



July 11, 2022

*By Electronic Submission*

Ms. Robin Hutcheson, Acting Administrator  
Federal Motor Carrier Safety Administration  
United States Department of Transportation  
1200 New Jersey Avenue SE  
Washington, DC 20590-0001

Re: Docket ID FMCSA-2022-0134—*Definitions of Broker and Bona Fide Agents*

Dear Acting Administrator Hutcheson:

The National Industrial Transportation League (“NITL” or “League”) is pleased to submit its comments in response to the Notice published in the Federal Register on June 10th by the Federal Motor Carrier Safety Administration (“FMCSA”) in the above referenced docket concerning the definitions of “broker” and “bona fide agents.” NITL members regularly contract with property brokers that facilitate truck transportation of the products they manufacture, distribute, and deliver to customers. NITL has a strong interest in a regulatory system of brokers and agents of motor carriers that promote safe, secure, and dependable freight transportation services. As explained below, NITL endorses the detailed and more comprehensive comments submitted in this docket by the Transportation Intermediaries Association (“TIA”).

**Background.** As explained in the Notice, Section 23021 of the Infrastructure Investment and Jobs Act (“IIJA”) directed the Secretary of Transportation to issue guidance by November 15, 2022, clarifying the definitions of those terms as currently codified in 49 C.F.R. § 371.2. The guidance must take into consideration the extent to which technology has changed the nature of freight brokerage, the role of bona fide agents, and other aspects of the freight transportation industry. Additionally, FMCSA must: (1) examine the role of a dispatch service in the transportation industry; (2) examine the extent to which dispatch services could be considered brokers or bona fide agents; and (3) clarify the level of financial penalties for unauthorized brokerage activities under 49 U.S.C. § 14916, applicable to a dispatch service.

**Statement of Interest.** The National Industrial Transportation League was founded in 1907 and is a national organization of shippers and other companies engaged in freight transportation throughout the United States and worldwide. The League advocates for the interests of shippers, i.e., manufacturers, distributors and other companies who purchase freight transportation services, before federal agencies and both houses of Congress. The League has been instrumental in advocating for competitive, safe, and efficient freight transportation since its formation and



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throughout deregulation in the 1980s and beyond. Our members control between \$5B and \$10B in surface transportation spend and represent companies in many different sectors of the American industry. Our members ship coffee, paper, corrugated paperboard, plastics, chemicals, petroleum, and temperature-controlled foods, to name a few. League members depend heavily on domestic truck transportation, and many engage brokers to facilitate the movement of their freight.

**Comments.** NITL believes that the current definition of “broker” in the statute and regulations are sufficient and appropriate for determining the scope of activities that warrant regulatory oversight of non-asset-based entities that facilitate commercial truck transportation. Thus, there is no need for FMCSA to modify the “broker” definitions to address whether new technologies or dispatching services qualify as a broker. Currently, the statute defines a broker as “. . . a person, other than a motor carrier or an employee or agent of a motor carrier, which has a principal or agent sells, offers for sale, negotiates for, or holds itself out, or arranging for, transportation by motor carriers for compensation.” 49 U.S.C. § 13102(2). This definition is straight-forward and is generally well understood by the buyers, sellers, and arrangers of commercial trucking services.

When NITL members engage a non-asset-based entity to arrange truck transportation for their products, such as a broker or dispatching service, they have an interest in ensuring that the entity is a legitimate and financially sound business that will engage safe and efficient trucking companies to carry their freight. In this regard, NITL agrees with TIA that entities who perform dispatching services on behalf of multiple motor carriers and exploit a loophole in the current regulatory definitions to avoid regulation as a “broker” by asserting they are merely “bona fide agents” of the carriers create potential supply chain risks for shippers. In this regard, NITL agrees that this loophole should be addressed by clarifying the definition of a motor carrier “bona fide agent” to narrow its scope to apply to a single motor carrier. This clarification would help to ensure that entities performing dispatching services who arrange truck transportation in connection with multiple carriers for compensation are subject to the same registration and financial responsibility requirements as traditional brokers. This level of regulation is not overly burdensome and provides an appropriate level of oversight that protects the shipping public.

Moreover, while large, sophisticated shippers are more likely to employ practices to vet entities who arrange truck transportation of their products, including dispatching services, NITL is concerned that smaller shippers may not have these resources and are more likely to confuse such entities for the asset-based carrier creating both commercial and legal risks. Applying the approach suggested by TIA to clarify the scope of “bona fide agents” could reduce some of these risks by ensuring that dispatching companies who are compensated for arranging truck



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transportation with multiple carriers would carry at least the minimum financial security required by the broker regulations.

By applying broker regulation to dispatching companies who arrange truck transportation with multiple motor carriers for compensation, NITL would hope that such an approach would encourage dispatching services to follow responsible industry best practices with respect to carrier selection and could encourage vetting of motor carriers to reduce the risk of unsafe carriers operating on the nation's highways.

NITL appreciates the opportunity to submit its comments to FMCSA in response to the agency's Notice and to provide a perspective from the nation's shipper community.

Sincerely,

Nancy O'Liddy

NITL Executive Director