Owner-Operator Independent Drivers Association

National Headquarters: 1 NW OOIDA Drive, Grain Valley, MO 64029
Tel: (816) 229-5791 Fax: (816) 427-4468

Washington Office: 1100 New Jersey Ave. SE, Washington, DC 20003
Tel: (202) 347-2007 Fax: (202) 347-2008

January 21, 2025

Sue Lawless
Executive Director and Chief Safety Officer
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Docket # FMCSA-2023-0257, "Transparency in Broker Transactions"

Dear Executive Director Lawless:

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 approximately 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.

For decades, small-business truckers have expressed frustration that 49 CFR § 371.3 (371.3) regulations designed to provide transparency are routinely evaded by brokers or simply not enforced by the Federal Motor Carrier Safety Administration (FMCSA). We agree with the Agency's assertion that, "broker transparency is intended to enable efficient outcomes in the transportation industry by providing material information necessary for the transacting parties to make informed business decisions."[1] Over the last few years, motor carriers have been increasingly victimized by freight fraud, unpaid claims, dubious charges, unpaid loads, double brokered loads, and load phishing schemes. The absence of legitimate broker transparency limits carriers' ability to combat these problems.

At the same time, brokers today have an unprecedented level of insight into a carrier's operations. Brokers can track carriers through electronic logging devices or smartphone apps, but that doesn't necessarily stop them from checking in on drivers trying to rest in the middle of the night. More and more, brokers rely on carrier monitoring and vetting services that punish small businesses because they do not receive enough inspections even if they have millions of miles of safe driving history under their belts. The deck is stacked against carriers in numerous ways, yet truckers persevere and deliver for the American people. It's time to level the playing field. It's

[1] Transparency in Property Broker Transactions, 89 FR 91648 (Nov. 20, 2024).

time to restore fairness in the freight market. It's time to give small-business truckers a leg up. It's time for broker transparency.

Ignoring 371.3 regulations has directly led to an asymmetry of information between carriers, shippers, and brokers. According to the proposal, "Information asymmetry may give brokers a strategic advantage in contract negotiations, potentially enabling them to secure more favorable contractual terms. Information asymmetry is generally undesirable, and the Agency believes it creates inefficient outcomes in brokered freight transactions."[2] An asymmetry of information not only creates an inequitable playing field between carriers and brokers, but jeopardizes carriers' ability to know if they are hauling fair-value loads.

According to the Office of Management and Budget, "absent government regulation, imperfect or asymmetric information substantially affects important sectors of the economy."[3] By design, broker transparency alleviates asymmetric information disparities and helps motor carriers determine which loads they choose to haul and which brokers they choose to haul for. Strengthening and actually enforcing transparency regulations will foster a fair working environment between brokers and motor carriers by sorting out honest brokers from unscrupulous ones. Good brokers will get more dedicated customers seeking their services, while carriers will quickly determine who they want to conduct business with. This structure will support a free market that relies upon transparency to operate efficiently.

Restoring transparency in the freight market is also a highway safety priority. Broker transparency would result in fewer instances of motor carriers being unfairly billed by brokers after transactions are completed. There are cases when everything appears fine regarding compensation upon delivery. Then, days or weeks later, a carrier will have wages automatically deducted or receive a bill saying there was a claim on the load without any proof from the broker. Brokers use various ad hoc justifications for withholding pay such as, "failure to get a signature upon delivery," "failure to deliver on time," "offset for claims/issues with prior load(s)," or "other breach of the carrier's contract with the broker." These issues could be resolved with access to transaction records. If FMCSA implements the proposals, brokers will be accountable for fully compensating motor carriers for their services. Fair compensation is critical for sustaining small trucking businesses. Additionally, enhancing fairness and efficiency in the marketplace through transparency will improve driver recruitment and retention.

At the outset of the COVID-19 pandemic in Spring 2020, truckers protested in Washington, DC, speaking up about the overdue need for transparency and explaining how freight brokers manipulated rates because of their noncompliance with transparency regulations. President Donald Trump tweeted his support:

> "I'm with TRUCKERS all the way. Thanks for the meeting at the White House with my representatives from the Administration. It is all going to work out well!"[4]

---

[2] Transparency in Property Broker Transactions, 89 FR 91648 (Nov. 20, 2024).

[3] OMB Circular No. A-4, (Nov. 9, 2023).

[4] https://x.com/realDonaldTrump/status/1257138589307219969.

On Fox News, President Trump said truckers are "price gouged," referring to complaints that brokers may be tampering with the price transactions they set up between truck drivers and shippers.[5]

In May 2020, OOIDA submitted a Petition for Rulemaking with FMCSA to improve broker transparency. The petition requested that brokers automatically provide an electronic copy of each transaction record within 48 hours after the contractual service has been completed and asked that brokers be prohibited from including any provision in their contracts that requires a carrier to waive their rights to access transaction records. Over the next four years, OOIDA and its membership submitted hundreds of comments to FMCSA, conducted meetings with regulators and lawmakers, and participated in public listening sessions supporting the push for transparency. These efforts culminated in the agency publishing the Notice of Proposed Rulemaking (NPRM) last November.

OOIDA supports the NPRM's intent along with many of its technical provisions. If supplemented properly, these proposals will contribute to a more ethical, fair, and efficient freight brokerage marketplace. However, FMCSA must strengthen the rulemaking by clarifying how they will enforce the rules and closing all loopholes that let brokers waive transparency rights.

OOIDA submits the following feedback on the four key NPRM provisions along with other issues raised by the Agency.

Provision 1 – Brokers Must Keep Records in an Electronic Format.

We completely endorse this provision. There are too many brokers preventing truckers from accessing information by only providing transaction records at their physical office location during normal business hours. Brokers know requirements like these make it nearly impossible for truckers to view the information they have a regulatory right to see. We agree with FMCSA that requiring records in an electronic format would eliminate this loophole brokers utilize to conceal transaction information from motor carriers.

Based on OOIDA members' relationships with freight brokers, we know that most brokers already keep electronic records. Thus, we concur with the Agency's assessment that this provision would not impose a significant burden on the broker industry. Electronic records would streamline the exchange of transaction information and ensure that motor carriers can access the information in a reliable, efficient manner.

We do not believe FMCSA should be overly prescriptive in the specific type of electronic system brokers must use if the electronic records comply with 49 CFR § 390.32, "Electronic documents and signatures." The 390.32 language provides clear direction on meeting the electronic format standards as long as the documents contain the required information.

[5] https://www.foxbusiness.com/lifestyle/trump-truckers-price-gouged-shipping-rates-plunge.

<u>Provision 2</u> – Revisions to the Required Contents of Brokers' Records.

FMCSA proposes eliminating the distinction between brokerage and non-brokerage services and instead requiring that the records contain, for each shipment in the transaction, all charges and payments connected to the shipment, including a description, amount, and date. The record would also be required to include any claims connected to the shipment, such as a shipper's claims for damage or delay.

This provision can help remedy a broken claims process that costs carriers both time and lost earnings. While 49 CFR § 370 delineates the applicability of regulations, filing, acknowledgment, investigation, disposition, and processing of claims, some brokers simply ignore these rules or devise delay tactics that result in motor carriers receiving fractions of what they should have been paid. Specifying the information brokers must include will provide a clear record for all parties involved in the transaction. This will give carriers necessary data if and when they experience chargebacks or non-payment. Increasing accessibility to itemized payments, charges, and fees can help parties reconcile claims amongst themselves. We think this will expedite disputes between motor carriers and brokers resulting in less need for litigation, less need for FMCSA intervention, and benefiting the economic health of the broker/motor carrier component of the transportation industry. Most importantly, small-business motor carriers who rely on brokers will be spared financial loss.

The Agency should further clarify when a "shipment" begins and ends. This would eliminate uncertainty about the contents of the records and the timing of when claims connected to the "shipment" are covered. We support a comprehensive record so as much information as possible is available to all parties when problems with a shipment arise or the compensation amount differs from the contractual amount. Again, these records will assist in getting disputes resolved fairly and efficiently.

<u>Provision 3</u> – Brokers Must Provide Records Upon Request.

We applaud FMCSA for amending 371.3 language that clarifies and strengthens the regulatory obligation for brokers to provide transaction records. According to the NPRM, "the proposed amendments to 371.3(c) would clarify that brokers maintain a continuing duty to act fairly and honestly, and that visibility into the transaction records is the mechanism by which shippers and carriers can ensure that brokers are complying with this duty."[6]

As proposed, this language will give motor carriers more leverage when reporting brokers who refuse to disclose transaction records. We are cautiously optimistic the updated regulatory text will incentivize brokers to comply with transparency requirements rather than employ evasive practices to skirt the intent of 371.3. The proposed language, "Brokers must provide, upon request by any party to a brokered transaction, a copy of the record of the transaction required to be kept by this section," leaves no question that brokers *must* comply with requests.

We are less sure that the amended language will dissuade brokers from using contractual waivers to evade transparency rights. We disagree with FMCSA's reasoning for not including an explicit

[6] Transparency in Property Broker Transactions, 89 FR 91648 (Nov. 20, 2024).

ban on waivers of 371.3 requirements. The Agency states, "As a general principle, parties are permitted to waive any right unless Congress, by statute, specifically makes a right non-waivable. The Agency has not identified any statutory provision in which Congress expressly barred waivers in this context, and therefore the Agency has not included the requested language in the revised regulation."[7]

The NPRM consistently highlights current problems associated with the lack of transparency and the consequences for industry stakeholders. Thus, we question why FMCSA is not explicitly prohibiting brokers from including provisions in contracts that require a carrier to waive their rights to access the transaction records. If brokers can continue manipulating these types of waivers, then that defeats the well-established purpose of the NPRM.

FMCSA cites that Congress has not expressly outlawed these sorts of waivers. However, we feel Congress has substantively delegated regulatory authority to pursue such policies. Recordkeeping and transparency requirements have been a central component of broker regulations since their inception, and were written to serve the greater public interest, not merely the interests of the protected parties.[8] Ever since Congress first called for broker regulations 85 years ago, the objective has been to protect the public's interest in an "adequate, economical, and efficient" motor carrier transportation system free from the "unjust discriminations" and "destructive competitive practices" of unscrupulous middlemen.[9] As one federal court recognized, the "primary purpose of Congress in regulating motor transportation brokers is to protect carriers and the traveling and the shipping public against dishonest and financially unstable middlemen in the transportation industry."[10] The Intersate Commerce Commission (ICC) reaffirmed that public policy interest when broker regulations were first meaningfully revised 45 years later.[11] Specifically, the need for recordkeeping and disclosure requirements was described by the ICC when it proposed the rule that is now codified at 371.3.[12] Nothing has occurred in the last 40-plus years to mitigate the need for broker regulation. In fact, the proliferation of brokers from dozens in the early 1980s to tens of thousands today shows the need for broker regulation has only increased.

When Congress terminated the ICC in 1995, it preserved and continued federal regulation of brokers.[13] The Senate Report to that legislation affirmed that rules were "needed to protect the public from unscrupulous brokers."[14] In 1999, Congress gave FMCSA jurisdiction over broker

---

[7] Ibid.

[8] 14 Fed. Reg. 2833, 2834 (May 28, 1949) (establishing broker requirements under Section 167.1–.12).

[9] Motor Carrier Act of 1935, P. L. 74-255, 49 Stat. 543 at §§ 202, 204(4) (identifying the purpose of the Motor Carrier Act).

[10] *Gray Line Nat. Tours Corp. v. United States*, 380 F. Supp. 263, 266 (S.D.N.Y. 1974). See also Jeffrey Kinsler, Motor Fright Brokers: A Tale of Federal Regulatory Pandemonium, 14 Nw. J. of Int. L. & Business 289, 300 (1994) (citing *P. D. Copes Broker Application*, 27 M.C.C. 153 (1940)).

[11] *See* 45 Fed. Reg. 68941 (Oct. 17, 1980) (adopting the broker regulations still in effect today consistent with the Motor Carrier Act of 1980).

[12] 45 Fed. Reg. 31140, 31140–41 (May 12, 1980).

[13] Interstate Commerce Commission Termination Act ("ICCTA"), P.L. 104-88, 109 Stat. 905 at §§ 13101(a)(1)–(2), 13904, 14122 (Dec. 29, 1997).

[14] S. Rep. 104–176, p. 12 (Nov. 21, 1995).

regulation.[15] FMCSA, as recently as 2006, quoted the Senate Report to acknowledge that broker regulations are necessary to "protect the public from unscrupulous brokers."[16]

This history shows that Congressional interest in a secure transportation system underlies the statutes and regulations that require broker transparency. Although compliance with these rules can occur on a transactional level from the broker to the motor carrier, this characteristic of the rule does not transform it into solely a matter of private contracting. Broker contracts designed to help brokers avoid compliance with 371.3 disclosure requirements undermine the inherent public policy objectives enacted by Congress and since implemented by various agencies. Noncompliance destabilizes the goals of a secure transportation system. Therefore, the Agency should ensure that brokers cannot avoid their legal responsibilities via contractual waivers.

We urge the Agency to reconsider permitting contractual waivers that undermine broker transparency as the rulemaking process moves forward. FMCSA should not allow stakeholders to waive compliance provisions of federal motor carrier safety regulations.

<u>Provision 4</u> – Records Must Be Provided Within 48 Hours of Request.

The proposed 48-hour window to provide requested records would benefit motor carriers by ensuring access to transaction information in a reasonable timeframe. We concur that 48 hours is a balanced approach, promoting both industry efficiency and minimal burdens for brokers. Brokers can be in constant communication with carriers and often expect immediate answers about a load, regardless of the time of day. If carriers can provide these types of responses within 48 hours, then brokers can promptly provide documentation that they are already supposed to have retained.

While we support the proposed timeframe, we seek clarification about when this 48-hour period would officially begin following a request. The NPRM explains, "The fourth proposed provision would require brokers to provide the records required to be maintained under § 371.3(a) within 48 hours when a party to the transaction requests those records."[17] The Agency also notes, "FMCSA is proposing to amend the language of § 371.3(c) to state that brokers have an obligation to disclose records within 48 hours of request." Yet, the proposed regulatory text states, "Records must be provided electronically within 48 hours of the broker's receipt of the request."[18]

As a matter of consistency, FMCSA must alter the proposed 371.3(c) regulatory language so the 48-hour clock begins upon the "request" and not upon the "broker's receipt." The following wording should be considered:

- Records must be provided electronically within 48 hours of the request.

[15] Motor Carrier Safety Improvement Act of 1999 ("MCSIA"), Pub. L. 106–159.
[16] FMCSA Notice of Determination, 71 Fed. Reg. 50115-02, 50116 (Aug. 24, 2006) (explaining that ICCTA retained broker regulations and that the FMCSA has and exercises that authority to further that objective).
[17] Transparency in Property Broker Transactions, 89 FR 91648 (Nov. 20, 2024).
[18] Ibid.

- Records must be provided electronically within 48 hours of the motor carrier's or shipper's request.

Given the documented history of brokers intentionally evading 371.3 regulations, we are concerned that the proposed timeframe will be obstructed if the 48 hours begins at the broker's discretion. The Agency has publicly indicated, "FMCSA proposes amending § 371.3(c) to require that records must be provided within 48 hours. This amendment is intended to provide the requestor with the records in a timely fashion, which enables the use of the records to resolve any issues around service or payment."[19] The proposed 371.3(c) text must be further amended to confirm the 48-hour period begins at request rather than receipt.

Additionally, we oppose any exemptions or delays that could prolong the processing of the 48-hour timeframe. Trucking is a 24-hour a day, 7 days a week, 365 days a year business. The 48-hour period must be respectful of that fact.

Automatic Disclosure and Retaliation

Our 2020 petition sought a provision making disclosure of the records automatic. We believe automatic disclosure is necessary to prevent selective retaliation. We disagree with the Agency's position that an automatic disclosure provision is unnecessary and could be excessively burdensome to brokers. Requiring automatic disclosures would prevent brokers from putting carriers on a "Do Not Use" list for simply exercising their rights. If the Agency does not make disclosures automatic, then brokers will continue singling out individual carriers just for requesting records.

Over the years, OOIDA has heard countless reports from truckers whose services are rejected after making requests for transparency. When the Agency reviews the NPRM public comments, they will see examples of carriers getting blacklisted for seeking transparency. Based on the NPRM's provisions, 371.3 information is already readily accessible and would not constitute a burden for most brokers. Thus, automatically disclosing transactional data is necessary to protect all motor carriers and level the playing field across the industry given the current imbalance of economic power that brokers wield over carriers. Carrier requests for information could continue resulting in economic retaliation unless automatic disclosure is part of the rulemaking.

Brokers are increasingly employing monitoring and vetting services to contract with carriers. These companies use "automated websites" to "research, qualify and monitor the insurance, operating authority and safety ratings of owner-operators and trucking companies."[20] Their services include "automatic" alerts as soon as any information is updated on carriers.[21] Brokers can identify and flag carriers as "Do Not Use" for dozens of subjective factors including "refused or stopped tracking," "driver performance," "payment issues," and "filed on bond" just to list a few.[22] As a result, motor carriers have experienced difficulties obtaining loads because of these

[19] https://www.overdriveonline.com/regulations/article/15709197/fmcsa-clears-up-intentions-behind-broker-transparency-rulemaking.
[20] https://www.carrier411.com/overview.cfm.
[21] Ibid.
[22] https://www.carrier411.com/freightguard.cfm.

services. In some cases, small-business truckers do not get approved because they have not received a certain number of inspections. The growth of such services has contributed to the asymmetry of information between brokers and carriers. Automatic disclosure of records will close this information gap and put carriers on equal footing with brokers who are receiving automatic alerts themselves.

Compliance and Enforcement

The NPRM does not propose stricter penalties than are currently approved by regulations. Nor does FMCSA sufficiently address how they will achieve better enforcement and compliance under these provisions. A final rulemaking must address these critical details. Since the NPRM publication, many OOIDA members have inquired how these proposals will be enforced. Unless this is specifically documented, motor carriers will remain skeptical about updated transparency regulations and will unlikely submit record requests in fear of retaliation.

FMCSA must levy and enforce a structured fine system for 371.3 violations that would penalize noncompliance with broker regulations. The Agency should suspend or revoke the authority of unscrupulous brokers that exhibit a pattern of noncompliance. We believe this would improve transparency between brokers and carriers as intended by 371.3.

Under current regulations, FMCSA has general authority to investigate a violation of the regulations under its jurisdiction, including broker rules; and private persons have the right to file a complaint with the Agency concerning such violations.[23] FMCSA may bring a civil action to enforce a regulation when violated by a broker.[24] A person who does not comply with the broker recordkeeping statute is liable for at least $1,000 for each violation.[25] A person who tries to evade a broker regulation is liable for a civil penalty of at least $2,000 to $5,000 and possible criminal penalties.[26]

FMCSA has clear statutory authority to bring a civil action as a result of any broker's failure to comply with an order issued for violations of these regulations.[27] Using this authority, FMCSA must create an enforcement mechanism where it issues an order to a broker that violates the regulations. FMCSA's order must assess a civil penalty of $500 per day for each violation where a broker fails and/or refuses to provide a complete response to a party's request for documentation in the time and manner required by 371.3.

(a) For each violation that FMCSA determines has occurred, FMCSA must establish a rule in which it issues an order to the violating broker requiring that the following procedure takes place:

    1. FMCSA provides a brief, but reasonable deadline for a broker to fully comply with the regulations to cure each violation;

[23] 49 U.S.C. § 14701.
[24] 49 U.S.C. § 14702.
[25] 49 U.S.C. § 14901.
[26] 49 U.S.C. § 14906.
[27] 49 U.S.C. § 14904.

2. The violating broker provides FMCSA with confirmation of compliance (a copy of such confirmation shall also be provided to the parties to the shipping transaction at issue) within a brief but reasonable deadline;
3. Pursuant to the order issued, FMCSA assesses a penalty of $500 per day to the violating broker for each violation FMCSA determines has occurred;
4. FMCSA collects the penalty paid by the violating broker for each violation FMCSA determines has occurred; and
5. FMCSA remits any amount collected for each violation FMCSA determines has occurred to the party that made the original request for documentation under 371.3 which caused FMCSA to issue any order to the violating broker as a result of a violation of these regulations.

(b) If a violating broker fails to fully comply with any order(s) issued by FMCSA relating to 371.3, within 30 days of the date of the order, FMCSA shall:

1. Bring a civil action against the violating broker for each violation FMCSA determines has occurred to:
    a. Enforce any order(s) issued by FMCSA to require full compliance with the regulations and the terms of the order, including but not limited to any penalty assessed in the order which is not paid in full;
    b. Assess an additional penalty of $500 per day for each day subsequent to any order(s) issued by FMCSA where the violating broker continues to be in violation of the regulations and/or order(s) previously issued by FMCSA:

    OR.

2. Authorize any party identified in (a)(5) to bring a private civil action to obtain the relief and remedies outlined in (b)(1) above plus the party's costs and attorney's fees reasonably incurred in order to bring such action.

FMCSA must also swiftly follow through on upgrades to the National Consumer Complaint Database (NCCDB) as outlined in the September 2023 Government Accountability Office's report, *Motor Carrier Operations: Improvements Needed to Federal System for Collecting and Addressing Complaints against Truck, Moving, and Bus Companies*. The NCCDB's online portal is used by carriers to report and identify brokers who are reported to have engaged in violations of the 371.3 regulations. OOIDA members have found the NCCDB to be an inadequate outlet to report violations or other unfair business practices because complaints do not receive a satisfactory response level.

Agency Questions

OOIDA submits the following responses to the questions presented in the NPRM. Any questions that have been omitted would be better addressed by other industry stakeholders.

1. **What impact, if any, would the proposed rule have on freight rates? Please provide support for your position.**

We agree with FMCSA that the proposed rule would have a limited, indirect impact on freight rates. Supply and demand determine rates in the freight market. However, the lack of broker transparency compliance/enforcement has resulted in a one-sided asymmetry of information exclusively benefitting freight brokers. When all parties to a transaction have access to information that is legally required, it lays the groundwork for a fair negotiation. We do not think improving broker transparency will raise rates overall or guarantee certain prices. However, transparency can provide the framework to support the free market and level the playing field so that carriers aren't negotiating with one hand behind their backs.

2. **How much time would a broker spend creating an electronic record from paper documents for the record mandated by § 371.3? What would be the costs for a broker to create an electronic record per transaction?**

The data presented in NPRM Section VIII, Regulatory Analyses accurately estimates costs for creating electronic records. We echo FMCSA's findings that, "it is likely that brokers have already transitioned to electronic recordkeeping. Therefore, the Agency concludes that this requirement would not constitute a burden for most brokers."[28]

4. **Do you believe that the 48-hour timeframe proposed for § 371.3(c) would create a substantial burden for brokers? Why or why not? If you disagree with the proposed 48-hour timeframe, what timeframe would best balance the objectives of transparency while minimizing the burden on brokers?**

As previously discussed, we do not feel the 48-hour timeframe proposed for § 371.3(c) would create a substantial burden for brokers.

5. **If this proposal effectively reduced instances of illegal brokering, through carrier policing with transparency information, would the brokers engaged in illegal practices exit the market, resulting in the transfer of illicit profits to legally operating motor carriers and/or brokers?**

Broker transparency is a critical element for eliminating freight fraud and illegal practices that have plagued the industry in recent years. Fraudulent actors have targeted the trucking industry because of insufficient criminal enforcement processes. Freight fraud alone is costing the industry hundreds of millions of dollars annually. This will not change until there is substantive compliance with broker regulations and stronger regulatory enforcement targeting illicit financial activity. Improving broker transparency will supplement other Agency initiatives to combat freight fraud.

[28] Transparency in Property Broker Transactions, 89 FR 91648 (Nov. 20, 2024).

6. **Should freight brokers and household goods brokers be subject to the same recordkeeping requirements under § 371.3? If your answer is "no," why should they be subject to different requirements?**

Yes, all brokers should be subject to the same recordkeeping requirements under 371.3.

7. **Should parties requesting records under § 371.3(c) be required to submit their request in writing? Should parties requesting records under § 371.3(c) be required to submit their request electronically? Would requiring a specific format for submitted requests impose a cost on the parties or otherwise deter requests for transparency? Please provide support for your position.**

Any parties requesting records under 371.3(c) should be required to submit their request electronically. A consistent, electronic format between all parties will best serve transparency requests.

8. **Would the proposal that records be provided electronically under § 371.3(c) make broker transparency more likely, as compared to not specifying a method of provided the records? Should the Agency be more specific in requiring a particular format for records provided under § 371.3(c), and if so, what method and/or format is preferrable? Please provide support for your position.**

We believe brokers could provide information to motor carriers electronically using a variety of methods. This requirement would simply ask a broker to use the standard forms of communication used by brokers today to interact with shippers and motor carriers including email, digital photos or scans, smartphone apps, and other methods. Setting up alternative systems to comply with these disclosure obligations is not necessary. Electronic records can best achieve timely compliance and restrict brokers from avoiding responsibility with 371.3 regulations.

We believe brokers should designate a specific point of contact for reference following requests. This would assist the exchange of information and promote resolving potential disputes. The Agency should also consider including digital confirmation receipts. Motor carriers rely on confirmation receipts to verify the successful collection and delivery of goods. Drivers also use contract and payment confirmation receipts for proof of payment terms and conditions while fuel, toll, scale, and repair receipts help track daily business expenses.

OOIDA has long pushed for greater transparency in transactions with brokers and supports FMCSA's initiative to bring overdue improvements to broker regulations. OOIDA supports the NPRM's intent along with many of its technical provisions. However, FMCSA must strengthen the rulemaking by clarifying how they will enforce the rules and closing all loopholes that let brokers waive transparency rights. The proposal can help restore honesty and integrity between all brokers and carriers. If implemented effectively, broker transparency can forge mutually beneficial partnerships that will cultivate economic stability within the trucking industry, improve driver retention, and benefit highway safety.

It’s time to level the playing field. It’s time for broker transparency. Thank you for your consideration of our comments.

Sincerely,

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