

## Client Alert: FMCSA Extends Public Comment Deadline Regarding Brokers' Disclosure of Rates to Carriers

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Last week, the Federal Motor Carrier Safety Administration (FMCSA) extended its deadline for public comment regarding the Owner-Operator Independent Drivers Association's (OOIDA) rule-making petition that requested FMCSA implement new regulations to require brokers to automatically disclose their rates to their carriers. Specifically, OOIDA petitioned FMCSA to implement a regulation to require brokers to provide an electronic copy of each transaction within 48 hours and prohibit contractual waivers of this new requirement. FMCSA has taken no action on this petition, except to ask for public comment. To date, the FMCSA has received over 1,100 comments in response. The new comment deadline is November 18, 2020. In addition, FMCSA has scheduled a virtual listening session with the general public on October 28, 2020 related to this issue.

While we will continue to monitor the process of this rulemaking effort, this is a good opportunity to remind brokers that under current regulations, brokers are required to keep records of transactions and that "each party has the right to review" those records (49 CFR 371.3(c)). However, there is—at present—a strong legal argument that brokers can contract around this disclosure requirement. These contractual provisions typically take two forms: either requiring the carrier to waive the disclosure requirements of 49 CFR 371.3 completely, or putting reasonable restrictions in place regarding such disclosure such as limiting the time, place, and method of disclosure. If you require assistance in ensuring that your carrier contracts adequately address this issue, please don't hesitate to contact us.

### Resources:

[Read the original request for comment here.](#)

[Read the notice extending the public comment period to November 18 here.](#)

Register for the October 28, 2020 FMCSA listening session [here](#).

