

detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before March 12, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2006-0140, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: [Majumder.joydeb@epa.gov](mailto:Majumder.joydeb@epa.gov).
3. *Fax*: (404) 562-9195.
4. *Mail*: "EPA-R04-OAR-2006-0140," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.
5. *Hand Delivery or Courier*. Deliver your comments to: Joydeb Majumder, Air Toxics and Monitoring Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business is Monday through Friday, 8:30 to 4:30, excluding federal holiday's comments. Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Joydeb Majumder, Air Toxics and Monitoring Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9121. Mr. Majumder can also be reached via electronic mail at [Majumder.joydeb@epa.gov](mailto:Majumder.joydeb@epa.gov).

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: January 19, 2007.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

[FR Doc. E7-2118 Filed 2-7-07; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 371, 375, 386, and 387

[Docket No. FMCSA-2004-17008]

RIN 2126-AA84

#### Brokers of Household Goods Transportation by Motor Vehicle

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** FMCSA proposes to amend its regulations to require brokers who arrange the transportation of household goods in interstate or foreign commerce for consumers to comply with additional consumer protection requirements. This rulemaking is in response to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) and a petition for rulemaking from the American Moving and Storage Association. This rulemaking is intended to educate and inform consumers and brokers about fair and competitive business practices proposed by the FMCSA.

**DATES:** FMCSA must receive your comments by May 9, 2007.

**ADDRESSES:** You may submit comments, identified by DOT DMS Docket Number FMCSA-2004-17008, by any of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Agency Web Site*: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax*: 1-202-493-2251.
- *Mail*: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.
- *Hand Delivery*: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Instructions:* All submissions must include the agency name and docket number (FMCSA-2004-17008) or Regulatory Identification Number (RIN) for this rulemaking (RIN 2126-AA84). Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the

Privacy Act heading for further information.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Privacy Act:* Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dorothea Grymes, Household Goods Team, Commercial Enforcement Division, (202) 385-2400, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### Legal Basis for the Rulemaking

The Secretary of Transportation's (Secretary) general jurisdiction to establish regulations concerning the procurement by property brokers of for-hire transportation in interstate or foreign commerce is found at 49 U.S.C. 13501. Brokers of household goods are a subset of all property brokers but specifically register with FMCSA as household goods brokers. This rulemaking applies only to household goods brokers procuring for-hire transportation in interstate or foreign commerce. The Secretary is authorized to collect from household goods brokers "information the Secretary decides is necessary" to ensure a transportation system that meets the needs of the United States. (49 U.S.C. 13101 and 13301). Brokers of household goods are required to register with the Secretary by 49 U.S.C. 13904(a)(1). Section 4142 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59), which made changes to certain other registration requirements, did not change registration requirements

for household goods brokers. The Secretary also has authority to adopt regulations applicable to registered household goods brokers which "shall provide for the protection of shippers by motor vehicle." (49 U.S.C. 13904(c)) The Secretary's authority to inspect and copy household goods broker records is found at 49 U.S.C. 14122. The Secretary has delegated these various authorities to the FMCSA Administrator. (49 CFR 1.73(a)).

This rulemaking is based on the statutory provisions cited above and on the Household Goods Mover Oversight Enforcement and Reform Act of 2005, otherwise known as Title IV, Subtitle B of SAFETEA-LU. This rulemaking focuses on the business practices of household goods brokers engaged in interstate or foreign commerce. Household goods brokers arrange, but do not perform, the transportation of household goods shipments. FMCSA will address the SAFETEA-LU provisions specifically directed to household goods motor carriers in separate rulemakings, as appropriate.

While section 4205 of SAFETEA-LU contains estimating requirements for household goods motor carriers, the general authority cited above allows FMCSA to establish such requirements for household goods brokers.

Section 4212 of SAFETEA-LU directs the Secretary to require a household goods broker to provide shippers with the following information whenever the broker has contact with a shipper or a potential shipper:

1. The broker's U.S. DOT number.
2. The FMCSA pamphlet titled, "Your Rights and Responsibilities When You Move."
3. A list of all motor carriers providing transportation of household goods used by the broker and a statement that the broker is not a motor carrier providing transportation of household goods.

Section 4209 adds new civil penalties for unlawful broker estimating practices and increases existing civil penalties for providing motor carrier or broker services subject to FMCSA jurisdiction without being registered with FMCSA.

#### **Existing FMCSA Regulations Applicable to Household Goods Brokers**

Household goods brokers have been regulated by FMCSA and its predecessor agencies for many years and a number of regulations apply to them, including registration requirements (49 CFR part 365), process agent requirements (49 CFR part 366) and financial responsibility requirements (49 CFR part 387). Section 387.307 requires

property brokers, including household goods brokers, to maintain a surety bond or trust fund agreement in the amount of at least \$10,000 to provide for payments to motor carriers or shippers if the broker fails to carry out its agreement to supply transportation by authorized motor carriers.

Part 371 specifies general property broker transaction record requirements, prohibits misrepresentation of the broker's name or non-carrier status, and prohibits certain rebating and compensation practices. Part 379 specifies general recordkeeping time periods.

FMCSA can also issue orders to compel compliance, impose civil monetary penalties, revoke the broker's license, or seek federal court orders to stop statutory and/or regulatory violations. Because household goods brokers do not provide the actual transportation, they are not subject to FMCSA's safety jurisdiction.

#### **Previous Household Goods Rulemaking**

FMCSA regulations on household goods motor carriers and the proposed regulations for household goods brokers are intended for the protection of individual shippers (as defined in 49 U.S.C. 13102(13) added by section 4202 of SAFETEA-LU). FMCSA regulations on household goods motor carriers and the proposed regulations for household goods brokers do not apply to corporate, government, or military-arranged and paid moves.

The Interstate Commerce Commission (ICC), one of FMCSA's predecessor agencies, concluded that household goods brokers may not provide estimates directly to shippers.<sup>1</sup> The ICC reasoned that shippers aggrieved by an act or omission of a broker would be unprotected by the household goods consumer protection regulations (currently codified at 49 CFR part 375) because only motor carriers were required to comply with these regulations. This problem was addressed in the Household Goods; Consumer Protection Regulations issued by FMCSA in 2003 (68 FR 35064; June 11, 2003), which substantially revised part 375.<sup>2</sup>

In its 2003 rulemaking, FMCSA added a new § 375.409 that allowed a household goods broker to provide an

estimate to a shipper if the following requirements are met:

1. There must be a written agreement between the broker and the motor carrier.

2. The written agreement must provide that the motor carrier adopts the broker's estimate as its own.

3. The motor carrier must ensure compliance with all the requirements of part 375 pertaining to estimates, including the requirement that the motor carrier must relinquish possession of the shipment if the shipper pays the motor carrier 110 percent of a non-binding estimate at the time of delivery.

In the preamble to the 2003 rulemaking FMCSA explained that the individual shipper would not be deprived of the protections provided in part 375, even if the broker could not be held directly responsible for compliance, because the motor carrier would still be held accountable for complying with part 375.

#### **Petition for Rulemaking**

On March 6, 2003, the American Moving and Storage Association (AMSA) petitioned FMCSA to initiate a rulemaking to amend 49 CFR part 371, "Brokers of Property," to impose specific additional requirements on household goods brokers. AMSA's main argument for additional rulemaking was its assertion that there were an increasing number of "moving-related" Web sites hosted by household goods brokers engaging in unfair business practices.

AMSA's petition states a significant number of the complaints it receives involve the same Internet companies, many of which are based in Florida. AMSA argues the fact these companies are involved in moves having no connection to Florida as an origin or destination demonstrates the impact of the Internet on these household goods broker arrangements and how the Internet is being used to entrap unsuspecting consumers. AMSA states it often receives complaints from consumers who have dealt with a Florida-based Internet broker, who in turn arranged a move from a non-Florida origin to another non-Florida destination. AMSA states once these brokers establish a business relationship with the consumer, they require payment of a deposit of several hundred dollars or more, fade from the picture, and leave the consumer to deal with, in most cases, a motor carrier who has failed to register with FMCSA. AMSA believes that a significant network of unscrupulous household goods brokers and household goods motor carriers is

<sup>1</sup> See *Entry Control of Brokers*, 126 M.C.C. 476 (1977); *Exec-Van Systems, Inc., Broker Application*, 128 M.C.C. 669 (1978); and *Ward Moving & Storage Co., Inc., Household Goods Broker Application*, 132, M.C.C. 589 (1981).

<sup>2</sup> These regulations were interim final rules. Following several technical amendments, the regulations became final rules in July 2005 (70 FR 39949, July 12, 2005).

functioning with the sole purpose of bilking the moving public by demanding charges that bear no relation to the legitimate costs of moving, or by collecting charges for services that are not performed.

AMSA provided ten additional examples of complaints it has received to illustrate the nature of the problems being experienced by the moving public. The examples generally involve circumstances similar to the Florida example discussed in the previous paragraph.

*AMSA wants FMCSA to amend our regulations to:*

- Specifically name and include household goods brokers in 49 CFR part 371, Brokers of Property;
- Require a household goods broker to identify itself as a broker and provide its location and telephone number;
- Add a requirement for household goods brokers to provide consumers with 49 CFR part 375, Appendix A, the pamphlet "Your Rights and Responsibilities When You Move;"
- Add a requirement that a household goods broker must only use FMCSA-registered household goods motor carriers (those with a U.S. DOT identification number, insurance on file with us, and registered to transport household goods in interstate or foreign commerce);
- Add a requirement for full written disclosure concerning estimates in advance of the move;
- Add a requirement that the broker will refund consumer deposits if the consumer cancels the shipment;
- Add a requirement to advise the consumer about the existence of the household goods broker's surety bond/trust fund; and
- Add a requirement to report illegal operations of household goods carriers to us.

FMCSA granted AMSA's petition and issued an Advance Notice of Proposed Rulemaking (ANPRM) in 2004 (69 FR 76664; December 22, 2004), which is also available in docket FMCSA-2004-17008. In the ANPRM, FMCSA sought answers to 36 questions related to household goods broker issues. The questions sought to determine the extent to which the public believes a problem exists and, if so, whether regulatory or non-regulatory solutions would best solve the problem. The ANPRM also addressed potential cost-benefit estimates, potential information collection burdens, and other potential impacts. The agency also requested comments on an array of specific regulatory requirements that should be considered.

### Summary of Responses to ANPRM

*FMCSA received comments from the following nine entities:* AMSA; the Owner-Operator Independent Drivers Association, Inc. (OOIDA), an international trade association representing independent owner-operators and professional drivers; the Public Utilities Commission of Ohio (PUCO), the regulator of intrastate household goods brokers in the State of Ohio; James Lamb, a household goods broker registered with FMCSA under the name Carrier Authority.com, Inc.; Tom Kizer, an FMCSA-registered broker doing business as Absolute Transportation Logistics; Timothy Walker, owner of the Web site MovingScam.com; Norman S. Marshall, an attorney; Noble Mountain Tree Farm, a shipper of Christmas trees; and Roger A. Bauer of Western Wholesale Distributing.

Generally, the commenters did not express support for rulemaking action and they did not address many of the specific questions raised in the ANPRM. For example, none of the commenters submitted specific information relating to the questions about the estimated number of household goods brokers, or questions about details of the household goods broker business. Commenters did, however, offer useful information and suggestions in other areas to assist FMCSA to develop this proposal.

Commenters expressed concern that household goods shippers may not be aware they are dealing with a household goods broker rather than a household goods carrier and that FMCSA should require household goods brokers to disclose their status and provide information to facilitate contacting household goods brokers in the event of problems with a shipment. Certain commenters also urged FMCSA to require household goods brokers to deal solely with FMCSA-registered household goods motor carriers to minimize potential problems with a move.

Timothy Walker recommends FMCSA require household goods brokers to disclose which household goods carriers they have agreements with or, at a minimum, which household goods carrier the household goods broker intends to tender the customer's shipment to before the move so customers have adequate time to research the carrier's license status and business history.

James Lamb and PUCO believe that although household goods brokers could play some role in providing written estimates, the primary responsibility for issuing and honoring estimates should

continue to remain with the household goods carrier and the household goods broker should be required to advise the customer of this fact.

PUCO and AMSA believe household goods brokers should be required to refund a deposit required by a household goods broker, minus the reasonable cost of any services provided, if the shipper cancels the shipment. James Lamb believes that if a household goods broker requests deposits for a planned shipment, the household goods broker should disclose the deposit's terms to the shipper.

FMCSA has adopted some of the commenters' suggestions in the proposed rule, as discussed in more detail in the section headed "Proposed Rule".

### Continuing Problems With Household Goods Brokers

While FMCSA has addressed certain household goods broker issues in recent years, a number of problems remain. Based on FMCSA's review of the responses to the ANPRM and complaints about household goods brokers, the agency believes some household goods brokers are acting deceptively, particularly on the Internet. These broker operations use various disguises and facades to mislead vulnerable consumers into believing that they are complying with FMCSA regulations. For example, a consumer may visit a Web site and be presented with misleading information for moving services. The Web sites may list a number of motor carriers that are performing transportation services, however, the list on the Web site may include some motor carriers that do not have operating authority from FMCSA to engage in the interstate transportation of household goods.

There are several factors contributing to the problems experienced by shippers in using household goods brokers:

1. *Minimal or no requirement to disclose contact and nature of operations information.* The Internet has provided an easy way for companies to advertise; however, it also makes it possible for unscrupulous companies to effectively conceal their identities, avoid disclosing the true nature of their operations, make misrepresentations to consumers, and defraud the moving public.

2. *No protection of consumers from unlicensed, illegal motor carriers.* Evidence from complaints filed with FMCSA by some consumers show household goods brokers have arranged for transportation by unregistered motor carriers. Such carriers are frequently not accountable to customers, whose

attempts to obtain redress for problems associated with the move may be ignored or otherwise undermined.

3. *The practice of quoting estimates of charges without providing written documents.* Unscrupulous brokers often fail to give consumers written estimates of charges, which permit them to avoid accountability when conflicts later arise. This is compounded by the fact that consumers are often persuaded to do business with the broker on the basis of an unrealistically low estimate, but may be required to pay substantially higher transportation charges under the tariff of the motor carrier transporting the shipment.

4. *No requirement for brokers to disclose refund policy for customers' deposits when shipments are cancelled.* Shippers have alleged household goods brokers have consistently not made clear their customer deposit refund policies.

5. *No significant identifiable capital investment, reputation and standing in the community, or insurance concerns.* Because many household goods brokers make such small investments in their business, there is a lack of incentive to protect this investment by following generally accepted business practices of fair and honest dealings with their customers.

6. *Consumer lack of knowledge and experience with moving transactions.* Household goods brokers are dealing with a relatively unsophisticated group of shippers who may not be familiar with the applicable regulatory requirements, thus highlighting the need for specific corrective actions to better educate consumers so they can better protect themselves against substantial financial and property losses.

7. *Internet brokers providing false or inaccurate information on their Web sites.* A number of Internet brokers are providing false or misleading information on their Web sites, contrary to current "advertising" requirements in part 371.

### The Proposed Rule

This proposal addresses the problems identified above and incorporates requirements mandated by SAFETEA-LU, recommended by AMSA in its petition, and some of the recommendations made by commenters to the ANPRM. FMCSA proposes to amend the current broker regulations in part 371 by adding a new subpart B specifically for household goods brokers; amending appendix B of part 386 to incorporate the civil penalties applicable to household goods brokers added by SAFETEA-LU; and amending

part 387 to increase the amount of surety bond or trust fund currently required for household goods brokers. This proposed rule is intended to educate and inform consumers and household goods brokers about fair and competitive business practices the FMCSA believes should be a part of every transaction between individual shippers and household goods brokers.

### Impact on Competition

The proposed rule consists of five basic elements:

- It would require household goods brokers to disclose to individual shippers critical information designed to educate the shipper and facilitate a satisfactory moving experience.
- It would require household goods brokers to use only household goods motor carriers that are properly licensed and insured.
- It would impose additional requirements governing estimates, consistent with those statutorily imposed on household goods motor carriers.
- It would incorporate new statutory penalties for providing estimates without a contract with a household goods motor carrier and for operating without being registered with FMCSA.
- It would adjust for inflation the current minimum level of financial responsibility required of household goods brokers.

The proposed disclosure requirements are intended to result in better-educated individual shippers who, armed with information about the household goods moving process, the regulations governing that process, and household goods broker cancellation, deposit and refund policies, will be in a better position to evaluate whether a particular household goods broker or household goods motor carrier best serves their moving needs. A more sophisticated population of customers encourages service providers to compete for their business by offering better quality service, adopting more customer-friendly policies or offering lower prices. The proposed disclosure requirements, therefore, would tend to be pro-competitive.

The proposal to require household goods brokers to verify that the motor carriers they use are properly licensed and registered to transport household goods is intended to ensure that motor carriers compete on a level playing field and customers receive better service. Interstate household goods carriers are required by law to register with FMCSA, maintain minimum levels of public liability and cargo insurance and charge only published tariff rates. Unregistered

carriers are more likely to lack the necessary insurance and tariff and to ignore the consumer protection regulations in 49 CFR part 375. It is generally cheaper to operate if a carrier does not comply with the regulatory requirements applicable to its industry. Permitting, or failing to discourage, use of illegal motor carriers penalizes competitors who comply with the regulations and incur the additional costs associated with compliance. By requiring household goods brokers to use registered, compliant carriers, the proposed rule will encourage non-compliant motor carriers to register with FMCSA, thus creating a level playing field that should result in better customer service through the promotion of fair competition and the elimination of unlawful activity.

By requiring household goods brokers to put all estimates in writing based on a physical survey of the household goods (unless the household goods broker or its agent is located more than 50 air-miles from the shipper's location or the shipper waives a physical survey), the proposed rule intends to subject household goods brokers to the same estimating requirements imposed by statute on household goods motor carriers by section 4205 of SAFETEA-LU. Having several written estimates will allow consumers to make more informed choices and level the playing field. Household goods brokers commonly provide telephone estimates without ever viewing the household goods. Experience has shown that such estimates are less reliable than estimates based on a physical survey. Many consumers may not realize this and choose a household goods broker based on a low-ball telephone estimate. However, the ultimate price, based on the shipment's weight, may be considerably higher. By promoting more reliable estimates, the proposal will encourage competition by standardizing the estimating rules and reducing the "sticker shock" experienced by consumers at their new residence after receiving and ordering moving services based on unreasonably low estimates.

FMCSA recognizes that SAFETEA-LU did not prescribe estimating requirements for household goods brokers as it did for household goods motor carriers. Nevertheless, we believe that we have existing statutory authority in 49 U.S.C. 13904(c) to do this and that an individual shipper's protection against unreliable estimates should not depend upon whether the shipper uses a broker or carrier to provide the estimate. We also recognize that unlike household goods motor carriers, who maintain office and/or agency locations

in reasonable proximity to most shippers, household good brokers commonly transact business over the Internet, commonly do not have agents, and, in most cases, are located more than 50 miles from the shipping site. Although household goods broker James Lamb commented his company arranges for on-site inspections as a part of its business practices, FMCSA believes most household goods brokers do not arrange for such on-site inspections. The Agency invites public comment on the impact to shippers, brokers and motor carriers of applying or removing the 50 air-mile provision for household goods broker estimates. FMCSA would also like comments on alternatives to the 50-mile requirement. One such alternative might be to require that all estimates provided by household goods brokers and motor carriers be based on a physical survey, regardless of shipper location, unless the individual shipper specifically waives the physical survey requirement.

FMCSA also invites comment on whether permitting individual shippers to waive a physical survey by checking an "opt-out" box on-line would satisfy the SAFETEA-LU requirement that physical survey waivers be in the form of a signed, written agreement. The Agency is not specifically proposing an opt-out waiver procedure at this time, but will consider an opt-out waiver or other waiver suggestions aimed at making the waiver process more flexible and convenient, consistent with statutory requirements.

Comments should also address whether electronic waivers can be provided consistent with the provisions of 15 U.S.C. 7001 *et seq.*, the Electronic Signatures in Global and National Commerce Act, Pub. L. 106-229, 114 Stat. 464 (June 30, 2000).

The penalties incorporated by the proposed rule are mandated by statute and are effective even without rulemaking. They are intended to make the cost of noncompliance with the statute significantly higher than the cost of compliance. By encouraging compliance by illegal operators, they are designed to eliminate unfair competitive disadvantages to legitimate operators who must bear the cost of compliance.

The inflation adjustment to the household goods broker minimum financial responsibility requirement applies to all household goods brokers and is based on the fact that the protection provided by the current required surety bond or trust agreement has significantly diminished because the minimum amount has not changed in over 25 years. The proposed change in the requirement should not have an

anti-competitive impact. Legitimate household goods brokers who honor their legal obligations will continue to remain in business.

FMCSA invites comments regarding the potential impact of the proposed rule on competition within the household goods moving industry.

#### **Subpart B—Special Rules for Household Goods Brokers**

Proposed new subpart B of part 371 for the most part contains new requirements mandated by SAFETEA-LU or suggested by the AMSA Petition for Rulemaking. A few of the proposed requirements in part 371 would echo certain provisions of part 375 applicable to motor carriers of household goods.

*Section 371.101 If I operate as a household goods broker in interstate or foreign commerce, must I comply with subpart B of this part?*

This proposed section requires household goods brokers that operate in interstate or foreign commerce to comply with all of the provisions of subpart B.

*Section 371.103 What are the definitions of terms used in this subpart?*

This section contains a definition of "household goods broker" and cross references the definitions of "household goods" and "individual shipper" in § 375.103.

*Section 371.105 Must I use a motor carrier that has a valid U.S. DOT number and valid operating authority issued by FMCSA to transport household goods in interstate or foreign commerce?*

This proposed section makes it clear that a household goods broker may only act as a household goods broker for a household goods motor carrier that has a valid U.S.DOT number and valid operating authority issued by FMCSA. This proposed requirement was requested by AMSA in its Petition for Rulemaking and was suggested by some of the commenters to the ANPRM. The use of FMCSA-registered household goods motor carriers to provide the transportation will provide a greater degree of assurance that the household goods motor carrier will comply with applicable FMCSA regulations. FMCSA will provide household goods brokers with instructions on the use of the agency's Internet Web site (<http://www.protectyourmove.gov>) to help them quickly locate the registration, insurance, and safety records of household goods motor carriers before tendering a shipment to a household

goods carrier. These instructions will be provided in compliance guides to implement this provision, if the agency publishes a final rule. These instructions may also be provided in small entity compliance guides,<sup>3</sup> if the agency must publish such guides in accordance with the Regulatory Flexibility Act.

*Section 371.107 What information must I display in my advertisements and Internet web homepage?*

Proposed § 371.107 implements the section 4212 of SAFETEA-LU requirements that household goods brokers disclose to potential shippers their Department of Transportation number and that they are not motor carriers providing transportation of household goods. FMCSA is also proposing that household goods brokers disclose additional information not required by SAFETEA-LU, but which FMCSA believes is necessary to properly educate and assist individual shippers. This section would require a household goods broker to prominently display in its advertisements and on its Web site the following:

1. The physical location of the business.
2. Its "MC" operating authority number and U.S.DOT registration number.<sup>4</sup>
3. Its status as a household goods broker.
4. A statement that the broker does not transport household goods but that it can arrange for such transportation.

*Section 371.109 Must I inform individual shippers which motor carriers I use?*

Proposed § 371.109 requires a household goods broker to provide each

<sup>3</sup> For each final rule requiring a final regulatory flexibility analysis, section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 110 Stat. 857 (codified at 5 U.S.C. 601 *et seq.*) requires Federal agencies to publish one or more small entity compliance guides. FMCSA has determined preliminarily in its analysis under the Regulatory Flexibility Act (5 U.S.C. 601-612), discussed later in this NPRM, that this proposed rule will most likely not have a significant economic impact on all 690 small entity household goods brokers (and any future small entity household goods brokers), but there remains some uncertainty as to the impacts to individual brokers. The agency has prepared an initial regulatory flexibility analysis. FMCSA invites comments on its initial regulatory flexibility analysis.

<sup>4</sup> FMCSA has proposed eliminating the "MC" operating authority number in its NPRM of May 19, 2005 (70 FR 28990) regarding the Unified Registration System mandated by the ICC Termination Act of 1995. Until FMCSA publishes a final rule in that proceeding, we propose to include a requirement for the household goods broker to display the "MC" number in its advertisements.

shipper or potential shipper who has contact with the household goods broker with a list of all household goods motor carriers used by the broker (including their U.S.DOT and MC numbers) and a statement that the household goods broker is not a motor carrier providing transportation of household goods. This requirement is specifically mandated by section 4212(3) of SAFETEA-LU.

*Section 371.111 Must I provide individual shippers with Federal consumer protection information?*

Proposed § 371.111 would require a household goods broker to provide potential shippers with one copy of each of the two FMCSA consumer pamphlets: "Your Rights and Responsibilities When You Move," and "Ready to Move?—Tips for a Successful Interstate Move." Section 4212 of SAFETEA-LU requires household goods brokers to distribute publication ESA 03005, entitled "Your Rights and Responsibilities When You Move". However, the publication number used in the statute actually refers to "Ready to Move?—Tips for a Successful Interstate Move". "Your Rights and Responsibilities When You Move" is publication OCE 100. Section 4205 of SAFETEA-LU requires household goods motor carriers to distribute both pamphlets and we propose to impose the same requirement on household goods brokers. Although section 4212 requires household goods brokers to provide consumer protection information "whenever they have contact with a shipper or potential shipper", we do not interpret this language to mean that the information must be provided every time there is contact. We believe that Congress intended that this information be furnished to individual shippers at the time an estimate is given and the shipper may not have come into contact with a carrier at that stage of the move. This section permits the household goods broker to make the information available through an Internet home page hyperlink as suggested by PUCO in its comments or by physical distribution to each potential shipper. Providing an Internet home page hyperlink as an option to physical distribution will reduce regulatory burdens on the small entities subject to this proposal. The household goods broker may distribute each of the two publications in the form published by FMCSA or in a modified format published by the household goods motor carrier the household goods broker intends to use to provide the transportation, provided the

modifications comply with 49 CFR 375.213.

This section would also require a household goods broker to obtain and retain for three years an electronic or paper receipt showing that the shipper received copies of both documents. This will enable household goods brokers to demonstrate compliance with the distribution requirement.

*Section 371.113 May I provide individual shippers with a written estimate?*

This proposed section requires that, if the household goods broker provides an estimate, it must be in writing and must be based on a physical survey of the shipper's household goods if the household goods are located within a 50 air-mile radius of the broker or its estimating agent. This proposed section is consistent with 49 U.S.C. 14104(b), as amended by section 4205 of SAFETEA-LU. In accordance with section 4209 of SAFETEA-LU, proposed § 371.113(a) also requires the household goods broker to prepare the estimate in accordance with a signed written agreement with the motor carrier who will actually transport the shipper's household goods.

Proposed § 371.113(b) requires household goods brokers to base their estimates upon the published tariffs of the authorized household goods motor carriers they use.

Proposed § 371.113(c) permits shippers to waive the physical survey requirement.

Proposed § 371.113(d) requires that the records of transactions conducted under this section be retained for as long as a household goods broker provides estimates on behalf of an authorized household goods motor carrier and for three years thereafter for shipments actually arranged for the individual shipper.

*Section 371.115 Must I maintain agreements with motor carriers before providing written estimates on behalf of these carriers?*

Proposed § 371.115(a) requires household goods brokers to maintain written agreements with authorized household goods motor carriers before providing estimates and lists the items that must be included in these agreements.

Proposed § 371.115(b) states that the signed written agreement required under the section is considered to be public information to be produced on reasonable request of the public.

Proposed § 371.115(c) requires that the agreements required by this section be retained for as long as a household

goods broker provides estimates on behalf of the authorized household goods motor carrier and for three years thereafter.

*Section 371.117 Must I provide individual shippers with my policies for canceling a shipment?*

This proposed section requires a household goods broker to disclose its cancellation policy, deposit policy, and refund policy on its Web site and in its customer agreements. The proposed section also requires the household goods broker to maintain records that document requests for cancellation and the disposition of cancellations, i.e., proof of refunds when made.

FMCSA has found that household goods brokers have consistently retained customer deposits even when the customer cancels the shipment well in advance of the planned moving date. In its Petition for Rulemaking and comments to the ANPRM, AMSA proposed that, before a deposit can be demanded by the household goods broker, the broker must make full disclosure of the terms governing deposits and forfeitures in the event of cancellations. This would add an additional layer of protection for the consumer.

FMCSA does not believe it should mandate the specifics of a household goods broker's refund policies nor require household goods brokers to refund deposits, as the household goods broker may have incurred legitimate costs on behalf of shippers who subsequently decide to not use the household goods broker's services.

*Section 371.119 What must I do before I arrange with a motor carrier to transport household goods in interstate or foreign commerce?*

This proposed section requires that each household goods broker must "inspect, verify, and document" the household goods motor carrier's U.S.DOT registration and MC operating authority validity each month. The household goods broker would comply with this requirement by using FMCSA's Internet Web site (<http://www.protectyourmove.gov>) to check whether the motor carrier has active for-hire authority to transport household goods and evidence of the necessary financial responsibility on file with FMCSA. The household goods broker must print or electronically save a copy of the on-line report(s) showing the information it has verified and must maintain the information for at least three years. FMCSA will provide detailed instructions on how to navigate FMCSA's Internet Web site (<http://www.protectyourmove.gov>)

*www.protectyourmove.gov*) in its compliance guides to implement this provision, if the agency publishes a final rule. These instructions may also be provided in small entity compliance guides.<sup>5</sup>

In developing this proposal, FMCSA considered requiring household goods brokers to inspect, verify, and document each household goods motor carrier's U.S. DOT registration and MC operating authority numbers before giving a shipper every estimate and before arranging any shipment with a household goods motor carrier. The agency decided not to propose this option because the costs to the 690 registered household goods brokers would increase from approximately \$42,400 to about \$220,000 per year. The agency is proposing to minimize costs imposed on responsible small household goods brokers to the extent practicable by proposing the checks be made on a monthly basis. See the agency's draft Regulatory Evaluation in docket FMCSA-2004-17008 for more information. FMCSA encourages comments and data, including cost data, on whether any potential final rule on checking carriers' registrations should be more or less frequent than this proposal.

*Section 371.121 What penalties may FMCSA impose for violations of this part?*

This proposed section states that household goods brokers who violate the provisions of subpart B would be subject to the penalty provisions of 49 U.S.C. chapter 149. It also confirms that these penalty provisions would not deprive a shipper of any other remedies provided by law. Section 4209 of SAFETEA-LU amended 49 U.S.C. 14901(d) by adding new penalties and increasing existing penalties applicable to household goods brokers. See the discussion below under part 386, appendix B. Proposed § 371.121 would parallel current § 375.901.

**Part 375—transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations**

*Section 375.409 May household goods brokers provide estimates?*

We propose changing § 375.409 to state that the written agreement between the household goods broker and the household goods motor carrier must contain all of the items required in proposed § 371.115.

<sup>5</sup> See footnote 3 above for a discussion of the small entity compliance guide.

**Part 386—Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings**

*Appendix B to Part 386—Penalty Schedule; Violations and Maximum Monetary Penalties*

FMCSA proposes to amend paragraph (g) of appendix B by adding two new provisions to specify the minimum civil penalties for: (1) household goods brokers who make estimates without the necessary contracts with household goods motor carriers in effect; and (2) household goods brokers and household goods motor carriers who operate in interstate commerce without the necessary FMCSA registration. These proposed new paragraphs incorporate into our rules the penalties established in section 4209 of SAFETEA-LU.

**Part 387—Minimum Levels of Financial Responsibility for Motor Carriers**

*Section 387.307 Property broker surety bond or trust fund*

FMCSA proposes to add specific language to § 387.307(a) to require household goods brokers to have a surety bond or trust fund in effect for \$25,000. The ICC created the financial responsibility requirements for household goods brokers in 1980. The requirement was set at \$10,000 to ensure shippers or motor carriers would be paid if the household goods broker failed to carry out its contracts, agreements, or arrangements for the supplying of transportation by authorized household goods motor carriers. Although commenters to the ANPRM stated that the \$10,000 requirement for the surety bond/trust fund should be raised, FMCSA does not have adequate data to determine the appropriate amount of increase necessary for the protection of carriers or shippers. Accordingly, FMCSA is proposing to raise the surety bond/trust fund requirement for household goods brokers from \$10,000 to \$25,000, based on adjustments for inflation. Adjusting the \$10,000 minimum figure for inflation as measured by the Consumer Price Index, results in purchasing power of \$24,490.29 in 2006. Because a final rule based on this NPRM may not be in effect until 2008, it is reasonable to round up to \$25,000. When FMCSA obtains adequate data to propose raising the limit higher than \$25,000, FMCSA will consider proposing that higher limit in a future rulemaking or supplemental proposal. We invite public comment on the appropriate level of the surety bond or trust fund.

**Regulatory Analyses**

*Executive Order 12866 (Regulatory Planning and Review); DOT Regulatory Policies and Procedures*

FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and the U.S. Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979) because there is substantial public interest in the interstate transportation of household goods and related consumer protection regulations.

FMCSA estimates that the maximum first-year discounted costs to the industry of the proposed rule would be about \$1.691 million, while maximum first-year discounted costs to society of the proposed rule would be about \$1.841 million. Costs in additional years would be dependent on new household goods brokers entering the marketplace, but would be less than incurred during the first year. As such, the costs of this proposal do not exceed the \$100 million annual threshold as defined in Executive Order 12866.

FMCSA's full draft Regulatory Evaluation is in the docket for this NPRM. It explains in detail how we estimated cost impacts of the proposal.

This proposal would establish additional consumer protection regulations specifically for household goods brokers to supplement the regulations at 49 CFR part 375, which apply to motor carriers transporting household goods by commercial motor vehicle in interstate commerce.

FMCSA estimates these regulatory changes will produce three primary cost impacts on household goods brokers: (1) Costs of training certain employees on the proper application of the regulatory changes; (2) costs to revise broker marketing materials, forms, and orders for service, including technical writing and printing costs associated with incorporating mandated consumer information pamphlets; and (3) additional information collection burdens associated with the new regulations, especially information collection burdens to travel to and perform on-site physical surveys for written estimates, information collection burdens to make written agreements with household goods motor carriers, and information collection burdens to verify household goods motor carrier authority/insurance validity.

*Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies, as a part of each rulemaking, to consider regulatory alternatives that minimize the impact on small entities while achieving the objectives of the rulemaking. FMCSA has evaluated the effects of this proposed rule on small entities as required by the RFA. This proposed rule directly affects all household goods brokers required to register with FMCSA, of which there are approximately 690 active, registered household goods brokers. FMCSA estimates 100 percent of these registered household goods brokers are small entities. FMCSA believes, based on its draft Regulatory Evaluation, that this proposed rule will not have a significant impact on a substantial number of small entities, but there remains some uncertainty as to the impacts to individual household goods brokers. FMCSA has prepared an Initial Regulatory Flexibility Analysis. A copy of the Initial Regulatory Flexibility Analysis can be found attached to the draft Regulatory Evaluation in docket FMCSA–2004–17008. (See the last three pages of the Regulatory Evaluation.) FMCSA has chosen not to certify at this stage of the rulemaking that a significant impact will not occur and welcomes comments on our analysis and findings.

*Unfunded Mandates Reform Act*

This proposed rule does not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$128.1 million or more in any one year (2 U.S.C. 1531 *et seq.*).

*National Environmental Policy Act*

The agency analyzed this proposed rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1 published March 1, 2004 (69 FR 9680), that this action is categorically excluded (CE)

under Appendix 2, paragraphs 6.d, 6.m, and 6.q of the Order from further environmental documentation. These categorical exclusions relate to rulemaking actions affecting household goods brokers. In addition, the agency believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this proposed rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA’s general conformity requirement since it involves rulemaking and policy development and issuance. See 40 CFR 93.153(c)(2). It would not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule’s *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule would not increase total CMV mileage, change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. This action merely establishes regulations applicable to the business practices of household goods brokers, who do not operate CMVs.

We seek comment on these determinations.

*Privacy Impact Assessment*

FMCSA conducted a privacy impact assessment of this proposed rule as required by Section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Pub. L. 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. § 552a]. The assessment considers any impacts of the proposed rule on the privacy of information in an identifiable form and related matters. FMCSA has determined this proposal contains no privacy impacts.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and

Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. FMCSA will seek approval of the information collection requirements in a new information collection to be entitled “Practices of Household Goods Brokers.”

The collected information encompasses that which is generated, maintained, retained, disclosed, and provided to, or for, the agency under 49 CFR part 371. It will assist shippers in their commercial dealings with interstate household goods brokers. The collection of information will be used by prospective shippers to make informed decisions about contracts and services to be ordered, executed, and settled within the interstate household goods motor carrier industry. These information collection items were required by regulations issued by the former ICC; however, that agency was not required to comply with the PRA. When these items transferred from the ICC to the Federal Highway Administration, and ultimately to FMCSA, no OMB control number was assigned to cover this information collection transfer. It was therefore necessary to calculate the old information collection burden hours for these items approved under the ICC rules and to add the new burden that may be generated by this proposal.

Assumptions used for calculation of the information collection burden include the following: (1) There are currently approximately 690 interstate household goods brokers; and (2) FMCSA estimates 125 new household goods brokers will register with FMCSA each year, making them subject to FMCSA regulations.

Table 1 summarizes the information collection burden hours by correlating the information collection activities with the sections of part 371 in which they appear. See attachment A of the supporting statement for the Paperwork Reduction Act Submission in docket FMCSA–2004–17008 for the detailed FMCSA analysis. The table shows whether each information collection activity was required under ICC regulations in 1995.

TABLE 1

Type of burden	Proposed section	First yr. burden	Annual hourly burden	New burden?
Household Goods Broker Transactions .....	Old 371.3 .....	41,400	41,400	No.
Separate accounting system <sup>6</sup> .....	Old 371.13 .....	1,000	1,000	No.
Web site and Advertisement Information .....	371.107 .....	173	32	Yes.
List and Statement .....	371.109 .....	173	32	Yes.



TABLE 1—Continued

Type of burden	Proposed section	First yr. burden	Annual hourly burden	New burden?
Adding Hyperlinks on Household Goods Broker Web site to FMCSA Booklet Information "Ready to Move" and "Your Rights and Responsibilities When You Move".	371.111(a)(1) ....	311	57	Yes.
Distribute FMCSA's Booklets .....	371.111(a)(2) ....	1,250	1,250	Yes.
Distribute Household Goods Motor Carrier's Booklets .....	371.111(a)(3) ....	1,250	1,250	Yes.
Shipper's Signed and Dated Statement .....	371.111(b)&(c) ..	29,140	29,140	Yes.
Travel to location within 50 air miles of broker and physically survey household goods.	371.113 .....	37,500	37,500	Yes.
Written agreement with household goods motor carrier .....	371.115 .....	13,800	2,500	Yes.
Disclose cancellation, deposit, and refund policies .....	371.117(a) .....	173	32	Yes.
Disposition of shipper's cancel request .....	371.117(b) .....	250	250	Yes.
Carrier monthly operating authority status check .....	371.119 .....	1,400	1,400	Yes.
"Old" Burden Hours .....	.....	42,400	42,400	
New Burden Hours .....	.....	85,420	73,450	
Total Burden Hours for This Information Collection .....	.....	127,820	115,850	

<sup>6</sup> FMCSA believes setting up the first accounting system for a new business is a usual and customary business practice. The PRA regulations at 5 CFR 1320.3(b)(2) allows FMCSA to calculate no burden when the agency demonstrates to OMB that the activity needed to comply with the specific regulation is usual and customary. The supporting statement in the docket demonstrates that setting up and accounting system is a usual and customary practice when starting a new business. FMCSA seeks comment on whether setting up the first accounting system for a new business is a usual and customary business practice.

*Executive Order 12988 (Civil Justice Reform)*

This rulemaking meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, entitled "Civil Justice Reform," to minimize litigation, eliminate ambiguity, and reduce burden.

*Executive Order 13045 (Protection of Children)*

FMCSA has analyzed this proposal under Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks." The agency does not believe this proposed rulemaking would be economically significant, nor does it concern an environmental risk to health or safety that may disproportionately affect children.

*Executive Order 12630 (Taking of Private Property)*

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, entitled "Governmental Actions and Interference with Constitutionally Protected Property Rights."

*Executive Order 13132 (Federalism)*

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The FMCSA has determined that this rulemaking would not have a substantial direct effect on States, nor would it limit the policy-making discretion of the States.

*Executive Order 13211 (Energy Effects)*

FMCSA has analyzed this proposed action under Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." The agency has determined that it is not a "significant energy action" under that order because it does not appear to be economically significant (i.e., a cost of more than \$100 million in a single year) based upon analyses performed at this stage of the rulemaking process, and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*Executive Order 12372 (Intergovernmental Review)*

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

**List of Subjects**

*49 CFR Part 371*

Brokers, Motor carriers, Reporting and recordkeeping requirements.

*49 CFR Part 375*

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

*49 CFR Part 386*

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation,

Highway safety, Motor carriers, Motor vehicle safety, Penalties.

*49 CFR Part 387*

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

For the reasons discussed above, FMCSA proposes to amend title 49, Code of Federal Regulations, chapter III, subchapter B, as set forth below:

**PART 371—BROKERS OF PROPERTY**

1. Revise the authority citation for part 371 to read as follows:

**Authority:** 49 U.S.C. 13301, 13501, and 14122; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.73.

2. Amend part 371, by adding a new subpart B to read as follows:

**Subpart B—Special Rules for Household Goods Brokers**

Sec.

371.101 If I operate as a household goods broker in interstate or foreign commerce, must I comply with subpart B of this part?

371.103 What are the definitions of terms used in this subpart?

371.105 Must I use a motor carrier that has a valid U.S. DOT number and valid operating authority issued by FMCSA to transport household goods in interstate or foreign commerce?

371.107 What information must I display in my advertisements and Internet web homepage?

- 371.109 Must I inform individual shippers which motor carriers I use?
- 371.111 Must I provide individual shippers with Federal consumer protection information?
- 371.113 May I provide individual shippers with a written estimate?
- 371.115 Must I maintain agreements with motor carriers before providing written estimates on behalf of these carriers?
- 371.117 Must I provide individual shippers with my policies for canceling a shipment?
- 371.119 What must I do before I arrange with a motor carrier to transport household goods in interstate or foreign commerce?
- 371.121 What penalties may FMCSA impose for violations of this part?

### Subpart B—Special Rules for Household Goods Brokers

#### § 371.101 If I operate as a household goods broker in interstate or foreign commerce, must I comply with subpart B of this part?

Yes, you must comply with all regulations in this subpart if you operate as a household goods broker in interstate or foreign commerce.

#### § 371.103 What are the definitions of terms used in this subpart?

*Household goods* has the same meaning as the term is defined in § 375.103 of this subchapter.

*Household goods broker* means a person, other than a motor carrier or an employee or bona fide agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation of household goods by motor carrier for compensation.

*Individual shipper* has the same meaning as the term is defined in § 375.103 of this subchapter.

#### § 371.105 Must I use a motor carrier that has a valid U.S. DOT number and valid operating authority issued by FMCSA to transport household goods in interstate or foreign commerce?

You may only act as a household goods broker for a motor carrier that has a valid U.S. DOT number and valid operating authority issued by FMCSA to transport household goods in interstate or foreign commerce.

#### § 371.107 What information must I display in my advertisements and Internet web homepage?

(a) You must prominently display in your advertisements and Internet web homepage(s) the physical location(s) (street or highway address) where you conduct business.

(b) You must prominently display your U.S. DOT registration number(s)

and MC license number issued by the FMCSA in your advertisements and Internet web homepage(s).

(c) You must prominently display your status as a household goods broker in your advertisements and Internet web homepage(s).

(d) You must prominently display in your advertisements and Internet web homepage(s) that you will not transport an individual shipper's household goods, but that you will arrange for the transportation of the household goods by an FMCSA-authorized household goods motor carrier, whose charges will be determined by its published tariff.

#### § 371.109 Must I inform individual shippers which motor carriers I use?

(a) You must provide to each potential individual shipper who contacts you a list of all authorized household goods motor carriers you use, including their U.S. DOT registration number(s) and MC license numbers.

(b) You must provide to each potential individual shipper who contacts you a statement stating you are not a motor carrier authorized by the Federal Government to transport the individual shipper's household goods, and you are only arranging for an authorized household goods motor carrier to perform the transportation services and, if applicable, additional services.

#### § 371.111 Must I provide individual shippers with Federal consumer protection information?

(a) You must provide potential individual shippers with Federal consumer protection information by one of the following three methods:

(1) Provide a hyperlink on your Internet web home page to the FMCSA Web page containing the information in FMCSA's publications "Ready to Move?—Tips for a Successful Interstate Move" and "Your Rights and Responsibilities When You Move."

(2) Distribute to each shipper and potential shipper at the time you provide an estimate, copies of FMCSA's publications "Ready to Move?—Tips for a Successful Interstate Move" and "Your Rights and Responsibilities When You Move."

(3) Distribute to each shipper and potential shipper at the time you provide an estimate, copies of "Ready to Move?—Tips for a Successful Interstate Move" and "Your Rights and Responsibilities When You Move" as modified and produced by the authorized, lawful motor carrier you intend to provide the shipment to under your written agreement required by § 371.115.

(b) You must obtain a signed, dated electronic or paper receipt showing the individual shipper has received both booklets.

(c) You must maintain the signed receipt required by paragraph (b) of this section for three years from the date the individual shipper signs the receipt.

#### § 371.113 May I provide individual shippers with a written estimate?

(a) You may provide each individual shipper with an estimate of transportation and accessorial charges. If you provide an estimate, it must be in writing and must be based on a physical survey of the household goods if the household goods are located within a 50 air-mile radius of your or your agent's location. The estimate must be prepared in accordance with a signed, written agreement, as specified in § 371.115 of this subpart.

(b) You must base your estimate upon the published tariffs of the authorized motor carrier who will transport the shipper's household goods.

(c) A shipper may elect to waive the physical survey required in paragraph (a) of this section by written agreement signed by the shipper before the shipment is loaded. A copy of the waiver agreement must be retained as an addendum to the bill of lading and is subject to the same record inspection and preservation requirements as are applicable to bills of lading.

(d) You must keep the records required by this section for three years following the date you provide the written estimate for an individual shipper who accepts the estimate and has you procure the transportation.

#### § 371.115 Must I maintain agreements with motor carriers before providing written estimates on behalf of these carriers?

(a) In order to provide estimates of charges for the transportation of household goods, you must do so in accordance with the written agreement required by § 375.409 of this subchapter. Your written agreement with the motor carrier(s) must include the following items:

(1) Your broker name as shown on your FMCSA registration, your physical address, and your U.S. DOT registration number or MC license number;

(2) The authorized motor carrier's name as shown on its FMCSA registration, its physical address, and its U.S. DOT registration number and MC license number;

(3) A concise, easy to understand statement that your written estimate or quote to the individual shipper:

(i) Will be exclusively on behalf of the authorized household goods motor carrier;

(ii) Will be based on the authorized household goods motor carrier's published tariff; and

(iii) Will serve as the authorized household goods motor carrier's estimate for purposes of complying with the requirements of part 375 of this chapter, including the requirement that the authorized household goods motor carrier relinquish possession of the shipment upon payment of no more than 110 percent of the estimate at the time of delivery;

(4) Your owner's, corporate officer's, or corporate director's signature lawfully representing your household goods broker operation and the date;

(5) The signature of the authorized household goods motor carrier's owner, corporate officer, or corporate director lawfully representing the household goods motor carrier's operation and the date; and

(6) A notary public's signature, date, and seal notarizing and attesting to the validity of the signatures on the agreement between the household goods broker and household goods motor carrier.

(b) The signed written agreement required by this section is public information and you must produce it for review upon reasonable request by a member of the public.

(c) You must keep copies of the agreements required by this section for as long as you provide estimates or quotes on behalf of the authorized household goods motor carrier and for three years thereafter.

**§ 371.117 Must I provide individual shippers with my policies for canceling a shipment?**

(a) You must disclose prominently on your Internet Web site and in your agreements with prospective shippers your cancellation policy, deposit policy, and policy for refunding deposited funds in the event the shipper cancels an order for service before the date an authorized household goods motor carrier has been scheduled to pick up the shipper's property.

(b) You must maintain records showing each individual shipper's request to cancel a shipment and the disposition of each request for a period of three years after the date of a shipper's cancellation request. If you refunded a deposit, your records must include:

(1) Proof that the individual shipper cashed or deposited the check or money order, if the financial institution provides documentary evidence; or

(2) Proof that you delivered the refund check or money order to the individual shipper.

**§ 371.119 What must I do before I arrange with a motor carrier to transport household goods in interstate or foreign commerce?**

(a) Using the FMCSA's database systems, you must verify and document each month that household goods motor carriers with whom you arrange transportation have an active U.S. DOT registration number, active for-hire operating authority from FMCSA to transport household goods in interstate or foreign commerce, and that the household goods motor carrier has evidence of the necessary insurance coverage on file with FMCSA.

(b) You must maintain the verification documents in paragraph (a) of this section for three years from the date you arrange for a shipment on behalf of an individual shipper by a household goods motor carrier.

**§ 371.121 What penalties may FMCSA impose for violations of this part?**

The penalty provisions of 49 U.S.C. Chapter 149, *Civil and Criminal Penalties* apply to this subpart. These penalties do not overlap. Notwithstanding these civil penalties, nothing in this section deprives an individual shipper of any remedy or right of action under existing law.

**PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS**

3. Revise the authority citation for part 375 to read as follows:

**Authority:** 5 U.S.C. 553; 49 U.S.C. 13301, 13704, 13707, 14104, 14706; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.73.

4. Revise § 375.409 to read as follows:

**§ 375.409 May household goods brokers provide estimates?**

(a) Household goods brokers may provide estimates provided there is a written agreement between the broker and you, the motor carrier, adopting the broker's estimate as your own estimate. If you, the motor carrier, make such an agreement with a household goods broker, you must ensure compliance with all requirements of this part pertaining to estimates, including the requirement that you must relinquish possession of the shipment if the shipper pays you no more than 110 percent of a non-binding estimate at the time of delivery.

(b) Your written agreement with the household goods broker(s) must include the items required in § 371.115(a) of this subchapter.

**PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS**

5. Revise the authority citation for part 386 to read as follows:

**Authority:** 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; sec. 206, Pub. L. 106–159, 113 Stat. 1763; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.45 and 1.73.

6. Amend appendix B to part 386 by revising the heading and by adding paragraphs (g)(21) and (22) to read as follows:

**Appendix B to Part 386—Penalty Schedule; Violations and Monetary Penalties**

\* \* \* \* \*

(g) \* \* \*

(21) A broker for transportation of household goods who makes an estimate of the cost of transporting any such goods before entering into an agreement with a motor carrier to provide transportation of household goods subject to FMCSA jurisdiction is liable to the United States for a civil penalty of not less than \$10,000 for each violation.

(22) A person who provides transportation of household goods subject to jurisdiction under 49 U.S.C. chapter 135, subchapter I, or provides broker services for such transportation, without being registered under 49 U.S.C. chapter 139 to provide such transportation or services as a motor carrier or broker, as the case may be, is liable to the United States for a civil penalty of not less than \$25,000 for each violation.

**PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS**

7. The Authority citation for part 387 continues to read as follows:

**Authority:** 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 31139; and 49 CFR 1.73.

8. Amend § 387.307 by redesignating paragraph (a) as paragraph (a)(1) and adding new paragraph (a)(2) to read as follows:

**§ 387.307 Property broker surety bond or trust fund.**

(a) *Security.*

(1) \* \* \*

(2) A household goods broker must have a surety bond or trust fund in effect for \$25,000. The FMCSA will not issue a household goods broker license until a surety bond or trust fund for the full limits of liability prescribed herein is in effect. The household goods broker license remains valid or effective only as long as a surety bond or trust fund remains in effect and ensures the financial responsibility of the household goods broker.

\* \* \* \* \*

Issued on: February 2, 2007.

**John H. Hill,**

*Administrator.*

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