



Owner-Operator Independent Drivers Association

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May 19, 2020

The Honorable Elaine Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

The Honorable Jim Mullen
Acting Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

Dear Secretary Chao and Acting Administrator Mullen:

The Owner-Operator Independent Drivers Association (OOIDA) hereby petitions the U.S. Department of Transportation (DOT) to initiate a rulemaking that will improve broker transparency regulations promulgated in 49 CFR §371.3.

OOIDA is the largest trade association representing the views of small-business truckers and professional truck drivers. OOIDA has more than 160,000 members located in all fifty states that collectively own and operate more than 240,000 individual heavy-duty trucks. OOIDA's mission is to promote and protect the interests of its members on any issues that might impact their economic well-being, working conditions, and the safe operation of commercial motor vehicles (CMVs) on our nation's highways.

With freight rates reaching historic lows, small-business truckers are struggling. Many have expressed frustration about the lack of transparency between brokers and motor carriers. The problem is that the regulations designed to provide transparency are routinely evaded by brokers or simply not enforced by DOT. Our petition is effectively a request to improve transparency as required by 49 CFR §371.3 by proposing the following:

1. Require brokers to automatically provide an electronic copy of each transaction record within 48 hours after the contractual service has been completed.
2. Explicitly prohibit brokers from including any provision in their contracts that requires a carrier to waive their rights to access the transaction records as required by 49 CFR §371.3.

49 CFR §371.3 mandates that brokers keep transaction records and permits each party to a brokered transaction to review these records. This allows carriers to know precisely how much a shipper paid the broker and how much the broker then paid the carrier. Unfortunately, many brokers implement hurdles they know will prevent a carrier from ever seeing this information. For example, some only allow a carrier to access records at the broker's office during normal

business hours. Brokers know this makes it virtually impossible for most carriers to ever access any records.

The current regulations must be updated so that brokers are required to automatically share their transaction records electronically after the contractual service has been completed. Given the fact that so many business transactions are now conducted and executed electronically, this requirement would improve transparency and prevent brokers from keeping their records only accessible in locations that could be thousands of miles away from their customers. This would also prevent brokers from selectively retaliating against carriers that request this information. In other words, brokers would not be able to put carriers on a “Do Not Use” list for simply exercising their rights.

Many carriers, including owner-operators, sign contracts with brokers that waive 49 CFR §371.3 requirements. OOIDA discourages this, but the practice is so prevalent that truckers often have no other choice if they want to haul a brokered load. Even many of the most reputable brokers use these clauses to avoid complying with the requirement. Here is an example from one of the nation’s largest brokers: *“Carrier shall not claim or demand, in whole or in part, broker's commissions earned by [redacted] on shipments tendered under this Contract. [Redacted] shall not be required to disclose the amount of its broker's commission to Carrier, and Carrier expressly waives its right to receive and review information, including broker's commission information, pursuant to 49 CFR §371.3.”* This flies in the face of 49 CFR §371.3. In effect, brokers are exempting themselves from federal regulations. Small-business truckers would never get away with blatantly and deliberately evading federal regulations, nor should they. Accordingly, 49 CFR §371.3 must be amended to prohibit brokers from including any provisions in their contracts that requires a carrier to waive their rights to access transaction records.

In addition to improving broker transparency by adopting these provisions, FMCSA must also enforce 49 CFR §371.3. This regulation requires the following:

- (a) A broker shall keep a record of each transaction. For purposes of this section, brokers may keep master lists of consignors and the address and registration number of the carrier, rather than repeating this information for each transaction. The record shall show:
 - (1) The name and address of the consignor;*
 - (2) The name, address, and registration number of the originating motor carrier;*
 - (3) The bill of lading or freight bill number;*
 - (4) The amount of compensation received by the broker for the brokerage service performed and the name of the payer;*
 - (5) A description of any non-brokerage service performed in connection with each shipment or other activity, the amount of compensation received for the service, and the name of the payer; and*
 - (6) The amount of any freight charges collected by the broker and the date of payment to the carrier.**
- (b) Brokers shall keep the records required by this section for a period of three years.*

(c) Each party to a brokered transaction has the right to review the record of the transaction required to be kept by these rules.

In order to dissuade brokers from knowingly skirting these regulations, FMCSA must levy and enforce a structured fine system that would penalize non-compliance. Furthermore, FMCSA must suspend or revoke the authority of unscrupulous brokers that exhibit a pattern of non-compliance. We believe this would improve transparency between brokers and carriers as intended by 49 CFR §371.3.

OOIDA has long pushed for greater transparency in transactions with brokers. With rates on the decline, many truckers are concerned they're the only ones feeling the pain – or at least feeling a disproportionate share of the pain. This will not change until federal regulators enhance and enforce the broker transparency regulations listed in 49 CFR §371.3. OOIDA strongly encourages FMCSA to promulgate and enforce measures that will prevent brokers from continuing to circumvent these requirements.

Sincerely,

A handwritten signature in cursive script, appearing to read "Todd Spencer".

Todd Spencer
President & CEO
Owner-Operator Independent Drivers Association, Inc.