

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION**

**COMMENTS OF
THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.**

**IN RESPONSE TO A
NOTICE OF PROPOSED RULEMAKING
REQUEST FOR COMMENTS**

**[FMCSA Docket No. FMCSA-2004-17008]
RIN 2126-AA84**

Brokers of Household Goods Transportation by Motor Vehicle

**JAMES JOHNSTON
President
Owner-Operator Independent
Drivers Association, Inc**

May 09, 2007

BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

I. INTRODUCTION

A. Procedural Statement

These comments are submitted by the Owner-Operator Independent Drivers Association, Inc. (“OOIDA” or “Association”) in response to the Notice of Proposed Rulemaking (“NPRM”); Request for Comments published by the Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”), Docket No. FMCSA-2004-17008, RIN 2126-AA84 [72 FR 5947] (February 8, 2007) related to a proposal to amend regulations to require brokers who arrange for the transportation of household goods in interstate or foreign commerce for consumers to comply with additional consumer protection requirements.

B. Interest of the Owner-Operator Independent Drivers Association, Inc.

The Owner Operator Independent Drivers Association, Inc. is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. OOIDA is the largest international trade association representing the interests of independent owner-operators, small business motor carriers and professional drivers. The more than 153,000 members of OOIDA are professional drivers and small business men and women located in all 50 states and Canada who collectively own and operate more than 240,000 individual heavy-duty trucks and small truck fleets. One-truck motor carriers represent nearly half the total number of active motor carriers operating in the United States while approximately 96

percent of active motor carriers operate 20 or fewer trucks. The address of the Association is:

Owner-Operator Independent Drivers Association, Inc.
P.O. Box 1000
1 NW OOIDA Drive
Grain Valley, Missouri 64029
www.oida.com

The Association actively promotes the views of small business truckers and professional drivers through its interaction with state and federal government agencies, legislatures, the courts, other trade associations, and private businesses to advance an equitable and safe environment for commercial drivers. OOIDA is active in all aspects of highway safety and transportation policy, and represents the position of small business truckers on numerous committees and in various forums on the local, state, national, and international levels. Many owner-operators, motor carriers and professional drivers, including members of OOIDA who conduct business with HHG brokers are concerned about effective oversight of these brokers.

II. SUMMARY

OOIDA supports increasing both the regulatory requirements and enforcement penalties for brokers of household goods. However, a wide chasm exists between codifying new regulations and active enforcement. The Association believes that FMCSA falls short in adequately addressing consumer protections.

While FMCSA views safety as its primary mission rather than enforcing the regulations it views as economically related, economics and safety are intrinsically linked. Small business motor carriers, leased operators and professional drivers are put under undeniable financial strain, affecting their business viability when their hard work

goes uncompensated because of fraud on the part of any transportation broker. This strain can be more acute for household goods movers since the nature of their operational model leaves little ability to regain the lost time and money when a HHG broker “cuts and runs” from their financial responsibilities.

Additionally, this NPRM misses an opportunity to establish sufficient increases in the required surety bond or trust fund agreement meant to protect both motor carriers and shippers (consumers). The methodology and reasoning utilized by the Agency to minimally increase bonding/trust fund agreement requirements on brokers of HHG is flawed and the proposed amount is insufficient to protect motor carriers and shippers.

III. COMMENTS OF THE ASSOCIATION

A. Enforcement of economic regulations must be taken seriously

A regulation is only as good as the effort to enforce that particular regulation. When FMCSA practices selective enforcement and fails to prosecute flagrant violators of what the Agency deems as non-safety related regulations, their purpose and intent is all but lost.

OOIDA can detail with exacting certainty numerous violations of the 1980 law related to loading and unloading motor vehicles (49 U.S.C. 14103). Agency trepidation over enforcing regulations deemed to have nothing to do with its safety mission exhibits a myopic world view of its duties and how those violations indeed affect highway safety.

A telling example of rogue HHG brokers and their path of financial destruction was graphically illustrated by two articles in Land Line Magazine, *May 2005*. pp. 12-13, 40-41. The fact that the individual identified within those articles continues to prey on unsuspecting consumers and motor carriers points to an irresponsible dereliction of duty

on the part of FMCSA. Failure by the Agency to acknowledge the cascading affect that irresponsible, non-paying HHG brokers have on continued successful business operations by motor carriers creates an environment where all law abiding participants are pushed into an economic downward spiral.

In a mind-blowing abdication of oversight with national security implications, this particular broker was approved by the Military Surface Deployment and Distribution Command to broker military shipments in 2004, even when he had no broker authority. Often operating without proper authority and unresponsive to dozens of legal judgments, this broker clearly exhibited no fear of prosecution. This broker of property, including HHG, unregistered at the time, dispatched an OOIDA member on a load of missile launchers and to-date has refused payment for services. When government oversight and indifference to enforcement is so clearly demonstrated, what chance do consumers and motor carriers have even with these new proposed regulations?

The consumer is ill served by a system that continues to allow rogue HHG brokers to operate with impunity. Both consumers and motor carriers will continue to be scammed by unscrupulous HHG brokers because the Agency does not actively police brokers for adherence to the regulations. Additional regulations with little or no enforcement are really nothing more than acceptance of the status quo.

B. Insufficient increase in surety bond or trust fund agreement

FMCSA reasons that adjusting the surety bond or trust fund agreement for inflation from \$10,000 to \$25,000 dollars is the best that can be done without further data supporting a higher amount. While the Agency acknowledged comments to the ANPRM requesting an increase, simply making an inflation adjusted increase, that under current

economic conditions is hardly a noteworthy amount, will be insufficient to curtail rogue HHG brokers. As FMCSA stated in the preamble to this NPRM concerning the requirement, “[t]he requirement was set at \$10,000 to ensure shippers or motor carriers would be paid if the household goods broker failed to carry out its contracts, agreements, or arrangements for the supplying of transportation by authorized household goods motor carriers.” Any HHG broker could easily dispatch \$25,000 dollars worth of contracts in as little as a week or even a day. When normal business time-lag is accounted for, it is not implausible that hundreds-of-thousands of dollars can be at stake.

In comments to the ANPRM OOIDA supplied the Agency with an estimate of between \$300,000 and \$500,000 of the aggregate amount of outstanding claims reported by surety companies in response to Association efforts to submit claims of our members against broker bonds. Increasing the surety bond to only \$25,000 dollars makes it a certainty that crime will pay as rogue HHG brokers will still be able to scam both shippers and motor carriers out of amounts well into the hundreds-of-thousands of dollars. Broker concerns about the cost of procuring a bond or establishing a trust are irrelevant. Those costs are a direct reflection of the accurately determined risk exposure for an industry that can’t police itself of rogue brokers. It is a noteworthy dichotomy that OOIDA members operating one truck under their own operating authority are required to maintain at a minimum \$750,000 worth of liability insurance to protect the public. Yet HHG brokers are allowed to slide by significantly “under-insured” by comparison. The damage a broker can do to shippers and motor carriers is not as readily apparent as a high profile accident, but the financial injury they cause can be just as real and long-lasting.

The Agency left the door open for a future rulemaking addressing higher limits for the surety bond or trust fund. OOIDA believes the Agency is missing a golden opportunity within this rulemaking to state unequivocally that financial chicanery and the associated impact it can have on highway safety is going to be seriously dealt with. The insufficiency of the proposed broker bond/trust fund agreement increase will allow unscrupulous HHG brokers to continue to make a mockery of the regulation, the Agency, and the intent of Congress.

C. Estimates must be based on a physical survey

It is hard to imagine that a trustworthy HHG motor carrier or broker would attempt to blindly estimate a typical HHG shipment. Certainly, if a shipper has received estimates based on physical surveys from other HHG motor carriers, brokers or experienced third parties, or has otherwise determined the shipment weight then the shipper may opt out of any additional physical surveys. However, OOIDA believes that HHG brokers must be required to conduct a physical survey, regardless of the distance from the broker's place of business, unless the shipper provides the broker with a weight by which the broker is to determine an estimate of charges.

IV. CONCLUSION

Bureaucratic indifference to the enforcement of commercial regulations, or regulations not viewed as being part of FMCSA's safety mission (i.e. effective and meaningful HHG broker oversight and enforcement) only ensures continued frustration by all affected parties. The Agency must recognize that even the regulations it considers purely economic have an impact on safety, and actively enforce all regulations that fall within its jurisdiction.

FMCSA must substantially increase the surety bond or trust fund agreement requirements along with streamlining complaint procedures to assure both consumers and motor carriers that legitimate complaints will not disappear into a bureaucratic morass. Absent an adequate amount of surety and dedicated oversight and enforcement, shippers and motor carriers will continue to be victimized by HHG brokers.

Finally, HHG brokers must be required to conduct a physical survey, regardless of the distance from the broker's place of business, unless the shipper provides the weight by which the estimate of charges is to be calculated by the broker.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JJ', with a stylized flourish extending from the end of the second letter.

JAMES J. JOHNSTON
President
Owner-Operator Independent
Drivers Association, Inc.

May 9, 2007