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Helping Food Motor Carriers Adjust to Tougher Regulations



New Food Safety Modernization Act (FSMA) requirements will place more responsibility on motor carriers and increase claim complexity.

An 18-wheeler barreling down the highway is carrying a shipment of organic fruits and vegetables to be delivered that morning to a regional supermarket. The driver receives a signal from the truck's telematics system that the temperature in the trailer is getting a tad too warm — not ideal conditions for fresh produce. With an hour left to go in the trip, what should the driver do?



When the Food Safety Modernization Act (FSMA) goes into effect next summer, motor truck cargo insurers may find themselves saddled with greater obligation to ensure the safe transportation of perishable foods.

The new regulations will require insured motor carriers to more carefully monitor shipping conditions — particularly the temperature — and report any issues or anomalies promptly to the shipper, receiver, cargo owner, and freight broker — even if there is no definitive proof that the food is unsafe.

"If the receiver or cargo owner gets a call informing them that the refrigeration mechanism is malfunctioning, that fresh produce has been traveling at 40 degrees as opposed to the requisite 35 degrees, they may deem that product a total loss," said Alan Clark, Senior Executive General Adjuster with Engle Martin & Associates, a national independent loss adjusting and claims management firm.

The FSMA will also tighten requirements for record-keeping. The motor carrier has to understand specifications set by the shipper and reconcile them with the receiver's conditions, which could include pre-cooling and cleaning requirements as well as temperature regulation. Motor carriers will bear the responsibility of pointing out any ambiguities and recording what measures they take to resolve them.



Alan Clark
Senior Executive
General Adjuster

With motor carriers shouldering more accountability in safe food transportation, the question of liability surrounding a loss will become more complex, and claims become lengthier.

To navigate that complexity, cargo insurers can trust Engle Martin's adjusters to parse through the implications of the FSMA and ensure a fair resolution of every claim once the regulations go into effect.

Growing Claim Complexity

"There are really three separate issues within a claim for total loss: damage, liability, and coverage," Clark said.

Because the FSMA will require motor carriers to report any potential problem, it can be unclear whether or not the food has actually suffered damage. In some cases, the product may still be considered usable and safe for consumption.

Clark referred back to a refrigeration malfunction. A motor carrier could receive a code showing that his shipping container is hovering at 40 degrees — too warm for fresh vegetables on a long journey. He pulls over and informs all parties — per FSMA rules — who order the food returned to the shipper and deem it a loss. But what is the food's true condition?

"An adjuster's response is, 'Did you test the product?'" Clark said. When a problem is reported, experts should immediately conduct quality assurance testing to see if the produce was affected by the temperature change.

"An apple may have been sitting in a 40-degree truck for half an hour, but the internal temperature may still be 35 degrees. In that case, it is perfectly fit for consumption, and that is why we would call in USDA officials or other experts to do quality assurance," Clark said.

There can also be a margin of error in measuring the temperature of the truck itself. Internal monitoring software may report a temperature of 40 degrees, when in reality the container is 38 degrees. Such tiny discrepancies matter when determining if an entire shipment of fresh food should be sent to market, or tossed out.

Once the extent of damage has been assessed, the question of liability comes into play. Since the FSMA will require motor carriers to conduct more due diligence, shippers can more easily point the finger at motor carriers and claim they did not adequately protect their wares.

If the motor carrier neglects to test the product or keep both shipper and receiver updated, that claim may be legitimate.

If the motor carrier is liable, do they have the right insurance coverage in place to respond? Before the new regulations take effect, motor truck cargo insurers will have to identify the potential impact of the FSMA on their standard operating procedures and determine if they have the policies needed to cover their increased exposure.

"And will our clients, the insurers, provide that cover?" Clark said. "It will depend on whether those motor carriers are prepared to comply with the new regulations, but also on how well-prepared adjusters are to evaluate new claims that evolve from them. It all comes down to due diligence.

"We will communicate. We will inspect the product. We will make recommendations as to whether we believe the product to be damaged, whether the motor carrier is liable, and how that impacts insurance coverage," Clark said.

Staying Ahead of the Curve

With so many players involved in a claim, communication is critical.

"Communication and full disclosure is the central theme," Clark said. "The insurer, shipper, cargo owner, and motor carrier all have to be on the same page, and we as adjusters have a leading role to play in that."

Adjusters bear the burden of collecting documents from every party – police reports, contracts, freight rate agreements, and bills of lading, among others — to expedite the claims process.

"At Engle Martin, we are comfortable reconciling all aspects of the claim. We are really the standard bearer in the industry when it comes to pulling all of these pieces together to arrive at the fairest assessment," he said.

Engle Martin has a dedicated staff of independent adjusters for cargo claims in its Specialty Marine and Transportation division. Their experience and relationships in the industry give them the leverage to call on the experts they need to consult and educate clients on the changes introduced by the FSMA.

"We have top-tier transportation attorneys on speed dial," said Clark, who has been running the company's cargo book of business since 2004.

Regulations similar to the Food Safety Modernization Act have been on the table in the past, but there were never guarantees they would pass into law. Anticipating eventual legislation, Clark and his team have fought to stay ahead of the curve, discussing possible changes with clients for years.

"They can rest assured that we are going to do the research and the due diligence," he said.

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