

***Mandatory Motor Carrier Insurance: You're covered whether or not you know it or need it***

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It's no secret that shipping relationships are becoming increasingly intermodal. Few in the transportation industry can operate in a modal vacuum these days. Intermediaries usually book carriage door to door, often engaging truckers and railroads to haul their customers' cargo on one or both ends of an ocean transport. Water carriers are broadening their horizons through multimodal intermediary operations of their own, and/or or by purchasing trucks to run themselves. Transportation regulation is becoming more homogenous, with issues previously attended to by mode-specific agencies now being administered by one governmental branch.

Legislative trends support this. With all modes now deregulated (to varying extents), industry players can more easily operate from a "big picture" perspective. The trucking industry was deregulated a decade earlier than the ocean transportation industry. It use to be a hassle to negotiate and book multimodal transit, because one mode's rates might be subject to mandatory tariff pricing, while another could be freely negotiated. Now, most of a deal can be haggled out start to finish subject to players' needs and concerns.

The risk of life, limb and property is inherent in all modes of transportation, but none subject the unwitting public to such risk more than the motor carrier industry. Trucks operate on the nation's highway system where mishaps are more frequent and can impose great consequences on third parties. Moreover, interstate surface transit accounts by far for the greatest percentage of cargo mileage accomplished in American transportation.

It's no wonder, therefore, that federal trucking regs, administered by the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation, require long-haul motor carriers and surface freight forwarders to purchase insurance covering the risks they impose on the public. It's a neat concept, one which anyone involved with surface transit (which is pretty much anyone involved with transportation generally) should be aware of.

As part of obtaining and retaining their operating authority, truckers that haul interstate loads must present to the feds proof of two forms of liability coverage. The first pertains to "bodily injury and property damage" (BIPD), and is required of any motor carrier. Differing levels of BIPD coverage are required depending on the variety of cargo hauled.

The second is cargo liability coverage. Currently, FMCSA regs only require truckers to demonstrate proof of cargo liability insurance for their common carriage hauls (i.e., cargo booked pursuant to tariff). If a carrier operates exclusively by contract, proof of cargo liability coverage isn't required or even accepted. The minimum limits of coverage are

low, \$5,000 per claim and \$10,000 per event, but motor carriers typically – though not always – procure higher levels of coverage.

The two varieties of coverage are confirmed to the FMCSA by way of forms issued by insurers – an “MCS-90” for BIPD and a “BMC-34” for cargo liability. Everyone in the process should be aware that these coverages, while technically issued to the motor carrier for liability purposes, are tantamount to first-party coverage for the public at large. In other words, anyone who ships cargo with a common carrier enjoys free cargo coverage to a minimum of five grand per loss. The insurer can’t escape liability regardless of its insured trucker’s no-no’s (such as failure to pay premiums or misrepresentations in an insurance application, etc.). In fact, the coverage applies even if the trucker disappears or goes belly up. If the insurer has filed a BMC-34 with the FMCSA, then coverage lies for a lost or damaged cargo claim. End of story. The same goes for people who are hurt or lose property as a result of a trucking accident.

A few issues have arisen lately in the FMCSA’s administration of these policies. First, there’s an anomaly in the common carrier/contract carrier dichotomy vis-à-vis mandatory cargo insurance, because federal statutes say the two are supposed to be treated identically for purposes at hand. Moreover, there’s been some clamoring about the bar being set too low at five grand minimum coverage.

The FMCSA should be fixing this situation, and has had a proposed rulemaking docket open to invite public commentary on the subjects for years. Movement is expected “soon,” but the feds won’t comment as to a date when they’ll get around to modifying the insurance regs. Mum’s also the word regarding what the FMCSA thinks might be substantively appropriate (this actually is standard procedure when a rulemaking proceeding is underway).

Meanwhile, shippers and intermediaries should be aware of their entitlement to cargo insurance coverage from the trucker’s insurer. Sure, you can purchase your own coverage, which still may be a good idea, especially for more valuable loads. The mandatory coverage only kicks in if a trucker or freight forwarder is at fault for your loss (under a federal motor carrier liability statute known as the Carmack Amendment, 49 USC § 14706). But if a motor carrier does lose or damage your (or your customer’s) cargo, an insurer should be there to pay your claim.

***Ref.: 49 CFR § 31139 “Minimum financial responsibility for transporting property”.  
To learn the insurer of a licensed interstate motor carrier: [www.safersys.org](http://www.safersys.org)***