



Owner-Operator Independent Drivers Association

National Headquarters: 1 NW OOIDA Drive, Grain Valley, MO 64029
Tel: (816) 229-5791 Fax: (816) 427-4468

Washington Office: 1100 New Jersey Ave. SE, Washington, DC 20003
Tel: (202) 347-2007 Fax: (202) 347-2008

March 16, 2023

The Honorable Robin Hutcheson
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Broker Concerns Persist for Small-Business Truckers

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 over 150,000 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 has been communicating to the U.S. Department of Transportation for decades about inadequate broker regulations that are rarely, if ever, enforced. This has resulted in an inequitable economic environment for motor carriers, especially small-businesses that are victimized by unscrupulous brokers. The current regulatory framework forces safe and experienced motor carriers out of business. The lack of enforcement only promotes fraudulent entities to enter and stay in the industry, rather than prospective drivers who are looking to build sustainable trucking careers.

As the Federal Motor Carrier Safety Administration (FMCSA) prepares to host a public listening session on the regulation of property brokers, we urge the agency to take substantive actions that will improve broker transparency, eliminate broker non-payment of claims, and crack down on ever increasing double brokering practices. Since the deregulation of the trucking industry, there has been a slow decay of fairness that was once the standard operating procedure between brokers and motor carriers. The agency must work to restore the fairness that is all too often absent in broker transactions.

FMCSA should immediately grant OOIDA's petition to improve broker transparency. Our petition requested that brokers provide transaction information automatically within 48 hours of the completion of contractual services and that brokers be prohibited from including any provision that requires a carrier to waive their rights to access the transaction records. 49 CFR § 371.3 (§ 371.3) already requires that brokers keep records of each transaction with a carrier and that each party to the transaction has a right to view these records. OOIDA's recommendations to ensure compliance with § 371.3 are not attempts to control rates or impose burdensome

requirements, but simply ensure that motor carriers can review documents that they should already have access to.

It has been nearly three years since OOIDA submitted its original petition, more than 24 months since the most recent comment period ended for broker transparency related dockets, with nearly 1,500 comments filed on the dockets. It's past time for FMCSA to grant the petition and promote broker transparency. Not only will access to these documents protect carriers from unscrupulous brokers, it helps to protect the public by providing a marketplace in which each party behaves in a clear and transparent manner and will also give motor carriers better protections when there are claims or disagreements with brokers.

OOIDA welcomes FMCSA's recent publication of a Notice of Proposed Rulemaking (NPRM) that would update its broker security regulations to implement changes required by the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141. The most important aspect of this rulemaking is the implementation of the statutory requirement that FMCSA immediately suspend the registration of a broker if the available financial security of that broker falls below the currently required \$75,000. The MAP-21 legislation increased the amount of the broker bond to a minimum \$75,000, but raising the bond to this amount did not stop brokers from continuing to steal transportation services in excess of the bond amount. When making a claim against a bond, motor carriers have often only collected cents on the dollar for what they should have been paid. This all but eviscerates the effectiveness of the broker bond as security for the broker's liabilities.

However, the processes outlined in the NPRM that could help mitigate the need to initiate interpleader proceedings and alleviate the concern of broker non-payment of claims are not satisfactory to accomplish those objectives. The Final Rule must be strengthened to ensure that FMCSA along with industry stakeholders can readily identify when "available financial security" falls below \$75,000. The NPRM falls short of providing the necessary transparency and accountability from brokers and freight forwarders to absolutely know if and when there has been a drawdown on the bond below \$75,000. Without these changes, the current fiction that allows a bond to still be in effect until a claim is actually *paid* on the bond will persist. Any Final Rule must end this practice.

Another practice that must end is double brokering. While it is not illegal for a load to be brokered multiple times with multiple brokers getting paid a percentage of the load (co-brokering), it is unlawful when a carrier accepts a load from a shipper and the shipper believes that the carrier will haul the load, and then the carrier brokers the load to another carrier without the shipper's knowledge. MAP-21 was supposed to eliminate double-brokering, but what it actually has done is stop the practice of "convenience interlining," where carriers used to accept a load and then assign it to another carrier for all or part of the trip. In these cases, brokers have gone beyond the definition and intent of brokering and therein lies some systemic operational problems. This is another scenario where advancing a productive "Broker and Freight Forwarder Financial Responsibility" final rulemaking would be helpful in eliminating these and other deceitful practices.

Recently, we have witnessed an uptick of fraudulent entities using double brokering to take advantage of motor carriers. Chameleon brokers will pop up, arrange loads, then disappear without paying carriers for the load only to resurface under a new name or new location and do it

all over again. This has made it difficult for motor carriers to determine which loads are legitimate. OOIDA, along with other industry stakeholders including trade associations representing brokers, have shared best practices to educate motor carriers/brokers about how to identify these illegal actors and prevent them from conducting unlawful business. However, more federal oversight is necessary to monitor these fraudulent entities, restrict their brokering authority, and eliminate increasing instances of double brokering.

We commend FMCSA for acknowledging broker concerns and hosting a public listening session at the Mid-America Trucking Show on March 31st. We will be providing additional comments during the listening session and urge the agency to implement policies that will restore economic fairness that was once standard between brokers and motor carriers. These actions will improve highway safety and driver retention.

Sincerely,

A handwritten signature in black ink that reads "Todd Spencer". The signature is written in a cursive, flowing style.

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