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Submitter Information

Submitter Name: Robert Voltmann

Mailing Address: 1625 Prince Street, Suite 200

City: Alexandria

Country: United States

State or Province: VA

Postal Code: 22314

Fax Number: 703-836-0123

Organization Name: Transportation Intermediaries Association

UNITED STATES

DEPARTMENT OF TRANSPORTATION

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

AGENCY INFORMATION COLLECTION ACTIVITIES; NEW INFORMATION COLLECTION: LEASE AND INTERCHANGE OF VEHICLES

Notice and request for comments.

Docket No. FMCSA-2013-0050

COMMENTS

SUBMITTED BY THE

TRANSPORTATION INTERMEDIARIES ASSOCIATION

TRANSPORTATION INTERMEDIARIES ASSOCIATION

1625 Prince Street, Suite 200

Alexandria, Virginia 22314

703-299-5700

www.tianet.org

Robert A. Voltmann
President & CEO
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The Transportation Intermediaries Association (TIA) submits these comments in response to the Federal Motor Carrier Safety Administration's (FMCSA) March 27, 2013 notice and request for comments inquiring for public comment on an Agency Information Collection Activity pertaining to lease and interchange information of motor carriers. TIA strongly supports the Agency's authorized requirement, which mandates that motor carriers that utilize other motor vehicles not owned by it, to transport property under an arrangement with another party to make the arrangement in writing. TIA implores the Agency not to eliminate this important requirement. This requirement ultimately alleviates concerns within the transportation industry of fraudulent entities in the supply chain, by placing safeguards in the industry. If this requirement is eliminated it will make it easier for carriers who are illegally brokering to continue this detrimental practice.

IDENTITY AND INTEREST OF THE TRANSPORTATION INTERMEDIARIES ASSOCIATION

TIA is the professional organization of the \$162 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 approximately over 1,300 property brokers, surface freight forwarders, international ocean transportation intermediaries (ocean freight forwarders and non-vessel-operating common carriers), air forwarders, customs brokers, warehouse operators, logistics management companies, intermodal marketing companies, and motor carriers.

TIA is also the U.S. member of the International Federation of Freight Forwarders Associations (FIATA), the worldwide trade association of transportation intermediaries representing more than 40,000 companies in virtually every trading country. 3

THE ROLE OF TRANSPORTATION INTERMEDIARIES

Transportation intermediaries or third party logistics professionals act as the "travel agents" for freight. They 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 primarily non-asset based companies whose expertise is providing mode and carrier neutral transportation arrangements for shippers with the underlying asset owning and operating carriers. They get to know the details of a shipper's business, then tailor a package of transportation services, sometimes by various modes of transportation, to meet those needs.

Transportation intermediaries bring a targeted expertise to meet the shippers' transportation needs. Many shippers in recent years have streamlined their acquisition and distribution operations. They have reduced their in-house transportation departments, and have chosen to deal with only a few "core carriers" directly. Increasingly, they have contracted out the function of arranging transportation to intermediaries or third party experts. Every Fortune 100 Company now has at least one third party logistics company ("3PL") as one of its core carriers. Since the intermediary or 3PL, in turn, may have relationships with dozens, or even thousands of underlying carriers, the shipper has many service options available to it from a single source by employing an intermediary.

Although intermediaries are described in the business and trade literature as "non-asset-based," many intermediaries in fact own some assets, broadly defined. These include local pick up and delivery vehicles, over the road trucks, warehouses and cargo consolidation centers, complex computer and 4

telecommunications systems, dispatching centers and sales offices. Shippers count on transportation intermediaries to arrange for the smooth and uninterrupted flow of goods from origin to destination, and many carriers rely upon them to keep their equipment filled and moving. It is, therefore, difficult to describe a typical intermediary, or to divide them into fixed categories. They range from small, family owned businesses to multi-billion dollar, publicly traded corporations.

SHIPPERS AND CARRIERS RELY ON TRANSPORTATION INTERMEDIARIES

Shippers rely upon 3PLs to arrange for the smooth and uninterrupted flow of goods from origin to destination, and carriers rely upon them to keep their equipment filled and moving. Many carriers, especially the thousands of small motor carriers and owner operators rely on motor carrier brokers to find freight for them, and to process the paperwork necessary for the movement.

TIA and its members support outsourcing part or all of an entity's supply chain to a third party logistics professional. To be successful, both parties need to be clear about what is expected, how it will be measured, and how it will work. The shipper and its 3PLs work together to craft the best solution by lane and circumstance to meet the shipper's needs.

Thus, in the comments that follow, TIA has taken into account the experience and needs, both of its own members and of the customers they serve.

MAINTAIN THIS IMPORTANT PROVISION TO PROTECT THE TRANSPORTATION INDUSTRY FROM FRAUDULENT ENTITIES

One of the major provisions of H.R. 4348, the "Moving Ahead for Progress in the 21st Century Act" (MAP-21) signed into law by President Obama on July 6, 2012, was the clarification that licensed motor carriers

engaging in brokerage activities are subject to brokerage licensing and registration requirements. The language in MAP-21 specifically stated that in order for a motor carrier to properly “interline” freight with another motor carrier not owned by the carrier, the originating carrier must physically transport the freight at some point during the movement and maintain liability for the cargo and payment to the interchanged carrier.

This language was part of a larger negotiation between TIA, the American Trucking Associations (ATA) and the Owner-Operator Independent Drivers Association (OOIDA). In the coalition’s efforts to strengthen the transportation industry and reduce fraud in the transportation industry, the organizations agreed to increase the financial requirements for brokers and forwarders from \$10,000 to \$75,000, only to the extent that all entities arranging freight for compensation must have in place a \$75,000 bond. TIA advocated strongly for this compromise in part because of the growing concern of double brokering amongst the brokerage industry.

The issue of double brokering of freight is not only harmful to the brokerage industry, but the transportation supply chain as a whole. The practice of double brokering or illegal brokering by motor carriers not only hurts small businesses, but it places the financial burden on consumers who are required to front the bill.

Additionally, prior to 2004, property brokers were not overly concerned that they would be involved in a lawsuit if a motor carrier that was fully authorized to operate on the roads by FMCSA was selected to haul a load, and was subsequently in a tragic accident. A court decision that year held that a broker could be found liable for the negligent actions of carriers engaged by the broker to transport freight for a shipper. This case was followed by several more in other states that have exposed the brokerage

industry to great financial risk, if the carrier selected by the broker operates unsafely and has a serious accident that involves a fatality. Illegal double brokering only exacerbates the problem by creating an unknown situation of who is actually hauling the freight. For example, a broker could knowingly contract with a compliant motor carrier with a satisfactory safety rating, proper insurance, and an excellent safety history, but then the carrier could turn around and, unbeknownst to the broker, arrange transportation of the load with another motor carrier without properly vetting them. In the unfortunate event of a fatal accident, ultimately the responsibility could fall on the broker who could be found liable for millions of dollars in damages for hiring a carrier that he never knew was transporting the load until the accident occurred. MAP-21 was intended to stop this practice and the FMCSA's requirement at a minimum could help determine which entity in the movement is liability for not only the cargo, but carrier selection.

TIA fully supports legal interlining and trip leasing, but will continue to fight against fraudulent entities that look to continue this harmful practice. For example, we hear that small carriers often will accept 15 truckloads from a broker or shipper, but will only have 10 trucks available and will "sub-contract" the remaining loads out for compensation to five other motor carriers, often without filing the proper paperwork with the Agency. This is not an example of interlining or subcontracting; this is brokering and is clearly stated in section 371.2 of the Code of Federal Regulations (CFR) which defines a broker as:

(a) Broker means a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.

The reasons stated above clearly show the importance of maintaining this important information collection by the DOT. The mandate follows Congressional intent outlined in MAP-21, and maintains a core mission of the FMCSA to eliminate fraudulent entities operating in the transportation industry. This important provision protects all entities involved in a transportation movement, by clearly outlining under which authority an entity is operating. It not only ensures the interchanged carrier that they are working with a motor carrier and not a broker, and it ensures to shippers and brokers who is actually transporting the freight. Eliminating this requirement would not only harm thousands of innocent entities operating in the transportation industry, it would jeopardize safety throughout the industry.

FMCSA NEEDS TO WORK CLOSELY WITH STATE PARTNERS AND INDUSTRY STAKEHOLDERS

TIA strongly believes that in order for the FMCSA to further advance its mission of increasing safety and specifically dealing with fraudulent entities, the Agency needs to work closer with State partners and industry stakeholders on developing long term strategic plans and safety measures. FMCSA needs to expand the enforcement role of the State partners, which will ultimately create another layer of security in identifying fraudulent entities.

TIA offers its members access to TIA Watchdog, an online forum that provides important information about companies so our members can make informed decisions when selecting business partners. TIA Watchdog was launched in response to a need within the industry to “root out” the bad actors. Through this forum members are able to alert each other to fraudulent operators within the industry. Currently, the Federal Maritime Commission (FMC) is using the Watchdog tool, and soon TA will be demonstrating this tool to the Surface Deployment and Distribution Command (SDDC) of the U.S. Department of 8

Defense. TIA staff has met with FMCSA Administrator Ferro about the TIA Watchdog tool, and we would like to work with the FMCSA on developing an integration plan.

CONCLUSION

In conclusion, TIA commends FMCSA for taking an active role in seeking out egregious entities from entering the marketplace, but the Agency needs to ensure that requirements like this one are in place to reduce double brokering. Furthermore, an accurate and a current database of active and legitimate entities need to be maintained to ensure that innocent companies and citizens are not put in harm's ways.

Respectfully Submitted,
Robert A. Voltmann President & CEO