



Blog by Tommy Ruke, The King Pin – Leading Expert in Truck Insurance

INSURED REQUESTS TO CANCEL A POLICY MID-TERM – WHAT WILL THE “RETURN PREMIUM” BE?

I have been teaching for years that an insurance policy with an MCS90 attached requires the insured and the insurer to provide 35 days’ written notice of their desire to cancel the policy mid-term to each other. Typically, the request would be when the insured obtained a “better” price.

In the last couple of weeks I had the following situation presented by an agent for my thoughts:

One of my insureds had their renewal increase a lot. We could not find an insurance carrier that was lower so we renewed and had a 91X sent by the insurance carrier. A couple of weeks after we agreed to bind and obtain a filing, we found another carrier that was much less costly. We bound coverage with the new carrier, new carrier filed a 91X which replaced the one provided by the “old” insurance carrier and furnished a written notice to the insurance carrier to cancel the policy now. The old carrier said they would not cancel on the requested date, but 35 days later. My client is upset.

I have had these calls often in the past. I can see a request to cancel mid-term happening more often now with the pressure on insurance carriers to increase premium. I have written, and in fact, told the agent that presented me the above situation that this is the standard position because of the MCS90 attached to the policy and its bilateral notification of cancellation provision.

Some of you have seen a letter that I wrote to the FMCSA about the cancellation provision in the MCS90 endorsement effective 1/5/17 on its website (see below if you have not). This caused me to rethink the cancellation provision.

My “new” thoughts – The MCS90 is attached to a policy as an endorsement that contains a cancellation provision to cancel the endorsement. Most insurance carriers treat the cancellation provision in the MCS90 endorsement as the cancellation provision of the policy. Again, the “standard” policy of insurers will require the insured to provide 35 days’ notice to cancel the policy/endorsement.

After the letter I wrote went out, I have had the opportunity to review two insurers that are members of the Foundation's policies and they are using the MCS90 effective 1/5/17 found on the federal website. Here is the difference and concern. The "old" MCS90 has the wording required in the MCA80 which I feel is correct:

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party
...

This edition of the MCS90 with this wording is found on the federal website also.

As stated earlier, I agree the insurance carrier needs to require the 35 days' notice from the insured with the MCS90 wording.

The 1/5/17 MCS90 edition found on the federal website that some carriers are using has the following wording:

Cancellation of this endorsement may be effected by the company of the insured by giving (1) thirty-five (35) days notice in writing to the other party
...

With the or the required 35 days' notice by the insured is correct but using the "new" (I believe is wrong) with the of only requires the insurance company to provide the notice.

So does the insurance company have the "right" or the need to require the insured to provide 35 days' notice to them when the MCS90 has the of? Maybe if the 91X provided to the FMCSA of the insurance carrier whose policy is being requested to be cancelled mid-term.

The 91X has two provisions that would affect the cancellation of the policy/MCS90:

The receipt of this certificate (which is the 91X) by the Commission certifies that a policy or policies of Public Liability . . . insurance has been issued by the company . . . and that by the attachment of endorsement BMC90, prescribed by the Interstate Commerce Commission, and/or an endorsement prescribed by the U.S. Department of Transportation (its MCS90 or a form of similar import), is amended to provide the coverage or security for the protection of the public . . . by this Commission or elsewhere.

The endorsement(s) described may not be cancelled without notification to the Commission. Such cancellation may be affected by the Company or the Insured giving thirty (30) days notice in writing to the Interstate Commerce Commission at its office in Washington, D.C., said thirty (30)

days notice to commence to run from the date notice is actually received at the office of the Commission.

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

So even if the MCS90 has the of, the insurance carrier still would possibly not be obligated to cancel the policy due to the 91X on the date the insured requested it. The cancellation would be 30 days plus mailing not the 35 days. However, there are two ways to cancel a 91X. The first as stated above and the second is by "replacement". If a new 91X is provided to FMCSA by either the current 91X provider or by a new provider and the new 91X has the same name and address of the motor carrier at the same limits of the current filing, the old 91X is cancelled by replacement.

Back to the cancellation request of the insured. The policy has the current 1/5/17 MCS90 with the of, the new carrier makes a 91X filing thus cancelling the current filing, there is then no reason for the carrier to not honor the cancellation request of the insured at the date of the request. The return premium would be calculated based on the date requested and then pro-rated or short-rated depending on the practices of the insurance carrier/and or the State Department of Insurance the policy was insured under.

The bottom line – Now there would be no difference in canceling a policy (AL/PD/Property or another) when the policy has a MCS90 with the of and the 91X has been replaced.

Is this a concern for the insurance carrier if they comply with the insured's request without the 35 days' notice because of the government requirements? NO! -Because there is no longer any additional requirement imposed on the insurance carrier so no exposure to the carrier that is being asked to cancel the policy mid-term by honoring the request.

There might be a concern if the insurance carrier does not honor the request to cancel the policy at the date requested once the 91X has been cancelled – They no longer have any right or reason not to.



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FMCSA
US Department of Transportation
1200 New Jersey Avenue S.E.
Washington, DC 20590

Re: Form MCS-90
Cancellation Provision (01/05/17 edition)

Dear Sir/Madam:

Several years ago, I sent a letter about the cancellation provision wording in the MCS-90 and received an acknowledgement that there in fact was a typo and it would be changed. In July of 2014 I again pointed out the “typo” in some of the MCS-90 forms on the FMCSA website under “forms” and FMCSA has taken no action. The MCS-90 on the current website has the wrong wording in the cancellation provision. The original MCA80 required the insurance carrier and the insured to provide each written notice of cancellation. The wording in the Act and the previous MCS-90 states:

“Cancellation of this endorsement may be effected by the company or the insured . . .”

There is a MCS-90 form on the website with this wording in 387.13 (edition 03/82).

If you search for the MCS-90 on the FMCSA website, it brings up the 01/05/17 edition which has the following wording:

“Cancellation of this endorsement may be effected by the company of the insured . . .”

The change from the “or” to the “of” may be a typo but it makes a major difference for insurance providers. It changes the cancellation requirement from

a bilateral (both parties – “or”) to a unilateral (only the insurance carrier – “of”). Notice with the “of” only to the insured by insurer, the “or” to each.

Why is this important? With the “or” (bilateral) wording the insured who wishes to cancel their policy or the MCS-90 endorsement mid-term must give the insurance carrier 35 days’ notice in writing. The “of” wording allows the insured to provide no notice and request cancellation of the policy immediately. If this happened, the insurance carrier would, under most state laws, have to allow the insured to cancel the policy. The “or” would require the 35 days’ notice.

If the insured is allowed to cancel the policy immediately (“of” wording), then the insurance carrier would have to honor the request to cancel immediately but the 91X filing could not be cancelled without 30 days’ plus mailing notice, so the insurance carrier would be in an adverse position – A COI 91X in place to protect the public but with no policy or MCS-90 to “back” the COI.

The MCS-90 is important to the insurance provider because it allows reimbursement if the insurance carrier has to pay a judgment against the insured to protect the public when there is no coverage. If the insured is allowed to cancel immediately without the 35 days’ notice, the insurance carrier is in a precarious position to have the 91X filing but has no ability to seek reimbursement.

Please review the form and consider going back to the original wording that contains “or”. I look forward to a response so that I can share FMCSA’s position with members of the Motor Carrier Insurance Education Foundation. Members of the Foundation provide most all the 91X COI’s and insurance coverage to motor carriers.

Thank you for your consideration.

Respectfully,

M. Thomas Ruke, Jr.