Before the Federal Motor Carrier Safety Administration

SBTC & OOIDA Petitions to Strengthen 49 CFR 371.3 Broker Transparency

Docket No. FMCSA-2020-0150

Property Broker Listening Session

TIA Petition for Rulemaking to Repeal 49 CFR 371.3(c) and to Address "Dispatch Services"

Docket No. FMCSA-2020-0190

COMMENTS

SUBMITTED BY THE

SMALL BUSINESS IN TRANSPORTATION COALITION

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The Small Business in Transportation Coalition (SBTC) offers these comments on the Transportation Intermediaries Association's (TIA) petition received by the FMCSA on August 5th, 2020 to repeal 49 CFR 371.3(c) and address the legality of "dispatch services." We believe it is important for the agency to view this request, both in the context of 2020 current events, as well as the historical context of the rule in question.

In terms of the former, SBTC was the first trade group to bring the 49 CFR 371.3 rule to the forefront on social media back in April (SBTC's Executive Director James Lamb actually first rang the 371.3(c) alarm way back in 2007--see this reprint of his article from 2011: https://www.careersingear.com/blog/dealing-freight-brokers-644), after which, *Transportation Nation Network (TNN)* published this story on the rule... https://www.transportationnation.com/what-every-price-gouging-freight-broker-hopes-truckers-dont-know/.

That TNN article then set off a chain of events that then lead to a late-April SBTC antitrust complaint filed with USDOJ Antitrust Division over alleged price-fixing and price-gouging... Truckers then stormed the nation's capitol and held a three week long 'May Day' Protest in DC over broker abuses and the resulting decline in spot market freight rates at that time.

Thereafter, the SBTC filed a petition for rulemaking on May 6, 2020 to stop big brokers from evading the regulation and gouging to owner-operators to unscrupulously achieve margins as high as 65% while purporting through TIA's then-CEO Robert Voltmann that their average margins is 16%. Owner-Operator Independent Drivers Association (OOIDA) then filed a similar request on May 19th, 2020.

Comes now, the TIA as of August 2020 asking the agency to repeal this rule after the President echoed truckers' concerns about possible price-gouging and the Attorney General directed an investigation by a U.S. Attorney and DOJ Antitrust Division staff attorneys.

FMCSA has now published the TIA request in furtherance of its notice of an October 28, 2020 Listening Session, which will be held virtually due to COVID-19.

In terms of the latter, as noted by TIA on January 4th, 2017, in response to FMCSA's "Broker and Freight Forwarder Financial Responsibility Roundtable Notice of meeting, request for public comment Docket No. FMCSA-2016-0102:"

> *The former Interstate Commerce Commission (ICC) decided on May 16, 1949 (Ex Parte MC-39 Practices of Property Brokers, 49 M.C.C. 277, at 286) (14 FR 2833, May 28, 1949) that it was necessary to regulate all property brokers, including household goods brokers, in interstate or foreign commerce. The Commission cites § 204 (a) (4) of the Interstate Commerce Act (as amended by the Motor Carrier Act of 1935, P.L. 74-255) as authority to, "establish reasonable requirements with respect to licensing, financial responsibility, accounts, records, reports, operations, and practices of brokers as defined in section 203 (a) (18)."*

Indeed, the original 1949 broker rule, codified as the time as 167.3 stated:

> *167.3 Records to be kept by brokers. Each broker shall keep and retain for a period of three years an exact record of each transaction in which he participates, which record shall show for each transaction: (a) Name and address of the consignor. (b) Name, address, and the lead or principal docket number of the originating motor carrier. (c) Bill of lading or freight bill number. (d) Description of commodity or commodities, weight, rate, and tariff reference. (e) Date of shipment. (f) Origin and destination of shipment. (g) Amount of compensation received by the broker for brokerage service furnished and from whom it was received. (h) Description of any non-brokerage service performed in connection with each particular shipment or otherwise, amount of compensation received for such service, and from whom such compensation was received. (i) If freight charges are collected by the broker, the record shall show, for each shipment, the amount collected and the date of payment to the carrier.*

Additional relevant rules included:

> *§ 167.5 Charges for brokerage service. (a) Each broker shall maintain and keep open for public inspection at each place of business which he maintains, a schedule stating his maximum charge for each brokerage service which he holds out to perform, and (b) No broker shall charge or collect any more for any brokerage service than his maximum charge therefor as contained in his schedules maintained pursuant to paragraph (a) of this section.*

…which reveals the ICC intended for brokers to have to publicly publish their maximum charges.

Additionally, the original 167.10 provision entitled “Duties and obligations of brokers” held, in part:

> *(c) No broker shall charge or accept compensation from both a shipper and a motor carrier in connection with the same shipment, whether for brokerage or non-brokerage service, without first advising both parties of the amount and basis for the charge or payment by the other.*
>
> *(d) A broker shall exercise due diligence to carry out any undertaking to arrange for desired transportation, to carry out the terms of its arrangements with any shipper or motor carrier, and to pay promptly any monies received by him for such shipper or motor carrier.*
>
> *(e) Any freight charges collected by a broker shall be paid in full to the carrier or carriers employed by him, without deduction for any amount due to him from such carrier or carriers.t*

Again, as noted by TIA on January 4, 2017:

> *The ICC originally established the property broker surety bond amount at $5,000 in 1936 (1 FR 1156, August 20, 1936). The commission cited § 211 (c) of the Interstate Commerce Act (as amended by the Federal Motor Carrier Act of 1935, 49 Stat. 543), as the authority to impose upon them the duty to require brokers to furnish a bond or other security in such form and amount as will insure financial responsibility…*

The broker compensation model was therefore set up from the onset so that it was possible that brokers could be paid by either a shipper, a carrier, or both upon notice to both the shipper and carrier the **specific amount(s)** the broker was receiving to, in effect, make the double-dipping transparent. Obviously, the bond was always intended to make sure brokers paid carriers their freight charges which the broker collected from the shipper.

Thereafter, the ICC tweeked the rules as per Practices of Property Brokers, 53 M.C.C. 633 (1951).

The broker rules remained unchanged until a 1979 notice of intent to once again review the property broker rules was published by ICC in the Federal Register.

On May 12, 1980, the ICC then announced specific rulemaking on brokers, stating its intent in the summary as:

> *The Commission proposes to revise its rules governing the operational practices of property brokers. Our goal is to improve the way in which we regulate property broker practices by eliminating regulations which are unnecessary and modifying those regulations which are unnecessarily restrictive. We are also attempting to simplify and clarify the language used in the regulations and to incorporate changes resulting from the codification of the Interstate Commerce Act.*

In the discussion section, ICC advised:

> *§ 1045.3 Records to be kept by brokers. The Property Brokers Association of America, Inc. (PBAA) contends that some of our recordkeeping requirements may be unnecessary. We agree. For example, it should not be necessary to record the address and lead docket number of the originating motor carrier and consignor for every shipment. It would probably be sufficient for brokers to keep a master list containing this information. We propose to eliminate subsections (d), (e), and (f) of the present rule, since they relate to information which can be obtained from carrier records. We request that parties apprise us of any other reporting requirements which might be eliminated. The primary purpose of our record-keeping requirements is to ascertain whether improper rebating activities are taking place. Since we are proposing revisions in our rebating rules to reflect what we believe is a more realistic appraisal of rebating dangers, it may be that there is further action which we can take to reduce recordkeeping requirements.*

> *We recognize that our recordkeeping requirements may pose a greater burden on brokers of transportation of less truckload freight than on others. However, there does not appear to be a practical way to condense or summarize the information needed to detect improper activities. We would like to receive suggestions as to how the recordkeeping burden might be reduced for brokers of less-truckload traffic.* ***We have added one recordkeeping requirement: any party to a brokered transaction shall have a right to review the record of the transaction required to be kept under this section. This addition enables us to eliminate more complex rules found in sections 1045.5,1045.6, and 1045.10 (emphasis added).***

In justifying the relaxation of regulations on brokers, the ICC further suggested:

> *§ § 1045.5 and 1045,6 Charges for brokerage services and Charges for nonbrokerage services. We propose to eliminate these two sections. The broker is now given broad discretion in its ability to charge fees for brokerage and non-brokerage services. In effect, there is no limitation, on the size of the fees under the present rules since a broker can, by careful statement of the fee maxima and minima, render these sections meaningless. The situation has not caused any problems, and, as a result, we do not believe that eliminating these two sections will have any practical effect. We believe that the suspected evils against which these rules were designed to guard' (see discussion in Practices, supra, at M.C.C. 314-320) were extremely hypothetical.* ***Therefore, we are proposing to eliminate these two sections and to replace them with the new requirement in section 1045.3 that the affected parties have the right to look at the description of the charges contained in the record of the transaction. This will enable them to determine what portion of their bill is related to the broker's services (emphasis added).***

This came up yet again in their discussion on duties of brokers:

> *§1045.10 Duties and obligations of brokers. We propose to delete subsections (a), (b) and (c) of the present rule and to combine sections (d) and (e). Most of sections (a) and (b) contain standards of conduct which reflect what the proper role of the broker should be. We do not believe that these sections are necessary. There are not penalties for violations of the standards set forth in them, and enforcement of the standards can only come from the interactions of the marketplace and healthy competition.* ***Subsection (c) would be replaced by the new provision which we propose to add to section 1045.3 to give any party to a brokered transaction the right to review the record of the transaction (emphasis added).*** *Present subsection (c) requires that brokers not accept or charge compensation for a shipment from both a shipper and a carrier without first advising both parties of the charge or, payment of the other. This requirement does not appear necessary and could hinder all parties since proper notification might delay service. The present rule is especially apt to be*

burdensome when a broker is attempting to marry freight on an expedited basis or trying to arrange transportation for a large number of small shipments. We propose to combine subsections (d) and (e) to require that a broker not disrupt the normal billing and payment procedures between shippers and carriers. The present regulation's admonition to "pay promptly any monies" is vague and unenforceable. The proposed rule also would allow brokers to simplify their billing practices.

In fact, most of the 1980 relaxation of the original 1949 broker regulations hinged upon the very fact that ICC would be implementing what we today call 49 CFR 371.3(c), the very regulation that the TIA members have been evading and TIA now seeks to help its members repeal.

Congress then deregulated trucking through the Motor Carrier Act of 1980, which was signed into law by President Carter on July 1, 1980.

Thereafter, on October 17, 1980, in the new era of "deregulation," ICC concluded, after review of public comments, that the proposed rule should indeed be adopted as a final rule, including the then-new requirement for each party to a brokered transaction to have a right to review the record of the transaction required to be kept by the ICC's regulations:

§ 1045.3 Records to be kept by brokers. (a) A broker shall keep a record of each transaction. The record shall show: (1) The name and address of the consignor; (2) The name, address, and lead MC number of the originating motor carrier; (3) The bill of lading or freight bill number; (4) The amount of compensation received by the broker for the brokerage service performed and the name of the payer; (5) A description of any nonbrokerage service performed in connection with each shipment or other activity, the amount of compensation received for the service, and the name of the payer; and (6) The amount of any freight charges collected by the broker and the date of payment to the carrier. For purposes of this subsection, brokers may keep master lists of consignors and the address and lead docket number of the carrier, rather than repeating this information for each transaction. (b) Brokers shall keep the records required by this section for a period of three years. ***(c) Each party to a brokered transaction has the right to review the record of the transaction required to be kept by these rules (emphasis added).***

In the announcement, once again, ICC proclaimed:

In addition, I.C.C. brokers are licensed and bonded. Failure to pay transportation bills is guarded against through the Commission's requirement of a surety bond. If the bond is revoked, a broker may not continue to operate until a valid bond is obtained.

Thereafter, this language in subdivision (c) survived subsequent action enacted through 61 FR 54707, Oct. 21, 1996 (49 CFR 1045 was recodified: 49 CFR 371), and 62 FR 15421, Apr. 1, 1997, which clarified 371.3(a) but did not change the language of subdivision 371.3(c)).

With the dissolution of the ICC in 1996 and then the creation of the FMCSA in 2000, broker regulations were next looked at by the FMCSA in 2007 the context of household goods broker rulemaking in furtherance of the agency's consumer protection role.

The agency would finalize the rulemaking in 2010, raising the bond for household goods brokers in 2012 from $10,000 to $25,000, an act that would later be overridden by Congress at the behest of OOIDA and TIA in the Moving Ahead for Progress in the 21st Century Act (MAP-21) in 2012.

TIA filed comments in this matter to the docket on May 9, 2007 stating:

> *TIA is opposed, however, to the promulgation of regulations for which there is no effective enforcement, including an increase in the amount of the required surety bond… The proposed bond increase then is an unjustified tax by FMCSA on the legitimate businesses in the industry… TIA believes that the solution to the problems raised in the proposed rulemaking rests within FMCSA and not by imposing new regulations on the professional third party logistics industry. TIA strongly opposes the proposed rules…. TIA strongly opposes the proposed rulemaking. TIA urges FMCSA instead to increase its enforcement of current regulations before adopting new regulations. TIA urges FMCSA to encourage private sector solutions rather than increased government regulation.*

TIA went on to suggest that brokers should not have to be bonded at all, which would echo the SBTC's sentiment in the current transportation intermediary bond exemption application currently pending before the agency:

> *Bonds serve only to cost legitimate companies necessary working capital.* ***A bond requirement for brokers is a throw back to an earlier time of heavy regulation that is no longer necessary (emphasis added).*** *A bond requirement only for brokers also presumes that the brokers are not fiscally fit to meet obligations while motor carriers are fiscally fit. This is discrimination at its best, and does not reflect the reality of today's marketplace. Brokers, both household goods and truck brokers, have become the industry's bank usually paying the carrier long before being paid by the shipper. The brokers are professional business with strong balance sheets. On the other hand, the bond proposal assumes that because carriers have "assets" they are more fiscally sound and responsible. A look at the failure rate of carriers versus brokers will quickly disprove this assumption. If bonds are the answer to protecting consumers, then carriers should be required to post bonds as well. Bonds also tie up working capital. Broker bonds are unlike other federally required bonds against which only the federal government can make a claim. Instead, broker*

> *bonds can be claimed against by anyone. The result is that for many brokers, they must post the entire amount of the bond in cash. Tying up capital in this way limits the amount of capital available for other business and might even slow payments to carriers.*

And, TIA on May 9, 2007 suggested the then-proposed proposed house hold goods broker rules unfairly penalized one segment of the market. In the present matter, however, comes now, the TIA to ask FMCSA to issue its members a get-out-of-371.3(c)-free-card and give preferential treatment to one segment of the market.

In 2010, OOIDA and TIA thereafter teamed up (with TIA flip-flopping on its position against raising the broker bond as articulated in 2004 (https://www.ttnews.com/articles/opinion-higher-bonds-are-not-answer) and 2007 referenced above--after it had begun to sell optional $100,000 performance bonds to its members) and started calling for a $100,000 bond for all brokers to ensure brokers are properly capitalized despite the fact small brokers usually use factoring services to ensure proper funding is in place.

Insofar as the current TIA petition addresses "dispatch services," TIA stated:

> *…the general brokerage industry, as with household goods brokerage, is subject to registration and bonding requirements. Yet there are hundreds of entities, including many motor carriers that are today unlawfully brokering or re-brokering freight without authority and without bonding.*

SBTC notes that FMCSA specifically looked at the six items in 371.3; however, at no time during household goods rulemaking did TIA or FMCSA suggest the rights conferred to shippers and carriers by the ICC in 1980 under present-day 371.3(c) should be repealed because they are unfair or otherwise outdated. Only now do they take this position because the fear transparency. In contrast, former AIPBA President, now SBTC Executive Director James Lamb has been calling for broker transparency since 2014: https://www.overdriveonline.com/transparency-a-new-deal-for-independents-using-brokers/)

On January 31 2012, FMCSA published a "SMALL ENTITY COMPLIANCE GUIDE FOR BROKER OPERATIONS: 49 CFR §371 and Other Applicable Regulations and Statutes" document pursuant to Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. 104-121.

In it, FMCSA embraces 371.3(c) stating:

> *The regulation gives all parties to your brokered transactions the right to review the records of transactions that involve them. Therefore, you must allow shippers and motor carriers involved in your brokered transactions to review records pertinent to them.*

A review of the summary of the TIA petition received by FMCSA on August 5, 2020 leads us to believe that TIA now seeks to have its cake and eat it too; that is, to **skirt enforcement** of the rules against its own members after years of filing dissertations on the topic of FMCSA's **lack of enforcement** against unlicensed entities by simply purporting to FMCSA that the times have somehow changed these past 40 years since ICC inserted its wisdom into the broker regulatory scheme… and the 371.3 rule that requires transparency should now simply be deleted.

Yet this rule is the very safeguard the ICC put into place in late 1980 --after the onset of deregulation-- to justify the 1980 relaxation of regulations on brokers, on the one hand, yet ensure a level playing field among all the players, on the other. To remove this safeguard now is imprudent. Such a move would essentially give brokers carte blanche to abuse owner-operators and small business motor carriers, moving forward, with impunity, and allow them to continue to unethically purport they have only 16% average margins… but secretly effect margins as high as 65% under the cover of darkness. That kind of unethical, underhanded business practice has never been okay. It was not okay 70+ years ago, and the FMCSA should not conclude it is suddenly okay in 2020. Times have not changed. Big corporate broker ethics have. The ball is now in FMCSA's court and you have a chance to declare that broker exploitation will not be condoned.

TIA's petition, according to FMCSA:

> …asserts that its proposed modifications and clarifications would eliminate an outdated regulation that no longer applies to the current marketplace. TIA's request includes the promulgation of guidance to the public on what constitutes a legitimate "dispatch service" to remove, in its words, "unethical and unscrupulous actors from the marketplace" and eliminate an administrative burden on FMCSA to enforce outdated and unnecessary regulations.

In reply, SBTC suggests that in actuality, the regulations and the protections they confer for owner-operators with their own authority, motor carriers, and shippers still do apply to the current marketplace; that these protections grounded in ICC wisdom are neither outdated nor unnecessary. One only has to look at the freight rate crisis caused by "unethical and unscrupulous" **licensed brokers** who engaged in price-gouging and/or price fixing this past Spring to draw that logical conclusion. That remains a matter being reviewed by the Department of Justice. And we ask you to make the distinction that licensure, in and of itself, and membership in the TIA does not necessarily mean a broker is not unethical and/or unscrupulous.

First, we ask you to note that there are criminal implications when brokers attempt to evade duly promulgated regulations like 49 CFR 371.3(c). We point to 49 U.S. Code § 14906. Evasion of regulation of carriers and brokers:

A person, or an officer, employee, or agent of that person, that by any means tries to evade regulation provided under this part for carriers or brokers is liable to the United States for a civil penalty of at least $2,000 for the first violation and at least $5,000 for a subsequent violation, and may be subject to ***criminal penalties (emphasis added).***

We would suggest this is a roundabout way of TIA asking FMCSA to exempt brokers from the rule. And we suggest the agency is to be guided by the spirit of the agency's exemption authority granted by 49 U.S. Code § 13541 which calls for the agency to show that exempting an entity is appropriate because the regulation:

(1) is not necessary to carry out the transportation policy of section 13101;

(2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and

(3) is in the public interest.

We remind the FMCSA that the transportation policy of 49 USC section 13101 states very clearly:

(a)In General.—To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to oversee the modes of transportation and—

(1)in overseeing those modes—

(A)to recognize and preserve the inherent advantage of each mode of transportation;

(B)to promote safe, adequate, economical, and efficient transportation;

(C)to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(D)to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices (emphasis added);

(E)to cooperate with each State and the officials of each State on transportation matters; and

(F)to encourage fair wages and working conditions in the transportation industry;

(2)in overseeing transportation by motor carrier, to promote competitive and efficient transportation services in order to—

(A)encourage fair competition, and reasonable rates for transportation by motor carriers of property (emphasis added);

(B)promote efficiency in the motor carrier transportation system and to require fair and expeditious decisions when required;

(C)meet the needs of shippers, receivers, passengers, and consumers (emphasis added);

(D)allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;

(E)allow the most productive use of equipment and energy resources;

(F)enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;

(G)provide and maintain service to small communities and small shippers and intrastate bus services;

(H)provide and maintain commuter bus operations;

(I)improve and maintain a sound, safe, and competitive privately owned motor carrier system;

(J)promote greater participation by minorities in the motor carrier system;

(K)promote intermodal transportation;

The price-gouging of shippers this past Spring clearly proves 371.3(c) is indeed necessary, in the public interest --because when shippers pay more, American consumers pay more in stores, price-gouging is clearly an abuse of market power, and that transparency must continue to be regulated.

SBTC blew the whistle on TIA's last attempt to defeat transparency on social media in 2014 in this article: https://www.linkedin.com/pulse/20140806174333-21695323-tia-s-dirty-little-secret-the-75k-broker-bond-was-really-to-stop-transparency-not-fraud/

As pointed out above, TIA told the FMCSA it its comments on January 4th, 2017:

> *The Commission cites § 204 (a) (4) of the Interstate Commerce Act (as amended by the Motor Carrier Act of 1935, P.L. 74-255) as authority to, "establish reasonable requirements with respect to licensing, financial responsibility, accounts, records, reports, operations, and practices of brokers as defined in section 203 (a) (18)."*

There has been no indication from Congress since 1949 that Congress wishes to either deregulate brokers or commence a policy of disintermediation. Congress' directive to the Secretary therefore remains to register brokers and enforce the licensing and bond requirement for the protection of carriers and shippers. In fact, the very raising of the

broker bond in MAP-21 from $10,000 to $75,000 shows that Congress is very much interested in continuing to regulate brokers in the 21st Century in accordance with its National Transportation Policy.

And as FMCSA pointed out when it denied the AIPBA's original class broker bond exemption, FMCSA is not in a position to overrule Congress' intent. We suggest whereas FMCSA concluded this in the context of the AIPBA's broker bond exemption application, the same would then logically hold true when it comes to repealing, on a whim, a long-standing rule designed to balance the playing field among the actors, one grounded in 70 years of regulatory wisdom.

In contrast, in its own petition for rulemaking (published with a petition OOIDA filed 13 days later under Docket No. FMCSA-2020-0150), SBTC has, as noted by FMCSA:

> *…requested that FMCSA amend 49 CFR 371.3 to prohibit brokers from coercing or otherwise requiring parties to a transaction to waive their right to review the record of the transaction as a condition of doing business. The requested language would also state that "No stipulation or clause in any contract shall exempt any broker from having to comply with this rule, upon demand, by a party to the transaction."*
>
> *SBTC explained that freight rates have dropped drastically and that motor carriers have reported instances of brokers engaging in "profiteering, price gouging and low-balling tactics." SBTC claims that in some instances, brokers are receiving commissions of up to 65 percent on loads due to a sudden shortage of freight and over-capacity in the transportation market. SBTC stated that, to evade regulations, some brokers have resorted to requiring carriers, as parties to broker transactions, to waive their rights to obtain documents that show the amount the shipper is paying the broker. SBTC further states that the provisions in 49 CFR 371.3 should be strengthened to stop this abuse, noting:*
>
> *While the SBTC does not seek to return to economic regulation to limit the amounts or percentages brokers earn and believe this should be left to the free market—much like we wouldn't want carriers' revenue to suddenly be limited, transparency is essential in making sure market forces operate ethically and fairly. We believe FMCSA should enforce its rule and act to terminate this abuse by big brokers in the marketplace.*

Lastly, the TIA has asked in its petition received by FMCSA on August 5, 2020 for the FMCSA to issue guidance on "dispatch services." SBTC's predecessor group Association of Independent Property Brokers & Agents (AIPBA), which was absorbed into SBTC in 2016, has been asking TIA to address this euphemism for unlicensed broker since January of 2015 (https://www.linkedin.com/pulse/aipba-board-invites-tia-target-unlicensed-brokers-james-lamb/). Under the leadership of Voltmann, TIA ignored this problem.

So, after the 2016 merger with AIPBA, SBTC then tackled this issue with FMCSA alone by filing a petition for rulemaking in 2018 to clarify the definition of property broker so as to make it more clear that dispatch services are in effect unlicensed brokers because they are (1) persons who are (2) paid to (3) arrange motor carrier transportation of regulated commodities.

In January 2020, then-FMCSA Acting Administrator Jim Mullen agreed with us. He responded essentially stating that there was no need for such clarification because under the existing regulatory definition of broker, "dispatchers" who work independently for multiple carriers as opposed to being the bona fide agent of one motor carrier and part of their normal organization, already fall under this definition (and, ergo, are thereby illegal if operating without a license and bond). Who pays the broker is not relevant for the purpose of qualifying an entity as a broker, as evidenced by the regulatory history we have pointed to herein.

We again cite 49 U.S. Code § 14906. Evasion of regulation of carriers and brokers here and suggest there are **criminal implications** for entities using euphemistic titles to explain away their illegal broker activities and evade regulation. One only needs to watch this humorous Twix commercial to appreciate the absurdity of brokers saying they are not brokers, they are "dispatchers" as the company pokes fun at ghosts being different from spirits, janitors being different from custodians and undertakers being different from morticians:

https://www.youtube.com/watch?v=KawjY0PK7A8

While we now welcome the new post-Voltmann TIA to the discussion --and do appreciate they have finally woken up to this problem and are taking a stance against illegal brokers who are plaguing both duly licensed carriers and brokers in the industry, calling themselves "dispatchers" or "dispatch services," we believe this is a matter of 'asked and answered.' We are therefore happy to share with TIA --and all interested parties --our 2018 petition for rulemaking and the FMCSA's January 2020 response. We previously released these documents publicly and are now uploading them to this docket for public display and the industry's information.

As a trade group president since 2010, SBTC's Executive Director, James Lamb, has been asking FMCSA to enforce the law against unlicensed brokers for many years (https://www.linkedin.com/pulse/aipba-asks-fmcsa-crack-down-unlicensed-brokers-james-lamb/)

The SBTC once again wishes to remind FMCSA of its 2013 promise to industry to implement a "**comprehensive enforcement program**" to crack down on illegal brokers as published at:

https://www.fmcsa.dot.gov/mission/policy/federal-register-notice-registration-and-financial-security-requirements-brokers

Rather than spend time entertaining illegitimate requests from the TIA to erase 70 years' worth of bona fide protections for carriers and shippers and help their abusive big broker members wiggle out of regulations they now don't like because of the heat turned up by the President of the United States, the White House, and the Department of Justice, the FMCSA would much better serve the industry by making good on that now 7 year old promise.

SBTC therefore requests that FMCSA please approve the SBTC Petition to strengthen the protections of 49 CFR 371.3 by amending this part to prohibit brokers from coercing or otherwise requiring parties to a transaction to waive their right to review the record of the transaction as a condition of doing business. We ask you adopt the proposed language: "No stipulation or clause in any contract shall exempt any broker from having to comply with this rule, upon demand, by a party to the transaction." This would address the current practice of circumventing the existing rule and **criminally evading regulation** by waiving 371.3(c) in their contracts. We believe such criminal activity is worthy of investigation by the Department of Justice and/or USDOT Office of the Inspector General and FMCSA should not eliminate such criminal liability by erasing 70 years' worth of shipper and carrier protections on a whim.

SBTC therefore asks you to deny the TIA petition as it is not in the public interest, not in accordance with Congressional intent dating back to 1935 and ICC regulatory wisdom dating back to 1949, does not reconcile with the National Transportation Policy, and does not protect shippers and carriers from an abuse of market power as witnessed in the Spring of 2020.