



# TRADE ROANOKE HUSCHBLACKWELL

## Protecting Your Company – New Rules Freight Brokers Need to Know

### Post Webinar Q&A

**Q:** How does one obtain a copy of the [Best Practices in Carrier Selection](#) document?

**A:** Click on link above.

**Q:** Please define “All Persons.”

**A:** ‘All Persons’ is a legal term meaning all legal entities including such entities as a sole proprietor, a corporation, a partnership and individuals.

**Q:** If the company has a permit, does everyone in the company that arranges freight need to have a permit?

**A:** No. Individuals do not need to have a permit if they are employees of a property broker that already holds a permit unless it’s the sole proprietor as noted above. However, employees of sole proprietors can also act as a property broker on behalf of the sole proprietor.

**Q:** When a parent company has a property broker permit but the subsidiary is a customs broker, does the subsidiary need a permit as well or are they covered under the parent company’s permit?

**A:** It depends upon how ‘subsidiary’ is defined. If the customs broker is a separate legal entity and performing interstate surface transportation that is not within the ‘exceptions’ as outlined in the webinar, then yes, the CHB would fall within the scope of the FMCSA authority. From a practical standpoint, clients with similar structures will have all surface transportation performed by the entity that is properly permitted/licensed.

**Q:** Just to be clear, should domestic freight forwarders have a property broker permit?

**A:** The primary difference between domestic freight forwarders and property brokers is that a domestic freight forwarder is presenting themselves as a ‘carrier’ in a sense that they issue a bill of lading and assume the liability of the shipment, whereas a property broker assumes no liability and cargo moves under the truckers bill of lading. The domestic freight forwarder may also assemble and consolidate freight. A full definition can be found here: <http://www.fmcsa.dot.gov/faq/what-are-definitions-motor-carrier-broker-and-freight-forwarder-authorities-0>. Depending upon the services you provide, you may need up to three authorities, property broker, domestic freight forwarder, and household goods broker. Fortunately, one bond will support all three authorities if they are all under the name of the same legal entity.

**Q:** Is an exporter and/or importer also considered as ‘all persons’ as they are responsible for engaging with forwarders/brokers?

**A:** No, an importer or exporter does not need an FMCSA authority as long as the activities of the exporter and/or importer do not fall within the scope of FMCSA authority while directing the domestic transportation of its own freight. However, some large importers and exporters may have their own logistics group and if that group is moving freight of others for a fee, then yes they are required to carry the applicable FMCSA authority.

**Q:** Do terms of sale apply at all? (e.g., FCA Port versus EXW, etc.)

**A:** For transport intermediaries like international freight forwarders and customs brokers, terms of sale as they apply to international shipments will help guide them in determining which shipments may fall within the scope of the FMCSA authority. For example, an ocean import shipment moving on terms of sale ending at the port of entry in the United States with a subsequent domestic move as directed by the international forwarder or customs broker, would likely fall within the scope FMCSA’s authority and the ‘exceptions’ would not apply. But the best indicator of FMCSA authority is the applicable bill of lading.

## Post Webinar Q&A, continued

**Q: If we are moving freight through multiple states, do we need a permit for EACH state?**

**A:** No. FMCSA is a federal entity.

**Q: If one is already registered as a surface freight forwarder (SFF), does one have to register as a broker of property? (MAP-21 does not specifically state that that an SFF can not engage in broker of property activities and conversely it does not state they can).**

**A:** A full definition of the different activities can be found here: <http://www.fmcsa.dot.gov/faq/what-are-definitions-motor-carrier-broker-and-freight-forwarder-authorities-0>. While MAP 21 may not specifically state that an SFF cannot engage in broker of property activities, the fact that there are two separate authorities and that FMCSA has acknowledged that the financial responsibility of both activities can be covered under one bond, leads us to believe that FMCSA requires a domestic surface forwarder to carry the property broker authority if that entity acts as a property broker. From a practical standpoint, the cost of an added authority is \$300, so the cost for compliance is minimal. This is further confirmed by the fact that FMCSA made it very clear in MAP-21 that even motor carriers when acting as a property broker need to have a permit.

**Q: What is the approximate cost of the property broker bond?**

**A:** That depends on the entity's financial condition and other factors. Consider the bond more like a loan than insurance as the surety may pay on the entities behalf and then will seek reimbursement from the entity. Therefore, the surety wants a reasonable expectation that the entity can reimburse. To obtain specific pricing for your company, speak with your Roanoke Trade representative or call 1-800-ROANOKE.

**Q: Is Roanoke a process agent?**

**A:** Roanoke is not a process agent. A process agent is a representative upon whom court papers may be served in any proceeding brought against a motor carrier, broker or freight forwarder. Either the applicant or process agent, on behalf of the applicant, can file Form BOC-3 (designation of process agents) with the FMCSA. One process agent can provide all the state designations on your behalf and the service fee for the Process Agency is approximately \$50 per authority. Note that this is a one-time charge, not an annual charge.

**Q: Is there a way for a motor carrier to verify that the freight forwarder has a permit or is asking and obtaining a copy enough?**

**A:** Yes, the FMCSA has a public access website and licensing and insurance information can be found here: [http://li-public.fmcsa.dot.gov/LIVIEW/pkg\\_carrquery.prc\\_carrlist](http://li-public.fmcsa.dot.gov/LIVIEW/pkg_carrquery.prc_carrlist) along with carrier safety statistics found here: <http://safersys.org/CompanySnapshot.aspx>. Monitoring your carriers insurance and safety information is a responsibility of all domestic surface forwarders and property brokers to ensure they do not take on the liability of truck accidents involving their freight. As this information is publicly available there is no defense on the part of the forwarder or broker that they were unaware of unsatisfactory safety ratings or lapses and/or inadequate insurance. Please refer to the [\*Best Practices in Carrier Selection\*](#) for more details.

**Q: Are you protected in any way if an application and bond has been filed but permit has not been issued?**

**A:** No, you do not have authority and the bond will not be applicable until which time your authority is in place.

**Q: How long does it take to go through the process and receive the actual permit?**

**A:** The authority application and bond application process can take as little as two days.

**Q: Does an intrastate trucking arrangement require a property broker permit for customs brokers?**

**A:** Most likely yes if the customs broker is arranging domestic surface transportation that does not fall within the narrow scope of the 'exceptions' and the cargo is destined to or originates from outside one state.

## Post Webinar Q&A, continued

**Q: NVOCCs /OTIs move cargo interstate from foreign ports as part of our international service as a continuation or “substituted service,” hence, should it be entitled to the same exception?**

**A:** If the transportation begins at an inland point on an export or ends at an inland point on an import, and the underlying bill of lading clearly indicates an inland point as where the transport begins or ends, it would be excepted from the FMCSA requirement. However if an OTI handles any port to port moves, these would require a property broker permit.

**Q: Regarding the question of liability, wherein officers are jointly and severally liable to claims, is there a statute of limitation or legal exceptions if the company, at the time of violation do not have the property bond?**

**A:** The statute of limitations is two years.

**Q: Is Puerto Rico considered interstate?**

**A:** YES: Puerto Rico is considered part of the U.S. Interstate Highway System and is regulated by FMCSA. All shipments which involve transport in the foreign commerce either as imports or exports require that they be handled with a property broker permit. Cargo originating in the Continental U.S. and shipped to Puerto Rico is considered interstate transportation; therefore, the arranging for delivery of this cargo to an inland point in Puerto Rico also requires an FMCSA property broker permit.

To learn more about more about legal or insurance issues related to the transportation of freight...

Contact:



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