

TRANSPORTATION

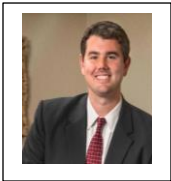
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IN THIS ISSUE

This article will address National Transportation Safety Board (NTSB) and the Federal Motor Carrier Safety Administration (FMCSA) investigations in the context of trucking accidents and recommendations for responding to same on behalf of motor carriers in the United States.

Government Investigations: Cooperating with Federal Agencies After a Trucking Accident

ABOUT THE AUTHOR



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This IADC Committee was formed to combine practices of aviation, rail, maritime with trucking together to serve all members who are involved in the defense of transportation including aviation companies (including air carriers and aviation manufacturers), maritime companies (including offshore energy exploration and production), railroad litigation (including accidents and employee claims) and motor carriers and trucking insurance companies for personal injury claims, property damage claims and cargo claims. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:



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The International Association of Defense Counsel serves a distinguished, invitation-only membership of corporate and insurance defense lawyers. The IADC dedicates itself to enhancing the development of skills, professionalism and camaraderie in the practice of law in order to serve and benefit the civil justice system, the legal profession, society and our members.

Motor vehicle accidents occur every day in the United States and other countries. Depending upon the parties involved, some accidents can often lead to inquiries and investigation from one or more federal agencies. These investigations can serve different purposes depending upon the specific authority of the investigating body. For those who practice in the area of transportation law or assist clients with needs in that area in the United States, it is important to be able to assess whether your client is prepared to interact with these federal investigative agencies. While representing a commercial motor carrier after an accident, it is beneficial to understand the differences between the Federal Motor Carrier Safety Administration (FMCSA) and the National Transportation Safety Board (NTSB).

1. Federal Motor Carrier Safety Administration

The FMCSA regulates and enforces safety regulations ¹ as well as hazardous materials regulations. ² In addition, it also regulates and enforces minimum financial responsibility and insurance requirements of motor carriers ³ and household goods. ⁴ In addition to enforcing their regulations at a federal level, the FMCSA allows state law enforcement agencies to enforce these regulations. These grants provide financial support to the states to ensure enforcement can be coordinated throughout all 50 states. The data that is generated by state

law enforcement agencies provides FMCSA with a foundation for establishing the risk values for each motor carrier, which it then uses to target enforcement actions and initiate company-specific compliance reviews. The data includes both federal and state activity related to crashes, roadside inspections, on-site compliance review results, as well as the enforcement history of each commercial motor carrier in a database known as the Safety Measurement System.

2. National Transportation Safety Board

The NTSB is an independent agency established under the Independent Safety Board Act of 1974. The agency is responsible for investigating both aviation and surface transportation accidents and incidents. With regard to accidents or incidents that occur on highways within the United States, the NTSB has broad powers for determining if it believes that investigation of the accident would help prevent similar accidents in the future. The NTSB has authority to investigate any highway accident or incident, including railroad grade-crossings, that it feels is worthy of the agency's investigative resources. Ultimately, the NTSB is responsible for investigating any accident or incident that in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of the Independent Safety Board Act of 1974. Pursuant to 49 CFR 831.4, the nature of an NTSB investigation is

¹ See 49 CFR 350-399

² See 49 CFR 171-180

³ See 49 CFR Part 387

⁴ See 49 CFR Part 375

to determine the: (1) facts, (2) conditions, (3) circumstances associated with the accident or incident, and to (4) determine probable cause.

3. Responding to Investigation Requests

Just like any immediate action taken in response to a serious accident, a motor carrier should make specific, documented efforts to obtain and preserve data and information that will foreseeably be relevant to both litigation and federal agency inquiries as soon as possible after the accident occurs. This information includes, but is not limited to: (1) hours of service documentation, (2) documentation regarding the load and bill of lading and (3) physical evidence such as the involved tractor and trailer. In this context, the motor carrier and its counsel should place emphasis upon data and information that is regularly destroyed or overwritten in the regular course of business following an accident.

It is in the best interest of any organization involved in an inspection or investigation by either the FMCSA or NTSB to work cooperatively with the agency and provide them with the information they request. As federal inspectors or investigators, the agencies obviously have substantial authority that can cause grief for companies that fail to comply. For instance, if a motor carrier denies access to FMCSA inspectors who are requesting records, the agency has the ability to suspend, amend or revoke any part of the registration of the motor carrier,

broker or freight forwarded for willful failure to comply with various items, including an administrative subpoena or letter demanding release of company safety records. If they request information that is reasonably necessary for them to complete the work they are required to accomplish, it is in the company's best interest to provide it to them as quickly as possible.

As a motor carrier, it is crucial to contact counsel as soon as possible after the notification of a federal investigation. If the NTSB contacts the motor carrier directly, it would be prudent for the company to immediately contact counsel, as well as experts who have firsthand working knowledge of the agency. This expert should be able to provide guidance to help protect the company's rights and interests during the on-scene phase of the investigation, as well as the evaluation of factual information while at either NTSB headquarters or at one of the field offices.

According to 49 CFR 831.14, any company whose "employees, functions, activities or products were involved in an accident or incident under investigation may submit to the NTSB written proposed findings to be drawn from the evidence produced during the course of the investigation, a proposed probable cause, and/or proposed safety recommendations designed to prevent future accidents." This section of the governing regulations allows for a motor carrier to consider all the facts that were drawn upon by the NTSB while investigating the accident or incident and provide the NTSB with suggested findings. If the motor



carrier has retained counsel, and individuals that have expertise in working with the NTSB, it is essential to have these individuals incorporated into the workings of the investigation from the beginning. This will enable areas of the investigation that are focused on the motor carrier to be fully explored and a formal submission drafted for NTSB's consideration as part of their deliberations.

There are many more aspects of these federal investigations to consider, but it is important for motor carriers to reach out to their counsel if contacted by the authorities, cooperate with the designated agency and document each part of their own investigation.

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