

CALIFORNIA AIR RESOURCES BOARD (CARB)

Advanced Clean Fleets Regulation

Informal Public Comments on the Proposed Advanced Clean Fleets Rulemaking

COMMENTS

SUBMITTED BY THE

TRANSPORTATION INTERMEDIARIES ASSOCIATION (TIA)



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10/4/2021

The Transportation Intermediaries Association (TIA) submits these comments in response to the California Air Resources Board's (CARB) request for informal public comments on the proposed Advanced Clean Fleets rulemaking.

As the premier organization representing third-party logistics companies (3PLs), TIA supports the mission of CARB and reducing and ultimately eliminating carbon emissions and harmful pollutants and improving air quality. TIA works closely with the federal Environmental Protection Agency (EPA) on this mission by participating in their SmartWay program and being an affiliate partner. However, TIA is frankly confused with the proposed role of brokers described in the draft proposed text of the regulation. TIA staff and member companies have met in good faith with CARB several times on this regulation and based on the staff presentation that was shown at the September 9, 2021 workshop, it appears that our feedback was considered and incorporated on the issue of common ownership. However, it is not clear what the final guidance will be on compliance with the proposed regulation. TIA thus would like to offer the comments below to CARB to ensure a complete understanding of our members' business and its interaction with motor carriers. As explained further in detail below, **brokers do not exercise any control over the trucking company or motor carrier's operation.**

IDENTITY AND INTEREST OF THE TRANSPORTATION INTERMEDIARIES ASSOCIATION

TIA is the professional organization of the \$214 billion third-party logistics industry. TIA is the only U.S. organization exclusively representing transportation intermediaries of all disciplines doing business in domestic and international commerce. TIA is the voice of transportation intermediaries for shippers, carriers, government officials, and international organizations.

TIA members include approximately 1,800 property brokers, surface freight forwarders, international ocean transportation intermediaries (ocean freight forwarders and non-vessel-operating common carriers), air forwarders, customs brokers, warehouse operators, logistics management companies, intermodal marketing companies, and motor carriers.

TIA is also the U.S. member of the International Federation of Freight Forwarders Associations (FIATA), the worldwide trade association of transportation intermediaries representing more than 40,000 companies in every trading country.

Transportation intermediaries or third-party logistics professionals act as the "travel agents" for freight. They serve tens of thousands of shippers and carriers, bringing together the transportation needs of the cargo interests with the corresponding capacity and special equipment offered by rail, motor, air, and ocean carriers.

Transportation intermediaries are primarily non-asset-based companies whose expertise is providing mode and carrier-neutral transportation arrangements for shippers with the underlying asset owning and operating carriers. They get to know the details of a shipper's business, then tailor a package of transportation services, sometimes by various modes of transportation, to meet those needs. Transportation intermediaries bring expertise to meet the shippers' transportation needs.

BROKERS ARE NOT FLEET OWNERS & COMPLIANCE

Based on the initial CARB staff presentation that was promulgated to the public in March 2020, the presentation noted that brokers would be considered "fleet owners" and responsible to ensure that

the fleets would be compliant within the timeframes. TIA met with CARB officials on several occasions about this provision and provided them with the following feedback:

A DOT licensed property broker (colloquially referred to as a Freight Broker) company does not have direct influence over a trucking company's fleet and should not be subject to this rule. Unless the third-party logistics company has Trailers registered/licensed under their authority (this could be determined through state plate registrations). A "Freight Brokerage" company that simply arranges transportation between a shipper and a motor carrier that does not meet one of these requirements, would not be considered to have "influence" over the fleets of heavy-duty commercial motor vehicles. The exceptions to this definition include a licensed freight forwarder who physically takes possession of the freight and essentially acts as a motor carrier, or a freight broker who owns/leases/operates at least 50 pieces of trailer equipment, or a truck dispatch service that operates as a bona fide agent of a motor carrier (as defined by 49 CFR 371.2).

TIA felt strongly that this definition would accurately reflect instances where a broker "could" actually exert control over a motor carrier's operation. On a day-to-day basis, licensed property brokers arrange transportation on behalf of their shipper customers with motor carriers that meet the needs and requirements of customers. A broker that arranges transportation on an ad hoc basis simply does not exert control over a motor carrier and does not have a role in determining which trucks they purchase, upgrade, or which drivers they hire. Exerting control is directly contrary to FMCSA's rulemaking, RIN 2126-AB57.

At the September 2021 workshop, TIA was pleased to see that CARB staff included a slide that outlined that brokers that arrange transportation on an ad hoc basis would not be included. This is a welcome change and TIA appreciates the CARB staff taking our feedback and implementing that change.

As to the broker's role in ensuring the selection of motor carriers that are compliant with the regulation, TIA has two thoughts on this. TIA is aware that CARB plans to roll out an online database for brokers and shippers to check compliance of motor carriers, which would be a

very useful tool for our members. TIA will also recommend to our members to seek the certificate from the motor carriers themselves, in addition to including contract language similar to how our members navigate other CARB regulations.

TIA fully supports exempting small motor carriers, defined as earning less than \$50 million in annual revenue, as these requirements would place an undue burden on small businesses that do not have the manpower or resources to ensure compliance. Many of them could go out of business, which would drastically have negative impacts on California and the American economy. These companies, however, represent 90% of the motor carrier population. In light of this large, exempted population, it is unclear to us how CARB intends to ensure compliance. Further clarification would be welcomed on this point.

CONCLUSION

TIA commends CARB for taking these steps to improve our nation's air quality and appreciates the willingness to meet with our members and staff to hear our concerns and make necessary adjustments.

Respectfully Submitted,

A handwritten signature in black ink that reads "Chris Burroughs". The signature is written in a cursive, flowing style.

Chris Burroughs
Vice President of Government Affairs