

## Title 49: Transportation

[Browse Previous](#) | [Browse Next](#)

### PART 371—BROKERS OF PROPERTY

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#### Section Contents

[§ 371.1 Applicability.](#)

[§ 371.2 Definitions.](#)

[§ 371.3 Records to be kept by brokers.](#)

[§ 371.7 Misrepresentation.](#)

[§ 371.9 Rebating and compensation.](#)

[§ 371.10 Duties and obligations of brokers.](#)

[§ 371.13 Accounting.](#)

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

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

#### § 371.1 Applicability.

[↑ top](#)

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

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

#### § 371.2 Definitions.

[↑ top](#)

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

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

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

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

#### § 371.3 Records to be kept by brokers.

[↑ top](#)

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

- (1) The name and address of the consignor;
  - (2) The name, address, and registration number of the originating motor carrier;
  - (3) The bill of lading or freight bill number;
  - (4) The amount of compensation received by the broker for the brokerage service performed and the name of the payer;
  - (5) A description of any non-brokerage service performed in connection with each shipment or other activity, the amount of compensation received for the service, and the name of the payer; and
  - (6) The amount of any freight charges collected by the broker and the date of payment to the carrier.
- (b) Brokers shall keep the records required by this section for a period of three years.
- (c) Each party to a brokered transaction has the right to review the record of the transaction required to be kept by these rules.

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

### **§ 371.7 Misrepresentation.**

[↑ top](#)

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

(b) A broker shall not, directly or indirectly, represent its operations to be that of a carrier. Any advertising shall show the broker status of the operation.

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

### **§ 371.9 Rebating and compensation.**

[↑ top](#)

(a) A broker shall not charge or receive compensation from a motor carrier for brokerage service where:

- (1) The broker owns or has a material beneficial interest in the shipment or
- (2) The broker is able to exercise control over the shipment because the broker owns the shipper, the shipper owns the broker, or there is common ownership of the two.

(b) A broker shall not give or offer to give anything of value to any shipper, consignor or consignee (or their officers or employees) except inexpensive advertising items given for promotional purposes.

#### **§ 371.10 Duties and obligations of brokers.**

[↑ top](#)

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

[45 FR 68943, Oct. 17, 1980, as amended at 62 FR 15421, Apr. 1, 1997]

#### **§ 371.13 Accounting.**

[↑ top](#)

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

[45 FR 68943, Oct. 17, 1980]