

ISCPO – SUMMIT - DALLAS

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FAAAA Post-Montgomery, Legislation, Theft & Fraud Mitigation

- ❖ FAAAA Preemption over post-Montgomery
 - ❖ Ruling and Landscape of Risk
- ❖ Theft & Fraud Mitigation
- ❖ Combating Fraud Through Legislation
 - ❖ CORCA
 - ❖ BUILD America 250 Act
 - ❖ SAFER Transport Act (H.R. 8267)

Montgomery – End of FAAAA

49 U.S.C. § 14501(c):

“(1) **General Rule** – Except as provided in paragraphs (2) and (3), a State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . Broker, or freight forwarder with respect to the transportation of property”

(2) MATTERS NOT COVERED.— Paragraph (1) - (A) shall not restrict the *safety regulatory authority of a State with respect to motor vehicles, . . .*”

Montgomery – End of FAAAA

- Question is: Are negligent-hiring claims “with respect to motor vehicles?”
 - “The phrase “with respect to” has an ordinary meaning of “referring to,” “concerning,” or “regarding.”
 - “[A] claim is ‘with respect to motor vehicles’ if it ‘concerns’ or ‘regards’ the vehicles used in transportation.”

Montgomery – End of FAAAA

“Requiring [Brokers] to exercise ordinary care in selecting a carrier therefore ‘concerns’ motor vehicles—most obviously, the trucks that will transport the goods.”

Montgomery dealt with negligent hiring/selection by a broker. Negligent hiring will likely equally apply to anyone that engages a motor carrier – shippers, freight forwarders, etc.



Montgomery – End of FAAAA

- ❖ SCOTUS unwilling to accept that safety measures are not imposed on all.
 - ❖ FAAAA was “economic deregulation,” but left “safety regulation” in place, including state common-law torts claims.
 - ❖ Such claims “exist to keep unsafe trucks and unsafe drivers off America’s highways.”

Montgomery – Interstate vs. Intrastate

Majority Opinion

- “[S]ubsection (b) of the FAAAA . . . preempts state regulation of ‘intrastate’ rates, routes, or services ‘of any freight forwarder or broker.’”
- Unlike subsection (c), subsection (b) does not contain a safety exception.”

Montgomery – Interstate vs. Intrastate

Majority Opinion

- “It is not obvious why Congress included a safety exception in (c) but not in (b).”
- “Better to live with the mystery than to rewrite the statute.”
- “Because subsection (b) is not before us, we do not address that issue.”

Montgomery – Interstate vs. Intrastate

Concurring Opinion of Kavanaugh (Alito joining)

- **“all agree that the Act as amended does not permit state tort suits against brokers for arranging *intrastate* transportation.”**

Favorable Decisions Since Montgomery

In re Home Depot (Texas Supreme Court – May 15, 2026)

- “one who hires an independent contractor is generally not liable for the contractor’s torts”
- Narrow exceptions apply:
 - *hiring party retains or exercise control over the details of work – [vicarious liability]*
 - *a non-delegable duty is imposed by law, such as inherently dangerous activity.*
 - *Hiring party’s own negligence creates or increases the risk.*

Favorable Decisions Since Montgomery

In re Home Depot (Texas Supreme Court – May 15, 2026)

- “Home Depot had no duty to investigate [the motor carrier’s] competence because (1) the shipment did not present an unusual risk or hazard and (2) Home Depot neither controlled the actors nor created the risk that materialized.”
- Here, “any risk to the motoring public existed independently of Home Depot’s shipment and arose only from [the motor carrier’s] conduct as a motor carrier.”
- “[The motor carrier’s] trucks would be on the road regardless—carrying Home Depot’s goods, other cargo, or nothing at all—and neither the shipment nor the identity of the customer altered the risk posed to other motorists.”

Favorable Decisions Since Montgomery

In re Home Depot (Texas Supreme Court – May 15, 2026)

- “Home Depot’s engagement of an FMCSA-regulated carrier to transport nonhazardous freight did not give rise to a common-law duty of care to the decedent.”
- “Where, as here, the cargo poses no inherent risk, private parties should not be required to duplicate that comprehensive federal safety regime or qualitatively evaluate and rank the safety fitness of more than a million regulated carriers before engaging in routine commerce. Such a duty would be neither practical nor workable. Instead, a shipper of such cargo should ordinarily be entitled to rely on the carrier to conduct business lawfully and to utilize proper equipment.”

Favorable Decisions Since Montgomery

In re Home Depot (Texas Supreme Court – May 15, 2026)

- Bottom Line: “[A] customer with ordinary cargo does not undertake a duty to prevent the independent motor carrier’s torts simply by engaging it to transport that freight.”



Favorable Decisions Since Montgomery

Allen v Foxway Transportation (3rd Cir. – May 26, 2026)

- Non-Precedential, but still persuasive
- Fed. Court construing Pennsylvania common law
- Double-fatality of two (2) minor children

Favorable Decisions Since Montgomery

Allen v Foxway Transportation (3rd Cir. – May 26, 2026)

Key Points:

- Defendant Gateway was a broker, not a motor carrier.
 - If a motor carrier, it may have been found vicariously liable
 - Define your as a broker (49 U.S.C. §§ 13102(2) & 13901(c))
 - As a “broker”, Gateway was not vicariously liable for driver’s negligence

Favorable Decisions Since Montgomery

Allen v Foxway Transportation (3rd Cir. – May 26, 2026)

Key Points:

- Under Pennsylvania law, one must directly control and oversee the negligent party's activities. (citing Restatement § 411)
- Such a principal-agent relationship is prerequisite to:
 - Vicarious liability
 - Negligent Selection
 - Negligent Retention

Favorable Decisions Since Montgomery

Allen v Foxway Transportation (3rd Cir. – May 26, 2026)

Ruling:

- Summary judgment granted because no evidence that broker would have know that the motor carrier was likely to create an unreasonable risk of harm to others, even if broker would have conducted ongoing safety and compliance review.
- Meaning: No reasonable jury could conclude that broker was negligent.

Post-Montgomery – Renewed Emphasis on Carrier Vetting

Concurring Opinion (Kavanaugh, joined by Alito)

- “brokers may not always (or even often) be in a good position to objectively assess the relative safety of different trucking companies.”

Montgomery, Kavanaugh concurring (citing TIA’s Amicus Brief, p. 20-28).

- “That said, brokers may sometimes become aware that a particular carrier operates unsafe trucks or hires unfit drivers. And if brokers can be ‘held liable for disregarding poor safety records, they have a strong incentive to do business only with safe and reliable motor carriers.’”

Montgomery, Kavanaugh concurring



Post-Montgomery – Renewed Emphasis on Carrier Vetting

Concurring Opinion (Kavanaugh, joined by Alito)

- “Importantly, the Court’s decision today should not be read to mean that brokers will routinely be subject to state tort liability in the wake of truck accidents. . . . brokers should be able to successfully defend against state tort suits if the brokers have acted reasonably and arranged transportation with reputable trucking companies.”
- “[T]he proximate-cause requirement in typical state tort law should help protect brokers from excessive liability.”

Post-Montgomery – Renewed Emphasis on Carrier Vetting

- **What information is publicly available?**
- **What do you do with such publicly available information?**
- **Is the basis for your decision reasonable?**

TIA Petition for FMCSA Rulemaking re: Carrier Vetting

- Seeks to establish a federal motor carrier safety selection standard
- Seeks publication of FMCSA's "High-Risk Motor Carrier List"
- Urges establishing reasonable steps that brokers and shippers should take when selecting motor carriers, in order to provide guidance, improve safety and create greater legal and operating environments

Practical Effects of Montgomery – Increased Costs of Litigation & Insurance

“[T]he costs of litigation and insurance, as well as the costs of brokers’ conducting more substantial inquiries into trucking companies, will cascade through the economy and be paid in part by American consumers in the form of higher prices.”

Montgomery, Kavanaugh concurring (citing Amicus Brief of U.S. Chamber of Commerce, et al.; Amicus Brief of Nat’l Assoc. of Mfgs. P 15).



Practical Effects of Montgomery – Increased Costs of Litigation & Insurance

Increased Litigation Costs:

- Rarely, will a broker (or shipper) be able to win a negligent selection claim on motion. (however, it is possible - *Allen* opinion from 3rd Cir.)
- Reasonableness and Causation normally within purview of the jury, thus:
 - *More Discovery on vetting procedures*
 - *Expert witnesses as to reasonableness of vetting procedure*
 - *Litigating to trial*
- *More cases may be filed. Less apprehension to bring a negligent hiring/selection claim – there is value to it, even if only defense costs.*

Practical Effects of Montgomery – Increased Costs of Litigation & Insurance

Increased Costs of Insurance:

- Increased litigation costs
- Settlement values will increase
 - *Claims more likely to go to jury; thus, greater risk of nuclear verdict.*
 - *Plaintiffs not as concerned with losing on a legal motion basis.*
 - *Plaintiffs more likely to “role the dice” at trial*
- Insurance is the transfer of risk.
 - *Increased broker risk transferred to Insurer*
greater risk = higher premium.

CUSTOMER/SHIPPER RESPONSES

- Shippers **may** gravitate toward use of brokers
 - *Brokers select the carrier*
 - *Brokers communicate with the carrier (vicarious liability concerns)*
 - *Puts another party and financial recovery resource between customer and plaintiff*

Practical Effects of Montgomery – Other Effects

CUSTOMER/SHIPPER RESPONSES

- Transfer of Risk to Brokers
 - **May** require stricter indemnification provisions (already strict)
 - **May** require Brokers to carry higher broker auto liability insurance limits
 - **May** require or impose certain (**perhaps** stricter) carrier vetting procedures
 - **May** require selection of carriers with greater insurance limits

Practical Effects of Montgomery – Other Effects

EFFECTS ON MOTOR CARRIERS

- ***May*** create more difficult barriers to entrance to market
- ***May*** reduce motor carrier capacity even more, coupled with:
 - Non-Domiciled CDL rule;
 - Enforcement of English Language Proficiency Requirement; and
 - Emphasis on identification of chameleon/reincarnated carriers
- *Motor Carriers may be required to carry higher insurance limits*
- ***May*** cause more consolidation
 - Acquisitions and/or owner-operator model

Practical Effects of Montgomery – Other Effects

EFFECTS ON FREIGHT BROKERS

- *Broker rates **may** increase*
 - Tightened carrier capacity
 - Increased insurance limits
 - Increased carrier vetting costs

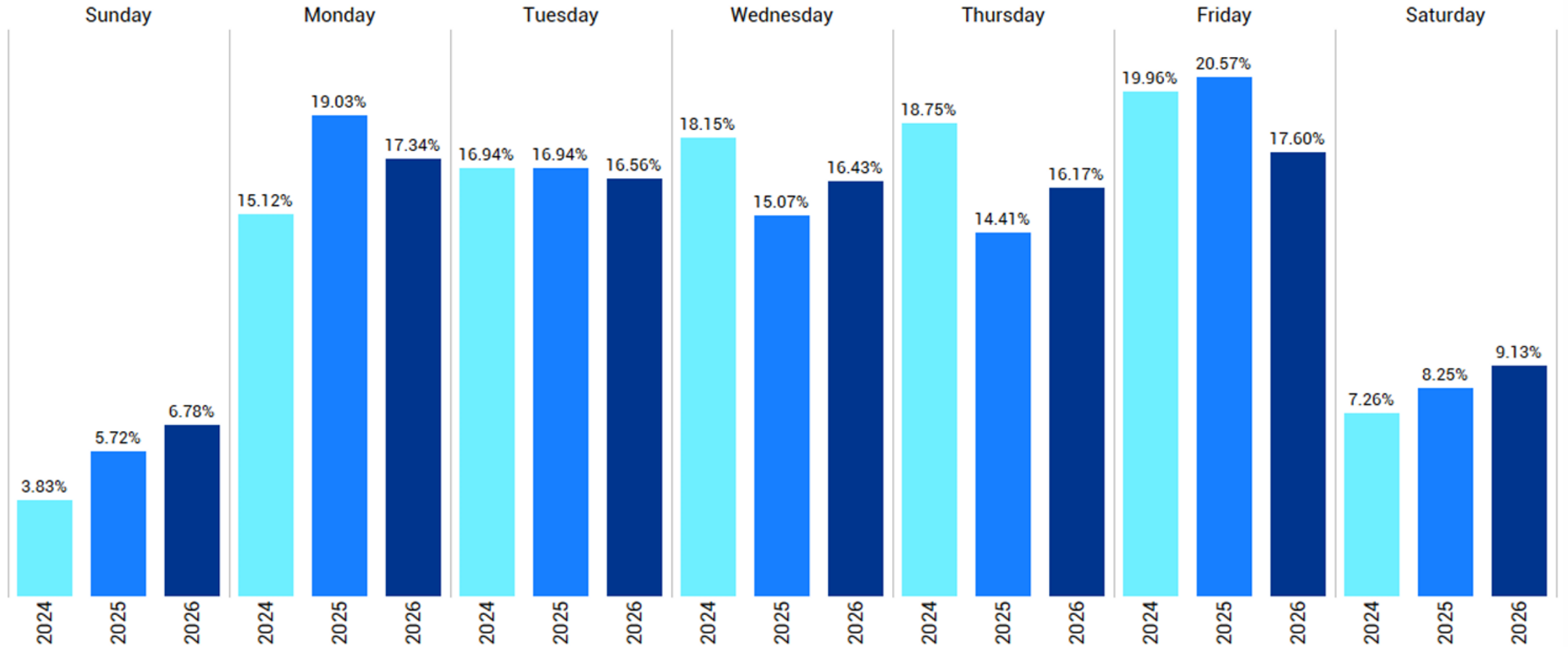
- *Greater focus on carrier vetting – Safety and Cargo Security/Fraud both of tremendous importance*

- *Consolidation of brokerages **may** occur, remains to be seen.*

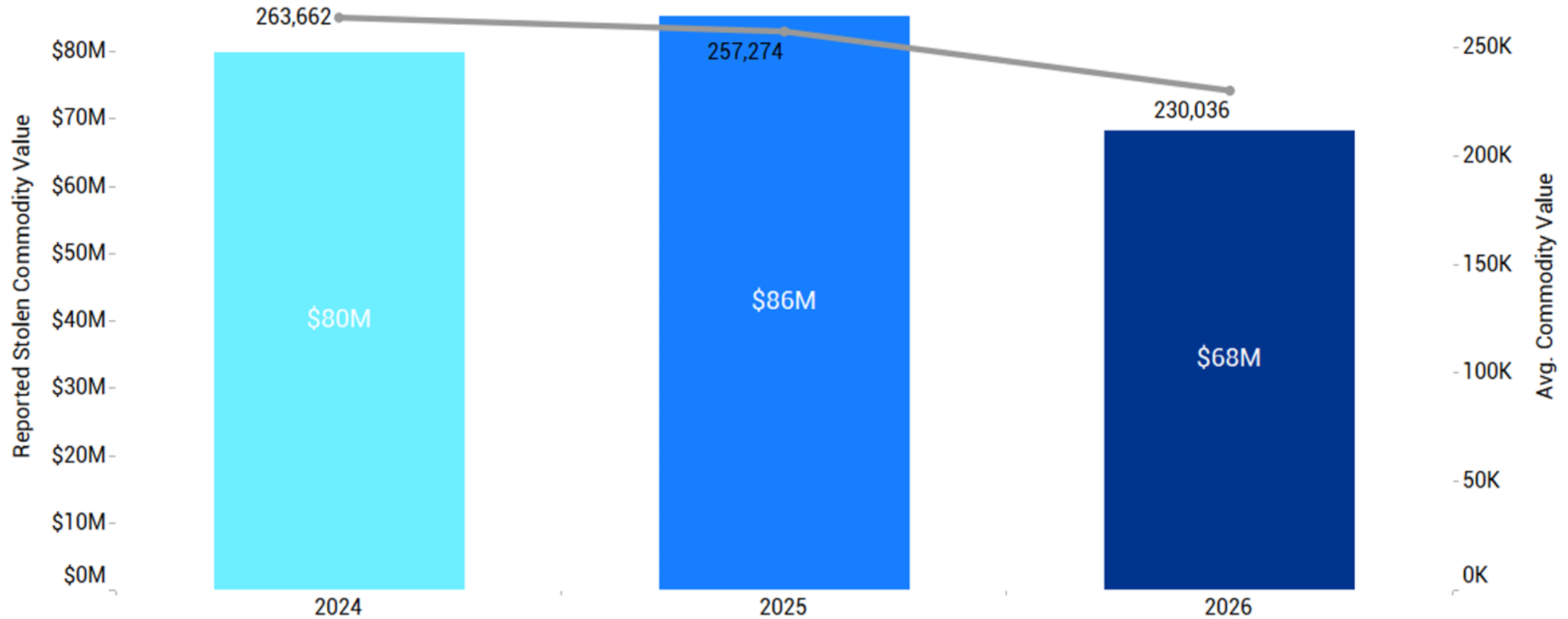
CargoNet's Q1 2026 Supply Chain Risk Trends Highlights



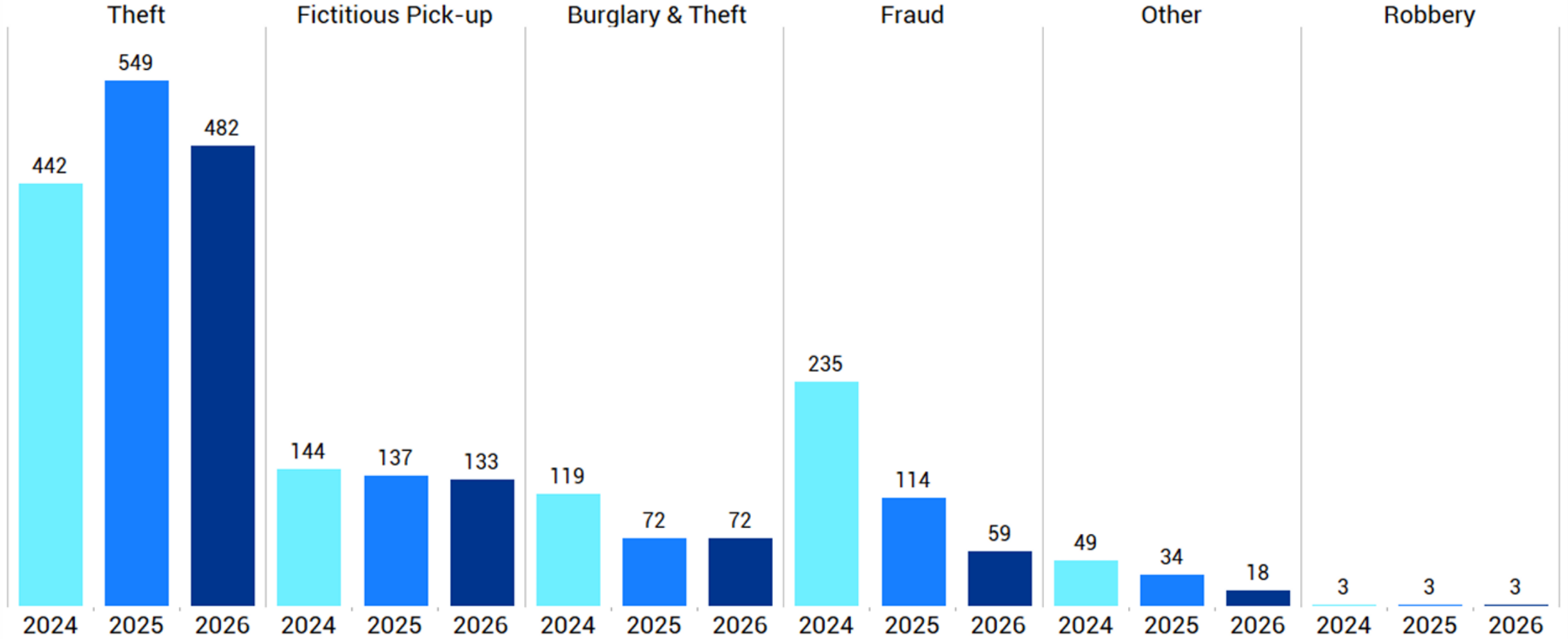
Cargo Theft by Day of the Week (Q1)



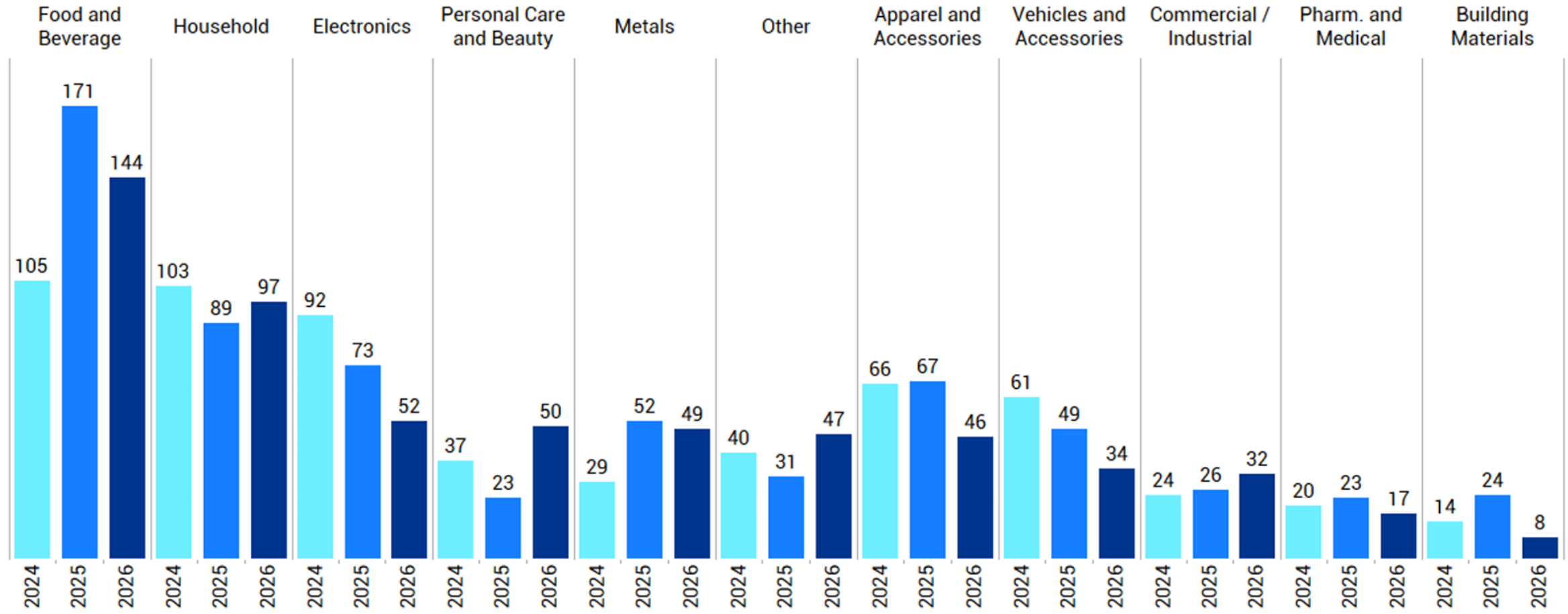
Cargo Theft by Total and Average Loss Value (Q1)



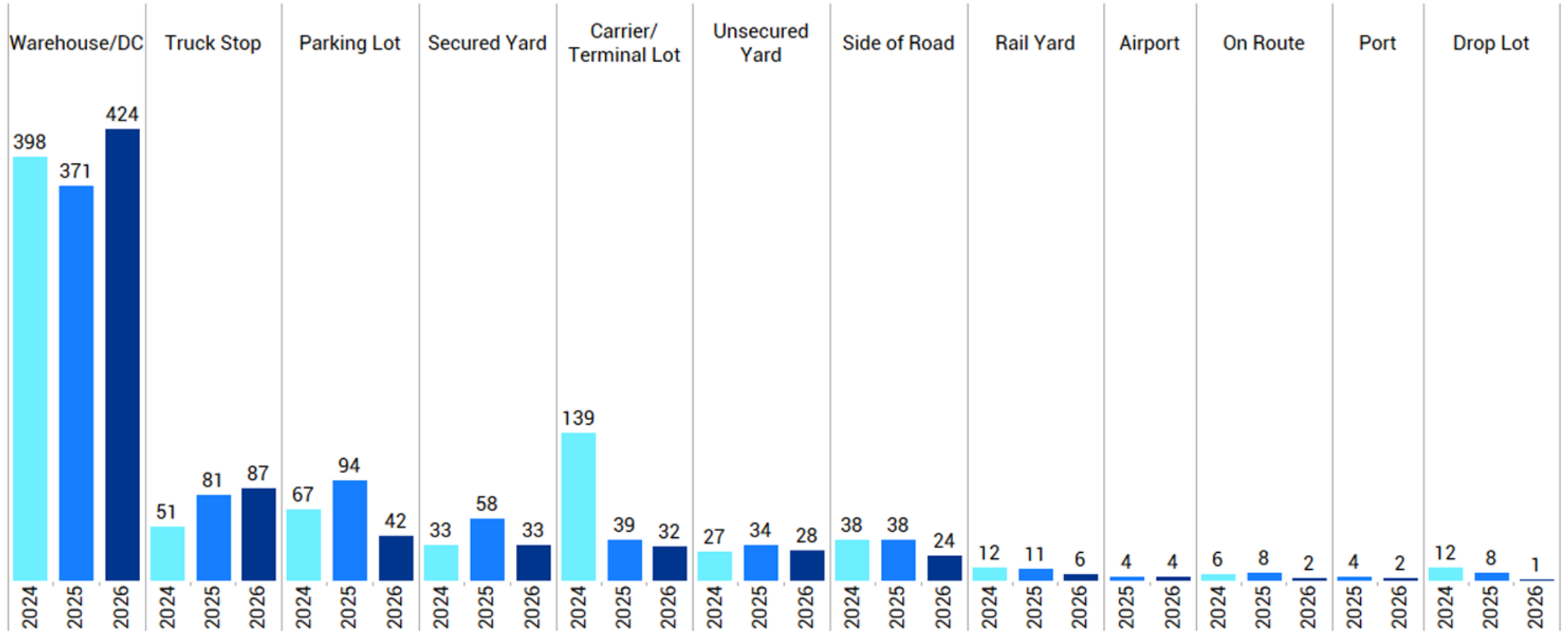
Cargo Theft by Incident Type (Q1)



Cargo Theft by Commodity (Q1)



Cargo Theft by Location Type (Q1)



Theft by Location Type Breakdown: Warehouse/DC

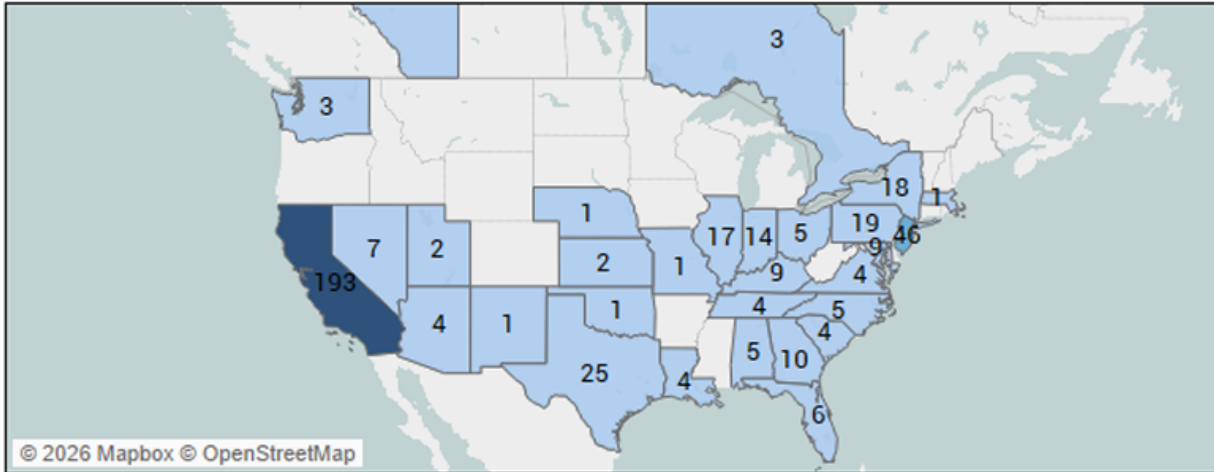
Date Range: January 1, 2026 – March 31, 2026

424 incidents reported

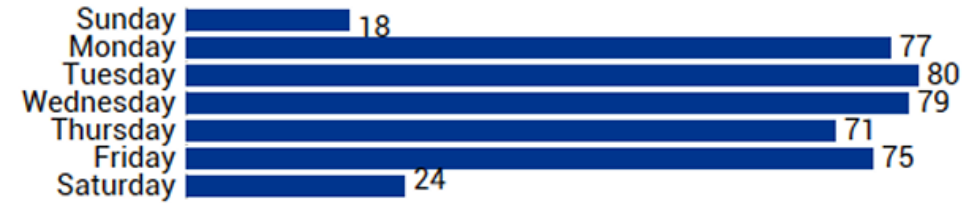
\$121K avg. loss value per theft

\$51.22M total stolen

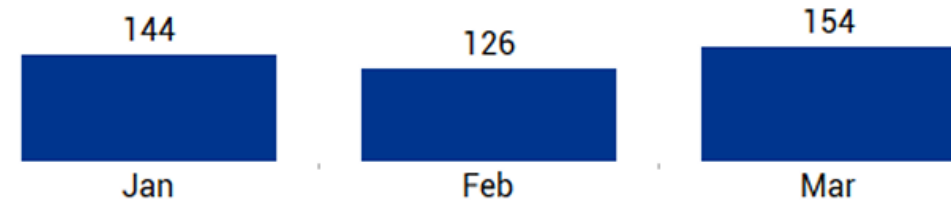
Theft by State



Theft by Weekday



Theft by Month



Cargo Theft by Commodity Category

| | |
|--------------------------|--------|
| Food and Beverage | 23.48% |
| Household | 15.57% |
| Electronics | 10.29% |
| Apparel and Accessories | 9.76% |
| Metals | 9.50% |
| Personal Care and Beauty | 9.23% |
| Other | 7.92% |
| Commercial / Industrial | 5.28% |
| Vehicles and Accessories | 4.49% |
| Pharm. and Medical | 3.43% |
| Building Materials | 1.32% |

Theft by Incident Type

| | |
|-----------------------------|--------|
| Cargo Only | 83.25% |
| Trailer / Cargo | 5.42% |
| Other | 4.25% |
| Trailer | 1.89% |
| Box Truck / Van / Cargo | 1.18% |
| Chassis / Container / Cargo | 1.18% |
| Tractor / Trailer / Cargo | 1.18% |
| Tractor | 1.18% |
| Chassis / Container | 0.24% |
| Tractor / Trailer | 0.24% |

Appendix

Commodity Category Subtypes

Apparel and Accessories

Accessories
Diapers
Dresses
Footwear
Outerwear
Pants
Shirts
Shirts and Blouses
Shorts
Skirts
Sleepwear
Socks
Suits
Swimwear
Ties
Underwear

Pharmaceutical and Medical

Medical Equipment
Infant Formula
Nutrients and Supplements
Over the Counter
Prescription
Medical Supplies
Unspecified

Building Materials

Building Components
Enclosures
Flooring
Insulation
Lighting
Plumbing
Roofing
Walling
Wood

Electronics

Audio
Cameras and Accessories
Communications
Components
Computers and Accessories
GPS
Televisions and Displays
Video Cameras and Accessories
Video Games and Accessories

Personal Care and Beauty

Cosmetics
Deodorant
Fragrances
Hair Care
Oral Care
Skin Care
Soap

Commercial/Industrial

Agricultural
Chemicals
Energy Generation
Explosives
Gases
HVAC
Large Tools
Machinery and Parts
Machinery
Packaging Products
Textiles

Metals

Alloy
Aluminum
Brass
Chrome
Copper
Iron
Lead
Nickel
Other
Scrap
Stainless Steel
Steel
Titanium
Unspecified

Household

Batteries
Furniture and Furnishings
Games and Toys
Gardening Supplies
Household Cleaning Supplies
Household Paper
Housewares
Kitchen Accessories
Laundry Supplies
Lawn Care
Lighting
Linens
Maintenance
Major Appliances
Outdoor Items
Pet Supplies
Small Appliances
Sporting Goods
Stationery
Tools

Vehicles and Accessories

Vehicle Accessories
Vehicles

Unknown

Misc Consumer Goods

Food and Beverage

Alcoholic Beverages
Animal Food
Baby Products
Bakery Products
Baking and Cooking Ingredients
Beans and Seeds
Candy and Gum
Condiments and Spices
Dairy Products
Non-Alcoholic Beverages
Meat Products
Frozen Foods
Prepared Foods
Produce
Seafood Products
Snack Products

Other

Arms and Ammunition
Art and Antiques
Fireworks
Musical Instruments
Office Supplies
Precious Stones and Metals
Scrap
Tobacco

Location Type Definitions:

Airport: The location is an airport.

Carrier/Terminal Lot: The lot is owned by the carrier associated with the theft.

Drop Lot: The lot contains only trailers (trailers are dropped off here).

Other: Used if no other descriptor is applicable.

Parking Lot: A parking space with no security measures that is not attached to a truck stop.

Port: The location is a port.

Rail Yard: The location is a rail yard.

Secured Yard: A yard with a large, well-maintained fence, security cameras, and a guard shack.

Side of Road: The location is a residential area, or along a thoroughfare.

Truck Stop: A parking lot that is affiliated with a truck stop.

Unreported: Use only if no theft address is available. If you have an address, use an Earth-mapping or street view utility to categorize the location.

Unsecured Yard: A yard with a broken-down or otherwise ineffective-looking fence, no security cameras, and no guard shack.



CargoNet

To learn more about Verisk's cargo theft recovery and prevention solutions please contact us:

[verisk.com](https://www.verisk.com)

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website

WHAT CAN BROKERS DO?

➤ Enhanced Carrier Vetting

- Minimum length of active authority
- # of loads for broker
- How recent were those loads – no long gaps
- Check negative reports (TIA Watchdog, Freight Guard, etc.)
- Enhanced Verification Process – verification technology
- Use of tracking devices/technology
- Zero tolerance for double-brokering/re-brokering
- Improve carrier utilization

WHAT CAN BROKERS DO?

- Communication with Shipper/Customer
- Communicate carriers name, USDOT# and MC# to Shipper
- Elevated Criteria for High Value/High Risk Loads
- Train employees to identify fraud
- Collaborate with industry

Preventing Cargo Theft

“COLLABORATION, COOPERATION, COMMUNICATION”

- Collaborate with Customer re: prevention and protocol at pick-up
- Communication with Shipper/Customer
- Cooperation

Preventing Cargo Theft

THINK “PIC” AT PICK-UP (cooperation and communication from shipper)

- “PIC” = Photograph, Identify, Confirm

Photograph:

- Driver license
- Tractor, including placard with name and MC#
- License plate on tractor (improves law enforcement engagement and assistance)
- License plate on trailer
- BOL given to driver
- Seal and back of trailer



Preventing Cargo Theft

THINK “PIC” AT PICK-UP (cooperation and communication from shipper)

Identify:

- Driver name and CDL
- Check trailer latch, hinges for signs of easy removal
- Name, USDOT# and MC# on tractor placard

Confirm:

- Confirm that the placard on the tractor matches the name and MC# of the carrier that the broker has arranged
- Confirm that the BOL is not a “blind shipment”
- Confirm that information on the BOL matches your records

COMBATING ORGANIZED RETAIL CRIME ACT “CORCA” - (H.R. 2853)

Organized theft groups are increasingly involved in criminal activities in the supply chain and retail industries

❖ Retail Industry

- 93% increase in retail larceny 2019 to 2023
 - 84% of retailers report violence and aggression from criminal activities

❖ Supply Chain/Cargo Theft

- 27% increase 2023 to 2024 in cargo theft. (per CargoNet)
 - 2021-2024 - All cargo theft rose 93%
 - 2021-2024 – Strategic cargo theft rose 1,475%
 - These are “reported” figures – actual figures likely greater

COMBATING ORGANIZED RETAIL CRIME ACT “CORCA” - (H.R. 2853)

- Establishes an “Organized Retail and Supply Chain Crime Coordination Center” responsible to:
 - Coordinate federal law enforcement to investigate and enforce laws
 - Coordinate efforts and sharing of data between federal, state and local law enforcement
 - Coordination of investigation among federal, state and local law enforcement
 - Assisting with methods of and training for loss prevention
 - Working with Dept. Homeland Security and Dept. of Justice
 - Tracking and reporting trends
- Enhances criminal penalties

BUILD AMERICA 250 ACT (H.R. 8870)(May 19, 2026)

- Five-Year Surface Transportation Reauthorization Bill:
 - Investment in roads, bridges, rail, and highway and motor carrier safety programs
 - Introduce by Sam Graves, Chair of the T&I Committee
 - Passed through Committee with a 62-2 bipartisan vote
- Directs establishment of a Cargo Theft Advisory Committee
- Coordinates federal, state and industry efforts to combat cargo theft
- Addresses Highway Use Tax evasion thought to be linked to fraudulent freight practices and schemes that enable cargo theft

BUILD AMERICA 250 ACT (H.R. 8870)

- Enforcement and Fraud Prevention Measures:
- ELD certification
- Freight Forwarder and Broker registration requirements (MAP-21)
- Addresses predatory lease-purchase agreements
- Focuses on non-compliant training providers
- Investment in roads, bridges, rail, and highway and motor carrier safety programs
- Conduct study on cabotage

SAFER Transport Act (H.R. 8267)(April 14, 2026)

- Securing American Freight, Enforcement, and Reliability in Transport Act
 - Freight Fraud and Theft Advisory Committee Consisting of motor carriers, rail, ports, freight brokers, aviation operators, law enforcement, shippers and insurance representations
 - Identify vulnerabilities and recommend solutions
 - Interagency Coordination
 - Understanding between DOT and DOJ to formalizing reporting and handling of freight fraud cases
 - Understanding between CBP to enforce cabotage restrictions on motor carriers
 - FMCSA system to detect fraudulent registrations and operations, including criminal penalties
 - Phases out MC#s, Uses USDOT#s
 - Restricts registration for convicted felons related to theft and fraud

QUESTIONS?

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