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 and specifically register with FMCSA as household goods brokers as required by 49 U.S.C. 13901 and 13904. This rulemaking applies only to household goods brokers that procure 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). 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. 13422. 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, Title IV, Subtitle B of 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 ensure that individual shippers who arrange for transportation of household goods through brokers receive necessary information regarding their rights and responsibilities in connection with interstate household goods moves.

Dates: Effective date: The effective date of this final rule is January 28, 2011. Compliance date for 49 CFR 387.307(a)(2): Brokers that arrange the transportation of household goods in interstate or foreign commerce must increase their surety bonds or trust funds to the new minimum amount of $25,000 and have surety companies or surety bond agreements 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.

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.

1 The term “financial responsibility,” is not specifically defined in subpart C of 49 CFR part 387 (property brokers) and takes the general, commonly understood meaning of responsibility to compensate a party for losses, whether those losses are caused by physical damage, breach of contract, or other type of injury. The use of the term “financial responsibility” in Subpart C does not incorporate the definitions of that term found at 49 CFR 387.5 and 387.29, which apply to Subparts A (motor carriers of property) and B (motor carriers of passengers), respectively, of 49 CFR part 387.
additional requirements on household goods brokers. A copy of AMSA’s petition is in docket FMCSA–2004–17008. 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.

FMCSA granted AMSA’s petition and issued an Advance Notice of Proposed Rulemaking (ANPRM) in 2004 (69 FR 76664, December 22, 2004). In the ANPRM, FMCSA sought answers to 36 questions related to household goods broker issues. By posing these questions, the Agency sought to determine the extent to which the public believes a problem exists with household goods brokers and, if so, whether regulatory or non-regulatory solutions would better solve the problem.

Also in the ANPRM, FMCSA discussed how it became responsible for household goods broker regulatory oversight through the Interstate Commerce Commission Termination Act of 1995 (ICCTA) (Pub. L. 104–88, December 29, 1995, 109 Stat. 803) and the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, December 9, 1999, 113 Stat. 1748). The ICCTA gave the Secretary of Transportation jurisdiction over the procurement of interstate motor carrier transportation (49 U.S.C. 13501). The MCSIA, in establishing FMCSA, granted to the Agency regulatory oversight of the property broker regulations. The former Interstate Commerce Commission (ICC) decided on May 16, 1949 (Ex Parte MC–39 “Practices of Property Brokers,” 49 M.C.C. 277, at 286) (14 FR 2833, May 28, 1949) that it was necessary to regulate all property brokers, including household goods brokers, in interstate or foreign commerce. In that proceeding, the ICC decided it was unnecessary to regulate household goods brokers separately from general freight brokers.

Generally, the commenters to the ANPRM did not express support for rulemaking action or address many of the specific questions raised in the ANPRM. For example, none of the commenters submitted specific information related 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 in developing a rulemaking proposal.

The Proposed Rule

The Notice of Proposed Rulemaking (NPRM) (72 FR 5947, February 8, 2007), addressed the problems and recommendations identified by AMSA in its petition, incorporated requirements mandated by SAFETEA–LU, and adopted some of the recommendations made by commenters to the ANPRM. FMCSA proposed to amend the current broker regulations in part 371 by adding a new subpart B specifically for household goods brokers; amend appendix B of part 386 to incorporate the civil penalties applicable to household goods brokers added by SAFETEA–LU; and amend part 387 to increase the amount of the surety bond or trust fund currently required for household goods brokers. The proposed rule consisted of five basic elements that are being made final in this rule:

- 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 requirements governing estimates, consistent with those statutorily imposed on household goods motor carriers.
- It would incorporate new statutory penalties for providing estimates without an agreement 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.

Discussion of Comments on the Proposed Rule

FMCSA received 11 comments on the notice of proposed rulemaking (NPRM) (72 FR 5947, February 8, 2007). Several commenters expressed general support for the requirements imposed on household goods brokers. The following sections discuss comments on specific issues and FMCSA’s responses to those comments.

Scope of Part 371, Subpart B

Proposed § 371.101 would require household goods brokers that operate in interstate or foreign commerce to comply with all of the provisions of subpart B. AMSA recommends adding a phrase to state that the rule applies to a broker offering services “to individual shippers.”

FMCSA response. FMCSA agrees with AMSA. The subpart’s scope should be limited to only household goods brokers offering services to individual shippers.

Definitions of Terms

Proposed § 371.103 would define terms used in subpart B. FMCSA proposed definitions for the terms “household goods,” “household goods broker,” and “individual shipper.” The acronym “FMCSA” was used numerous times in the proposed rule, but the Agency does not show a definition of the term in part 371. The Agency will add the acronym “FMCSA” in the final rule and define it to mean “Federal Motor Carrier Safety Administration.”

Qualifications of Motor Carriers Used by the Broker

Proposed § 371.105 would make 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, active U.S. DOT number and valid, active operating authority issued by FMCSA. This 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 level of assurance that the household goods motor carrier will comply with applicable FMCSA regulations. The Public Utilities Commission of Ohio (PUCO) believes it would be useful to keep a database of consumer complaints against each carrier so that potential shippers could identify potentially troublesome movers.

FMCSA response. FMCSA maintains a consumer complaint database and allows public access to consumer complaint information regarding household goods carriers and brokers. This database can be accessed on the Internet by going to http://www.protectyourmove.gov and selecting the hyperlink “Search for Moving Companies and View Complaint History” which will lead to http://ai.volpe.dot.gov/hhg/search.asp. In a separate rulemaking (73 FR 9266, 2008), FMCSA proposed to add the acronym “FMCSA” in the final rule and define it to mean “Federal Motor Carrier Safety Administration.”
February 20, 2008), FMCSA proposed that each household goods carrier must submit a statutorily-mandated quarterly report about consumer complaints it receives, which should assist individual shippers in evaluating their transportation options.

Information in Advertisements and Internet Web Sites

FMCSA proposed (§ 371.107) implementing section 4212 of SAFETEA–LU by requiring that household goods brokers disclose to potential shippers their Department of Transportation registration number and that they are not motor carriers providing transportation of household goods. FMCSA also proposed that household goods brokers disclose certain information not required by SAFETEA–LU, but which FMCSA believes is necessary to assist individual shippers. The Agency proposed that household goods brokers prominently display in their advertisements and on their Web sites the following:

1. The physical location of the business,
2. Its “MC” operating authority number and U.S. DOT registration number,2
3. Its status as a household goods broker that does not transport household goods but that arranges for such transportation.

AMSA urges FMCSA to monitor brokers’ Web sites to ensure that unscrupulous brokers are not providing misleading information. The commenter also recommends an additional subparagraph in the rule to prohibit the broker from including the names or logos of motor carriers unless they are FMCSA-authorized household goods motor carriers with which the broker has a written agreement, as required by § 371.115. We agree that brokers should not misrepresent to shippers that their shipments will be moved by specific moving companies, when the broker does not have agreements with those companies. The provision is intended to further full and honest disclosure to the shipper.

List of Motor Carriers

FMCSA proposed (§ 371.109) that a household goods broker must provide to each potential individual shipper who has contact with the household goods broker a list of all household goods motor carriers used by the broker, to implement sec. 4212(3) of SAFETEA–LU. National Relocation Services and Pro Movers Network believe that the requirement is burdensome on the broker and does not serve a consumer protection purpose for the shipper.

FMCSA response. Notwithstanding the comments’ concerns about burden, the carrier list requirement is mandated by SAFETEA–LU. To address concerns regarding disclosure of information on household goods brokers, FMCSA revises its proposal to allow household goods brokers to provide the information required by § 371.109 electronically either through a Web site or by electronic messaging (e-mail), as an alternative to a paper-based communication.

Consumer Protection Information

FMCSA proposed (§ 371.111) requiring that each household goods broker 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 4205 of SAFETEA–LU requires household goods motor carriers to distribute both pamphlets and the proposal would impose the same requirement on household goods brokers. Proposed paragraph (a) permitted the household goods broker to make the information available through its Web site or by distribution of paper copies to each potential shipper. PUCO supports the proposed requirement. AMSA suggests FMCSA’s requirements for household goods motor carriers in part 375 should allow use of a hyperlink on the carrier’s Web site to provide the required consumer protection information.

FMCSA response. To better verify that shippers have been fully informed of their opportunity to access the consumer protection information via the broker’s Web site, FMCSA has added a new paragraph (b) to § 371.111 to require that the broker must state on any written estimate provided pursuant to § 371.113 that the individual shipper has expressly agreed to access the consumer protection information via the Web site in lieu of paper copies. FMCSA has also revised § 371.111 paragraph (c) to require written or electronic verification of the shipper’s agreement to access the Federal consumer protection information via the Internet, instead of receiving the booklet copies in paper form.

AMSA’s suggested revision of part 375 has merit and FMCSA will make the change it requested. This change will allow household goods motor carriers also to use a hyperlink on the carrier’s Web site to provide the required consumer protection information. FMCSA believes it is in the best interests of shippers, brokers, and carriers for the consumer protection information to be distributed electronically if consumers choose to receive the information in that format. A shipper’s ability to receive consumer protection information in his/her preferred medium can not depend on whether he/she arranges for transportation through a broker or directly with a motor carrier.

Written Estimate Based on a Physical Survey

Proposed § 371.113(a) would require 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. The
FMCSA recognizes that SAFETEA–LU did not prescribe estimating requirements for household goods brokers as it did for household goods motor carriers. Nevertheless, 49 U.S.C. 13904(c) grants FMCSA the authority to promulgate this requirement. The Agency believes 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 believe AMSA’s suggested revision to proposed § 371.113(a) accomplishes the goal more effectively than FMCSA’s original proposal and we adopt that revision in the final rule, with a minor modification as described below.

We decline to adopt AMSA’s proposed revision to 49 CFR 375.409(a) requiring that all estimates be based on physical surveys conducted by motor carriers because it would essentially prevent household goods brokers from making estimates under any circumstances. Such a prohibition is inconsistent with section 4209 of SAFETEA–LU, which prohibits household goods brokers from making estimates before entering into an agreement with a carrier to provide the transportation. Section 4209, therefore, implicitly recognizes that brokers are permitted to make estimates after entering into agreements with carriers, and not simply to provide estimates with estimates prepared by motor carriers or their agents. However, we have revised § 375.409(a) to make it consistent with revised § 371.113(a).

We also decline to adopt OOIDA’s suggestion to require household goods brokers to perform a physical survey regardless of the distance from the broker’s place of business. We do not require household goods motor carriers or their agents to perform a physical survey regardless of the distance from the motor carrier’s or agent’s place of business. We do not believe it would be appropriate to place this burden on brokers when we do not place it on motor carriers.

FMCSA does not agree with the suggestion of Pro Movers Network that the requirement for a physical survey should be eliminated because it limits a consumer’s choice to receive a remote estimate. Section 371.113(c) expressly permits the individual shipper to waive the physical survey requirement.

**Explanation of Waiving the Physical Survey**

PUCO states that estimates are most frequently a disputed issue and it is important that the broker be required to provide the shipper with a written estimate of the property to be shipped. It believes the option of waiving the physical survey should be explained and should be printed in a required font size in a required location on a standard document to ensure that the shippers are fully informed.

**FMCSA response.** We agree with PUCO that waiving the physical survey requirement, where it would otherwise apply, should be explained, printed on a standard document and printed with a minimum font size and font typeface following the General Services Administration (GSA) guidelines in the “Standard and Optional Forms Procedural Handbook.” The GSA handbook requires the font typeface Univers and minimum font size of 7 points for all standard Federal forms and documents.

**Estimates Based on Published Tariffs**

FMCSA proposed (§ 371.113(b)) requiring household goods brokers to base their estimates upon the published tariffs as defined in § 375.103 of the authorized household goods motor carriers they use. Nationwide Relocation Services believes the rule should require any motor carrier accepting jobs from a broker to adopt the broker’s tariff as its own for all jobs secured from the broker. AMSA suggests that the rule should require the broker’s fee or service charge to be separately stated in the estimate and not included in the motor carrier’s estimate of transportation charges.

**FMCSA response.** Household goods motor carriers are required to maintain tariffs under 49 U.S.C. 13702 and must charge individual shippers in accordance with those tariffs. Implementing regulations of the Surface Transportation Board (STB) governing household goods carrier tariffs, at 49 CFR 1310.3(a), require such tariffs to provide “the specific applicable rates, charges and service terms; and must be arranged in a way that allows for the determination of the exact rate, charges and service terms applicable to any given shipment.” Section 1310.3(b) permits use of multiple tariffs to determine applicable rates and charges, provided “the tariff containing the rates must make specific reference to all other tariffs required to determine applicable rates, charges and service terms. The carrier(s) party to the rate(s) must participate in all of the tariffs so linked.”
is for household goods motor carriers to adhere to the terms of their tariffs.

FMCSA believes Nationwide Relocation Services’ suggestion would be inconsistent with 49 CFR 1310.3 and therefore, FMCSA will not adopt it.

At this time, the Agency does not adopt AMSA’s suggestion that the broker’s fee or service charge be separately stated in the estimate. The Agency does not have sufficient information about how different brokers charge their fees and what affect this change would have.

Agreements With Motor Carriers

Proposed § 371.115(a) would require 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. Nationwide Relocation Services suggests all agreements should be submitted and filed with FMCSA.

Paragraph (a)(6) would require the signatures on the agreement to be notarized. Pro Movers Network believes the requirement for a notarized agreement is unrealistic and would almost certainly be impossible to execute successfully. Because household goods carriers typically have working agreements with between 5 and 15 brokers, the commenter asserts, the notary requirement would have to be repeated many times for each carrier.

The commenter believes the rule would ultimately be too stressful to the broker-carrier business relationships and transactions. The commenter argues that the potential of lost opportunity costs caused by strained business relationships between household goods brokers and carriers is a distinct possibility and FMCSA’s cost and risk assessments did not take these lost opportunity costs into account.

We also proposed 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. AMSA recommends adding a sentence stating that the estimate is based on a physical survey of the goods conducted by the motor carrier.

FMCSA response. We believe the filing requirement suggested by Nationwide Relocation Services would create an unnecessary burden for FMCSA, carriers, and brokers that would have little usefulness in protecting individual shippers. Based on comments received, we agree that the notarization requirement will be unduly burdensome and is unnecessary. We have removed the requirement that the agreements be notarized.

We have also revised § 375.409 to reflect the changes to § 371.113(a) discussed above (requiring a physical survey if the carrier on whose behalf the broker makes an estimate is within 50 miles of the household goods). However, as discussed earlier in this preamble, we are not adopting AMSA’s suggested change to require that all estimates be based on physical surveys of the property conducted by household goods motor carriers, because it would prohibit anyone other than the authorized motor carrier from performing the estimate. As such, it would be inconsistent with SAFETEA–LU and would limit the flexibility FMCSA intends to afford household goods brokers and carriers to provide services to their individual shippers.

Motor carriers can certainly provide additional restrictions in their agreements with household goods brokers beyond FMCSA’s minimum requirements.

Verifying the Motor Carrier’s Authority

As proposed, § 371.119 would have required that each household goods broker “inspect, verify, and document” the validity of the U.S. DOT registration and MC operating authority for each household goods motor carrier with which it arranges transportation each month. The household goods broker would comply with this requirement by using FMCSA’s 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. Nationwide Relocation Services suggests that monitoring the authority and licensing status of motor carriers is a role best suited for FMCSA, and a private broker should not be required to undertake the regulatory duty of FMCSA in policing the authority status of motor carriers. Pro Movers Network believes FMCSA should devise an e-mail notification system to register a broker’s carriers and automatically e-mail the broker when one of its carrier’s authorities is suspended or revoked. Manual checks by the broker of its entire network of carriers would be time- and resource-intensive, the commenter asserts, and a once per month check by the broker is not a foolproof method of verification. The commenter believes the broker should only have to confirm whether the carrier is in “Active” or “NonActive” status in FMCSA’s Safety and Fitness Electronic Records (SAFER) database. The commenter also states that it is not the broker’s obligation and responsibility to report carrier non-compliance to FMCSA.

FMCSA response. In response to comments and after further consideration, FMCSA has decided to eliminate proposed § 371.119 from the final rule. The intent of proposed § 371.119 was to provide additional protection to shippers by requiring brokers to verify the validity of carriers’ registration and operating authority on a monthly basis. However, proposed § 371.105 independently prohibits anyone from acting as a household goods broker for household goods motor carriers that do not have valid U.S. DOT numbers and valid operating authority from FMCSA. Regardless of whether a broker complies with the monthly verification and recordkeeping requirements, it would nonetheless be bound by § 371.105 and subject to penalties for arranging moves with unregistered or unauthorized carriers.

Considering this redundancy, it is unclear what additional protections § 371.119 would provide to shippers. Because brokers would be required to comply with § 371.105 under threat of penalty with or without § 371.119, the Agency does not believe that eliminating § 371.119 would diminish brokers’ incentives to avoid doing business with unregistered or unauthorized carriers. Thus, the Agency believes that eliminating § 371.119 would leave shippers with the same level of protection against unregistered or unauthorized carriers, while reducing the administrative burden on brokers.

Furthermore, striking this provision would eliminate any confusion over whether compliance with § 371.119 excuses or provides mitigating circumstances for failure to comply with § 371.105. FMCSA is concerned that proposed § 371.119, as written, could be interpreted as a safe haven for brokers who comply with the verification and recordkeeping requirements, but nonetheless arrange a move with an unregistered or unauthorized carrier.

FMCSA never intended for proposed § 371.119 to be interpreted this way. As a result, FMCSA leaves it to the household goods brokers to determine the most effective and efficient manner in which to ensure compliance with § 371.105.

Broker Surety Bond or Trust Fund

FMCSA proposed 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, based on adjustments for inflation. The former ICC increased the financial responsibility requirement for
brokers in 1979 from $5,000 to $10,000. See 44 FR 70167, December 6, 1979. The NPRM proposed adjusting the $10,000 minimum figure for inflation as measured by the Consumer Price Index, which resulted in purchasing power of $24,490.29 in 2006. Because a final rule based on the NPRM would not be in effect until after the 2007’s NPRM, FMCSA found it reasonable to round the minimum requirement up to $25,000. The requirement was raised to $10,000 to ensure shippers or motor carriers would be paid if the broker failed to carry out its contracts, agreements, or arrangements for the supplying of transportation by authorized motor carriers. Sandra Irwin supports raising the amount of the surety bond or trust fund, and AMSA, PUCO, and OOIDA believe an increase to $25,000 is inadequate. According to OOIDA, surety companies have reported an aggregate amount of outstanding claims against broker bonds of between $300,000 and $500,000 in response to OOIDA’s efforts to submit claims by its members against broker bonds. Nationwide Relocation Services believes the amount of the surety bond or trust fund should be $50,000, and David Marsh suggests $100,000. Sandra Irwin, David Marsh, and the Transportation Intermediaries Association suggest the increase in the surety bond or trust fund should apply to all property brokers, not just household goods brokers.

On the other hand, Pro Movers Network points out that household goods brokers may incur a high cost of doing business, such as increased costs of advertising, and increasing the surety bond or trust fund requirement to $25,000 represents an unnecessary financial burden.

FMCSA response. Commenters that favored increasing the amount of the surety bond or trust fund did not provide adequate justification for an increase above $25,000, especially in light of the number of small business household goods brokers and the potential impact of significantly increasing the amount of financial responsibility beyond a level adjusted for inflation. Inasmuch as OOIDA did not provide specific information regarding the number and amount of outstanding claims per broker, its argument that an aggregate amount of $300,000 to $500,000 in outstanding claims warrants an increase in the amount of the bond to that level is not justifiable.

The surety bond and trust fund provisions apply only to household goods transportation. FMCSA may consider applying the increased surety bond and trust fund provisions to general freight brokers in the future. Finally, FMCSA acknowledges Pro Movers Network’s comment about high costs of doing business, however, it did not provide sufficiently specific information to justify changing FMCSA’s proposal to something other than an adjustment for inflation.

**Implementation of the Household Goods Broker Surety Bond or Trust Fund Amount**

FMCSA did not propose how the Agency would implement the additional $15,000 increase in the amount of the surety bond or trust fund agreement. FMCSA believes it is necessary to provide household goods brokers a sufficient amount of time to acquire the additional $15,000 for surety bonds and trust funds. The Agency will set one year from the date of the final rule as the date when all brokers of household goods must have filed new BMC–84s or BMC–85s, as appropriate, to prove they have the minimum $25,000 in effect. This should give sufficient time to household goods brokers, especially small entities, to find sureties willing to write $25,000 surety bonds to replace their $10,000 bonds. Likewise, for those household goods brokers using trust fund agreements, this should give sufficient time for these entities to raise the additional $15,000 of capital to place in escrow with their trust fund managers.

**The Final Rule**

FMCSA adopts the proposed rule as final with minor changes in response to the comments. First, as discussed in the section on the “Scope of part 371, subpart B,” at the suggestion of AMSA, we are limiting the scope of part 371, subpart B to only household goods brokers offering services to individual shippers. We have made the appropriate changes to §371.101 to limit the scope to individual shippers. Second, as discussed in the section of the “Definitions,” the Agency is adding the acronym “FMCSA” and the definition that it means the Federal Motor Carrier Safety Administration, an agency within the U.S. Department of Transportation. Third, as discussed in the section on “information in advertisements and Internet Web homepage,” we are adding §371.107(d) to require household goods brokers who provide estimates of household goods motor carriers, to state prominently on their Web site(s) that the estimates must be based on the carrier’s tariff and that the carrier is required to make the tariff available for public inspection upon a reasonable request. Fourth, also as discussed in the section on “information in advertisements and Internet Web homepage,” at the suggestion of AMSA, we are adding §371.107(e) to prohibit the broker from including the names or logos of motor carriers unless they are FMCSA-authorized household goods motor carriers with which the broker has a written agreement as specified in §371.115. Fourth, as discussed in the section “list of motor carriers,” FMCSA will allow household goods brokers to provide the information required by §371.109 electronically as an alternative to a paper-based communication.

Fifth, as discussed in the section “consumer protection information,” FMCSA is adding §371.111(b) to require that, if a shipper elects to access the statutorily-mandated consumer information via the household goods broker’s Web site, then the broker must state on the written estimate described in §371.113 that the individual household goods broker expressly agreed to access the consumer protection information via the Internet in lieu of a paper copy.

Sixth, as discussed further in the section “consumer protection information,” FMCSA has also revised §371.111 paragraph (c) to require written or electronic verification of the shipper’s agreement to access the Federal consumer protection information on the Internet, instead of receiving the booklet copies in paper form.

Seventh, as discussed in the section “Written estimate based on a physical survey,” we are adopting one of AMSA’s two suggestions to require in §371.113(a) that a physical survey of the household goods must be conducted by the authorized motor carrier on whose behalf the estimate is provided, if the shipment is located within a 50-mile radius of the carrier’s “household goods agent preparing the estimate,” unless the physical survey requirement is waived by the shipper.

Eighth, for §371.113(c)(2), as discussed in the section on “Explanation of waiving the physical survey,” we are adopting PUCO’s suggestion that the final rule require brokers to explain the physical survey and waiver requirement to individual shippers, print the waiver agreement on the written estimate, and print the agreement with a minimum font size and font typeface. Ninth, as discussed in the section “verifying the motor carrier’s authority,” FMCSA is eliminating proposed §371.119 from the final rule. Tenths, as discussed in the sections on “Written estimate based on

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3 The ICC established the broker surety bond amount at $5,000 in 1936, 1 FR 1156, August 20, 1936.
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, Web site editing, and printing costs associated with incorporating mandated consumer information; and (3) additional information collection burdens associated with the new regulations, including traveling to and performing on-site physical surveys for written estimates; making written agreements with household goods motor carriers, stating on the written estimate that the individual shipper expressly agreed to access the consumer protection information on the Internet; obtaining written or electronic verification of the shipper’s agreement to access the Federal consumer protection information on the Internet; explaining the physical survey and waiver requirement to individual shippers; printing the waiver agreement on the written estimate; printing the agreement with a minimum font size and font typeface; and, finally, requiring household goods brokers to have their sureties or trust fund managers file proof of their $25,000 minimum financial responsibility on the Forms BMC–84 or BMC–85, as appropriate.

Regulatory Analyses

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

FMCSA has determined that this action is not 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). The Agency received only 11 comments and the costs are minimal.

The total cost of the final rule is approximately $5.543 million in the first year with annual, recurring costs of $1.776 million thereafter. As such, the costs of this final rule do not exceed the $100 million annual threshold as defined in Executive Order 12866. The ten-year costs and benefits of the final rule are shown in Table 1:

| TABLE 1—SUMMARY OF TEN-YEAR COSTS AND BENEFITS FOR FINAL RULE |
| [In millions] |
| 7% Discount Rate | Option 3 |
| Costs .................. | $17.11 |
| Benefits ............... | 46.97 |
| Net Benefits .......... | 32.25 |
| 3% Discount Rate | Option 3 |
| Costs .................. | 16.58 |
| Benefits ............... | 54.91 |
| Net Benefits .......... | 38.33 |

FMCSA’s full Final Regulatory Evaluation is in the docket for this rule. It explains in detail how we estimated cost impacts for the final rule.

This rule establishes 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 and foreign commerce.

Under section 4212 of SAFETEA–LU, Public Law 109–59, which was enacted into law on August 10, 2005. Specifically, section 4212 of SAFETEA–LU directs FMCSA to issue regulations requiring household goods brokers to provide this information to consumers.

(2) Objectives of, and legal basis for, the final rule.

This rulemaking is mandated by section 4212 of SAFETEA–LU. FMCSA’s general authority to enact consumer protection regulations governing broker operations is contained in 49 U.S.C. 13904(c). The objective of this rule is to ensure that individual shippers of household goods that arrange for transportation through household goods brokers (rather than directly through motor carriers) receive necessary information regarding the parties with which they are dealing and their rights and responsibilities in connection with interstate household goods moves. It also is intended to ensure that household goods brokers deal only with properly registered and insured motor carriers and that estimates provided by household goods brokers be provided under specific circumstances designed to protect the shipper against abuse. Finally, it increases the level of financial responsibility required to ensure that household goods brokers perform their transportation contracts.

(3) Significant issues raised by small entities’ comments.

A summary of the significant issues raised by the public in response to the NPRM and the assessment of each significant issue are discussed earlier in this final rule under the heading “Discussion of Comments on the Proposed Rule.”

FMCSA is adopting the proposed rule as final with the minor changes discussed above under the heading The Final Rule, based mainly on comments to the NPRM. FMCSA believes most household goods brokers that commented to the NPRM would meet the definition of a small business entity.

(4) Description and estimate of the number of small entities to which the final rule will apply.

There are currently 615 active, registered household goods brokers and another 394 registered household goods
brokers that are inactive. 4 We do not know the number of unregistered household goods brokers, but we suspect that there are many. For the purposes of our analysis, we assume the number is 75—which would put the percentage of unregistered brokers at just over ten percent (75 is 10.87% of (615 + 75)). The figure is based on conversations with industry experts and information from broker Web sites. We use 690, then, as the estimate of total active brokers—registered and (now) unregistered. Almost all are small entities according to the definition in Small Business Administration (SBA) regulations (13 CFR part 121) which defines a “small entity” in the North American Industrial Classification System (NAICS) Code 488510 “Freight Transportation Arrangement” industry by average annual receipts, which are currently set at $7 million per firm. The motor carriers with whom household goods brokers deal may also be indirectly affected.

5 Description of the projected reporting, record-keeping and other compliance requirements for small entities.

The final rule requires additional record-keeping on the part of household goods brokers to demonstrate compliance. The cost to the household goods broker industry of this additional record-keeping ($5.543 million in the first year and $1.776 million annually) is also reflected in our cost estimates. Additionally, the aggregate cost to the household goods broker industry of raising the financial responsibility requirement to $25,000 from $10,000 (approximately $50,000 annually) is also reflected in our cost estimates. The total cost has a present value of approximately $17.11 million over ten years when discounted at 7 percent, and does not require any special skills that would be available to large entities any more than to small entities.

6 Duplication with other Federal rules.

FMCSA is unaware of any other Federal rules which will duplicate, overlap, or conflict with this proposed rule except for the household goods carriers rule published on July 12, 2005. 5 Because these rules apply only to household goods motor carriers, it was necessary to establish separate rules applicable to household goods brokers, even though they contain certain similarities. For example, SAFETEA–LU requires every shipper to receive the pamphlet “Your Rights and Responsibilities When You Move.” Household goods carriers are already required to make this pamphlet available to every shipper. This rule requires household goods brokers to make the same pamphlet available to shippers. There is no practical way around the duplication because some shippers do not use a household goods broker and those who do often do not have any direct contact with a household goods carrier early enough in the process to make effective use of the information contained in the pamphlet.

7 Description of any significant alternatives to the final rule.

FMCSA believes that there are no significant alternatives to the final rule which would accomplish the stated objectives of the Household Goods Mover Oversight Enforcement and Reform Act of 2005, otherwise known as Title IV, Subtitle B of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59) and which would minimize any significant economic impact of the final rule on small entities.

The Agency did consider ways in which it could assist small household goods broker entities to mitigate the impact of increasing the trust fund resources to the new minimum requirement of $25,000. The Agency decided it could extend the compliance date regarding the financial responsibility requirement so that brokers will have a full year after publication of the final rule to come into compliance with the $25,000 requirement, increasing trust funds from the minimum of $10,000 to the final rule’s minimum requirement of $25,000. Therefore, FMCSA is mitigating the impact of obtaining the additional $15,000 of financial responsibility over the current $10,000 requirement by adding a 1-year compliance date in § 387.307(a)(2). Thus, all household goods brokers will have one year from the date of publication of this final rule to obtain the additional $15,000 of financial responsibility over the current $10,000 requirement, and to have their sureties and trust fund managers file with FMCSA the required proof (Forms BMC–84 or BMC–85, as appropriate) of the total $25,000 minimum financial responsibility required by the compliance date for § 387.307(a)(2).

As we stated above, almost all of the 690 household goods brokers subject to this final rule meet the definition of a small business entity under the RFA.

We have estimated this final rule will cause the average household goods broker to incur an estimated, additional $8,030 in the first year of implementation and annual recurring costs of about $2,575. The Administrator of the FMCSA believes this final rule will have a significant economic impact on a substantial number of small entities (SEISONOSE).

Unfunded Mandates Reform Act

This 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 $140.3 million or more in any one year (2 U.S.C. 1531 et seq.). The present value of the final rule is about $17.11 million.

National Environmental Policy Act

The Agency analyzed this 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 under Appendix 2, paragraphs 6.d, 6.m, and 6.g 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 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, paragraphs 6.d, 6.m, and 6.g of the Order from further environmental impact statement.

4 A broker generally becomes inactive after registering with FMCSA when its surety bond or trust fund is cancelled.

5 70 FR 39949 (Jul. 12, 2005).
Privacy Impact Assessment

FMCSA conducted a privacy impact assessment of this rule as required by section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Public Law 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 rule on the privacy of information in an identifiable form and related matters. FMCSA has determined this rule imposes 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 seeks 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. Some of 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 were 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 will be generated by this final rule.

Assumptions used for calculation of the information collection burden include the following: (1) There are currently approximately 690 active household goods brokers; (2) on average, each household goods broker will enter into written agreements to estimate shipment costs with about 31 motor carriers, (3) household goods brokers will eventually sever some of these written agreements and make agreements with new household goods motor carriers. We assume that an average agreement lasts for about six years, meaning that brokers will enter into about five new agreements each year, and (4) FMCSA estimates household goods brokers handle about 100,000 moves each year. The first two items result in 24,390 respondents subject to the information collection (690 × 31 = 24,390). The third item results in an additional 3,450 respondents subject to the information collection (690 × 5 = 3,450). Together with the fourth item, a total of about 127,900 respondents (24,390 + 3,450 + 100,000) would be subject to the information collection.

The PRA regulations at 5 CFR 1320.3(b)(2) allow 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. FMCSA sought comment in the NPRM on whether setting up the first accounting system for a new business is a usual and customary practice. FMCSA received no comments from the public about this accounting system issue. Thus, FMCSA concludes the public believes it is a usual and customary practice when starting a new business.

Table 2 summarizes the information collection burden hours by the actions being taken in the final rule. See attachment S of the supporting statement for the Paperwork Reduction Act Submission in docket FMCSA–2004–17008 for the detailed FMCSA analysis.

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Calculation</th>
<th>Total hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>371.3</td>
<td>Transaction records</td>
<td>60hr × 690</td>
<td>41,400</td>
</tr>
<tr>
<td>371.13</td>
<td>Second accounting system</td>
<td>8hr × 125</td>
<td>1,000</td>
</tr>
<tr>
<td>371.107</td>
<td>Web site/Ad Modification</td>
<td>20hr × 690</td>
<td>13,800</td>
</tr>
<tr>
<td>371.109</td>
<td>Create A List of Carriers</td>
<td>10hr × 690</td>
<td>6,900</td>
</tr>
<tr>
<td>371.111(a)</td>
<td>Confirming Required Information</td>
<td>0.5hr × 690</td>
<td>345</td>
</tr>
<tr>
<td>371.111(c)</td>
<td>Explanation of Waiver-Agreement</td>
<td>(1/12)hr × 20,000</td>
<td>1,667</td>
</tr>
<tr>
<td>371.115</td>
<td>Negotiation of Agreements (One-Time)</td>
<td>4hr × 31 agreements × 690</td>
<td>85,560</td>
</tr>
<tr>
<td>371.116</td>
<td>Additional Agreements Through Turnover</td>
<td>4 hrs × 5 agreements × 690</td>
<td>13,800</td>
</tr>
<tr>
<td>371.117</td>
<td>Disclosure and Records</td>
<td>10hr × 690</td>
<td>6,900</td>
</tr>
<tr>
<td>371.119</td>
<td>Removed Verification Requirement</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Total First Year Hours</td>
<td></td>
<td>175,512</td>
<td></td>
</tr>
<tr>
<td>Total Recurring Annual Hours</td>
<td></td>
<td>89,607</td>
<td></td>
</tr>
</tbody>
</table>

We have rounded the estimates and have asked OMB for approval for first-year burden-hours of 175,500, and subsequent-year burden-hours of 89,600. We particularly request your comments on whether the collection of information is necessary for FMCSA to meet the goal of 49 CFR part 371 to protect consumers and household goods motor carriers, including: (1) Whether the information is useful to this goal; (2) the accuracy of the estimate of the burden of the information collection; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. You must submit comments on the information collection burden addressed by this final rule to the Office of Management and Budget (OMB). The deadline for such submissions is December 29, 2010. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to oira_submission@omb.eop.gov, or faxed to (202) 395–6074, or mailed to the Office of Information and Regulatory Affairs, Office of Information and Regulatory Affairs, Room 4100, 725 17th Street NW, Washington, DC 20573.
Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

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 12630 (Taking of Private Property)

This rule will 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 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 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., imposing 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 is amending 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:


Subpart A—General Requirements

2. Add a heading for subpart A to read as set forth above, and designate §§371.1 through 371.13 under subpart A.

3. Add 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 page?

371.111 Must I inform individual shippers with a written estimate?

371.112 Must I provide individual shippers with written estimates on behalf of these carriers?

371.113 Must I provide individual shippers with a motor carrier's U.S. DOT registration number(s) and MC license number issued by the Federal Maritime Commission?

371.114 Must I inform individual shippers with a motor carrier's U.S. DOT registration number(s) and MC license number issued by the Federal Maritime Commission?

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

371.116 Must I inform individual shippers with written estimates on behalf of these carriers?

371.117 Must I provide individual shippers with motor carrier's U.S. DOT registration number(s) and MC license number issued by the Federal Maritime Commission?

371.118 Must I provide individual shippers with written estimates on behalf of these carriers?

371.119 Must I provide individual shippers with written estimates on behalf of these carriers?

371.120 Must I provide individual shippers with motor carrier's U.S. DOT registration number(s) and MC license number issued by the Federal Maritime Commission?

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

(d) If you provide estimates on any carrier’s behalf pursuant to §371.113(b), you must prominently display in your Internet Web site(s) that the estimate must be based on the carrier’s tariff and that the carrier is required to make its tariff available for public inspection upon a reasonable request.

(e) You may only include in your advertisements or Internet Web site(s) the names or logos of FMCSA-authorized household goods motor carriers with whom you have a written agreement as specified in §371.115 of this part.

§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. You may provide the list electronically or on paper.

(b) You must provide to each potential individual shipper who contacts you a statement indicating that 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. You may provide the statement electronically or on paper.

§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 site to the FMCSA Web site 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 to which you intend to provide the shipment under your written agreement required by §371.115.

(b) If an individual shipper elects to waive physical receipt of the Federal consumer protection information by one of the methods described in paragraphs (a)(2) and (a)(3) of this section, and elects to access the same information via the hyperlink on the Internet as provided in paragraph (a)(1) of this section, you must include a clear and concise statement on the written estimate described in §371.113 that the individual shipper expressly agreed to access the Federal consumer protection information on the Internet.

(c) You must obtain a signed, dated, electronic or paper receipt showing the individual shipper has received both booklets that includes, if applicable, verification of the shipper’s agreement to access the Federal consumer protection information on the Internet.

(d) You must maintain the signed receipt required by paragraph (c) 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 conducted by the authorized motor carrier on whose behalf the estimate is provided if the goods are located within a 50-mile radius of the motor carrier’s or its agent’s location, whichever is closer. 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) The signature of the authorized household goods broker operation and the date; and

(d) 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 on behalf of the authorized household
§ 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

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


5. Amend §375.213 by reversing paragraphs (a), (b)(1), and (d), and adding paragraph (e) to read as follows:

§ 375.213 What information must I provide to a prospective individual shipper?

(a) When you provide the written estimate to a prospective individual shipper, you must also provide the individual shipper with a copy of Department of Transportation publication FMCSA–ESA–03–005 (or its successor publication) entitled “Ready to Move?—Tips for a Successful Interstate Move.” You may provide the individual shipper with a paper copy or you may provide a hyperlink on your Internet Web site to the FMCSA Web site containing the information in FMCSA’s publication “Ready to Move?—Tips for a Successful Interstate Move.”

(b) * * *

(1) The contents of appendix A of this part, entitled “Your Rights and Responsibilities When You Move” (Department of Transportation publication FMCSA–ESA–03–006, or its successor publication), you may provide the individual shipper with a paper copy or you may provide a hyperlink on your Internet Web site to the FMCSA Web site containing the information in FMCSA’s publication “Your Rights and Responsibilities When You Move.”

* * * * *

(d) Paragraphs (c)(2) and (c)(3) of this section do not apply to exact copies of appendix A published in the Federal Register, the Code of Federal Regulations, or on FMCSA’s Web site.

(e) If an individual shipper elects to waive physical receipt of the Federal consumer protection information by one of the methods described in paragraphs (a) and (b)(1) of this section, and elects to access the same information via the hyperlink on the Internet as provided in paragraphs (a) and (b)(1) of this section:

(1) You must include a clear and concise statement on the written estimate described in §375.401 that the individual shipper expressly agreed to access the Federal consumer protection information on the Internet.

(2) You must obtain a signed, dated, electronic or paper receipt showing the individual shipper has received both booklets that includes, if applicable, verification of the shipper’s agreement to access the Federal consumer protection information on the Internet.

(3) You must maintain the signed receipt required by paragraph (e)(2) of this section for three years from the date the individual shipper signs the receipt.

5. Revise §375.409 to read as follows:

§ 375.409 May household goods brokers provide estimates?

(a) Subject to the limitations in §371.113(a) of this subchapter, household goods brokers may provide estimates to individual shippers 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

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


7. Amend appendix B to part 386 by revising the heading and by adding paragraphs (g)(22) and (23) to read as follows:

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

(g) * * * * *

(22) 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.

(23) 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.

§ 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 on and after January 1, 2012. 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. The compliance date for paragraph (a)(2) is January 1, 2012.

Issued on: November 19, 2010.
Anne S. Ferro,
Administrator.