

# TIA July 14, 2010 WEBINAR ON S. 3483 LEGISLATION – QUESTIONS FROM July 14, 2010

## GENERAL QUESTIONS

1. Have OOIDA and TIA partnered? OOIDA and TIA sat down together at the urging of House Transportation Committee leadership; what we found is that both organizations have more in common than we expected. Our leadership decided to find common solutions to common problems; so, yes, we have partnered to address our common concern about fraud in the marketplace.
2. Where might any opposition in Congress come from? Would opposition actually be a bad thing, or is it better to get this done and out of the way now? Opposition is always possible, but the issues and pressure to address the issues will not go away and we may then have to go back to the original issue of brokers having to disclose their margins publicly.
3. Will our current MC # stay intact, which is important to brokerage's that have a long history? Nothing in the legislation would affect your current MC number.
4. Is there any discussion among the Carrier groups which would require Shippers to post a bond? Many groups share your concept, but shippers have never been subject to regulation under the Interstate Commerce Act, and it is very unlikely that they ever will be.
5. Could you explain how this is not going to affect the smaller brokerages? TIA was started by brokers 32 years ago, and has been run by brokers since. About half of our members have gross revenue below \$5 million per year. The TIA Board is comprised of members of all size companies, and would not do anything to harm our members. We believe that any well-managed, well-capitalized company will be able to comply with the requirements. The TIA Board took the action to compromise with OOIDA on the legislation to prevent a much higher bond and other more onerous requirements that would have had a very detrimental effect on smaller companies.
6. Who would be able to help my company qualify for this increase in a bond? TIA will work with companies and will provide the tools to help get credit score and financials in order to move forward.
7. Isn't a minimum of \$10,000 cash deposit required under the bill? Yes, as currently drafted, the legislation calls for a minimum cash deposit of \$10,000.
8. What is the difference between a broker license and a carrier license? These are defined under the law. Basically a carrier license is for someone who owns assets/trucks that move freight, and a freight broker license is for someone who arranges freight movement, but has no assets/trucks.
9. What about asset based carriers being required to post some type of performance bond? Everyone wants brokers to be accountable, what about carriers / trucking companies? Possibly a good idea, but currently beyond the scope of the TIA – OOIDA agreement.
10. Why not take the approach to make the carrier disclose profit? Not being a carrier organization, I don't know whether carriers are required to disclose that information to their owner operators.
11. Would this bill change the rules which allow a company to broker exempt commodities without a license or bond? The legislation does not make any changes to exempt commodities or impose new requirements on those that broker exempt commodities.

12. Why do you feel there is some resistance to this legislation among some brokers that are members of TIA especially when they know the legislation could have imposed greater limits on bonds? **Many members do not accept the assumption that something worse could happen. Also, many members do not understand the power that the trucking associations have from long standing lobbying expenditures and political action committee contributions. TIA has made major headway over the past few years, which has driven the trucking associations to the table.**
13. Does that mean that LTL carriers who utilize interline carriers will not have to participate as a broker under this program? **The legislation is vague on LTL carriers, and this will have to be sorted out.**
14. How does new regulation affect frt forwarders? **As drafted, the legislation would require freight forwarders to have a bond for the first time, and they will be required to have the \$100,000 bond/trust as well.**
15. How is it proposed that the MC or authority number is going to be disclosed or stated to govern each and every load? If you're a broker and carrier that seems overwhelming. **A: If you take the load as a carrier, you provide the carrier number that it governs; if you take the load as a broker, you provide the broker number. The provision is designed to limit a carrier's ability to claim to be taking the load and then re-broker it.**
16. What are the odds of reversing the FMSCA rule making to drop minimum cargo liability as a requirement to get operating authority? **TIA and shipper groups will work to overturn this decision.**
17. You said authority number for each transaction would be required. Where would the authority number be required? Confirmation Sheet, Bill of Lading, both? other? **That level of detail would be decided by DOT if the legislation becomes law.**
18. What would the annual re-registration fee be? **We don't know. If the legislation becomes law, it will be up to DOT to sort through this provision.**
19. If you own an asset based trucking company and a brokerage and these companies are kept completely separate would the asset based company also need a bond to be able to co-broker to its non-asset based brokerage? **Yes. Brokerage is brokerage. If you accept a load as a carrier, the broker expects you to actually transport it on your truck, not give it to another carrier through your brokerage.**
20. Could I get a forwarders license to get around the broker bond issue? My local trucks pick up freight for consolidation **No, as drafted, the legislation would require freight forwarders to have a bond for the first time, and they will be required to have the \$100,000 bond/trust as well.**
21. Will the broker's application of the information available from CSA 2010 play a part in your qualifying a bond increase for a carrier? **Broker regulations and CSA 2010 are completely separate.**
22. Do we have an estimated number of Brokerages that this piece of legislation will affect? (by way of putting them out of business) **We believe that the vast majority of brokers will be able to qualify for the increased bond. The very smallest companies, those that may broker only a few loads a week, may find it more advantageous to become an agent for another company. In any event, we don't believe the legislation will put any legitimate company out of business.**
23. What cost would a start-up brokerage be looking at? Can they even qualify for this bond? **If the legislation becomes law, it will be more expensive for a start-up company, but they will know that going in, and can prepare. The requirements are very similar to that currently in place for customs brokers and ocean intermediaries, and they have not dampened the entrance into those industries.**

24. Barriers to start a new brokerage from scratch. Will you be required to put up or have \$100,000 cash/liquid asset in order to obtain the bond? **If the legislation becomes law, we don't know what the requirements each bond company will require. The proposed legislation borrows heavily from the Federal Maritime commission requirements for ocean intermediaries, and those regulations have not had a dampening effect on new entrants.**
25. How does a company engage TIA to assist in the preparation you are talking about? **TIA will offer a series of free webinars, discounted training, and a tool box of materials to help you. Visit the TIA website at [www.tianet.org](http://www.tianet.org) for additional information.**
26. This law will help carriers as well - we've had many instances where the bond was exhausted by the time our claim was made. **Yes, this is why the carrier associations want the bond increased.**
27. How will the act impact IMC's? **Rail intermodal is exempt from regulation. A truck move as part of an intermodal rail move is exempt from regulation and would not be affected by the legislation. If, however, the IMC were brokering a truck move not involving rail, the IMC would need broker authority, just like they do today.**
28. Will the CTB qualify an individual to be tied to a broker authority? **We certainly hope so! But this will have to be sorted out in the details.**
29. Are trucking companies overall supporting this or are they pushing back? **OOIDA is supporting the legislation, ATA is generally supportive, I don't know about the others.**
30. Why are we required to reapply for our license? **One of the problems today is that no one – including DOT – knows what companies are still in business. TIA seeks to expand the requirement in the legislation to include carriers and sureties that offer trust forms. Annual registration of a license is really not unusual. I know in Virginia where TIA is based, we must register our corporation with a list of officers every year.**
31. Does the annual re-registration require paying a renewal fee? **As drafted, the legislation would require an annual fee, but it will be up to DOT to set the fee.**
32. Seems like this helps out the bigger companies by making it impossible for the little players in the industry to compete. Put the little guys out of business and the big guys get more market share. How does TIA benefit me if it's working towards putting me out of business? **TIA is not working to put anyone out of business except the scam artists, and you are not a scam artist! The TIA Board took the step to compromise with OOIDA, because if they did not, much worse legislation would have been introduced that would certainly have put a majority of brokers out of business. TIA will work with all members, to help them meet the changed requirements if indeed, the requirements change.**
33. Access to Bond. There were not a lot of companies interested in writing the broker bond to begin with. Other than the TIA program do you have a feel for any other bonding companies interested in participating? I would hope the TIA program will always be a viable option. What would happen if this legislation passes and the TIA program does not succeed? **TIA is committed to its members and helping its members meet statutory and regulatory requirements, as well as grow their business; we'll be here.**
34. Will there be a charge for the webinars? **Generally no. There may be occasions when we have to pay a speaker, and will, therefore, have to charge for the webinar**
35. One of the issues facing Brokers now is carriers that have Owner/Operators that they do not cover their insurance. After due diligence we find that the O/O does not even have insurance. Does this change the liability for the carrier in that situation? **We recognize this as a problem, but it is currently outside of the TIA – OOIDA agreement, and is not currently addressed in the legislation.**

36. This about big companies versus smaller companies? Will this help make the playing field more competitive for smaller companies? **In no way is this about big companies v. small; TIA agreed to compromise with OOIDA to avoid much more onerous proposals that would have had a crippling effect on the industry.**
37. Is the ratio of bond to MC#s/FF#s one to one, or will businesses be allowed to umbrella currently held multiple Freight Forwarding Licenses and Brokerage licenses under one \$100,000 bond? **That will be up to DOT to sort through.**
38. Will TIA charge for workshops on how to increase your credit scores? **The credit webinar will be free of charge and is presently scheduled for August 11 at 2:00 pm ET.**
39. Who is OOIDA? **OOIDA is the Owner-Operators Independent Drivers Association and represents more than 100,000 independent drivers and owner operators.**
40. Will the Motor Carrier Protection Act be mutually beneficial for the carriers and the brokers? **The carrier associations think so.**
41. Down the road, will all carriers be mandated to carry general liability insurance? **We don't know.**
42. The UCRA is \$30.00 per year for a broker in IL. **The Unified Carrier Registration Agreement (UCRA) fee for 2010 for brokers was increased to \$87; every broker, forwarder, and carrier must register. Each UCR entity should receive a bill with instructions on where to pay their fee. However, the state of Indiana supports a nationwide system where the fee can be paid (<http://www.ucr.in.gov/>). Some States (AL, IA, IL, ME, ND, OH, TX) have their own system, so UCR entity based in those States would use their systems.**
43. What is advantage of having the SDDC bond mentioned on the Avalon Risk Management application? **The Department of Defense Surface Deployment Distribution Command (SDDC) requires brokers that want to engage in DOD freight movements to post a separate \$100,000 bond. This is written specifically for government freight.**
44. Unrelated to current issue, what is happening regarding hours of service? **DOT must release its decision by July 26, 2010. Whichever way they go, some group will be unhappy, and may likely sue.**
45. My parent company is asset based. When explaining the value of the \$100,000 bond to an asset based minded CFO what is the best route to take? **I'm not sure I understand your question. Carrier organizations have been calling for a broker bond of \$100,000 for years**

#### **WHEN WILL LEGISLATION GO INTO EFFECT QUESTIONS**

46. How soon is this going to happen? What is the deadline for obtaining this bond? **We don't know. It could happen by the end of the year, or it could die with this Congress at the end of the year. What we do know is that it is likely that these types of reforms will come to be in the next couple of years. The Snowe legislation provides time for existing brokers to come into compliance.**
47. If this is passed through, what is the anticipated amount of time to take effect and have your Bond in place? **If the legislation becomes law, it would provide a long phase in period for implementation.**
48. What is the likelihood of this legislation being coat tailed in the Hwy Act? **We don't know. We are watching it closely.**
49. How likely is it that the minimum bond amount rises before this is over? **It is possible that DOT could act on old requests by ATA, OOIDA, and shipper groups to raise the bond level by regulation before Congress could act on the present Snowe legislation.**

50. In this economic climate, how do we small brokers (with less than 5 million in sales) add expenses in the form of additional insurance premiums and grow our net worth at the same time? I can't see it happening. **If the legislation becomes law, there will be a phase in period; the best thing to do is to begin preparing. TIA will be offering a series of webinars to assist. For information visit our website at [www.tianet.org](http://www.tianet.org)**

## **GRANDFATHERED QUESTIONS**

51. Will existing brokers be grandfathered in from the new bond requirements? **Yes and no. The legislation, if it becomes law, would provide a transition period for existing companies to obtain the higher bond; a longer transition period is provided for registering your qualified individual so that companies in business at the time of enactment would have a qualified individual.**
52. Will we be grandfathered into the legislation? **The legislation does not provide for grandfathering, but does provide phase in time for current companies.**

## **TIA PERFORMANCE CERTIFIED QUESTIONS**

53. With regard to the TIA bond requirement, you said \$200K on the broker balance sheet, \$200K cash? Net worth? **Net worth. This is used by TIA's underwriter as an indicator that the company can absorb a major hit. We want you to survive, not fail. But, we also know that problems arise. The insurance and net worth requirements are designed to provide a cushion to cover the problems.**
54. Our insurance company has E&O built into our current cargo policy. It's not necessary for us to purchase the E&O, so that would be an added cost to our ins. that we'd only be getting to meet this standard. **Under TIA's Performance Certified program, our underwriter will accept almost every E&O transportation policy. So if you already have an E&O policy there will be no additional costs on this issue for you.**
55. If I'm able to sign up for TIA performance certified \$100,000, then I'd be covered? **We believe that the TIA Performance Certified \$100,000 bond will meet the requirements if they become law.**
56. Where on the TIA site would we find the application for the bond? **The Performance Certified Program can be launched from the TIA home page ([www.tianet.org](http://www.tianet.org)) by clicking on the TIA Certified button. Contact Nancy O Liddy at 703-299-5711 or [oliddy@tianet.org](mailto:oliddy@tianet.org) with questions.**
57. If my company has a positive cash flow and a high credit score, I still need the contingent auto to qualify for the TIA bond? And do I need to be a member of TIA to qualify? **Under the TIA Performance Certified Program (a very strict program since it is a company certification) the company must be a TIA member. The mix of insurance and positive net worth is variable, and risk management is assessed by our underwriters.**
58. I am PC10 Certified - how do we transition to a PC100? **You would apply for the Performance Certified \$100,000 level, Contact Nancy O'Liddy ([oliddy@tianet.org](mailto:oliddy@tianet.org)) for assistance.**
59. Is membership in TIA a requirement for access to the surety product? **Yes, Membership in TIA is required to be part of the TIA Performance Certified Program. This is a company certification, and part of the requirements for certification is TIA membership and adherence to the TIA Code of Ethics.**
60. How much cash and positive net worth is required for PC100? **TIA's underwriter for the TIA Performance Certified \$100K level assesses your mix of insurance and net worth using a point system, so the amount of positive net worth required depends on the amount and type of insurance.**
61. Does the proposed legislation eliminate 3PL owner's requirement to personally guarantee the surety bond? Does the TIA program require the guarantee? **TIA's Performance Certified program does not require owner guarantees.**

62. If I get all of the insurance recommendations, am I considered a Performance Certified Broker? **In order to be a Performance Certified Member you must complete the performance certified application. Contact Nancy O'Liddy at 703-299-5711 or [oliddy@tianet.org](mailto:oliddy@tianet.org) with questions or visit [www.tianet.org/performancecertified](http://www.tianet.org/performancecertified)**
63. If a freight broker uses a financially-capable TIA member factoring company that makes carrier payments on behalf of the freight broker, might the minimum financial requirements/credit score requirements needed to qualify for a bond from the TIA be relaxed? **The TIA Performance Certified requirements are set by the TIA Board and were set to promote the highest standards in the industry; it is possible that the Board could make this change.**
64. Is there an advantage to going ahead and getting the 100K bond now? OR wait till it's a requirement? **The advantages to becoming TIA Performance Certified is that you will be done, your loads will stand out on the freight boards, and you can use it as a marketing advantage.**
65. Can an S corp. use owners personal net worth in place of corporate net worth? **Under the TIA Performance Certified program, the underwriters want to see net worth in the company.**
66. For those of us that do not qualify for the \$100K bond...what happens? **The requirements for TIA's Performance Certified program outlined on the webinar are probably the most difficult that will be in place, because it is a company certification; other bond companies may have lower requirements. In the meantime, you should take steps to prepare, and TIA will help.**
67. Once becoming PC10 certified - how long does it take for the posting services to be notified? Please explain the benefits of being PC certified from a load posting stand point? **TIA notifies the posting services every week. How TIA Performance Certified companies are recognized on the posting service depends on the individual service provider. Companies that are TIA Performance Certified can use the designation as a marketing tool to stand out from the crowd.**
68. TIA promoted getting a higher bond \$25K, \$50K, \$100K, etc. to set ourselves apart from other non-TIA companies. What will TIA offer now to set us apart if everyone will have to carry a \$100K bond? **TIA offered a voluntary increase in the bond to help members stand out and to help forestall a legislative or regulatory increase in the bond. TIA is always looking for ways to help members stand out from the crowd. By simply being a TIA member your company will still stand out. Being a member of TIA makes a statement that your company has been reviewed and you have agreed to adhere to the TIA code of ethics.**
69. Our attorney has stated that the E&O insurance is unnecessary if you carry the other forms of coverage. Why is E&O required if General Liability and Auto Liability cover the same loss. In effect the the deep pockets are exposed to suits more than those without the coverage. As I see the requirements they will add a minimum of \$10,000 annual expense to a small broker's out of pocket expenses. This will eliminate new brokers entering the marketplace but will give the large broker a leg up on acquiring broker agents...one of the main sources of exposed liability to the parent broker. **E&O is not required; it is a recommended insurance by TIA to become TIA Performance Certified.**
70. If a small brokerage company currently has \$10K bond in place and would like to move to the \$100K bond. Is the company required to have \$100k in cash or will financing be available for this? **It will be up to the bond company. Under the TIA Performance Certified program, our underwriter balances the amount of cash required against insurance.**
71. What kind of cost are you looking at for "new" entries to the market w/o the \$200,000 positive net worth history? **It will be up to your bond company. The \$200K net worth requirement is the minimum required by TIA for the TIA Performance Certified program.**

72. Can my current fully funded \$10,000.00 bond be transferred to a TIA \$100,000.00 bond? If so is it a complicated process? **Yes it may be transferred. A Performance Certified \$100,000 application will need to be submitted. There is a process that will need to be completed. Contact Nancy O'Liddy at [oliddy@tianet.org](mailto:oliddy@tianet.org) or 703-299-5711 for assistance.**
73. Does TIA have a conflict of interest to make more money from this legislation? **TIA is the only organization run by brokers for brokers. TIA did not agree to work with OOIDA to benefit the TIA Performance Certified program, but to seek solutions to common problems.**
74. Is TIA Performance Certification Program profiting from this? **TIA did not agree to work with OOIDA to benefit the TIA Performance Certified program, but to seek solutions to common problems.**

## **BOND COMPANIES AND INSURANCE QUESTIONS**

75. Regarding insurance requirements, is the E&O absolutely necessary to qualify for the increased bond? **E&O is not absolutely necessary. We suggest having E&O because it provides the best protection for you and your company. One of our members moved a load of pressure sensitive potato chips. The member knew the potato chips could not be routed above a certain altitude, but the dispatcher put them on the wrong western railroad -- \$60,000 worth of potato chips exploded and it was the broker's fault. The member's E&O policy covered the mistake. Another member was called in at the last minute on an international move. The member was called in to move a piece of expensive electronics by truck when the cargo could not move by air due to a snowstorm. Before our member's brokered truck got to the freight, the freight was placed in the snow – not our member's fault, but \$1.5 million in legal fees later, the member was dismissed from the case; his E&O covered the legal fees. We never know what is going to happen; insurance helps us sleep at night. Can you qualify without E&O, sure, but under our system, you will need more cash to cover the unexpected.**
76. Do you have the name of all the contacts for all bonding companies writing truck brokers? **No. There are too many and new ones pop up almost daily.**
77. What are the requirements for smaller brokers that do not have sufficient assets? **We don't know yet. We know the TIA Performance Certified requirements, and by design, they are strict. It is probably safe to assume that our requirements may be the strictest in the market. TIA is working on a solution to offer the bond in a different manner that will be less expensive.**
78. How is the broker trust company going to be audited, who is going to regulate that they handle the proposed changes properly? **An audit is a very specific process conducted by Certified Public Accountants. If the trust company does not meet the requirements, TIA and other organizations will work with DOT to shut them down.**
79. Is the insurance available exclusively or can any insurance agent or TIA member access? **TIA's underwriters will accept most insurance products; the insurance does not have to be issued by TIA's underwriter. Under the TIA Performance Certified program, which is a very strict program, the underwriter does not give credit for follow form contingent cargo, since follow form policies provide no protection to the broker or shipper.**
80. What about the change requiring non-payment claims to be paid after a reasonable time? (Even if contested)? **Brokers have always been able to contest claims against their bond. Some bond companies are better at addressing these challenges than others. But, it has always been up to the bond company to make the final determination. The legislation will not change that, but it will add requirements that the bond company not duck and dodge, but issue a decision. What we were told by OOIDA is that some broker trust companies never answer the carrier's claim.**
81. Does hired/non-owned auto coverage suffice as contingent auto? **I believe so.**

82. Why would the bond not follow a similar path as our taxes, insurance & UCR. We pay on size and or gross receipts & not a one size fits all. Billion dollar broker pays for the same bond as a million dollar broker??  
There are many answers. Who would enforce the requirement? DOT? The problems now are that DOT doesn't enforce anything. Even if DOT would enforce a variable bond, you would have to provide financial reports to DOT to prove your bond level; and this is something TIA policy opposes. Finally, how would you enforce a variable bond against a rogue operator?
83. What percentage of brokers have the contingent auto liability policy? We don't know. But, the awards in lawsuits associated with carrier accidents will attract even more trial lawyers to initiate even more lawsuits. Contingent auto liability insurance can protect your family business should the unthinkable happen.
84. Will you be required to maintain a \$10,000.00 cash balance with the surety/bond company in addition to the annual fees? The legislation as written requires \$10,000 in cash and a \$90,000 bond or trust instrument. Each company offering the surety will determine its own fees and requirements.
85. Would having a line of credit offset need for cash on hand? We don't know. If the legislation becomes law, it will be up to the Surety Company and DOT to determine.
86. E&O, what is the additional cost of this added on to a brokerage insurance policy? It will depend on what company you get it from.
87. This sounds like an insurance agents dream? Do we have a TIA connection for insurance providers? TIA has many insurance company associates that can help you with your risk management. See the website for a list of these associates. [www.tianet.org](http://www.tianet.org)
88. BMC-32 is scheduled to be eliminated on 3-21-11...comments?...in regard to this proposed legislation? TIA and many shipper groups believe this is a bad decision, and will work to overturn it.
89. What are the proposed changes to the BMC-32? FMCSA issued a decision recently to eliminate the BMC-32 requirement and the carrier insurance requirement. TIA and shipper groups object to this decision, and will seek to overturn it
90. How difficult will it be to get our \$10,000 from the trust company? How long will they hold it? Can you help in the process of change from a truck company to the TIA trust? It depends on the trust company. Yes, TIA can help you.
91. Can a broker put \$100,000 into trust? That will probably be an option that some surety companies offer.
92. My experience with E&O is you have to also buy contingent cargo with it which, together, is very expensive. You are correct that most current companies that offer E&O for brokers bundle it with other insurance. This insurance is designed to mitigate your risk. It is your decision to make the cost – benefit decision.
93. How would a start-up broker get such coverage? If the legislation becomes law, we don't know what the requirements each bond company will require. The proposed legislation borrows heavily from the Federal Maritime commission requirements for ocean intermediaries, and those regulations have not had a dampening effect on new entrants.

94. How would trust companies be more responsible? The legislation will mostly affect trust companies. Today, some of these companies say a broker has a \$10,000 surety, but when the broker fails, the trust company claims not to have any money to pay claims; the legislation would require them to pay \$100K. The legislation would also require the companies to pay claims on a pro-rata basis so that every carrier gets something. The legislation would require the company to post its payment schedule to carriers on its website so that the carriers can see which companies were paid. Finally, the legislation would require surety companies to be audited and make those audits public. These regulations will bring an end to fraudulent bonding companies in the transportation industry
95. Who bonds the bonding company? Oasis seemed to have a free ride. The Department of the Treasury regulates a true bond company. Companies like Oasis operated as a trust company registered under California state law. The new legislation, if it becomes law, will place new requirements on companies like Oasis that issue trust forms.
96. Please comment on unfunded bonds and success we have already seen (Oasis)? Oasis Capital was a trust company that lost its California license. TIA petitioned FMCSA to revoke their ability to issue broker trusts. A group organized by a TIA member attorney is now organizing a class action lawsuit against Oasis to help brokers get their trust funds back.
97. Why not outlaw trust accounts? That is a simple answer, but well run trust funds have been essential to brokers during years when insurance companies have withdrawn from the bond market.
98. What happens to the current bond we already have? If the legislation becomes law, and after the phase in period, your current bond will have to be replaced or upgraded.
99. If a company has \$10K bond in place already, what are options on upgrading to the \$100K bond? It will be up to your bonding company if the legislation becomes law.
100. Is Great American bonding company committed to following language & requirements of proposed legislation? We're hearing some bonding companies have concerns with the language and may pull out of the market. Great American Alliance Insurance Company is presently who Avalon has chosen to be their underwriting partner in the \$100,000 bond/surety. Avalon is committed to working with TIA to make sure that we are in compliance.
101. If you are currently a BMC-85 holder, will this new bill require you to change your surety bond? If the legislation becomes law, you will need to upgrade your current bond.
102. What is the verification process to ensure that bonds are valid and up to date? A: Currently there is none, and no enforcement of the current rules. The legislation would change the regulation to law and make it easier to enforce in court if need be.

#### **PRESENT LAW 49 CFR 371.3 QUESTIONS**

103. Aren't brokers already required to disclose margins in regs? The regulations at 49 CFR 371.3 require brokers to ... The difference between the current requirement and that proposed in the TRUCC Act is that under the regulations your disclosure is private, the TRUCC Act would have required you to post your margins on every invoice.
104. So we are supposed to make our sub contractors aware of our profit margin? Under 49 CFR 371.3, the parties to the transaction is able to see the details of the transaction. It is up to you to decide who the parties to the transaction are.

105. When did that start? We pass on 100% fuel, straight through to the underlying carrier...but we do not and have not in the past, made our sub contractors aware of our profit margin. Can you explain further, I didn't understand the explanation you just gave? 49 CFR 371.3 dates back to the 1980's and requires brokers to (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. This is different than disclosing your margins on every invoice as OOIDA previously requested from Congress.

106. By regulation NOW you are required to separate brokerage and non-brokerage accounting. Yes, but the difference is current regulation is private and must be made available only upon request to the parties involved, not put on every invoice as proposed by legislation in the last Congress.

## FRAUD QUESTIONS

107. If a carrier does not broker loads, will the carrier be required to purchase the bond in case they might broker?

A: If a carrier brokers, they are a broker and the Snowe legislation makes this clear. Yes, they will need to comply with the broker regulations if they broker freight. A broker that owns a truck, even if it only moves one load a year, must comply with the trucking regulations.

108. Can you please better explain how this will protect brokers from fraud? TIA and OOIDA believe that by linking authority to a qualified individual that must meet specific requirements that it will be easier to track those people that come in and out of the business today. We also believe that by specifying that carriers that put freight on another company's truck are engaging in brokerage and must meet the broker requirements or face unlimited liability, that the incidence of unauthorized re-brokering will be reduced. Finally, by cracking down on the rogue broker trust companies, these companies will be more careful to whom they issue trusts, and this will reduce the incidence of fraud.

109. How will this legislation effectively fight the fraud of double brokering of loads where the middle broker has no intention of paying the carrier that hauled the load? The middle broker will have to have the higher bond, and by placing strict new requirements on the broker trust companies, it will be difficult for rogue brokers to get their bond. By linking a qualified individual to the authority will make it easier to track the bad guys. Finally, a company that brokers without authority and bond would face unlimited liability – even to their personal assets – if they broker; this will create a larger pool of money for the affected carriers to go after in court.

110. How sure are you that double brokering will cease? My opinion is that if someone is going to commit fraud, they will do it regardless of regulations and law. You are right, someone seeking to break the law, will. The legislation, if it becomes law, will give us more tools for identifying and tracking the bad guys; and new tools to go after them when they are caught.

111. Who will we report fraud issues to? The same entities that you do today, the various reporting services. The difference will be the ability to track a qualified individual.

112. How can the carriers be effectively managed from double brokering freight. Will this bonding effort help prevent that? TIA's model contract has many provisions in it to address the issue of carriers that perform un-authorized re-brokering. Another effective method is not to offer advances to carriers that have not hauled for you a set number of times before. Utilizing services like TIA Watchdog® on every load is essential.
113. I'm interested in how this bill changes the legality of carriers re-brokering freight or using another carrier to move freight? The legislation would make it very clear that a carrier putting freight on another carrier is engaging in brokerage.
114. I hear from carriers all the time that they are not re-brokering loads but re-assigning them to owner operators, will there be anything in the new bill addressing this type of situation? The legislation makes it very clear that a carrier putting freight on another carrier is engaging in brokerage. If they do not get a bond or license, they would face unlimited liability for payments.
115. Re: carriers or a 3pl having unlimited liability for unauthorized brokerage - wouldn't there be more teeth to legislation which includes enforceable fines for the illegal activity of un-bonded / unlicensed brokering? Fines are an idea that has come up several times and will be discussed.
116. The act does not prohibit "re-brokering" as long as broker is registered and has bond on file....why not add section that prohibits rebrokering unless broker has prior written consent? This was considered, but too many members engage in agreed to re-brokering for cross border, specialized carriage, intermodal moves, etc.
117. How will we stop fraud if the 10k bond is only required for small brokers / new startups...new startups are generally the source of fraudulent brokers? If the legislation becomes law, the \$100K bond would be required of everyone.
118. How will it deal with the fraudulent companies that are registering as Motor Carriers, because they have 1 truck, but are actually double brokering freight? The legislation makes clear that a carrier needs separate broker authority and bond to put freight on another carrier, the legislation also would require the company to provide an authority number under which it was accepting the load – if as a carrier, than the carrier number, and that number governs, finally, the legislation provides for unlimited liability for payment if the company brokers without a license or bond.
119. Please discuss how fraudulent bonding companies will be tied down? The legislation will mostly affect trust companies. Today, some of these companies say a broker has a \$10,000 surety, but when the broker fails, the trust company claims not to have any money to pay claims; the legislation would require them to pay \$100K. The legislation would also require the companies to pay claims on a pro-rata basis so that every carrier gets something. The legislation would require the company to post its payment schedule to carriers on its website so that the carriers can see which companies were paid. Finally, the legislation would require surety companies to be audited and make those audits public. These regulations will bring an end to fraudulent bonding companies in the transportation industry.
120. How do we report the folks that re-broker that do not have broker authority? As a TIA member, you can report the company to TIA Watchdog®. You can also report them to other carrier monitoring services and, of course, to the freight boards.
121. So a carrier can re broker our load and long as they pay the carrier, there is no enforcement? Under current regulations, a carrier needs broker authority to broker freight. Unfortunately, DOT does not have the enforcement staff to enforce the regulations. So, you must rely on TIA Watchdog® and other such services.
122. Could TIA put together a more pro-active board of questionable brokers that members could look at to make sure they are doing business with good players? The Board is currently examining this idea.

123. Will carriers that broker be required to disclose to shipper that a load would be brokered? How is this going to help the carriers with poor business practices, those that don't check credit, don't get authority or copies of the bond now? **The legislation, if it becomes law, would clarify that a carrier needs separate broker authority and bond to engage in brokerage. We believe the requirements in the legislation will reduce the incidence of un-authorized re-brokerage by carriers.**
124. How do they suggest that they will catch the carriers that are brokering without a bond? **TIA continues to work with regulatory bodies and Congress on this issue and will continue to find ways to weed out the bad players.**
125. We thoroughly check out new carriers & still are burned by carriers who send someone else in for the load! Everywhere where we catch it I hold the paperwork & refuse to make payment to the carrier the load was booked with until they can provide us proof that they have paid the carrier who actually did the work as a safeguard to protect our company. Then the carrier is placed upon our do not use list. Perhaps if more brokers took this stand the carriers would take the hint. **AMEN!**
126. Will this be controlled through the court system or is there an agency that will enforce the legislation? **DOT should enforce the regulations, but if enacted, the legislation would also allow companies to go directly to court to enforce provisions of the act.**
127. The criminals will just figure out a way around the new rules and the small and medium broker will bear the brunt of the new government regulations. There are very few instances where increased government regulation solved anything while imposing a greater burden on small business. **You are right, someone seeking to break the law, will. The legislation, if it becomes law, will give us more tools for identifying and tracking the bad guys; and new tools to go after them when they are caught.**
128. Who will be in charge of enforcing it? What about interstate shipments? **All shipments covered by the proposed legislation are interstate. DOT should enforce the regulations, but by putting the requirements in law, any company will be able to enforce the provisions in court.**
129. With the new changes in Washington will this improve the TIA Watchdog and other carrier monitoring service to be able monitoring of bad carriers to help us be able to avoid these types of companies? **We believe that by tying authority to a qualified individual it will make it easier to track the bad guys. Also, by clarifying that carriers need broker authority to put freight on another carrier, it will help fight the incidence of un-authorized re-brokerage.**
130. Getting a judgment and collecting any money is two different things. We screen every carrier we use and they have to meet certain requirements before we will load them. Why do we, reputable brokers have to add operating expenses because some carriers do not do their due diligence with regard to who they contract with? **Yes, carriers should do their due diligence. The current mood in Washington, however, is that companies that handle other people's money must step up their protection of that money. This is a natural (over) reaction to the crisis on Wall Street.**
131. Will this change in Washington help cut down on double brokering of loads by Canadian carriers? **We believe it will.**
132. Will there be a way to report carriers who are brokering without a license? Will there be any enforcement? **You can use TIA Watchdog® and other reporting services now. Unfortunately, there is no enforcement by DOT. If the legislation becomes law, it will be easier to sue carriers in court.**
133. Will there be any penalties against carriers who re-broker freight be written into this legislation beyond civil such as lost of authority & being barred from industry? **We are looking at strengthening these provisions.**

## CREDIT QUESTIONS

134. How will TIA get credit on brokers for bonds? TIA uses TransCredit or if a member has proof from another credit reporting organization that is known in the industry for broker credit.
135. How will TIA help me get my financial house in order? TIA will provide you with tools and information to help you get your own financial house in order. Just like our personal credit scores matter, so too does your business credit score matter. For brokers, it is essential that you maintain excellent credit.
136. If 1st Advantage is a preferred credit reporting service, we're all in trouble because they use Experian and it's practically impossible to get a human being to address mistakes on the report. It seems that most brokers have low Experian scores. What do you suggest to help in this regard? TIA uses TransCredit or if a member has proof from another crediting organization that is known in the industry for broker credit.
137. For newer brokerages.. What is the best way to increase our credit score? The best way to increase your credit score is to make sure that carriers are paid quickly. Your transportation credit score is based on how quickly you pay the carrier. Remember, the carrier usually counts 30 days from the time he prepares the invoice, not when you receive it.

## QUALIFIED INDIVIDUAL QUESTION

138. Corporate officer training or experience. Can you address how this comes into play, to show your qualified in our industry, and what documentation that might entail? This idea is borrowed from the Federal Maritime Commission licensing procedures. Under the FMC rules, someone seeking an ocean transportation intermediary license must have a qualified individual as an officer and register that qualified individual with the agency. As drafted, the Snowe legislation would impose this requirement after a phase in period. If you are currently operating in the industry, even if the legislation were to pass this year, you would have the requisite three years experience by the time the rule would apply. The important thing about this provision is that it ties authority to a traceable individual, which will limit the ability of churners to come in and out of the market.
139. With it being a qualified individual having authority - what happens to a company when that person retires or passes? Since the concept is borrowed from the Federal Maritime Commission, it is informative to look how they address this issue. When a qualified individual leaves the employ of a company, that company must replace the qualified individual.
140. How can they possibly police the experience requirement? This is borrowed from the Federal Maritime Commission, and it works quite well.
141. Can you elaborate on the 3 year experience requirement for brokers? This is borrowed from the Federal Maritime Commission, and it requires a company seeking authority to have someone with at least three years of experience as an officer of the company.
142. Having authority tied to an individual is still a problem. What would stop a bad broker from just using one of his many "partners" as the principal of the new entity? If he has 20 bad friends, he could get away with it 20 times. You're right, but eventually he will run out of friends. Today, there is no way of tracking the creeps.
143. Will the new legislation also tie the name back to a motor carrier's authority or is this just for broker? TIA seeks to expand the requirement to carriers and surety companies that issue trust documents.

144. Is verifying 3 years experience realistic? Who will do this? This idea is borrowed from the Federal Maritime Commission licensing procedures. Under the FMC rules, someone seeking an ocean transportation intermediary license must have a qualified individual as an officer and register that qualified individual with the agency. As drafted, the Snowe legislation would impose this requirement after a phase in period. If you are currently operating in the industry, even if the legislation were to pass this year, you would have the requisite three years experience by the time the rule would apply. The important thing about this provision is that it ties authority to a traceable individual, which will limit the ability of churners to come in and out of the market.
145. Will existing property brokers need to re-apply for the qualifying individual requirement? This idea is borrowed from the Federal Maritime Commission licensing procedures. Under the FMC rules, someone seeking an ocean transportation intermediary license must have a qualified individual as an officer and register that qualified individual with the agency. As drafted, the Snowe legislation would impose this requirement after a phase in period. If you are currently operating in the industry, even if the legislation were to pass this year, you would have the requisite three years experience by the time the rule would apply. The important thing about this provision is that it ties authority to a traceable individual, which will limit the ability of churners to come in and out of the market.
146. When you mention that a new broker will have to have a "qualified" primary point person in order to get a license...what will those qualifications be? This idea is borrowed from the Federal Maritime Commission licensing procedures. Under the FMC rules, someone seeking an ocean transportation intermediary license must have a qualified individual as an officer and register that qualified individual with the agency. As drafted, the Snowe legislation would impose this requirement after a phase in period. If you are currently operating in the industry, even if the legislation were to pass this year, you would have the requisite three years experience by the time the rule would apply. The important thing about this provision is that it ties authority to a traceable individual, which will limit the ability of churners to come in and out of the market.