

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Parts 371, 375, 386, and 387**

[Docket No. FMCSA-2004-17008]

RIN 2126-AA84

**Brokers of Household Goods Transportation by Motor Vehicle****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Final rule.

**SUMMARY:** FMCSA amends its regulations to require brokers that arrange the transportation of household goods in interstate or foreign commerce for consumers to comply with certain consumer protection requirements. Brokers must provide: their U.S. DOT number on their advertisements and Internet Web sites; estimates of expected moving charges and brokerage fees; FMCSA pamphlets containing tips for successful moves and the consumer's rights and responsibilities; and the broker's policies concerning deposits, cancellations, and refunds. This rulemaking is in response to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) and a petition for rulemaking from the American Moving and Storage Association. This rulemaking is intended to 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 trust fund managers file appropriate Forms BMC-84 or BMC-85 with FMCSA no later than January 1, 2012.

**ADDRESSES:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brodie Mack, FMCSA Household Goods

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**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. 14122. The Secretary has delegated these various authorities to the FMCSA Administrator (49 CFR 1.73(a)).

This rulemaking is based on the statutory provisions cited above and on the Household Goods Mover Oversight Enforcement and Reform Act of 2005, Title IV, Subtitle B of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59). This rulemaking focuses on the business practices of household goods brokers engaged in interstate or foreign commerce. Household goods brokers arrange, but do not perform, the transportation of household goods shipments.

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

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

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

The Secretary's general jurisdiction at 49 U.S.C. 13501 authorizes FMCSA to establish shipment estimating and other requirements not specifically mandated by SAFETEA-LU in this final rule.

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

Household goods brokers have been regulated by FMCSA and its predecessor agencies for many years and a number of regulations apply to them, including registration requirements (49 CFR part 365), process agent requirements (49 CFR part 366), and financial responsibility<sup>1</sup> requirements (49 CFR part 387). Section 387.307 requires property brokers, including household goods brokers, to maintain a surety bond or trust fund agreement in the amount of at least \$10,000 to provide for payments to motor carriers or shippers, if the broker fails to carry out its agreement to supply transportation by authorized motor carriers.

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

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

*Petition for Rulemaking*

On March 6, 2003, the American Moving and Storage Association (AMSA) petitioned FMCSA to initiate a rulemaking to amend 49 CFR part 371, "Brokers of Property," to impose specific

<sup>1</sup> 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. It should not include commercial and government shippers that are generally more knowledgeable of brokerage transactions. FMCSA will change the rule to the following. "Yes, you must comply with all regulations in this subpart when you operate as a household goods broker offering services to individual shippers in interstate or foreign commerce. The regulations in this subpart do not apply to a household goods broker when providing services to commercial or government shippers in interstate or foreign commerce."

##### *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,

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.<sup>2</sup>
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 specified in § 371.115.

*FMCSA response.* As a part of its enforcement program, FMCSA already monitors the Web sites of household goods brokers and carriers to determine

<sup>2</sup>Brokers currently receive "MC" numbers, not U.S. DOT registration numbers. FMCSA proposed eliminating the "MC" operating authority number in its May 19, 2005 NPRM regarding the Unified Registration System (URS) mandated by 49 U.S.C. 13908 (70 FR 28990). FMCSA intends to issue and notify each household goods broker of the U.S. DOT number FMCSA will assign to that active household goods broker before the URS final rule is published. The URS final rule will remove the requirements for household goods brokers to display their "MC" numbers in their advertisements, Web sites, and agreements with household goods motor carriers. Household goods brokers will only be required to display their assigned U.S. DOT number after the URS final rule becomes effective. Until FMCSA publishes a final rule in that proceeding, household goods brokers must display their "MC" numbers in their advertisements.

if they are providing misleading information on the Internet. We conduct compliance reviews and initiate enforcement action when appropriate.

We add a subparagraph in the final rule to provide more information to individual shippers receiving estimates prepared by brokers pursuant to § 371.113(b). A household goods broker that provides an estimate on behalf of a motor carrier must state on the broker's Web site that any estimate 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. We add this requirement to better ensure that individual shippers understand their rights with respect to broker-prepared estimates.

We have adopted AMSA's suggestion to add a subparagraph in the final rule to prohibit household goods brokers 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 commenters' concerns about burden, the carrier list requirement is mandated by SAFETEA-LU. To address concerns regarding potential burdens 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 provide that the broker must state on any written estimate provided pursuant to § 371.113 that the individual shipper has expressly agreed to accept access to the 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 should 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

Owner Operator Independent Drivers Association (OOIDA) believes the household goods broker should be required to conduct a physical survey regardless of the distance from the broker's place of business, unless the shipper can provide the broker a weight by which to determine an estimate of charges.

AMSA argues that proposed § 371.113(a) does not adequately address the inaccurate, "lowball" broker estimating problems experienced by consumers who receive estimates over the telephone or Internet without a physical survey because, in most cases, brokers are not located anywhere near shipping sites. Accordingly, AMSA recommends that the Agency revise its proposal by requiring that estimates be based on a physical survey 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 or its agent. AMSA also proposes that 49 CFR 375.409(a) be revised to require that all estimates provided by the broker be based on physical surveys conducted by the motor carrier transporting the shipment.

Pro Movers Network opposes the requirement for an in-home survey, because the provision is especially burdensome for consumers who are shipping a very small amount of goods. Pro Movers Network believes that if the list of goods provided by the shipper is complete, an accurate non-binding estimate based on weight does not require an in-home estimate. Also, Pro Movers Network commented that requiring in-home surveys limits a consumer's choices and the ability to receive a moving estimate remotely via the Internet.

*FMCSA response.* In the NPRM, FMCSA expressly invited comment on the impact to shippers, brokers, and motor carriers of applying or removing the 50-mile requirement for household goods broker estimates based on physical surveys, and invited comments on alternatives to this requirement. The Agency agrees with AMSA that because household goods brokers are rarely located within 50 miles of the shippers to whom they provide estimates, it is likely that the 50-mile radius exception, if implemented as proposed, would become the standard practice. As a result, FMCSA revised § 371.113(a) to require brokers to conduct or arrange for someone to conduct physical surveys of goods that are located within 50 miles of either the broker or the carrier on whose behalf the broker submits an estimate. As we stated in the NPRM, 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 good 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 shippers 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 estimates in writing based on a survey 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. We have adopted PUCO's suggestion for the final rule. FMCSA will adopt in today's final rule the 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 Universe 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 \* \* \*". A "carrier party to the rate" means more than one carrier can use the same rates. A broker's rate schedule is not a tariff subject to 49 U.S.C. 13702 and the STB regulations. There is no regulatory requirement that brokers adhere to such rate schedules, as there

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 fool-proof 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.<sup>3</sup> 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 homepages," we are adding § 371.107(d) to require household goods brokers who provide estimates on behalf 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 homepages," 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 shipper 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. Tenth, as discussed in the sections on "Written estimate based on

<sup>3</sup> The ICC established the broker surety bond amount at \$5,000 in 1936, 1 FR 1156, August 20, 1936.

a physical survey” and “Estimates provided by household goods brokers,” we have revised the household goods motor carrier requirements applicable to household goods broker estimates in § 375.409(a) to make them consistent with our revised written estimate revisions in § 371.113(a). Finally, we are adding a 1-year compliance date in § 387.307(a)(2) for household goods brokers to obtain the additional \$15,000 of financial responsibility over the current \$10,000 requirement, and to 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 1-year compliance date.

**Regulatory Analyses**

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

FMCSA has determined that this action is a 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.

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

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies, as a part of each rulemaking, to consider regulatory alternatives that minimize the impact on small entities while achieving the objectives of the rulemaking. The Agency’s Initial Regulatory Flexibility Analysis is available in docket FMCSA–2004–17008 at item 0018. FMCSA received no specific comments about its Initial Regulatory Flexibility Analysis. The Agency’s Final Regulatory Flexibility Analysis (FRFA) for this final rule is discussed below.

*(1) A description of the reasons why action by the agency is being considered.*

The American Moving and Storage Association (AMSA) petitioned the DOT for a rulemaking in March 2003 that would amend the property broker regulations in part 371 to require brokers that arrange for household goods transportation by motor carrier (household goods brokers) to provide

consumer information that only household-goods motor-carriers must now provide, as well as establish additional consumer protection requirements. Many of AMSA’s concerns were addressed in the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (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.<sup>4</sup> 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 to inform, display, and disclose information to shippers and maintain the files for three years) is 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.<sup>5</sup> 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.q of the Order from further environmental documentation. These categorical exclusions relate to rulemaking actions affecting household goods brokers. In addition, the Agency believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA’s general conformity requirement since it involves rulemaking and policy development and issuance. *See* 40 CFR 93.153(c)(2). It will not result in any emissions increase nor will it have any potential to result in emissions that are above the general conformity rule’s *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule will not increase total CMV mileage, or change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. This action merely establishes regulations applicable to the business practices of household goods brokers, which do not operate CMVs. FMCSA received no comments to its NEPA and Clean Air Act analyses.

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

<sup>5</sup> 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 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 ( $690 \times 31 = 24,390$ ). The third item results in an additional 3,450 respondents subject to the information collection ( $690 \times 5 = 3,450$ ). 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 business 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 2—ANNUAL BURDEN HOURS ACROSS THE 127,900 RESPONDENTS

Section	Description	Calculation	Total hours
371.3	Transaction records	$60\text{hr} \times 690$	41,400
371.13	Second accounting system	$8\text{hr} \times 125$	1,000
371.107	Web site/Ad Modification	$20\text{hr} \times 690$	13,800
371.109	Create A List of Carriers	$10\text{hr} \times 690$	6,900
371.111(a)	Pamphlet Provision (One-Time)	$0.5\text{hr} \times 690$	345
371.111(c)	Confirming Required Information	$0.5\text{hr}/\text{month} \times 12 \times 690$	4,140
371.113	Explanation of Waiver-Agreement	$(1/12)\text{hr} \times 20,000$	1,667
371.115	Negotiation of Agreements (One-Time)	$4\text{hr} \times 31 \text{ agreements} \times 690$	85,560
	Additional Agreements Through Turnover	$4 \text{ hrs} \times 5 \text{ agreements} \times 690$	13,800
371.117	Disclosure and Records	$10\text{hr} \times 690$	6,900
371.119	Removed Verification Requirement	Removed	0
	Total First Year Hours		175,512
	Total Recurring Annual Hours		89,607

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 [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory

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:

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

**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 homepage?

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

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

371.113 May I provide individual shippers with a written estimate?

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

371.117 Must I provide individual shippers with my policies concerning cancellation, deposits, and refunds?

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

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

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

Yes, you must comply with all regulations in this subpart when you operate as a household goods broker offering services to individual shippers in interstate or foreign commerce. The regulations in this subpart do not apply to a household goods broker when providing services to commercial or government shippers in interstate or foreign commerce.

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

*FMCSA* means the Federal Motor Carrier Safety Administration within the U.S. Department of Transportation.

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

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

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

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

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

**§ 371.107 What information must I display in my advertisements and Internet Web homepage?**

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

(b) You must prominently display your U.S. DOT registration number(s) and MC license number issued by the FMCSA in your advertisements and Internet Web homepage(s).

(c) You must prominently display in your advertisements and Internet Web site(s) your status as a household goods broker and the statement that you will not transport an individual shipper's

household goods, but that you will arrange for the transportation of the household goods by an FMCSA-authorized household goods motor carrier, whose charges will be determined by its published tariff.

(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)(1) A shipper may elect to waive the physical survey required in paragraph (a) of this section by written agreement signed by the shipper before the shipment is loaded.

(2) The household goods broker must explain the physical survey waiver agreement to the individual shipper in plain English. The physical survey waiver agreement must be printed on the written estimate and must be printed at no less than 7-point font size and with the font typeface Universe.

(3) A copy of the waiver agreement must be retained as an addendum to the

bill of lading and is subject to the same record inspection and preservation requirements as are applicable to bills of lading.

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

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

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

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

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

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

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

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

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

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

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

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

(c) You must keep copies of the agreements required by this section for as long as you provide estimates on behalf of the authorized household

goods motor carrier and for three years thereafter.

**§ 371.117 Must I provide individual shippers with my policies concerning cancellation, deposits, and refunds?**

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

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

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

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

**§ 371.121 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:

**Authority:** 5 U.S.C. 553; 49 U.S.C. 13102, 13301, 13704, 13707, 14104, 14706, 14708; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.73.

■ 5. Amend § 375.213 by revising 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:

**Authority:** 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; Sec. 206, Pub. L. 106–159, 113 Stat. 1763; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.45 and 1.73.

■ 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.

\* \* \* \* \*

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

■ 8. The authority citation for part 387 continues to read as follows:

**Authority:** 49 U.S.C. 13101, 13301, 13906, 14701, 31138, 31139, and 31144; and 49 CFR 1.73.

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

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

(a) *Security.* (1) \* \* \*

(2) A household goods broker must have a surety bond or trust fund in effect for \$25,000 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.*

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