

FMCSA Transparency in Property Broker Transactions NPRM Outline

SUMMARY

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My name is Michael Darden and I have reviewed the NPRM and selected key parts of the NPRM as they relate to Broker Transparency and the key word that everyone wants to use, the waiver. "The term "waiver" and "exemption" carry various meanings in agency practice, when Congress has expressly authorized an agency to excuse a regulated party from a legal requirement, the term "waiver" is used. If an agency is implicitly authorized by Congress to excuse a regulated part from a legal requirement, "exemption" is used. All text below is copied directly from the NPRM and has not been modified.

SUMMARY

- 'FMCSA proposes amendments to its property broker rules in response to petitions for rulemaking'
- 'Under current regulations, the parties to a brokered freight transaction have a right to review the broker's record of the transaction, which stakeholders often refer to as "broker transparency."
- 'Contracts between brokers and motor carriers **frequently contain waivers of this right.**'
- 'The proposed rule is responsive to the petitions in **reinforcing the broker transparency requirement**'
- 'The proposed provisions **differ from those requested by OOIDA and SBTC.**'
- 'The proposed rule would **revise the regulatory text to make clear that brokers have a regulatory obligation** to provide transaction records to the transacting parties on request.'
- 'The proposal would **also make changes to the format and content** of the records.'

Comment

- I. **Public Participation and Request for Comments**
 - A. **Submitting Comments**
 - B. **Viewing Comments and Documents**
 - C. **Privacy**
 - D. **Comments on the Information Collection**
- II. **Executive Summary**
 - A. **Purpose and Summary of the Regulatory Action**

Property brokers match motor carriers with shippers.

This business model **can also lead to an asymmetry of information** between parties, which in turn can affect the contracting process by limiting parties' ability to negotiate for their desired terms. (Asymmetric information exists when one party in a transaction has more information than the other, which can result in a market failure. Asymmetric information provides an advantage to one side of a market over the other when negotiating a transaction. OMB Circular No. A-4, p. 17 (Nov. 9, 2023).)

FMCSA and its predecessor agencies have attempted to address these problems by requiring property brokers to keep certain records of their transactions and make the records available to motor carriers and shippers involved in those transactions.

"broker transparency" is meant to inform business decisions and enable self-policing of abuses that may arise.

Brokers often include provisions in their contracts with motor carriers that **require motor carriers to waive their ability to review broker records**.

The Agency reviewed its property broker recordkeeping requirements and is proposing certain amendments to those requirements. The proposed amendments are intended to reinforce broker transparency for motor carriers and to better tailor the required contents of the records to the purpose of broker transparency.

Based on the **Agency's authority to regulate** the procurement of interstate transportation, which includes **authority over property brokers and their arrangement of transportation**. The Agency has the **authority to collect information from brokers and require them to keep certain records**. The Agency also has authority over the registration of property brokers, and when registering them, to **determine whether the broker is willing and able to comply with all applicable regulations**, including the recordkeeping regulations. In exercising its authority over brokers, **the Agency is required to provide for the protection of motor carriers and shippers**. The proposed rule would use and implement this authority by revising the broker recordkeeping requirements to **further protect motor carriers and promote efficiency** within the motor carrier transportation system.

B. Summary of Major Provisions

The **first proposed provision would require property brokers to keep their records in an electronic format**. This provision would serve the purpose of broker transparency by making it easier for motor carriers and shippers to review broker records on request,

The **second proposed provision would modernize and tailor the required contents of the records** to better achieve broker transparency. 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.

This amendment would **ensure the parties have full visibility into the payments, fees, and charges associated with the transaction** so they can resolve issues and disputes among themselves without resorting to costlier remedies.

The **third proposed provision would clarify the obligation imposed on brokers to respond to requests** for transaction records and the process parties must follow when requesting and supplying such records.

The proposed amendment would **reframe broker transparency as a regulatory duty imposed on brokers to provide records to the transacting parties**.

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.

C. Costs and Benefits

The Agency believes the revisions to the regulation will make it **more likely that brokers will comply with their regulatory duty** to provide information.

III. Abbreviations

IV. Legal Basis

The Secretary of Transportation (Secretary) has general jurisdiction to establish regulations concerning the procurement by property brokers of for-hire transportation in interstate or foreign commerce (49 U.S.C. 13501).

The Secretary is authorized to obtain information from motor carriers, brokers, and other related parties that the Secretary determines is necessary to ensure a transportation system that meets the needs of the United States (49 U.S.C. 13101 and 13301(b)). **encouraging fair competition and reasonable rates** for transportation by motor carriers of property; **promoting efficiency in the motor carrier transportation system**; enabling efficient and well-managed motor carriers to **earn adequate profits**, attract capital, and **maintain fair wages** and working conditions; and improving and **maintaining a sound, safe, and competitive privately owned motor carrier system**.

The Secretary is also **authorized to prescribe the form of any required records prepared or compiled by brokers**, including those related to movement of traffic and receipts and expenditures of money, and the time period for preservation of such records (49 U.S.C. 14122). Under 49 U.S.C. 13904(e), regulations applicable to brokers “**shall provide for the protection of motor carriers and shippers by motor vehicle.**”

FMCSA’s mandate under 49 U.S.C. 13904 specifically includes providing for the protection of motor carriers with respect to broker regulations, and because a records-transmittal regulation would protect both motor carriers and shippers, FMCSA’s promulgation of such a regulation is authorized by 49U.S.C.13904(e).

This rulemaking is **intended to address an asymmetry of information between brokers, shippers, and motor carriers that affects the ability of all parties to participate effectively in a fair, efficient transportation system**. FMCSA intends to modernize regulations applicable to broker recordkeeping and disclosure while complying with the requirement in 49 U.S.C. 13904(e) to ensure that the regulations provide for the protection of motor carriers and shippers.

V. Background

FMCSA regulates property brokers.

A brokered transaction for transportation of property **involves at least a shipper seeking to have the property transported, a carrier willing to transport the property, and a broker who arranges the transportation**.

FMCSA requires brokers to make certain transaction records available to the transacting parties, that is, the shipper, the motor carrier, and **any other party** to the brokered property transaction.

A. History of Property Broker Regulations

The ICC then explained the addition of the right-to-review requirement as a replacement for more complex requirements in §§ 1045.5, 1045.6, and 1045.10 (45 FR 31140). The ICC explained that **the new regulation would enable parties to determine what portion of their bill was related to the broker’s services** (45 FR 31140, 31141). Section 1045.10 **prohibited brokers from charging both the shipper and the carrier for a service** without first advising both parties of the details of the charges.

B. History of the Current Rulemaking

The **prevalence of waiver clauses and instances of retaliation by brokers** against motor carriers seeking to exercise their rights under § 371.3(c)

On March 16, 2023, FMCSA granted OOIDA's and SBTC's rulemaking petitions.

C. Related Actions

Listening session participants expressed concerns about freight rates, disclosure of confidential pricing information, motor carriers directly soliciting shippers, so-called "double brokering," record-keeping costs,

The Agency acknowledges these ancillary comments as **evidence of continuing concerns around broker transparency**.

VI. Discussion of Proposed Rulemaking and Comments

A. Proposed Rulemaking

FMCSA proposes the following amendments to § 371.3, "Records to be kept by brokers," presented in the order in which they would appear in the section. The Agency also proposes a conforming amendment to § 371.2, "Definitions."

1. **Brokers Must Keep Records in an Electronic Format.** FMCSA proposes requiring that the records covered by § 371.3(a) be kept in an electronic format
2. **Revisions to the Required Contents of Brokers' Records.** The Agency proposes the following revisions to ensure that the records are tailored to the needs of the parties, therefore better addressing the concerns of motor carriers while not imposing unnecessary recordkeeping burdens on brokers.

Date of Payment

The Agency proposes adding the date of payment from both the shipper to the broker and from the broker to the carrier.

Elimination of Brokerage Service vs. Non-brokerage Service Distinction

Itemization of Charges and Fees

The Agency proposes clarifying that the records **must itemize all charges and fees associated with the brokerage service**, brokers would also be **required to itemize any penalties assessed** in connection with the shipment,

This revision is **intended to ensure the parties have visibility into the payments, fees, and charges associated with the transaction**, and can resolve issues and disputes without resorting to costlier remedies.

3. **Brokers Must Provide Records Upon Request**

The Agency **proposes amending the language of § 371.3(c) to more accurately describe the regulatory obligation imposed on brokers and the process for requesting and supplying transaction records**.

Related to the duties and obligations of a broker, which included **giving fair advice to shippers and not misrepresenting or making false promises about the services motor carriers would provide; not misrepresenting or giving false information to motor carriers about the commodities in the shipment**; advising both the shipper and carrier of the amount and basis of any compensation being received from the other; exercising due diligence in carrying out the terms of its contracts with shippers and motor carriers and ensuring prompt payment; and paying any freight charges in full to the carrier or carriers without deduction for any amount due to the broker from such carrier or carriers. **The ICC was clear that its intention was not to eliminate these duties and responsibilities entirely**, but rather that **providing shippers and carriers with the ability to review the transaction records would ensure that brokers were acting honestly and fairly.**

FMCSA believes **the original wording did not adequately capture the ICC's intent that brokers continue to comply with those duties and obligations**, particularly disclosure of such records to shippers and motor carriers who find value in such information. To address these concerns, **FMCSA has reframed the disclosure requirement as a regulatory obligation**, as the Agency believes this more closely aligns with the original intent of the regulation. Moreover, **a regulated entity must adhere to the regulations and cannot "disguise its regulatory obligations as contractual ones."** Taylor Energy Co. LLC v. United States, 975 F.3d 1303, 1306 (Fed. Cir. 2020).

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**. The requirement to provide the records upon request would thus be made **explicit as a regulatory obligation**. The proposed rule would **not, however, prohibit brokers from including confidentiality clauses in their contracts with motor carriers**. As long as brokers are complying with the requirement to disclose records upon request, **the parties may negotiate and reach agreements regarding non-disclosure of the information to non-parties**.

4. Records Must Be Provided Within 48 Hours of Request

The Agency is aware of brokers avoiding meaningful compliance with the regulation by delaying the availability of records for review, and by restricting access for review to their principal place of business. The **Agency proposes amending §371.3(c) to require that records must be provided within 48 hours**.

The amendment **plainly places the responsibility of delivering the information to the requestor on the broker**.

B. Comments and Agency Responses

1. The Agency's Authority Over Broker Transparency

The Agency has the authority to establish certain regulations for property brokers. The Agency believes that the proposed rule, which revises the recordkeeping regulations for property brokers, **falls squarely within this authority**.

FMCSA and its predecessor agencies have long been responsible for regulating certain commercial aspects of motor carrier transportation, including broker recordkeeping.

2. **FMCSA Enforcement Role**

The Agency believes that the proposed rulemaking is an appropriate exercise of its authority that builds on the current recordkeeping requirements.

FMCSA believes the language of the original regulation does not accurately describe the transacting parties' rights and burdens, and that **a broker's obligation to provide records is not premised on any inherent right of the carrier or shipper to receive those records, but rather on the Agency's statutory authority to protect motor carriers in connection with its broker recordkeeping regulations.**

Brokers must agree to comply with all applicable regulations (49U.S.C.13904(a)(2)) and FMCSA has the authority to suspend or revoke a broker's operating authority for willful failure to comply with a condition of registration (49U.S.C. 13905(d)(2)(A)(iii)).

The Agency has a further option to seek a civil penalty for regulatory violations.

The penalty schedule in 49 CFR part 386 Appendix B already sets out penalties for violations of FMCSA's commercial regulations in paragraph (g), as well as penalties for evasion in paragraph (i).

FMCSA is aware that the Department of Justice (DOJ) must bring certain enforcement actions for civil penalties on behalf of FMCSA.

Congress has also expressed its clear intent in 49 U.S.C. 13904(e) for the Agency to issue regulations applicable to brokers that provide protection for shippers and motor carriers, consistent with the Agency's responsibility to carry out the objectives of the national transportation policy and its general authority to regulate brokers of property.

3. **Broker Size as Related to Transparency**

The proposed rule should apply equally to large and small brokers.

Brokers as a whole were not transparent and were not treating motor carriers fairly.

The Agency believes that the proposed **broker transparency requirements should apply to all brokers, regardless of size**, as is the case with the current regulation. The Agency believes that a lack of broker transparency causes problems whether the broker who arranged the transportation is large or small.

4. **Cost of Providing Transaction Records**

FMCSA is not proposing to prescribe a specific type of electronic system brokers must use, provided the system complies with [49 CFR 390.32](#), "Electronic documents and signatures." The Agency finds that the requirements listed there are appropriate in the

context of the broker recordkeeping requirements and **sees a benefit in having a consistent standard for electronic documents.**

5. Economic Benefits to Motor Carriers and Costs to Brokers

Many motor carriers expressed concern that they lack negotiating power to exclude transparency waiver provisions from contracts and, **if they exercise their right to view the transaction records, brokers will select other motor carriers to work with and refuse to do business with them in the future.**

As with the current rule, the proposed rule **would give shippers and carriers the option to access information about a brokered freight transaction after the parties have negotiated the terms of the contract and the transaction is complete but would not require disclosure prior to that time**, nor would it require automatic disclosure.

By **clarifying the regulatory obligation for brokers to provide the transaction records**, the proposed rule would make the information enumerated at § 371.3(a) available to all parties participating in a brokered freight transaction.

FMCSA does not view the information available on load boards or through other publicly available sources to be an adequate substitute for the transaction-specific information set out in this proposed rule.

Broker transparency provides the retrospective transaction specific detail on completed loads necessary to resolve these issues.

6. Transparency of Charge Backs, Accessorial Fees, and Surcharges

The practices identified in the comments are concerning because, depending on their prevalence, they may significantly disrupt the efficiencies and opportunities offered by brokered freight transactions.

Broker transparency provides parties to a brokered transaction visibility into the associated payments, fees, and charges, enabling the parties to resolve issues and disputes among themselves without resorting to costlier remedies.

In addressing broker transparency, FMCSA cannot replace prudent business judgment and cannot guarantee the trustworthiness of every shipper, broker, and carrier.

7. Confidentiality of Pricing

The broker transparency regulation does not require public disclosure, and the Agency believes that broker transparency is compatible with the prudent protection of business information. Section 371.3 does not require the broker to disclose to the carrier all details of the business relationship between the broker and shipper, but rather only the transaction-specific details enumerated in § 371.3(a).

Regarding trade secrets, the Agency does not believe that § 371.3 in its current form, or with the amendments proposed, conflicts with trade secret protections.

§ 371.3(c) does not require the type of public disclosure that would be economically damaging to a party. Instead, it only requires that brokers give the parties to a transaction access to a limited amount of information pertaining to that transaction.

8. Applicability of Other Statutes

The language of 49 U.S.C. 14101 refers to shippers and motor carriers, not brokers. The Agency does not interpret that statute to apply to brokers, and the proposed rule therefore would not conflict with the statute.

It is **unreasonable to say that a broker could rely on 49 U.S.C. 14101, which on its face does not apply to brokered freight transactions, in order to waive a right that applies only to brokered freight transactions.**

The Agency believes that in most brokered transactions, the broker is not the shipper, and 49 U.S.C. 14101(b) does not apply.

The **proposed amendments to § 371.3(c) would also render this objection largely moot by clarifying that access to records is not a right belonging to motor carriers or shippers that can be contracted away, but instead is a regulatory compliance requirement that brokers must meet** in order to operate in the interstate transportation industry.

9. **Context and Impact of the COVID-19** National Emergency the Agency believes the proposed rulemaking serves a purpose beyond the context of that emergency, a conclusion supported by the continued engagement of motor carriers on the issue of broker transparency.

10. **Automatic Disclosure and Retaliation** necessary to prevent selective retaliation, i.e., blacklisting, against motor carriers who exercise their option to review the transaction records.

Though the **concerns regarding retaliation appear plausible**, the Agency cannot determine how frequently retaliation would take place or its potential effect on the motor carrier transportation industry. The Agency seeks further comment on this issue.

C. Issues on Which the Agency Seeks Further Comment

While the Agency invites comment on all aspects of the NPRM, we are particularly interested in comments that address the following issues. In addressing topics, FMCSA requests that commenters number their remarks to correspond with the list below:

1. What impact, if any, would the proposed rule have on freight rates? Please provide support for your position.
2. How common is electronic recordkeeping among household goods brokers? What burden, if any, would be imposed if electronic recordkeeping was required?

3. 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?
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?
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?
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?
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.
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 preferable? Please provide support for your position.

VII. Section-by-Section Analysis

A. Section 371.2 Definitions.

B. Section 371.3 Records to be kept by brokers.

In § 371.3 the Agency proposes modernizing the language of the regulation by **replacing the word “shall” with the word “must.”**

Paragraph (a)(4) would be revised to include the amount of compensation received by the broker for each service performed in connection with each shipment, **including, but not limited to, freight charges, surcharges, and accessorial fees; the date of payment; and the name of the payer, including any business aliases,** if known.

To add “must” to confirm that records are required to be kept for 3 years.

VIII. Regulatory Analyses

A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures

1. Need for the Regulation

This proposal would amend the requirements of § 371.3 to further improve transparency in brokered freight transactions between brokers, motor carriers, and shippers. The Agency seeks to increase transparency and reduce information asymmetry **so that the freight brokerage market operates in a more ethical, fair, and efficient manner.**

Information asymmetry is generally undesirable, and the Agency believes it creates inefficient outcomes in brokered freight transactions.

Motor carriers may not be able effectively to defend themselves against potential abuses, such as unfounded claims.

2. Summary of the Requirements

The purpose of this NPRM is to reduce information asymmetry among parties to brokered freight transactions, i.e., brokers, shippers, and motor carriers. The NPRM proposes to do so by improving transparency.

- a. to **require that brokers keep the required records in an electronic format;**
- b. to **revise the required contents of brokers' records;**
- c. to clarify that **brokers must provide records upon request;** and
- d. to require that **records must be provided electronically within 48 hours of request.**

3. Costs

Brokers Must Keep Records in an Electronic Format

Revisions to the Required Contents of Brokers' Records

Updating the content of records under § 371.3(a) to **include the date of payment for brokered services.**

Most brokers likely already retain payment dates for brokered services as part of their standard transaction and accounting processes.

Under this proposal, **brokers would be required to update the contents of records kept under § 371.3 to include dates of payment.**

Multiple commenters discussed charge backs and claims after loads were delivered. The Agency believes the inclusion of a date of payment would provide additional information to motor carriers that they may use to counter any inaccurate claims. For example, date of payment information may aid a carrier to establish a timeline of events, such as payments to the broker by the shipper, and possibly aid in rectifying discrepancies and spurious charge backs with brokered freight contracts.

The Agency also proposes to **eliminate the distinction between brokerage services and non-brokerage services** in § 371.3(a) by removing paragraph (5) and revising paragraph (4). The rationale for the distinction was initially set out in the brokers of property rule promulgated by the ICC in 1949, as detailed earlier in this NPRM in section V.A. History of Property Broker Regulations.

With the current focus on transparency in broker transactions, the **distinction between these service types is no longer necessary**. The Agency, therefore, proposes to require that the records contain all charges and payments connected to the shipment.

Brokers Must Provide Records Upon Request

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**. The prevalence of waivers may be reduced through the framing of this regulatory obligation.

Free markets require transparency to operate efficiently. When parties to a brokered transaction have unequal access to relevant information, known as information asymmetry, that could lead to an inefficient allocation of resources and therefore a sub-optimal outcome for society. Since **waivers of § 371.3 inhibit the sharing of information in brokered freight transactions, these waivers may create some degree of market failure or inefficiency**.

A party to a brokered transaction may seek records under § 371.3(c) for various reasons, including, but not limited to the following:

- Motor carriers may seek transaction records in furtherance of a remedy against potential charge back abuses or other erroneous charges on completed loads. It is evident from the comments received that some motor carriers believe spurious charge backs can be identified if motor carriers have access to transparency information.
- Shippers may use transaction records to verify that the services that they were billed for by the broker were provided.
- Motor carriers and shippers may seek transparency on broker margins... carrier and shippers could use this information to determine whether the margins are commensurate with the service provided, and potentially to negotiate for better rates or turn to other brokers for future loads.
- Motor carriers and shippers may use transaction information to identify instances where loads have been brokered without authority and to report such instances to FMCSA.

FMCSA does not regulate freight rates or broker margins. The proposed rule would **reframe the existing regulation that requires the broker to provide a record of the transaction to the motor carrier on request after the transaction is complete, but it would not regulate rates or margins**... the current prevalence of waivers suggests that brokers likely derive some benefit from not providing transaction records to motor carriers.

The number of brokers with operating authority grew by 20.90 percent from 2020 to 2021. Similarly, the number of motor carriers with operating authority grew by 18.81 percent from 2020 to 2021.

Average broker margins of approximately 13.47 percent to 15.4 percent

Broker records would be of limited utility in negotiating contracts due to the effect of the pricing factors listed above, as such records are provided only upon request and after the completion of the contractual obligations. Therefore, the records may only be useful for negotiating pricing for future loads.

Records Must Be Provided Within 48 Hours of Request

The Agency recognizes that a broker's role extends beyond matching shippers with motor carriers. Brokers act as an extension of the shipper's team, managing and overseeing cargo transportation with the carrier and handling varying documentation.

The proposed amendments to paragraph (c) would **not impose any duty on motor carriers**. They **clarify that the broker has a duty to provide records to the motor carrier upon request, as intended by the current regulation**, but the motor carrier is not obligated to request the records.

Records Must Be Provided Within 48 Hours of Request

The Agency has heard from at least one carrier claiming that a broker asserted that § 371.3, "does not state how long they have, to comply with that request and we can wait 10 years before we give you those records."

The Agency acknowledges that the requirement for broker records to be provided within 48 hours may present some costs for brokers

4. Benefits

To **modernize FMCSA's existing recordkeeping requirements and transparency provisions for brokers and clarify the obligation imposed on brokers to respond to requests for transaction records and the process parties must follow** when requesting and supplying such records.

A lack of transparency in freight brokerage contracts has been linked to excessive and inappropriate charge backs by brokers.

The Agency believes the **inclusion of the date of payments** with the contents of records would provide additional information a carrier may use to counter any inaccurate claims, or spurious charge backs. The **intent of the current regulations in § 371.3 is, in part, to enable self-policing of freight-brokered contracts** in the absence of more restrictive regulation. The proposed rule would help improve self-policing of freight brokered contracts on issues such as charge back abuses and unauthorized brokering.

The Agency believes that broker information would offer limited utility in securing more favorable rates. The information itself would become available only after the contractual obligations have been fulfilled.

5. Alternatives Considered

The Agency **explored alternative approaches**, such as a phased implementation, automatic disclosure of the content of records under § 371.3, prohibiting waivers, and a longer timeframe for providing transparency information than the proposed 48 hours.

The Agency finds that a phased implementation would not reduce potential burdens imposed by this proposed rule for the following reasons:

1. Brokers are already obligated to maintain records under § 371.3. Therefore, **they possess the information necessary to comply with the proposed 48-hour turnaround** for information requests;

...

3. Brokers likely capture the date of payment for brokered services as part of their standard transaction and accounting processes.

To prevent selective retaliation, i.e., blacklisting, against motor carriers that exercise their right to review the transaction records

The Agency believes that an automatic disclosure provision would be excessively burdensome to brokers. Though the concerns regarding retaliation appear plausible, the Agency cannot determine how frequently that retaliation would take place. This is, in part, because motor carriers have frequently waived their right to review, which makes it **difficult for the Agency to determine if retaliation would be a common problem if the proposed regulation is implemented**.

A request-based system ensures that motor carriers who value access to the content of records under § 371.3 receive it, while minimizing the burden for brokers who, under an automatic disclosure requirement, would need to distribute the content of records to all parties, whether or not they wanted to receive it.

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