

FMCSA – Moving Fraud Summit November 14th, 2012

Summary of Key Points and Indicated Direction

On November 14th, leadership and staff from the Federal Motor Carrier Safety Administration (FMCSA) recently hosted their inaugural, Moving Fraud Summit. In addition to leadership and key staff from the FMCSA (including FMCSA Administrator Anne Ferro), there were about 45 people in attendance, including; IAM, AMSA, other HHG moving industry reps, along with several state agency reps from attorneys general offices and state enforcement officers.

As indicated in MAP-21 (the recently signed “Highway Bill”), issues surrounding the HHGs industry remain a top priority for the Agency. Among other items, FMCSA is statutorily required to develop consumer protection programs, HHG entry requirements, along with later training and certification.

FMCSA staff made it clear that they view a potential connection between HHG hostage and similar situations as much more than a simple dispute between a carrier and a customer. Connected to the HHG hostage load may be credit card fraud, false advertising, wire fraud and a host of other connected issues, (including labor law violations) that are often uncovered as an inquiry into a HHG hostage load develops.

This has led the FMCSA to partner with state agencies and to provide information to them that could lead to criminal investigations and prosecution. While the FMCSA may issue fines, penalties and revoke operating authority for rogue operators, they cannot detain property, individuals or initiate their own criminal prosecution. The FMCSA is looking to expand the number of states that they are partnering with, as they see this as a key to reducing the number of rogue operators and subsequent HHG hostage loads.

Representatives from the states that have partnered with the FMCSA believe that these efforts are working, and many observed that rogue operators have moved out of state, or area, when coordinated action has been taken.

The FMCSA has formed a Task Force to address rogue operators, whose membership for the time being is limited to federal and state agency personnel. In addition to information sharing, representatives from the current task force at the meeting expressed a strong desire to set up rather elaborate sting operations to catch rogue operators. In order to get the

evidence needed, they would need to pose as customers and see the process through from beginning to end – an effort that would require significant time and resources.

To be clear, there would seem to be a general agreement at the Agency that the problem with moving fraud begins most often with online brokers, that are subbing out the physical move to a variety of companies. There was discussion of reincarnated operators, and how these companies are often utilized by the online brokers to carry out service contracts and agreements. The online broker industry was also the primary target of the recent U.S. Senate Commerce Committee hearing on the HHG moving industry.

FMCSA staff also reviewed the process by which HHG complaints are currently resolved when notified by the shipper. This process currently includes a review by phone with both the carrier and the shipper to try and resolve the conflict. If in the course of the inquiry by the Agency violations are discovered, the Agency is able to take enforcement action, including assessment of fines and penalties, along with revocation of operating authority for the carrier. It is important to note however that the FMCSA is not able to act as an advocate for the shipper, and must only take punitive action against the carrier based on evidence found during the course of the inquiry.

With respect to HHG hostage loads was the acknowledgement that rogue operators are very likely to not pay assessed fines, respect the revocation of their license (which they may or may not have) and will move as needed to continue their operations.

As directed by MAP-21 and pending legislation in Congress, FMCSA will continue to look to partner with industry to develop consumer education programs, as well as future HHG entry requirements. As these proposed rules are issued, IAM will need to develop a coordinated, consistent response that provides the HHG moving industry perspective and considerable expertise. This is particularly true of the to-be-developed HHG entry requirements.

IAM will continue to and needs to stay engaged with FMCSA staff and leadership, to not only provide information on the industry, but also to shape future regulations that while compliant with requirements, are also reasonable and able to be achieved by the HHG industry. IAM will work to ensure to the degree possible that regulations and other restrictions meant to address the very small number of rogue operators does not have an onerous impact on the IAM membership.

In addition to educating the FMCSA staff, IAM will also encourage (where possible) to ask the FMCSA open up more of their working groups to include industry may also be helpful. An effort in this direction would assist the Agency as they develop rules impacting the HHG industry.