

§ 370.9

be true and correct with respect to the property and value involved in the claim; or certification of prices or values, with trade or other discounts, allowance, or deductions, of any nature whatsoever and the terms thereof, or depreciation reflected thereon; *Provided, however,* That where property involved in a claim has not been invoiced to the consignee shown on the bill of lading or where an invoice does not show price or value, or where the property involved has been sold, or where the property has been transferred at bookkeeping values only, the carrier shall, before voluntarily paying a claim, require the claimant to establish the destination value in the quantity, shipped, transported, or involved; *Provided, further,* That when supporting documents are determined to be a necessary part of an investigation, the supporting documents are retained by the carriers for possible FMCSA inspection.

(c) *Verification of loss.* When an asserted claim for loss of an entire package or an entire shipment cannot be otherwise authenticated upon investigation, the carrier shall obtain from the consignee of the shipment involved a certified statement in writing that the property for which the claim is filed has not been received from any other source.

§ 370.9 Disposition of claims.

(a) Each carrier subject to 49 U.S.C. subtitle IV, part B which receives a written or electronically transmitted claim for loss or damage to baggage or for loss, damage, injury, or delay to property transported shall pay, decline, or make a firm compromise settlement offer in writing or electronically to the claimant within 120 days after receipt of the claim by the carrier; *Provided, however,* That, if the claim cannot be processed and disposed of within 120 days after the receipt thereof, the carrier shall at that time and at the expiration of each succeeding 60-day period while the claim remains pending, advise the claimant in writing or electronically of the status of the claim and the reason for the delay in making final disposition thereof and it shall retain a copy of such advice to the claimant in its claim file thereon.

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(b) When settling a claim for loss or damage, a common carrier by motor vehicle of household goods as defined in § 375.1(b)(1) of this chapter shall use the replacement costs of the lost or damaged item as a base to apply a depreciation factor to arrive at the current actual value of the lost or damaged item: *Provided,* That where an item cannot be replaced or no suitable replacement is obtainable, the proper measure of damages shall be the original costs, augmented by a factor derived from a consumer price index, and adjusted downward by a factor depreciation over average useful life.

§ 370.11 Processing of salvage.

(a) Whenever baggage or material, goods, or other property transported by a carrier subject to the provisions in this part is damaged or alleged to be damaged and is, as a consequence thereof, not delivered or is rejected or refused upon tender thereof to the owner, consignee, or person entitled to receive such property, the carrier, after giving due notice, whenever practicable to do so, to the owner and other parties that may have an interest therein, and unless advised to the contrary after giving such notice, shall undertake to sell or dispose of such property directly or by the employment of a competent salvage agent. The carrier shall only dispose of the property in a manner that will fairly and equally protect the best interests of all persons having an interest therein. The carrier shall make an itemized record sufficient to identify the property involved so as to be able to correlate it to the shipment or transportation involved, and claim, if any, filed thereon. The carrier also shall assign to each lot of such property a successive lot number and note that lot number on its record of shipment and claim, if any claim is filed thereon.

(b) Whenever disposition of salvage material or goods shall be made directly to an agent or employee of a carrier or through a salvage agent or company in which the carrier or one or more of its directors, officers, or managers has any interest, financial or otherwise, that carrier's salvage

records shall fully reflect the particulars of each such transaction or relationship, or both, as the case may be.

(c) Upon receipt of a claim on a shipment on which salvage has been processed in the manner prescribed in this section, the carrier shall record in its claim file thereon the lot number assigned, the amount of money recovered, if any, from the disposition of such property, and the date of transmittal of such money to the person or persons lawfully entitled to receive the same.

PART 371—BROKERS OF PROPERTY

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AUTHORITY: 49 U.S.C. 13301, 13501, and 14122; and 49 CFR 1.73.

SOURCE: 45 FR 68942, Oct. 17, 1980, unless otherwise noted. Redesignated at 61 FR 54707, Oct. 21, 1996.

§ 371.1 Applicability.

This part applies, to the extent provided therein, to all brokers of transportation by motor vehicle as defined in § 371.2.

[32 FR 20034, Dec. 20, 1967, as amended at 62 FR 15421, Apr. 1, 1997]

§ 371.2 Definitions.

(a) *Broker* means a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.

(b) *Bona fide agents* are persons who are part of the normal organization of a motor carrier and perform duties under the carrier's directions pursuant to a preexisting agreement which provides for a continuing relationship, precluding the exercise of discretion on

the part of the agent in allocating traffic between the carrier and others.

(c) *Brokerage* or *brokerage service* is the arranging of transportation or the physical movement of a motor vehicle or of property. It can be performed on behalf of a motor carrier, consignor, or consignee.

(d) *Non-brokerage service* is all other service performed by a broker on behalf of a motor carrier, consignor, or consignee.

§ 371.3 Records to be kept by brokers.

(a) A broker shall keep a record of each transaction. For purposes of this section, brokers may keep master lists of consignors and the address and registration number of the carrier, rather than repeating this information for each transaction. The record shall show:

- (1) The name and address of the consignor;
- (2) The name, address, and registration number of the originating motor carrier;
- (3) The bill of lading or freight bill number;
- (4) The amount of compensation received by the broker for the brokerage service performed and the name of the payer;
- (5) A description of any non-brokerage service performed in connection with each shipment or other activity, the amount of compensation received for the service, and the name of the payer; and
- (6) The amount of any freight charges collected by the broker and the date of payment to the carrier.

(b) Brokers shall keep the records required by this section for a period of three years.

(c) Each party to a brokered transaction has the right to review the record of the transaction required to be kept by these rules.

[45 FR 68942, Oct. 17, 1980. Redesignated at 61 FR 54707, Oct. 21, 1996, as amended at 62 FR 15421, Apr. 1, 1997]

§ 371.7 Misrepresentation.

(a) A broker shall not perform or offer to perform any brokerage service (including advertising), in any name other than that in which its registration is issued.