



May 6, 2020

Via Elaine.Chao@dot.gov & US Mail

The Honorable Elaine Chao
Secretary of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Re: PETITION FOR BROKER RULEMAKING UNDER 49 CFR PART 371

Dear Secretary Chao:

Thank you for Jim Mullen's January 28, 2020 letter denying our October 4, 2018 petition for rulemaking to clarify the definition of property broker. As we understand it, Mr. Mullen essentially advised there was no need to change the definition to make individuals acting as representatives of multiple competing carriers arranging for transportation for compensation who are calling themselves "dispatchers" fall under the definition of "broker" because they already fall under the existing definition of broker since they do not work exclusively for one carrier as a "bona fide agent" as defined in 49 CFR § 371.2.

We now turn to 49 CFR § 371.3.

As you know, due to the national emergency and the shut down of many manufacturers, freight rates have dropped drastically nationwide. Carriers and independent truckers have reported instances of big brokers engaging in profiteering, price gouging and low-balling tactics. We understand in some instances, big brokers are currently "scoring" commissions of up to 65% on loads due to a sudden shortage of freight and an over-capacity in the market.

It has come to our attention that some large brokerages have, in an effort to evade regulation, been resorting 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. We therefore believe it is time to strengthen this rule to stop this abuse.

These big brokers' rate data are already protected through confidentiality/non-disclosure provisions. Their interests are further protected through non-back-solicitation clauses.

The Honorable Elaine Chao
May 6, 2020
Page 2 of 4

We contend there is no bona fide reason for them to attempt to nullify 49 CFR § 371.3 except to obstruct administration of a duly promulgated rule that was specifically designed to give carriers a 'right to know;' that is, to help carriers understand if the contractual rate they were offered was a bona fide prevailing rate in accordance with reasonable and customary standards of 85-90% of the amount the shipper is paying for transportation.

In this video released last week by the Transportation Intermediaries Association, CEO Robert Voltmann suggests that industry standard for his members is 84%.

<https://youtu.be/LGrvtMXiyw>

But carriers and independent truckers have no way of verifying this is true, so long as TIA member brokers engage in this practice of circumventing a duly promulgated rule.

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.

As you know, FMCSA has already required transparency with respect to the relationship between carriers and leased owner-operators in 49 CFR § 376.12. We point to:

(d) Compensation to be specified. The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease. Such lease or addendum shall be delivered to the lessor prior to the commencement of any trip in the service of the authorized carrier. An authorized representative of the lessor may accept these documents. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached addendum may apply to equipment and driver's services either separately or as a combined amount.

...and

(g) Copies of freight bill or other form of freight documentation. When a lessor's revenue is based on a percentage of the gross revenue for a shipment, the lease must specify that the authorized carrier will give the lessor, before or at the time

of settlement, a copy of the rated freight bill, or, in the case of contract carriers, any other form of documentation actually used for a shipment containing the same information that would appear on a rated freight bill. Regardless of the method of compensation, the lease must permit lessor to examine copies of the carrier's tariff or, in the case of contract carriers, other documents from which rates and charges are computed, provided that where rates and charges are computed from a contract of a contract carrier, only those portions of the contract containing the same information that would appear on a rated freight bill need be disclosed. The authorized carrier may delete the names of shippers and consignees shown on the freight bill or other form of documentation.

We therefore write to you now to petition that FMCSA be directed to engage in rulemaking to terminate this abusive practice.

We therefore propose the existing language of 371.3 be changed as follows. Whereas the rule currently states:

§ 371.3 Records to be kept by brokers.

(a) A broker shall keep a record of each transaction. For purposes of this section, brokers may keep master lists of consignors and the address and registration number of the carrier, rather than repeating this information for each transaction. The record shall show:

(1) The name and address of the consignor;

(2) The name, address, and registration 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 non-brokerage 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.

(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.

We suggest the following addition of a new subparagraph:

The Honorable Elaine Chao
May 6, 2020
Page 4 of 4

(d) Brokers may not coerce or otherwise require parties to the transaction to waive their right to review the record of the transaction as a condition for doing business. 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.

Thank you.

Sincerely,

/s/ JAMES LAMB

Executive Director

cc: Mr. Mullen, Mr. Minor and Mr. Socci via email