



IN-DEPTH REVIEW OF COVERAGE ADDRESSING THE UNIQUE OPERATIONS OF A MOTOR CARRIER





GOVERNMENT REQUIREMENTS

PART 2

**THIS WEBINAR IS NOT FILED FOR STATE CE
AND IS A LEARNING OPPORTUNITY ONLY**



QUESTIONS

If you have any questions, please send an email to:
trs@mcief.org



FINANCIAL RESPONSIBILITIES

- Safer/CAB/Carrier Software
 - Motor Carrier
 - Operating Status
 - Out-of-Service – Carrier is under any type of out-of-service order and is not authorized to operate
 - Inactive USDOT Number – Inactive per 49 CFR 390.19(b)(4); biennial update of MCS-150 data not complete
 - Authorized for (Passenger, Property, HHG) – This will list the specific operating authorities the carrier (or broker) is allowed to operate
 - Not Authorized – Carrier does not have any operating authority and is not authorized to operate
 - Active – Carrier is authorized to operate



FINANCIAL RESPONSIBILITIES CONT.

- Motor Carrier
 - Name
 - Address
 - Contact information
- ID
 - DOT#
 - MC#
- Number of units/Miles
 - Bi-annual update
 - Rule – Last two digits of DOT# - Second from end – Year last number month



CONSIDERATIONS

- Current Unrated/Satisfactory/Conditional/Unsatisfactory
 - Why unrated??
 - No reason for a DOT officer to perform a full compliance review
 - Holders of MC#'s as of 1/24/2020 – 265,471
 - » 86.3% - Unrated
 - » 11.0% - Satisfactory
 - » 2.7% - Conditional
 - » 0.02% - Unsatisfactory
 - Unrated = Unsafe – No – No – No



CONSIDERATIONS CONT.

- Motor carrier #'s with at least one (1) power unit – 258,090
- Brokerage – 5,670 total – 2,802 of which have active brokerage and active/contract authority
- Number of power units with MC#'s

1- 5	206,540	80.1%
1- 20	241,654	93.7%
20- 50	10,767	4.2%
50-100	3,705	1.4%
100 plus	2,872	1.1%



FEDERAL GOVERNMENT'S CURRENT FINANCIAL RESPONSIBILITY REQUIREMENTS

- Motor carrier (for-hire and private) obtain DOT#
 - Information in Safer
- In addition to DOT#
 - MC# information in Licensing & Insurance



FEDERAL GOVERNMENT'S CURRENT FINANCIAL RESPONSIBILITY REQUIREMENTS CONT.

- Currently the federal government requires motor carriers to gain from them permission (authority) to haul certain properties (non-owned property that has been processed while the property is in interstate or foreign commerce) – Permission must be obtained before they can start operating
- Motor carrier is provided a MC number but cannot use until proof of financial responsibility is provided (COI – 91X) – This protects the public for all activities under this government authority to haul certain types of cargo and only applies to federal regulated truckers – Motor carriers with a “MC” number must have 91X
- Process agent – BOC3



FMCSA INSURANCE REQUIREMENTS

Form	Description	Authorities Subject to Filing
BMC-91 or BMC-91X	Public liability insurance (bodily injury/property damage/environmental restoration)	Motor Carrier Freight Forwarder (Note: Non-vehicle operating freight forwarders may seek waiver of this requirement.)
<p>Freight:--\$750,000 - \$5,000,000, depending on commodities transported; \$300,000 for non-hazardous freight moved only in vehicles weighing under 10,001 lbs. Passengers:--\$5,000,000; \$1,500,000 for registrants operating only vehicles with seating capacity of 15 or fewer passengers.</p>		



FMCSA INSURANCE REQUIREMENTS CONT.

BMC-34 or BMC-83	Cargo insurance--\$5,000 per vehicle \$10,000 per occurrence	Household Goods Motor Carrier Household Goods Freight Forwarder
BMC-84 or BMC-85	Surety Bond amount is \$75,000 <u>Trust Fund Agreement amount is \$75,000</u>	Freight Forwarder Broker of Freight
BOC-3	<u>Service of Process Agents</u>	All Authorities
MCS-90	<u>Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980</u>	Hazmat Safety Permit Carriers



FEDERAL REGISTRATION AND INSURANCE REQUIREMENTS (COI SENT TO FMCSA – 91X)

- Property being hauled is processed
- Obtain a MC# in addition to Dot#
 - Processed – Raw made into a consumer good – COI required



FEDERAL REGISTRATION AND INSURANCE REQUIREMENTS (COI SENT TO FMCSA – 91X) CONT.

- The filing – 91X
- Not insurance
 - Protect the public
- If no coverage in policy, insurance carrier that makes the 91X filing would have to protect the public from any damage/claims caused by any unit the motor carrier uses as a part of their business as a motor carrier using their authority



FORM BMC 91X

FORM BMC-91X Revised 06/16/2015

OMB No.: 2126-0017 Expiration:

USDOT Number: _____ **Date Received:** _____

A Federal Agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0017. Public reporting for this collection of information is estimated to be approximately 10 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-RRA, Washington, D.C. 20590.



United States Department of Transportation
Federal Motor Carrier Safety Administration

Motor Carrier Automobile Bodily Injury and Property Damage Liability
Certificate of Insurance

FORM BMC-91X



This is to certify, that the _____
Name of Insurance Company

(hereinafter called Company) of _____
Company's Home Office Street Address/Route Number City State Postal Code

has issued to _____
Name of Motor Carrier or Freight Forwarder

of _____
Motor Carrier's Street Address/Route Number City State Postal Code

insurance under terms described on the back of this form to provide coverage as follows (check as applicable):

Full Security Limits required in Title 49 of the Code of Federal Regulations: Under Section 387.303(b)(1) Under Section 387.303(b)(2)

Security Limits required under Section 387.303(b)(1) or 387.303(b)(2) of the same Title as follows:

- This insurance is primary and the company shall not be liable for amounts in excess of \$ _____ for each accident.
- This insurance is excess and the company shall not be liable for amounts in excess of \$ _____ for each accident in excess of the underlying limit of \$ _____ for each accident.

Effective from _____ (12:01 a.m., standard time at the address of the Insured as stated in said policy or policies) and continuing until canceled as provided in the rules and regulations under Section 13906 of Title 49 of the United States Code.

Countersigned at: _____
Street Address/Route Number of Countersigning Location City State Postal Code

Date: _____ Insurance Company Policy Number: _____

Issuing Office: _____
Full Name of Agency or Branch

Countersigned by: _____
Signature of Authorized Representative

Filings must be transmitted online via the Internet at <http://www.fmcsa.dot.gov/urs>.



The receipt of this certificate by the FMCSA certifies that a policy or policies of Public Liability (or Automobile Bodily Injury and Property Damage Liability) insurance has been issued by the company identified on the face of this form, that the company is qualified to make this filing under Section 387.315 or Section 387.411 of Title 49 of the Code of Federal Regulations, and that by the attachment of endorsement BMC-90, MCS-90 or a form of similar import prescribed by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, is amended to provide the coverage or security for the protection of the public required under Section 387.303 of Title 49 of the Code of Federal Regulations. The amendment governs the operation, maintenance, or use of motor vehicles under certificate or permit issued to the Insured by the Federal Motor Carrier Safety Administration or otherwise in transportation subject to Subchapter I or III of Chapter 135 of Title 49 United States Code, and the pertinent rules and regulations of the Federal Motor Carrier Safety Administration, regardless of whether or not such motor vehicles are specifically described in the policy or policies. The liability of the Company extended to all losses, damages, injuries, or death occurring within the authority granted to the insured by the Federal Motor Carrier Safety Administration or elsewhere. The endorsement described herein may not be canceled or withdrawn until thirty (30) days after written notice has been submitted to the Federal Motor Carrier Safety Administration at its offices in Washington, D.C., on the prescribed Form BMC-35, Notice of Cancellation Motor Carrier Policies of Insurance under 49 U.S.C. 13906, said thirty (30) days notice to commence to run from the date notice is actually received at the office of the FMCSA.

Falsification of this document can result in criminal penalties prescribed under 18 U.S.C. 1001.



91X

- A certificate of insurance (COI) is not insurance
- Name COI reflects as the motor carrier is the name the motor carrier has told the government they are and reflected in the federal website Licensing & Insurance –
Note: This is to complete the process of being legal – The insured in the policy issued to the motor carrier is the owner of the assets exposed to loss – Not necessarily the name the government knows the motor carrier by



91X CONT.

- Limit on 91X – Required as reflected in Licensing & Insurance (not limit on policy)
 - Based on information in 150
- Policy COI is based on – Must have an endorsement (MCS90) attached to it
- Protect the public whether unit being operated under the motor carrier's authority is specified in the policy or not



91X CONT.

- Continuous proof of financial responsibility to protect the public until cancelled either
 - By the insurance company
 - Or
 - Replaced with another 91X in same name and limit



91X CONT.

- The 91X becomes involved in a crash when there is no coverage
 - If no coverage public still is protected by insurance carrier's payment of a judgment against the insured
 - But
 - Insurance carrier can seek reimbursement if no coverage
- To keep authority active must have a 91X which is continuous until cancelled
- If cancelled, authority revoked



MCS90

- An endorsement on a motor carrier's insurance policy to meet financial responsibility requirements imposed by the MCA80
- 91X (filing sent to FMCSA) and MCS90 (attached to policy) are not insurance - only to protect the public when no coverage – No protection to insured
- If coverage, then COI and endorsement are not involved in a claim



MCS90 CONT.

- Cancellation provision
 - The insurance provider wants to cancel the policy mid-term that the MCS90 is attached to before policy expiration
 - Why would the insurance company want to?
 - 36 days' notice
 - The insured wants to cancel their policy before policy expiration
 - Why?
 - Dollars



THE LAW – MOTOR CARRIER ACT OF 1980

- Major change in regulations by federal government
- Authority no longer exclusive (open up competition)
- Increased limit
 - \$300,000 to \$750,000 or more
 - 91 to 91X
- Endorsement requirement
 - MCS90 or similar protection for public including environmental restoration



PART 387

§ 387.3 Applicability.

- (a) This subpart applies to for-hire motor carriers operating motor vehicles transporting property in interstate or foreign commerce.
- (b) This subpart applies to motor carriers operating motor vehicles transporting hazardous materials, hazardous substances, or hazardous wastes in interstate, foreign, or intrastate commerce.



PART 387 CONT.

- (c) *Exception.* (1) The rules in this subpart do not apply to a motor vehicle that has a gross vehicle weight rating (GVWR) of less than 10,001 pounds. This exception does not apply if the vehicle is used to transport any quantity of a Division 1.1, 1.2, or 1.3 material, any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A, or to a highway route controlled quantity of a Class 7 material as it is defined in 49 CFR 173.403, in interstate or foreign commerce.



MCS90

- MCS90 – Protection of the Public from the Insured’s Negligence in Use of “Autos” that Are Subject to the MCA80 – If no coverage for the auto used!
 1. Endorsement Would Require Insurer to Respond to “Public Liability” on a Blanket Basis – Public protected for BI, PD and ER for all autos owned or operated by insured after determining no coverage
 2. Recovery – However . . . endorsement does not provide protection to the insured. Insured must buy policy to protect them or could have to repay insurance company. Watch covered auto – Pollution coverage
 3. Insurance carrier or insured must give the other party 36 days’ notice of cancellation of endorsement (policies)



MCS90 CONT.

- Must Make Sure All Autos Owned and Used by the Insured Are Covered Under the Policy this Endorsement Is Attached to
 - Symbols (Any) (Any 10,000 GVW or larger) – No problem
 - Problem if specified and auto not listed but used
 - Hired auto coverage helps to meet requirement but premium consideration if provided



MCS90 CONT.

- Watch Your Insurance Carrier's Position on Providing Pollution Coverage
 - Forms with pollution coverage in or standard Endorsement CA9948
 - Within the policy
 - Additional cost
- Reimbursement Possibility
 - Offer coverage



SCHEDULE OF LIMITS — PUBLIC LIABILITY

Type of carriage	Commodity transported	January 1, 1985
(1) For-hire (in interstate or foreign commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Property (nonhazardous)	\$750,000
(2) For-hire and Private (in interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2, and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403.	\$5,000,000
(3) For-hire and Private (in interstate or foreign commerce, in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,000 or more pounds).	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials, and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	\$1,000,000
(4) For-hire and Private (In interstate or foreign commerce, with a gross vehicle weight rating of less than 10,000 pounds).	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	\$5,000,000

*The schedule of limits shown does not provide coverage. The limits shown in the schedule are for information purposes only.

MCS90 COURT CASES

- Carolina Casualty Insurance Co. vs. Yates – 10th Circuit – 2009
 - Mixed operation
 - Farm with two 18-wheelers
 - Farm – State Farm - \$750,000
 - 18-wheeler – CCIC - \$1,000,000 – MCS90
 - All units owned same legal entity - Some used in farm operation – Larger than 10,000 GVW plus tractor trailer insured by CCIC



MCS90 COURT CASES CONT.

- Crash – A lot of damage – Bad
 - More damage than \$750,000
 - State Farm paid \$750,000
 - Plaintiff wanted more – Attempted to bring CCIC's MCS90 in



MCS90 COURT CASES CONT.

–Court ruling

- FR requirement is to protect the public
- As long as the minimum responsibility (\$750,000) no matter who pays satisfies MCS90/91X's obligation to protect the public
- 91X/MCS90 only becomes involved when no coverage!



MUST PROVIDE LIMITS

- Must provide limits to meet financial responsibility requirements – 91X and MCS90
 - Limits set by federal government
 - \$750,000/\$1,000,000/\$5,000,000
 - Limits set by what motor carrier tells DOT they haul
 - Limit requirement reflected in Licensing & Insurance on federal website
 - Why reflect more of a limit on 91X or MCS90 than is required even if the policy has higher limits? Why protect the public for more than required when there is no coverage in policy?



COMMUNICATION CONSIDERATIONS

- Limits of insurance provided to the federal government for 91X or reflected on MCS90 endorsement are what is required, not what is on the policy
- To Agent:
 - It is our practice to only provide proof of insurance to comply with the minimum limits requested by the federal government. Please be advised that the insured's policy could have a higher limit of insurance. The full limit of the policy is available to your insured for any accident covered under policy issued by us. The limits furnished to the government do not limit or change any coverage provided under the policy furnished to your insured



COMMUNICATION CONSIDERATIONS CONT.

- To insured:
 - It is the practice of your insurance carrier to file proof of insurance on your behalf to the federal or state government at the limits required by them. This gets you “legal” and ensures your authority is active. The limit reflected on your policy is for your protection and its full limit will be available to you for an accident covered under your policy



COMMUNICATION CONSIDERATIONS CONT.

- To Insured's Customer:
 - Please be advised that (insured) has an insurance policy, issued by (carrier/company) effective (date) with limits of \$_____. For all accidents covered under this policy the full limits of the policy are available. However, it is our practice to only provide proof of insurance to comply with the minimum limits requested by the federal government. Therefore, the information contained in Licensing & Insurance reflects only the minimum limits required to keep our hauling authority active



MCS90

- Required for Both Exempt and Non-Exempt For-Hire Motor Carriers Operating in Interstate Commerce and Private Interstate Carriers of Any Hazardous Materials or Intrastate if Bulk
- 91X Filing With FMCSA Pledges Compliance with the MCA80
- Insurer Agrees to Pay to Protect the Public Even if No Coverage in Policy
- Reimbursement by Insured for Any Payment Beyond Coverage



MCS90 ISSUES

- Suretyship vs. Coverage – Only protects public, not insured
- Applicability to the insured who is the motor carrier only – Not other motor carriers, driver, or customer
- Applicability to Punitive Damages – No
- Duty to Defend – None in MCS90 but could be in coverage until coverage is denied
- Claims for Reimbursement – Carrier discretion
- Cancellation – 36 Days by insurer



MCS90 REQUIREMENTS

- Who Must Comply?
 - For-Hire Motor Carriers with MC#'s
 - 91X says it is attached to the policy
 - For-Hire interstate motor carriers that are exempt
 - Exempt – DOT# only



MCS90 REQUIREMENTS CONT.

- Others if hauling hazardous property (Private as well as for-hire – All other)
 - Inter or foreign transportation – Any quantity – This is when the hazardous property crosses state lines
 - Intra transportation only – Then must be bulk – Property never crosses state lines, then insured must carry 1,000 lbs. of solid, 3,500 gal. of liquid to meet bulk requirements for most properties



MCS90 REQUIREMENTS CONT.

- If No MCS90, \$11,000 Fine Possible – Owners of Units 10,000 lbs. GVW or Larger and For-Hire Motor Carriers Subject to Being Fined
 - On-site inspection verification
 - Concern – Limits vs. What is added
- Watch Coverage Provided in Form and Promise to Pay Under MCS90-Symbols and Pollution
 - Any/Specified 10,000 GVW or larger/Hired
 - CA9948



WRAP-UP

- Private motor carriers have no requirements to meet financial responsibility beyond state requirements and if state requirements are met can operate in all states except if private carrier hauls anything hazardous in interstate commerce then must have a MCS90 endorsement on the policy
- For-hire hauling exempt (ag – not processed goods) have to meet state of domicile FR requirements but no requirement currently for a “filing” and would have MCS90 attached to the policy



WRAP-UP CONT.

- If for-hire hauling processed goods
 - MC#
 - 91X filing
 - MCS90 endorsement
 - Limits to meet government requirements
- MCS90 is not coverage – Involved only when no coverage



QUESTIONS

If you have any questions, please send an email to:
trs@mcief.org

