CLIENT ALERTS & INSIGHTS

U.S. DOT Regulation of Shippers? Comments by the Transportation Secretary Raise Questions of Shipper Risk

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Key Takeaways

- Recent comments from the U.S. Transportation Secretary have raised concerns that shippers may soon face new liabilities and compliance obligations, especially regarding driver language proficiency at the loading dock.
- This signals a potential shift in regulatory focus, increasing the risk of legal exposure for shippers and warehouse operators-although best practices will also address cargo theft, negligence claims and reputational harm risks.
- Shippers and warehouse operators can proactively review and strengthen their dock procedures, which may include verifying carrier and driver identity, ensuring clear communication, and documenting compliance steps to mitigate risk and prepare for possible regulatory changes.

Transportation Secretary Sean Duffy's recent comments on Fox News' "The Will Cain Show" have raised concerns across supply chains that purchasers of transportation and logistics services may face new liabilities and compliance obligations for carrier drivers. Specifically, Secretary Duffy emphasized potential liability for shippers who load cargo in trailers hauled by carrier drivers who do not meet the English language proficiency (ELP) requirements.

The comments raise questions about the authority of the Federal Motor Carrier Safety Administration (FMCSA) to regulate shippers and how those actions would align with President Trump's deregulatory policy. This article addresses those issues and outlines basic best practices for all shippers and warehouse operators to implement for dock operations.

Regulation of Shippers at the Loading Dock

Shipper liability for shipments tendered is not a new concept, even if the prospect of new regulatory obligations may be breaking new ground. The FMCSA has historically acknowledged that its authority to regulate shipper functions is somewhat limited given its motor carrier safety charge. For example, back in 2012, FMCSA issued a "Five Year Plan" where it suggested that it would identify gaps in its enabling legislation that currently prevent the agency from reaching "certain elements of the CMV transportation life-cycle," specifically calling out "shippers" and "receivers" in that regard. FMCSA implied that it might seek Congressional authority to expand its regulatory jurisdiction.

Likewise, in 2016 when promulgating driver coercion regulations under MAP-21, FMCSA noted that Congress did not intend to apply *all* of the Federal Motor Carrier Safety Regulations to shippers or receivers. An agency's understanding of its jurisdiction can of course change over time. Secretary Duffy's comments could signal coming change.

In practice, even today, shipper conduct is frequently the subject of scrutiny in cargo damage and personal injury suits. Shippers and warehouse operators must generally exercise reasonable care at the loading dock. For example, failure by shippers and warehouse operators to confirm that a driver understands shipping instructions can serve to implicate these parties in negligence claims when cargo is damaged, stolen or misrouted. A shipper or warehouse operator who tenders a load to a driver who is manifestly inebriated raises similar potential exposures in casualty cases. In those types of disputes the attorneys, judges and juries will review shippers' actual conduct as well as internal procedures to determine whether the shipper was negligent when loading a trailer or otherwise tendering the cargo.

Today's dramatic rise in cargo theft offers one of the most tangible examples of this concern. Criminals are exploiting communication gaps to impersonate carriers, including through the use of fraudulent door markings and bills of lading. These misrepresentations persuade shippers to participate unwittingly in their own thefts by loading certain trucks. Drivers who struggle to communicate basic shipment details may not always be a threat, but poor verification procedures leave shippers and warehouse operators vulnerable to loss. Law enforcement-and now the U.S. DOT-appears to support proactive verification measures to protect and defend against cargo theft and other potential liabilities.

In essence, shipper liability at the loading dock is not a new concept and to date has largely centered on vigilance. This is likely to remain the case with or without new FMCSA regulatory action.

White House Policy on Deregulation

The current administration immediately emphasized the removal of unnecessary regulations and the cost of compliance burdens following Inauguration Day on January 20, 2025. In the time since, the President issued an executive order requiring federal agencies to repeal at least 10 regulations for each new regulation issued (far more aggressive than the two-for-one approach of the Trump 45 Administration). This signals a potential mathematical and philosophical hurdle for any new regulatory burden sought by the U.S. DOT. The President's propensity to act through executive order simultaneously raises the possibility of initiating change through the White House rather than Congress. Another course of action could focus on heightened enforcement policy, similar to how the renewed focus on ELP requirements does not actually change existing regulations but rather emphasizes regulatory enforcement priorities of the Trump Administration.

Practices to be Considered from the Shipper's Perspective

A growing list of reasons exists for shippers and warehousemen to strengthen operating procedures for traditional "shipping" and "dock" functions at their companies, not the least of which are this change in tone by the administration. The potential for cargo theft, nuclear verdict risk and supply chain interruption stand along with reputational harm as strong reasons for implementing best practices. The practical response for shippers and warehouse operators right now involves adopting practices that demonstrate reasonable care and mitigate risky behavior.

Those new and improved standard operating procedures can be written and implemented, and may include these six features:

- **Carrier Identity:** Confirming that the motor carrier is authorized and that all markings match the company booked and listed on shipping documents.
- **Driver Identity:** Verifying the driver's identification at the gate or the loading dock instead of simply relying on dispatch calls or emails.
- **English Language:** Ensuring that no language proficiency barrier exists and avoiding any indication (through signage or otherwise) that a lack of proficiency exists.
- **Confirming Consistency:** Loading freight while confirming that seals, labels and cargo counts align with bills of lading or manifest requirements.
- **Clear Instruction:** Ensuring that communication about shipment details, routes and handling is clear, and confirming that drivers understand the same prior to executing any shipping documents at origin.
- **Internal Policies:** Ensuring that internal policies around shipping practices are clear regarding loading/unloading, identity verification and other loss mitigation requirements.

Secretary Duffy's remarks can serve as an important reminder whether or not dramatic regulatory change is coming. It is in the best interest of all parties procuring transportation and logistics services, particularly shippers and warehousemen, to fortify approaches to physical security and standard operating procedures. The risks that those efforts target have existed for years and only continue to grow. Amid this challenging environment, the current regulatory landscape is one where, with or without purported deregulation, the administration will not shy away from action in support of its overall policy agendas. Shippers and warehouses can position themselves to avoid liability under the law and, in the process, prepare for shifts in government enforcement posture or the body of applicable regulation.

Benesch's Transportation and Logistics team stands ready to proactively advise on deploying safety compliance best practices and to defend all manner of enforcement actions when those occur.

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