



Owner-Operator Independent Drivers Association

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Dear Member of Congress;

The services provided by truck drivers are currently in high demand, but at the same time many small trucking businesses are far from certain they will survive today's economic downturn. With freight rates reaching historic lows, small business truckers are struggling. Many have reached out to Congressional offices to express frustration not only about feeble rates, but the utter lack of transparency between brokers and motor carriers. The problem is regulations designed to ensure transparency are commonly skirted by brokers - it's practically an industry norm. While little can be done by Congress to improve rates, much more can be done in the next COVID-19 relief bill to help truckers know they are being compensated fairly.

Existing regulations (49 CFR 371.3) require brokers to keep records of transactions with motor carriers. Under Part 371.3, each party to a brokered transaction also has the right to review the record of the transaction. This allows our members to know precisely how much a shipper paid the broker and how much the broker then paid the carrier. Unfortunately, brokers continue to circumvent this federal regulation in two ways:

1. Many carriers, including owner-operators, sign contracts with brokers that waive Part 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 Part 371.3. In effect, brokers are exempting themselves from federal regulations.
2. The few brokers who do provide transaction records usually put in place hurdles they know will prevent a carrier from ever seeing them. In fact, 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 access records. Further, when a carrier tries to assert his/her right to review this information, the broker is unlikely to contract with them again. These tactics further undermine Part 371.3.

Small business truckers would never get away with blatantly and deliberately evading federal regulations. Brokers must be held to the same standard. Unfortunately, rampant evasion is increasingly resulting in carriers assuming – fairly or not – that brokers have something to hide.

There are two simple solutions:

1. Require brokers to immediately provide an electronic copy of each transaction record as required by 49 CFR 371.3 once the contractual service has been completed. No exceptions. This would allow carriers to identify brokers who truly are taking advantage of them during the crisis, as well as after it.
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.

OOIDA has long pushed for greater transparency in transactions with brokers, but COVID-19 has made this an even more pressing matter. With rates on the decline, many of our members are concerned they're the only ones feeling the pain – or at least feeling a disproportionate amount of the pain. This will not change until Congress addresses the widespread evasion of 49 CFR 371.3. Therefore, when developing the next COVID-19 relief bill, Congress must include measures to prevent brokers from continuing to circumvent existing federal transparency requirements.

If you have any questions, need additional information or would like to work with OOIDA to advance any of these recommendations, please contact Collin Long, Director of Government Affairs, via email at collin_long@ooida.com.

Sincerely,



Todd Spencer
President & CEO
Owner-Operator Independent Drivers Association

cc: Federal Motor Carrier Safety Administration