

**652.228-71 Workers' Compensation Insurance (Defense Base Act)—Services.**

As prescribed in 628.309-70(b), insert the following clause:

Workers' Compensation Insurance (Defense Base Act)—Services (MO/YR)

(a) This clause supplements FAR 52.228-3. For the purposes of this clause, "covered contractor employees" includes the following individuals:

- (1) United States citizens or residents;
- (2) Individuals hired in the United States or its possessions, regardless of citizenship; and
- (3) Local nationals and third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.

(b) The Contractor shall procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the Department of State and the Department's DBA insurance carrier for covered contractor employees, unless the Contractor has a DBA self-insurance program approved by the Department of Labor. The Contractor shall submit a copy of the Department of Labor's approval to the contracting officer upon contract award, if applicable.

(c) The current rate under the Department of State contract is [contracting officer insert rate] of compensation for services.

(d) The Contractor shall insert a clause substantially the same as this in all subcontracts. The Contractor shall require that subcontractors insert a similar clause in any of their subcontracts.

(e) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, the contracting officer shall modify this contract accordingly.

(f) The Contractor shall demonstrate to the satisfaction of the contracting officer that the equitable adjustment as a result of the insurance increase or decrease does not include any reserve for such insurance. Adjustment shall not include any overhead, profit, general and administrative expenses, etc.

(g) Section 16 of the State Department Basic Authorities Act (22 U.S.C. 2680a), as amended, provides that the Defense Base Act shall not apply with respect to such contracts as the Secretary of States determines are contracts with persons employed to perform work for the Department of State on an intermittent basis for not more than 90 days in a calendar year. "Persons" includes individuals hired by companies under contract with the Department. The Procurement Executive has the authority to issue the waivers for these Contractor employees. For those employees, the Contractor shall provide workers' compensation coverage against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention.

(End of clause)

*Alternate I.* (MO/YR) If the contract is for construction, as prescribed in 628.309-70(a), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The current rate under the Department of State contract is [contracting officer insert rate] of compensation for construction.

8. Section 652.228-74 is revised to read as follows:

**652.228-74 Defense Base Act Insurance Rates—Limitation.**

As prescribed in 628.309-70(c), insert the following provision:

Defense Base Act Insurance Rates—Limitation (MO/YR)

(a) The Department of State has entered into a contract with an insurance carrier to provide Defense Base Act (DBA) insurance to Department of State covered contractor employees at a contracted rate. For the purposes of this provision, "covered contractor employees" includes the following individuals:

- (1) United States citizens or residents;
- (2) Individuals hired in the United States or its possessions, regardless of citizenship; and
- (3) Local nationals and third country nationals where contract performance takes place in a country where there are no local workers' compensation laws.

(b) In preparing the cost proposal, the bidder/offeror shall use the following rates in computing the cost for DBA insurance:

Services @ [contracting officer insert current rate] of compensation; or  
Construction @ [contracting officer insert current rate] of compensation.

(c) Bidders/offerors shall compute the total compensation (direct salary plus differential, but excluding per diem, housing allowance and other miscellaneous allowances) to be paid to covered contractor employees and the cost of the DBA insurance in their bid/offer using the foregoing rate. The DBA insurance cost shall be included in the total fixed price or estimated cost. The Department shall reimburse the DBA insurance costs directly to the Contractor.

(End of provision)

9. Section 652.228-76 is removed.

**Corey M. Rindner,**

*Procurement Executive, Bureau of Administration, Department of State.*

[FR Doc. 04-27990 Filed 12-21-04; 8:45 am]

**BILLING CODE 4710-24-P**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Part 371**

[Docket No. FMCSA-2004-17008]

RIN 2126-AA84

**Brokers of Household Goods by Motor Vehicle**

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

**ACTION:** Advance notice of proposed rulemaking (ANPRM); request for comments on petition for rulemaking.

**SUMMARY:** FMCSA seeks comments on whether additional regulations for property brokers of household goods (HHG) in interstate or foreign commerce are necessary and, if so, what these regulations should include. We have granted a petition from the American Moving and Storage Association to initiate this ANPRM. HHG property brokers sell, offer for sale, negotiate for, or hold themselves out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation of HHG in interstate commerce by motor carriers for compensation. This action is necessary to help determine whether the general property broker regulations have failed to adequately protect consumers during HHG transportation.

**DATES:** You must submit comments concerning this ANPRM on or before February 22, 2005.

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

- 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.

• Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number for this potential regulatory action. 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.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Keenan, (202) 385-2400, Commercial Enforcement Division (MC-ECI), FMCSA, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY 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 of all comments received into any of DOT's 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). This statement is also available at <http://dms.dot.gov>.

### History of Our Property Broker Regulations

We and our predecessor agencies, the Interstate Commerce Commission (ICC) and Federal Highway Administration, have regulated property brokers for many years. The ICC decided on May 16, 1949 (Ex Parte MC-39 "Practices of Property Brokers," 49 M.C.C. 277, at 286) that it was necessary to regulate all property brokers, including HHG brokers<sup>1</sup>, in interstate or foreign commerce. In that proceeding, the ICC decided it was unnecessary to regulate HHG brokers separately from general freight brokers.

The Motor Carrier Safety Improvement Act of 1999, Pub. L. 106-159, December 9, 1999, 113 Stat. 1748, in establishing FMCSA, granted to us continued regulatory oversight of the property broker regulations.

### Brokers' Increasingly Significant Role

Brokers generally, and HHG brokers in particular, have played an increasingly significant role over the last 26 years in the transportation industry. Their role, when executed properly, is that of an arranger of transportation.

<sup>1</sup> HHG brokers are not themselves HHG motor carriers (persons providing motor vehicle transportation of HHG) or HHG freight forwarders. HHG freight forwarders are persons holding themselves out to the general public (other than as motor carriers) to provide transportation of HHG, unaccompanied baggage, or used automobiles for compensation. In the ordinary course of an HHG freight forwarder's business, it:

(A) Assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) Assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) Uses for any part of the transportation motor carriers or water carriers (persons providing water transportation for compensation) subject to jurisdiction under subtitle IV of title 49 of the ICC Termination Act of 1995, Pub. L. 104-88, December 29, 1995, 109 Stat. 803.

This role is very helpful to the small commercial shipper, and to the unsophisticated consumer that is shipping HHG. However, since Congress substantially deregulated the motor carrier, broker, and freight forwarder industry through the ICC Termination Act of 1995, Pub. L. 104-88, December 29, 1995, 109 Stat. 803 (ICCTA), FMCSA has received complaints that a segment of the industry may be engaging in unscrupulous business practices which defraud motor carriers as well as consumers. The Internet has become a very convenient medium that allows HHG brokers to expand their customer base by advertising their services to a wider range of customers. News media have reported that many consumers now use the Internet to seek the best possible prices for all of their consumer purchases, including transportation of HHG.

Many of the complaints the agency receives involve HHG brokers who mislead consumers with lures of inexpensive transportation charges. In a typical case, the HHG broker enters into a contract with the consumer, takes a sizeable deposit, and arranges to have a motor carrier handle the shipment. When the shipper's goods are in the possession of the carrier, the carrier then demands additional freight charges. The complaints we receive show when problems between the consumer and motor carrier arise, the HHG broker disavows any responsibility for the motor carrier's actions, despite the HHG broker's role in acquiring the carrier's services on behalf of the shipper. FMCSA has not proven collusion or conspiracy between brokers and carriers in these cases. However, we believe this is an area of transportation that deserves further attention. We need to determine how extensive our role should be in regulating the HHG broker industry.

### Current Regulations

HHG brokers must comply with the regulations in 49 CFR part 371, which apply to all regulated property brokers. We summarize these regulations below.

#### 49 CFR Part 365—Rules Governing Applications for Operating Authority

A broker must register with us in accordance with part 365.

#### 49 CFR Part 366—Designation of Process Agent

A broker must file designations of persons upon whom court process may be served. Every broker must make a designation for each State in which its offices are located or in which contracts will be written.

#### 49 CFR Part 387 Subpart C—Surety Bonds and Policies of Insurance for Motor Carriers and Property Brokers

A broker must have a surety bond or trust fund in effect for \$10,000. The FMCSA will not issue a property broker license until a surety bond or trust fund for the full limits of liability prescribed is in effect. The broker license will remain valid or effective only as long as a surety bond or trust fund remains in effect and will ensure a minimum level of financial responsibility for the broker.

#### 49 CFR 371.3 Records To Be Kept by Brokers

A broker must keep a record of each of its transactions, and keep the records for three years. Each party to a brokered transaction has the right to review the record of the transaction applicable to them. For example, motor carriers accepting transportation shipments from brokers have the right to review any of the required documents retained by brokers. Shippers also are entitled to examine broker records containing the motor carrier's address and USDOT number. Brokers may keep master lists of consignors and the address and registration number of the motor carrier, rather than repeating this information for each transaction. Each transaction record must 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 non-brokerage 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 motor carrier.

#### 49 CFR 371.7 Misrepresentation

A broker must not perform or offer to perform any brokerage service (including advertising) in any name other than that in which FMCSA or one of our predecessor agencies has issued its registration. A broker must not, directly or indirectly, represent its operations to be that of a motor carrier. Any advertising must show the true nature of the broker role in services offered.

#### 49 CFR 371.9 *Rebating and Compensation*

A broker must not charge or receive compensation from a motor carrier for brokerage service where: (1) The broker owns or has a material beneficial interest in the shipment; or (2) the broker is able to exercise control over the shipment because it owns the shipper, the shipper owns the broker or there is common ownership of the two. A broker must not give or offer to give anything of value to any consumer, consignor, or consignee (or their officers or employees), except inexpensive advertising items given for promotional purposes.

#### 49 CFR 371.10 *Duties and Obligations of Brokers*

Where the broker acts on behalf of a person bound by law, or our regulation, as to the transmittal of bills or payments, the broker must also abide by the law or regulations which apply to that person.

#### 49 CFR 371.13 *Accounting*

Each broker who engages in any other business must maintain accounts so that the revenues and expenses relating to the brokerage portion of its business are segregated from its other activities. Expenses that are common must be allocated on an equitable basis; however, the broker must be prepared to explain the basis for the allocation to us and the courts.

#### 49 CFR 375.409 *May Household Goods Brokers Provide Estimates?*

We published an Interim Final Rule (IFR) applying to operations of HHG motor carriers on June 11, 2003 (68 FR 35064). We developed the rule to improve public understanding of our commercial rules, and to help consumers understand their roles and responsibilities along with those of HHG motor carriers to prevent moving disputes. We inserted § 375.409 in the IFR in an effort to make HHG carriers more responsible for the actions of HHG brokers who provide estimates on their behalf. Twenty-seven years ago, the ICC concluded that brokers were prohibited from providing estimates because the duty to comply with the HHG regulations rests with the motor carrier, and shippers aggrieved by an act or omission of a broker would be unprotected by our regulations. In *Entry Control of Brokers*, 126 M.C.C. 476, 520 (1977), the ICC stated:

For example, if a broker provides a c.o.d. [cash on delivery] shipper with an estimate it has made, on which the shipper relies, the shipper would be deprived of the protection of 49 CFR 1056.8(b) [now 49 CFR

375.405(b)(8)] of the household goods regulations, which provides that where the transportation charges exceed a carrier-made estimate by more than 10 percent, the shipper must pay only 110 percent of the charges upon delivery and is given a period of 15 days following delivery to make payment in full. Since this protection applies only to carrier-made estimates, a c.o.d. shipper who relies upon an incorrect estimate of a broker will have to pay the carrier's entire freight charges upon delivery, regardless of the extent the actual charges might exceed the broker's estimate.

As we noted in the preamble to the IFR (June 11, 2003, 68 FR 35078), although brokers may not enter into agency agreements with HHG motor carriers because they are required to exercise discretion in allocating traffic among carriers, we believe it is permissible for a motor carrier to enter into a more limited type of agreement authorizing the broker to provide estimates on behalf of the motor carrier. Under such an agreement, the motor carrier must adopt the broker's estimate as a carrier-issued estimate and incorporate it into the order for service and bill of lading for purposes of compliance with part 375, particularly the 110 percent rule. We believe that under these circumstances, the individual shipper would not be deprived of the protections provided in part 375 because the carrier would still be held accountable for complying with that part. However, an HHG broker may not issue an estimate without entering into such an agreement with an HHG motor carrier because otherwise the requirements of part 375 would not apply to the broker-issued estimate. Thus, the IFR authorized an HHG broker to provide estimates, but only if it has a written agreement with the carrier under which the carrier agrees to adopt the estimate as its own.

#### **Petition for Rulemaking**

The American Moving and Storage Association (AMSA) petitioned us on March 6, 2003, to initiate a rulemaking to amend 49 CFR part 371, "Brokers of Property," by imposing specific requirements on HHG brokers. AMSA's petition is in the docket. Title 49 U.S.C. subtitle IV, part B and 49 CFR 1.73 authorize us to adopt regulations for property brokers of HHG in interstate or foreign commerce.

AMSA asserts there are increasing numbers of "moving-related" Web sites hosted by unscrupulous HHG brokers, which have resulted in numerous complaints from consumers who use the Internet to secure the services of an HHG motor carrier.

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 HHG 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 HHG brokers and HHG motor carriers is 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 us to amend our regulations to:

- Specifically name and include HHG brokers in 49 CFR part 371, Brokers of Property;
- Require an HHG broker to identify itself as a broker and provide its location and telephone number;
- Add a requirement for HHG brokers to provide consumers with 49 CFR part 375, Appendix A, the pamphlet "Your Rights and Responsibilities When You Move;"
- Add a requirement that an HHG broker must only use FMCSA-registered HHG motor carriers (those with a U.S. DOT identification number, insurance on file with us, and registered to transport HHG 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 HHG broker's surety bond/trust fund; and

- Add a requirement to report illegal operations of HHG carriers to us.

AMSA's concerns include lack of public awareness and advertising practices of unscrupulous HHG brokers. AMSA argues that its suggested regulations would:

- Fill an existing regulatory gap; and
- Ensure that HHG brokers do not use the Internet as a device to avoid regulation.

AMSA suggests that we consider a regulatory solution applying only to brokers of HHG. It explains that the primary concept underlying its regulatory solution is disclosure. Its regulatory alternative would apply regardless of the medium through which services are advertised and would therefore ensure that the Internet is not used as a device to avoid regulation.

#### *Suggested Definitions in Present Section 371.2*

AMSA suggests we consider adding paragraphs (e) and (f), defining "household goods broker" and "individual shipper." AMSA said it designed its definitions to mirror the definitions of "household goods" and "brokers" contained in the statute, and the definition of "shipper" contained in the consumer protection regulations under 49 CFR part 375 applicable to HHG motor carriers. AMSA suggests we consider amending paragraph (c) to include the transportation of HHG within the definition of brokerage service.

#### *Suggested Section 371.14*

AMSA suggests we consider adding a new § 371.14 applicable only to HHG brokers.

*Suggested paragraph (a)* would subject HHG brokers to both the existing and the new regulations.

*Suggested paragraph (b)* would require the HHG broker to identify whether it has HHG broker or HHG motor carrier authority, and reveal its location and telephone number so that customers can communicate with a person. AMSA states it designed this paragraph to remove the cloak of anonymity.

*Suggested paragraph (c)* would require HHG brokers to use only FMCSA-registered HHG motor carriers in an effort to eliminate or reduce the use of unauthorized carriers. AMSA believes this will help ensure that the HHG motor carrier performing service has insurance, offers arbitration, is a responsible entity in the event of a dispute, and otherwise is held to the requirements of the consumer protection regulations under 49 CFR part 375.

*Suggested paragraph (d)* would require HHG brokers to provide the pamphlet, "Your Rights and Responsibilities When You Move" to shippers, explain HHG motor carrier liability for loss and damage, and advise consumers of the availability of arbitration.

AMSA believes it is appropriate that the broker provide this information when first contacted by the consumer. AMSA argues our regulations presently require HHG motor carriers to furnish this information, but often times HHG motor carriers do not provide it. The overlapping requirement would serve to provide a safety net for consumers to ensure that they receive this important information.

*Suggested paragraphs (e), (f), (g) and (h)* would require full written disclosure in advance regarding shipment charges. A persistent source of disputes among HHG motor carriers, brokers, and shippers involves estimates of shipment charges. AMSA states some estimates are simply inaccurate, while others are deliberately deceptive. AMSA believes this is often the case with Internet quotes given solely on the basis of a customer's oral or electronic description of the goods to be transported without an actual physical shipment survey. AMSA also believes disputes arise when brokers do not inform individual shippers the estimate is not binding, and the actual weight of the shipment determines the charges or the estimate does not cover unanticipated services at delivery. AMSA states the customer is often simply given an oral quotation that HHG motor carriers subsequently disavow.

AMSA believes requiring full written disclosure in advance of the move could prevent many disputes. If brokers disclose at the outset of the transaction all of the factors that could affect the HHG motor carrier's charges, customers are less likely to claim surprise or that they are the subject of a bait and switch maneuver. Alternatively, AMSA believes that if the broker does not disclose to the customer that actual charges may differ from the quote, and the reasons why, the HHG motor carrier should not be authorized to collect a higher amount.

*Suggested paragraph (i)* would require full disclosure of the terms governing deposits and forfeiture requirements before payment of a deposit. A frequent complaint AMSA hears from consumers involves deposits required to secure broker service. Presently, AMSA states, there is no prohibition against requiring a deposit. Inasmuch as an Internet customer can disappear as readily as an unscrupulous

broker, AMSA believes it may be prudent to permit a deposit from a customer to secure the transportation service. By the same token, AMSA states if the customer cancels the request for service before the move, the deposit could be returned in varying amounts, depending upon how close or far in advance the customer provides notice of cancellation. In any case, AMSA believes brokers should disclose the terms governing deposits and forfeitures before a deposit can be demanded.

*Suggested paragraph (j)* would require the HHG broker to advise the consumer/shipper about the existence of its surety bond or trust fund agreement. Due to the nature of the broker's business, AMSA believes unscrupulous brokers are able to "close shop" and disappear, leaving shippers and HHG motor carriers without any recourse. Accordingly, we require brokers to have a bond or trust agreement as a protective measure for shippers and carriers in such an event. See *Property Broker Security For Protection of Public*, 4 I.C.C. 2nd 358 (1988). The AMSA suggested regulation would require HHG brokers to disclose the existence of the bond or trust agreement, so the consumer is aware there is the potential for recourse.

*Suggested paragraph (k)* would require HHG brokers to identify and disclose to individual shippers AMSA's suggested regulations. AMSA states many consumers are unaware of their rights and the responsibilities of service providers prescribed by us. AMSA believes this requirement would serve to make consumers aware of these rights and responsibilities.

*Suggested paragraph (l)* would require HHG brokers to report violations of regulations by HHG motor carriers to us. AMSA believes this would enhance enforcement of our regulations. Some consumers, subjected to unlawful practices by HHG motor carriers failing to comply with, or who violate existing HHG regulations under 49 CFR part 375, do not know where or to whom such violations should be reported. Since brokers are typically the only independent point of contact a consumer may have with the service provider, AMSA believes it is appropriate to require the broker to report violations to us in an effort to improve the remedies available to consumers.

*Suggested paragraph (m)* would prohibit misleading and deceptive trade practices. Before the ICC revised the regulations in 1980, the broker regulations imposed an affirmative duty on brokers to fairly protect the interests of their shipper customers and prohibited misrepresentations and false

promises. Former 49 CFR 1045.10 (1978). Given the practices AMSA described in its petition and the Congressional directive to protect shippers in 49 U.S.C. 13904, Registration of Brokers, AMSA suggests reviving the former prohibition against misleading and deceptive practices.

Further AMSA discussion and the text of its suggested regulations are contained in its petition, which is publicly available in docket FMCSA-2004-17008.

#### AMSA Petition Granted

On December 11, 2003, we granted the AMSA petition and initiated this ANPRM to help determine whether the public, HHG brokers, motor carriers, and freight forwarders, as well as Federal and State regulatory agencies, believe there is sufficient need to amend 49 CFR part 371, as AMSA requested.

#### Scope and Necessity of Separate Regulations

We request public comments regarding the need for any further regulatory changes, requirements, or non-regulatory alternatives specifically for HHG brokers. We would also like specific comments on what effects such regulatory or non-regulatory alternatives may have in deterring illegal HHG broker and motor carrier activities.

We request information on the economic structure of the property broker entities which would be subject to potential actions we might consider and may initiate in a subsequent regulatory action, and the effect that such potential actions may have on small property brokers. We also ask whether current surety bond or trust fund requirements are sufficient to ensure a minimum level of financial responsibility.

#### Penalties

Sanctions and penalties for HHG brokers are addressed in 49 U.S.C. chapter 149—Civil and Criminal Penalties (sections 14901 through 14914), and 49 CFR part 386—Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings. Paragraph (c) of 49 U.S.C. 14901 requires that when we are determining and negotiating the amount of a civil penalty concerning the transportation of HHG, we are to take into account the degree of culpability, any history of such prior conduct, the degree of harm to shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the proceeding, and such other matters as fairness may require.

Section 14901(d) requires a motor carrier or freight forwarder of household goods, or their receiver or trustee, that does not comply with any regulation relating to the protection of individual shippers, to be liable for a minimum penalty of \$1,100 per violation.<sup>2</sup> No comparable sanction or penalty relating to the protection of individual shippers, however, exists currently in 49 U.S.C. Chapter 149 for brokers or HHG brokers.

We seek comment on the enforcement strategies we should consider for any potential actions we may initiate in response to this ANPRM. We also seek comment on the range of appropriate sanctions or penalties we should consider for HHG brokers, alternative remedial actions we may consider, and whether we should seek Congressional action to extend 49 U.S.C. 14901(d) to property brokers, including HHG brokers.

#### Rulemaking Analyses and Notices

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

We have determined this ANPRM is a significant regulatory action within the meaning of Executive Order 12866 and the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). We are considering setting up a new regulatory program for HHG brokers engaged in interstate and foreign commerce that could have an affect on other governments, particularly States. However, we are not yet in a position to analyze fully any potential actions we may initiate in response to this ANPRM, as there is some uncertainty as to the size of the specific HHG broker population that we may affect, given that the agency has not developed any specific set of alternatives.

There are approximately 535 active HHG brokers currently registered in the FMCSA Licensing and Insurance (L&I) database <http://li-public.fmcsa.dot.gov/>. There are also 1,087 HHG brokers included in the L&I database that are listed either as inactive (*i.e.*, they have

allowed their authority to lapse) or had their applications dismissed by FMCSA for some reason. It is unclear whether some portion of these 1,087 inactive or dismissed HHG brokers may still be operating illegally in some capacity within the HHG broker industry, and would thus be affected by any potential actions we may initiate in response to this ANPRM. Additionally, we believe it is also logical to assume that there may be some HHG brokers operating illegally who have never registered with FMCSA. They of course would also be affected by any potential actions we may initiate. As the AMSA petition notes, there are “no fewer than several hundred websites offering to perform, arrange, or manage moving services in one form or another on behalf of consumers,” and presumably some portion of these entities have never registered with FMCSA and would therefore not appear in the above estimates of active and inactive/dismissed HHG brokers engaged in interstate or foreign commerce. Regardless, our initial research indicates that the population of HHG brokers potentially affected by any actions we may initiate is most likely less than 2,000 entities. However, to be sure, we are asking for comments from the public on our initial HHG broker population estimate as part of this ANPRM.

FMCSA receives approximately 4,000 to 6,000 HHG consumer complaints annually. We receive approximately 50 complaints that would be classified as hostage loads per week. While these estimates include complaints against HHG motor carriers, the FMCSA Offices of Communications and Household Goods Enforcement believe the majority of these consumer complaints are related to HHG brokers.

With regard to the economic impact on the HHG broker population, we do not anticipate that any potential action we may initiate would have a significant impact on the industry for two reasons. First, as noted above, we believe the total number of entities potentially affected is probably low. Secondly, while we have yet to recommend any specific sets of alternatives (without which we cannot conduct an economic evaluation), most appear to have a modest economic impact, in that they require greater disclosure to consumers or strengthen the opportunities for redress by the consumer. For instance, the AMSA petition recommends regulatory amendments to:

- Specifically name and include HHG brokers in 49 CFR part 371;
- Require an HHG broker to identify itself as an HHG broker, provide its location, and telephone number;

<sup>2</sup> The Debt Collection Improvement Act of 1996 [Pub. L. 104-134, Title III, Chapter 10, Sec. 31001, par. (s), 110 Stat. 1321-373] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 [Pub. L. 101-410, October 5, 1990, 104 Stat. 890]. We must adjust for inflation “each civil monetary penalty provided by law” within our jurisdiction after having published the regulation in the **Federal Register**. The last time we made this adjustment for 49 U.S.C. Chapter 149 was on March 31, 2003 (68 FR 15383). Pursuant to that authority and this **Federal Register**, the inflation-adjusted civil penalties listed in paragraphs (a) through (g) of Appendix B to 49 CFR part 386 supersede the corresponding civil penalty amounts listed in 49 U.S.C. chapter 149 (14901 through 14914).

- Require an HHG broker to provide consumers shipping HHG with 49 CFR part 375, Appendix A, the pamphlet “Your Rights and Responsibilities When You Move;”

- Require an HHG broker to disclose estimates fully in writing in advance of an interstate or foreign HHG shipment;

- Require an HHG broker to refund consumer deposits, if the consumer cancels the interstate or foreign HHG shipment;

- Require an HHG broker to advise the consumer about the existence of the HHG broker’s surety bond/trust fund agreement; and

- Require an HHG broker to report illegal operations of HHG motor carriers to FMCSA.

However, because of the uncertainties noted above, we seek specific comment on the costs and benefits to the public and the impact potential alternatives would create on State governments and others.

Before initiating an analysis, we must first determine whether there exists a significant failure or failings by HHG brokers to deal fairly and equitably with consumers. In particular, our analysis must distinguish actual failures from potential failures that can be resolved by non-regulatory means. If we find a significant failure by HHG brokers to deal fairly and equitably with consumers, our analysis must show how various alternatives will address the specified failures.

#### **Appropriateness of Alternatives to Federal Regulation**

Even if comments in this proceeding confirm the HHG broker activities alleged in AMSA’s petition, there may be no need for our regulatory intervention, if other means of addressing the HHG broker industry would adequately resolve the problem. We would like to know whether we should consider legislative measures that use economic incentives, such as changes in surety and trust fund provisions.

Another important factor to consider in assessing the appropriateness of a Federal regulation is whether State or local regulation of HHG brokers may be an option. In this case, AMSA has stated Florida-based brokers are its largest problem. Where our regulations appear appropriate, our analysis will need to attempt to determine whether the burdens on interstate and foreign commerce arising from different State and local regulations, including the compliance costs imposed on national and international firms, are greater than the potential advantages of uniform application.

We seek comments on these issues for our analysis of a possible notice of proposed rulemaking.

#### **Regulatory Flexibility ACT**

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), (RFA) requires Federal agencies to analyze the impact of regulatory alternatives on small entities, unless we certify that a regulatory alternative will not have a significant economic impact on a substantial number of small entities, and to consider non-regulatory alternatives that could achieve our goal while minimizing the burden on small entities.

We are not yet in a position to analyze fully any potential actions we may initiate in response to this ANPRM. We need specific information about which industry classification designation is appropriate for property brokers under the Office of Management and Budget’s (OMB) North American Industry Classification System (NAICS)<sup>3</sup> for the United States. We use the NAICS to analyze small entity impacts in accordance with the RFA. Some of the questions at the end of this ANPRM relate directly to the RFA and our need for NAICS information to assist us in properly analyzing small property broker entity impacts.

We believe property brokers of HHG would classify and identify themselves generally under the NAICS code 488510 Freight Transportation Arrangement. The OMB description for 488510 is “Shipping agents, Customs brokers, Freight forwarding, Marine shipping agency, Shipping agents (freight forwarding)” as seen at: <http://www.census.gov/epcd/naics02/naicod02.htm> and <http://www.census.gov/epcd/naics02/def/NDEF488.HTM#N4885>. We request HHG brokers provide information on the NAICS code they believe best fits their operation.

The Statistics of U.S. Business (SUSB) for 2001 estimates that 11,716 firms engage primarily in freight transportation arrangement. See “Freight transportation arrangement NAICS 4885” on page 14 of “Employer

<sup>3</sup> OMB published the NAICS on April 9, 1997 (62 FR 17288) and an amendment on January 16, 2001 (66 FR 3826). NAICS is the North American international system for classifying establishments (individual business locations) by type of economic activity in Canada, Mexico, and the United States. Its purposes are: (1) To facilitate the collection, tabulation, presentation, and analysis of data relating to establishments, and (2) to promote uniformity and comparability in the presentation and analysis of statistical data describing the North American economy.

Firms, and Employment by Employment Size of Firm by NAICS Codes, 2001” at: [http://www.sba.gov/advo/stats/us\\_01\\_n6.pdf](http://www.sba.gov/advo/stats/us_01_n6.pdf). The U.S. Census Bureau provides the SUSB with data on employer firm size by NAICS code to the Small Business Administration. See <http://www.sba.gov/advo/stats/data.html>. As we stated above, we believe HHG brokers would classify themselves as freight transportation arrangers, though we are asking for comment on this assumption.

One challenge facing us is identifying HHG brokers that should be registered with us, but are not. Another challenge is estimating the benefits to consumers from potential alternatives we might consider in response to this ANPRM. Although our Offices of Communications and Household Goods Enforcement believe a majority of our consumer complaints are related to HHG brokers, our HHG complaint database has very limited information on the exact nature of complaints received. Thus, it is difficult to determine what percentage of complaints, including complaints that are filed with our state divisions, could be averted by potential actions we may initiate.

We request comments from the public on how potential alternatives may impact HHG brokers. This information would represent a major input to estimating the costs of any potential alternatives. We also specifically request comments on the benefits of potential alternatives to prevent harm to those consumers who might otherwise suffer negative economic or other consequences, absent such alternative solutions. In addition, we ask entities and associations of small entities to identify their gross revenues.

#### **Executive Order 13132 (Federalism)**

We are not yet in a position to analyze fully any potential actions in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). As we have said earlier in this ANPRM, we and our predecessor agencies have regulated the brokering, arranging, and forwarding of property in interstate or foreign commerce, including the transportation of HHG, since 1949. We believe these issues are national in scope. Congress transferred the property broker regulations to DOT in the ICCTA. Title 49 U.S.C. 13904 confers authority on the Secretary of Transportation to register brokers and “provide for the protection of shippers by motor vehicle.” The Secretary subsequently delegated this

authority to FMCSA under 49 CFR 1.73(a)(5).

The primary federalism issue is whether 49 U.S.C. 13904 preempts State and local attempts to regulate the business practices of interstate HHG brokers. Although 49 U.S.C. 14501(b)(1) prohibits a State, a political subdivision of a State, an intrastate agency, or other political agency of two or more States to enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to *intrastate* rates, routes, or services of a broker, there is no express preemption regarding interstate broker operations.

The Carmack Amendment (June 29, 1906, ch. 3591, § 7 (pars. 11, 12), 34 Stat. 595) to the Interstate Commerce Act (Feb. 4, 1887, ch. 104, 24 Stat. 379) as amended, codified at 49 U.S.C. 14706, imposes a uniform system of motor carrier and freight forwarder liability for interstate and foreign shipments of property. Congress designed Carmack to eliminate uncertainty resulting from potentially conflicting State laws. Federal and State courts have consistently held that Carmack preempts a broad range of State consumer protection laws potentially applicable to HHG motor carriers and freight forwarders engaged in interstate or foreign commerce.

The Carmack Amendment by its terms applies to "carriers," "motor carriers," and "freight forwarders." Therefore, we do not believe Carmack would apply to typical broker operations, especially since brokers seldom take possession of property. We invite comment regarding whether potential actions we may initiate in response to this ANPRM would preempt many, if not all, State regulations that directly, or indirectly regulate the brokerage of transportation of HHG subject to Federal jurisdiction.

#### *Consultations With State and Local Officials*

We specifically request comment from State and local officials on any federalism issues. In particular, we request comment on whether we should seek legislative changes to allow States to assist FMCSA in enforcing regulations applicable to HHG brokers engaged in interstate or foreign commerce.

Because AMSA has reported the most problems with brokers allegedly doing business in Florida, we would specifically like to hear from State officials in Florida, including the Florida Attorney General.

#### **Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government, or by the private sector of \$100 million or more (adjusted for inflation) in any one year, must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. We are not yet in a position to analyze fully any potential actions we may initiate and that may meet the requirements of the Unfunded Mandates Reform Act. We seek specific comments whether such impacts are likely for any regulatory or non-regulatory alternatives we might consider in our deliberations.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), a Federal agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations.

As referenced above, part 371 requires a broker to keep a record of each transaction and to retain the records for a period of three years. Each party to a brokered transaction has the right to review the record of the transaction applicable to them. Brokers may keep master lists of consignors and the address and registration number of the motor carrier, rather than repeating this information for each transaction. Under section 371.3, each transaction record must 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 motor carrier.

Each broker who engages in any other business, must maintain accounts so

that the revenues and expenses relating to the brokerage portion of its business are segregated from its other activities. Expenses that are common must be allocated on an equitable basis; however, the broker must be prepared to explain the basis for the allocation.

The AMSA suggested alternative would also require an HHG broker to:

- (1) Identify itself, the capacity in which it holds itself out, and reveal its location and telephone number;
- (2) Use only FMCSA-registered motor carriers for HHG movements placed in interstate or foreign commerce;
- (3) Provide to shippers the pamphlet "Your Rights and Responsibilities When You Move;"
- (4) Explain motor carrier liability for loss and damage;
- (5) Advise of the availability of arbitration;
- (6) Require full written disclosure in advance regarding shipment charges;
- (7) Require full disclosure of the terms governing deposits and forfeiture requirements before payment of a deposit;
- (8) Advise the consumer about the existence of its surety bond or trust fund agreement;
- (9) Direct the consumer to appropriate rights and responsibility assistance; and
- (10) Report violations of regulations by HHG motor carriers to us.

We are not yet in a position to analyze fully any potential action we may initiate that may fall within the scope of the Paperwork Reduction Act. If we initiate a potential regulatory alternative in the future incorporating these or other relevant provisions, we would seek approval of any collection of information *requirements to generate, maintain, retain, disclose, and provide information to*, or for, the agency under 49 CFR part 371. The information collected would assist individual HHG consumers and HHG motor carriers in their commercial dealings with HHG brokers. The collection of information would be used by prospective HHG consumers to make informed decisions about contracts and services to be ordered, executed, and settled within the HHG motor carrier industry.

When the ICCTA transferred the current regulations to DOT, OMB assigned no control number to cover the information collection transfer of the six items in section 371.3. We seek specific comments from property brokers and HHG brokers concerning what information collection burdens they currently experience to comply with part 371, and what burdens they would anticipate under AMSA's suggested alternative and other alternatives we

might consider for a possible subsequent regulatory action.

### **National Environmental Policy Act**

We are not yet in a position to analyze fully any potential actions under the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and our environmental procedures Order 5610.1 (issued on March 1, 2004, 69 FR 9680). We believe potential actions we may initiate in response to this ANPRM may be categorically excluded (CE) from further environmental documentation under Appendix 2 6.k. of Order 5610.1, which contains a categorical exclusion for regulations for all brokers of transportation by motor vehicle. In addition, we believe potential actions we may initiate would not involve extraordinary circumstances that would affect the quality of the environment.

We are not yet in a position to analyze fully any potential actions under the requirements of 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. We believe potential actions we may initiate would be exempt from the CAA's general conformity requirement since they would involve policy development and civil enforcement activities, such as investigations, inspections, examinations, and the training of law enforcement personnel. See 40 CFR 93.153(c)(2). We anticipate potential actions we may initiate in response to this ANPRM would not result in any emissions increase or result in emissions that are above the general conformity rule's *de minimis* emission threshold levels because the AMSA suggested alternative or other potential actions would merely establish standards for arrangements between HHG brokers and shippers.

We seek comment on the effect on the environment of the AMSA suggested alternative and other potential action alternatives.

### **Executive Order 12630 (Taking of Private Property)**

We are not yet in a position to analyze fully any potential actions that may constitute a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. We seek comment on whether potential actions we may initiate in response to this ANPRM would constitute a taking of private property or otherwise have implications under Executive Order 12630.

### **Executive Order 12372 (Intergovernmental Review)**

We are not yet in a position to analyze fully any potential actions that may require intergovernmental consultation on Federal programs and activities under Executive Order 12372, as amended. We seek comment on whether potential actions we may initiate in response to this ANPRM would require any intergovernmental consultation on Federal programs and activities under Executive Order 12372, as amended.

### **Executive Order 13211 (Energy Supply, Distribution, or Use)**

We are not yet in a position to analyze fully any potential actions that may affect energy supply, distribution, or use under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We seek comment on whether potential actions we may initiate in response to this ANPRM would affect any regulatory or non-regulatory alternatives that may significantly affect energy supply, distribution, or use.

### **Executive Order 12988 (Civil Justice Reform)**

We are not yet in a position to analyze fully any potential actions that may meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. We seek comment on whether potential actions we may initiate in response to this ANPRM would meet the standards in Executive Order 12988.

### **List of Subjects in 49 CFR Part 371**

Brokers, Motor carriers, Reporting and recordkeeping requirements.

### **Questions**

We would like the public to answer the following questions:

#### *General*

1. Is the statement/description of the problem accurate? Please explain.
2. What non-regulatory actions could address the problem?
3. What State or local actions could address the problem without our Federal regulatory action?
4. Is the problem of shipper abuse by HHG brokers serious enough to expedite the rulemaking process in some way? Please explain.
5. Are there other consumer protection models being utilized by other Federal or State agencies that we should study and/or emulate? Please explain.

### **Statistics for Cost-Benefit Analysis**

6(a). How many entities in the United States sell, offer for sale, negotiate for, or hold themselves out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, HHG transportation by motor carrier in interstate or foreign commerce for compensation, and are not an HHG motor carrier or HHG freight forwarder?

6(b). How many entities outside the United States sell, offer for sale, negotiate for, or hold themselves out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, HHG transportation by motor carrier in the United States in interstate or foreign commerce for compensation, and are not an HHG motor carrier or HHG freight forwarder?

7. If you are a property broker of HHG, under what North American Industry Classification System code at <http://www.census.gov/epcd/naics02/naicod02.htm> would you classify yourself?

8. If you are a property broker of HHG, what was your gross revenue for your most recent fiscal year?

### *Information Collection Burdens*

9. If you are a property broker, what are your current time and dollar burdens to generate, maintain, retain, disclose, and provide information to us or the public:

9(a). For each record of every transaction?

9(b). For each record for a period of three years?

9(c). To review each record of each transaction applicable to the parties of each transaction?

9(d). About your HHG broker operation advertising?

9(e). About how you maintain your accounts so that the public may see the revenues and expenses relating to the brokerage portion of your business are segregated from your other activities?

9(f). For allocating your expenses that are common on an equitable basis?

10. If you are a property broker, do you keep master lists of consignors and the address and registration number of the motor carriers, rather than repeating this information for each transaction?

11. If you are a property broker of HHG, what do you estimate your anticipated time and dollar burdens would be to generate, maintain, retain, and provide:

11(a). Full written disclosure in advance regarding your shipment charges?

11(b). Full disclosure of your terms governing deposits and forfeiture requirements before you demand payment of a deposit?

11(c). Information advising consumers about existence of your surety bond or trust fund agreement?

11(d). Information directly to consumers about their appropriate rights and responsibility assistance as requested by AMSA?

11(e). Information to us about violations of our regulations by HHG motor carriers, as requested by AMSA?

11(f). Information to us and the public to ensure you, your employees, and your agents do not provide misleading or deceptive information?

#### *Federalism Implications*

12. Does 49 U.S.C. 13904 preempt States from enforcing consumer protection laws potentially applicable to property brokers?

13. Have current interpretations of the Carmack Amendment frustrated the ability of States to use their consumer protection statutes in cases of HHG broker abuse? If so, will the AMSA suggested alternative or would a different alternative be helpful to your State? Is something else needed?

14. What role, if any, may State or local enforcement agencies and attorneys general provide in helping enforce potential action alternatives?

15. Do you believe only FMCSA should enforce regulations or other alternatives on HHG brokers?

16. Do you believe States and local government agencies should be involved in enforcing regulations or other alternatives on HHG brokers?

#### *HHG Carrier Related Pamphlet*

17. Should HHG brokers be required to provide consumers with the 49 CFR part 375, Appendix A, "Your Rights and Responsibilities When You Move" pamphlet?

#### *New Regulations Specifically for HHG Brokers*

18. Should HHG brokers be required to provide refunds of consumer deposits if the consumer cancels the shipment? Why or why not?

19. Should HHG brokers advise the consumer about the existence of the HHG broker's surety bond or trust fund? Please explain.

20. Should HHG brokers be required to report to us illegal operations of HHG motor carriers? Please explain.

#### *Economic Implications*

21. What are the economic issues and impacts of the AMSA suggested alternative and other alternatives that we should evaluate?

#### *Regulatory Flexibility/Small Business Issues*

22. What are the small entity economic issues and impacts of the AMSA suggested alternative and other alternatives that we should evaluate?

#### *Unfunded Mandates*

23. What are the potential unfunded mandates that may be involved in the AMSA suggested alternative and other alternatives?

#### *Environmental Issues*

24. What are the potential effects of the AMSA suggested alternative and other alternatives on the quality of the environment that we should consider in any potential NEPA analysis?

#### *Private Property Taking Issues*

25. Would the AMSA suggested alternative and other alternatives constitute a taking of private property or otherwise have taking implications under Executive Order 12630? Please explain.

#### *Intergovernmental Consultation Issues*

26. Would the AMSA suggested alternative and other alternatives require any intergovernmental consultations on other Federal programs and activities under Executive Order 12372? Please explain.

#### *Energy Supply Issues*

27. Would the AMSA suggested alternative and other alternatives affect any actions that significantly affect energy supply, distribution, or use under Executive Order 13211? Please explain.

#### *Financial Responsibility Issues*

28. Should HHG brokers be subject to more stringent surety bond/trust fund requirements than apply to brokers of general freight? If so:

28(a). Should the surety bond/trust fund requirements be increased?

28(b). What should the surety bond/trust fund requirement amount be to deter sufficiently non-compliant behavior and protect the public? What would be the impact of this requirement on small businesses?

#### *Contract Issues*

29. Should HHG brokers be required to enter into specific contractual agreements for all motor carriers for which they provide estimates? Please explain.

30. The current § 375.409 places the responsibility of complying with the estimating requirements on the HHG motor carrier. Should the same

responsibility be placed upon the HHG broker? Please explain.

#### *HHG Motor Carrier Issues*

31. How will the AMSA suggested alternative and other alternatives affect HHG motor carriers?

31(a). What additional paperwork burdens could reasonably be seen?

31(b). How important are HHG brokers and freight forwarders to HHG motor carrier business operations?

#### *HHG Freight Forwarder Issues*

32(a). Are there any HHG freight forwarder problems similar to the problems reported by AMSA concerning HHG brokers?

32(b). Should a potential action FMCSA may initiate consider regulatory requirements for HHG freight forwarder operations?

#### *HHG Motor Carrier Business Protection Issues*

33. How and to what extent should we protect HHG motor carriers from unscrupulous HHG broker activities?

#### *Enforcement Strategies*

34. Given the current e-business environment, what enforcement strategies should we use to protect HHG shippers from unscrupulous HHG broker activities?

35. What should be the range of appropriate sanctions or penalties for violating potential actions FMCSA may initiate?

36. Paragraph (d) of 49 U.S.C. 14901 requires a motor carrier or freight forwarder of household goods, or their receiver or trustee, that does not comply with any regulation relating to the protection of individual shippers, to be liable for a minimum penalty of \$1,100 per violation, as adjusted for inflation. Should we seek Congressional action to extend applicability of 49 U.S.C. 14901(d) to HHG brokers? Why or why not?

Issued on: December 16, 2004.

**Annette M. Sandberg,**

*Administrator.*

[FR Doc. 04-27933 Filed 12-21-04; 8:45 am]

**BILLING CODE 4910-EX-P**