

Opinion: Model Contract Fills Regulatory Void

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When the National Industrial Transportation League and the Transportation Intermediaries Association announced an agreement endorsing a model contract for shippers and third-party logistics providers, the need for such a contract was indisputable.

On a daily basis, shippers ask brokers to sign carrier contracts. A legitimate licensed broker, acting within its realm of responsibility, will tell the shipper it is operating as an intermediary and cannot legally sign a contract as a carrier. Many times, the shipper will tell the broker to “scratch through” whatever does not apply, sign it and send it back. Usually, this alteration of the contract does neither party any good and makes the contract at best confusing and at worst useless for trying to establish responsibility when an issue arises.

No matter how big or small a shipper you are, if you are working with an intermediary or a carrier, you should consider having a contract with the broker or carrier.

Perhaps it was inevitable that after the model contract was released in November, some would cry “foul” for not being included in its drafting.

However, the TIA and NITL committees that worked on the model contract each included representatives actively involved in the day-to-day contractual operations of transportation moves. What’s more, NITL is one of the oldest and largest national associations representing companies involved with the transportation of goods in domestic and international commerce, while TIA is the only collective organization representing 3PLs of all disciplines doing business in domestic and international commerce.

In addition, there were lawyers on both sides making sure there were no glaring improprieties and no unfair favor given to one side or the other.

The intent was to create “guidelines” for these interacting parties to follow

where none have openly existed before, and concessions were made by both entities, with a common goal of making the model contract a reality rather than reaching an impasse.

The resulting document is a "boilerplate" contract that a shipper can use when working with a broker or a third-party logistics provider. It is also a resource for the broker to provide to the shipper for consideration when a carrier contract is presented to the broker.

From the shipper's point of view, the execution of this contract with a broker defines the broker's responsibilities to the shipper when the broker is performing as an intermediary on your behalf. This agreement can be applicable not only to regulated freight, but exempt commodities as well.

And to make it even better, the model contract is free. You can download it from either the TIA Web site at www.tianet.org or from the NITL Web site at www.nitl.org. To make it easier, the document is in Microsoft Word format and can be changed to address specific needs, if necessary.

When the sun finally set on the now-defunct Interstate Commerce Commission, the once-vigorous enforcement of ICC regulations was passed along to the Federal Motor Carrier Safety Administration. However, that entity's collective hands already are full and heading to overflow, given its involvement with the embattled hours-of-service regulations and the enforcement of new hazardous materials requirements, not to mention the additional burden of responsibility loaded onto FMCSA under the Bioterrorism Act of 2002, including active participation with the new Department of Homeland Security.

All that, plus the work FMCSA had been doing all along, suggests that it could use some help. And it must find it encouraging when organizations involved in transportation that have distinct disciplines can come together and develop self-governing guidelines for consideration when conducting business within their associations.

Embracing a joint model contract was a step in the right direction by NITL and TIA, whose cooperation sets an example of what can be accomplished when people make up their minds to reach a mutual agreement.

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