CLIENT ALERTS & INSIGHTS

Property Broker Regulations: A Chance to Be Heard!

OCTOBER 21, 2020

Authors: Martha J. Payne

The Federal Motor Carrier Safety Administration (FMCSA) has called a public listening session for **Wednesday, October 28, 2020**, from 1:00 PM to 2:30 PM EDT. Advanced registration is required at www.fmcsa.dot.gov.

This is a chance for brokers, shippers, and motor carriers to be heard regarding costly regulations, both current and proposed, applicable to property brokers.

Background

In 1980, a regulation called *Records to be kept by brokers* became effective. 49 CFR § 371.3(c) states: "Each party to a brokered transaction has the right to review the record of the transaction required to be kept by these rules." Deregulation over the last forty (40) years has made 49 CFR § 371.3(c) archaic and vestigial, but it has remained on the books.

During the early days of the pandemic, a group of small motor carriers tried to blame their financial distress on brokers and began demanding access to information that for any other business would be considered confidential. That demand led to the filing of three petitions for rulemaking with the FMCSA.

Petitions

The listening session on October 28 is to address three petitions.

1. Owner-Operator Independent Drivers Association (OOIDA) has filed a petition for rulemaking that would require brokers to provide an electronic copy of each transaction record automatically within 48 hours after the services have been completed. Included in the petition is a provision that would prohibit brokers from requiring parties to the transaction from waiving the right to review the records.

2. The Small Business in Transportation Coalition (SBTC) petition also requests the FMCSA to adopt regulatory language prohibiting brokers from contracting out of the disclosure requirement.

3. The Transportation Intermediaries Association (TIA) has filed a competing petition asking FMCSA to eliminate the requirements of 49 CFR § 371.3(c) as outdated and unnecessary.

If OOIDA and SBTC succeed, the cost of compliance will be great. Some brokers have estimated that compliance will cost brokers, on average, in excess of $500,000 per year to comply. The additional costs will be imposed not only on brokers, but on motor carriers, as they enhance their IT systems. And the costs, of course, will ultimately be passed on to shippers and consumers on the one hand or motor carriers on the other hand.

In addition, FMCSA has also now extended the date for the submission of written comments to OOIDA's and SBTC's petitions through **November 18, 2020**. Take advantage of this chance to be heard by either submitting written comments or participating in the scheduled public listening session.

Please contact a member of Benesch's Transportation & Logistics Practice Group if you have any questions relating to this subject.

Martha J. Payne at mpayne@beneschlaw.com or 541.764.2859.