Owner-Operator Independent Drivers Association

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June 3, 2020

Mr. Larry Minor
Associate Administrator for Policy
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Docket # FMCSA-2020-0130 "Registration and Financial Security Requirements for Brokers of Property and Freight Forwarders: Small Business in Transportation Coalition (SBTC) Exemption Application

Dear Associate Administrator Minor:

The Owner-Operator Independent Drivers Association (OOIDA) is the largest trade association representing the views of small-business truckers and professional truck drivers. OOIDA has more than 160,000 members located in all fifty states that collectively own and operate more than 240,000 individual heavy-duty trucks. OOIDA's mission is to promote and protect the interests of its members on any issues that might impact their economic well-being, working conditions, and the safe operation of commercial motor vehicles (CMVs) on our nation's highways.

OOIDA members continue to fall victim to deceitful brokers that get away with collecting payments from shippers, but cheat truckers out of what is rightfully theirs. As America's small-business truckers are struggling with historically low rates in the freight market, many are feeling pressure to work with unfamiliar brokers. Unfortunately, this has once again presented an opportunity for unscrupulous brokers to hire motor carriers without any intention of paying them, essentially stealing a driver's services. The COVID-19 pandemic has also emphasized the need for stronger enforcement of current broker-related regulations, including broker and freight forwarder bond requirements established in the Moving Ahead for Progress in the 21st Century Act (MAP-21). As such, OOIDA opposes any exemption from the $75,000 bond requirement and urges FMCSA to better enforce all of the MAP-21 broker bond provisions.

Any exemptions from the $75,000 bond requirement, codified in 49 U.S.C. 13906(b) and (c), would worsen a longstanding practice of defrauding professional truck drivers and motor carriers. Under this practice, when legitimate claims aggregating in excess of the bond amount have been presented to the surety, the bond is still good and the broker can stay in business as long as the surety has not yet paid a single claim. This means the broker can continue to conduct business even if there is effectively no longer any financial security in place to cover the broker's debts. In too many instances, a broker will let multiple claims on the $75,000 bond accrue, forcing truckers to settle for a fraction of what they are rightfully owed. In other words, a broker can continue to contract with motor carriers even if they have no intention of paying them.

Here's a real example of how this plays out: A broker has a $75,000 bond. They broker approximately $544,000 in freight charges with multiple motor carriers with no intention of ever paying. So, every carrier who has completed a job is forced to file a claim against the bond. The surety company receives those claims and pays truckers using only the $75,000 bond, resulting in each carrier only receiving a prorated percentage of what they were owed. In many cases, this means pennies on the dollar or nothing at all. Meanwhile, the broker walks away with nearly $500,000, deletes everything, creates a new company, files for new authority, gets another bond, and does the same thing again. This loophole allows them to broker loads well past the point where they have any financial security in place to cover their debts. Exemptions that would lower the broker bond level will only exacerbate this problem within the industry.

The MAP-21 broker bond provisions were enacted to mitigate this system that denies truckers what they are rightfully owed. The goal of the MAP-21 language was to eliminate deceitful actors and business practices from the supply chain by implementing surety bond requirements for freight brokers and forwarders, requiring transportation intermediaries to renew their licenses annually, and establishing guidelines for companies who provide brokers with surety bonds on how they administer those bonds. Granting exemptions from the $75,000 requirement will undermine the intent of MAP-21.

In addition to rejecting any broker bond exemptions, FMCSA must also promulgate and enforce all of the MAP-21 broker bond requirements. This includes taking action against brokers when their bond falls below $75,000. FMCSA should immediately suspend a broker's authority when a valid claim is made. When a claim of any amount is made, a broker's bond inevitably drops below the $75,000 minimum required by law. Therefore, the broker must either augment their bond (i.e. "refill" it back to $75,000) or remain suspended. This simple solution would go a long way toward solving the problem.

Additionally, OOIDA strongly encourages FMCSA to resume the rulemaking process initiated through a September 2018 Broker and Freight Forwarder Financial Responsibility Advanced Notice of Proposed Rulemaking (ANPRM). The ANPRM pertained to implementing the MAP-21 broker-related provisions and focused on eight separate areas including group surety bonds/trust funds, assets readily available, immediate suspension of broker/freight forwarder operating authority, surety or trust responsibilities in cases of broker/freight forwarder financial failure or insolvency, and enforcement authority.

This rulemaking process can produce clear and effective steps for the resolution of motor carrier claims against a bond or trust, reducing disputes between motor carriers and sureties, and result in less need for litigation and less need for FMCSA intervention. A strong final rule implementing all of the MAP-21 provisions will improve the economic health of the broker/motor carrier component of the transportation industry. Most importantly, the small-business motor carriers who rely upon brokers will be spared from significant financial loss from both brokers and their insufficient bonds or trusts.

For over 20 years, OOIDA has been communicating to FMCSA and Congress about the inadequacy of the current statutory and regulatory framework for broker bonds and trusts. FMCSA must deny any exemptions that would weaken current broker bond standards and further defraud professional truck drivers and motor carriers from their rightful compensation. Additionally, the agency must implement a final Broker and Freight Forwarder Financial Responsibility rulemaking that will better enforce all of the MAP-21 broker-related provisions.

Thank you for your consideration of our comments.

Sincerely,

Todd Spencer
President & CEO
Owner-Operator Independent Drivers Association, Inc.