



TIA Petition for Rulemaking: Background & Talking Points

On November 25, 2020, the Federal Motor Carrier Safety Administration (FMCSA) published in the Federal Register TIA's Petition for Rulemaking and request for public comments in regard to eliminating 49 CFR 371.3(c) and requesting the agency to promulgate regulatory guidance on what constitutes a legal "dispatch service."

TIA firmly believes that transparency is provided through multiple other means in today's marketplace and regulation 371.3(c), which was written in 1980 is no longer needed nor applicable to today's supply chain needs. Additionally, there is a lack of clarity from the agency in terms of dispatch services and their role in the supply chain and regulatory authority. This lack of clarity has led to the systematic issue of unauthorized brokerage activities, which has created a public safety concern.

In the Federal Register, the FMCSA outlines seven questions that it would like interested parties to address. These would include:

- To what extent would brokers' disclosure of the records of individual transactions to individual motor carriers under 49 CFR 371.3(c) place brokers and their shipper clients at risk of having proprietary information concerning freight descriptions, transportation rates, and routes disclosed to their competitors?

- For authorized brokers, how often do motor carriers exercise their right under 49 CFR 371.3(c) to review the record of the transaction, and are there motor carriers who make requests on such a frequent basis that they could, if working with other motor carriers, learn certain proprietary information concerning shippers' rates and routes?

- In the absence of 49 CFR 371.3(c), what information concerning brokered transactions would authorized brokers share with the shippers and for-hire carriers?

- *To what extent do shippers engage in discussions with brokers about the rates the authorized motor carriers will be paid?*
- *How often do shippers enter into negotiations about interstate transportation services with an entity that is neither an interstate motor carrier registered with FMCSA nor a broker registered with FMCSA?*
- *Would the issuance of regulatory guidance concerning “dispatch services” provide an effective deterrent to unauthorized brokerage services, or would additional actions by FMCSA be required to address the challenges described by TIA?*
- *Is there sufficient clarity in the current definitions of “broker,” “bona fide agents,” and “brokerage or brokerage service” under 49 CFR 371.2 to enable interested parties to identify dispatch services that are actually carrying out the functions of a registered broker and to file a complaint with FMCSA for subsequent investigation?*

Draft Talking Points:

- *We support TIA’s Petitions for Rulemaking; Concerning Property Broker Transaction Records and Regulatory Guidance Concerning Dispatch Services. Today, forty years later, 49 CFR §371.3(c) is in direct conflict with the original intent of the ICC to ensure that “all unnecessary restrictions which might impede the free operation of the marketplace” are removed. In today’s marketplace brokers are not commissioned sales agents of motor carriers. Brokers pay motor carriers regardless of the rate that the shipper pays the broker. There are two separate transactions that take place between the shipper and the broker and the broker and the carrier. Due to the already transparent market, the need to verify commissions no longer exists and therefore, the regulation should be eliminated.*
- *We support TIA’s Petitions for Rulemaking; Concerning Property Broker Transaction Records and Regulatory Guidance Concerning Dispatch Services. Motor carrier transportation on the spot market is one of the most transparent marketplaces in the world. Load boards, online marketplaces and resources, and rate quotes via person to person communications within the industry provide the rate transparency that was intended by 49 CFR §371.3 when commissions paid by carriers to brokers were common. Motor carriers have sufficient access to current market rates without inspecting brokers’ shipment records to find out what the brokers’ gross margins are on a load-by-load basis.*

- We support TIA's Petitions for Rulemaking; Concerning Property Broker Transaction Records and Regulatory Guidance Concerning Dispatch Services. A clear analogy to the outdated provisions of part 371.3 can be made with the motor carrier cargo insurance filing that FMCSA dealt with in 2011. When FMCSA eliminated the requirement for carriers to file a minimum amount of cargo insurance on the BMC-32 form, the final rulemaking stated, "In summary, FMCSA does not believe it is necessary to mandate cargo insurance requirements for the benefit of most commercial shippers. Commercial shippers should be able to protect their own property loss and damage interests in the marketplace without continued FMCSA intervention." FMCSA continued further to state that, "The financial arrangements they elect to make with shippers are not a concern for the public, nor do they raise safety issues that might justify such Federal intervention."

- We support TIA's Petitions for Rulemaking; Concerning Property Broker Transaction Records and Regulatory Guidance Concerning Dispatch Services. There is currently a dangerous loophole in the transportation market of so-called "dispatch services" that are essentially unlicensed brokers. These services handle freight monies but do not meet the statutory licensing or financial security requirements. A legal dispatch service will provide a service on behalf of a motor carrier, where they assist in booking loads and other services for them. The dispatch service is paid a commission by the motor carrier for their services, not the model that generally applies to brokers, where the shipper pays the broker for their service and the broker pays the motor carrier. We believe there are many dispatch services that are operating unlawfully as illicit unlicensed brokers under the guise of "dispatch services." FMCSA should prohibit and enforce penalties against these companies from offering such a service without a license.

How to File Comments:

To file your comments, [click here](#). Once on the page click the "Comment Now" button. Enter your comment or attach a document. Enter your contact information and hit submit.

Please feel free to send TIA Government Affairs your comments in advance if need be at Advocacy@tianet.org.