shippers/charterers."*

It is believed that the above-mentioned mis-delivery risks are minimised, if not altogether avoided, by the insertion of this subject notation as it gives notice to any party purchasing the cargo against an incomplete set of bills of lading that delivery may be made in exchange for one original bill of lading retained on board the ship. Nonetheless, by no means is it guaranteed that this will offer full protection to the carrier against claims brought in contract or in tort from the rightful cargo receivers.

Additional protection may be secured for the member should they reach agreement with the charterer and the shipper that any carriage of a bill of lading on board constitutes simply transportation of the document itself and the master will not be responsible for confirming the identity of the person to whom that document is handed to at the discharge port.

### Conclusion

The pivotal role of a bill of lading, as a document of title, in international trade cannot be ignored. It is hoped the above provides some useful information on the problems arising out of delivering cargo against one original bill of lading carried on board and the options available to a member if they take the commercial decision to comply with such a request. A member's legal defences against a wrongful delivery claim will be less viable if delivery is made against an original carried on board.

Members are encouraged to contact their usual contact at the club and seek specific guidance whenever such a request is made, either in the context of negotiating charterparty terms and/or at the time of completion of loading operations and/or prior to the discharge of cargo.

**This article intends to provide general guidance on the issues arising. It is not intended to provide legal advice in relation to any specific query. The law is also not static. If in doubt, The Standard Club is always on hand to assist.**

---

[1] In the 'ship's bag' as this is sometimes referred to.

[2] In **The Mobile Courage (1987) 2 Lloyd's Rep 655** it was recognized that such a practice (bills of lading carried in the ship's bag) was common in the oil trade. Although the court didn't thoroughly analyse the issue, it appears that where it has been contractually agreed between the parties, the courts may oblige the carrier to deliver the subject cargo against a bill of lading carried onboard, which the master hands over to the receiver who then hands it back for delivery of the cargo.

#### Cargo deviation clause 2018

<b>Cover</b>	<b>1</b>	Liabilities under rules 3.13 and 3.14 where such liabilities fall within the scope of exclusions (2) to (12) of rule 3.13, and exclusion (1) of rule 3.14.
<b>Exclusions</b>	<b>2.1</b>	Unless otherwise agreed by the managers, the member shall only be entitled to recover in respect of any liabilities, costs or expenses under paragraph 1 if the member has no recourse to recover such sums from any other party and, where such recourse may be subject to the exercise of discretion by another party, then it shall be a condition precedent to recovery under paragraph 1 that such discretion shall first have been exercised.
	<b>2.2</b>	Excluding liabilities covered elsewhere under the rules and the member's certificate of entry.
	<b>2.3</b>	Excluding liabilities for any loss or damage arising from: (1) inherent quality, defect or vice of cargo (2) rusting, electronic and mechanical derangement, unless caused by an external peril (3) delay and/or loss of market.
	<b>3</b>	Where cover under this extension is provided in respect of a ship which is not entered with the club, the member and each joint entrant warrant that they have not and will not disclose the existence and/or the terms of this policy without the prior written approval of the managers.
<b>Deductible and limit of cover</b>	<b>4</b>	The applicable deductible and limit of club cover shall be that set out in the member's certificate of entry.



## CHARTER PARTY DISPUTES / CARGO CLAIMS ROUNDTABLE

Agenda item no

**2**

### Reefer Cargoes

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- 1 New FDA regulation: sanitary transportation of human and animal food
  - a. Right of the consignee to refuse delivery?
  - b. Who is covered?
- 2 New technology: remote control
  - a. How does it work?
  - b. Impact on claims?

Enclosures to Tab 2:

- “New FDA Rules could lead to rejected – and wasted – shipments”, Journal of Commerce (28 Oct 2014)
- “New FDA Rules create new burdens for forwarders, brokers”, Journal of Commerce (10 July 2016)
- FDA Guidance, [www.fda.gov/FoodGuidances](http://www.fda.gov/FoodGuidances)
- 21 CFR 1.908 (regulations)
- “The inside story on how to keep it cool”, The Load Star
- “Smart containers listen and talk”, [www.maersk.com/stories/smart-containers-listen-and-talk](http://www.maersk.com/stories/smart-containers-listen-and-talk)





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## New FDA rules could lead to rejected — and wasted — shipments

Stephanie Nail | Oct 28, 2014 8:00AM EDT

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In its first attempt to regulate transportation-related food safety, the Food and Drug Administration has confused quality with safety, a move that could force the automatic rejection of countless loads and push cargo claims and insurance rates up sharply, shippers, carriers and industry associations say.

"I'm not sure how they got there, or why, but the rules as proposed by the FDA would legally force receivers to reject loads of food if they were ever out of temperature range guidelines set by the shipper — no matter how narrow the guidelines," said Patrick Brecht, an industry consultant and forensic scientist with experience in the transportation industry. "The way the proposed rules are written, it wouldn't matter if the food was unsafe or not. If temperatures strayed by even one degree outside the shipper guidelines, the load would be considered adulterated."

The FDA received more than 100 comments on its proposed rules to implement the Sanitary Food Transportation Act. The law initially was enacted in 2005, but never implemented by the agency. Congress packaged the law's provisions into the Food Safety Modernization Act that was signed in January 2011.

A number of provisions have drawn questions, comments and opposition from retail grocers, food manufacturers, growers, carriers and industry and consumer organizations. A number of commenting parties, including the American Trucking Associations, the Produce Marketing Association, the Global Cold Chain Alliance, Wal-Mart and C.R. England, raised the question of quality versus food safety.

"Often times, transportation temperature requirements are established to maintain optimal product quality and are much more stringent than those required for product safety," Wal-Mart wrote. "If a food fails to meet a temperature limit established for quality requirements yet meets all temperature requirements identified for safety ... the food should not be considered adulterated."

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#### US retailers rush imports as tariffs loom

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#### CEVA includes anti-takeover blocking proviso in stake sale to CMA CGM

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Under the proposed regulations, rejected loads couldn't be sold for salvage at a discounted rate, as is the case now.

Wal-Mart said it's concerned the vague wording could "lead to unnecessary increases in cargo claims, transportation and disposal fees, and a disruption of the overall supply chain. Food waste also continues to be a key national concern, and the proposed rule could lead to a significant increase in the waste of foods that are still safe for consumption."

Another issue is the definition of "shipper" with comments suggesting the FDA needs to clarify the meaning because, as written, it could be construed to mean shipper, receiver, broker, warehouse operator and sometimes even a carrier. The definition is key, because the rules hand certain legal responsibilities to shippers, as opposed to carriers.

The proposed rules are designed to cover food carried by domestic truck and rail, but a number of comments questioned whether export cargoes are included. The World Shipping Council this year sent a memo to its members urging them not to submit comments because the rule pertains only to domestic truck and rail movements. The Agriculture Transportation Coalition was among those wondering if the FDA included exports in the regulation and urged the agency to clarify the issue and exclude from the final rule any shipments destined for export. C.R. England's comments noted the trucking company did a lot of cross-country transportation between the U.S. and Mexico and asked for clarification on whether the rules cover those movements.

Brecht says his reading of the rules makes it clear the proposed rule would apply to shipments of food moved under through bills of lading from overseas locations to inland points and shipments moved by rail and truck from Mexico and Canada into the U.S. "I was in a meeting where I asked point blank if international shipments were covered if they move under a joint bill of lading, and was told by an FDA official that they are covered," he said.

The FDA's standards for cleaning and sanitizing equipment is another area of uncertainty, with multiple parties questioning what standard of cleanliness is being used in the regulation. Regardless of the standard, cleaning after each load raises possible conflicts with environmental laws, according to the Global Cold Chain Alliance.

"Container cleaning and 'sanitizing' also raises the issue of local, state and federal water use and water drainage/runoff issues," the GCCA said in its comments. "In many jurisdictions, carriers are prohibited from washing their trucks because of local regulations designed to protect from water runoff and water quality issues. This places carriers in the position of having to choose which regulation to follow."

As is the case with many regulations, some groups want to be exempted from. The Owner-Operator Independent Drivers Association wants to be sure brokers and freight forwarders are considered shippers under the regulation.

The Transportation Intermediaries Association wants to make sure the FDA knows brokers and freight forwarders aren't shippers and should not be included in the law. Wal-Mart says the rules shouldn't apply to intercompany transportation — any shipments moving between a Wal-Mart distribution center and a Wal-Mart store, for example.

The proposed rules don't apply to carriers and shippers with less than \$500,000 in revenue a year. That means many, if not most, refrigerated trucking companies wouldn't have to comply with any new rules.

Larger carriers generally have better records in safely handling foods than the smallest mom-and-pop delivery services, the ATA and C.R. England pointed out.

Even OOIDA said one category of small shipper should be included. "FDA should also focus its regulatory efforts more directly on local delivery small box carriers, instead of long-haul tractor-trailer operators, since that is the group found to engage most often in unsafe food handling practices," it wrote.

Breaking up the industry into *different* size businesses makes little practical sense, Brecht said. "Many shippers and growers would fall under the small business exemption, along with many truckers, especially truckers that haul produce," he said. "But much of the cargo they haul is going to receivers like Kroger or Wal-Mart. Because the receiver is covered, does that mean the entire trip falls under the rules? The FDA rules are not clear."

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5/10/2018

## New FDA rules could lead to rejected — and wasted — shipments

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As a practical matter, industry pressure will mean most shippers and carriers will be subject to the rules, Brecht said. "The receivers will simply mean that everyone meet the standards," he said. "The Wal-Marts of this world, the ones who take direct shipments, are going to require that the same standards be followed, whether a shipment started out on an ocean vessel or was hauled by a small trucker."

Contact Stephanie Nall at [stephna1joc@gmail.com](mailto:stephna1joc@gmail.com) (<mailto:stephna1joc@gmail.com>).

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## New FDA rules create new burdens for forwarders, brokers

Richard L. Furman, attorney, Carroll, McNulty & Kull | Jul 10, 2016 9:00AM EDT

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The Food Safety Modernization Act of 2011 regulations were published on April 6 ([http://www.joc.com/regulation-policy/transportation-regulations/us-transportation-regulations/fda-sanitary-food-transport-rule-poses-global-logistics-challenge\\_20160406.html](http://www.joc.com/regulation-policy/transportation-regulations/us-transportation-regulations/fda-sanitary-food-transport-rule-poses-global-logistics-challenge_20160406.html)), and they have serious implications for brokers and freight forwarders.

The act creates new obligations on property brokers and, in the opinion of the writer, freight forwarders, to involve themselves in ensuring the safe and sanitary transport of food in interstate commerce, along with the shipper, actual carriers and others.

The act requires shippers, property brokers, carriers — by motor vehicle or rail — receivers and other persons engaged in the transportation of food to use sanitary transportation practices of, "any food that is placed into a container in such a manner that it is partially open to the surrounding environment." Notably, however, unloaders are not covered by the statutes and the regulations.

It must be noted that neither the definition of "shipper" or "carrier" in the regulations expressly includes interstate freight forwarders, but the introductory provision of the act that specifies who is subject to the new rules states they apply "to shippers, receivers, loaders and carriers engaged in transportation operations whether or not food is being offered for or enters interstate commerce."

However, interstate freight forwarders should consider themselves within the purview of the act by reasonable interpretation, even if they do not physically handle or transport food. Merely engaging in customary forwarding services by acting as the nominal carrier by issuing a bill of lading in its name opens a freight forwarder up to the regulations, even if they would consign a shipment to an actual carrier.

Consequently, forwarders should err on the side of caution and assume they must abide by the new regulations, which also cover international shippers that export food to the U.S. in air and ocean transport.

The regulations cover food and food products already subject to the federal Food, Drug and Cosmetic Act. However, there are several exemptions: shippers, receivers or carriers that have less than \$500,000 in average annual revenue; farm transportation; food transshipped through the U.S. to a foreign country; imported goods that will not be consumed or distributed in the U.S. destined for future export; compressed gases and food contact material; human food by-products for use as animal food; food that is completely enclosed by a container, unless it requires temperature-control handling and live food animals, except shellfish. In addition, although not expressly excluded, the FDA advises that frozen food is not subject to the regulations.

Key sections of the regulations address the following: sanitary requirements for vehicles and transportation equipment; transportation operations, covering measures taken during transport of food to ensure food safety; training of carrier personnel in sanitary transportation practices; maintenance of records of written procedures, agreements and training of carriers and waivers. The retention period can vary depending on the type of record but will not exceed 12 months.

**So what does all this mean to property brokers and forwarders that arrange for shipments of food?**

The impact of the regulations on brokers is likely to be more significant than on forwarders and actual carriers. The latter two groups are customarily more directly involved in the handling and transport of food and will likely

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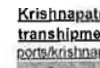
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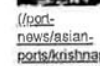
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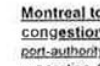
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have some working knowledge of existing food handling and transport practices required by existing FDA Food and Drug Act regulations.

Brokers, on the other hand, customarily focus on acting in a capacity akin to that of a travel agent, putting a shipper together with a carrier suitable to meet shipper's transport requirements. But under the new regulations brokers are now charged with a greater duty that will not only expose them to potential sanctions for non-compliance with the regulations, but civil liability to the shippers on whose behalf the brokers act.

The regulations provide a number of broad requirements, but not a great deal of detail, likely because what is necessary to properly transport one type of food versus another can vary widely. Generally it is the shipper that is in the best position to know if its food product is subject to the regulations and what specific requirements are needed to ensure its safe handling.

**What may a property broker and freight forwarder do to avoid being the target of a claim for violation of the regulations?**

A person subject to the regulations may reassign its responsibilities by contract. Therefore, a property broker and forwarder should have standard terms and conditions, preferably as part of a written service agreement with the shipper, stating that the shipper is wholly liable for compliance. The agreement should hold the shipper responsible for ensuring that all information and documents needed to ensure the safe and sanitary transport of the shipper's food is provided.

Further, the broker and forwarder should have written service agreements with the carriers engaged to transport food that make the carriers liable for compliance, including the type of container used, the equipment's cleanliness, the loading of the container if performed by the carrier, and all other specifics of the regulations applicable to the transport equipment and the safe handling of the food.

It is also essential the broker and forwarder ensure its personnel are trained in compliance with the regulations and all records related to training are properly maintained. Also, if the shipper specifies handling requirements when booking a shipment, which the forwarder or broker cannot operationally comply with, the shipment should be declined.

In addition, brokers and forwarders that are booking a shipment of food with actual carriers need to ensure they obtain from the shipper, and pass on in writing to the carriers, any particulars or specifications for the safe and sanitary transport of the food. These should include design specifications, cleaning procedures and proper temperature controls.

The regulations require brokers and forwarders to maintain written procedures that ensure vehicles and equipment are sanitary, including necessary sanitizing and cleaning protocols; cargo previously carried in a container does not represent a potential contaminant for bulk shipments of food and when required food is shipped under proper temperature controls.

In sum, brokers and forwards should limit their liability under the new rules with a written service agreement, or at least standard trading terms, ensuring the shipper understands it is responsible for compliance.

However, in an excess of caution, forwarders and brokers should comply with the regulations in all events and not rely on the shippers for compliance. In doing so, brokers and forwarders may substantially limit or avoid potential penalty or civil claims.

*Richard L. Furman is an attorney specializing in freight forwarding and customs brokerage at the law firm Carroll, McNulty & Kull.*

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# **Sanitary Transportation of Human and Animal Food: What You Need to Know About the FDA Regulation: Guidance for Industry<sup>1</sup>**

## **Small Entity Compliance Guide**

This guidance represents the Food and Drug Administration's (FDA or Agency) current thinking on this topic. It does not establish any rights for any person and does not bind FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. To discuss an alternative approach, contact the FDA staff responsible for this guidance using the contact information on the title page.

### **I. INTRODUCTION**

The **FDA Food Safety Modernization Act of 2011 (FSMA)** directs the Food and Drug Administration (FDA) as the food regulatory agency of the U.S. Department of Health and Human Services to better protect public health by, among other things, adopting a modern, preventive, and risk-based approach to food safety regulation. On April 6, 2016, FDA published in the *Federal Register* a final rule, *Sanitary Transportation of Human and Animal Food* (Sanitary Transportation rule) (81 FR 20091), that establishes requirements for shippers, loaders, carriers by motor vehicle and rail vehicle, and receivers engaged in the transportation of food, including food for animals, to use sanitary transportation practices to ensure the safety of the food they transport. The final rule became effective on June 6, 2016. Compliance dates are staggered – see “WHEN DO I HAVE TO COMPLY WITH THE RULE?”

We have prepared this Small Entity Compliance Guide in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104-121, as amended by Public Law 110-28). This guidance document is intended to assist small entities in complying

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<sup>1</sup> This guidance has been prepared by the Office of Food Safety in the Center for Food Safety and Applied Nutrition at the U.S. Food and Drug Administration.

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with the rule set forth in 21 CFR Part 1, subpart O concerning Sanitary Transportation of Human and Animal Food. The rule is binding and has the full force and effect of law.

FDA's guidance documents, including this guidance, do not establish legally enforceable responsibilities. Instead, guidances describe our current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited. The use of the word *should* in FDA guidances means that something is suggested or recommended, but not required.

#### **A. Purpose of this Compliance Guide**

This guide was developed to inform shippers, receivers, loaders, and carriers engaged in transportation operations about the Sanitary Transportation rule and how to comply with it. It contains important information that may affect your business.

For additional information on the Sanitary Transportation rule, see <https://www.fda.gov/food/guidanceregulation/fsma/ucm383763>.

#### **B. Key Requirements**

The rule establishes requirements for:

- Vehicles and transportation equipment: The design and maintenance of vehicles and transportation equipment to ensure that it does not cause the food that it transports to become unsafe. (21 CFR 1.906)
- Transportation operations: The measures taken during transportation to ensure food safety. (21 CFR 1.908)
- Training: Training of carrier personnel in sanitary transportation practices and documentation of the training. This training is required when the carrier and shipper establish an agreement that the carrier is responsible for sanitary conditions during transport. (21 CFR 1.910)
- Records: Maintenance of records of written procedures, agreements and training (required of carriers). (21 CFR 1.912)

## **II. WHO MUST COMPLY WITH THE RULE?**



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Generally, the requirements of the Sanitary Transportation rule apply to shippers, receivers, loaders, and carriers engaged in transportation operations whether or not the food is being offered for or enters interstate commerce. (21 CFR 1.900(a))

#### **A. Definitions**

The Sanitary Transportation rule uses a number of terms in very specific ways. A full list of these terms appears in this guide in section IX. The terms defined here and in the section “Who is exempt from the requirements of the Sanitary Transportation rule?” will help you determine if your business is subject to the rule. (21 CFR 1.904)

Table 1--Key Terms Used in Part 1, Subpart O

<b>Term</b>	<b>Definition</b>
Carrier	A person who physically moves food by rail or motor vehicle in commerce within the United States. The term carrier does not include any person who transports food while operating as a parcel delivery service.
Loader	A person that loads food onto a motor or rail vehicle during transportation operations.
Non-covered business	A shipper, loader, receiver, or carrier engaged in transportation operations that has less than \$500,000, as adjusted for inflation, in average annual revenues, calculated on a rolling basis, during the 3-year period preceding the applicable calendar year. The baseline year for calculating the adjustment for inflation is 2011.
Receiver	Any person who receives food at a point in the United States after transportation, whether or not that person represents the final point of receipt for the food.
Shipper	A person, e.g., the manufacturer or a freight broker, who arranges for the transportation of food in the United States by a carrier or multiple carriers sequentially.
Small business	1. A business that is not a motor vehicle carrier and that employs fewer than 500 full-time equivalent employees, or



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	2. A motor vehicle carrier that is not a shipper or receiver that has less than \$27,500,000 in annual receipts.
Transportation	Any movement of food in by motor vehicle or rail vehicle in commerce within the United States.

**B. Who is exempt from the requirements for the Sanitary Transportation Rule?**

Non-covered businesses (see definition in Table 1) are not subject to the rule and therefore do not need to comply with the rule. In addition, shippers, receivers, loaders, or carriers subject to the Sanitary Transportation rule do not need to comply with the rule when they are engaged in the following transportation operations and activities.

Table 2--Exemptions for Part 1, Subpart O

<b>Exemption</b>	<b>Conditions</b>
Transportation operations of food that is transshipped through the U.S. to another country  21 CFR 1.900(b)(1)	
Transportation operations of food that is imported for future export  21 CFR 1.900(b)(2)	
Transportation operations of food located in food facilities that are regulated exclusively, throughout the entire facility, by the U.S. Department of Agriculture under the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act  21 CFR 1.900(b)(3)	
Transportation activities performed by a farm  21 CFR 1.904 "Transportation operations"	

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<b>Exemption</b>	<b>Conditions</b>
Transportation of compressed food gases 21 CFR 1.904 "Transportation operations"	
Transportation of food contact substances 21 CFR 1.904	Food contact substances as defined in section 409(h) of the Federal Food, Drug, and Cosmetic Act
Transportation of human food byproducts for use as animal food without further processing 21 CFR 1.904 "Transportation operations"	See definition of "Transportation operations"
Transportation of food that is completely enclosed by a container 21 CFR 1.904 "Transportation operations"	Except a food that requires temperature control for safety
Transportation of live food animals 21 CFR 1.904 "Transportation operations"	Except molluscan shellfish

**C. Has FDA issued any waivers?**

Yes, FDA has waived the requirements of the Sanitary Transportation rule for three classes of businesses (see Section VIII for additional information about waivers):

1. Businesses holding valid permits that are inspected under the National Conference on Interstate Milk Shipments' Grade "A" Milk Safety Program, only when transporting bulk and finished Grade "A" milk and milk products.
2. Businesses authorized by the regulatory authority to operate a food establishment (e.g., restaurants, grocery stores) when engaged in transportation as receivers, or as shippers and carriers in operations in which food is delivered directly to consumers, or to other locations the establishments or affiliates operate that serve or sell food directly to consumers. (This waiver applies to establishments that provide food for human consumption such as restaurants, supermarkets and home grocery delivery services. Establishments that only sell animal food are not included under this waiver. For additional information refer to the "Clarification on Food Establishment Waiver from Requirements of the Sanitary Transportation of Human and Animal Food Rule" guidance at:

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<https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/UCM571341.pdf>).

3. Businesses that are certified and inspected under the requirements established by the Interstate Shellfish Sanitation Conference's (ISSC) National Shellfish Sanitation Program (NSSP) when transporting shellfish (such as oysters, clams, mussels or scallops) in vehicles permitted under ISSC authority.

#### **D. Do I have any modified requirements if I am a small business?**

No, all of the requirements of the Sanitary Transportation rule apply to a small business. However a small business has an additional year before it is required to comply with the rule (see Section III). (Also, a shipper, loader, receiver, or carrier engaged in transportation operations that has less than \$500,000 in average annual revenues is not covered by the rule. See section II.B.)

### **III. WHEN DO I HAVE TO COMPLY WITH THE RULE?**

We encourage you to comply with the Sanitary Transportation rule as soon as possible. However, we are not requiring you to comply with the rule right away. As shown in the table below, the amount of time we are allowing you to comply with the Sanitary Transportation rule depends on the size of your particular business.

Table 3--Compliance Dates for the Sanitary Transportation Rule Based on Size of Business

<b>Size of Business</b>	<b>Compliance Date</b>
Small businesses, i.e., a business other than a motor vehicle carrier with fewer than 500 full-time equivalent employees, or a motor vehicle carrier that is not also a shipper or a receiver that has less than \$27,500,000 in annual receipts	April 6, 2018
Other businesses that do not qualify for exemptions	April 6, 2017

### **IV. VEHICLES AND TRANSPORTATION EQUIPMENT**

#### **A. What is a vehicle?**



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A “vehicle” is a land conveyance that is motorized, such as a motor vehicle, or that moves on rails, such as a railcar, which is used in food transportation operations. (21 CFR 1.904)

#### **B. What can be considered transportation equipment?**

“Transportation equipment” means equipment used in food transportation operations and includes items such as bulk and non-bulk containers, bins, totes, pallets, pumps, fittings, hoses, gaskets, loading systems, and unloading systems. Transportation equipment also includes a railcar not attached to a locomotive or a trailer not attached to a tractor. (21 CFR 1.904)

#### **C. What requirements apply to vehicles and transportation equipment?**

Vehicles and transportation equipment used in transportation operations must:

- Be designed and of such material and workmanship as to be suitable and adequately cleanable for their intended use to prevent the food they transport from becoming unsafe during transportation; (21 CFR 1.906(a))
- Be maintained in such a sanitary condition for their intended use as to prevent the food they transport from becoming unsafe during transportation; and (21 CFR 1.906(b))
- Be stored in a manner that prevents their harboring pests or becoming contaminated in any other manner that could result in food for which they will be used becoming unsafe during transportation. (21 CFR 1.906(d))

#### **D. Are there specific requirements for vehicles and transportation equipment for food requiring temperature control for safety?**

Yes, vehicles and transportation equipment used in the transportation of food requiring temperature control for safety must be designed, maintained, and equipped as necessary to provide adequate temperature control to prevent the food from becoming unsafe during transportation. (21 CFR 1.908(c))

## **V. TRANSPORTATION OPERATIONS**

### **A. General Requirements**

#### **1. If I am both a shipper and a carrier, what requirements am I subject to?**

You must meet the requirements for each function you perform that is subject to the rule, i.e., as a shipper, receiver, loader or carrier. Therefore if you are functioning as both the shipper and the carrier, you must meet both the shipper’s and the carrier’s requirements. (21 CFR 1.908(a)(1))



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If you perform multiple functions under the rule, and are under the ownership or operational control of a single legal entity, as an alternative to meeting the rule's specific requirements for shippers, receivers and carriers, you may operate under common, integrated written procedures that ensure the sanitary transportation of food consistent with the requirements of the Sanitary Transportation rule. Establishing these common integrated procedures may make it easier for you to comply with the rule's requirements. These written procedures are subject to the records requirements of the rule which are discussed in Section VII. (21 CFR 1.908(a)(5))

#### **2. Can I reassign my responsibilities under the rule to another person?**

Yes you can, if the other person is also subject to the rule. For example, if you are a loader, under the rule you would be responsible for verifying that a truck has been pre-cooled as specified by the shipper prior to loading food that requires temperature control for safety. However, you may establish an agreement with the carrier to perform this verification check for you. The carrier will then have this responsibility under the rule. Your agreement with the carrier is subject to the records requirements of the rule discussed in Section VII. (21 CFR 1.908(a)(1)).

#### **3. Who in my company is responsible for making sure that we are following the requirements of this rule?**

Supervisory level personnel in your company must be assigned the responsibility for making sure that your company is meeting the requirements of the Sanitary Transportation rule. (21 CFR 1.908(a)(2))

#### **4. Are there requirements for transportation operations that everyone subject to the rule must meet, in addition to the specific requirements that only apply to specific persons, such as shippers or carriers?**

Yes. Everyone subject to the rule must do these things in their transportation operations:

- You must take effective measures such as segregation, isolation, or the use of packaging to protect food from contamination by raw foods and nonfood items in the same load. (21 CFR 1.908(a)(3)(i))
- You must take effective measures such as segregation, isolation, or other protective measures, such as hand washing, to protect food transported in bulk vehicles or food not completely enclosed by a container from contamination and cross-contact during transportation operations. (21 CFR 1.908(a)(3)(ii))
- You must take effective measures to ensure that food that requires temperature control for safety is transported under adequate temperature control. (21 CFR 1.908(a)(3)(iii))

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**5. Are the requirements of the rule the same for the transportation of human and animal food?**

Yes they are the same inasmuch as they require that food, whether human or animal food, be transported in a manner in which it will not become unsafe during transportation. However, we recognize that in certain instances, different practices to effectively accomplish this purpose have been established for the transportation of human and animal food. For example, certain types of equipment used for the transportation of human food and pet food use stainless steel food contact surfaces, while comparable equipment used for the transportation of animal feed uses a suitable non-stainless grade of steel called mild steel. (21 CFR 1.908(a)(4))

**6. What am I required to do if I notice that food that requires temperature control has been transported in a way in which it could become unsafe, such as in very hot weather on a truck without a refrigeration unit?**

If a person subject to this rule becomes aware of an indication of a possible material failure of temperature control or other conditions that may render the food unsafe during transportation, you must not sell or distribute the food and you must take appropriate action including, as necessary, communication with other parties to ensure that the food is not sold or otherwise distributed unless a determination is made by a qualified individual that the temperature deviation or other condition did *not* render the food unsafe. (21 CFR 1.908(a)(6))

Therefore, if you are a receiver and your standard procedure is to reject a delivery if it shows an indication of severe temperature abuse or another serious problem, you must also take additional action such as calling the shipper or carrier and informing them of what you observed that may indicate that the food has become unsafe. It then becomes that person's responsibility to ensure that the food is not sold or otherwise distributed unless a determination is made by a qualified individual that the temperature deviation or other condition did not render the food unsafe.

**B. Requirements Applicable To Shippers Engaged In Transportation Operations**

**1. As a shipper, what are my responsibilities under this rule?**

As a shipper, you must establish written procedures subject to the records requirements discussed in Section VII, that describe how you conduct your operations to ensure that food does not become unsafe during transportation. There are as many as 3 specific types of written procedures you must establish, depending upon the type of food you ship:

- In all cases, as a shipper, you must develop and implement written procedures adequate to ensure that vehicles and equipment used in your transportation operations are in appropriate sanitary condition for the transportation of the food, i.e., they will prevent the food from becoming unsafe during the transportation operation. You may perform the measures to implement these procedures yourself, or they may be accomplished by the



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carrier or another party subject to the rule under a written agreement subject to the records requirements discussed in Section VII. (21 CFR 1.908(b)(3))

- If you ship food in bulk, you must also develop and implement written procedures adequate to ensure that a previous cargo does not make the food unsafe. You may perform the measures to implement these procedures yourself, or they may be accomplished by the carrier or another party subject to the rule under a written agreement subject to the records requirements discussed in Section VII. (21 CFR 1.908(b)(4))
- If you ship food that requires temperature control for safety under the conditions of shipment you must also develop and implement written procedures to ensure that the food is transported under adequate temperature control. You may perform the measures to implement these procedures yourself, or they may be accomplished by the carrier or another party subject to the rule under a written agreement subject to the records requirements discussed in Section VII. These measures must include measures equivalent to those specified for carriers under 21 CFR 1.908(e)(1), (2) and (3) discussed in Section V. E. (21 CFR 1.908(b)(2))

#### **2. If I establish an agreement with my carrier to implement some of my written procedures, what are my responsibilities with respect to working with my carrier?**

Depending upon the type of food you ship, you would have one or both of the following responsibilities:

- Unless you take other measures as allowed by 21 CFR 1.908(b)(3) to ensure that vehicles and equipment used in your transportation operations are in appropriate sanitary condition for the transportation of the food, you must specify to the carrier and, when necessary, the loader, in writing, all necessary sanitary specifications for the carrier's vehicle and transportation equipment to achieve this purpose, including any specific design specifications and cleaning procedures. A one-time notification is sufficient unless the design requirements and cleaning procedures required for sanitary transport change based upon the type of food being transported, in which case you must notify the carrier in writing before the shipment. (21 CFR 1.908(b)(1))
- In addition, if you ship food that requires temperature control for safety under the conditions of shipment, unless you take other measures as allowed by 21 CFR 1.908(b)(5) to ensure that adequate temperature control is provided during transportation of the food, you must specify in writing to the carrier, except a carrier who transports the food in a thermally insulated tank, and, when necessary, the loader, an operating temperature for the transportation operation including, if necessary, the pre-cooling phase. A one-time notification is sufficient unless a factor, e.g., the conditions of shipment, changes, necessitating a change in the operating temperature, in which case you must so notify the carrier in writing before the shipment. The information you submit to the carrier is subject to the records requirements discussed in Section VII. (21 CFR 1.908(b)(2))

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### **C. Requirements Applicable To Loaders Engaged in Transportation Operations**

**As a loader, what are my responsibilities under the rule?**

- Before loading food not completely enclosed by a container onto a vehicle or into transportation equipment, you must determine, considering, as appropriate, any specifications provided by the shipper, that the vehicle or transportation equipment is in appropriate sanitary condition for the transport of the food, for example, it is in adequate physical condition, and free of visible evidence of pest infestation and previous cargo that could cause the food to become unsafe during transportation. You may accomplish this by any appropriate means. (21 CFR 1.908(c)(1))
- Before loading food that requires temperature control for safety, you must verify, considering, as appropriate, specifications provided by the shipper, that each mechanically refrigerated cold storage compartment or container is adequately prepared for the transportation of such food, including that it has been properly pre-cooled, if necessary, and meets other sanitary conditions for food transportation. (21 CFR 1.908(c)(2))

### **D. Requirements Applicable To Receivers Engaged in Transportation Operations**

**As a receiver, what are my responsibilities under the rule?**

Upon receipt of food that requires temperature control for safety under the conditions of shipment, you must take steps to adequately assess that the food was not subjected to significant temperature abuse, such as determining the food's temperature, the ambient temperature of the vehicle and its temperature setting, and conducting a sensory inspection, e.g., for off-odors. (21 CFR 1.908(d))

### **E. Requirements Applicable To Carriers Engaged In Transportation Operations**

#### **1. Do the requirements of the rule always apply to carriers who transport food?**

The general requirements of the rule apply to all persons subject to the rule, i.e., shippers, receivers, loaders and carriers, at all times when they are engaged in the transportation of food.

However the specific requirements for carriers in 21 CFR 1.908(e) only apply to the carrier when the carrier and shipper have established a written agreement that the carrier is responsible, in whole or in part, for sanitary conditions during the transportation operation. (21 CFR 1.908(e))

#### **2. What are the specific requirements for carriers when a shipper-carrier agreement has been established?**

When a shipper-carrier agreement has been established, the carrier is responsible for the following functions as applicable under the agreement:



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- The carrier must ensure that vehicles and transportation equipment meet the shipper's specifications and are otherwise appropriate to prevent the food from becoming unsafe during the transportation operation. (21 CFR 1.908(e)(1))
- The carrier must, once the transportation operation is complete and if requested by the receiver, provide the operating temperature specified by the shipper, as discussed in Section V. B. 2, and, if requested by the shipper or receiver, demonstrate that it has maintained temperature conditions during the transportation operation consistent with the operating temperature. The demonstration may be accomplished by any appropriate means agreeable to the carrier and shipper, such as the carrier presenting measurements of the ambient temperature upon loading and unloading or time/temperature data taken during the shipment. (21 CFR 1.908(e)(2))
- Before offering a vehicle or transportation equipment with an auxiliary refrigeration unit for use for the transportation of food that requires temperature control for safety under the conditions of the shipment during transportation, the carrier must pre-cool each mechanically refrigerated cold storage compartment as specified by the shipper, as discussed in Section V. B. 2. (21 CFR 1.908(e)(3))
- If requested by the shipper, a carrier that offers a bulk vehicle for food transportation must provide information to the shipper that identifies the previous cargo transported in the vehicle. (21 CFR 1.908(e)(4))
- If requested by the shipper, a carrier that offers a bulk vehicle for food transportation must provide information to the shipper that describes the most recent cleaning of the bulk vehicle. (21 CFR 1.908(e)(5))
- A carrier must develop and implement written procedures subject to the records requirements discussed in Section VII that:
  - Specify practices for cleaning, sanitizing if necessary, and inspecting vehicles and transportation equipment that the carrier provides for use in the transportation of food to maintain the vehicles and the transportation equipment in appropriate sanitary condition as required by 21 CFR 1.906(b);
  - Describe how it will comply with the provisions for temperature control in 21 CFR 1.908(e)(2), and;
  - Describe how it will comply with the provisions for the use of bulk vehicles in 21 CFR 1.908(e)(4) and (5). (21 CFR 1.908(e)(6))

## **VI. TRAINING**

### **A. What training requirements apply to carriers?**

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If you are a carrier and you have a contract with the shipper to be responsible for any sanitary conditions during transportation, you must provide adequate training for your personnel involved in food transportation operations. The training must provide an awareness of potential food safety problems that may occur during food transportation, basic sanitary transportation practices to address those potential problems, and the responsibilities of the carrier under the rule. (21 CFR 1.910(a))

#### **B. When must training be provided?**

You must provide the training when you hire personnel for food transportation operations and as necessary thereafter. For example, you may need to provide additional training if you previously transported only fully packaged refrigerated items but you now begin transporting produce in open containers and begin using different cleaning procedures for your trucks. (21 CFR 1.910(a))

#### **C. Do I have to keep records of the training?**

Yes, you must establish and maintain records documenting the training. The requirements for these records are described in the table in Section VII A. (21 CFR 1.910(b))

#### **D. Where can I get training for this rule?**

To assist carriers in their efforts to provide training to personnel, FDA offers a free web-based training module that covers the required training elements described above. You may offer this module to your personnel as a means of satisfying the rule's training requirement. The training module is available at: <https://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm576097.htm>.

The FDA training module touches on a wide range of transportation food safety topics in a non-detailed manner. We anticipate that some carriers will wish to provide additional training that focuses on company-specific operations and procedures related to food safety.

You are not required to use the FDA training module. You may use training offered by third parties training vendors or you may train your personnel yourself. We do not require training offered by a company or a third party to be approved by FDA or that the instructors be certified.

## **VII. Records**

### **A. What records am I required to make and keep?**

You are required to make and keep the records shown in Table 4. (21 CFR 1.912)

Table 4--Records Required Under 21 CFR Part 1, subpart O

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<b>Required Records</b>	<b>Description</b>
Information provided by shippers to carriers (21 CFR 1.912(a)(1))	Shipper records must demonstrate that the shipper:  Provided, as a regular part of transportation operations, specifications and operating temperatures to carriers as required by 21 CFR 1.908(b)(1)
Written agreements and the written procedures of a shipper (21 CFR 1.912(a)(2))	The shipper's written agreements and written procedures must meet the requirements of 21 CFR 1.908(b)(3), (4), and (5).
Written procedures of a carrier (21 CFR 1.912(b))	The carrier's written procedures must meet the requirements of 21 CFR 1.908(e)(6)
Any written agreements subject to the rule that are not otherwise noted (21 CFR 1.912(d))	Written agreements that assign tasks required by the rule to another person
Records documenting required training by carriers (21 CFR 1.912(c))	The training records must:  (1) Include the date of training, the type of training, and the persons trained; and  (2) Be established and maintained in accordance with other records requirements.  (21 CFR 1.910(b))
Written procedures of firms that operate in more than one capacity under the rule, under the ownership or operational control of a single legal entity, for example, as a shipper and a carrier.	The written procedures must:  Be common integrated procedures that ensure the sanitary transportation of food consistent with the requirements of the rule.



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(21 CFR 1.912(e))  This requirement is an alternative to meeting the requirements of 21 CFR 1.908 (b), (d) and (e)	(21 CFR 1.908(a)(5))
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**B. What are the requirements for my records?**

Your records must be kept as original records, true copies (such as photocopies, pictures, scanned copies, microfilm, microfiche, or other accurate reproductions of the original records), or electronic records. (21 CFR 1.912(g))

**C. Do my records have to be in electronic format?**

Your records do not have to be in electronic format.

Records that are established or maintained for the Sanitary Transportation rule that meet the definition of electronic records in 21 CFR 11.3(b)(6) are exempt from the requirements of 21 CFR Part 11. However, records that satisfy the requirements of this rule, but that also are required under other applicable statutory provisions or regulations, remain subject to part 11. (21 CFR 1.912(h))

**D. How long must I retain my records?**

All persons subject to this rule must retain records of written procedures and written agreements (except as described in the next paragraph) for a period of 12 months beyond when the procedures or agreements are in use in your transportation operations. (21 CFR 1.912(a)(2), (b) and (e))

All persons subject to this rule must retain records of written agreements that assign tasks required by this rule to another person for a period of 12 months beyond the termination of the agreements. (21 CFR 1.912(d))

Shippers must retain records that demonstrate that they provide specifications and operating temperatures to carriers as a regular part of their transportation operations for a period of 12 months beyond the termination of the agreements with the carriers. (21 CFR 1.912(a)(1))

Carriers must retain training records required by 21 CFR 1.910(b) for a period of 12 months beyond when the person identified in the record stops performing the duties for which the training was provided. (21 CFR 1.912(d))

**E. Can I store my records offsite?**