

**NEW BRUNSWICK
REGULATION 95-76
under the
MOTOR VEHICLE ACT
(O.C. 95-563)**

Filed May 31, 1995

Under section 265.8 of the *Motor Vehicle Act*, the Lieutenant-Governor in Council makes the following Regulation:

1 This Regulation may be cited as the *Commercial Vehicle Bill of Lading and Cargo Insurance Regulation - Motor Vehicle Act*.

2 In this Regulation

"Act" means the *Motor Vehicle Act*;

"for-hire carrier" means a person who owns, is the lessee of, or is otherwise responsible for the operation of a for-hire commercial vehicle;

"for-hire commercial vehicle" means a commercial vehicle that is used to transport goods or persons for hire.

3 A carrier who is not a for-hire carrier is exempt from section 265.71 of the Act and this Regulation.

4(1) Every operator of a for-hire commercial vehicle shall, before accepting for delivery at any certain point any goods, have properly filled out, signed and received a bill of lading that complies with the requirements of section 5 or 6, as the case may be.

4(2) Every for-hire carrier shall ensure that the operator of a for-hire commercial vehicle, before accepting for delivery at any certain point any goods, has properly filled out, signed and received a bill of lading that complies with the requirements of section 5 or 6, as the case may be.

4(3) Subsections (1) and (2) do not apply to an operator of a for-hire commercial vehicle who uses an on-line computer, telex or other electronically operated billing system if the operator has received authorization from the Registrar and the authorization accompanies the goods.

5(1)... 5(8) not applicable and deleted

6(1) The provisions of this section are prescribed for the bill of lading to be completed as required by subsections 4(1) and (2) in those circumstances enumerated in subsection (2).

6(2) The provisions of this section apply to all transportation of goods by for-hire carriers where transporting used household goods and furniture.

6(3) The bill of lading shall be signed by the consignor and by the carrier as an acceptance of all terms and conditions contained in the bill of lading and it is not sufficient that the consignor or carrier merely initial the bill of lading.

6(4) Every bill of lading shall have provision for the display of not less than the following information:

(a) the name and address of the consignor;

- (b) the date of the shipment;
- (c) the originating point of the shipment;
- (d) in a conspicuous place, the name of the original contracting carrier and the carrier's telephone number;
- (e) the name of connecting carriers, if any;
- (f) in a conspicuous place, the name of the destination agent, if different from the original contracting carrier, and the agent's telephone number;
- (g) the name, address and telephone number of the consignee;
- (h) the destination of the shipment; and
- (i) an inventory of the goods comprising the shipment must be attached to, and become part of, the bill of lading.

6(5) Every bill of lading shall contain the following:

- (a) a provision stipulating whether the goods are received in apparent good order and condition, except as noted on the inventory;
- (b) notwithstanding paragraph (a), a statement in conspicuous form indicating that signature of consignee for receipt of goods shall not preclude future claim for loss or damage made within the time limit as prescribed by the bill of lading;
- (c) a space to show the declared value of the shipment;
- (d) a space or spaces to show the actual amount of freight and all other charges to be collected by the carrier;
- (e) a statement to indicate that the uniform conditions of carriage apply;
- (f) a space or spaces to note any special services or agreements between the contracting parties;
- (g) a space to indicate date or time period agreed upon for delivery;
- (h) a statement in conspicuous form to indicate that the carrier's liability is limited by a term or condition of carriage; and
- (i) a space for the signature of the consignor.

6(6) The conditions of carriage which shall form a part of every bill of lading are those set out in Schedule B.

7 A for-hire carrier shall have, with respect to the goods transported by a for-hire commercial vehicle, a policy of insurance that insures the goods against loss or damage to a maximum of \$4.41 per kilogram computed on the total weight of the shipment or the declared value, whichever is higher.

8 *not applicable and deleted*

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SCHEDULE B

1. Liability of Carrier

The carrier of the goods herein described is liable for any loss of or damage to goods accepted by the carrier or the carrier's agent, except as hereinafter provided.

2. Liability of Originating and Delivering Carriers

Where a shipment is accepted for carriage by more than one carrier, the carrier issuing the bill of lading (hereinafter called the originating carrier) and the carrier who assumes responsibility for delivery to the consignee, (hereinafter called the delivering carrier), in addition to any other liability hereunder, are liable for any loss of or damage to the goods while they are in the custody of any other carrier to whom the goods are or have been delivered and from which liability the other carrier is not relieved.

3. Recovery from Connecting Carrier

The original contracting carrier or the delivering carrier, as the case may be, is entitled to recover from any other carrier to whom the goods are or have been delivered the amount of the loss or damage that the original contracting carrier or delivering carrier, as the case may be, may be required to pay hereunder resulting from any loss of or damage to the goods while they were in the custody of such other carrier.

4. Remedy by Consignor or Consignee

Nothing in article 2 or 3 deprives a consignor or consignee of any rights the consignor or consignee may have against any carrier.

5. Exceptions from Liability

The carrier shall not be liable for

- (a) loss, damage or delay to any of the goods described in the bill of lading caused by an act of God, the Queen's or public enemies, riots, strikes, a defect or inherent vice in the goods, the act or default of the consignor, owner or consignee, authority of law or quarantine,
- (b) other than because of the carrier's, the carrier's agents or employee's negligence,
 - (i) damage to fragile articles that are not packed and unpacked by the contracting carrier, the carrier's agent or employee,
 - (ii) damage to the mechanical, electronic or other operations of radios, phonographs, clocks, appliances, musical instruments and other equipment, irrespective of who packed or unpacked such articles, unless servicing and preparation was performed by the contracting carrier or the carrier's agent or employees,
 - (iii) deterioration of or damage to perishable food, plants or pets, or
 - (iv) loss of contents of consignor packed articles, unless the containers used are opened for the carrier's inspection and articles are listed on the bill of lading and receipted for by the carrier,
- (c) damage to or loss of a complete set or unit when only part of such set is damaged or lost, in which event the carrier shall only be liable for repair or recovering of the lost or damaged piece or pieces,
- (d) damage to the goods at place or places of pick-up at which the consignor or the consignor's agent is not in attendance, or
- (e) damage to the goods at place or places of delivery at which the consignee or the consignee's agent is not in attendance and cannot give receipt for goods delivered,

and the onus is on the carrier to prove the absence of negligence on the carrier's part under paragraphs (a) and (b).

6. Delay

(a) At the time of acceptance of the contract, the original contracting carrier shall provide the consignor with a date or time period within which delivery is to be made. Failure by the carrier to effect delivery within the time specified on the face of the bill of lading, shall render the carrier liable for reasonable food and lodging expenses incurred by the consignee.

(b) Failure by the consignee to accept delivery when tendered within the time specified on the bill of lading, shall render the consignee liable for reasonable storage in transit, handling and redelivery charges incurred by the carrier.

7. Routing by Carrier

In case of physical necessity where the carrier forwards the goods by a conveyance that is not a licensed for-hire vehicle, the liability of the carrier is the same as though the entire carriage were by licensed for-hire vehicle.

8. Stoppage in Transit

Where goods are stopped or held in transit at the request of the party entitled to so request, the goods are held at the risk of that party.

9. Valuation

Subject to article 10, the amount of any loss or damage for which the carrier shall be liable, whether or not the loss or damage results from negligence of the carrier or its employees or agents, shall be computed on the basis of the value of the lost or damaged article(s) at the time and place of shipment.

10. Maximum Liability

(a) The amount of any loss or damage computed under article 9 shall not exceed the greater of

(i) the value declared by the shipper, or

(ii) \$4.41 per kilogram computed on the total weight of the shipment,

provided that, where the consignor releases the shipment to a value of \$1.32 per kilogram per article or less in writing, the amount of any loss or damage computed under article 9 shall not exceed such lower amount.

(b) Where subparagraph (i) or (ii) applies, additional charges to cover the additional coverage over \$1.32 per kilogram per article shall be paid by the consignor.

11. Consignor's Risk

Where it is agreed that the goods are carried at the risk of the consignor of the goods, such agreement covers only such risks as are necessarily incidental to transportation and the agreement shall not relieve the carrier from liability for any loss or damage or delay which may result from any negligent act or omission of the carrier or its agents or employees and the burden of proving absence of negligence shall be on the carrier.

12. Notice of Claim

(a) No carrier is liable for loss, damage or delay to any goods carried under the bill of lading unless notice thereof setting out particulars of the origin, destination and date of shipment of the goods and the estimated amount claimed in respect of such loss, damage or delay is given in writing to the original

contracting carrier or the delivering carrier within sixty days after delivery of the goods, or, in the case of failure to make delivery, within nine months from the date of shipment.

(b) The final statement of the claim must be filed within nine months from the date of shipment.

(c) Either the original contracting carrier or the delivery carrier, as the case may be, shall acknowledge receipt of claim within thirty days of receipt of the claim.

13. Articles of Extraordinary Value

No carrier is bound to carry any documents, specie or any articles of extraordinary value unless by a special agreement to do so. If such goods are carried without a special agreement and the nature of the goods is not disclosed on the face of the bill of lading, the carrier shall not be liable for any loss or damage.

14. Freight Charges

(a) If required by the carrier, the freight and all other lawful charges accruing on the goods shall be paid before delivery, provided that, where the total charges exceed by more than 10% the total estimated charges, the consignee shall be allowed fifteen days after the day on which the goods are delivered (excluding Saturdays, Sundays and holidays) to pay the amount by which the total actual charges exceed 110% of the total estimated charges.

(b) The fifteen day extension provided in paragraph (a) does not apply where the carrier notifies the consignor of the total actual charges immediately after the goods are loaded, or, where the carrier receives a waiver of the extension provision signed by the consignor.

15. Dangerous Goods

Every person, whether as principal or agent, shipping explosives or dangerous goods without previous full disclosure to the carrier as required by law, shall indemnify the carrier against all loss, damage or delay caused thereby, and such goods may be warehoused at the consignor's risk and expense.

16. Undelivered Goods

(a) Where, through no fault of the carrier, the goods cannot be delivered, the carrier shall immediately give notice to the consignor and consignee that delivery has not been made, and shall request disposal instructions.

(b) Pending receipt of such disposal instructions,

(i) the goods may be stored in the warehouse of the carrier, subject to a reasonable charge for storage, or

(ii) provided that the carrier has notified the consignor of the carrier's intention, the goods may be removed to, and stored in, a public or licensed warehouse, at the expense of the consignor, without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

17. Alterations

Subject to article 18, any additional limitation on the carrier's liability on the bill of lading, and any alteration, or addition or erasure on the bill of lading shall be signed or initialled by the consignor or the consignor's agent and the original contracting carrier or the carrier's agent and unless so acknowledged shall be without effect.

18. Weights

It shall be the responsibility of the original contracting carrier or the carrier's agent to show the correct tare, gross and net weights on the bill of lading by use of a certified public scale, and attach the weigh scale ticket to the carrier's copy of the bill of lading.

In cases where certified public scales are not available at origin or at any point within a radius of sixteen kilometres thereof, a constructive weight based on one hundred and twelve kilograms per cubic metre of properly loaded van space shall be used.

N.B. This Regulation is consolidated to July 15, 2005.