

UNDERSTANDING THE NEW TRANSPORTATION BILL: WHAT YOU NEED TO KNOW

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The Defense Transportation Journal (DTJ) is the official publication of the National Defense Transportation Association and the only trade publication dedicated to topics and trends from the perspective of military and commercial partnership. The association is dedicated to fostering a strong and efficient global transportation and distribution system in support of national security.



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This summer, significant legislation passed on Capitol Hill that not only provides about two years of highway funding, but also permanently changes federal law regarding freight transportation. Truckers, transportation brokers and domestic forwarders will experience considerable changes in the way they conduct business.

Increased Surety Bond

Perhaps the most reported-on provision of the new Transportation Bill is the requirement for freight brokers and domestic forwarders to each post a \$75,000 surety bond, a boost from the current \$10,000. As a result, all freight brokers and forwarders will need a new bond, and have until October 2013 to comply. Customs brokers and air freight forwarders are exempt from the changes when arranging transportation as part of a greater international move. The change has been resoundingly welcomed by supporters, who say the increase will reduce fraud in the industry.

Surety providers will also face increased oversight from the Federal Motor Carrier Safety Administration. Any financial security amount must consist of assets readily available to pay claims, without resorting to personal guarantees or collection of pledged accounts receivable.

Re-Brokering Freight

It is now illegal for motor carriers to accept freight as a carrier, then broker the load out (unbeknownst to the shipper or broker that tendered the freight) to another carrier, unless the first carrier discloses this fact and also has the proper authority and corresponding bond. Interlining, however, is allowed, but the carrier must physically transport the cargo itself, at some point in transit. Severe penalties will be enacted for re-brokering freight without a license, including civil penalties up to \$10,000 per violation and unlimited liability for payments to "injured parties." Payment liability is not just on that of the legal entity, but also to individual officers, directors and principals.

Registration Numbers and Authority

Because motor carriers are now forbidden from re-brokering freight without the proper authority and bond, many motor carriers may also seek broker authority in the coming months.

Confusion regarding which authority a company is operating under could still lead to unintentional assumption of liability and legal action for failing to make a proper disclosure as the nature of the company's role. The fact that a company acts as a motor carrier and a broker under the same name, at the same address, with the same employees answering the same phones and using the same email accounts easily exacerbates the possibility that the company's role could be misunderstood.

To assist with these problems, the Department of Transportation will issue distinctive registration numbers that indicate the type of activity a company operates under (e.g., motor carrier, broker, freight forwarder). The authority given to a particular entity will govern the transaction. By placing all of these provisions into law, they can be enforced through the courts by the private sector, without resort to action by the FMCSA.

Licensing

To obtain a license to operate as a broker or forwarder, companies must employ an officer with at least three years of industry experience or certified training requirement. All broker and forwarder licenses must be renewed every five years. There is no grandfather amendment in this legislation, all brokers and forwarders must comply.

Electronic On-Board Recorders (EOBRs)

The new law also contains a provision to require electronic on-board recorders for heavy trucks engaged in interstate commerce, but this provision continues to be debated. The House of Representatives recently passed a bill to prohibit FMCSA from spending money to implement a mandate for EOBRs.

Reincarnated Carriers

The FMCSA now has more power to investigate companies who disobey regulations, only to close and then re-open under a new name. The law expands upon the reasons why motor carriers can be shut down, and the FMCSA can revoke a company's authority if its officers show a pattern of avoiding compliance.

It's important to note that the above highlights are only a portion of the new 600-page law. Please continue to monitor upcoming developments and new regulations from the FMCSA in implementing these new requirements.



Overwatch, Inc. is a division of Avalon Risk Management and a Regional Member of NDTA.

Avalon Risk Management is a premier provider of insurance and surety solutions for the transportation industry, and offers the only Errors & Omissions policy endorsed by the Transportation Intermediaries Association. For more information, visit www.avalonrisk.com

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