

S. 3483 Talking Points

1. Why are TIA and OOIDA working together?

Following our battle during the last Congress over the TRUCC Act, TIA and OOIDA opened a dialogue at the suggestion of Representative Peter DeFazio (D-OR), Chairman of the House Subcommittee on Highways and Transit, and a sponsor of the TRUCC Act. What TIA and OOIDA found when we sat down together, was a common interest in finding solutions to shared problems. From that dialogue, we agreed to attempt to find a legislative solution to address our common concerns. These common concerns center on marketplace fraud. TIA and OOIDA recognized that the members of both organizations need each other to survive and grow successful family businesses. For its part, TIA recognized that Chairman DeFazio was intent on re-introducing the TRUCC Act during the current Congress. TIA recognized that the fight against the TRUCC Act, if it were part of the Transportation Reauthorization Bill, would be a protracted and expensive fight. There are things we like about the legislation and things we don't, that's what makes a compromise. By taking the step of finding common ground with OOIDA, we have sought to fight common problems. Brokers, forwarders, and owner-operators need each other, and by working together, we can fight industry fraud so that our members can continue to grow their family businesses.

2. Why increase broker responsibility?

The broker bond requirement has not changed since the mid-1980's. All of the major transportation associations were calling for an increase in the broker bond, with some calling for escrow accounts and bond of \$500,000. The \$100,000 bond was determined to be a reasonable compromise to prevent escrow accounts and the public disclosure of broker margins.

3. Will small companies be able to qualify for a \$100,000 bond?

TIA already offers a \$100,000 broker bond as part of our TIA Performance Certified program. TIA members of all sizes, therefore, can obtain the \$100,000 immediately. Knowing that an increase in the bond is likely gives us time to prepare accordingly. Qualification for the current TIA Performance Certified \$100,000 bond is based on underwriter point scoring, and while we're not going to give our secret sauce formula to our competitors, think about what could cause your company to fail: not enough working capital or improper insurance to withstand a major setback. With that in mind, here's what you need to do to prepare: (1) Improve your credit score – this is something you should be doing anyway, and TIA and TransCredit will offer a free webinar to help. (2) Keep your financial reports in good order and have a positive net worth of at least \$200,000 depending on the size of your business and your insurance coverage. (3) Have proper insurance coverage including non-follow form contingent cargo, errors and omissions, contingent auto liability, and general liability. With these things in place, TIA members can get a \$100,000 bond for a \$10,000 trust deposit for less than \$2,000 per year. Become TIA Performance Certified now—don't wait until the new law requires you to raise your security to \$100,000.

4. What are the regulations being placed on broker trust companies?

One of the biggest problems in the market today are companies that offer broker trusts in violation of the current regulations to require full funding for those trusts. Treasury Department licensed bond companies and insurance companies can offer broker bonds at less than face value (\$800 for a \$10,000 bond), but banks and trust companies are required to collect and hold the full-face amount (\$10,000) before issuing the trust. Unfortunately, too many of these trust companies issue broker bonds based on a pledge of receivables, a promissory note or for little or nothing down. Many of these companies then do not pay carrier claims. Or, they deduct their costs from the \$10,000 before paying any carrier claims. Too many do not submit to DOT the list of companies that were paid. The legislation addresses all of these issues. We believe these reforms are more important to carriers than the amount of the bond. Under the legislation, broker trust companies would be responsible for the face value of the trust. They will have to publish the list of payments on their website for all to see. They will have to pay claims on a pro-rata basis so that everyone gets something. Finally, broker bond and trust companies will have to be publicly audited, with the audit posted on their website.

5. Why should companies register each year?

Both TIA and OOIDA members are plagued with “churners,” those companies that come in and out of the industry. Both organizations recognized too, that neither DOT nor the companies in the industry know what companies are still in business. Requiring every licensed company 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 with the qualified individual requirement, will help identify the “churners”. Annual registration is not new. In many ways, this is what the Unified Carrier Registration Agreement (UCRA) is supposed to do, but the dots have not been connected. Every carrier, broker, and forwarder is supposed to pay an annual UCRA fee. The Snowe - Klobuchar requirement will tie renewal of authority to this requirement. TIA is not happy that motor carriers were excluded from the annual registration in the initial version of Snowe – Klobuchar, and will work to get them included.

6. Why will brokers and forwarders have to have a qualified individual to obtain authority?

Again, this is a provision to catch the “churners” and “cheats”. By requiring a qualified individual to be identified with each broker and carrier authority, it will make the job of tracking the bad guys much easier. Another benefit will be stronger companies entering the market since a principal in the company will have experience in the market.

7. Why was the bond requirement expanded to include forwarders?

Motor carriers have generally disliked working with forwarders since they do not have a bond requirement. For that reason, many TIA members have both authorities or have a bond for their forwarder operation already, so we did not think it would be a major issue.

8. How will the legislation eliminate un-authorized re-brokering of freight?

The legislation addresses this problem through many means.

- Distinctive authority numbers will be issued for each authority, and for each shipment, the parties must declare under which authority they are participating in the transaction. In other words, a motor carrier taking the load, takes it as a motor carrier for the rest of the transaction. So, if a carrier takes the load as a carrier, it is a carrier for the entire transaction.
- The legislation would prohibit motor carriers from re-brokering freight no matter what they call it, without having a proper broker license and bond. The legislation places unlimited liability for valid claims on companies that broker without a license or bond. A carrier might claim that what they are doing is not brokerage, but the legislation makes it clear that putting another company's freight on another company's truck is either brokerage or forwarding.
- Finally, those companies that enter the market, grab a load, flip it and then disappear without paying, will now face unlimited freight bill liability if they do not have a proper broker license and bond. That means that if one of these bad guys runs up \$300,000 in payables to carriers, it faces a liability of \$300,000 even if their personal assets must be liquidated. A properly licensed broker has its liability capped at the bond amount.

9. Why is the legislation called the “Motor Carrier Protection Act of 2010”?

The choice of name is unfortunate since the legislation is about fighting fraud in trucking. TIA is working with OOIDA and Senators Snowe and Klobuchar to get the name changed.

10. Is this legislation just a way for the big companies to get bigger?

This is not about big companies versus small companies, as some will suggest. This legislation is about well-run companies of all sizes that follow the rules against those that think they can skate on thin ice. The legislation will bring an end to bad bonding companies, carriers brokering without a license or bond, and scam artists that come in and out of the market to rip people off. It will create a competitive playing field for the legitimate industry. The legislation is not about regulating brokers or carriers; it is about fighting fraud in the trucking industry.

11. How can I learn more about the legislation?

To fully answer your questions and concerns, TIA will host a Free Webinar on July 14 at 2:00 pm EST, where members can ask questions about the legislation. In the meantime, rest assured that TIA is your voice in Washington.

12. What is the likelihood of the legislation passing in 2010?

It is difficult to predict what will happen in Washington, and this year is no exception.