



**CONFERENCE: AGRICULTURAL AND FOOD TRANSPORTERS**

CHAIR Mike Miller, Miller Trucking, Ltd. La Crosse, KS 785-222-3170  
VICE CHAIR Brian Hitchcock, MBH Trucking, LLC. Webberville, MI 517-521-2124  
ATA STAFF Jon Samson, Executive Director 703-838-7955

**AGENDA**

**Meeting Date: Saturday, May 6th**  
**Time: 8:00 – 9:15 AM**  
**Place: Hollywood, FL**

1. Welcome & Self-Introductions
2. Antitrust Guideline Review
3. AFTC Business Meeting
  - a) Approval of minutes from fall board meeting
4. Issue Updates
  - a) NTSB board meeting on milk hauler crash (2017) via HOS ag exemption
    - i. Daily driver - revisit
  - b) Broker bond/sub-contractor reply from FMCSA
  - c) Supply chain efforts
    - i. Ocean shipping reform act (OSRA) implementation– (Eisen)
    - ii. Detention and demurrage charge changes
    - iii. Chassis case update
  - d) Highway/Infrastructure bill
    - i. Hill overview (Will Sehestedt)
    - ii. Ship It Act (including weight increase and HOS exemption extension)
5. New or Other Business
  - a) Axle weight tolerance (NTTC)
  - b) Speed limiter working group – on hold
  - c) Board management and nomination committee

Adjourn Meeting

## **American Trucking Associations ANTITRUST GUIDELINES**

All ATA meetings are held in strict compliance with federal and state antitrust laws and ATA's antitrust compliance policies, which prohibit exchanging information among competitors about purchase or sales prices, refusals to deal with customers or suppliers, dividing up markets or customers, tying the sale of one product to another, and other topics that might infringe upon antitrust regulations.

**For the Diesel Fuel Strategies Workshop, June 19, 2008, the following specific additional guidelines apply:**

- No discussion about fuel surcharges, including the need for them, possible methodologies to calculate them, or specific levels.
- No discussion about prices to be charged to shippers or other customers, relating to fuel or otherwise.
- No discussion about specific suppliers of fuel or operators of truck stops.
- No discussion of specific companies' plans for responding to higher fuel costs. General ideas about strategies may be discussed.
- No agreement or invitations to agree on any of these topics.

These rules apply not only in the general sessions, but also during informal discussions in hallways and at lunch or coffee breaks. ATA staff will monitor the meeting, but for the protection of all attendees it is vital that everyone keep these rules in mind throughout the workshop.

To minimize the possibility of antitrust problems, the following guidelines should be followed at all meetings of ATA boards and committees and all ATA-sponsored conventions, trade shows, training seminars, best-practices discussions, conferences, colloquiums, and task force and working group sessions.

### **Procedures for Meetings**

1. Meetings should be held only when there are proper items of substance to be discussed which justify a meeting.
2. In advance of every meeting, a notice of meeting, along with an agenda, should be sent to each member of the group. The agenda should be specific and such broad topics as "marketing practices" should be avoided. An ATA Law Department attorney must review all agendas before they are sent to meeting participants.
3. Participants at the meeting should adhere strictly to the agenda. In general, subjects not included on the agenda should not be considered at the meeting.
4. If a member brings up a subject of doubtful legality for discussion at a meeting, he or she should be told immediately the subject is not a proper one for discussion. The ATA staff representative or any member present who is aware of the legal implications of a discussion of the subject should attempt to halt the discussion. If the subjects of prices, costs, or other competitive practices are raised by others at the meeting, you must disassociate yourself unequivocally from the discussion. If necessary, you must leave or halt the meeting.
5. Minutes of all meetings should be kept by ATA. An ATA Law Department attorney should review draft meeting minutes before they are distributed to meeting participants. Minutes should summarize accurately the actions taken at meetings, if any. Minutes should not contain comments made by particular meeting participants because of the potential for incompleteness or inaccuracy in attempting to report precise remarks.
6. An ATA attorney or other staff member should attend all meetings. During any discussion between meeting participants that occur outside the formal meeting, the guidelines contained in the next section – "Topics to Avoid at Meetings" – must be followed.

(over)

7. Members should not be coerced in any way into taking part in ATA activities.
8. It is essential that members cooperate with ATA counsel, particularly when counsel has ruled adversely about a particular activity or topic of discussion.

### **Topics to Avoid at Meetings**

The following topics are some of the main ones that should not be discussed at meetings attended by ATA members or staff, including meetings or other gatherings sponsored by organizations independent of ATA:

1. Current or future prices of competitors.
2. Matters related to prices, such as discounts, credit terms, profit levels, or volume of production or service.
3. Wage and salary rates, equipment prices, or other actual costs of individual companies, since these costs are an element of price.
4. Dividing up, allocating, or rationalizing markets, bids, geographic areas, types of business, or customers among competitors.
5. Refusals to deal with suppliers, customers, or other competitors. For example, if a group of motor carriers were to agree to boycott a supplier of diesel fuel for the purpose of forcing that supplier to lower its prices, such an agreement could run afoul of the antitrust laws. Critiques of supplier products or customer practices can also raise the danger of being construed as an unlawful group boycott, and should be conducted only after consultation with counsel. Such discussions may be permissible where efficiencies will be achieved through the exchange of ideas and where precautions are taken to avoid the inference of an agreement to deal with suppliers or customers only on certain terms.

### **“Best Practices” Discussions**

The following guidelines should be applied to any “best practices” discussion:

1. All industry practices discussed should involve an attempt to reduce costs or realize some other efficiency. Discussions should be limited to what is reasonably necessary to accomplish these legitimate goals.
2. As in other areas of ATA activity, price and other competitively sensitive terms of trade should not be discussed in the “best practices” context. Specific present or future competitive plans and strategies of individual companies should not be discussed. Nor should specific customer information or specific companies’ costs.
3. In discussing “best practices,” no agreement should be reached to use a particular practice, to deal with suppliers or customers on particular terms, or to exclude a member or other competitor for using a different practice.
4. To the extent possible, technical personnel of member companies, rather than marketing personnel, should be used to conduct “best practices” discussions.
5. Prior to a “best practices” discussion, an agenda should be prepared and reviewed by counsel. Minutes should be kept of all meetings at which “best practices” are discussed. Should questions arise about the propriety of a “best practices” discussion, the discussion should be discontinued until counsel can be consulted.

**If you have questions, please call the ATA Law Department at (703) 838-1865.**



## REPORT OF THE AGRICULTURAL AND FOOD TRANSPORTERS CONFERENCE OF AMERICAN TRUCKING ASSOCIATIONS

CHAIRMAN: Mike Miller, Miller Trucking, Ltd. La Crosse, KS 785-222-3170  
VICE CHAIRMAN: Brian Hitchcock, MBH Trucking, LLC. Webberville, MI 517-521-2124 (absent)  
ATA STAFF LIASON: Jon Samson, Executive Director 703-838-7955

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The Board met in San Diego, CA on October 23, 2022. Chairman Mike Miller presided over the meeting. The meeting was called to order and anti-trust guidelines were reviewed. Conference members, guests and ATA staff introduced themselves. A quorum having been established, the minutes from the Spring Board meeting were approved. The committee proceeded with the remainder of its agenda.

**Subcontracting** – Samson overviewed recent comments submitted to FMCSA regarding the broker definition. AFTC argued that carriers who subcontract freight are not brokers and should not be treated as such. We support the current definition of a broker which expressly states a motor carrier is not a broker if they contract with other carriers, and FMCSA should recognize the distinction between third party logistics brokers and carriers who subcontract to other carriers. We hope to have an answer back from FMCSA by November 15 of this year.

**OSRA** – IMCC Exec Director, Jon Eisen, provided an update on the Ocean Shipping Reform Act (OSRA) and its implementation. Eisen outlined a provision that targets the return of empty containers, pressuring the ship lines to transport exported commodities. He also highlighted a recent FMC proposal that would change the way detention and demurrage is billed, putting the transaction in the hands of the shippers and the ocean lines, and eliminating the carrier from the equation. AFTC pledged to support IMCC in submitting comments.

**Capitol Hill Update** – Henry Hanscom provided additional background on OSRA and provided a more in-depth view of the political landscape for the rest of the year. He overviewed the highlights/wins ATA has accomplished over the past year and overviewed a current effort to eliminate the ELDT rules. This issue remains fluid and updates will be provided as the situation moves forward.

**Other Issues** – Brief updates were given on the ongoing speed limiter discussion, ELDT implementation and the removal of the vax mandate by Canada. Additionally, it was the sense of the members that we actively engage and support ongoing weight increase initiatives, holding a vote on our position until a more specific proposal is provided. Lastly, the board requested updates provided on pre-2000 ELD mandates as FMCSA works to close certain loopholes.

The Chairman asked for volunteers to stand up a Board nominating committee to update AFTC's current board member list and John Whittington, Jason Hammes, Mike Miller and Deb Stone volunteered to serve on that committee. He then recognized retiring KMCA President, Mr. Tom Whitaker, who is attending his last MC&E, and AFTC thanked him for all his work and participation over the years.

Having exhausted the time available, the chairman entertained a motion to adjourn at 11:05 am.

Respectfully submitted,  
Jon Samson  
AFTC Executive Director

Hi All— (Dan H)

Yesterday, the safety team listened to the NTSB board meeting on the Arizona Milk tanker crash. I wanted to flag a few points that were raised, as I do think we'll see some spotlight on issues related to detention, pay, and the ag commodities exemption, and hours of service. The NTSB report will be finalized in a few weeks.

- Company was Arizona Milk Transport (AMT)
- Driver was working maximum hours
  - 83 hours one week
  - 77 hours another
- The hours the driver reported on record-of-duty status and other timecards were different (less) than his actual driving and working hours
- Truck had inward and outward facing camera
  - AMT criticized because the company did not regularly address safety concerns identified on the drive cam.
    - For instance, drive cam footage from other drivers showed drivers engaged in “events” that should have necessitated coaching. Coaching did not take place.
- Issues of Detention Time discussed as a deterrent to safety
- Issues of pay-by-miles, pay by load, and pay by hours discussed as a deterrent to safety
  - AMT paid “per load”. NTSB cited it incentivized drivers to do more. This particular driver was doing a “third trip” as compared to two trips that many others did.
- V2X was discussed, and FCC criticized for narrowing safety spectrum
- AMT had many policies in place, but appears they were not enforced
- Agriculture Commodity Exemption discussed at length
  - NTSB Chairman: “why does it matter what’s in the back of the truck” to determine what hours you can drive
  - FMCSA does not know how many carriers/drivers are running under the ag exemption. They are apparently required to know this under a 1995 ruling (looking into this).
  - NTSB recommending to DOT to start tracking ag commodity exemption use and crashes
  - IIJA changes that allow 150 air-mile radius on the back end were strongly scrutinized

NTSB did clarify that they do not have appropriate data to determine *IF* the Ag exemption should go away.

**NATIONAL TRANSPORTATION SAFETY BOARD**  
**Virtual Meeting of March 28, 2023**  
**(Information subject to editing)**

***Multivehicle Collision Involving a Milk Tank Combination Vehicle and Stopped Traffic Queue, Phoenix, Arizona, June 9, 2021***

This is a synopsis from the NTSB's report and does not include the Board's rationale for the findings, probable cause, and safety recommendations. NTSB staff is currently making final revisions to the report from which the attached findings and safety recommendations have been extracted. The final report and pertinent safety recommendation letters will be distributed to recommendation recipients as soon as possible. The attached information is subject to further review and editing to reflect changes adopted during the Board meeting.

**Executive Summary**

**What Happened**

On the evening of June 9, 2021, a truck-tractor in combination with a tank-trailer hauling milk, operated by Arizona Milk Transport (AMT), was traveling eastbound on SR-202 in Phoenix, Arizona, when it crashed into a queue of passenger vehicles that were stopped due to a road closure. The truck driver did not slow down or steer away as he approached the traffic queue at a speed of 62-64 mph. The combination vehicle struck and partially overrode the car at the end of the traffic queue, initiating a series of chain-reaction collisions that involved six other passenger vehicles. Following the initial impacts, the combination vehicle crossed the eastbound travel lanes, struck the concrete median barrier and separated, and the truck-tractor and one passenger vehicle were consumed by fire. Four passenger vehicle occupants died and 11 occupants were injured; the truck driver was uninjured.

**What We Found**

The video footage from the inward-facing camera of the commercial vehicle's driver monitoring system showed the truck driver facing forward for 8 seconds before the crash but showed no visible indication that he was aware that the combination vehicle was rapidly approaching the fully conspicuous traffic queue. Based on this video footage, the truck driver was not distracted by an external source, and toxicology testing showed that he was not impaired. Based on the interview with the truck driver and the examination of his phone and work records, he had about 5.5-6 hours of sleep opportunity on the day of the crash.

AMT operated under a federal agricultural hours-of-service (HOS) exemption, which allows unlimited driving hours within a 150 air-mile radius. AMT's safety culture

was inadequate; the carrier had no fatigue management program that would have reduced the risk of fatigued operation by its drivers. Moreover, the carrier's oversight of its drivers and enforcement of its own policies regarding the maximum daily and weekly on-duty hours was poor, as the crash-involved driver and several other examined drivers regularly violated those policies.

The federal HOS exemption is granted by statute for transportation of livestock and certain perishable commodities, including milk. Because motor carriers that operate under an agricultural HOS exemption are not required to inform the Federal Motor Carrier Safety Administration when using the exemption, the agency does not have a mechanism to identify those carriers or maintain information about their crash rate.

We also found that, as a result of the Arizona Department of Transportation (ADOT) classifying the road closure as a low-priority event as opposed to a high-priority event, dynamic message signs in the area of the crash displayed alternating messages regarding the road closure and dynamic travel time.

In addition, several of the passenger vehicle occupants in the Phoenix crash were not wearing or were improperly restrained by the available lap/shoulder belts, which increased their risk of ejection and exacerbated their injuries.

We determined that the probable cause of this multivehicle crash was the truck driver's failure to respond to the fully conspicuous traffic queue, likely as the result of fatigue. Contributing to the crash was Arizona Milk Transport's (1) poor oversight of its drivers, (2) lack of fatigue management program, and (3) failure to enforce its own policies, such as those regarding on-duty hours—all a consequence of its inadequate safety culture. Contributing to the severity of injuries to several passenger vehicle occupants was their lack of or improper lap/shoulder belt use.

## **What We Recommended**

As a result of this investigation, we recommended that the US Department of Transportation (USDOT) develop and implement a program to determine the prevalence of for-hire motor carriers operating under agricultural HOS exemptions and study their safety performance, and to report the findings and any recommendations to improve safety to Congress. We further recommended that the USDOT require interstate motor carriers operating under an agricultural HOS exemption to implement a fatigue management program or, if necessary, seek congressional authority to do so.

We also recommended that ADOT revise its policies regarding dynamic message signs to classify single-direction road closures as high-priority messages.

Further, we recommended that AMT implement an improved coaching program to improve driving behavior; implement a process to improve adherence to

carrier policies, such as by verifying the accuracy of driver-reported duty hours and cross-referencing other information; and implement a fatigue management program.

To broaden industry awareness of this crash, its findings, and the risk of fatigue when operating beyond traditional HOS, we recommended that the International Dairy Food Association, the National Conference for Interstate Milk Shipments, and the International Milk Haulers Association inform their members about this crash and encourage motor carriers to establish a fatigue management program. We further recommended that the Commercial Vehicle Safety Alliance, in its promotion of the North American Fatigue Management Program, develop an outreach program focusing on motor carriers that operate under an agricultural HOS exemption.

We also reiterated several safety recommendations pertaining to implementing collision avoidance technologies and increasing the use of seat belts. First, we reiterated Safety Recommendation H-15-5 to the National Highway Traffic Safety Administration (NHTSA) to develop performance standards for forward collision avoidance systems in commercial vehicles. Also to NHTSA, we reiterated Safety Recommendations H-13-30 and -31 to develop performance standards and mandate connected vehicle technology on all new vehicles. Furthermore, we reiterated Safety Recommendation H-22-1 to the USDOT to develop a plan for nationwide deployment of connected vehicle technology, and Safety Recommendation H-22-6 to the Federal Communications Commission to protect communication between connected vehicle devices from harmful interference. We also changed the status of Safety Recommendations H-22-1 and -6 from Open–Await Response to Open–Unacceptable Response.

Finally, we reiterated Safety Recommendation H-15-42 to Arizona, the District of Columbia, and 37 other states to enact legislation that provides for primary enforcement of seat belt use law in all vehicles and all seating positions equipped with a restraint system.

## **Findings**

1. None of the following were factors in the crash: (1) the licensing or driving experience of the truck driver; (2) cell phone use, use of alcohol or other drugs, or medical conditions of the truck driver; (3) the mechanical condition of the combination vehicle or the passenger vehicles; and (4) highway design.
2. The emergency response was timely and adequate.
3. The truck driver's lack of avoidance response—evident in the vehicle data and video from the fleet management system—to the bright and conspicuous tail and brake lights of the vehicles in the traffic queue ahead was likely the result of fatigue.



4. Although Arizona Milk Transport equipped its vehicles with a fleet management and driving monitoring system, the carrier's implementation of the system—which includes coaching of drivers—was ineffective in improving the driving behavior of its drivers and in reducing violations of carrier safety policies.
5. Arizona Milk Transport's lack of oversight to ensure adherence to company policies allowed the crash-involved driver and other drivers to operate well beyond the carrier-allowable hours of operation.
6. By not having a fatigue management program and by not incorporating considerations for fatigue in its policies and monitoring mechanisms, Arizona Milk Transport failed to mitigate the risk of fatigue for its drivers who frequently operated beyond maximum hours-of-service limits for non-exempt carriers.
7. Drivers operating under an agricultural exemption, which allows them to operate beyond traditional hours-of-service limits, would be at greater risk of fatigued operation.
8. Motor carriers can considerably reduce fatigue-related crash risk and improve safety by implementing a fatigue management program.
9. Due to the limited oversight and lack of monitoring of motor carriers operating under an agricultural hours-of-service (HOS) exemption, the extent to which these motor carriers operate beyond traditional HOS limits—which can increase the risk of fatigued operation by drivers—is unclear.
10. By including a transportation safety component in the oversight of milk and dairy production and transportation, milk cooperatives and dairy-processing plants can mitigate the risk of fatigued driving.
11. The Commercial Vehicle Safety Alliance, as the operator of the North American Fatigue Management Program, can directly influence all motor carriers in reducing the risk of drivers operating while fatigued, including those that operate under an agricultural hours-of-service exemption.
12. Although the Arizona Department of Transportation Traffic Operations Center classification of the road closure message as low priority deemphasized the safety risk of the ongoing traffic incident, it is unlikely that the low-priority message level affected the truck driver's failure to notice the fully conspicuous traffic queue.
13. The use of lap/shoulder belts by the passenger vehicle occupants would have reduced serious and fatal injuries and the risk of ejection.

14. The use of a lap/shoulder belt without an appropriate child safety restraint system contributed to the injuries of the child occupant.
15. The speed differential in this crash was well outside the parameters of the National Highway Traffic Safety Administration's research test protocols for forward collision avoidance systems in heavy vehicles.
16. Had the truck-tractor and at least one of the vehicles in the traffic queue been equipped with vehicle-to-everything capabilities, the truck driver would have been alerted of the stopped traffic queue well in advance to take necessary action to prevent the crash from occurring or at least mitigate its severity.

## **Probable Cause**

The National Transportation Safety Board determines that the probable cause of the Phoenix, Arizona, multivehicle crash was the truck driver's failure to respond to the fully conspicuous traffic queue, likely as the result of fatigue. Contributing to the crash was Arizona Milk Transport's (1) poor oversight of its drivers, (2) lack of fatigue management program, and (3) failure to enforce its own policies, such as those regarding on-duty hours—all a consequence of its inadequate safety culture. Contributing to the severity of injuries to several passenger vehicle occupants was their lack of or improper lap/shoulder belt use.

## **Recommendations**

### **New Recommendations**

#### **To the US Department of Transportation:**

1. Develop and implement a program to determine the prevalence of for-hire motor carriers operating under an agricultural hours-of-service exemption and study their safety performance, including but not limited to (1) fatigue-related crashes, (2) risk of fatigued operation, and (3) adherence to fatigue management principles. Report the findings and any recommendations to improve safety to Congress, as expected in the National Highway System Designation Act, and make them publicly available. (H-23-X)
2. Require interstate motor carriers operating under an agricultural hours-of-service exemption to implement a fatigue management program or, if necessary, seek authority from Congress to do so. (H-23-X)

#### **To the Arizona Department of Transportation:**

3. Revise your dynamic message sign operational policies to classify single-direction road closures as high-priority messages. (H-23-X)

**To Arizona Milk Transport:**

4. Implement an improved coaching program as part of your fleet management and driving monitoring system that would improve driving behavior and reduce instances of violations of carrier safety policies. (H-23-X)
5. Implement a process to improve adherence to carrier policies and regularly verify the accuracy of drivers' reported hours of operation, such as by reviewing the drivers' records of duty status and cross-referencing other available information. (H-23-X)
6. Develop and implement a fatigue management program based on the North American Fatigue Management Program. (H-23-X)

**To the Commercial Vehicle Safety Alliance:**

7. As part of your promotion of the North American Fatigue Management Program, develop a dedicated outreach plan that focuses on motor carriers that operate under an agricultural hours-of-service exemption. (H-23-X)

**To the International Dairy Food Association and the National Conference for Interstate Milk Shipments:**

8. Inform your members of the circumstances of this crash and encourage those members that contract with motor carriers to request that the carriers implement a fatigue management program based on the North American Fatigue Management Program. (H-23-X)

**To the International Milk Haulers Association:**

9. Inform your members of the circumstances of this crash and encourage them to implement a fatigue management program based on the North American Fatigue Management Program. (H-23-X)

**Reiterated Recommendations****To the National Highway Traffic Safety Administration:**

Complete, as soon as possible, the development and application of performance standards and protocols for the assessment of forward collision avoidance systems in commercial vehicles. (H-15-5)

Develop minimum performance standards for connected vehicle technology for all highway vehicles. (H-13-30)

Once minimum performance standards for connected vehicle technology are developed, require this technology to be installed on all newly manufactured highway vehicles. (H-13-31)

**To the states of Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wyoming, and to the District of Columbia:**

Enact legislation that provides for primary enforcement of a mandatory seat belt use law for all vehicle seating positions equipped with a passenger restraint system. (H-15-42)

### **Reiterated and Classified Recommendations**

#### **To the US Department of Transportation:**

Implement a plan for nationwide connected vehicle technology deployment that (1) resolves issues related to interference from unlicensed devices, such as those that use wi-fi; (2) ensures sufficient spectrum necessary for advanced connected vehicle applications; and (3) defines communication protocols to be used in future connected vehicle deployment. (H-22-1)

This recommendation's classification is changed from Open–Await Response to Open–Unacceptable Response.

#### **To the Federal Communications Commission:**

Implement appropriate safeguards to protect vehicle-to-everything communications from harmful interference from unlicensed devices, such as those that use wi-fi. (H-22-6)

This recommendation's classification is changed from Open–Await Response to Open–Unacceptable Response.

## DAILY DRIVER WHITE PAPER - FINAL DRAFT

The Agricultural and Food Transporters Conference and (names of other groups) recommends that the United States Department of Transportation's (DOT) Federal Motor Carrier Safety Administration (FMCSA) adopt a special hours of service rule to meet the business needs of local and short haul truck drivers. These drivers operate from a home base, with regular schedules and are home each night. There is significant employer control and supervision of safety since the drivers report to and depart from an employers' facility each day. There exists, substantial evidence, in the U.S. DOT's proceedings to revise the hours of service proposal, demonstrating that these shorter haul truck drivers have a good safety record and that fatigue is not a safety problem.

This daily driver proposal builds upon the existing regulation which exempts home based drivers from driver log book requirements of 49.C.F.R. 395.8 and 395.11, a proposal based on the driver functioning in natural, commonsense settings, where they operate on a daily basis and on natural work-rest cycles. Moreover, while we recommend that no regulatory distinction be maintained between driving time within the total daily on-duty time of 14 hours, the nature of the work of these drivers results in a significant amount of their time being devoted to duties such as freight loading or unloading, securing and sealing loads, document preparation pre and post trip safety inspections, and stand-by at customer's facilities. It is important to also emphasize that these are maximum hours of operation and these drivers often complete their tasks in advance of the allotted time.

Daily drivers generally work only five days in a seven day period, however on occasion, during seasonal peak periods; additional day(s) may be required. Therefore, it may be necessary to establish a maximum or aggregate duty time for the driver, who in any industry segment, qualifies as a daily driver under the definition contained in this proposal.

The daily driver concept modernizes the existing 100 mile air radius rule (short haul), which is a distance based regulation, since in reality, the activities in the daily work place are time-based, time management sensitive, where fatigue management is critical. In many instances, many other necessary activities absorb more time in the workday than driving the truck.

The enforcement of the *daily driver proposal is simple. The burden of proof* is on the carrier and *the driver*. The carrier and the *driver must record* the starting time, stopping time and off-duty time or the carrier is out of compliance. The enforcement of this concept is easy as it is simple, straight forward, and easy to manage and negates the motivation to keep two log books, eliminates the possibility of mistakes differentiating between different types of duties, and eliminates ways violations may occur.

## Daily Driver specifics and proposed language

- 1) Modify current short haul regulations to allow a carrier to operate as he/she sees fit within a 14 hour window, while ensuring 10 hours of rest are taken at the end of 14 hours.
- 2) Carrier is exempted from 395.8 (records of on duty status) and 395.11 (supporting documents) when operating under the Daily Driver rule.
- 3) There would be no mileage restriction as long as the driver departs from and returns to the work reporting location and is released from work within 14 consecutive hours.
- 4) Driver allowed to operate any 6 out of 7 days, not to exceed 84 hours in a 7 day period.
- 5) The employer shall have to keep a record of the time and place where he/she reported for duty, the total number of hours worked, and the time he/she is released. These records must be retained for no less than 6 months.

40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

- This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

- Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 17, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 8, 2022.

**Meghan A. McCollister,**  
Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (d) is amended by adding an entry for "(37)" in numerical order to read as follows:

#### § 52.1320 Identification of plan.

*	*	*	*	*
(d)	*	*	*	*

#### EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit No.	State effective date	EPA approval date	Explanation
(37) Ameren Missouri—Sioux Energy Center.	Consent Agreement No. APCP-2021-018.	3/31/2022	11/16/2022, [insert <b>Federal Register</b> citation].	

\* \* \* \* \*

[FR Doc. 2022-24789 Filed 11-15-22; 8:45 am]

BILLING CODE 6560-50-P

#### DEPARTMENT OF TRANSPORTATION

#### Federal Motor Carrier Safety Administration

#### 49 CFR Part 371

[Docket No. FMCSA-2022-0134]

#### Definitions of Broker and Bona Fide Agents

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notification of interim guidance; request for comments.

**SUMMARY:** FMCSA is issuing this interim guidance to inform the public and regulated entities about FMCSA's interpretation of the definitions of "broker" and "bona fide agents" as it relates to all brokers of transportation by motor vehicle. FMCSA is taking this action to better define the terms in response to a mandate in the Infrastructure Investment and Jobs Act (IIJA). After consideration of public comments received, FMCSA is providing clarification on its interpretation of the definitions of "broker" and "bona fide agents," in addition to meeting other criteria

required by the IIJA. While this interim guidance is effective immediately, FMCSA is also seeking comments in response to this interim guidance and may issue updated guidance if comments demonstrate a need.

#### DATES:

*Effective date:* This updated guidance is effective November 16, 2022.

*Comment date:* Comments must be received on or before January 17, 2023.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Secrist, Registration, Licensing, and Insurance Division, Office of Registration and Safety Information, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, (202) 385-2367, [jeff.secrist@dot.gov](mailto:jeff.secrist@dot.gov). If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

### I. Public Participation and Request for Comments

#### A. Request for Public Comments

FMCSA requests public comment on its regulatory guidance and the factors the Agency will use in its interpretation of the definitions of “broker” and “bona fide agents.”

*Docket:* For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, DOT, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its guidance process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

#### B. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2022-0134), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA

recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2022-0134/document>, click on this notice, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

#### C. Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket for this notice. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this proceeding.

#### D. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2022-0134/document> and choose the document to review. To view comments, click this notice, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through

Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

#### E. Privacy Act

In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its decision-making process DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov). As described in the system of records notice DOT/ALL 14-FDMS, which can be reviewed at <https://www.transportation.gov/privacy>, the comments are searchable by the name of the submitter.

### II. Background

*Broker* is defined in 49 U.S.C. 13102(2) as a “person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.” It is also defined in 49 CFR 371.2(a) as a “person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.” In that same section, *bona fide agents* are defined as “persons who are part of the normal organization of a motor carrier and perform duties under the carrier’s directions pursuant to a preexisting agreement which provides for a continuing relationship, precluding the exercise of discretion on the part of the agent in allocating traffic between the carrier and others.” 49 CFR 371.2(b).

On November 15, 2021, the President signed the IIJA into law (Pub. L. 117-58, 135 Stat. 429). Section 23021 of the IIJA<sup>1</sup> directed the Secretary (FMCSA) to issue guidance, within one year of the date of enactment of the IIJA, clarifying the definitions of the terms “broker” and “bona fide agents” in 49 CFR 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

<sup>1</sup> The full text is available at [congress.gov/117/plaws/publ58/PLAW-117publ58.pdf](https://congress.gov/117/plaws/publ58/PLAW-117publ58.pdf).



agents, and other aspects of the freight transportation industry. Additionally, when issuing the guidance, FMCSA must, at a minimum: (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.<sup>2</sup>

In an effort to obtain and consider stakeholder input in the development of its guidance, FMCSA issued a **Federal Register** notice on June 10, 2022, seeking comment in 13 specific areas. 87 FR 35593.

#### Stakeholder Comments

FMCSA appreciates the robust response to our request for comment. Over 80 stakeholders filed comments in the public docket, including individuals, trade associations, brokers, and dispatch services.<sup>3</sup> While the Agency does not specifically reference all comments in this guidance, the Agency would like to assure stakeholders it has reviewed and considered all comments filed.

### III. Compliance With the IJA

#### A. Technology

As an initial matter, commenters were nearly unanimous that while technology has changed freight brokerage, such changes have not affected the fundamental nature of freight brokerage, nor are they relevant for the issuance of this guidance.<sup>4</sup> One commenter did note that the technological changes have exacerbated fraud problems.<sup>5</sup>

<sup>2</sup> Due to a statutory omission, FMCSA is unable to assess civil penalties for violations of 49 U.S.C. 14916 and may pursue such penalties only through the Department of Justice in federal court. Congress has indicated interest in FMCSA's statutory authority in a recent House Appropriations Committee Report.

<sup>3</sup> FMCSA appreciates commenters that provided submissions by the July 11 deadline for comment submission. A number of commenters submitted comments after the deadline. While FMCSA reminds stakeholders of the importance of submitting timely comments, in this particular proceeding, FMCSA will consider the late-filed comments in the interest of developing a complete record. While FMCSA accepted the comments in this proceeding, it may not consider late-filed comments in future proceedings.

<sup>4</sup> See comments of *Truckstop.com*, at 5; Mode Transportation (Mode), at 8; Transportation Intermediaries Association (TIA), at 10; National Industrial Transportation League (NITL), at 2; Small business in Transportation Coalition (SBTC), at 14; England Logistics (England), at 8; and Uship, at 3.

<sup>5</sup> See Comments of 13 stakeholders (13 Stakeholder comments), at 12–13. The 13 stakeholders include the Air & Expedited Motor Carriers Association, Airforwarders Association, Alliance for Safe, Efficient, and Competitive Truck Transportation (ASECTT), Auto Haulers

Accordingly, while the Agency recognizes that brokerage has changed immeasurably due to technology, including moving from a phone based system to one based on the internet, such changes do not impact the fundamental nature of brokerage, which involves arranging transportation for compensation, and hence do not have a significant impact on this guidance.

#### B. Bona Fide Agents

Stakeholders provided FMCSA with useful information on the role of bona fide agents. Commenters have described bona fide agents as advocates or a sales force for a single motor carrier,<sup>6</sup> an outside sales force that acquires freight for an employer,<sup>7</sup> a dispatch service used in lieu of motor carrier employees,<sup>8</sup> people who look for freight for a motor carrier,<sup>9</sup> a service that allows motor carriers to outsource operations instead of having employees handle them,<sup>10</sup> a sales force from acquired motor carriers that big motor carriers use,<sup>11</sup> and an operation where people work for one motor carrier and have no discretion to allocate traffic.<sup>12</sup> Based upon stakeholder comments, it appears that bona fide agents are generally considered individuals/entities that solicit business for a motor carrier.

#### C. Other Aspects of the Freight Transportation Industry

Finally, stakeholders provided input, albeit more limited, on other aspects of the freight transportation industry. A broker indicated that other aspects of the transportation industry do not need to be considered.<sup>13</sup> A managing general agency and program administrator for insurance companies focused on transportation indicated that FMCSA should issue guidance that is consistent with the Motor Carrier Safety Improvement Act of 1999 and the Moving Ahead for Progress in the 21st

Association of America, American Home Furnishings Alliance, Apex Capital Corp. National Association of Small Trucking Companies (NASTC), PFA Transportation Insurance & Surety Services, Sompo International, Transportation & Logistics Council, Specialized Furniture Carriers, The Expedite Association of North America, Transportation Loss Prevention and Security Association.

<sup>6</sup> See Mode comments, at 7.

<sup>7</sup> See comment of AWM Associates, LLC (AWM), at 4.

<sup>8</sup> See TIA comments, at 9.

<sup>9</sup> See comments of the Owner-Operator Independent Drivers Association (OOIDA), at 5.

<sup>10</sup> See comments of the Intermodal Association of North America (IANA), at 5.

<sup>11</sup> See 13 Stakeholder comments, at 10–11.

<sup>12</sup> See comments of the American Trucking Associations Moving and Storage Conference (MSC), at 5.

<sup>13</sup> See comments of Mode, at 8.

Century Act (MAP–21).<sup>14</sup> A truck safety advocacy group indicated that FMCSA must issue a clear definition of broker that enables enforcement.<sup>15</sup> And, a coalition of stakeholders noted the significant ramifications of being considered a broker or not.<sup>16</sup>

While stakeholders did not provide FMCSA with specific information related to the requirement that the Agency must consider “other aspects of the freight transportation industry” in issuing the guidance, FMCSA recognizes that its guidance is operating in a broader context and has impacts beyond the immediate focus of this guidance. In today's notice, FMCSA has worked to avoid creating unintended consequences, in issuing guidance on its interpretation of its regulations and related matters. While guidance may be relevant to stakeholder compliance with FMCSA's regulations, any changes to FMCSA's regulations and hence compliance responsibilities would need to be enacted in a separate rulemaking proceeding.<sup>17</sup>

### IV. Interim Guidance

With the aforementioned consideration of factors as background, FMCSA now turns to the core IJA mandate: the issuance of guidance pertaining to the definition of broker and bona fide agents, the examination of the role of dispatch services in the transportation industry, the extent to which dispatch services could be considered brokers or bona fide agents, and the level of financial penalties for unauthorized brokerage activities under 49 U.S.C. 14916 applicable to a dispatch service. This document does not have the force and effect of law and is not meant to bind the public in any way, and the document is intended only to provide information to the public regarding existing requirements under the law or agency policies

#### A. Definition of Broker

While FMCSA is unable to change the definition of “broker” absent a rulemaking, it is able to provide clarification here. As an initial matter,

<sup>14</sup> See comments of Greenwich Transportation Underwriters, at 2.

<sup>15</sup> See comments of the Truck Safety Coalition (TSC), at 3. FMCSA reminds stakeholders that guidance is not enforceable, in contrast to statutes and regulations, which are.

<sup>16</sup> See 13 Stakeholder comments, at 4–6.

<sup>17</sup> FMCSA notes and appreciates SBTC's Petition for rulemaking regarding the definition of “dispatcher.” As noted in its response to SBTC, FMCSA is continuing to review SBTC's petition. Today's notice is not to be interpreted as a decision on SBTC's petition. Other stakeholders are free to file petitions for rulemaking related to the issues covered in today's notice as well.

there was a split amongst stakeholders on whether the current definition of broker was adequate. A majority of stakeholders believed that the current definition of broker was adequate,<sup>18</sup> while others proposed some changes. A safety advocacy group recommended amendment of the definition of “broker.”<sup>19</sup> A stakeholder representing the household goods (HHG) motor carrier industry asked FMCSA to clarify that merely selling leads does not require an entity to obtain broker authority.<sup>20</sup> One broker believed that FMCSA should amend the definition of “broker” to comport with changes in MAP-21 that required motor carriers and hence their agents to obtain broker operating authority.<sup>21</sup> Additionally, internet based load matching services have requested that FMCSA consider electronic load boards to not be considered brokers.<sup>22</sup>

Given the prevailing view among commenters that the current definition of “broker” is adequate, the Agency feels the need to clarify it in only one area: the relevance of an entity’s handling of funds in a transaction between shippers and motor carrier.

<sup>18</sup> See comments of Mode, at 3–4; TIA, at 3; OOIDA, at 2; NITL, at 2; IANA, at 2; MSC, at 2–3; Agricultural and Food Transporters Conference of ATA and multiple state trucking associations (AFTC), at 2; 13 Stakeholder comments, at 4; Larry Walker.

<sup>19</sup> TSC comments, at 2. In order for FMCSA to consider such a change, TSC would need to file a petition for rulemaking.

<sup>20</sup> See comments of MSC, at 4. FMCSA appreciates MSC’s comments and recognizes that they have raised the issue with the Agency for quite some time. In order to give stakeholders a chance to comment in this area, FMCSA will treat MSC’s comments as a request for guidance on the definition of HHG broker and issue guidance in a separate proceeding.

<sup>21</sup> See Comments of England, at 1–4. FMCSA recognizes this issue but does not believe that this is the appropriate forum to resolve it. England would need to file a petition for rulemaking with the Agency for a change in the definition of “broker.” However, as England notes, Congress did not change the definition of “broker” in 49 U.S.C. 13102(2). In order for FMCSA to change the definition of broker in its regulations as England suggests, the Agency would have to carefully consider its authority to make such a change given that Congress specifically left the prior definition of “broker” in place in MAP-21.

<sup>22</sup> See comments of DAT, at 1; *Truckstop.com*, at 1–5; and Uship, at 4. Comments filed by representatives of the HHG motor carrier industry do not believe a carveout from the broker definition for load boards is appropriate. See comments of Unigroup/Mayflower/MoveRescue, at 3. While whether an entity requires broker operating authority must be determined on a case by case basis, FMCSA does not believe that where entities merely host an electronic platform for shippers and motor carriers to connect directly that broker operating authority registration is required. This position is consistent with a 2000 letter from FMCSA that has been placed in the docket. See Letter from Judith Rutledge, FMCSA Acting Chief Counsel, to Andrew K. Light, Esq.

FMCSA appreciates the robust input it received on this issue. Some commenters believed that whether one handles funds is irrelevant to whether one is a broker.<sup>23</sup> A coalition of stakeholders believed the handling of money is not determinative in the broker determination.<sup>24</sup> Other stakeholders felt that the handling of money had at least some relevance as to whether one is brokering.<sup>25</sup>

After consideration of the stakeholder comments and the important role of financial responsibility in broker regulation,<sup>26</sup> FMCSA wishes to clarify that handling money exchanged between shippers and motor carriers is a factor that strongly suggests the need for broker authority, but it is not an absolute requirement for one to be considered a broker.

### B. Definition of Bona Fide Agent

Next, FMCSA is mandated to clarify the definition of “bona fide agents” in 49 CFR 371.2. Stakeholders provided feedback on this point. A HHG motor carrier trade association thought the current definition was “clear as to what entities fall within that term.”<sup>27</sup> A broker indicated that the definition should be eliminated due to MAP-21 requiring motor carriers, and hence their agents, to have broker authority.<sup>28</sup> And multiple entities believe that in order to be deemed a “bona fide agent” one can represent only one motor carrier.<sup>29</sup>

After careful consideration, FMCSA has determined that representing more than one motor carrier does not necessarily mean one is a broker rather than a bona fide agent. Any determination will be highly fact specific and will entail determining whether the person or company is engaged in the allocation of traffic between motor carriers.

<sup>23</sup> See comments of SBTC, at 6; England, at 5; TSC, at 2.

<sup>24</sup> See 13 Stakeholder comments, at 6–7.

<sup>25</sup> See comments of TIA, at 7; OOIDA, at 4; MSC, at 4; Cox Automotive, at 1–2.

<sup>26</sup> One of the most significant broker regulations is the requirement that brokers have a \$75,000 bond or trust fund to protect motor carriers from non-payment. Where a shipper pays a fee to third party that then takes a profit and remits the balance to a motor carrier, the third party is clearly required to have broker authority. FMCSA will soon be issuing a Notice of Proposed Rulemaking on broker and freight forwarder financial responsibility, which will further clarify related duties.

<sup>27</sup> See comments of the MSC, at 5.

<sup>28</sup> See comments of England, at 1–4. As noted above, any such change would require rulemaking in accordance with the APA and statutory authority concerns would need to be addressed.

<sup>29</sup> See comments of TIA, at 8; NITL, at 2; SBTC, at 9.

### C. Role of Dispatch Services

Next, the IIJA required the agency to examine the role of dispatch services in the transportation industry and the extent to which such services could be considered brokers or bona fide agents.

Stakeholder comments make clear that there is no universally accepted definition of “dispatch service,” nor did Congress define the term in the IIJA provision mandating this guidance.<sup>30</sup>

One broker trade association characterized it as a vague term,<sup>31</sup> while a coalition of stakeholders said it is an invented term.<sup>32</sup> According to a self-identified dispatch service, dispatchers represent motor carriers, they don’t connect shippers and motor carriers, they don’t handle money, but they do provide carrier support services.<sup>33</sup> Additional commenters stated that dispatchers perform back office operations for motor carriers;<sup>34</sup> they book freight and perform other tasks;<sup>35</sup> they perform many administrative duties and basic accounting for small carriers;<sup>36</sup> and they are paid a percentage of the freight charges from a motor carrier.<sup>37</sup> Other stakeholders indicate that dispatch services find loads for motor carriers, handle administrative tasks and assist with compliance,<sup>38</sup> source shipments, and allocate shipments between motor carriers.<sup>39</sup> According to a shipper trade association, dispatch services would be expected to be like an in-house truck dispatcher, but in reality many are operating more like brokers.<sup>40</sup> A broker commenter indicated that dispatch services have multiple motor carriers in their client base, they seek freight and obtain freight for motor carriers, and they are paid by motor carriers.<sup>41</sup>

After consideration of the public comments, while it is clear that there is no commonly accepted definition of a dispatch service, such services appear to have certain common features. First,

<sup>30</sup> See comments of England, at 5–7.

<sup>31</sup> See TIA comments, at 7.

<sup>32</sup> See 13 stakeholder comments, at 7.

<sup>33</sup> See comments of Seeley & Sylvester, LLC, at 2–4; See also comments of A1 Express, at 2 (stating that dispatch services “are and should be a carrier support service.”) Note that a number of individuals submitted identical comments which are cited as A1 Express.

<sup>34</sup> See Mode comments, at 5; See also comments from Shelley Smith (stating that “a dispatcher should be categorized as a back office assistant because that is truly a power dispatcher.”).

<sup>35</sup> See comments of Quality Dispatching, at 5.

<sup>36</sup> See comments of WCF Freight Transport.

<sup>37</sup> See comments of AWM Associates LLC, at 2.

<sup>38</sup> See comments of OOIDA, at 4.

<sup>39</sup> See comments of IANA, at 3–4.

<sup>40</sup> See comments of the Transportation and Logistics Council, Inc., at 2.

<sup>41</sup> See comments of England, at 5–7.

they work exclusively for motor carriers, not for shippers. Second, they source loads for motor carriers. And third, they perform additional services for motor carriers that are unrelated to sourcing shipments.

#### *D. Dispatch Service: Broker or Bona Fide Agent*

Further, the IIJA mandated that FMCSA examine when a dispatch service could be considered a broker and when it could be considered a bona fide agent. Stakeholders provided significant input on these points.

A trade association indicated that when a dispatch service represents one motor carrier it is a bona fide agent, but when it represents more than one it is a broker.<sup>42</sup> A broker thought that when a dispatch service only performed back office operations, it was not a broker, but if it arranges loads it is.<sup>43</sup> A dispatch service indicated that dispatch services are bona fide agents, as they are merely agents to locate freight and are paid a flat fee or a percentage.<sup>44</sup> Another dispatch service also believes that a dispatch service is a bona fide agent and not a broker because dispatch services do not connect shippers with carriers that can transport their loads, and therefore do not meet the broker business model.<sup>45</sup> A consulting firm believes that dispatch services are bona fide agents if they are employees per IRS regulations, but not if they represent more than one motor carrier.<sup>46</sup> Several trade organizations believe that if a dispatch service represents more than one motor carrier it is a broker, and that the handling of funds warrants a finding of brokerage.<sup>47</sup> A coalition of 13 stakeholders believes that representing more than one motor carrier renders a dispatch service a broker, and a broker believes that representing more than one motor carrier takes one outside of the definition of “bona fide agent.”<sup>48</sup> Finally, a dispatch service indicated that broker authority should be required only when arranging transportation on behalf of shippers.<sup>49</sup>

After careful consideration, FMCSA clarifies that when a dispatch service does not participate in the arrangement of freight, or when it represents only one motor carrier, it is not a broker. If a dispatch service arranges transportation on behalf of multiple

motor carriers and engages in the allocation of traffic, however, then pursuant to 49 CFR 371.2, it is not a bona fide agent and must obtain broker operating authority registration. Ultimately, the analysis of whether a person or entity requires broker authority is often highly fact specific and must be made on a case-by-case basis.

Regarding whether a dispatch service is a bona fide agent, one must analyze whether the service falls within the definition of bona fide agent in 49 CFR 371.2(b). However, if the dispatch service allocates traffic between two motor carriers, it cannot be a bona fide agent by definition.

#### *E. Dispatch Services That Would Not Require Broker Authority*

Generally, the factors relevant to whether a dispatch service is not required to obtain broker authority are stated below:

(1) The dispatch service has a written legal contractual relationship with a motor carrier that clearly reflects the motor carrier is appointing the dispatch service as a licensed agent for the motor carrier. This is often a long-term contractual relationship;

(2) The written legal contract specifies the insurance and liability responsibilities of the dispatch service and motor carrier. The dispatch service must also meet all state licensing requirements;

(3) The dispatch service goes through a broker to arrange for the transportation of shipments for the motor carrier. The dispatch service may not seek or solicit shippers for freight;

(4) The dispatch service does not provide billing nor accept compensation from the broker, 3PL (third-party logistics company), or factoring company, but instead receives compensation from the motor carrier(s) based on the pre-determined written legal contractual agreement;

(5) The dispatch service is not an intermediary or involved in the financial transaction between a broker and motor carrier;

(6) The dispatch service is an IRS 1099 recipient from the motor carrier, or a W2 employee of the motor carrier as specified in the legal written contract agreement;

(7) The dispatch service discloses that they are a dispatch service operating under the authority of a specific motor carrier, and the shipment is arranged for that motor carrier only;

(8) The dispatch service does not subsequently assign or arrange for the load to be carried/moved by another motor carrier; or

(9) A dispatch service does not provide their “services” for a motor carrier unless that motor carrier specifically appointed the dispatch service as their agent in accordance with the aforementioned requirements.

#### *F. Dispatch Services That Require Broker Authority*

The following factors would indicate the dispatch service should obtain broker authority:

(1) The dispatch service interacts or negotiates a shipment of freight directly with the shipper, or a representative of the shipper;

(2) The dispatch service accepts or takes compensation for a load from the broker, or factoring company, or is involved in any part of the monetary transaction between any of those entities;

(3) The dispatch service arranges for a shipment of freight for a motor carrier, with which there is no written legal contract with the motor carrier that meets the aforementioned criteria;

(4) The dispatch service accepts a shipment without a truck/carrier, then attempts to find a truck/carrier to move the shipment;

(5) The dispatch service is a named party on the shipping contract; or

(6) The dispatch service is soliciting to the open market of carriers for the purposes of transporting a freight shipment.

It is clear based on feedback from industry that there is a need and desire for dispatch services, among large and small motor carriers. A beneficial role that a dispatch service may provide is the outsourcing of resources for small motor carriers who cannot afford a full-time employee to perform these functions. The dispatch service can help to ensure the motor carrier has a steady stream of shipments while allowing the motor carrier to focus on its core business of safely transporting freight. FMCSA does not believe it is the intent of Congress to eliminate the services that dispatch services provide.

While no single factor is paramount in assessing the business relationship between a dispatch service and a motor carrier, the extent of a motor carrier’s control over the individual(s) performing the dispatch services is highly significant, *i.e.*, the dispatch service works on behalf of the motor carrier and makes decisions based on the motor carrier’s guidance and direction. As noted, FMCSA determines whether a dispatcher is conducting broker operations on a case-by-case basis, utilizing factors including those above.

<sup>42</sup> See comments of IANA, at 4.

<sup>43</sup> See comments of Mode, at 5.

<sup>44</sup> See comments of Quality Dispatching, at 4–5.

<sup>45</sup> See comments of A1 Express, at 2.

<sup>46</sup> See comments of AWM, at 4.

<sup>47</sup> See comments of TIA, at 7; and OOIDA, at 4.

<sup>48</sup> See comments of 13 stakeholders, at 10; England, at 8.

<sup>49</sup> See comments of Seeley & Sylvester LLC, at 4.

*G. Financial Penalties*

Finally, FMCSA must clarify the level of penalties for unauthorized brokerage applicable to dispatch services. Such an assessment is straightforward. If the dispatch service is deemed to be providing unauthorized brokerage services pursuant to 49 U.S.C. 14916, the service will be subject to applicable penalties.<sup>50</sup> If no finding of unauthorized brokerage is made, it will not be subject to such penalties.

**V. Request for Public Comment**

FMCSA requests public comment on its regulatory guidance and the factors the Agency will use in its interpretation of the definitions of “broker” and “bona fide agent.” The Agency welcomes comments from stakeholders that are relevant to identifying a dispatch service that engages in actions that would require broker authority compared with actions that don’t require broker authority. Additionally, FMCSA welcomes comments concerning the potential impact of this guidance on dispatch services upon which the broker rules would be considered applicable.

**Robin Hutcheson,**  
*Administrator.*

[FR Doc. 2022–24923 Filed 11–15–22; 8:45 am]

**BILLING CODE 4910–EX–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 220223–0054; RTID 0648–XC383]

**Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian district (CAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access sector fishery. This action is necessary to prevent exceeding the 2022 total allowable catch

(TAC) of Atka mackerel in the CAI allocated to vessels participating in the BSAI trawl limited access sector fishery.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), November 10, 2022, through 2400 hrs, A.l.t., December 31, 2022.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan (FMP) for Groundfish of the BSAI prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2022 TAC of Atka mackerel, in the CAI, allocated to vessels participating in the BSAI trawl limited access sector fishery was established as a directed fishing allowance of 1,500 metric tons by the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the CAI by vessels participating in the BSAI trawl limited access sector fishery. While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of the Atka mackerel directed fishing in the CAI for vessels participating in the BSAI trawl limited access sector fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 9, 2022.

The Assistant Administrator for Fisheries, NOAA also finds good cause

to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: November 10, 2022.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2022–24941 Filed 11–10–22; 4:15 pm]

**BILLING CODE 3510–22–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 220223–0054]

**RTID 0648–XC380**

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District of the Bering Sea and Aleutian Islands Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian district (CAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access sector fishery. This action is necessary to prevent exceeding the 2022 total allowable catch (TAC) of Pacific ocean perch in the CAI allocated to vessels participating in the BSAI trawl limited access sector fishery.


**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), November 10, 2022, through 2400 hrs, A.l.t., December 31, 2022.


**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP

<sup>50</sup> Penalties for violations of section 14916 are provided in 49 U.S.C. 14916(c)(1),(d).

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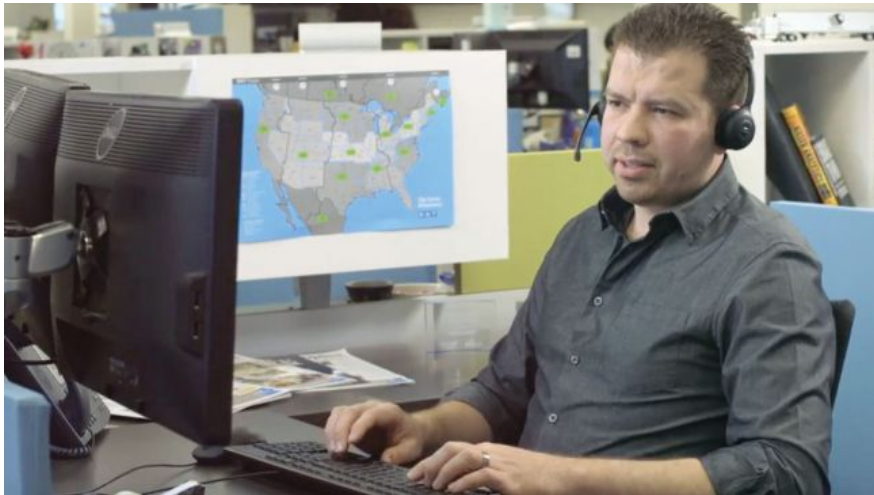
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**Mindy Long**  
(/authors/mindy-long) | **Special to Transport Topics** April 10, 2023 9:59 AM, EDT

## Reports of Double-Brokering Increase

### Carriers, Brokers Work to Prevent Fraud



*Experts contend that market conditions and weak enforcement of the law have contributed to the increase of fraud via double brokering. (DAT)*

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Double-brokering — when a carrier accepts a load and then illegally re-brokers it to another carrier — is on the rise, costing brokers and carriers millions of dollars, and hurting legitimate businesses.

Several red flags can alert companies to scams, and brokers said they're scrutinizing everything from ELD records to IP addresses.

"We're continual victims of this fraud, but we are doing everything in our power to stay ahead of it," said [Shayn Thrift](https://www.linkedin.com/in/shayn-thrift-770475228/) (<https://www.linkedin.com/in/shayn-thrift-770475228/>), carrier risk and operations manager for [Armstrong Transport Group](https://www.armstrongtransport.com/) (<https://www.armstrongtransport.com/>), a third-party logistics provider based in Charlotte, N.C., adding that cases of fraud have increased substantially this year.



**Anne Reinke** (<https://www.linkedin.com/in/anne-reinke-5b87956/>), president & CEO of the **Transportation Intermediaries Association** (<https://www.tianet.org/>), said reports of double-brokering through its Watchdog reporting system have been ticking up since December. “It is far more prevalent than we’ve seen in a while,” she said.

There are two primary types of double-brokering. In one, legitimate carriers accept loads but don’t have capacity, so they double-broker it even though they don’t have authority. While it is still illegal, there are often no claims unless there is an accident or a load is damaged. With fraudulent double-brokering, someone contracts with what they think is a legitimate motor carrier that then re-brokers the load.

“Another carrier accepts the load expecting payment, and that payment is nowhere to be found,” Reinke said.

**Cassandra Gaines** (<https://www.linkedin.com/in/madgaines/>), founder and CEO of **Carrier Assure** (<https://www.carrierassure.com/>), a provider of performance scoring software, said double-brokering presents a security issue. “Brokers and shippers do not know who is actually in the custody of the goods,” she said. “If something goes wrong, there is often no cargo insurance. Even worse, there is a higher risk of theft.”

In Q4 2022 and Q1 2023, **Truckstop** (<https://truckstop.com/>), a load board provider, saw a 400% increase in double-brokering complaints, said **Brent Hutto** (<https://www.linkedin.com/in/brent-hutto-b484038/>), its chief relationship officer. “Complaints reflect what is going on in the marketplace,” he said. “This is a constant in our market and sometimes it is worse than others.”

Today, about 30% of freight is moved in the spot market. “The sheer volume going through the spot market is much higher than it has ever been and is only predicted to increase,” Hutto said, adding that double-brokering tends to increase in a down market. “I don’t know why that is other than, anecdotally, the marketplace is more desperate to get freight at a profitable level.”

## Looking for Solutions

Those in the industry said a lack of enforcement is encouraging fraud. “Right now, it is the perfect crime,” Reinke said. “There is no actor who is trying to stop it other than the broker community and, to some extent, the owner-operator community.”



Reinke



Industry insiders say the broker and owner-operator community have become more proactive in discovering double-brokering fraud. (Comstock via Getty Images)

There have been 80,000 complaints since the national consumer database started in 2012, but the Department of Transportation’s Federal Motor Carrier Safety Administration hasn’t investigated them, Reinke said. **FMCSA** (<https://www.ttnews.com/articles/fmcsa-issues-guidance-brokerage-terminology>) has said it doesn’t have the authority to apply civil penalties in commercial disputes, but Reinke said the agency could do more. “They could investigate, take these guys out of service, put heat on them and make it painful to commit fraud. FMCSA has said they’re resource constrained.”



Nancy Hallbauer (<https://www.linkedin.com/in/nancyhallbauer/>), vice president of agent operations for [Business to Business Logistics](https://shipbtb.com/) (BTB), said there needs to be more state and federal agency involvement. “There are so many government agencies turning a blind eye to it, but they know it is going on,” she said. “The problem is that DOT is handing out MC numbers like candy at Halloween. There is virtually no vetting.”



Hallbauer

The [Motor Carrier Safety Selection Standard Act](https://moulton.house.gov/press-releases/moulton-gallagher-introduce-bipartisan-motor-carrier-safety-selection-standard-act) (<https://moulton.house.gov/press-releases/moulton-gallagher-introduce-bipartisan-motor-carrier-safety-selection-standard-act>), introduced in February, would implement an interim motor carrier selection standard that requires entities like shippers and brokers to verify certain trucking registration requirements before selecting them. “It would provide a greater sense of comfort over who you’re choosing,” Reinke said.

BTB has instituted new securities and protocols to minimize the risk of hiring a double-broker carrier. “It is an everyday vigilance that can be exhausting,” Hallbauer said, adding that BTB won’t work with anyone who has been in business for less than three months and only uses carriers with roadside inspection history. “If you’re stating you have 10 trucks and you have no inspections on those trucks, there is a problem.”

Hallbauer has identified several insurance companies double-brokers use and will not use any truck insured by them. Plus, Gaines recommends companies verify insurance. “Actually call the insurance broker and ask how many trucks are insured and the VINs,” she said.

It is also important to verify carriers’ physical addresses. “I looked up one today and it was a vacant lot,” Hallbauer said. “Some are in office buildings, and you look them up and there are 10 other people in the same office building. They are usually in a crew together.”



Hutto

Some carriers will exit the market and then come back with a new motor carrier number, but they’re domiciled at the same address, Hutto said.

Multiple carriers and brokers using the same IP address is also a concern. “Sometimes there are 15 different companies that have the same IP address,” Hallbauer said.

Armstrong’s Thrift looks for a failure to maintain or provide electronic logs. “I’m getting mixed information on that load, the first thing I’ll request is ELD logs,” she said. Other red flags include companies using Gmail addresses, resisting tracking apps or refusing to provide a driver’s cellphone number. “These things don’t mean they’re bad, but they are things to pay attention to,” Reinke said.

Detail-oriented employees are one of the best defenses against fraud. “We advise our agents to reach out to the verified contact or the corporate number to confirm the driver’s name and number is associated with that company,” Thrift said.

Gaines warned that companies need to make sure they’re talking to the actual carrier and not a person pretending to be a carrier. “Second, thoroughly vet the carrier. It is difficult because detecting these scams can be hard,” she said.

Thrift asks Armstrong’s agents to pull reports from Carrier411, a carrier monitoring service, take a screenshot and connect it to the load.



Carrier Assure ranks carriers. (Carrier Assure)

Carrier Assure ranks carriers, and Gaines recommends companies avoid using carriers with a D or F score. “Report the carrier you hired for double-brokering on Carrier Assure to alert other shippers and brokers in the industry to avoid this carrier,” she said.

Truckstop has implemented procedures to fight fraud. “I can’t speak to it because we don’t want to show the easy way to rob the bank,” Hutto said. “It bothers us a lot — to the point we’re willing to employ an entire division to help protect the customer.”

Truckstop ranks and grades every broker and vets them every 90 days. "If it is an A or B, they probably have been on Truckstop for a long time," Hutto said, adding that carriers are ranked and vetted every time they log onto the load board. "Anyone that is not playing by the rules, we do not let them have access to the board. We do a lot of data vetting to ensure information is accurate."

## Due Diligence

Spoofing is another problem brokers face. "Someone stole one of our rate confirmations and started calling carriers saying, 'We're Business-to-Business,' and faked a bunch of stuff," Hallbauer said, adding that the fraudster even created an email address similar to BTB's but didn't have the correct phone number.



Thrift

Armstrong had a fraudulent entity use its rate confirmation information and try to send freight out as Armstrong loads. "For the carriers, confirm your load with the corporate number," Thrift said.

Carriers should always ask in-depth questions, Hutto said. "If a broker is trying to rush you off the phone, that is a sign. When you get the information, call the contact information on the bill of lading to get proof that it is really there," he said. "When the person you're doing business with is legitimate, they don't mind passing you information."

Double-brokers often offer higher-than-market rates to the end carrier. "If it sounds too good to be true, it probably is," Hallbauer said.

Carriers and brokers can discover double-brokering at any point in the transaction. "It can happen almost instantaneously," Reinke said.

If a broker discovers they've hired a double-broker, they shouldn't pay the carrier they hired. "Hold your money until you know who the real carrier that transported the goods is. You must pay that carrier," Gaines said.

Double-brokers often request a quick-pay option, which provides accelerated payment terms for a processing fee. "That is how they get us. A lot of times, unfortunately, we've already paid the fraudulent carrier. Once the payment goes out, we never get it back," Thrift said. "We do try to get the end carrier compensation, but we're basically having to pay double for it."

BTB won't give fuel advances or quick-pay to someone who hasn't hauled for the company for three months.



Transport Topics



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Brokers sometimes see costs for double-brokering as part of doing business because they want to retain the shipper customer. "If you're a small broker, you don't have the money to do that. It can put companies out of business," Reinke said.

While the industry is working to increase awareness, one of the biggest challenges is keeping up with the criminals. "The more we talk about it, the more they pivot," Hallbauer said.

For Thrift, it is a constant chase. "They're going to realize you're catching up to them, so they're going to make their processes better," she said. "The problem with fraud is there are always holes."

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## **Ocean Shipping Reform Implementation Act of 2023**

*Sponsored by: Rep. Dusty Johnson (S.D.-AL) and Rep. John Garamendi (CA-08)*

### **Background:**

Last year, Congress made significant progress by updating U.S. ocean shipping laws for the first time in more than two decades. The FMC has since stated the *Ocean Shipping Reform Act (OSRA)* was crucial to putting the ocean shipping system back on course. However, it is clear more reforms are needed.

### **Legislation:**

The *Ocean Shipping Reform Implementation Act of 2023* seeks to get “tough on China” by protecting U.S. ports and shippers from CCP-influence, collect data to evaluate port performance and harmonize freight shipping, and enact “good government” provisions excluded from OSRA.

#### *Tough on China*

- Establishes formal process to report complaints against shipping exchanges like the Shanghai Shipping Exchange to the Federal Maritime Commission for investigation.
- Bans U.S. port authorities from using the Chinese state-sponsored National Transportation Logistics Public Information Platform (LOGINK) and similar state-sponsored malware.
- Directs the U.S. DOT to contract an independent auditor to examine the influence of the People’s Republic of China on the business practices of the Shanghai Shipping Exchange and report to Congress.
- Codifies the definition of “controlled carrier” under the Shipping Act to encompass state-controlled enterprises in non-market economies like the People’s Republic of China.

#### *Data Standards & Port Performance Statistics*

- Authorizes the FMC to set new data standard for maritime freight logistics and use existing data standards or industry best practices, including contracting an expert third party to develop the new federal data standard if needed.
- Authorizes the Bureau of Transportation Statistics to collect more information on port operations, such as the total of incoming and outgoing containers and yard capacity.

#### *OSRA Good Government*

- Clarifies that Federal Maritime Commission may also stipulate additional minimum requirements for service contracts by ocean common carriers, at the agency’s discretion.
- Updates and improves the purposes of the Shipping Act to better reflect current federal policy governing international ocean shipping and establishes reciprocal trade as part of Federal Maritime Commission’s mission in enforcing the Shipping Act.
- Prohibits the Federal Maritime Commission from requiring ocean carriers to report information already reported to other federal agencies.

## OCEAN SHIPPING REFORM Implementation ACT OF 2023

**Endorsements (to date):** Agriculture Transportation Coalition; National Milk Producers Federation; US Dairy Export Council; National Customs Brokers and Forwarders Association of America; Coalition for Reimagined Mobility; Consumer Brands Association; National Industrial Transportation League

### Section-by-Section Summary

#### Section 1: Short Bill Title

#### Section 2: Purposes

- Updates and improves the purposes of the Shipping Act to better reflect current federal policy governing international ocean shipping.
- Establishes reciprocal trade as part of Federal Maritime Commission's mission in enforcing the Shipping Act.
- Reflects amended purposes from the Garamendi-Johnson OSRA 2022 ([H.R.4996](#)), as introduced.

#### Section 3: Definitions

- Adds boilerplate language regarding state-controlled enterprises in non-market economies like the People's Republic of China to the definition of "controlled carrier" under the Shipping Act (Part of A of Title 46).

#### Section 4: Service Contracts

- Clarifies that Federal Maritime Commission may also stipulate additional minimum requirements for service contracts by ocean common carriers, at the agency's discretion.
- Included in Garamendi-Johnson OSRA 2022 ([H.R.4996](#)), as passed by the House.

#### Section 5: Complaints Against Shipping Exchanges

- Establishes formal process for interested members of the public to report complaints against shipping exchanges like the Shanghai Shipping Exchange to the Federal Maritime Commission for investigation.

#### Section 6: Elimination of Data Replication

- Prohibits the Federal Maritime Commission from requiring ocean carriers to report information already reported to other federal agencies.
- Included in Garamendi-Johnson OSRA 2022 ([H.R.4996](#)), as passed by the House.

#### Section 7: National Advisory Committees

- Specifies that the Congressionally authorized [Shipper Advisory Committee](#) may also include ocean transportation intermediaries such as freight forwarders who act on behalf of shippers.
- Establishes a National Seaport Advisory Committee comprised of port authorities and marine terminal operators, as [recommended by Federal Maritime Commissioner Rebecca F. Dye](#) in May 2022.

- New Seaport Advisory Committee is comprised of 24 members selected by the Federal Maritime Commission: 8 representing marine terminal operators and 16 representing port authorities.

### **Section 8: Annual Report and Public Disclosures**

- Adds to the Federal Maritime Commission's annual report to Congress analysis of any anticompetitive business practices or nonreciprocal trade practices exacerbating the United States' trade imbalance with foreign exporting countries.
- Require the Federal Maritime Commission to publish results of its [Vessel-Operating Common Carrier Audit Program](#) established in July 2021 in the Commission's annual report to Congress.
- Requires the Federal Maritime Commission to also publish online all penalties imposed on marine terminal operators, not just ocean carriers.

### **Section 9: Policy with Respect To LOGINK**

- Bans U.S. port authorities (including the U.S. territories) that receive federal grant dollars from using the Chinese state-sponsored National Transportation Logistics Public Information Platform (LOGINK) and similar state-sponsored malware.
- Implements [recommendation #19](#) from the United States-China Economic and Security Review Commission's [September 2022 report](#) outlining the "Risks from (the People's Republic of) China's Promotion of a Global Logistics Management Platform."

### **Section 10: Marine Terminal and Dwell Time Statistics**

- Authorizes the Bureau of Transportation Statistics to collect information on port operations, such as the total of incoming and outgoing containers and yard capacity.
- Remove's FY2024 sunset for the Bureau's data collection for dwell time at marine terminals from Senator Wicker's (R-MS) Facilitating Relief for Efficient Intermodal Gateways to Handle Transportation (FREIGHT) Act, as enacted in OSRA 2022 ([Public Law 117-146](#)).

### **Section 11: Containerized Freight Indexes**

- Directs the Federal Maritime Commission to set federal standards for price indexes for containerized freight published by shipping exchanges like the New York Shipping Exchange.

### **Section 12: Data Standard for Maritime Freight Logistics**

- Authorizes the FMC to set new data standard for maritime freight logistics.
- Directs the Commission to adopt existing data standards or industry best practices, including contracting an expert third party to develop the new federal data standard if needed.
- Allows the Commission to require adoption of the federal data standard by port authorities and other entities receiving federal Port Infrastructure Development Grants or other grants from the Maritime Administration (MARAD).

### **Section 13: Independent Study and Report on Shanghai Shipping Exchange**

- Directs the U.S. Department of Transportation to contract an independent auditor to examine the influence of the People's Republic of China on the business practices of the Shanghai Shipping Exchange and report to Congress.

**Section 14: Technical Amendments**

- Corrects typos, errors, and outdated citations in current law pertaining to the Federal Maritime Commission or the Shipping Act.

Mr. Thomas Menzies  
National Academy of Sciences  
Transportation Research Bureau  
500 Fifth St., N.W.  
Washington, D.C. 20001

Dear Mr. Menzies:

On behalf of the American Trucking Associations' Intermodal Motor Carriers Conference, I am pleased to submit this statement to the Committee on Best Practices for the Efficient Supply of Chassis for Transporting Intermodal Containers. The American Trucking Associations is a 90-year-old federation that is today the largest trucking industry trade association comprised of 50 state trucking associations and representing more than 34,000 motor carriers. The Intermodal Motor Carriers Conference is a subset of member companies within the ATA that operate at the nation's ports and inland rail facilities. IMCC focuses on the issues critical to these companies which includes chassis provisioning.

As background, IMCC is currently involved in ongoing litigation around the issue of chassis choice at the Federal Maritime Commission. IMCC filed a complaint at the FMC in August of 2020 against the Ocean Carriers Equipment Management Association (OCEMA), Consolidated Chassis Management (CCM), and 11 common carriers alleging violations of the Shipping Act through interference in chassis provisioning. The FMC Administrative Law Judge issued her ruling in the motion for summary decision on February 6<sup>th</sup> and IMCC's motion was granted in part and denied in part. Appeals must be filed by March 7<sup>th</sup>. Intermodal equipment providers are not a party to the litigation.

## **Overview**

A shortage of available chassis was one of the primary drivers of the supply chain problems that we saw during the last year. The dramatic increase in freight worsened already existing bottlenecks throughout the supply chain which led to an extremely tight chassis supply. For example, empty container return locations were often overloaded meaning motor carriers were sometimes forced to store empty containers on chassis in their yards until they could be returned. Additionally, container dwell time increased as overloaded warehouses were unable to turn containers around quickly meaning some containers continued to occupy chassis until they could be unloaded. This was compounded by the imposition of a 200% tariff on chassis manufactured in China and extremely limited American manufacturing which together meant that chassis were generally unavailable for purchase at exactly the worst time. The effects of these shortages were compounded by long-standing inefficient policies and practices.

These issues and others facing the supply chain led to the passage of the Ocean Shipping Reform Act, legislation which passed Congress with strong bipartisan majorities and was supported by ATA and IMCC. Within OSRA was the requirement that the National Academy of Sciences conduct a study on chassis provisioning to "develop best practices...with the goal of optimizing supply chain efficiency and effectiveness"

From the motor carrier perspective, efficiency and effectiveness are not the key drivers of the chassis provisioning process that we see today. The current chassis provisioning system is not the result of a carefully crafted system but came into being as ocean carriers moved away from owning chassis. Prior to 2009, all chassis were owned by ocean carriers but that year they began to divest this equipment to the

intermodal equipment providers that are the primary providers of chassis today. Though they moved away from chassis ownership, ocean carriers also formed OCEMA and CCM and through these organizations continue to exert control in the chassis provisioning process.

Supply chain participants can also have very different priorities and are not always aligned toward moving freight as efficiently as possible. This lack of alignment extends to chassis provisioning as well. Unfortunately, the current process is not one that maximizes the available assets to ensure that freight gets to the end user as efficiently as possible.

The process differs from location to location with a variety of different models including interoperable pools, pool of pools, proprietary pools, and single pools or different combinations of each. One thing they do have in common, however, is that motor carriers generally have had limited involvement in development of these pools. Agreements can involve different parties such as ports, OCEMA, CCM, and/or IEP's. Motor carriers are not participants to agreements. As an example, in the SACP 3.0 the newest pool that is being put together in the Southeast, the agreement is between the ports, OCEMA and CCM. This has resulted in limited motor carrier input on the structure of the pool, although motor carriers are clearly the party most impacted by pool operations.

### **Primary Motor Carrier Issues in Chassis Provisioning**

Any discussion of chassis provisioning must start with the issues of quality, roadability and safety. Chassis must be in good working condition, safe for the road, and have the newest equipment such as radial tires, LED lights, ABS braking systems and other features. This is critical as these chassis will share the roads with the American driving public. As the committee considers new provisioning models, the requirement to keep chassis in safe working order must be paramount.

The Federal Motor Carrier Safety Administration regulates chassis safety and motor carrier are liable for some violations while intermodal equipment providers are responsible for others. Beyond citations, however, motor carriers are the party that most often deals with the consequences of chassis that are not roadworthy in terms of repair costs that may not be covered by chassis providers, the potential for issues on the roads and the impact on efficiency if a chassis is not in good condition. Unfortunately, chassis condition can vary and motor carriers do not always have the opportunity to inspect chassis before they are loaded. This is especially true at wheeled rail facilities where containers are taken right off of trains and placed on chassis.

The other primary issue for motor carriers is practices that restrict chassis usage and have the impact of reducing chassis supply. As we look at ocean freight, there are two primary methods for shippers to choose. First, in carrier haulage, also known as a door move or CH, the shipper contracts with the ocean carrier for transportation from the overseas location through to the final delivery location. In this situation, the ocean carrier is responsible for procuring the transportation from the port of entry to the final destination including the chassis.

In merchant haulage or MH, the shipper contracts with the ocean carrier for transportation from the overseas location to the port. The shipper then is responsible for arranging transportation from the port to the final destination. In this scenario, the motor carrier is responsible for procuring and paying for the chassis. The majority of freight is shipped under this model.

While the motor carrier is responsible for the chassis charges in the merchant haulage scenario, in many locations they do not have the ability to utilize the chassis provider of their choice. This is due to restrictions and practices that permit ocean carriers to dictate which chassis must be used to move their containers in both CH and MH movements.

These restrictions, known as Box Rules, go far beyond simple accounting conveniences to create efficiency issues that result in significant roadblocks to the movement of freight. In some locations, a motor carrier may return a container with one provider's chassis to the port. He then must drive to a location to return that chassis, then go to a second location to obtain a chassis from another provider if available and then finally may go to pick up the container. This costs drivers time and money and means that available chassis are not being utilized in the most efficient manner. Once again, these restrictions can apply even in merchant haulage where the motor carrier is paying the cost of the chassis. Allowing motor carriers to choose their chassis provider for merchant haulage would provide the ability for the trucking company to utilize chassis efficiently while providing greater ability to control their own costs. Chassis choice for merchant haulage is a critical part of maximizing supply chain efficiency and effectiveness.

To avoid the scenario of forcing drivers to find the appropriate chassis, there are pools which permit interoperability meaning that any chassis provider can be used for any ocean carrier's container. While these pools eliminate the inefficiencies of requiring drivers to shuttle from place to place looking for a chassis, they may not permit motor carrier choice. For example, while the Pool of Pools serving Los Angeles and Long Beach allows interoperability of chassis, the trucker still is invoiced by the IEP of the ocean carrier's choice at a rate which the motor carrier had no ability to impact. Once again this is the case even in merchant haulage when the motor carrier is responsible for the chassis charges. While interoperable pools were more common in the past, in recent years we have seen fewer of them as ocean carriers and IEP's move toward different models.

Lack of interoperability and motor carrier choice in chassis provisioning increases costs and decreases asset utilization. As we look to best practices going forward, these two elements are critical to ensuring the most effective way to deploy chassis to maximize the efficient movement of freight.

These issues are present at inland railyards as well. Rail facilities operate in two different ways, grounded and wheeled. In a grounded facility, containers are taken off trains and placed in stacks to be picked up by motor carriers. By contrast a wheeled facility places containers directly on chassis as trains arrive. Both types of facilities experience chassis shortages, with wheeled facilities posing particular challenges.

In these facilities, the priority is on having chassis available when containers are being offloaded. When chassis are not available and containers must be grounded as we saw during the last year, these facilities are not sufficiently equipped to handle the stacked containers. This can lead to significant delays in moving cargo. Roadability, lack of interoperability and prohibitions against motor carrier choice can also apply at both wheeled and grounded rail facilities creating the same inefficiencies as seen at marine terminals.

## **Conclusion**

IMCC appreciates the opportunity to address motor carrier's key concerns in chassis provisioning. If there is particular additional information that the Conference or our members can provide to help the committee better understand these issues, please let us know. As was stated earlier, the current provisioning system was not created with efficiency and effectiveness in mind. This is a unique opportunity for the committee to approach the provisioning process with these two characteristics at the forefront in order to meet the goals that Congress included in the Ocean Shipping Reform Act.

Sincerely,

Jonathan Eisen  
Executive Director  
Intermodal Motor Carriers Conference





## **Safer Highways and Increased Performance for Interstate Trucking (SHIP IT) Act – H.R. 471**

*Sponsored by: Rep. Dusty Johnson (S.D.-AL) and Rep. Jim Costa (CA-21)*

### **Background:**

The COVID pandemic highlighted severe gaps in our supply chain system, and these issues continue to impact everyday Americans and businesses. It is important to learn from recent experiences of supply chain breakdowns and act now to improve freight movement and safety rather than wait for new or continued transportation supply chain problems.

Last year, Congress made significant progress by updating U.S. ocean shipping laws for the first time in more than two decades. However, it is clear more reforms are needed.

This package seeks to provide a comprehensive approach to the pain points in the supply chain by focusing on increasing shipping capacity, lessening burdens on current and future truck drivers, providing incentives to recruit and retain drivers, and allowing additional flexibilities during times of emergency.

### **Legislation:**

The SHIP IT Act includes a number of initiatives that would help add fluidity to the movement of freight in America.

Specifically, the bill:

- Modernizes the authority for certain vehicle waivers during emergencies
- Allows truck drivers to apply for Workforce Innovation and Opportunity Act grants
- Incentivizes new truck drivers to enter the workforce through targeted and temporary tax credits
- Streamlines the CDL process, making it easier for states and third parties to administer CDL tests
- Expands access to truck parking and rest facilities for commercial drivers

This bipartisan bill will improve our supply chain and keep costs down for consumers by making it easier for shippers to move products to every corner of the United States.

**To cosponsor H.R. 471:** please contact [Elizabeth.Lloyd@mail.house.gov](mailto:Elizabeth.Lloyd@mail.house.gov)

## **Section-by-Section Summary**

**Title: The SHIP IT Act** includes a number of initiatives that would help add fluidity to the movement of freight in America. It is important to learn from recent experiences of supply chain breakdowns and act now to improve freight movement and safety rather than wait for new or repeat transportation supply chain problems.

**Section 1:** Short title: Safer Highways and Increased Performance for Interstate Trucking (SHIP IT) Act

**Section 2:** Modernizing Authority for Certain Vehicle Waivers During Emergencies

- Expands the circumstances under which the Federal Government would allow a state to waive Federal weight limits on the Interstate System to include declarations by the Secretary of Transportation, including declarations regarding disease and declarations regarding a supply chain emergency.
- Allows declarations to remain in effect for longer periods than the 120-day maximum under current law.

**Section 3:** Eligibility for Workforce Grants

- Clarifies that individuals are eligible for Workforce Innovation and Opportunity Act (WIOA) grants for tuition, fees, and costs of entry level truck driver training.
- Investments that increase the supply of drivers will increase overall supply chain fluidity.

**Section 4:** Strengthening Supply Chains Through Truck Driver Incentives Act

- Provides eligible truck drivers a tax credit of \$7,500 per year (\$10,000 for certain new or apprentice drivers) for a maximum of two years. Eligible drivers hold a valid Class A CDL and are on duty (including driving) at least 1,900 hours a year.
- Would help increase the supply of drivers and thereby help increase overall supply chain fluidity.

**Section 5:** Parking for Commercial Motor Vehicles

- Includes Rep. Bost's Truck Parking Safety Improvement Act as unanimously reported by the House Transportation and Infrastructure Committee in 2021.
- Would improve safety for truck operators and transportation safety and efficiency by authorizing grants to provide parking facilities for commercial motor vehicles.
- Authorizes \$755 million from fiscal year 2023 through fiscal year 2026 for these purposes.

**Section 6:** Licensing Individual Commercial Exam-Takers Now Safely and Efficiently (LICENSE) Act

- Allows a state or third-party examiner to administer a CDL knowledge test.
- Allows a state to administer a driving skills test to any out-of-state CDL applicant.



- Increasing accessibility of testing would help increase the supply of truck drivers, contributing to overall supply chain fluidity.

### **Section 7:** Exemption for Certain Zero Emission Vehicles

- Clarifies that for certain vehicles powered primarily by means of electric battery power, the weight of the battery or batteries shall not count towards a vehicle's gross weight for certain regulatory purposes.

### **Section 8:** Safety Data Collection Program for Certain 6-Axle Vehicles

- The Secretary of Transportation will establish a voluntary pilot program allowing a state to increase weight limits on Federal Interstates to up to 91,000-pounds on 6-axes.
- Participating states shall submit a report on the number of accidents involving 6-axle vehicles in the program and the estimated gross vehicle weight of each vehicle at the time of the accident.
- A participating vehicle must comply with the weight limits required by the federal bridge formula.
- The pilot program vehicles would weigh less than many vehicles that are already allowed to operate on the Interstate System due to various exceptions in the law and are not as heavy as some vehicles that are allowed to operate in many states on non-Interstate System roads.
- The pilot program in a participating state would use a permit system, which will help ensure accurate data is collected regarding pilot program vehicles. The permit system is structured to incentivize use of vehicles with automated emergency braking, an important safety enhancement.
- With the required sixth axle, vehicles in the pilot program will have more brakes than a typical Class 8 5-axle tractor with trailer or semitrailer, reducing stopping distance.
- The pilot program does not include Longer Combination Vehicles, such as doubles or triples.

### **Section 9:** Haulers of Agriculture and Livestock Safety (HAULS) Act

- This section provides a 150-air-miles exemption from hours-of-service regulations on the frontend and the backend of hauls before hours-of-service rules apply.
- The exemption would apply to carriage of many agricultural commodities, including livestock, insects, and a wide range of processed or unprocessed agricultural and forest products including food and beverages.

# Johnson, Costa Lead Bill to Improve Supply Chain

January 24, 2023     [Press Release](#)

**Washington, D.C.** – Today, U.S. Representatives Dusty Johnson (R-S.D.) and Jim Costa (D-CA) introduced a sweeping overhaul of the interstate trucking supply chain system. The [\*Safer Highways and Increased Performance for Interstate Trucking \(SHIP IT\) Act\*](#) increases safety and shipping capacity for truckers; provides recruitment and retention incentives for drivers; and includes flexibility during times of emergencies or black swan events.

“Americans experienced a slew of freight disruptions during and after the COVID-19 pandemic,” **said Johnson**. “Last year we addressed ocean shipping reform, and it’s clear that updates are needed for other parts of the supply chain. The *SHIP IT Act* will bridge gaps, keep costs down for consumers, and make it easier for shippers to move products across the U.S.”

“Disruptions in our trucking supply chain continue to drive up costs and create uncertainty for American consumers and producers,” **said Costa**. “We need to recruit, train, and retain truck drivers to keep our supply chain moving, while also updating best practices to improve trucking to fit our modern economy. That is why we introduced this bipartisan legislation to strengthen the workforce and make it easier to move products across the country.”

“The Shippers Coalition applauds the introduction of the Safer Highway and Increased Performance for Interstate Trucking “*SHIP IT Act*.” This bill is vital to strengthening our supply chain by increasing shipping capacity, lessening burdens on truck drivers, modernizing the CDL process, and allowing additional flexibilities during times of emergency. The 80+ members of the Shippers Coalition appreciate Congressman Johnson’s steadfast leadership on these issues and look forward to working with him to help this critical legislation become law,” **said Sean Joyce, Executive Director, Shippers Coalition**.

“Hendrickson is a vital tier 1 supplier to the truck and trailer manufacturers worldwide, supplying suspensions systems, axles, brakes, springs, slider box systems, and bumpers. Hendrickson is proud to have one of its key manufacturing facilities located in the great state of South Dakota. The Mitchell, S.D. location, established in 1987, manufactures trailer air ride componentry and other important suspension parts. Hendrickson wholly supports legislative efforts that aim to improve the trucking industry. A perfect example is the “*SHIP IT Act*,” sponsored by Congressman Johnson. Anytime we can make the recruitment of qualified truck drivers easier and with greater retention, that is a positive step for the supply chain. Additionally, addressing the efficiency of moving goods on our roadways aligns well with America’s need to become more environmentally conscience, while keeping safety at the forefront. We are grateful to have Congressmen, like Representative Johnson, lead these significant and important issues,” **said Matt Joy, President & Chief Executive Officer, Hendrickson**.

“The *SHIP IT Act* is commonsense trucking reform legislation that will help dairy companies overcome many of the current supply chain challenges facing our industry. The legislation would bring the U.S. supply chain into the 21st century to meet the needs of shippers, reduce regulatory burdens that cost shippers millions of dollars a year, create good paying jobs, and support the ambitious sustainability goals of dairy businesses. IDFA is grateful to Reps. Dusty Johnson and Jim Costa for their leadership on this issue, and we urge swift passage of the *SHIP IT Act* in both chambers of Congress,” **said Michael Dykes, D.V.M., President and CEO of the International Dairy Foods Association**.

“Milk is a perishable commodity that needs to move quickly along the supply chain from the farm to the consumer. The damages wrought by the COVID-19 pandemic and the supply chain snarls that followed have shown how important it is to find safe, efficient means of transporting goods across the country. We commend Representatives Dusty Johnson (R-S.D.) and Jim Costa (D-CA) for their bipartisan *Safer Highways and Increased Performance for Interstate Trucking Act*. This measure includes important provisions that will improve transportation efficiency and sustainability within the U.S. dairy industry,” **said Jim Mulhern, National Milk Producers Federation President and CEO**.

“Consumer Brands is grateful for the bipartisan leadership of Congressmen Johnson and Costa in championing new legislation that will safely allow for less empty miles driven, a more robust and well-trained trucking workforce and a stronger national supply chain. The *SHIP IT Act* offers tangible solutions that stand to immediately address pressing supply chain challenges. We call on Congress to pass this bipartisan legislation and take meaningful steps to lower consumer costs, enhance efficiency and support safety,” **said Tom Madrecki, Vice President of Supply Chain, Consumer Brands Association**.

Background:

- America is experiencing an 80,000-truck driver shortage, which has a negative ripple effect for every part of the supply chain.
- The median age of the truck driver in the industry is between 51- and 52-years old.
- There is one parking space available for every 11 semitrucks on the road—yet there is a need for even more trucks to deliver freight.

The *Safer Highways and Increased Performance for Interstate Trucking (SHIP IT) Act*:

- Modernizes the authority for certain vehicle waivers during emergencies, allowing waivers in response to disease and supply chain emergencies
- Allows truck drivers to apply for Workforce Innovation and Opportunity Act grants
- Incentivizes new truck drivers to enter the workforce through targeted and temporary tax credits
- Streamlines the CDL process, making it easier for states and third parties to administer CDL tests
- Expands access to truck parking and rest facilities for commercial drivers

[Transportation & Infrastructure](#) [Economy](#)

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March 8, 2023

The Honorable Maria Cantwell  
Chair  
Committee on Commerce, Science and Technology  
United States Senate  
Washington, D.C. 20510

The Honorable Ted Cruz  
Ranking Member  
Committee on Commerce, Science and Technology  
United States Senate  
Washington, D.C. 20510

The Honorable Thomas R. Carper  
Chairman  
Committee on Environment & Public Works  
United States Senate  
Washington, D.C. 20510

The Honorable Shelley Moore Capito  
Ranking Member  
Committee on Environment & Public Works  
United States Senate  
Washington, D.C. 20510

The Honorable Sam Graves  
Chairman  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Rick Larsen  
Ranking Member  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington, DC 20515

Dear Chair Cantwell, Ranking Member Cruz, Chairman Carper, Ranking Member Capito, Chairman Graves and Ranking Member Larsen:

On behalf of our collective food and agricultural memberships, we write to urge further action to improve supply chain function with legislation to aid truck transportation – the largest freight mode with over 60 percent of all freight by weight according to the Bureau of Transportation Statistics. Trucks are the linchpin of the transportation sector with most forms of freight trucked at least once during the supply chain process. Pipelines move almost another 20 percent of freight, while the rail and water modes combine for almost 20 percent.

The pandemic highlighted the importance of trucking to our nation's well-being and we believe economic and environmental benefits can be unlocked through legislative reform. We support the Safer Highways and Increased Performance for Interstate Trucking Act (SHIP IT) and the meaningful solutions it provides to address the need for more truck drivers, truck parking, productivity, environmental efficiency, options during emergencies, and flexibility for ag haulers.

SHIP IT aims to bolster our nation's driver workforce with two years of tax incentives for qualified drivers, grants to help cover driver schooling costs, and additional options for obtaining commercial drivers' licenses. The bill also provides authorization for additional parking facilities to help improve drivers' quality of life.

Further, the bill increases truck productivity and environmental efficiency by allowing states to opt into pilot programs to permit trucks with at least six axles to weigh up to 91,000 pounds on Interstate Highways. The additional axle and associated set of brakes serve to increase stopping capability and trucks would be required to comply with the Federal bridge formula and axle weight limits to protect bridges and roads. In addition, SHIP IT provides the Secretary of Transportation the authority to relax truck weight limits during emergencies to help with relief efforts.

Lastly, SHIP IT helps ag haulers by providing a 150-air-miles exemption from hours-of-service regulations on the backend of hauls to provide needed flexibility for agriculture and its seasonal changes in freight demand.

We believe by supporting SHIP IT, Congress can achieve positive benefits for the environment while improving the economic competitiveness of the United States. We look forward to working with you in support of improving U.S. transportation and bolstering America's infrastructure.

Sincerely,

Agricultural Transportation Working Group

National Associations

Agricultural Retailers Association  
Agriculture Transportation Coalition  
Amcot  
American Bakers Association  
American Beekeeping Federation  
American Beverage Association  
American Building Materials Alliance  
American Farm Bureau Federation  
American Feed Industry Association  
American Sheep Industry Association  
American Soybean Association  
American Sugar Alliance  
American Sugar Cane League  
Consumer Brands Association  
Corn Refiners Association  
Cotton Growers Warehouse Association  
Forest Resources Association  
Hardwood Federation  
Institute of Shortening and Edible Oils  
International Dairy Foods Association  
International Fresh Produce Association  
Leather and Hide Council of America  
Livestock Marketing Association  
Meat Import Council of America  
National Aquaculture Association  
National Barley Growers Association  
National Cattlemen's Beef Association  
National Corn Growers Association  
National Council of Farmer Cooperatives  
National Grain and Feed Association  
National Grocers Association  
National Milk Producers Federation  
National Oilseed Processors Association  
National Pork Producers Council  
National Potato Council  
National Sorghum Producers  
National Sunflower Association  
National Turkey Federation  
National Wheat Growers Association  
North American Meat Institute  
North American Millers' Association

North American Renderers Association  
Pet Food Institute  
SNAC International  
Soy Transportation Coalition  
Specialty Soya & Grains Alliance  
The Fertilizer Institute  
U.S. Canola Association  
U.S. Forage Export Council  
US Pea and Lentil Trade Association  
USA Dry Pea and Lentil Council  
USA Rice

State and Regional Associations

Agribusiness Association of Iowa  
Agribusiness Council of Indiana  
California Cotton Ginners and Growers Association  
California Fresh Fruit Association  
California Grain and Feed Association  
Florida Fertilizer & Agrichemical Association  
Grain and Feed Association of Illinois  
Illinois Soybean Association  
Kansas Agribusiness Retailers Association  
Kansas Grain and Feed Association  
Michigan Agri-Business Association  
Michigan Bean Shippers  
Minnesota Grain and Feed Association  
Missouri Agribusiness Association  
Montana Agricultural Business Association  
North Dakota Agricultural Association  
North Dakota Grain Dealers Association  
North Dakota Grain Growers Association  
Northeast Agribusiness & Feed Alliance  
Northern Pulse Growers Association  
Ohio AgriBusiness Association  
Pacific Coast Renderers Association  
Pacific Northwest Grain & Feed Association  
Rocky Mountain Agribusiness Association  
South Dakota Agri-Business Association  
Texas Grain and Feed Association  
United Dairymen of Arizona  
Washington Association of Wheat Growers  
Washington State Potato Commission  
Western Agricultural Processors Association  
Western Pulse Growers Association  
Wisconsin Agri-Business Association

cc: Senate Committee on Agriculture, Nutrition and Forestry Members  
House Committee on Agriculture Members



April 19, 2019

The Honorable John Barrasso  
Chairman, Committee on  
Environment and Public Works  
United States Senate  
307 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Tom Carper  
Ranking Member, Committee on  
Environment and Public Works  
United States Senate  
513 Hart Senate Office Building  
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

As you consider an infrastructure bill and the next highway bill, the following agricultural organizations respectfully urge you to authorize a ten percent axle-weight tolerance on the Interstate Highway System for commercial motor vehicles transporting cargo in trailers specifically designed to hold dry bulk goods. The tolerance would increase the maximum weight limit for tandem-axles from 34,000 lbs. to 37,400 lbs. but would leave the maximum gross vehicle weight limit untouched at 80,000 lbs. We are making this request because dry bulk loads, such as grain and feed, regularly shift during transport and can cause a breach of the tandem-axle weight limit without exceeding the overall gross vehicle weight limit.

Dry bulk goods include plastic pellets, grain, grain products, feed products, and other solid substances with tiny individual particles that can easily separate during transport and cause a tandem-axle to exceed the 34,000 lbs. weight limit. The force generated when braking compacts the cargo at the front end of the trailer but the relatively weaker forces from acceleration and forward movement fail to evenly redistribute the weight across axles. Even when properly loaded, the truck's natural motion can cause cargo to become improperly distributed.

Commonsense policies, such as authorizing an axle weight tolerance to account for shifting during transport, are vitally important to the agricultural industry. For grain alone, approximately 20 million truckloads are transported from field to commercial storage facilities each year. Further, after the initial movement to storage, agricultural commodities often are transported at least one more time before arriving at the final domestic destination.

To help drivers whose trucks are otherwise loaded within the maximum gross vehicle weight remain within axle-weight limitations during transport, we strongly urge you to authorize a ten percent increase to axle-weights on the Interstate Highway System for commercial motor vehicles transporting cargo in trailers specifically designed to hold dry bulk goods.

Thank you for considering our views, and for your past help on this issue of importance to U.S. food and agriculture.

Sincerely,

AgriBusiness Association of Kentucky  
Agricultural and Food Transporters Conference  
Agriculture Transportation Coalition  
California Grain & Feed Association  
Chicken & Egg Association of Minnesota  
Georgia Poultry Federation  
Grain and Feed Association of Illinois  
Indiana State Poultry Association

Iowa Poultry Association  
Iowa Turkey Federation  
Kansas Agribusiness Retailers Association  
Kansas Grain and Feed Association  
Kentucky Poultry Federation  
Michigan Allied Poultry Industries  
Minnesota Turkey Growers Association  
Mississippi Poultry Association  
National Council of Farmer Cooperatives  
National Grain and Feed Association  
National Grange  
National Turkey Federation  
Nebraska Grain and Feed Association  
North American Millers' Association  
North Carolina Egg Association  
North Carolina Poultry Federation  
North Dakota Grain Dealers Association  
Ohio AgriBusiness Association  
Oklahoma Grain and Feed Association  
Pacific Egg & Poultry Association  
Pacific Northwest Grain & Feed Association  
PennAg Industries Association  
Renew Kansas  
Rocky Mountain Agribusiness Association  
Tennessee Poultry Association  
Texas Grain and Feed Association  
Texas Poultry Federation  
The Fertilizer Institute  
The Northeast Agribusiness and Feed Alliance  
Transportation, Elevator, & Grain Merchants Association  
U.S. Poultry & Egg Association  
Wisconsin Agri-Business Association