

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Agency Information Collection Activities: Renewal Information Collection:
National Consumer Complaint Database

SUBMITTED BY THE

Transportation Intermediaries Association
1625 Prince Street, Suite 200
Alexandria, VA 22314
703-299-5700
www.tianet.org

Chris Burroughs
Vice President of Government Affairs

October 5, 2021

On September 3, 2021, the Federal Motor Carrier Safety Administration (FMCSA) filed a notice and request for comments regarding the National Consumer Complaint Database (NCCDB). The following comments submitted by the Transportation Intermediaries Association (TIA) are focused on the NCCDB and the lack of effectiveness of the database and enforcement by the Agency. TIA appreciates the Agency for accepting comments on the NCCDB and working with industry stakeholders and the public to improve the system.

IDENTITY AND INTEREST OF THE TRANSPORTATION INTERMEDIARIES ASSOCIATION

TIA is the professional organization of the \$214 billion third-party logistics industry. TIA is the only U.S. organization exclusively representing transportation intermediaries of all disciplines doing business in domestic and international commerce. TIA is the voice of transportation intermediaries to shippers, carriers, government officials, and international organizations.

TIA members include more than 1,800 motor carrier property brokers, surface freight forwarders, international ocean transportation intermediaries (ocean freight forwarders and NVOCCs), air forwarders, customs brokers, warehouse operators, logistics management companies, intermodal marketing companies, and motor carriers. TIA members handle the purchase of more than \$100 billion worth of transportation each year and employ more than 130,000 people across the country.

TIA is also the U.S. member of the International Federation of Freight Forwarders Associations (FIATA), the worldwide trade association of transportation intermediaries representing approximately 50,000 companies in virtually every trading country.

Transportation intermediaries or third-party logistics professionals act somewhat as the “travel agents” for freight; however, given the wide varieties of freight, specific needs of each shipper and the diverse issues applicable to anyone load means that third-party logistics professionals must have expertise far beyond what a traditional “travel agent” must possess. These companies serve tens of thousands of shippers and carriers, bringing together the transportation needs of the cargo interests with the corresponding capacity and special equipment offered by rail, motor, air, and ocean carriers.

Transportation intermediaries are companies whose expertise is providing mode and carrier-neutral transportation arrangements for shippers with specific needs and requirements and matching those with the ability and expertise of the underlying operating carriers.

LACK OF ENFORCEMENT FOR UNLAWFUL BROKERAGE ACTIVITIES

As mentioned in the notice, the NCCDB grew out a Congressional mandate in the “Transportation Equity Act of the 21st Century” (P.L. 105-178), which was later refined through the “Motor Carrier Safety Improvement Act of 1999 and the “Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users.” [PL citation?] Congress saw the need for the Agency to create a system to record and log aggregate complaint information regarding violations by motor carriers, brokers, and other licensed entities of the Agency. The NCCDB does fulfill the requirements of the Congressional mandates, but without a successful mechanism and process in place to act against non-compliant entities, the database is nothing more than an illusion for the public.

TIA began recommending to our 1,800 Member companies to utilize the NCCDB following the passage and signing into law the “Moving Ahead for Progress in the 21st Century Act” of MAP-21 (P.L. 112-141), which codified specific requirements for entities that seek to broker freight in the United States. Additionally, the language clearly defined what unlawful brokerage activities were and established penalties for such violations for \$10,000 per violation.

In 2012, TIA worked with Congress to get these provisions included into law, because the industry was facing consistent “double-brokering” cases. Double brokering is a situation in which a licensed property broker selects a motor carrier to haul their customer’s freight, but unbeknownst to the broker, the motor carrier proceeds to re-broker the load out to another motor carrier and often the motor carrier does not have property brokerage authority and is not licensed to do such transaction. In feedback received internally on this from TIA members, this can happen up to five times before the customer receives their freight.

Specifically, MAP-21 stated:

“SEC. 14916. UNLAWFUL BROKERAGE ACTIVITIES.

“(a) PROHIBITED ACTIVITIES.—A person may provide interstate brokerage services as a broker only if that person—

“(1) is registered under, and in compliance with, section 13904; and

“(2) has satisfied the financial security requirements under section 13906.

Since, the passage of MAP-21, the number of double brokering “cases” continues to rise, and this is in large part because there is a lack of enforcement from the FMCSA using the existing laws to hold these fraudulent motor carriers accountable for illegally brokering freight. To our knowledge, there has never been one single violation against an entity for unlawful brokerage activities from the Agency. TIA knows of several dozen complaints that have been reported to the Agency through the

NCCDB for unlawful brokerage activities, with no enforcement action taken. It is quite frankly mindboggling to believe this to be the case, as we know this practice continues to happen daily.

This lack of enforcement has a direct impact on safety, which is the core mission of the Agency. TIA Members have a thorough carrier selection process to ensure to the best of their knowledge that only the safest motor carriers are utilized. When the motor carrier our member selects proceeds to re-broker the load without the consent or authority, this creates a situation where a fraudulent or unsafe motor carrier could be utilized, and where the wrong motor carrier receives compensation, cheating all other parties to the transaction. As we have advocated to the FMCSA and Congress for years, if there were a federal Motor Carrier Safety Selection standard, many of the concerns TIA Members have in selecting a safe and ethical motor carrier would be addressed.

Furthermore, TIA would recommend that the Agency amend the user interface for the NCCDB to make it easier for folks to file complaints with the Agency. There is not a place for licensed property brokers to easily identify areas to make a complaint.

CONCLUSION

TIA stands ready to work with the Agency to make the NCCDB a useful tool to identify bad actors whether it be a motor carrier, a broker, or another entity, and use that information to take the necessary enforcement action. Without the enforcement action, the Agency continues to allow illegal activities to occur and our nation's highways to be less safe. These changes will improve safety throughout the supply chain by barring irresponsible actors from the marketplace.

Respectfully submitted,

TIA
1625 Prince Street, Suite 200
Alexandria, VA 22314
703-299-5700
www.tianet.org



Chris Burroughs
Vice President of Government Affairs