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## I’m Kind of a Big Dill: Current Challenges in Transporting Food Under FSMA



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Since the U.S. Food and Drug Administration’s (FDA’s) publication of the Final Rule regarding Sanitary Transportation of Human and Animal Food on April 6, 2016, 21 CFR 1.900, et seq. (the STF Rule), there has been an increase in food cargo claims and confusion surrounding compliance with the STF Rule. Below we summarize the STF Rule and describe common issues that all

parties—ranging from shippers and carriers to brokers and loaders—should be aware of in this new food transportation landscape.

### A. STF Rule Lowdown

The STF Rule was mandated by the Food Safety Modernization Act of 2011. With safety in mind, the FDA crafted the STF Rule to better ensure that food would be transported under sanitary conditions and controls were implemented to prevent food from becoming adulterated during transportation. The STF Rule is composed of obligations aimed at reducing the incidence of cross-contamination and ensure that: (1) foods are kept at the requisite temperatures to ensure safety during transport; (2) food safety protocols are in place for safely transporting food; (3) records are maintained that memorialize food safety requirements; and (4) entities along the food supply chain continuum are held accountable for compliance with the STF Rule.

#### 1. Who’s Covered?

Covered entities—shippers (defined to include freight brokers), receivers, carriers (rail and motor), and loaders—had to comply with the STF Rule by April 6, 2018. Although the STF Rule was designed to regulate the transportation of perishable foods, including produce and

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meat, contacting parties along the foods supply continuum have, through contact, caused other types of food products to be tried like foods covered by the STF Rule.

### 2. "Un-exempting" Exempt Foods

For instance, one of the notable STF Rule exemptions excludes foods that are completely enclosed by a container and do not require refrigeration for safety. Nonetheless, shippers and brokers tend to contractually require certain foods that typically only require temperature control for increasing their shelf life or quality, like baby carrots enclosed in sealed plastic baggies, to be treated as covered foods when they would not otherwise be. The same is oftentimes true for frozen foods, which the FDA explicitly stated in the comment section were not intended to be subject to the STF Rule due to lack of *safety* concerns attributed to temperature variance during transport.

### 3. What the Heck is a Loader & Why Should I Care?

Loaders serve an important role in the shipment of food and, indeed, their negligent actions could jeopardize an entire shipment. It is, therefore, imperative that parties fully understand the scope of the loader's responsibilities and clearly allocate responsibility for its acts in shipper/broker and broker/carrier or shipper/carrier agreements.

Upon the carrier's arrival at pickup, the loader is generally responsible for:

- Inspecting and ensuring compliance with the vehicle's and any other equipment's sanitary condition requirements associated with the commodity being transported.

- Inspecting and confirming that there is no evidence of product adulteration.
- Confirming with the carrier the required operating temperature.
- Confirming that the vehicle and other transportation equipment utilized by the carrier can maintain and accurately record the requisite operating temperature during transport.
- Placing any required seal on the vehicle, trailer or transportation equipment and instructing the carrier to not remove the seal, but to have the receiver remove the seal.

If the food is to be transported in a bulk vehicle, then loaders also have a responsibility to:

- Ascertain from the carrier when and how the bulk vehicle was most recently cleaned.
- Ascertain from the carrier the nature of the previous cargo transported in the bulk vehicle since the last appropriate cleaning.

If the loader does not fulfill its responsibilities and a question of damage arises, then the loader or whomever was responsible for the loader could be held liable for food loss or damage. The loader may be considered an agent of the shipper, but if the shipper is not loading, then it could be independently responsible for cargo loss or damage or considered the agent of another entity. Consequently, parties should make clear at the outset under whose authority the loader is acting (if not solely its own) and, even better, who will be responsible for its actions.

## B. Brokers Are Stuck in the Middle With You

One of freight brokers' biggest challenges is passing along equipment and temperature control requirements assumed in shipper/broker agreements to the contract carriers. Ideally (from a broker perspective), a freight broker would limit its role in the food transportation transaction to that of a messenger, relaying shipper food safety instructions to the motor and rail carriers. Shippers tend to be in the best position to know how to keep food product safe during transportation, and carriers best know how to sanitarily maintain their trailers and how reefer units work. Yet, many brokers find themselves in a position where they have agreed that their customers can destroy food product, without salvaging or mitigating their damages, if it arrives at destination with a broken seal or if temperature was not maintained within a certain temperature range (even if the temperature is only off by a couple of degrees) during transport.

Meanwhile, savvy carriers are pushing back and requiring shippers (or brokers standing in their shoes who have taken an assignment of the right to pursue a cargo claim) to prove actual physical damage to food before they will pay a claim. Thus, freight brokers are increasingly "stuck in the middle," having assumed certain contractual requirements that they cannot meet or pass along to their contract carriers. Meanwhile, these brokers face challenges in obtaining evidence, e.g., temperatures of the food product at the point of origin from their customers to dispel a carrier's defense to a Carmack Amendment claim that the shipper's act of loading food product "hot" caused the temperature variance.

While, freight brokers are not ordinarily subject to the Carmack Amendment, there is a recent trend of freight brokers assuming primary liability for cargo loss and damage, contractually, to secure business from the larger shippers. Others fall into the trap of holding themselves out to their customers as if they were the actual carrier transporting a shipment and, therefore, are sometimes held liable to the shipper for a cargo loss or damage as if they were the actual carrier. Accordingly, freight brokers wind up paying food claims (even if they should not) and resorting to seeking reimbursement from

the contract carriers. These are all matters to be considered at the onset of the parties' relationship and discussed and addressed through contractual arrangements.

### C. Fake Food Product Damage?

The outright rejection or immediate disposal of food at destination, without knowing if the shipment was actually damaged, may present challenges in being able to establish the damages element of a Carmack Amendment Claim. Unless a contract provides otherwise, despite the STF Rule, a claimant must still establish a Carmack claim (49 U.S. Code § 14706) by showing that (1) a shipment was tendered in good condition, (2) it arrived in bad condition, and (3) damages occurred in order to recover for a lost or damaged shipment. Carriers that do not secure their own cargo inspection will likely experience difficulty in defending against a Carmack claim. Accordingly, a better practice is for the parties to obtain a third-party inspection, e.g., by the U.S. Department of Agriculture or an agreed-upon individual qualified to make both a safety determination and quality assurance assessment, prior to disposal. The greater the number of tools available to assess a particular claim, the less likely expensive litigation will ensue. Details regarding the inspection and who will pay for it (not to mention the cargo storage fees) in contracts also tends to avoid confusion and streamline the cargo claim process.

Meticulously maintaining records and implementing and enforcing standard operating procedures for food shipments are imperative to mitigate risk exposure associated with cargo loss and damage. For example, procedures for recording pulp temperature at pickup, taking photos of various stages of loading and transporting the food product, noting temperature variance on the bill of lading (drivers should be meticulous about this), and verification of load security prior to shipment should prove helpful in prosecuting and defending cargo claims.

#### 1. Broken Seals

Broken-seal claims are another contentious issue when determining whether a food shipment was actually damaged. Since the implementation of the STF Rule, broken-seal

claims have been on the rise, even if the STF Rule (aside from the comment section) does not address broken seals. Given the risks involved in food transportation, recent court decisions acknowledge the importance of seal requirements to help ensure food safety during transport. Although the trend is for food product to be rejected at destination without allowing salvage, in the event of a broken seal, the broken seal does not per se prove that the food was actually damaged (unless a contract provides otherwise). Instead, Comment 46 to the FDA Rule states:

A broken cargo seal or any evidence of food cargo tampering would not necessarily create a per se presumption of adulteration. However, we advise persons engaged in transportation operations that, if such situations should arise, they should carefully evaluate the facts and circumstances of each incident, on a case-by-case basis, to determine whether the safety of the food cargo may have been compromised.

Again, one of the best practices for navigating the incidence of a broken seal is to maintain records regarding the same, and to inspect the food product prior to discarding it. Also, as a rule of thumb, seal integrity cases should be treated differently when a party knows the source of the seal removal. For instance, a load might be delivered to a different customer of the shipper who removed the seal before realizing that it was not their load. In these cases, customers may be more willing to accept the food, or it might be easier to mitigate the damages. On the flip side, the shipper might still take the position that the seal was removed, so the load must be destroyed. To avoid broken-seal disputes at the point of delivery, parties should discuss and agree to a "broken seal" procedure at the outset of their transactions.

#### 2. Variant Temperatures

If a party is aware of a possible material failure of temperature control or other condition that may render a food product unsafe in connection with its transportation, then the food must be held and cannot be further distributed or sold until a safety determination has been made by

someone qualified to make that determination. Similar to the broken-seal cases, courts have tended to find that maintaining a certain temperature threshold is a reasonable safeguard for assuring food integrity (and also protecting the shipper or consignee's brand).

Temperature variance during food transportation can be a sign of physical damage to the food product. However, shipments containing multiple monitoring devices, e.g., a "reefer download" (obtained from the trailer's temperature recording unit), "Temp Tale" (an external device placed on the cargo pallets), and/or satellite data (obtained from an external GPS tracking device) could present different (and even conflicting) data sets and, therefore, prove difficult to reconcile. When deciphering temperature variance from these devices, you might consider:

- The reefer download is generally considered more accurate than the TempTale.
- One should be cognizant of where the TempTale is placed, since TempTales typically record the highest temperature spike received during the trip or record the temperature every minute associated with the location in which it was placed.
- One should also be cognizant of whether: (1) the food product was loaded in the trailer in such a way that it could have potentially blocked the chute inside the trailer and, therefore, prevented the air from getting all the way to the back of the trailer; (2) whether the entire shipment was impacted by the temperature variance (if not, this could mean that the chute was blocked or not functioning properly); and (3) the temperature of the food product, at the time it was loaded, could have impacted the temperature inside the trailer and its recording device.
- In the reefer download, the "return air temp" data is oftentimes more relevant if the truck is too warm (since it is influenced by the outside ambient temperature), while the "supply air temp" tends to be more relevant if it is too cold.

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## Industry Recommendations to Simplify Household Goods Regulations



Jonathan Todd

The Federal Motor Carrier Safety Administration (FMCSA) published recommendations from the 2016 FAST Act Household Goods Working Group on February 27, 2019. The Working Group was a Federal Advisory Committee created by Congress to analyze opportunities to reduce and simplify the paperwork requirements for interstate household goods (HHG) moving under 49 CFR Part 375 while remaining vigilant against abuses of the moving public. Jonathan Todd, a Partner in Benesch’s Transportation & Logistics Practice, contributed to those recommendations as an industry representative appointed to the Working Group.

In sum, the Working Group developed 19 recommendations for the U.S. Secretary of Transportation to consider when modernizing household goods moving documentation and consumer protections:

- |  |   |  |
|--|---|--|
| 1. Develop and maintain modern communications tools, platforms and partnerships to educate consumers.  | located over 50 miles from the mover’s location. Consumers should continue to have the option to waive in writing the visual survey if they choose, but movers must offer them the option of a visual survey regardless of distance.      | 15. Movers should be required to provide FMCSA publication ESA 03005 (“Ready to Move?”) when the visual survey is either scheduled or waived by the consumer.  |
| 2. Develop online (and other) education modules that are short and easily understood, and aligned with the different phases of the moving process.   | 9. The requirement for an order for service should be eliminated, and the unique, critical items from the order for service should be moved to the bill of lading.  | 16. The title of FMCSA publication ESA 03005 should be changed from “Ready to Move?” to “Choose Your Mover.”   |
| 3. Develop and maintain modern tools to assist efforts to educate consumers.   | 10. Consider specific changes to bill of lading requirements.   | 17. ESA 03005 should be made available electronically and should be printable.   |
| 4. Provide additional funding for staff and resources dedicated to HHG consumer education.   | 11. The bill of lading should be made available to consumers prior to the date of load, at least as early as the time when the order for service was previously provided (before a mover receives a shipment from an individual shipper). | 18. All movers who have a website should be required to prominently display, at their option, either a link to the brochure (ESA 03005) on the FMCSA website or a true and accurate copy of ESA 03005 on their own websites.                 |
| 5. Consider specific recommended updates to the required “Your Rights and Responsibilities When You Move” brochure.  | 12. Remove the requirement for a freight bill, and the freight bill should be transferred to an invoice.  | 19. ESA 03005 should be condensed to include only the content found in Appendix H.   |
| 6. FMCSA’s guidance should be formally adopted that if a consumer tenders additional items or requests additional services prior to load, and the mover agrees to such additions, the mover should prepare a completely new estimate (instead of amending the existing one). | 13. Finalize the proposed rulemaking published at 79 FR 23306 (4/28/14) to allow for electronic delivery of all required documents.   | The complete 68-page report titled “Recommendations to the U.S. Department of Transportation to Improve Household Goods Consumer Education, Simplify and Reduce Paperwork, and Condense FMCSA Publication ESA 03005” is available online at: |
| 7. Update requirements for “physical” surveys to account for “visual” surveys.   | 14. Eliminate the current requirement for consumers to sign an order to receive their documents electronically.   | <a href="https://www.fmcsa.dot.gov/fastact/fast-act-hhg-working-group-report-recommendations">https://www.fmcsa.dot.gov/fastact/fast-act-hhg-working-group-report-recommendations</a>  |
| 8. Movers should be required to offer visual surveys for all household goods shipments, including those that are   |   |  |

Benesch’s Transportation & Logistics Practice Group has long represented interests in the household goods moving and storage segment of the intrastate, interstate and international transportation industry.

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# New PHMSA Lithium-Ion Battery Rule Seeks Harmony in the Safe Skies



Jonathan Todd



David Krueger

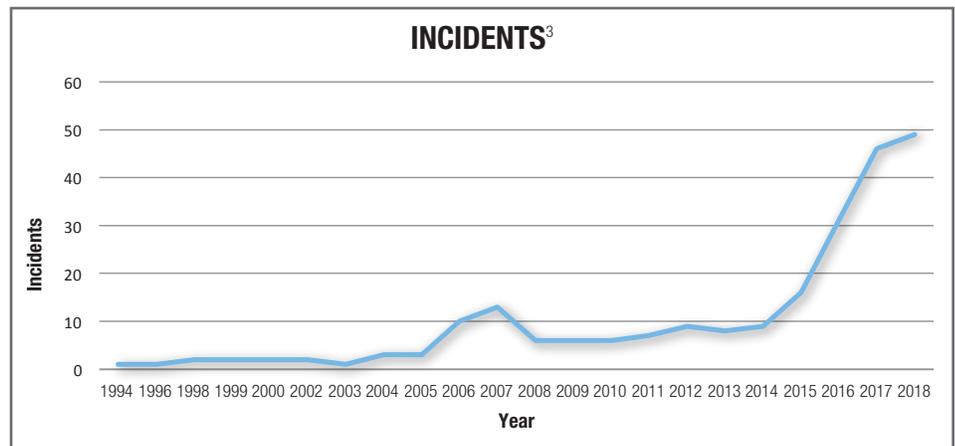


Kristopher Chandler

## I. Introduction

Safety hazards presented by the air transportation of lithium-ion batteries are once again the subject of regulatory action in the United States. The U.S. DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) recently issued an Interim Final Rule (IFR) seeking to revise the Hazardous Materials Regulations for lithium cells and batteries transported by aircraft. The IFR sets forth three distinct provisions. Specifically, it would: (1) prohibit the transportation of lithium-ion cells and batteries as cargo on passenger aircraft; (2) require lithium-ion cells and batteries to be tendered at not more than a 30 percent charge not shipped with or contained in equipment; and (3) limit the use of alternative measures for small lithium cell or battery shipments to only one package per consignment.

Domestically within the United States, there have been over 200 reported incidents involving lithium batteries and air transport.<sup>1</sup> The majority of these incidents have occurred in the past three years. The historic trend line is a stark reality to those tasked with transportation safety and supply chain security, and certainly for airline passengers. As more consumer products use lithium batteries, and as manufacturers continue to push the envelope of battery performance, the rate of incidents and frequency of alarming headlines can be reasonably expected to rise.<sup>2</sup>



In fairness, the danger of fire and explosion associated with air transportation of lithium-ion batteries has been known to the air transportation community for decades.<sup>4</sup> However, the present regulatory environment continues to be unique in its speed of change. This article examines the current regulatory regime as an emerging trend in hazardous materials compliance for the air transport of lithium batteries.

## II. Summary of Regulations Governing Air Carriage of Lithium Batteries

The PHMSA is tasked with regulating the transportation of hazardous materials. The term "hazardous materials" is defined broadly as any "substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety and property when transported in commerce. . . ."<sup>5</sup> Lithium batteries are regulated hazardous materials due to the risk of the batteries overheating and causing a fire.<sup>6</sup>

Lithium batteries are specifically regulated as Class 9 hazardous materials under the Hazardous Materials Regulations (HMR).<sup>7</sup> The hazardous materials classification applies to the lithium-ion batteries and cells that power consumer electrical devices as well as disposable lithium metal batteries. Under the HMR, lithium batteries are subject to complex inspection, testing, packaging, labeling, recordkeeping and notification requirements.<sup>8</sup> The practical application of these rules differs depending on the quantity of lithium and whether the batteries are contained in equipment carried aboard by passengers and crew or tendered as air cargo.

Air transportation of lithium batteries is a serious matter for all parties involved. The FAA, as a sister DOT division with PHMSA, holds authority to designate, and regulate the transportation of, hazardous materials to promote safe flight of civil aircraft.<sup>9</sup> Despite the risk of fire and explosion, there are limited exceptions. Lithium batteries may be carried by air crew/passengers

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# Li-ion Battery Lithium

## New PHMSA Lithium-Ion Battery Rule Seeks Harmony in the Safe Skies

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for personal use subject to the following conditions:

- Lithium batteries *installed* in portable electronic devices may be in carry-on or checked baggage.
- *Spare* lithium batteries may be in carry-on baggage only (not checked or gate-checked baggage), provided that the spare batteries are protected from damage or short circuit by being placed in secure packaging with the terminals protected from contacting other metal.
- Whether installed in portable electronic devices or carried as a spare: (1) lithium metal batteries may not have a lithium content of more than 2 grams per battery and (2) lithium-ion batteries may not have a Watt-hour rating exceeding 100 Wh (lithium-ion batteries with Watt-hour rating between 101–160 Wh may be carried subject to limited exceptions with air operator approval).<sup>10</sup>

However, the ability to carry lithium batteries and lithium-powered devices on aircraft is not unlimited and is subject to reasonable restrictions for potentially unsafe devices. Under the HMR, carriage of batteries or battery-powered devices is not permitted if the batteries or devices “are likely to create sparks or

generate a dangerous evolution of heat, unless packaged in a manner which precludes such an occurrence.”<sup>11</sup> Further, lithium cells or batteries that have been “identified by the manufacturer as being defective for safety reasons [and] have the potential of producing a dangerous evolution of heat [or] fire,” are prohibited from air transportation.<sup>12</sup>

The broader regime governing transportation of lithium batteries as air cargo is significantly more complex than the typical airline passenger experiences. The general approach manages risk by prescribing net quantity per package guidelines based upon the lithium content of each cell or battery.<sup>13</sup> Lithium batteries packed with or contained in equipment are limited to the number required to power the equipment plus two spares, provided that the total net mass of the lithium cells or batteries in the package transported does not exceed 5 kg.<sup>14</sup> When packages of lithium metal cells or batteries exceed 5 kg, the packaging may not be transported by air carrier and must be marked with one of the following warnings: “PRIMARY LITHIUM BATTERIES – FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT” or “LITHIUM METAL BATTERIES – FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT,” or labeled “CARGO AIRCRAFT ONLY.”<sup>15</sup>

### III. PHMSA Interim Final Rule and a Look to Harmonization

The regulatory regime is quickly evolving as one would expect based upon headlines and reported incidents. Agencies and trade associations across the globe are trending toward harmonized international rules and best practices for shipments containing lithium batteries. In 2016, the U.N.’s International Civil Aviation Authority put restrictions similar to the IFR in place for all member countries in an effort to prevent the risk of in-flight cargo hold fires.<sup>16</sup> The air transportation industry in the United States is no exception in its alignment with international trends. Two central themes have emerged. First, the carriage of lithium batteries as cargo on passenger aircraft is quickly falling into disfavor. Those batteries that are carried will face strict quantity, packaging and charge restrictions. Second, all parties involved in the air transportation of lithium-ion batteries are increasingly encouraged to adopt compliance measures tailored to their particular roles in the supply chain. Manufacturers and shippers who seek to avoid compliance with international norms will face increasing scrutiny—even in the form of self-policing among legitimate industry.

In an effort to harmonize U.S. regulation with the International Civil Aviation Organization’s (ICAO’s)

Technical Instructions for the Safe Transport of Dangerous Goods by Air, PHMSA has issued the IFR to address the “serious public safety hazards associated with lithium battery transportation.”<sup>17</sup> ICAO amended its Technical Instructions for the Safe Transportation of Dangerous Goods by Air to include: (1) the prohibition of transporting lithium batteries aboard passenger aircraft unless contained in carry-on personal electronic devices; (2) a requirement that all lithium batteries transported aboard cargo aircraft carry a charge no greater than 30% of their rated capacity; and (3) a limitation of one package of lithium batteries per overpack.<sup>18</sup> Due to the safety concerns and the statutory deadline found within the FAA Reauthorization Act of 2018, the IFR will go into effect without advance notice and opportunity for public comment.

The IFR, if finalized, will thus amend the HMR to mirror the amendments to the ICAO Technical Instructions. The key HMR amendments will: (1) prohibit the transport of lithium-ion cells and batteries as cargo on passenger aircraft; (2) require all lithium-ion cells and batteries to be shipped at not more than a 30 percent state of charge on cargo-only aircraft; and (3) limit the use of alternative provisions for small lithium cell or battery to one package per consignment. Despite these restrictions, it is important to bear in mind that these rules will not restrict passengers or crew members from bringing personal items or electronic devices containing lithium-ion cells or batteries, even if charged above 30 percent, since they will be packed with or contained in equipment. Additionally, the IFR provides a limited exception for medical devices to accommodate persons in areas potentially not serviced daily by cargo aircraft.

These rules may seem burdensome to some, but adoption is likely whether or not it is required. According to PHMSA, several large U.S. carriers have already voluntarily complied with the ICAO amendments, thus reducing any additional regulatory hurdle they would have to satisfy.<sup>19</sup>

#### **IV. Lithium Batteries and Hazardous Materials Compliance**

The far-reaching impact of coming changes will influence consumers, manufacturers, forwarders and carriers who employ aircraft to transport this increasingly prominent means of powering

modern life. However, regulatory changes alone are insufficient to ensure air safety. The PHMSA and Federal Aviation Administration (FAA) advisories correctly suggest that operational best practices are essential to keeping individuals safe and companies out of headlines. Compliance with this changing world of lithium transportation requires vigilant awareness, assessment, training and process improvement.

All transportation participants must recognize that lithium compliance is not new, although certain aspects are changing in real time. Ultimately, lithium is just one hazardous material among all those regulated as part of the HMR. The FAA correctly does not prescribe specific guidelines, instead it emphasizes best practices of conducting broad assessments of shippers, cargo requirements, communications, and safety and operating procedures in developing effective responses to each participant’s risk profile. There is no one-size-fits-all solution to hazardous materials compliance, in part because of the innumerable (and often invisible) ways in which lithium batteries are infiltrating our everyday lives. Every shipper, forwarder or carrier must closely analyze operations and develop appropriate standard operating procedures to manage risk. It would be appropriate for corporate compliance professionals to review these standard operating procedures at least once annually due to the increasing speed of change.

Compliance with all HMR is the responsibility of every shipper, forwarder and carrier. Each is subject to investigations and inspections that carry civil and criminal penalties for violations of the HMR. Civil penalties increased in 2016 to \$77,114 per violation, or \$179,933 per violation in cases involving death or serious bodily injury.<sup>20</sup> The civil penalty for training violations is now \$463.<sup>21</sup> Criminal penalties may include imprisonment for up to 5 years, or 10 years in cases involving death or bodily injury.<sup>22</sup> Of course, the potential for loss of life and damage to reputation are immeasurable.

REMEMBER: SAFETY INCIDENTS INVOLVING THE AIR TRANSPORTATION OF LITHIUM BATTERIES MUST BE REPORTED TO THE NATIONAL RESPONSE CENTER (1-800-424-8802) AS SOON AS PRACTICAL BUT NO LATER THAN 12 HOURS AFTER THE OCCURRENCE.<sup>23</sup> A WRITTEN INCIDENT REPORT IS ALSO REQUIRED.<sup>24</sup>

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<sup>1</sup> See FAA Lithium Batteries & Lithium Battery-Powered Devices Report, FAA (Feb. 1, 2019).

<sup>2</sup> *Id.*

<sup>3</sup> Chart compiled from data available at *id.*

<sup>4</sup> See, e.g., FAA SAFO 10017 (Oct. 8, 2010); see also “The FAA Is Freaked Out About Lithium-Ion Batteries on Planes,” *Popular Mechanics* (Oct. 19, 2015); “New FAA rules limit batteries in checked and carry-on baggage,” *ARS Technica* (Dec. 31, 2007).

<sup>5</sup> 49 C.F.R. § 171.8.

<sup>6</sup> See, e.g., 49 C.F.R. § 173.185; FAA SAFO 15010 (Oct. 8, 2015); FAA SAFO 10017 (Oct. 8, 2010).

<sup>7</sup> 49 C.F.R. Parts 100 to 185.

<sup>8</sup> See 49 C.F.R. §§ 175.30, 175.33, 175.75, and 173.185.

<sup>9</sup> 49 U.S.C. §§ 5101, *et seq.*; 49 U.S.C. § 44701.

<sup>10</sup> 49 C.F.R. § 175.10(a)(18).

<sup>11</sup> 49 C.F.R. § 173.21(c).

<sup>12</sup> See 49 C.F.R. § 173.185(f).

<sup>13</sup> 49 C.F.R. § 173.185(c)(4).

<sup>14</sup> *Id.*

<sup>15</sup> 49 C.F.R. § 173.185(c)(1)(iii). Additional packing, marking, and air waybill completion requirements are also provided in 49 C.F.R. § 173.185(c)(4).

<sup>16</sup> See *Lithium-ion batteries banned as cargo on passenger planes*, CNN Business, <https://money.cnn.com/2016/02/23/news/companies/lithium-ion-battery-ban-airplanes/index.html>.

<sup>17</sup> IFR at Page 5.

<sup>18</sup> ICAO Addendum No. 3 (January 15, 2016); ICAO Addendum No. 4 (February 23, 2016).

<sup>19</sup> See *U.S. bars lithium batteries as cargo on passenger aircraft*, Reuters, <https://www.reuters.com/article/us-usa-airlines-safety/u-s-bars-lithium-batteries-as-cargo-on-passenger-aircraft-idUSKCN1QG1XI>.

<sup>20</sup> 49 C.F.R. § 107.329.

<sup>21</sup> *Id.*

<sup>22</sup> 49 C.F.R. § 107.333.

<sup>23</sup> 49 C.F.R. § 171.15

<sup>24</sup> 49 C.F.R. § 171.16.

## IFTA Audit Roadmap: What to Expect From Base State Tax Departments



Jonathan Todd



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The International Fuel Tax Agreement (IFTA) system is an important clearinghouse mechanism for for-hire motor carriers and private carriers with interstate operations. The IFTA plan benefits participating carriers by offering a consolidated fuel tax system where payments are remitted to a single Base State rather than through each state in which commercial motor vehicles happen to operate. Despite its convenience, this agreement between the states can spell trouble for those motor carriers without strong documentation and recordkeeping practices.

IFTA audits can and do occur, resulting in administrative and financial burdens on motor carriers. The degree of granularity required for meaningful IFTA audit information disclosures may be surprising to many, as may the tenacity of auditors. This article provides a basic “roadmap” for steering through the course of events that follows a knock on the door by a Base State’s tax authority. Preventing disappointing outcomes from IFTA audits begins in large part with diligent and thoughtful recordkeeping—which is an achievable best practice for motor carriers.

### What Is IFTA, Really?

IFTA is an agreement made among 48 states and 10 Canadian provinces that streamlines the fuel tax reporting process for interstate carriers. The main purpose behind IFTA is to “promote and encourage the fullest and most efficient possible use of the highway system by making uniform the administration of motor fuels use taxation laws with respect to motor vehicles operated in multiple member jurisdictions.”<sup>1</sup> Among its core principles, IFTA implements the concept of a “base jurisdiction.” This allows a licensee to report and pay to its base jurisdiction all the fuel taxes it owes, which are then distributed to each member jurisdiction in which it traveled during the reporting period.<sup>2</sup>

You may qualify for IFTA if you use commercial motor vehicles (CMVs) in the interstate transportation of either persons or property and those CMVs: (i) have two axles and a gross vehicle weight (GVW) or registered GVW exceeding 26,000 pounds; (ii) have three or more axles, regardless of their weight; or (iii) are used in combination with a trailer, for a combined GVW or registered GVW in excess of 26,000 pounds. You may register by completing the IFTA License Application and submitting it to the proper authority within the Base State<sup>3</sup>—for example, the Bureau of Commercial Vehicle and Driver Services in Florida. You must agree to be “bound by the duties and obligations of licensees” as most currently amended, and it is the Base State that “must enforce those duties and obligations within its jurisdiction.”<sup>4</sup> With minor exceptions, an IFTA license is considered mandatory for any person or entity “based in a member jurisdiction operating a qualified motor vehicle(s) in two or more member jurisdictions.”<sup>5</sup>

In many ways IFTA is similar to the International Registration Plan (IRP) for equipment, with which you may also be familiar. However, an IFTA license is regularly a prerequisite for applying to the IRP. Participating carriers are issued an IFTA license and a set of IFTA decals for each vehicle, which allow the carriers to operate in all IFTA jurisdictions without buying additional decals from those jurisdictions, also similar to the IRP’s distribution of plates.

You will need to pay quarterly tax returns upon successful registration with IFTA—even if you do not operate or purchase fuel in any IFTA jurisdiction in any given quarter. In some jurisdictions, like Florida, the quarterly tax return due dates are the last day of the month following the quarter then-ended. For example, the tax return for the period of January through March is due on April 30. Yearly license renewal is available as long as the license is not revoked,

suspended or canceled, all tax returns for the year were filed, and all motor fuel use taxes and related expenses have been paid in compliance with IFTA and the laws of the licensee’s base jurisdiction.<sup>6</sup>

### How Will I Know My Company Is Being Audited?

The notification of an audit may come in the mail, or your company may first discover it is being audited by a phone call from your company’s Base State’s Department of Taxation (the Department). If your company has received notification that it has been selected for an audit, this is not necessarily an indication that wrongdoing or underpayment is suspected. Every year, each Base State’s Department is obliged to audit an average of 3% of IFTA accounts required to be reported in the jurisdiction.<sup>7</sup> At least 15% of the audited IFTA accounts must be those who are reporting the lowest miles/kilometers in member jurisdictions, and at least 25% audited must include those IFTA accounts reporting the highest miles/kilometers reported in member jurisdictions.<sup>8</sup> However, it is also possible that the Department has noted reporting discrepancies, such as wildly different reporting in similar quarters, triggering an audit.

In most instances, your company will be given notice of an audit via correspondence from your Base State’s Department of Taxation at least 30 days prior to the audit, and in that notification (or subsequent correspondence) you should receive direction as to the period of time the audit will cover, the types of records that will be audited, and the proposed audit start date.<sup>9</sup> The auditor assigned to your company’s case will also contact your company’s representative for an opening conference to discuss the company’s operations, distance and fuel accounting system, and audit procedures, and the scope of the audit.

## What Does My Company Need to Provide to the IFTA Auditor?

IFTA recommends using a document such as the "Individual Vehicle Mileage Record"<sup>10</sup> reporting form to verify the registrant's application or fuel report for a date; however, many, if not most, Electronic Logging Devices (ELDs) have the capacity to record the required information as well. The types of records that must be retained for IFTA purposes include:

- Beginning and ending dates of the trip to which the records pertain
- Trip origin and destination
- Routes of travel
- Beginning and ending reading from the odometer, ECM or similar device
- Total trip distance
- Distance traveled in each jurisdiction
- Vehicle identification number or vehicle unit number

If utilizing ELD records, the records must include:

- The original GPS<sup>11</sup> or location data to which the records pertain
- The date and time of each GPS reading, at intervals to validate the total distance traveled in each jurisdiction
- The location of each GPS reading
- Beginning and ending reading from the odometer, ECM or similar device, corresponding to the record date
- The calculated distance between each GPS reading
- The route of travel
- The total distance traveled
- The distance traveled in each jurisdiction
- Vehicle identification number or vehicle unit number

Your company must also retain fuel receipts for all fuel purchases for IFTA-qualified vehicles. For IFTA purposes, all of these records must be maintained for *four years*.

The toughest part for most motor carriers to keep track of is the route data because a high degree of specificity is required (the auditor wants to know exactly which route you used, because it invariably impacts the distance

traveled). If a motor carrier is unable to produce route records to confirm reported distance totals, the auditor can and will make his or her own calculations, which could result in the finding of an underpayment.

## How Is the IFTA Audit Performed?

Most often, the auditor will request a list of and data from your entire IFTA-qualified fleet. Once that list is obtained, the auditor will select a number of vehicle records to audit with specificity. Generally, auditors will request the records be produced to them so that they may conduct the audit from their office (not your location).

It sometimes happens that the records for a certain vehicle are lost, or have been corrupted. In these instances, it helps if your company's representative has developed a congenial relationship with the auditor, because the auditor is more likely to be willing to negotiate the substitution of records from another vehicle to complete the audit. Also, if your company does not have the exact records requested by the auditor, but did maintain documents that are sufficient to show the requested information, the auditor may accept alternative documentation of the reported numbers for the motor carrier.

## What Happens If the Auditor Determines My Company Has Underpaid?

The auditor will notify your company of an assessed underpayment in writing and will demand payment within a short period of time. Your company will have the option to appeal the decision of the auditor if you believe there is a material misunderstanding of fact or law, but this decision will have to be made relatively quickly after the decision or late payment penalties will likely be assessed. Like other forms of tax disputes, your company may choose to pay the assessment and then challenge the decision after payment, avoiding any late payment penalty.

The decision to fight or pay an assessed underpayment will hinge on many factors, such as the amount of the assessment, but will also rest upon the grounds for your company's challenge. For instance, if your company provided records sufficient to show the distances traveled, but the auditor refused to review the records (a material factual dispute), that would

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## TSA Administrator Appoints Todd to Transportation Security Committee



Jonathan Todd

Benesch is pleased to announce that Jonathan Todd, a partner in the firm's Transportation & Logistics Practice Group, was recently appointed by TSA Administrator David P. Pekoske to represent

the transportation industry as a voting member of the Surface Transportation Security Advisory Committee (STSAC).

The STSAC was formed to advise and consult with the TSA Administrator on surface transportation security matters. The federal advisory committee assists the Administrator in advancing TSA policies, programs, initiatives, rulemakings and security directives pertaining to surface transportation. It is composed of members with expertise in passenger rail, freight rail, mass transit, pipelines, highways, over-the-road bus, school bus and motor carrier transportation. Members are appointed by and serve at the pleasure of the Administrator for a term of two years.

**JONATHAN TODD** practices law in the areas of transportation, logistics, supply chain management and international trade compliance. He represents carriers, third-party logistics providers, manufacturers, distributors and retailers in transactional and regulatory matters. Jonathan may be reached at (216) 363-4658 or [jtodd@beneschlaw.com](mailto:jtodd@beneschlaw.com).

## IFTA Audit Roadmap: What to Expect From Base State Tax Departments

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be a good reason to appeal the decision. Or, perhaps the auditor selected a vehicle in your company's fleet that was not required to retain IFTA records (a material legal dispute) and refused to select a qualifying vehicle.

These are issues that may or may not be able to be addressed by your company's employees, and as a result, additional professionals may need to be retained to address any disputes with the Department. Your accounting and legal advisors will be helpful in navigating through underpayment allegations.

### What If My Company Does Not Feel Comfortable Working With the Auditor?

If your company would prefer to be represented by an attorney or other tax representative in your audit process, it is permitted to do so. These audits may have serious financial and other civil penalties, and it may make sense to have an intermediary to negotiate on your company's behalf. If your company chooses to hire someone to assist with the audit, the company will likely need to authorize that person to act on the company's behalf by providing the Department with a Declaration of Tax Representative, or other proof of authorization documentation.

### How Should My Company Prepare?

Participation in IFTA is a virtual inevitability for most interstate motor carriers and, while any type of audit is unpleasant, preparation for IFTA compliance can greatly ease that process. The key to minimizing the time and expense associated with an IFTA audit is to develop strong recordkeeping practices. The

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*“The goal of every IFTA licensee should be to develop recordkeeping and compliance processes that maintain an accurate picture of the operation.”*

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goal of every IFTA licensee should be to develop recordkeeping and compliance processes that maintain an accurate picture of the operation. The documents and data identified above must be reliably collected and maintained in order to evidence your actual fuel spend, mileage and routes. This is your responsibility—not the Base State's—and it will quickly become your problem during an audit.

It is helpful to bear in mind that the IFTA audit process is intended to arrive at the truth of your operation's fuel consumption and traffic. Once the audit begins, prepare to present this information and for you and your staff to answer the auditor's interview questions. In the best-case scenario, just as with income taxes, you have correctly paid or overpaid to IFTA. In the worst-case scenario, determinations will be made based upon the facts and circumstances of your operation (where quality recordkeeping does not exist) and the amount paid or demanded may not in fact align with the amount due. Viewed this way, IFTA compliance is more an exercise in accuracy than of gamesmanship. Failure to maintain accurate records and to respond to audits professionally and with candor can only hurt yourself.

**JONATHAN TODD, KELLY MULRANE** and **VINNY MICHALEC** are all transportation and logistics attorneys practicing at Benesch. Jonathan may be reached at 216-363-4658 or [jtodd@beneschlaw.com](mailto:jtodd@beneschlaw.com). Kelly may be reached at 614-223-9318 or [kmulrane@beneschlaw.com](mailto:kmulrane@beneschlaw.com). Vinny be reached at 216-363-6241 or [vmichalec@beneschlaw.com](mailto:vmichalec@beneschlaw.com).

<sup>1</sup> IFTA, *Articles of Agreement* § R130 (last updated Dec. 1, 2018)(available online at: <https://iftach.org/manuals/2018/AA/Articles%20of%20Agreement%20December%202018.pdf>).

<sup>2</sup> Id. at § R130.100 (part of an interstate compact approved by Congress in the Intermodal Surface Transportation Efficiency Act of 1991, providing retention for each jurisdiction's sovereign authority to determine tax rates, exemptions, etc., and a uniform definition of the vehicles subject to IFTA).

<sup>3</sup> Id. at § 315.

<sup>4</sup> Id. at § R140.

<sup>5</sup> Id. at § 305.

<sup>6</sup> Id. at § 345.100.

<sup>7</sup> Audit Manual \*A250.

<sup>8</sup> Audit Manual \*A260.

<sup>9</sup> Audit Manual \*A420.100.

<sup>10</sup> These source documents are developed by the Base State and generally available online.

<sup>11</sup> GPS or similar electronic system.



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## I'm Kind of a Big Dill: Current Challenges in Transporting Food Under FSMA

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Also, both the range and time at which the temperature variances occurred may significantly impact the determination of whether food was actually damaged during transport. The Blue Book Services' Transportation Guidelines, a source of industry best practices, customs and rules, which, if agreed upon, may apply to the transportation of fresh fruit and vegetables by motor carriage, states that plus or minus five degrees is considered a "slight variance" (depending upon how close it is to the freezing point). With that said, the longer the time during which the temperature variance occurs, the greater the chance that food product damage exists. All of this information should be considered when assessing the integrity of a food shipment where there has been temperature variance. Since there is no bright-line rule as to the impact of temperature variance on a product,

at the end of the day, whoever has the most data usually prevails in food cargo claim dispute.

A final note on temperature variance, motor carrier insurance coverage typically will not cover food product damage due to a temperature variance during transport unless the variance was caused by a reefer breakdown. Therefore, the motor carrier's drivers should be particularly careful when setting the reefer temperature recording unit in compliance with shipper instructions and monitoring temperature control during transport. Also, brokers might consider alternative insurance products that specifically cover such loss in the event that the carrier's insurance will not "kick in" and cover it.

### D. So What?

Given today's heightened food safety concerns, it is important for transportation companies

involved in shipping food products to understand the various pitfalls ahead. Since the implementation of the STF Rule, we have seen an increase in food cargo claims and confusion surrounding compliance and food safety responsibilities. However, if one understands how each party fits in, understands the best practices and procedures for minimizing the risks of damage and liability, and acts accordingly, then life should be simply business as usual.

**STEPHANIE S. PENNINGER** and **JOHN H. BURNSIDE** are attorneys in the firm's Transportation & Logistics Practice Group. Stephanie can be reached at [spenninger@beneschlaw.com](mailto:spenninger@beneschlaw.com) or (312) 212-4981. John can be reached at [jburnside@beneschlaw.com](mailto:jburnside@beneschlaw.com) or (614) 223-9383.



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# Ready for what's next.

## TRANSPORTATION & LOGISTICS GROUP ADDS MORE STRENGTH

Benesch is pleased to announce that attorneys **David A. Ferris**, **Jennifer A. Miller** and **Whitney Johnson** have joined the Transportation & Logistics Practice Group.



David A. Ferris

David focuses his practice primarily in the fields of transportation, telecommunications, hazardous materials, real property and construction. He has experience in handling all facets of litigation,

administrative applications and proceedings, complex contract negotiations, and business disputes. He has appeared before the United States Supreme Court, the Court of Appeals for the Sixth Circuit, and federal and state courts in Ohio, Pennsylvania and New York. He also has significant experience representing clients before administrative agencies, including the U.S. Department of Transportation, U.S. Department of Labor and Public Utilities Commission of Ohio. In addition, David has tried jury and bench trials, administrative hearings, and arbitrations. He has represented clients during mediations and attended numerous business and contract negotiations on behalf of his clients.

David received his J.D., *summa cum laude*, from Capital University Law School and his B.A. from Miami University.

David A. Ferris can be reached at (614) 223-9341 or [dferris@beneschlaw.com](mailto:dferris@beneschlaw.com).



Jennifer A. Miller

Jennifer concentrates her practice on complex commercial litigation and represents clients from a variety of industries, including energy, food, health, media and technology at both the trial and appellate

levels. Her experience includes handling several aspects of the litigation process, including factual investigation, motion practice, and preparing fact and expert witnesses. Earlier this year, Jennifer served discovery on behalf of a California company regarding damage sustained to a trailer, which successfully led to settlement negotiations.

Jennifer received her J.D., *summa cum laude*, from the University of Illinois and her B.A., *magna cum laude*, from the University of Missouri.

Jennifer A. Miller can be reached at (628) 216-2241 or [jamiller@beneschlaw.com](mailto:jamiller@beneschlaw.com).



Whitney Johnson

Whitney focuses her practice on commercial litigation, intellectual property disputes and white collar defense. Her commercial litigation practice is diverse, including breach of contract, product liability,

trade secret and business torts. Whitney has experience handling all aspects of the litigation process, including factual investigation, motion practice, written and oral discovery, and pre-trial preparations. Last year Whitney settled, for nuisance value, a multimillion-dollar dispute brought by a California trucking company seeking lost business profits in connection with damage sustained to one of its tractor-trailers.

Whitney received her J.D. from the University of Colorado, Boulder, and her B.A. from the University of California, Berkeley.

Whitney Johnson can be reached at (628) 600-2239 or [wjohnson@beneschlaw.com](mailto:wjohnson@beneschlaw.com).

Over the past 18 months, Benesch has welcomed over 70 new attorneys and opened an office in San Francisco. The strategic addition of these attorneys and offices is another step in executing the firm's aggressive growth plan and goal to continuously enhance the quality of service provided to clients. Since making its debut on the AmLaw 200 list in 2016, the firm has advanced 15 places and is currently ranked at number 180.

# RECENT EVENTS

## **Columbus Roundtable of Council of Supply Chain Management Professionals**

**Marc S. Blubaugh** moderated the Annual Transportation Executive Panel.  
January 11, 2019 | Columbus, OH

## **APICS Cleveland Chapter Meeting**

**Jonathan Todd** presented *Import and Export Compliance*.  
January 16, 2019 | Cleveland, OH

## **The Ohio Trucking Association's Safety Council Meeting**

**Marc S. Blubaugh** and **Kelly E. Mulrane** presented *Having a Winning Deposition Strategy*.  
January 17, 2018 | Columbus, OH

## **BG Strategic Advisors Supply Chain Conference**

**Marc S. Blubaugh**, **Peter Shelton** and **Eric L. Zalud** attended.  
January 23–25, 2018 | Palm Beach, FL

## **Transportation Law Association (TLA) Chicago Regional Seminar and Bootcamp**

**Stephanie S. Penninger** presented *Lifting TNCs and Other Big Economy Entities Out of the Worker Misclassification Tier Abyss: Solving Employment Law Concerns Permeating the Big Economy and Transportation Industry*. **Kevin M. Capuzzi**, **William E. Doran**, **Emily C. Fess**, **John C. Gentile**, **Charles Leuin**, **Kelly E. Mulrane**, **Margo Wolf O'Donnell**, **Verlyn Suderman**, **Jonathan Todd** and **Eric L. Zalud** attended.  
January 24–25, 2019 | Chicago, IL

## **Air Cargo Conference**

**Jonathan Todd** presented *CBP Developments*. **Martha J. Payne** attended.  
February 10–12, 2019 | Las Vegas, NV

## **Stifel Transportation Conference**

**Marc S. Blubaugh** and **Eric L. Zalud** attended.  
February 11–13, 2019 | Miami, FL

## **Ohio Trucking Association (OTA) Emergence Seminar**

**Jonathan Todd** presented *Opportunities and Risks for Transportation & Logistics Management*.  
February 12, 2019 | Columbus, OH

## **BB&T Transportation Conference**

**Marc S. Blubaugh** and **Eric L. Zalud** attended.  
February 13–14, 2019 | Miami, FL

## **ABA TIPS Mid-Year Conference and Admiralty and Maritime Law Committee Meeting**

**Stephanie S. Penninger** attended.  
February 21–23, 2019 | Phoenix, AZ

## **Journal of Commerce 19th TPM Annual Conference**

**Stephanie S. Penninger** attended.  
March 3–6, 2019 | Long Beach, CA

## **2019 International Warehouse Logistics Association (IWLA) Convention & Expo**

**Marc S. Blubaugh**, **Verlyn Suderman** and **Eric L. Zalud** attended.  
March 10–13, 2019 | Savannah, GA

## **81st Truckload Carriers Association (TCA) Annual Convention**

**Richard A. Plewacki** was elected to the TCA's Board of Directors for the 10th consecutive year. **Jonathan Todd** attended.  
March 10–13, 2019 | Las Vegas, NV

## **International Warehouse Logistics Association (IWLA) Webinar**

**Marc S. Blubaugh** presented *Legal Lessons: Key Court Decisions of 2018*.  
March 21, 2018 | Webinar

## **ABA TIPS Admiralty & Maritime Law Committee Admiralty Disruption Conference**

**Stephanie S. Penninger** moderated "From Blue to Brown Water: What Keeps Maritime In-House Counsel Up at Night and What Are Outside Counsel Doing to Create or Help Their Insomnia."  
March 22–23, 2019 | New Orleans, LA

## **ABA TIPS Admiralty & Maritime Law Committee and Women's International Shipping and Trading Association Roundtable**

**Stephanie S. Penninger** presented *Batten Down the Hatches: Navigating the Seas of 2019 Hot Maritime Topics*.  
March 23, 2019 | Stamford, CT

## **Transportation and Logistics Council (TLC) 45th Annual Conference**

**Marc S. Blubaugh** presented *Tow Company Cartels* and served on the "Law of the Land, Law of the Jungle" panel. **Martha J. Payne** moderated and **Eric L. Zalud** participated in the "Loss Prevention and Mitigation of Damage" panel.  
March 25–27, 2019 | Memphis, TN

## **Transportation Industry Defense Association's (TIDA) Cargo Claims Seminar**

**Marc S. Blubaugh** presented *Freight Broker Preemption Primer*.  
April 3, 2019 | Phoenix, AZ

## **The Blockchain Supply Chain Summit**

**Jonathan Todd** presented *The Blockchain Future State—Legal & Regulatory Impact*.  
April 10, 2019 | Chicago, IL

## **2019 Transportation Intermediaries Association (TIA) Capital Ideas Conference**

**Jonathan Todd** presented *Cross Border Changes and Trade Tariffs & Restrictions: Navigating Sudden Changes for Your Customers to Ease the Cost and Avoid Surprises*. **Marc S. Blubaugh** presented *Defending the Claim for Catastrophic Injury: Is There a Way Out Through Mediation*. **Martha J. Payne** presented *Contract Review—Key New Issues: What are the new issues in contracts between 3PLs and their customers?* **Stephanie S. Penninger** attended.  
April 11–13, 2019 | Orlando, FL

## **2019 TerraLex Global Meeting**

**Eric L. Zalud** attended.  
April 10–13, 2019 | Kuala Lumpur, Malaysia

## **Institute for Supply Management (ISM) Cleveland Chapter Meeting**

**Jonathan Todd** presented *Global Logistics: Protecting Goods Against Loss, Damage, Shortage, and Delay*.  
April 18, 2019 | Cleveland, OH



# ON THE HORIZON

## Legal Forum: Equipment Leasing and Finance Association (ELFA)

Jonathan Todd is presenting *Emerging Asset Classes*.

April 28, 2019 | San Diego, CA

## Intermodal Association of North America's Operations and Maintenance Business Meeting

Marc Blubaugh and Verlyn Suderman are attending.

April 30–May 2 | Lombard, IL

## ABA TIPS Section Conference and Admiralty and Maritime Law Committee Meeting

Stephanie S. Penninger is attending.

April 30–May 5, 2019 | New York, NY

## 2019 Transportation Lawyers Association's (TLA's) Annual Conference

Marc S. Blubaugh is presenting *Blockchain Unleashed*. Eric L. Zalud is presenting *2000 Miles: Through Multimodal*. Martha J. Payne and Stephanie S. Penninger are attending.

May 1–4, 2019 | Austin, TX

## American Trucking Association (ATA) Management Meeting

Jonathan Todd is attending.

May 5, 2019 | Scottsdale, AZ

## Columbus Logistics Conference

Marc S. Blubaugh is presenting.

May 16, 2019 | Columbus, OH

## National Association of District Export Councils (NADEC) Annual Export Conference

Jonathan Todd is attending.

May 21–22, 2019 | Arlington, VA

## TLA Webinar Series

Eric L. Zalud is presenting *The Sun Never Sets on Broker Liability (Unfortunately)*.

May 30, 2019 | Webinar

## Conference of Freight Counsel

Martha J. Payne and Eric L. Zalud are attending.

June 9–10, 2019 | Greenville, SC

## EyeForTransport (eft) 3PL Summit

Marc S. Blubaugh and Eric L. Zalud are attending.

June 10–12, 2019 | Atlanta, GA

## Association of Transportation Law Professionals' 90th Annual Meeting

Jonathan Todd is speaking.

June | Washington, DC

For further information and registration, please contact **MEGAN THOMAS**, Client Services Manager, at [mthomas@beneschlaw.com](mailto:mthomas@beneschlaw.com) or (216) 363-4639.

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