

UNITED STATES  
DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

---

**PATTERNS OF SAFETY VIOLATIONS BY MOTOR  
CARRIER MANAGEMENT**

**Notice of Proposed Rulemaking  
Docket No. FMCSA-2011-0321**

---

COMMENTS

SUBMITTED BY THE

TRANSPORTATION INTERMEDIARIES ASSOCIATION

---

TRANSPORTATION INTERMEDIARIES ASSOCIATION  
1625 Prince Street, Suite 200  
Alexandria, Virginia 22314  
703-299-5700  
[www.tianet.org](http://www.tianet.org)

Robert A. Voltmann  
President & CEO

January 14, 2013

The Transportation Intermediaries Association (TIA) submits these comments in response to the Federal Motor Carrier Safety Administration's (FMCSA) November 13, 2012 Notice of Proposed Rulemaking (NPRM) querying for public comment on amendments to Agency rules in regard to patterns of safety violations by motor carrier management. TIA strongly supports FMCSA's statutorily mandated efforts to suspend and/or revoke the operating authority registration of motor carriers that have shown egregious disregard for safety compliance or that permit persons who have shown egregious disregard for safety compliance to act on their behalf. TIA implores the FMCSA to efficiently and timely perform administrative reviews to ensure that egregious entities are removed from the marketplace as quickly as possible. For reasons set forth in more detail below, TIA makes the following recommendations.

- Expand upon the rulemaking to include motor carriers not licensed as property brokers under Title 49 USC §13904, engaging in brokerage activity as egregious entities and suspend or revoke operating authority for multiple offenses.
- To prevent churning of operating authorities by unscrupulous or fraudulent operators and ensure an accurate database of active entities: TIA respectfully suggests that FMCSA link the Unified Carrier Registration (UCR) or other registration requirement with operating authority.
- To advance its mission of increasing safety, the Agency needs to work with State partners and industry stakeholders.
- To further prevent churning and confusion in the marketplace, we respectfully suggest that FMCSA prohibit the sale of authority numbers outside the sale of the company.

## 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.

## 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 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.

## EXPAND UPON RULEMAKING TO INCLUDE UNLAWFUL BROKERAGE ACTIVITIES

One of the major provisions of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) signed into law by President Obama on July 6, 2013, was the clarification that licensed motor carriers engaging in brokerage activities are subject to brokerage licensing and registration requirements. The issue of double brokering of freight is not only harmful to the brokerage industry but the transportation marketplace as a whole. The practice of double brokering or illegal brokering by motor carriers not only hurts small business, but it places the financial

burden on consumers who are required to front the bill, by allowing fraudulent carriers to continue to operate.

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 negligence 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. 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 an excellent safety history, but then the carrier could turn around and, without notice to the broker, hand the load off to another motor carrier with a questionable background who is then involved in a fatal accident. Ultimately the responsibility could fall on the broker who could be found liable for millions of dollars in damages for hiring of 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 proposed rule should address it.

#### **ANNUAL REGISTRATION REQUIREMENTS SHOULD BE TIED TO OPERATING AUTHORITY**

The industry is plagued with “churners” or as the agency likes to describe them “chameleons,” those companies that come in and out of the industry. Neither the Department of Transportation (DOT) nor the companies in the industry know what companies are still in business. Requiring every licensed company (broker, forwarder, and carrier) to register its

authority every year and requiring DOT to cancel any authorities not re-registered will allow everyone to know what companies are still in business and under what company name. Annual registration is not new, but the dots have not been connected. Every carrier, broker, and forwarder is supposed to pay an annual UCR fee. Additionally, the FMCSA needs to make it clearer and expedite the process of placing motor carriers out-of-service and promulgate that to the public immediately to eliminate egregious carriers from operating. Currently, the FMCSA has three distinct methods of placing a motor carrier out-of-service, these include; revoking authority, place out-of-service at the carrier level, and issue an unsatisfactory Safety Fitness Determination (SFD). The issue is these processes don't all happen at once, and the public is required to check multiple sources to determine if a carrier is satisfactory to hire. The public and industry stakeholders need one standard measure to tell if a carrier has been deemed too high a risk to operate on our nation's highways by FMCSA. TIA would respectively suggest that the carrier's status be included on the Compliance, Safety, and Accountability (CSA) Safety Measure System (SMS) company snapshot webpage, as FMCSA begins the process of developing a rulemaking of linking the Behavioral Analysis and Safety Improvement Categories (BASICs) and the SFD.

#### **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 reincarnated 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 reincarnated 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. 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.

#### FMCSA SHOULD PROHIBIT THE SALE OF AUTHORITY NUMBERS

TIA strongly urges FMCSA to prohibit the practice of reinstating authority numbers that have been inactive for more than 12 months. A recent review by Internet Truckstop, a TIA member and one of the industry’s largest electronic load matching services, indicates that 22 percent of reinstated MC numbers were not reinstated by the original owner, and had, in fact, been purchased by a different company. Internet Truckstop’s report indicates that half of the reinstated MC numbers were purchased as part of the sale of a company; while the other half just purchased the MC number itself.

According to Internet Truckstop, as well as information gathered from TIA’s membership, one of the most common reasons for a broker or carrier to secure an older MC number is to give the appearance that the company has been in business longer than they actually have. To quote the Internet Truckstop report:

Any change in ownership usually flags a change in the company's methods of operation and business practices. In the case of a broker, this can mean a change in pay and contract terms. For a carrier this might mean different levels of insurance coverage and rate structures. Unfortunately, it is also well known that certain insidious elements within our industry will purchase and then reinstate MC numbers for the purposes of committing fraud.

Furthermore, a growing number of licensed property brokers for a variety of reasons, including; the new bonding requirements of MAP-21 and merging of Standard Carrier Alpha Codes (SCAC) are consolidating multiple MC numbers, which is ultimately exacerbating the confusion in the industry, by having multiple MC numbers associated with a licensed property broker and non-active MC numbers being sold. Unless someone purchases the entire company, they should be prohibited from purchasing and reinstating a retired MC number. In fact, TIA urges FMCSA to completely retire MC numbers and DOT numbers that have been out of service for more than 12 months.

#### 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 the process is completed in a timely manner and done in conjunction with State partners and industry stakeholders. Furthermore, an accurate and a current database of active and legitimate entities needs to be maintained to ensure that innocent companies and citizens are not put in harm's ways.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert A. Voltmann", followed by a horizontal line and a small dash.

Robert A. Voltmann  
President & CEO  
TIA