



Owner-Operator Independent Drivers Association

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August 17, 2023

The Honorable Robin Hutcheson
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Transparency in Property Carrier Broker Transactions Notice of Proposed Rulemaking

The Owner-Operator Independent Drivers Association (OOIDA) is the largest trade association representing the views of small-business truckers and professional truck drivers. OOIDA has 150,000 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.

Earlier this year, OOIDA applauded the agency's decision to initiate rulemaking proceedings that would consider amendments to 49 CFR 371.3(c). The regulation was first implemented in 1980 and is intended to ensure transparency between motor carriers and brokers, but has never been credibly enforced. This has resulted in an inequitable economic environment for motor carriers, especially small-businesses that are victimized by unscrupulous brokers. In May 2020, OOIDA petitioned FMCSA to improve broker transparency. Our petition requested that brokers provide transaction information automatically within 48 hours of the completion of contractual services and that brokers be prohibited from including any provision that requires a carrier to waive their rights to access the transaction records. It has been more than three years since OOIDA submitted its original petition and more than 28 months since the most recent comment period ended for broker transparency related dockets.

The Biden Administration's Spring 2023 Unified Regulatory Agenda projected that a Notice of Proposed Rulemaking (NPRM) regarding Transparency in Property Carrier Broker Transactions would be published in June. Now that it's mid-August, OOIDA members are understandably questioning the status of the proposal. Unfortunately, our association has to report that the NPRM is still pending even as broker concerns increasingly plague the industry.

As freight rates have declined throughout 2023, we have heard small-business truckers voice their frustrations about broker fraud. We understand that not all low rates are the result of unscrupulous brokers, but it can be difficult for carriers to identify legitimate brokers with the ineffective transparency regulations currently in place. Given how long the rulemaking process

has taken, we think it is appropriate to reiterate what we shared with you in a letter sent in September 2022:

*Listening to our members, we know that improving broker transparency remains a top priority for small-business motor carriers. While their concerns may intensify during more challenging economic times, there is constant frustration caused by brokers skirting federal transparency requirements without recourse. **As conditions in the trucking industry change, and more carriers face challenges, we can assure you that FMCSA and others in the federal government will continue to hear about the lack of broker transparency from small-business truckers.***

We believe the agency must publish the NPRM and promote broker transparency as soon as possible. Updating these regulations will protect carriers from unlawful brokers and help protect the public by providing a marketplace in which each party behaves in a clear and transparent manner. Since the agency's rulemaking announcement in March, instances of rampant broker abuse and fraud persist. Motor carriers are victimized through unpaid claims, unpaid loads, double brokered loads, or load phishing schemes on a daily basis. If broker transparency regulations and enforcement can be improved, then disputes between motor carriers and brokers will be reduced, there will be less need for litigation, less need for FMCSA intervention, and the economic health of the broker/motor carrier component of the transportation industry will be stronger.

Most importantly, enhancing broker transparency regulations will improve highway safety and driver retention as small-business motor carriers who rely upon brokers will be spared unnecessary financial loss. OOIDA urges FMCSA to promulgate the Transparency in Property Carrier Broker Transactions Notice of Proposed Rulemaking without further delay.

Thank you,

A handwritten signature in cursive script that reads "Todd Spencer".

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