



Federal Motor Carrier Safety Administration Requests Responses on The Definitions of “Broker” and “Bona Fide Agents”

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On June 10, 2022, the Federal Motor Carrier Safety Administration (“FMCSA”) issued a notice and request for comments in Docket No. 2022-134 to assist the agency in issuing guidance by November 15, 2022, in response to the Infrastructure Investment and Jobs Act.

A *broker* is a defined term in the Interstate Commerce Act 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 C.F.R. 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.”

And in the regulation *bona fide agents* are defined as persons who are part of the normal organization of a motor carrier and perform the 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.

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FMCSA seeks to consider the affect of technology on the brokerage industry (electronic bulletin boards), the role of bona fide agents, dispatch services and potential penalties for unauthorized brokerage activities. The June 10 Notice contains a list of 13 questions that will form the basis for responses to the request of the FMCSA that address these issues and seek comment from the transportation industry as a whole.