



A Freight Broker's Guide to Regulations and Compliance

Apart from the day-to-day tasks, a freight broker must regularly put in efforts to maintain relationships with carriers and shippers, market your business, network with other brokers, and — of course — work on developing your services. No wonder compliance can be such a challenge.

Yet, staying on top of freight broker compliance requirements, such as the Food Safety Rules recently adopted, or renewing your surety bond on time, is essential. Failing to do so can cost you time, money and other resources.

Read on for a list of some of the main compliance requirements you need to be aware of when doing business as a freight broker.

Freight Broker Compliance Requirements

The main compliance requirements which every freight broker must be acquainted with from the start are set out in the Code of Federal Regulations (CFR), Part 371 - Brokers of Property. The CFR spells out a number of general requirements for brokers to comply with, along with a number of special rules for household goods brokers.

The general requirements that brokers must comply with can be summed up as an obligation to keep records of transactions, avoid misrepresentation, not charge carriers in specific instances, and correctly account for their revenues and expenses.

Read on below for a brief explanation of each of these requirements. You can also find a detailed explanation of these in the freight broker compliance guide from Lance Surety Bonds.

1. Keeping Records

The CFR requires brokers to keep detailed records of all transactions they have for a period of three years. Such records need to include the name and address of the consignor, the motor carrier, the bill of lading, and the amount of money received by the broker in return for their services. These records must also be available to be reviewed by anyone who has been part of such a transaction.

2. Avoiding Misrepresentation

According to §371.7 of the CFR, freight brokers have a duty to avoid misrepresenting themselves as performing the services of a carrier in any way. Any advertisement conducted by a broker needs to clearly state that they perform brokerage services.

Brokers are also required to perform and offer services only in the name they are registered with at the Federal Motor Carrier Safety Administration (FMCSA).

3. Not Charging Carriers

Brokers are not allowed to charge carriers for services in which the broker owns or has an interest in the shipment being transported by carriers. This also applies to instances in which brokers own or are owned by the shipper, and can exercise control over the shipment. Brokers are also not allowed to offer or give anything of value to shippers apart from inexpensive marketing materials.

4. Correct Accounting

Finally, according to §371.13, brokers must also properly account for their expenses and revenues in instances in which they engage in other forms of business. Revenues and expenses that are part of the brokerage services offered must be clearly distinguished and separated from the rest of the revenues and expenses or must be allocated on an equitable basis when they are shared.

5. Rules for Household Goods Brokers

The CFR also includes a whole section on special rules for household goods brokers. In summary, this section addresses questions related to:

- The carriers such a broker can do business with
- The information they need to display in advertisement
- The information they must provide shippers with, and
- The rules on maintaining written agreements with carriers

Since these rules are at times quite detailed, household goods brokers are advised to take the time to read Subpart B of Part 371 of the CFR, and familiarize themselves with it thoroughly.

Food Safety Rules

An important rule that freight brokers need to comply with as well is the Sanitary Transportation of Human and Animal Food Rule which the Food and Drug Administration (FDA) issued in mid-2016. The rule became effective on April 6, 2017 for shippers and brokers with more than 500 employees or carriers with \$27.5m in annual receipts or more.

While the bulk of this rule is addressed to shippers and carriers, brokers too are required to comply with it, due to the language of the rule, which in its definition of "shipper" also includes freight brokers. The rule includes four general areas of compliance: the vehicles and transportation equipment; the transportation operations; the training of employees; and record-keeping.

The role of brokers in complying with these rules will be to make sure that all their employees are familiar with them in detail. In turn, employees who work with shippers and carriers will need to make sure to check or request that such partners are in compliance with these rules. According to the FDA, brokers also need to establish clear procedures and policies about how they will secure such compliance.

Since the Final Rule may be complex in its requirements and recommendations, the FDA has recently also created a “Small Entity Compliance Guide.” The document is recommended for brokers who have to meet the April 6, 2018 compliance deadline and are in need of further directions.

FR Title 49 - Transportation is one of fifty titles comprising the United States [Code of Federal Regulations](#) (CFR). Title 49 is the principle set of rules and regulations (sometimes called [administrative law](#)) issued by the Departments of [Transportation](#) and [Homeland Security](#), [federal agencies of the United States](#) regarding [transportation](#) and transportation related security. This title is available in digital and printed form, and can be referenced online using the [Electronic Code of Federal Regulations](#) (e-CFR).

History

The table of contents, as reflected in the e-CFR updated February 18, 2014, is as follows:^[2]

Volume	Chapter	Parts	Regulatory Entity
1		<u>1-99</u>	Subtitle A--Office of the Secretary of Transportation
2	I	<u>100-177</u>	Pipeline and Hazardous Materials Safety Administration, <u>Department of Transportation</u>
3		<u>178-199</u>	Pipeline and Hazardous Materials Safety Administration, Department of Transportation
4	II	<u>200-299</u>	Federal Railroad Administration, Department of Transportation

5	III	<u>300-399</u>	Federal Motor Carrier Safety Administration, Department of Transportation
6	IV	<u>400-499</u>	Coast Guard, <u>Department of Homeland Security</u>
	V	<u>500-571</u>	National Highway Traffic Safety Administration, Department of Transportation
7		<u>572-599</u>	National Highway Traffic Safety Administration, Department of Transportation
	VI	<u>600-699 (GPO)</u>	<u>Federal Transit Administration</u> , Department of Transportation
	VII	<u>700-799</u>	National Railroad Passenger Corporation (AMTRAK)
	VIII	<u>800-999</u>	National Transportation Safety Board
8	X	<u>1000-1199</u>	Surface Transportation Board, Department of Transportation
9		<u>1200-1399</u>	Surface Transportation Board, Department of Transportation
	XI	1400-1499 [Reserved]	Research and Innovative Technology Administration, Department of Transportation
	XII	<u>1500-1699</u>	Transportation Security Administration, Department of Homeland Security

Title 49 371 Property Broker Link :

<https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&ty=HTML&h=L&mc=true&=PART&n=pt49.5.371>

§371.2 Definitions.

- (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.

- (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.

§371.7 Misrepresentation.

(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.

§371.9 Rebating and compensation.

(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.

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.

§371.13 Accounting.

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.