



New Hampshire

*Department of Agriculture,
Markets, and Food*

Division of Weights and Measures

Handbook 133 Proposal

Uniform Shipping Law

OTH-24.1



Reason for Uniform Shipping Law Proposal

The Uniform Shipping Law submitted by New Hampshire is intended to be a **starting point** for the weights and measures regulatory community to help prevent fraudulent activity by shipping carrier and logistics companies.

The following slides illustrate instances of fraud in the shipping industry that NHWM has confirmed to have already occurred, are still occurring, and will continue to occur unless weights and measures authorities act on them through regulatory changes.

NHWM feels this is a good starting point, but further recommendations and changes will likely need be implemented to prevent instances of fraud from occurring.



Relevant U.S. Law that Applies

Chapter 801 – Bills of Lading, Title 49, U.S. Code § 80113. Liability for nonreceipt, misdescription, and improper loading.

§80113. Liability for nonreceipt, misdescription, and improper loading

(a) **Liability for Nonreceipt and Misdescription.**-Except as provided in this section, a common carrier issuing a bill of lading is liable for damages caused by nonreceipt by the carrier of any part of the goods by the date shown in the bill or by failure of the goods to correspond with the description contained in the bill. The carrier is liable to the owner of goods transported under a nonnegotiable bill (subject to the right of stoppage in transit) or to the holder of a negotiable bill if the owner or holder gave value in good faith relying on the description of the goods in the bill or on the shipment being made on the date shown in the bill.

(b) **Nonliability of Carriers.**-A common carrier issuing a bill of lading is not liable under subsection (a) of this section-

(1) when the goods are loaded by the shipper;

(2) when the bill-

(A) describes the goods in terms of marks or labels, or in a statement about kind, quantity, or condition; or

(B) is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load, and count", or words of the same meaning; and

(3) to the extent the carrier does not know whether any part of the goods were received or conform to the description.

Summary: The U.S. Code is saying that the carrier has no liability unless it knows otherwise. When a carrier weighs or measures a pallet, they take on that responsibility.



Relevant U.S. Law that Applies to Penalties

Chapter 801 – Bills of Lading, Title 49, U.S. Code § 80116. Criminal Penalty.

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person—

- (1) violates this chapter with intent to defraud; or
- (2) knowingly or with intent to defraud—
 - (A) falsely makes, alters, or copies a bill of lading subject to this chapter;
 - (B) utters, publishes, or issues a falsely made, altered, or copied bill subject to this chapter; or
 - (C) negotiates or transfers for value a bill containing a false statement.



UPS Terms and Conditions of Service

United Parcel Service (UPS) Tariff/Terms and Conditions of Service – United States Effective 12/27/2022

51. Shipping Charge Corrections; Audit Fee

UPS reserves the right to bill for Charges based upon the characteristics of, and services requested for, shipments tendered to UPS. UPS also reserves the right to audit any Package, Shipment and/or invoice to verify service selection, dimensions, or weight, and applicability of any Charges. As part of that audit, UPS may weigh and measure any Package or Shipment tendered to UPS using any method UPS deems appropriate, including but not limited to multidimensional measuring devices. UPS may in its sole and unlimited discretion increase or adjust Charges based on the results of such audit. UPS reserves the right in its sole and unlimited discretion to bill for Charges based on shipping characteristics provided by the Shipper, regardless of whether UPS has audited the shipping characteristics. If a Package's or Shipment's dimensions are altered during transit, UPS reserves the right to bill for Charges based on the altered dimensions. An audit fee may be assessed for shipping charge corrections, as set forth in the effective UPS Rates.



United States v. Roadway Express, Inc. (1:08-cv-00811)

In March 2022, Roadway Express, owned by YRC Freight Inc. (YRC), agreed to pay approximately \$6.85 million to resolve allegations under the False Claims Act that they knowingly presented false claims to the U.S. Department of Defense (DOD) by systematically overcharging for freight carrier services and making false statements to hide their misconduct.

The United States alleged that the YRC defendants fraudulently billed the United States for delivery charges based on false higher weights when, after reweighing the shipments, they knew that the actual weights were lower. For more than seven years (2005-2013), the YRC defendants continued this practice.

A statement from YRC in 2018: *“business with DOD currently represents less than one percent of YRC’s annual revenue”*.

- The Estimated Total **Annual** Overcharges from YRC (2005-2013): \$30,509,068.
- YRC represents only 10% of the market share of the freight carrier shipping industry.

According to YRC sources, the fraudulent conduct did not change after the lawsuit.

Source: https://www.justice.gov/opa/press-release/file%20target%3D%22_blank%22/1483006/download



Calculating Freight Class

The National Motor Freight Traffic Association publishes the National Motor Freight Classification (NMFC) Handbook which is a standard that allows for the determination of freight classes for the comparison of different commodities and products being shipped. Every commodity being shipped falls into one of 18 different freight classes which are represented by numeric numbers ranging from 50 – 500.

ISSUE: Unless the business (shipper) wants to pay a \$30 fee per pallet to NMFC, the shipper is not given access to the NMFC Handbook to determine the freight class for a particular shipment because only transport companies and logistics companies are allowed to be members. Therefore, both Carrier and Broker fail to provide the Shipper with how to they determine the freight class before a shipping quote/price is provided.



No Negative Reweigh Credits to Shipper

According to the original Department of Defense lawsuit complaint, the software used to conduct the reweighs were programmed to only recognize the increase in weight reweighs and to exclude the decrease in weight reweighs. No negative reweigh credits were ever passed onto any YRC shipper.

ISSUE: This is a profit motive by the carrier that does not create equity in the market.

RECOMENDATION: To mitigate this practice a regulator would need to take a sample of 50 – 100 shipments and look at the reweights to determine how many are in favor of the shipper or against the shipper. Require the carrier to credit shippers where reweighs are less than declared weight.



False Price Quote Provided (Extreme Length Fee)

Shipper provides dimensions (L x W x H) of pallet to Broker and Carrier. Length is reported by Shipper as 84 inches. Carrier provides a price quote to Shipper based on the L x W x H dimensions provided by the Shipper.

ISSUE: After delivery is completed, invoice from Carrier to Shipper states “Excessive Length Fee” added to invoice because pallet was over 76 inches in length. Shipper was already provided a quote based on the pallet being over 76 inches in length. Extreme length fee can be as much as \$250.00 per pallet. Carrier refused to cooperate with NH Weights and Measures officials about the added Excessive Length Fee and false price quote, and Carrier claimed they did not have access to all records.



Remeasure of Pallet – Process Not Documented

Employee of Carrier at local terminal will remeasure a pallet using a tape measure to determine if dimensions provided by Shipper are correct.

ISSUE: Carrier does not document the process of the remeasurement. Carrier will claim pallet is longer in length than what was provided by the Shipper. Carrier listed default names of individuals on correction documentation who neither inspected or witnessed the remeasurement. Investigations by New Hampshire Weights and Measures confirmed the length of the pallet in question was accurately provided by the Shipper.



Inaccurate Use of Laser Measuring Device

Certain Carriers will use a Multiple Dimension Measuring Device (MDMD) to determine if dimension measurements provided by the Shipper are correct.

ISSUE: Although certain MDMDs are NTEP-approved, consumer complaints submitted to New Hampshire Weights and Measures shows Carriers are at times inaccurately using these devices when determining measurements. For example, if the cardboard enclosing the pallet has been damaged, even if it is by the Carrier, and hangs outside of the dimensions of the pallet, the MDMD will record a higher dimensional reading, which leads to additional charges to the shipper.



Use of Forklift Scale and Absence of Quality Assurance

Carriers often use forklift scales when conducting reweighs to determine if the weight provided by the Shipper is correct. Forklift scales used in reweighs have typically by tested/certified by a weights and measures agency responsible for that jurisdiction.

ISSUE: Although previously tested/certified, forklift scales used at freight shipping terminals are commonly not used following the manufacturer's recommendations. For example, operators of forklift scales will crash the forklift machine into objects inside the terminal or use the forklift aggressively which results in inaccurate scale readings. It has also been determined that forklift scale operators may not let the pallet properly rest on the scale to get an accurate reading, nor will the operator re-zero the device. Additionally, we have found no Carrier that conducts a 2nd reweigh on a separate weighing device to confirm the forklift reading.



Correction Certificate Lacks Relevant Information

After conducting a reweigh, remeasure, or reclassification on a shipped pallet and choosing to add correction fees, the Carrier will create documentation for a Weight Correction, Excessive Length, or Freight Reclassification.

ISSUE: No standard format is used by the various Carriers when documenting the reweigh, remeasure, or reclassification process. Examples of documents provided to New Hampshire Weights and Measures shows a lack of relevant information related to the process used.



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