at the time of the application or identify the station that has aired or is airing the same or a similar programming lineup at the same resolutions on the same type of facility (individual or shared), as well as that station's lineup (with resolutions). This Exhibit must be placed on the applicant's public website or in the applicant's online public inspection file if the station does not have a dedicated website, with a link provided in the application. This information is consistent both with that currently collected in STA applications and the approach identified in the Next Gen TV *Multicast Licensing FNPRM.* As with broadcast licenses generally, modifications to this license application or its accompanying exhibit (with respect to the primary or multicast streams) must be preceded by the filing and approval of a new application. Changes to the affiliation or content of a stream, or the elimination of a stream, however, do not implicate the concerns raised in this proceeding if they would not result in the use of additional capacity and if information about the change is easily available to the public. Therefore, in order to streamline this process for both broadcasters and the Commission, such changes may be implemented without prior Commission approval. They need only be reflected in a timely update to the Exhibit that the applicant makes available on its public website or in the applicant's online public inspection file and in an email notice to the Chief of the Media Bureau's Video Division. The new information collection requirements are contained in §§ 73.3801(f) and (i), 73.6029(f) and (i), and 74.782(g) and (j) of the Commission's rules.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–25305 Filed 11–15–23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 386 and 387

[Docket No. FMCSA–2016–0102]

RIN 2126–AC10

Broker and Freight Forwarder Financial Responsibility

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FMCSA amends the regulations pertaining to financial responsibility requirements for brokers of property and freight forwarders in five separate areas: assets ''readily available''; immediate suspension of broker/freight forwarder operating authority; surety or trust responsibilities in cases of broker/freight forwarder financial failure or insolvency; enforcement authority; and entities eligible to provide trust funds for brokers and freight forwarders, which are filed using Form BMC–85, Broker's or Freight Forwarder's Trust Fund Agreement under 49 U.S.C. 13906 or Notice of Cancellation of the Agreement.

DATES:

Effective date: This regulation is effective January 16, 2024.

Expiration dates: Section 387.307T, which contains the current regulations on broker of property surety bonds or trust funds, expires as of January 16, 2025.

Section 387.307, which contains the revised regulations on broker of property surety bonds or trust funds, is stayed until January 16, 2025.

Compliance dates: Brokers, surety providers, and financial institutions must comply with the provisions regarding immediate suspension, financial failure or insolvency, and enforcement authority on January 16, 2025.

Brokers, surety providers, and financial institutions must comply with the provisions regarding assets readily available and entities eligible to provide trust funds for Form BMC–85 trust fund filings on January 16, 2026.

Petition submittal date: Petitions for reconsideration of this final rule must be submitted to the FMCSA Administrator no later than December 18, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey L. Secrist, Chief, Registration, Licensing, and Insurance Division, Office of Registration, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 385–2367, *Jeff.Secrist@dot.gov.* If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION: FMCSA organizes this final rule as follows:

I. Availability of Rulemaking Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2016-0102/document* and choose the document to review. To view comments, click this final rule, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations at U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Executive Summary

A. Summary of Major Provisions

This final rule modifies the following five regulatory areas relating to broker and freight forwarder financial responsibility:

Assets Readily Available. In the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141, 126 Stat. 405, 822, MAP–21), Congress mandated that broker/freight forwarder trust funds consist of ''assets readily available to pay claims without resort to personal guarantees or collection of pledged accounts receivable,'' (49 U.S.C. 13906(b)(1)(C), (c)(1)(D)). The Agency adopts a definition of *assets readily available* that both implements the statutory requirement and is reasonable for the Agency to administer. The final rule sets out a list of the acceptable asset types a BMC–85 trust may contain. FMCSA has determined that these asset types are readily available because they are stable in value and can be easily liquidated within 7 calendar days of an event that triggers a payment from the trust.

Immediate Suspension of Broker/Freight Forwarder Operating Authority. Pursuant to this final rule, when a broker or freight forwarder's available financial security falls below $75,000, FMCSA may suspend its operating authority registration. A broker's or freight forwarder's ''available financial security'' may fall below $75,000 because a broker or freight forwarder consents to a drawdown, or if a broker or freight forwarder does not respond to a valid notice of claim from a surety or trust provider, or if a claim against the broker or freight forwarder is converted to a judgment. If the available financial security falls below $75,000 and the broker or freight forwarder does not replenish funds within 7 calendar days after notice from FMCSA, the Agency will issue a notification of suspension of operating authority to the broker or freight forwarder. The Agency intends to use its forthcoming Unified Registration System (URS) platform to receive information from surety providers, trustees, brokers, and freight forwarders and to administer FMCSA's responsibilities regarding immediate suspension of operating authority registration.

Surety or trust responsibilities in cases of broker/freight forwarder financial failure or insolvency. FMCSA defines *financial failure or insolvency* as any payment made or other default pursuant to § 387.307(e)(1), the regulatory provision that addresses the situations under which a broker or freight forwarder's operating authority may be immediately suspended, which the broker or freight forwarder does not cure in accordance with § 387.307(e)(5) or (6). This rule requires that if the surety/trustee becomes aware that a broker or freight forwarder is experiencing financial failure or insolvency, it must notify FMCSA and initiate cancelation of the financial responsibility. FMCSA will then publish a notice of failure in the FMCSA Register.[1]

If the broker or freight forwarder subsequently cures the default, and the surety company or financial institution reinstates the bond or trust or the broker or freight forwarder obtains a new bond or trust, FMCSA will lift the suspension notice and update the FMCSA Register.

As with the immediate suspension provision, FMCSA intends to use the forthcoming URS platform to receive information and carry out its own responsibilities under this provision.

Enforcement Authority. With this rule, FMCSA implements the requirement in MAP–21 for suspension of a surety or trust fund provider's authority in certain circumstances. The Agency will first provide notice of the suspension to the surety/trust fund provider, followed by 30 calendar days for the surety or trust fund provider to respond before a final Agency decision is issued. The Agency also adds monetary penalties and a statutorily mandated suspension in 49 Code of Federal Regulations (CFR) part 386, appendix B, for violations of the new requirements.

Entities Eligible to Provide Trust Funds for BMC–85 Filings. In this rule, FMCSA removes loan and finance companies from the list of providers eligible to serve as BMC–85 trustees, because this type of institution is not subject to the rigorous Federal regulations applicable to chartered depository institutions or to the state regulations applicable to insurance companies. Loan and finance companies will now be prohibited from offering BMC–85 trusts unless they obtain certification to operate as another type of financial institution that remains on the list of eligible providers in § 387.307(c).

B. Costs and Benefits

Brokers and freight forwarders, surety bond and trust fund providers, and the Federal Government will incur costs for compliance and implementation. The quantified costs of the rule include notification costs related to a drawdown on a surety bond or trust fund, and immediate suspension proceedings, FMCSA costs to hire new personnel, and costs associated with the development and maintenance of the BMC–84/85 Filing and Management Information Technology (IT) System. As shown in Table 1, FMCSA estimates that the 10-year cost of the rule will total $5.5 million on an undiscounted basis, $3.9 million discounted at 7 percent, and $4.7 million discounted at 3 percent (all in 2022 dollars). The annualized cost of the rule will be $559,971 discounted at 7 percent and $556,786 discounted at 3 percent. Ninety-eight percent of the costs will be incurred by the Federal Government.

TABLE 1—TOTAL COST OF THE RULE

Year	Undiscounted				Discounted	
	Brokers and freight forwarders	Financial responsibility providers	Federal govt.	Total [a]	Discounted at 7%	Discounted at 3%
2025	$2,500	$3,700	$706,700	$712,900	$666,300	$692,100
2026	2,700	4,000	526,800	533,500	466,000	502,900
2027	2,900	4,400	526,800	534,100	436,000	488,800
2028	3,200	4,800	526,900	534,900	408,100	475,300
2029	3,500	5,200	527,000	535,700	381,900	462,100
2030	3,800	5,700	527,100	536,600	357,600	449,400
2031	4,200	6,300	527,200	537,700	334,900	437,200
2032	4,600	6,800	527,300	538,700	313,500	425,300
2033	5,000	7,500	527,400	539,900	293,700	413,800

[1] The FMCSA Register is available at: *https://li-public.fmcsa.dot.gov/LIVIEW/pkg_menu.prc_menu.*

TABLE 1—TOTAL COST OF THE RULE—Continued

Year	Undiscounted				Discounted	
	Brokers and freight forwarders	Financial responsibility providers	Federal govt.	Total [a]	Discounted at 7%	Discounted at 3%
2034	5,500	8,200	527,500	541,200	275,100	402,700
Total	38,000	56,500	5,450,700	5,545,200	3,933,100	4,749,600
Annualized					559,971	556,786

[a] Total cost values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).

This rule will result in benefits to motor carriers. FMCSA is aware that some brokers choose to withhold payment to motor carriers for services rendered. Motor carriers can then submit claims to the financial responsibility provider to receive payment. If the financial responsibility provider has received claims against an individual broker that exceed $75,000, the financial responsibility provider will often submit the claims to a court in an interpleader action [2] to determine how to allocate the broker bond or trust fund. The interpleader process can be costly and time consuming for motor carriers, and generally results in motor carrier claims being paid pro rata, depending on the number of claims against the broker bond or trust fund. FMCSA believes that most brokers operate with integrity and uphold the contracts made with motor carriers and shippers. However, a minority of brokers with unscrupulous business practices can create unnecessary financial hardship for unsuspecting motor carriers.

FMCSA is relying on available data from which to draw an estimated percentage of how many brokers fail to pay motor carriers. The Agency's best estimate is that approximately 1.3 percent of brokers (totaling approximately 429 in 2022) [3] will experience a drawdown on their surety bond or trust fund within a given year, with average claim amounts of approximately $1,900 per claim submitted. Of these brokers, 18 percent may receive total claims in excess of $75,000, potentially leading to interpleader proceedings. Because this data is limited in scope, FMCSA cannot quantify benefits resulting from this rule. It is FMCSA's intent that the provisions in this rule will mitigate the need to initiate interpleader proceedings and alleviate the concern caused by broker non-payment of claims.

III. Abbreviations

ANPRM Advance Notice of Proposed Rulemaking
ATA American Trucking Associations
ATA–MSC ATA Moving and Storage Conference
CFR Code of Federal Regulations
DOT Department of Transportation
E.O. Executive Order
FDIC Federal Deposit Insurance Corporation
FMCSA Federal Motor Carrier Safety Administration
FR Federal Register
ILC Irrevocable Letters of Credit
ITSA International Trade Surety Association
MAP–21 The Moving Ahead for Progress in the 21st Century Act
NAICS North American Industry Classification System
NCCDB National Consumer Complaint Database
NCUA National Credit Union Association
NPRM Notice of Proposed Rulemaking
OMB Office of Management and Budget
OOIDA Owner-Operator Independent Drivers Association
PFA Pacific Financial Association, Inc. and PFA Transportation Insurance & Surety Services
SBA Small Business Administration
SFAA The Surety & Fidelity Association of America
TIA Transportation Intermediaries Association
UMRA The Unfunded Mandates Reform Act of 1995
URS Unified Registration System
U.S.C. United States Code

IV. Legal Basis for the Rulemaking

In 2012, Congress enacted MAP–21 (Pub. L. 112–141, 126 Stat. 405, 822), section 32918, which contained requirements for the financial security of brokers and freight forwarders in amendments to 49 U.S.C. 13906(b) and (c). Section 32918(b) of MAP–21 (note to 49 U.S.C. 13906) directed the Secretary to issue regulations to implement and enforce the requirements under subsections (b) and (c) of section 13906. Authority to carry out and enforce these provisions has been delegated to the Administrator of FMCSA (49 CFR 1.87(a)(5)).

Title 49 CFR 387.403T(c), concerning freight forwarder surety bonds and trust funds, provides that the requirements applicable to broker of property surety bonds and trust funds in § 387.307 also apply to the surety bond or trust fund required of freight forwarders. Therefore, any time this rule and this preamble refer to brokers, the same requirements are also applicable to freight forwarders.

V. Discussion of Proposed Rulemaking and Comments

A. Proposed Rulemaking

On January 5, 2023, FMCSA published an NPRM titled ''Broker and Freight Forwarder Financial Responsibility'' in the **Federal Register** (Docket No. FMCSA–2016–0102, 88 FR 830). The NPRM proposed amending the regulations in five separate areas: assets readily available; immediate suspension of broker/freight forwarder operating authority; surety or trust responsibilities in cases of broker/freight forwarder financial failure or insolvency; enforcement authority; and entities eligible to provide trust funds for Form BMC–85 trust fund filings.

B. Comments and Responses

FMCSA solicited comments for a total of 90 days. On March 8, 2023, FMCSA announced that it would be holding a listening session on this rulemaking and other broker related matters in conjunction with the Mid-America Trucking Show in Louisville, KY on March 31, 2023, and the Agency extended the public comment period until April 6, 2023 (88 FR 14439).[4]

[2] ''By definition, interpleader is a suit to determine a right to property held by a disinterested third party who is in doubt about ownership and who deposits the property with the court so that interested parties can litigate ownership.'' *Scottrade, Inc.* v. *Davenport,* No. CV–11–03–BLG–RFC, 2011 WL 153999, at *1 (D. Mont. Apr. 21, 2011).

[3] See Table 4 of the Regulatory Impact Analysis (RIA) which is available in the Docket for this rulemaking for further detail.

[4] The public listening session was recorded and is available at: *https://www.youtube.com/watch?v=*

By April 6, the deadline for submitting responses to the NPRM, FMCSA received 340 unique comments, including Air & Expedited Motor Carriers Association (AEMCA), Airforwarders Association (AfA), the American Trucking Associations Moving and Storage Conference (ATA–MSC), Auto Haulers Association of America (AHAA), American Home Furnishings Alliance (AHFA), Apex Capital Corp, Avalon Risk Management Insurance Agency LLC (Avalon), Alliance for the Safe, Efficient and Competitive Truck Transportation (ASECTT), International Trade Surety Association (ITSA), Liberty National Financial Corporation (Liberty), National Association of Small Trucking Companies (NASTC), National Owner Operators Association, Owner-Operator Independent Drivers Association (OOIDA), Pacific Financial Association, Inc. and PFA Transportation Insurance & Surety Services (PFA), Pinnacle Financial Partners/Pinnacle Bank, Sompo International, Specialized Furniture Carriers, The Surety & Fidelity Association of America (SFAA), The Expedite Association of North America (TEANA), Transportation Intermediaries Association (TIA), Transportation & Logistics Council (T&LC), Transportation & Loss Prevention and Security Association (TLP&SA), approximately 30 private and family-owned businesses, and approximately 300 individuals.

1. Assets Readily Available

In the NPRM, FMCSA proposed a list of prohibited asset types. FMCSA also specified that the ability to liquidate an asset within 7 calendar days of the event that triggers a payment from the trust is necessary for that asset to be considered readily available.

Comments: FMCSA received feedback from private citizens, owner-operators, and trade associations on this proposed provision. The majority of commenters agreed that acceptable assets should be issued by banks insured by the Federal Deposit Insurance Corporation (FDIC) and have the capacity to be liquidated within 7 calendar days. However, most commenters disagreed with FMCSA's decision to publish only a list of prohibited assets. For example, the ATA–MSC, ITSA, TIA, and OOIDA each suggested that the Agency instead provide a list of acceptable assets, including those that would be acceptable under trusts. ATA–MSC stated that this would eliminate any ambiguity and set a standard for the Agency's expectations.

TIA expressed concern that fraudulent companies might ''seek a potential asset that isn't on the list and note that it is 'readily available' due to the fact it isn't included on the Agency's list of non-compliant assets.'' Similarly, PFA stated that including a list of prohibited assets could encourage financial institutions to create new asset classes in an attempt to circumvent the regulations.

PFA interpreted the proposed provision, in conjunction with other proposed provisions in the rule, as limiting allowable assets to cash and irrevocable letters of credit (ILC). OOIDA suggested that the only sufficient trust/surety funding sources should be cash and an ''unconditional FDIC-insured letter of credit.'' [5]

FMCSA Response: After considering the comments addressing this topic, FMCSA determined that prescribing a list of allowable assets, instead of prohibited assets, would benefit stakeholders by clearly articulating what assets the Agency deems acceptable. FMCSA proposed a list of prohibited assets in an attempt to strike a balance between the needs of brokers—particularly small businesses—and the goal of protecting motor carriers and shippers. However, FMCSA acknowledges that brokers may find it easier to comply with the regulations if they know the specific asset classes FMCSA deems acceptable.

FMCSA has therefore determined that cash, ILCs issued by a Federally insured depository institution, and Treasury bonds will constitute the acceptable categories of assets readily available. FMCSA considers this to be the broadest range of assets that meet the criteria set by Congress in MAP–21. Other asset classes such as real estate are not sufficiently liquid, while stocks, non-Treasury bonds, and other securities involve significant risk to the investor, and therefore none of these asset classes can be considered readily available. FMCSA also shares commenters' concerns about the potential use of assets that are not included in a list of prohibited assets, but which would nevertheless not meet the statutory mandate. FMCSA believes the listed asset classes will not require the Agency or trust fund providers to expend resources on continual monitoring and valuation to ensure the trusts remain compliant.

2. Immediate Suspension of Broker/Freight Forwarder's Operating Authority

FMCSA proposed suspending a broker/freight forwarder's operating authority when its available financial security falls below $75,000 and the broker or freight forwarder fails to replenish funds within 7 calendar days. This process would be triggered when there is a drawdown on the broker or freight forwarder's surety bond or trust fund, meaning when (1) a broker or freight forwarder consents to the drawdown and the instrument value drops below $75,000; (2) a broker or freight forwarder does not respond to adequate notice of a claim by a surety or trust fund provider, and the surety or trust provider pays the claim, and the instrument value drops below $75,000; or (3) a claim is reduced to a judgment, the surety or trust fund provider pays the judgment, and the instrument value drops below $75,000. A surety would be permitted to pay a claim either with the consent of the broker, when the broker fails to respond to a notice of claim within 14 calendar days, or when there is a judgment against the broker or freight forwarder.

Suggestions To Modify the Required Financial Security Amount

Comments: FMCSA received over 50 comments addressing this provision, including from brokers, owner-operators, and trade associations. Many commenters who identified as owner-operators and motor carriers expressed their full support for FMCSA's proposal to suspend a broker or freight forwarder's operating authority if they fail to meet the financial security requirements. A total of 20 individual commenters stated that the surety amount of $75,000 is too low and should be raised to meet inflation rates. The Agency received suggestions to raise the required amount to a minimum of $95,000, while others suggested $100,000, $250,000, or an amount reflecting the broker or freight forwarder's quarterly revenue. The commenters contend that such an increase would prevent fraudulent brokers while providing drivers and owner-operators assurance that they will be compensated for their services. These individuals also expressed the view that a higher surety minimum would improve the chances of receiving a higher percentage of pro rata payment when such situations arise. In their second comment, OOIDA mentioned that the MAP–21 legislation had previously raised the bond amount, which did not resolve the problem of unscrupulous brokers stealing

hgyKepEyoG0. A transcript is available at: *https://www.regulations.gov/document/FMCSA-2016-0102-0434.*

[5] Docket No. FMCSA–2016–0102–0178 at p. 2. FMCSA interprets this to mean an ILC.

transportation services that exceeded the bond minimum.

Five commenters, including those who identified as brokers and small business owners, stated that $75,000 is too high and should not be implemented for small businesses. These commenters stated this minimum will make it challenging for them to start a brokerage company or to remain in business. One commenter proposed reducing the required amount to $5,000.

FMCSA Response: As part of MAP–21, Congress raised the minimum required financial responsibility amount from $25,000 to $75,000 for household goods brokers and from $10,000 to $75,000 for all other brokers of property. The statute states that brokers ''shall provide financial security of $75,000 for purposes of this subsection, regardless of the number of branch offices or sales agents of the broker'' (49 U.S.C. 13906(b)(3)). In the NPRM, FMCSA did not propose changing the financial responsibility requirements, and therefore views these comments as outside the scope of the proposed rule.

Timing of When the Available Financial Security Falls Below the Required Minimum

Comments: Many stakeholders commented on FMCSA's proposal regarding when an entity's available financial security will be considered to have fallen below $75,000. ITSA supported the triggering event being an actual drawdown of funds which results in a security balance lower than $75,000. Many other commenters expressed concerns about FMCSA's proposal or opposed it entirely.

Avalon and TIA both stated that FMCSA's use of the word ''or'' in proposed § 387.307(e) suggested that sureties ''are free to make an independent determination on valid claims and make payments irrespective of the current regulations which require the claimants to obtain a judgment.'' [6] Both commenters proposed adding language to the regulation that permits immediate suspension when a broker or freight forwarder fails to adhere to the terms of its contract with the surety or financial institution.

PFA opposed the concept of a drawdown, stating that ''[m]aking a payment from the surety bond or trust fund without regard to other possible claims is in direct contradiction to 49 U.S.C. 13906 9(b)(6) [sic] and violates the Fair Claim Practices of several state Departments of Insurance.'' [7] PFA largely agreed with the language proposed by Avalon and TIA, with minor changes. Liberty National Financial Corporation (Liberty) also opposed limiting the definition to an actual drawdown, stating, ''[f]rom a practical standpoint, if a broker creates an 'inevitable' (versus 'actual') drawdown against its BMC–85 trust fund, that broker should just as well be cancelled . . . because, when legitimate claims are coming in, there is no practical distinction between a broker who cannot pay, and a broker who will not pay, and a broker who gives the run-around, and the broker who goes incommunicado. . . .'' [8]

FMCSA Response: After considering all the comments on this issue, FMCSA has determined that a bond or trust fund should be considered to have fallen below $75,000 when either an actual drawdown occurs, or when the surety provider or financial institution receives legitimate claims that have not been adequately addressed by the broker and will inevitably result in the bond or trust fund falling below that amount. Expanding the criteria in this manner will allay concerns from surety providers and financial institutions about their ability to quickly notify FMCSA of brokers warranting suspension while still adhering to the 60-day period for public advertisement and subsequent 30-day period for paying claims specified in 49 U.S.C. 13906(b)(6). This is because surety providers and financial institutions will not be required to actually make a payment from the bond or trust fund before notifying FMCSA that the assets have fallen below $75,000, and will thus be able to continue aggregating claims throughout the statutory claims period.

FMCSA did not include the language requested by Avalon, TIA, and PFA that would consider available financial security to fall below the minimum required amount when the broker or freight forwarder fails to adhere to the terms of its contract with the surety or financial institution, as it could potentially create due process concerns. FMCSA does not have authority to adjudicate such contract disputes, which may occur for reasons having nothing to do with the required financial security.

Notification Processes and Requirements

Comments: The Agency received numerous comments from trade organizations requesting specifics on when and how they will be notified if the status of a broker's financial security changes. OOIDA suggested providing a clearer definition of ''adequate notice'' and encouraged the Agency to strengthen its final rule by providing details on how the Agency will provide notice that a broker's financial security has fallen below the required amount. An individual commenter asked how the Agency plans to receive notification that a broker's financial security status no longer meets the required financial standards.

FMCSA Response: In response to these comments, FMCSA added provisions to the regulation delineating the process for surety providers or financial institutions to notify FMCSA of changes to a broker's or freight forwarder's financial security status. Such notification must be made in writing, by electronic means, within 2 business days of either a payment from the bond or trust that causes the available financial security to fall below $75,000 or a determination by the surety provider or financial institution that such payment will be inevitable once the 60-day period for submission of claims has elapsed.

FMCSA intends that surety providers and financial institutions will use the URS platform, which is currently under development, to provide FMCSA with relevant information. Brokers will be able to submit responses using the same platform.

Timeframe To Respond to a Claim

Comments: An anonymous commenter raised concerns regarding the proposed 7-day timeframe for immediate suspension and suggested allowing adequate time to respond to a claim but did not provide any suggestions. Another commenter suggested 24 hours. OOIDA proposed a timeframe of 5 to 10 calendar days and ATA–MSC suggested a timeframe of 2 weeks. The latter explained this timeline would provide enough time for internal investigations to take place and prevent disruptions from occurring in the supply chain.

Avalon advised that 5 business days would allow enough time for the trust or surety to ''request immediate suspension'' if the broker fails to respond to a claim. They recommended that suspension upon financial failure be triggered in the event a broker fails to resolve ''a specified number of undisputed claims representing a percentage of the security after 30 days.'' [9]

FMCSA Response: In the final rule, FMCSA is adopting a timeframe for brokers and freight forwarders to

[6] Docket No. FMCSA–2016–0102–0150 at pp. 3–4.

[7] Docket No. FMCSA–2016–0102–0146 at p. 2.

[8] Docket No. FMCSA–2016–0102–0148 at p. 3.

[9] Docket No. FMCSA–2016–0102 at p. 6.

respond to a claim. After considering the suggestions proposed by the various commenters, FMCSA determined that 7 business days is appropriate. This timeframe provides an adequate interval for a broker or freight forwarder to respond. In response to ATA–MSC's concern that an internal investigation may take up to 10 business days, FMCSA notes that this provision sets the timeframe for a broker or freight forwarder to submit an initial response when notified of a claim. It does not prescribe a timeframe for the surety provider or financial institution to investigate and make a determination on the validity of the claim. However, if the surety provider or financial institution ultimately determines that the claim is valid and will be paid, it must then comply with the 2-business day reporting timeline described above.

Need for Show Cause Remedies

Comments: A commenter on behalf of 13 stakeholders stressed the need to implement show cause remedies in the process leading up to a broker or freight forwarder's operating authority suspension. They contend that documented ''due process issues and procedural protections must be met,'' [10] allowing the broker or freight forwarder to either remedy or demonstrate reasons for their noncompliance. The commenter also pointed out that this process will provide a degree of fairness and protection to victims of identity theft or fraud, which the commenter identified as a rampant problem in the industry.

On the other hand, FMCSA received a request from the Surety & Fidelity Association of America (SFAA) to refine the language by clarifying that claimants would only be entitled to payment until the investigation period has elapsed.

FMCSA Response: FMCSA has strengthened due process protections for brokers in this final rule. After a surety provider or financial institution notifies FMCSA that a broker or freight forwarder's available financial security has fallen below $75,000, FMCSA will send written notification to the broker or freight forwarder and allow 7 business days for response. If the broker or freight forwarder presents evidence that the notification from the surety provider or financial institution was sent to FMCSA in error, the available financial security has been restored to the required minimum amount, or the pending claims have been satisfied without the use of surety bond or trust fund assets, FMCSA may find that immediate suspension is not warranted. FMCSA will also allow brokers or freight forwarders to cure a default after a suspension has been implemented.

Additional Requirements Requested

Comments: FMCSA received multiple comments requesting the adoption of additional requirements following the suspension of a broker's operating authority. ATA–MSC expressed its support for FMCSA's proposal, and suggested additional requirements, ''such as requiring these entities to take down websites and advertising as well notifying motor carriers and shippers with in-progress transportation services of the change in their authority status, particularly for brokers involved in household goods.'' [11]

The National Owner Operators Association, which represents 28,000 owner-operators, stated that brokers should be fined, barred, and sanctioned to prevent bad actors from operating.

An individual owner-operator who experienced an instance of inadequate payment from a broker suggested suspension of brokers for 30 days and decreasing their credit rating. Another commenter suggested imprisoning brokers who fail to pay.

FMCSA Response: FMCSA recognizes the adverse impact on motor carriers when brokers fail to pay for services rendered and appreciates that some motor carriers would like to see more severe sanctions put in place for such brokers. Except for the suspension of operating authority adopted in this rule, these suggested penalties exceed the Agency's statutory authorities.

Inconsistencies or General Concerns With the Suspension Provision

Comments: Many trade organizations pointed to some inconsistencies in the broader scope of the immediate suspension provision and raised concerns that it relies on the broker to self-disclose bankruptcy or insolvency as evidence of financial failure.

Avalon stated that the rulemaking will not prevent brokers from accumulating claims and exceeding their financial security, which will not improve the status quo for drivers and owner-operators. Liberty advised that the proposed procedure will not resolve the broader issue of nonpayment, as it will be challenging to trigger a broker or freight forwarder's financial failure status, which may not result in the immediate suspension of their operating authority. Liberty added that ''trust funds will continue to be expended on a ''first come, serve served'' basis and leave everyone else in the cold.'' [12] TIA shared concerns that ''the proposed change might be worse than the existing rules in place.'' [13]

Additionally, OOIDA inquired about the purpose of this statutory provision ''[i]f the broker is not considered insolvent upon evidence that is has stopped paying motor carriers.'' [14] SFAA shared that concern ''that the broker will continue conducting operations even during the solicitation period, which will result in increased claims and a corresponding reduction in pro rata recovery for all claimants.'' [15]

FMCSA Response: FMCSA recognizes that relying only on filings made pursuant to Title 11, United States Code or an equivalent state insolvency proceeding as evidence of financial failure or insolvency could prevent surety companies and financial institutions from reporting in a timely manner when a broker or freight forwarder is accumulating claims. The changes FMCSA made in the final rule to the reporting requirements for immediate suspensions, as discussed above, and to the definition of *financial failure or insolvency,* discussed below, will ensure that surety providers and financial institutions can initiate the immediate suspension process more quickly once certain conditions are met. This will help reduce the risk that brokers and freight forwarders can continue accumulating claims for an extended period. These changes also ensure that surety providers and financial institutions can continue to utilize the payment provisions of either 49 U.S.C. 13906(b)(2) or (6), as applicable.

Brokers who file bankruptcy proceedings are also covered by the anti-discrimination provisions in 11 U.S.C. 525. Accordingly, FMCSA made changes in the final rule to specify that the immediate suspension procedures do not apply when a broker or freight forwarder has filed a proceeding pursuant to Title 11, United States Code, in addition to changes in the definition of *financial failure or insolvency,* as discussed below. FMCSA believes these changes remove the potential for conflicts between the Bankruptcy Code and the regulatory requirements.

3. Surety or Trust Responsibility in Case of Financial Failure or Insolvency

In the NPRM, FMCSA proposed to define the terms *financial failure and*

[10] Docket No. FMCSA–2016–0102–0147 at p. 2.

[11] Docket No. FMCSA–2016–0102–0136 at p. 5.

[12] Docket No. FMCSA–2016–0102–0148 at p. 3.

[13] Docket No. FMCSA–2016–0102–0150 at p. 4.

[14] Docket No. FMCSA–2016–0102–0178 at p. 4.

[15] Docket No. FMCSA–2016–0102–0151 at p. 5.

insolvency and *publicly advertise,* in accordance with 49 U.S.C. 13906(b)(6) and (c)(7), as well as procedures relating to the cancellation of a surety bond or trust as the result of a broker's financial failure or insolvency.

Definition of Financial Failure or Insolvency

Comments: ITSA supported the proposed definitions of financial failure and insolvency and the proposed regulatory text for § 387.307(f). However, many other commenters opposed FMCSA's proposal to define *financial failure or insolvency* as bankruptcy or state insolvency proceeding. These commenters, who included Avalon, TIA, PFA, Liberty, and SFAA, stated that FMCSA's proposal would likely worsen the problem, as a significant period often elapses between the time a broker ceases paying motor carriers and the time a bankruptcy or insolvency proceeding commences. Further, in some instances a broker will simply move on and never make such a filing, and the surety or financial institution would be prevented from initiating the Form BMC–84 or BMC–85 cancellation process despite knowing that the broker is not paying motor carriers.

Surety and trust providers expressed a need for some flexibility in making determinations about the solvency of brokers they work with. PFA noted that financial failures typically involve a broker disputing claims on invalid or unreasonable grounds, acknowledging claims but not paying them while continuing to aggregate additional claims, or booking many loads and then exiting the market without paying motor carriers. Similarly, SFAA stated, ''[o]ften, when a broker's business is failing, the surety will receive a sudden spike in claims against the bond and will not receive any response from the broker.'' [16]

Liberty stated that ''BMC–85 Trustees are claims managers—not merely claims payers. We are intermediaries, liaisons, and problem solvers between claimants and brokers.'' [17] Liberty believes trustees have expertise necessary to determine whether a broker is in financial failure and/or insolvent.

Commenters were also concerned that the use of a bankruptcy proceeding as evidence of financial failure or insolvency would violate the anti-discrimination provisions of 11 U.S.C. 525, which provides that a governmental unit may not, among other actions, deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to a person solely because the person has been a debtor under Title 11 or a bankrupt or debtor under the Bankruptcy Act.

FMCSA Response: FMCSA appreciates commenters expressing detailed perspectives on this issue. After considering the comments, FMCSA has determined that, while it is necessary to establish an objective standard for determining financial failure or insolvency, the proposed definition would limit surety providers' or financial institutions' ability to protect motor carriers from brokers who delay or refuse to initiate formal bankruptcy or insolvency proceedings. Thus, FMCSA has modified the definition of *financial failure or insolvency* to allow surety providers or financial institutions flexibility to exercise their judgment and expertise in making such a determination. FMCSA also removed the use of a filing pursuant to Title 11, United States Code from the definition.

Under the final rule, surety providers or financial institutions may cite financial failure or insolvency of the broker or freight forwarder as grounds for cancellation of a Form BMC–84 surety bond or BMC–85 trust agreement when the surety provider or financial institution either makes a payment against the bond or trust fund that is not cured in accordance with § 387.307(e)(5) or (6) or expects to make a payment after aggregating multiple claims. FMCSA intends to receive this information via the URS.

Failure To Report Insolvent Brokers

Comments: A commenter inquired what type of action the Agency will take if a trust company refuses to report an insolvent broker or advertise for claims.

FMCSA Response: FMCSA has the authority to seek specific penalties for violations of the relevant statutes and regulations under 13906(b)(7) and (c)(8). While any action FMCSA may take would depend on the specific facts and circumstances involved in a violation, nothing in this rule is intended to, nor would it, limit the scope of FMCSA's enforcement authority.

Cancellation Notice

Comments: OOIDA commented on FMCSA's proposal to publish cancellation notices in the FMCSA Register. It noted that the FMCSA Register is not ''searchable or inherently accessible'' and requested that such notice be published on FMCSA's SAFER web page and the ''Licensing and Insurance'' web page of the broker bond in question. OOIDA additionally suggested that the Agency change its Licensing and Insurance web page to provide a link to a page on the surety's or trustee's website showing how many pending claims exist on a given bond.

FMCSA Response: The FMCSA Register [18] provides to the public a daily summary of motor carrier applications for operating authority registration, as well as decisions and notices the Agency has issued regarding the status of entities operating authority. FMCSA acknowledges the concerns raised regarding the importance of cancellation notices being easily accessible to the public and, in response, has placed a link to the FMCSA Register in a more prominent location on the Agency's website [19] to make it more accessible.

FMCSA declines to include links to the sureties' or trustees' web pages, as they are not required to list pending claims on their websites. The FMCSA Register web page is a reliable resource which is updated daily to provide the public information related to operating authority registration.

Ex Parte Communication Concerning This Provision

Comment: On May 12, 2023 an individual informed FMCSA that the hypothetical situation described in their original comment [20] to the docket had in fact occurred.

FMCSA Response: FMCSA placed an ex parte memo [21] in the docket for this rulemaking to capture this information and updated the registration page to ensure that others are also aware of the situation. The Agency notes that this rulemaking is not enforceable until the compliance dates listed under the **DATES** section of this final rule.

4. Enforcement Authority

In the NPRM, FMCSA proposed to implement MAP–21's provision for suspension of a surety provider's eligibility to make filings with FMCSA by providing a notice of suspension to the surety/trust fund provider followed by 30 calendar days for the surety or trust fund provider to respond before a final decision is issued. FMCSA also proposed to add penalties in 49 CFR part 386, appendix B, for violations of the new requirements.

Comments: FMCSA received approximately 50 comments on the

[16] Docket No. FMCSA–2016–0102–0151 at p. 3.

[17] Docket No. FMCSA–2016–0102–0148 at p. 2.

[18] The FMCSA Register is accessible at *https://www.fmcsa.dot.gov/registration/daily-fmcsa-registration-decisions-letters-certificates-permits-and-licenses.*

[19] The FMCSA Register is available at *https://www.fmcsa.dot.gov/registration/daily-fmcsa-registration-decisions-letters-certificates-permits-and-licenses.*

[20] Docket No. FMCSA–2016–0102–0419.

[21] Docket No. FMCSA–2016–0102–0435.

Agency's enforcement authority over surety providers. Many of the comments received were out of scope as they addressed what the commenters perceived as a lack of provisions to combat fraud and implement transparency requirements. Two individual commenters opposed this provision urging that the Agency should not regulate the financial aspect of the trucking industry.

ATA–MSC and TIA agreed with the Agency's proposal and found the provisions reasonable. ITSA also agreed with and supported FMCSA's proposed language but suggested placing it in §§ 387.317 and 387.415, which concern FMCSA's authority to refuse to accept or to revoke surety bonds, insurance certificates, self-insurer qualifications, or other securities or agreements, instead of in § 387.307. However, if FMCSA were to keep the language in § 387.307, ITSA recommended ensuring that the citation to section 13906 of the United States Code include both subsections (b) and (c), which apply to brokers and freight forwarders, respectively.

FMCSA Response: In response to the comments about regulation of financial aspects of the trucking industry, FMCSA notes that this rulemaking stems from a Congressional mandate to implement certain provisions of MAP–21. FMCSA must, by law, regulate these aspects. In response to the comments about fraud and transparency, this rule aims to reduce fraud by limiting the time brokers can continue to accrue claims while experiencing financial failure or insolvency before their operating authority registration is suspended. These changes adopted in this rule will result in fewer motor carriers accepting loads from brokers who do not intend to pay.

Regarding ITSA's suggestion to alter the placement of the enforcement authority provision in the regulations, FMCSA believes that the proposed language fits within the scope of § 387.307 and therefore declines to make changes to other sections of part 387. FMCSA has revised the citation to section 13906 of the United States Code to include both subsections (b) and (c).

Request for More Detail

Comments: OOIDA expressed frustration that bad actors have been able to ''register, conduct transactions, and stay in business without fear of any recourse against their criminal activity'' [22] but agreed that these are necessary provisions to implement the MAP–21 requirements. It requested to see a more detailed plan demonstrating how FMCSA plans to take enforcement action.

FMCSA Response: FMCSA is dedicated to ensuring the integrity of the trucking sector and refers incidents of criminal conduct to appropriate authorities. Criminal enforcement is handled by the Office of Inspector General and the Department of Justice.

5. Entities Eligible To Provide Trust Funds for BMC–85 Filings

In the NPRM, FMCSA proposed prohibiting loan and finance companies from serving as BMC–85 trustees. FMCSA received support on this provision from driver and motor carrier trade organizations, which fully agree that loan and finance companies should not serve as BMC–85 trustees.

Assets That Can Be Used as Collateral

Comment: PFA stated that the NPRM did not address the difference between allowable assets that the trustor can use as collateral and the way in which a trust provider can invest cash provided as collateral. In response to the proposed removal of finance lenders from the list of qualified financial institutions in § 387.307(c), PFA stated that ''the only entity that will practically be able to generate a profit from issuing BMC–85s will be banks,'' [23] as insurance companies stopped taking collateral on this type of surety many years ago. Thus, any investment the trust provider made using the collateral would be overseen by State and Federal regulators.

FMCSA Response: FMCSA takes note of PFA's comment that banks will be the only type of financial institution that will be able to profit from offering BMC–85 trust funds and acknowledges that the final rule may result in some providers ceasing to offer this service. However, FMCSA believes this change is necessary because loan and finance companies are not subject to similar levels of oversight as the other entities described in § 387.307(c) and such oversight is necessary to ensure the stability of the BMC–85 trust instrument.

Concern About Small Businesses

Comments: The Agency received two comments from 1st Security Financial Corporation on FMCSA's proposed rule expressing its disagreement with disqualifying loan and finance companies as acceptable entities. The company explained this will force many small loan companies out of business and increase premiums on BMC–84 forms. 1st Security Financial Corporation added that the company abides by the MAP–21 agreement instructions by vetting brokers and publicly advertising insolvent ones, and it urged the Agency to reconsider the provision. PFA also agreed that the provision would eliminate many small businesses and reduce ''the experience of claims management in the industry'' and the number of claims that will be paid.

FMCSA Response: Consistent with the requirement for brokers and freight forwarders to maintain $75,000 in available assets, FMCSA determined that the definition of a financial institution should include only highly regulated depository institutions, insurance companies, or equivalent entities. This decision is intended to ensure that a broker's or freight forwarder's surety bond or trust fund assets remain stable, secure, and readily available.

Loan and finance companies are not depository institutions and therefore are not regulated by the Federal depository regulators, such as the Federal Reserve, Office of the Comptroller of the Currency, the FDIC, or the National Credit Union Administration (NCUA), or an equivalent State regulator.[24] They are also generally not subject to a level of State regulation comparable to insurance companies. As FMCSA is now limiting the allowable assets held in BMC–85 trusts to cash, ILCs issued by Federally insured depository institutions, and Treasury bonds, loan and finance companies are unlikely to be able to comply with these requirements. FMCSA believes the risks involved in allowing companies that are not part of highly regulated industries to administer BMC–85 trusts are incompatible with the requirement that the trust fund consist of assets ''readily available to pay claims without resort to personal guarantees or collection of pledged accounts receivable'' (49 U.S.C. 13906(b)(1)(C)).

While FMCSA recognizes that removing loan and finance companies from the list of eligible BMC–85 providers may cause some of these companies to leave the industry, ensuring that all BMC–85 trust funds are administered by highly regulated institutions is a priority for the Agency and is necessary to carry out the requirements of MAP–21. This rule change will also more closely align FMCSA's regulations with those of other

[22] Docket No. FMCSA–2016–0102–0178 at p. 5.

[23] Docket No. FMCSA–2016–0102–0146 at p. 2.

[24] See, *e.g., Introduction to Financial Services: The Regulatory Framework,* Congressional Research Service, January 5, 2023, available at *https://crsreports.congress.gov/product/pdf/IF/IF11065.*

DOT agencies. For instance, in DOT's regulations on aviation proceedings applicable to public charter security and depository agreements, a surety provider must be a bonding or surety company that is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of ''A'' or better and legally authorized to issue bonds of that type in the State in which the charter originates (14 CFR 380.34(c)(6)). A trustee must be either an FDIC-insured national bank complying with the provisions of 12 CFR 7.7010(a) or a State bank complying with applicable State laws that grant authority to issue such agreements (14 CFR 380.34(c)(7)).

In Chapter 3.3.1 of this final rule's RIA, FMCSA outlines the process and anticipated timeline for a loan and finance company to become an FDIC-insured depository institution in order to continue serving as a BMC–85 trustee. Based on that timeline, FMCSA has concluded that the 2-year implementation period for this rule is reasonable for loan and finance companies to achieve compliance if they wish to do so. Due to a lack of data on the cost of this process and the number of loan and finance companies currently serving as BMC–85 trustees, the Agency cannot determine how many loan and finance companies will choose to meet the additional requirements to remain eligible entities or, alternatively, will exit the market. Nothing in this rule prohibits loan and finance companies that wish to continue offering services to brokers and freight forwarders from taking the necessary steps to become an eligible financial institution.

6. Proposed Changes to the Regulatory Text

Comments: The Agency received additional requests from commenters to modify the regulatory text pertaining to § 387.307(a), (b), (e), and (f). Additionally, PFA suggested adding a paragraph to § 387.307 outlining penalties for suspended brokers.

ITSA recommended keeping the language in paragraph (b), which deals with evidence of financial security, as it currently exists or alternately moving it to paragraph (a), which currently concerns the security necessary. ITSA also pointed to a typographical error in the proposed rule mentioning the removal of paragraph (c)(8); it believes the Agency intended to remove paragraph (c)(7).

Avalon and PFA both proposed changes to paragraphs (e) and (f), which would allow surety providers and trustees to initiate the immediate suspension process more quickly for brokers and freight forwarders who are accruing claims.

OOIDA proposed extensive changes to the structure and organization of § 387.307, including:

- Security—(a)(1); (d);
- Cancellation of Security and Revocation of Registration—(f)(1)(B);
- Public Notice—(f)(3)(A);
- Sureties and Trustees: The financial failure or insolvency of a broker—(g)(5)(a); (g)(5)(b);
- Claim Processing: First review of claim—(h)(3)(A)(i); (h)(3)(A)(ii);
- Claim Processing: Second review of claims—(h)(5)(A); (h)(5)(C); and
- Notice—(h)(6).

FMCSA Response: FMCSA agrees with ITSA that it is important to retain the language previously in paragraph (b) regarding the manner in which brokers and freight forwarders must provide evidence of security and the content of security agreements. In the final rule, FMCSA has moved this language to paragraph (a).

ITSA also accurately identified that FMCSA intended to remove paragraph (c)(7), not paragraph (c)(8). This typographical error has been corrected in the final rule.

FMCSA made several changes to the text of § 387.307(e) and (f) in response to comments received. FMCSA believes the text of the final rule both addresses commenters' concerns and implements the desire of Congress to expeditiously suspend brokers who are accruing claims against their surety bonds or trust funds.

While FMCSA appreciates the time and effort OOIDA spent in proposing changes to § 387.307, the Agency believes the structure and content of the regulatory changes implemented by this final rule is clear, well-organized, and fully addresses the intended scope of the rulemaking. The manner in which OOIDA has suggested restructuring this section goes beyond the changes FMCSA proposed in the NPRM, and FMCSA prefers to retain the current structure of the regulation to the extent possible.

In addition to the structural changes, OOIDA also proposes to set out in precise detail the procedures surety providers and trustees must follow when processing claims, including the responses required of brokers. As discussed above, the changes FMCSA made to paragraphs (e) and (f) of the final rule are designed to set certain parameters around claim processing, but the Agency does not believe the process needs to be regulated at the level of detail OOIDA suggests. OOIDA also proposed requiring all surety providers and trustees to maintain a public web page for each surety bond or trust fund, which would contain specified types of information, and to notify FMCSA of the correct URL address of the web page and any changes to that address. However, MAP–21 did not require FMCSA to implement this type of requirement, and the Agency believes administering such a provision would be unduly burdensome on sureties, trust fund providers, and Agency personnel. FMCSA therefore declines to make the changes OOIDA suggested.

7. Implementation Timeline

Comments: FMCSA received feedback on the 3-year implementation timeline proposed in the NPRM. ITSA disagreed that the industry needs that much time to comply with the regulatory changes, as brokers covered by a loan or finance company ''can easily transition to a surety company or other form of approved financial institution.'' They proposed that FMCSA consider 3 months as a reasonable timeframe. TIA agreed that a 3-year period would be too long and suggested 12 months instead.

FMCSA Response: FMCSA acknowledges the comments it received regarding the implementation period pertaining to this rule. After careful consideration, the Agency determined that reducing the 3-year implementation period would be beneficial to stakeholders while still providing the industry sufficient time to comply with the financial requirements. The Agency has decided to reduce the implementation period from 3 years to 1 year for the immediate suspension, financial failure or insolvency, and enforcement authority provisions of this rulemaking. FMCSA also reduces the implementation period from 3 years to 2 years for the assets readily available and entities eligible to provide trust funds for Form BMC–85 trust fund filings provisions.

8. Out of Scope Comments

Business Practices

Comments: FMCSA received more than 150 comments concerning issues beyond the scope of the NPRM. Most of these comments concerned common operational procedures or business practices and relationships between brokers and motor carriers.

These commenters stated that brokers often behave in various fraudulent ways and are not currently sufficiently regulated by DOT or FMCSA. In particular, commenters mentioned those who operate under fake/stolen business information, as multiple businesses with different operating authority numbers. Many commenters mentioned

broker actions the commenters viewed as predatory and, accordingly, favored FMCSA setting limits on rates brokers could charge. Multiple commenters at the March 2023 listening session mentioned charge backs and claims from brokers after loads were delivered.

A common complaint in the public comments was ''double-brokering'' of loads. This term is commonly used to refer to a situation where a motor carrier accepts a load from a broker and then transfers the load without the shipper's or original broker's knowledge to another motor carrier who actually delivers the load. In many instances, the motor carrier who completes the load does not receive payment for their services, as the original broker pays the motor carrier with whom it has contracted and believes the transaction is complete, but that motor carrier does not pay the second motor carrier with whom it has subcontracted.

FMCSA Response: FMCSA appreciates commenters for bringing these issues to the Agency's awareness and hopes the commenters will stay engaged, including by continuing to inform the Agency of such issues. However, these issues are outside of the scope of this rulemaking, as they do not specifically pertain to the issues presented in the NPRM. FMCSA therefore declines to modify the final rule based upon these comments.

Regarding the accusations of fraud, FMCSA is aware of increasing concerns in this area and is actively examining approaches to address the problems, including potential rule changes in other areas. FMCSA and DOT are also looking at new tools and practices to better enforce existing regulations against companies engaging in fraud. The Agency encourages drivers affected by deceptive business practices or similar concerns to file a complaint against the company involved on the National Consumer Complaint Database (NCCDB) website.[25]

Other Out of Scope Comments

Comments: Other out of scope comments included many complaints about specific brokers or brokers being foreign-owned and operated. Many individuals commented concerning a planned Agency rulemaking regarding transparency in the broker industry.

FMCSA Response: FMCSA encourages these commenters to submit complaints regarding a specific broker or company to FMCSA via the NCCDB website as detailed earlier. FMCSA requests that commenters interested in the issue of br'oker transparency submit comments to that rulemaking when it is published.

[25] The NCCDB is available at *https://nccdb.fmcsa.dot.gov/nccdb/home.aspx#*.

VI. Discussion of the Final Rule

A. Assets Readily Available

As discussed above, FMCSA modified this final rule to provide an explicit list of acceptable asset types, rather than the list of prohibited assets included in the NPRM. This list of acceptable assets will provide clarity to brokers, freight forwarders, surety providers, and financial institutions about the specific assets that meet the criteria set by Congress in MAP–21, as they are both stable and able to be made liquid within 7 calendar days. The final rule will also prevent the use of new asset types that would not be specifically included on a list of prohibited assets but would not meet the criteria FMCSA used to determine whether an asset type is allowable. In this rule, acceptable assets to be included in a trust fund are limited to cash, irrevocable letters of credit issued by Federally insured depository institutions, and Treasury bonds.

Compliance with this provision will be required on January 16, 2026.

B. Immediate Suspension of Broker/Freight Forwarder Operating Authority

Many comments on this provision requested more detail on the circumstances and process leading up to a broker or freight forwarder's suspension. A broker or freight forwarder's operating authority will be suspended when their available financial security falls below $75,000 and the broker or freight forwarder fails to replenish funds within 7 calendar days. This final rule outlines information about the triggers and roles of surety or financial institutions and FMCSA, including how surety providers issuing a BMC–84 form or financial institutions issuing a BMC–85 Form must notify FMCSA when a broker's financial responsibility falls below the required minimum and is not replenished in a timely manner. Compliance for this provision will be required on January 16, 2025.

C. Surety or Trust Responsibilities in Cases of Broker/Freight Forwarder Financial Failure or Insolvency

FMCSA defines the terms *financial failure and insolvency* as any payment made or other default pursuant to § 387.307(e)(1) not cured in accordance with § 387.307(e)(5) or (6) but does not include, in and of itself, a broker filing for bankruptcy protection pursuant to Title 11 of the United States Code. This final rule outlines the procedures and responsibilities for a surety company or financial institution and for FMCSA once the company or financial institution has become aware that a broker or freight forwarder has experienced financial failure or insolvency. Compliance with this provision will be required on January 16, 2025.

D. Enforcement Authority

As proposed in the NPRM, FMCSA implements the MAP–21 requirement for suspension of a surety provider's authority and to add penalties in 49 CFR part 386, appendix B, for violations of the new requirements. This final rule includes a new paragraph (g)(24) which specifies the monetary penalty for which a surety company or financial institution found to be in violation of 49 U.S.C. 13906 or § 387.307 will be liable, as well as the mandatory 3-year ineligibility period for providing broker financial security. This final rule does not remove any of the authority that FMCSA or other Federal entities already have in place to enforce compliance from brokers, sureties, and financial institutions. Compliance for this provision will be required on January 16, 2025.

E. Entities Eligible To Provide Trust Funds for Form BMC–85 Trust Fund Filings

As proposed in the NPRM, FMCSA removes the provision allowing loan and finance companies to serve as BMC–85 trustees. Compliance for this provision will be required on January 16, 2026.

VII. Section-by-Section Analysis

This section includes a summary of the changes to 49 CFR parts 386 and 387. The regulatory changes are discussed in numerical order.

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

In Appendix B to part 386, a new paragraph (g)(24) is added to clearly state the monetary penalty for which a surety company or financial institution found in violation of 49 U.S.C. 13906 or § 387.307 may be liable.

Sections 387.307 and 387.307T

Due to the delayed compliance date(s) in this final rule, FMCSA moves the existing language in § 387.307 to § 387.307T. This temporary section will expire January 16, 2025. FMCSA also corrects a typographical error in the existing text of the section now designated as § 387.307(d)(2)(i)T.

New § 387.307 modifies the existing language as follows and is suspended until January 16, 2025.

Section 387.307 Property Broker Surety Bond or Trust Fund

In § 387.307(b), FMCSA provides a list of acceptable assets for BMC–85 trust funds. Existing paragraph (c)(7) is removed and existing paragraph (c)(8) would be renumbered as paragraph (c)(7). New paragraphs (e), (f), and (g) are added.

Paragraph (e) sets out the triggers and procedures for immediate suspension of a broker. The paragraph establishes the role of the surety provider or financial institution, FMCSA, and the broker.

Paragraph (f) sets out procedures and responsibilities for a surety company or a financial institution and FMCSA following financial failure or insolvency of a broker. A financial failure or insolvency of a broker is defined as any payment made or other default pursuant to § 387.307(e)(1) not cured in accordance with § 387.307(e)(5) or (6).

Paragraph (g) sets out procedures concerning suspension of a surety company or financial institution's eligibility to file evidence of financial responsibility with FMCSA and FMCSA's role in that action. Penalties for violation of the requirements of this section or subsection (b) of Title 49, section 13906 U.S.C. are established.

Section 387.307T Property Broker Surety Bond or Trust Fund

This section is moved from existing § 387.307. A new introductory paragraph is inserted to reflect the expiration date of the temporary section. No other changes are made to this section. This temporary section will expire January 16, 2025.

VIII. Severability

The purpose of this rule is to implement, based on FMCSA's statutory authorities described in section V (Legal Basis for the Rulemaking), regulatory requirements for the financial security of brokers and freight forwarders. A judicial decision invalidating some of these measures would not necessarily require rejection of the entire rule. While many the provisions of this rule are integrated, and the Agency anticipates the separate provisions will function most effectively operating together, FMCSA nonetheless finds that each major provision of the rule is severable from the others and would operate effectively even in the event some provisions were deemed invalid. For example, if a court vacated FMCSA's decision to remove loan and finance companies from the list of allowable BMC–85 providers, that removal would not change FMCSA's determination regarding *assets readily available,* nor would it affect the validity of the rule's other provisions, which should be allowed to remain in effect. Likewise, if a court were to set aside FMCSA's definition of financial failure or insolvency, other provisions of the rule could be separately implemented and thus would remain valid.

IX. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this final rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and E.O. 14094 (88 FR 21879, Apr. 11, 2023), Modernizing Regulatory Review. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this final rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563 and E.O. 14094, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. Accordingly, OMB has not reviewed it under that E.O.

A regulatory impact analysis is available in the docket. That document:

- Identifies the problem targeted by this rulemaking, including a statement of the need for the action.
- Defines the scope and parameters of the analysis.
- Defines the baseline.
- Defines and evaluates the costs and benefits of the action.

Copies of the full analysis are available in the docket or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Summary of Estimated Costs

Brokers and freight forwarders, surety bond and trust fund providers, and the Federal Government will incur costs for compliance and implementation. The quantified costs of the final rule include notification costs related to a drawdown on a surety bond or trust fund, and immediate suspension proceedings, FMCSA costs to hire new personnel, and costs associated with the development and maintenance of the BMC–84/85 Filing and Management IT System. FMCSA estimates that the 10-year cost of the proposed rule will total $5.5 million on an undiscounted basis, $3.9 million discounted at 7 percent, and $4.7 million discounted at 3 percent (all in 2022 dollars). The annualized cost of the rule will be $559,971 discounted at 7 percent and $556,786 at 3 percent. Ninety-eight percent of the costs will be incurred by the Federal Government.

Summary of Estimated Benefits

This final rule will result in benefits to motor carriers resulting from a decrease in the claims against brokers that go unpaid. FMCSA expects that result for several reasons. First, FMCSA will immediately suspend brokers that do not respond following a drawdown on their financial security. Such brokers will no longer be able to accrue liabilities that they do not plan, or lack the ability, to pay. This will be accomplished through the BMC–84/85 Filing Management System FMCSA intends to implement and maintain as part of the larger URS, which is currently under development. Surety bond and trust fund providers will submit claim data and notice of a drawdown on a broker bond or trust fund in the system, provide notice of broker insolvency or financial failure, and provide notice if a broker satisfies all pending claims and is no longer experiencing financial failure or insolvency. Notices of a drawdown or financial failure will automatically alert FMCSA and trigger the system to generate a letter outlining requirements that must be met for brokers to maintain operating authority. Brokers will be able to provide written evidence of a restored financial instrument through the system. Motor carriers will be able to query the system to determine if a broker has active operating authority registration before accepting a load.

As described above, the BMC–84/85 Filing Management System within the URS will efficiently exchange information between motor carriers, brokers, financial responsibility providers, and FMCSA, thereby reducing the information asymmetry concerns associated with broker and motor carrier transactions. However, given a lack of data, FMCSA is unable to quantify benefits resulting from this rule, and instead qualitatively discusses benefits directly related to three provisions in the regulatory impact analysis.

FMCSA cannot directly estimate an impact on safety resulting from this rule. OOIDA [26] contends that broker

[26] Docket No. FMCSA–2016–0102–0076.

non-payment of claims causes smaller motor carriers to defer maintenance on their vehicles or ''run harder until they make up the shortfall,'' both resulting in unsafe driving practices.[27] TIA contends that ''small carriers and owner-operators often operate on thin financial margins and need the revenue from every load to maintain their equipment so that it meets roadworthiness and safety requirements. If they are not paid, necessary maintenance and repairs may be put off or ignored because of the reduced cash flow.'' With this final rule, motor carriers will have more information to avoid contracting with unscrupulous brokers and will also receive more timely payment for work completed, without use of interpleader proceedings. Both of these outcomes will lead to an increase in safety if motor carriers choose to use these resources to further their safety focus.

B. Congressional Review Act

This rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808).'' [28]

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121, 110 Stat. 857, Mar. 29, 1996) and the Small Business Jobs Act of 2010 (Public Law 111–240, 124 Stat. 2504, Sept. 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

Accordingly, FMCSA prepared an Initial Regulatory Flexibility Analysis (IRFA) for the NPRM and a Final Regulatory Flexibility Analysis (FRFA) for the final rule. This rule will affect financial responsibility providers, brokers, and freight forwarders.

FMCSA does not know the asset make-up of brokers, and therefore cannot anticipate based on current asset portfolios how many brokers will be unable to fund the type of assets that will be required in BMC–85 trust funds going forward. FMCSA estimates that a maximum of 17 percent of brokers could be forced out of the market. However, FMCSA anticipates that most, if not all, of the brokers who utilize BMC–85 trust funds will increase their capitalization during the 2-year compliance period such that they will meet the assets readily available requirements.

FMCSA does not have data on the number of loan and finance companies currently serving as BMC–85 trustees. FMCSA has no quantifiable data or information on what decisions these loan and finance companies will make (*i.e.,* remain an eligible entity or exit the market) nor reliable cost data relating to those decisions. Therefore, FMCSA has not determined whether this final rule will have a significant economic impact on a substantial number of small entities.

A FRFA must contain the following:

(1) A statement of the need for, and objectives of, the rule;

(2) A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected;

(7) For a covered agency, as defined in section 609(d)(2) of the Regulatory Flexibility Act, a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

1. *A statement of the need for, and objectives of, the rule.*

MAP–21, section 32918, amended 49 U.S.C. 13906 and provided new requirements for the financial security of brokers and freight forwarders. Congress mandated that FMCSA conduct rulemaking to implement the statutory changes. The objective of this rulemaking is to complete the implementation of Congress's directive and to help ensure that motor carriers are paid for the services they provide for brokers and freight forwarders.

2. A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

There were no public comments submitted in response to the IRFA. However, the Agency received approximately 342 unique comments in response to the NPRM. FMCSA received some comments concerning small businesses, specifically regarding the required financial security amount and entities eligible to provide trust funds for BMC–85 Filings. These comments are addressed in Section VI. B. of this final rule.

3. The response of the agency to any comments filed by the chief counsel for advocacy of the SBA in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.

The Chief Counsel for Advocacy of the SBA did not file comments in response to the proposed rule.

4. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

Small entity is defined in 5 U.S.C. 601. Section 601(3) defines a *small entity* as having the same meaning as *small business concern* under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated and is not dominant in its field of operation.

[27] TIA also references potential safety benefits of this rulemaking, available at Docket No. FMCSA–2016–0102–0032.

[28] A *major rule* means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 802(4)).

Section 601(4), likewise includes within the definition of *small entities* not-for-profit enterprises that are independently owned and operated and are not dominant in their fields of operation. Additionally, Section 601(5) defines *small entities* as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

This final rule will affect financial responsibility providers, brokers, and freight forwarders.

The financial responsibility providers that would be affected by this final rule operate under many different North American Industry Classification System [29] (NAICS) codes with differing size standards. Additionally, the financial responsibility providers that would be affected by the rule are a subset of the entities within these codes. Many of the entities operating under these NAICS codes have various functions that do not include providing financial responsibility to brokers or freight forwarders. In providing a wide range of NAICS codes in the finance and insurance sectors, FMCSA believes it captures financial responsibility providers who perform various other functions. Table 15 below, the SBA size standard for finance and insurance, ranges from $15 million in revenue per year for insurance agencies and brokerages, to $859 million in assets per year for commercial banking.

Brokers and freight forwarders operate in the transportation sector under the NAICS code 48851. As shown in Table 15, the SBA size standard for freight transportation arrangement is $20.0 million in revenue.

TABLE 2—SBA SIZE STANDARDS FOR SELECTED INDUSTRIES

[in millions of 2023$]

NAICS code	NAICS industry description	SBA size standard
	Subsector 522—Credit Intermediation and Related Activities	
52211	Commercial Banking	$850.
52229	All Other Nondepository Credit Intermediation	$47.0.
	Subsector 523—Securities, Commodity Contracts, and Other Financial Investments and Related Activities	
52315	Investment Banking and Securities Intermediation	$47.0.
52316	Commodity Contracts Intermediation	$47.0.
52321	Securities and Commodity Exchanges	$47.0.
52391	Miscellaneous Intermediation	$47.0.
	Subsector 524—Insurance Carriers and Related Activities	
524126	Direct Property and Casualty Insurance Carriers	1,500 employees.
524127	Direct Title Insurance Carriers	$47.0.
524128	Other Direct Insurance (except life, health, and medical) Carriers	$47.0.
52413	Reinsurance Carriers	$47.0.
52421	Insurance Agencies and Brokerages	$15.0.
524292	Third Party Administration of Insurance and Pension Funds	$45.5.
	Subsector 488—Support Activities for Transportation	
48851	Freight Transportation Arrangement	$20.0.

FMCSA examined data from the 2017 Economic Census, the most recent Census for which data was available, to determine the percentage of firms that have revenue at or below SBA's thresholds within each of the NAICS industries.[30] Boundaries for the revenue categories used in the Economic Census do not precisely coincide with the SBA thresholds. Instead, the SBA threshold generally falls between two different revenue categories. However, FMCSA was able to make reasonable estimates as to the percent of small entities within each NAICS industry group.

The commercial banking industry group has a revenue size standard of $850 million. The largest Economic Census revenue category is $100 million or more. As such, FMCSA could not determine the percent of entities within this NAICS industry group that would be considered small, and conservatively estimates that all commercial banking entities are small entities as defined by the SBA.

For Other Nondepository Credit Intermediation, the $47.0 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of Other Nondepository Credit Intermediates with revenue less than these amounts were 50 percent and 54 percent, respectively. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of these entities that are small will be closer to 50 percent and is using that figure.

The Securities Brokerage industry group focuses on underwriting securities issues and/or making markets for securities and commodities. The SBA size standard for this industry group is $47.0 million. The $47.0 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of Securities Brokerages with revenue less than these amounts were 97 percent and 98 percent, respectively. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of securities brokerages that are small will be closer to 97 percent and is using that figure. Note that the SBA size standards published on March 17, 2023, use the 2022 NAICS

[29] More information about NAICS is available at: *http://www.census.gov/naics/* (accessed June 29, 2022).

[30] U.S. Census Bureau. *2017 Economic Census.* Available at: *https://data.census.gov/cedsci/table?q=EC1700&n=48-49&tid=ECNSIZE2017.EC1700SIZEREVEST&hidePreview=true* (accessed Apr. 20, 2022).

codes. A key difference from the 2017 NAICS is that Investment Banking and Securities Dealing (52311) and Securities Brokerage (52312) have been combined into a single industry, Investment Banking and Securities Intermediation (52315). Although these two industries are now combined within NAICS and the SBA size standards, we do not wish to capture Investment Banking businesses in the number of affected entities. The estimates in Table 3 exclude these entities, as was the case in the NPRM RIA.

The Commodity Contracts Dealing industry group focuses on acting as agents between buyers and sellers of securities and commodities (52313). The SBA size standard for this industry group is $47.0 million. The $47.0 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of commodity contracts dealers with revenue less than these amounts were 75 percent and 81 percent. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of commodity contracts dealers that are small will be closer to 75 percent and is using that figure.

The Commodity Contracts Brokerage industry group focuses on providing securities and commodity exchange services (52314). The SBA size standard for this industry group is $41.5 million. The $47.0 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of commodity contracts brokers with revenue less than these amounts were 84 percent and 86 percent. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of commodity contracts brokers that are small will be closer to 84 percent and is using that figure. Note that in the 2022 NAICS, Commodities Contract Dealing (52313) and Commodities Contracts Brokerages (52314) were combined into one industry—Commodity Contracts Intermediation (52316). Both industries previously had identical size standards. FMCSA made the assumption that in the new combined size standard, both industries still maintained identical size standards with each other.

The Securities and Commodity Exchanges industry group provides marketplaces and mechanisms for the purpose of facilitating the buying and selling of stocks, stock options, bonds, or commodity contracts (52321). The SBA size standard for this industry group is $47.0 million. The $47.0 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. There are 13 total firms that operated for the entire year under the securities and commodity exchanges industry group, but the Census has redacted the number of firms with revenue less than $100 million. The Census reports that there are 4 firms with revenue of $100 million or greater, which leads FMCSA to estimate that there are nine firms with revenue below $100 million. FMCSA conservatively estimates that all nine firms with revenue below $100 million (69 percent of the industry group) are considered small.

The Miscellaneous Intermediation industry group primarily engages in acting as principals in buying or selling of financial contracts (52391). The SBA size standard for this industry group is $47.0 million. The $47.0 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of miscellaneous intermediation firms with revenue less than these amounts were 97 percent and 99.6 percent, respectively. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of miscellaneous intermediates that are small will be closer to 97 percent and is using that figure.

The Direct Property and Casualty Insurance Carriers industry group primarily engages in initially underwriting insurance policies (524126). The SBA size standard for this industry group is 1,500 employees. The 1,500 employees SBA threshold falls within the highest employment category of 250 employees or more. The low bound estimate assumes all firms in this category are above the SBA threshold and thus can be considered small. The high bound estimate assumes all firms in this category are below the SBA threshold and can be considered small. The estimated percentages of direct property and casualty insurance carrier firms with employment less than the SBA threshold is between 92 percent and 100 percent. FMCSA has assumed that the percent of direct property and casualty insurers that are small will be closer to 92 percent and is using that figure, as the agency believes there exist some non-small direct property and casualty insurance carriers and thus 92 percent is a more plausible assumption than estimating that the industry consists of 100 percent small firms.

The Direct Title Insurance Carriers industry group primarily engages in initially underwriting title insurance policies (524127). The SBA size standard for this industry group is $47.0 million. The $47.0 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of direct title insurers with revenue less than these amounts were 66 percent and 67 percent, respectively. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of direct title insurers that are small will be closer to 66 percent and is using that figure.

The Other Direct Insurance Carriers industry group primarily engages in initially underwriting insurance policies (524128). The SBA size standard for this industry group is $47.0 million. The $47.0 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of other direct insurance carriers with revenue less than these amounts were 58 percent and 63 percent, respectively. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of other direct insurance carriers that are small will be closer to 58 percent and is using that figure.

The Reinsurance Carriers industry group primarily engages in assuming all or part of the risk associated with insurance policies originally underwritten by a different provider (52413). The SBA size standard for this industry group is $47.0 million. The $47.0 million SBA threshold falls between two Economic Census revenue categories, $10 million and $100 million. The percentages of reinsurance carriers with revenue less than these amounts were 49 percent and 60 percent, respectively. The SBA threshold is not near either of these revenue categories, therefore FMCSA conservatively estimates that the percent of reinsurance carrier firms that are small will be closer to 60 percent and is using that figure.

The Insurance Agencies and Brokerages industry group primarily engages in selling insurance (52421). The SBA size standard for this industry group is $15 million. The $15 million SBA threshold falls between two Economic Census revenue categories, $10 million and $25 million. The percentages of insurance agencies and brokerages with revenue less than these amounts were 99 percent and 100 percent, respectively. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of insurance agencies and brokerages that are small will be

closer to 99 percent and is using that figure.

The Third Party Administration of Insurance and Pension Funds industry group primarily engages in providing third-party administrative services of insurance (524292). The SBA size standard for this industry group is $45.5 million. The $45.5 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of firms with revenue less than these amounts were 92 percent and 97 percent, respectively. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of firms that are small will be closer to 92 percent and is using that figure.

The Freight Transportation Arrangement industry group primarily engages in arranging the transportation of freight between shippers and motor carriers (48851). The SBA size standard for this industry group is $20.0 million. The $20.0 million SBA threshold falls between two Economic Census revenue categories, $10 million and $25 million. The percentages of firms with revenue less than these amounts were 93 percent and 97 percent, respectively. Because the SBA threshold is closer to the higher of these two boundaries, FMCSA has assumed that the percent of firms that are small will be closer to 97 percent and is using that figure. Table 3 below shows the complete estimates of the number of small entities within the NAICS industry groups that may be affected by this rule. FMCSA notes that there are approximately 36,000 financial responsibility providers, which is a small subset of the firms identified in the commercial industry groups below.

TABLE 3—ESTIMATES OF NUMBERS OF SMALL ENTITIES

NAICS code	Description	Total number of firms	Number of small entities	% of all firms
52211	Commercial Banking	4,804	4,804	100
52229	All Other Nondepository Credit Intermediation	10,411	5,255	50
52312	Securities Brokerage	6,009	5,832	97
52313	Commodity Contracts Dealing	493	368	75
52314	Commodity Contracts Brokerage	728	608	84
52321	Securities and Commodity Exchanges	13	9	69
52391	Miscellaneous Intermediation	6,912	6,715	97
524126	Direct Property and Casualty Insurance Carriers	2,079	1,912	92
524127	Direct Title Insurance Carriers	662	438	66
524128	Other Direct Insurance (except life, health, and medical) Carriers	285	166	58
52413	Reinsurance Carriers	129	77	60
52421	Insurance Agencies and Brokerages	106,260	105,056	99
524292	Third Party Administration of Insurance and Pension Funds	2,498	2,306	92
48851	Freight Transportation Arrangement	13,252	12,889	97

5. A description of the proposed reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to requirements and the type of professional skills necessary for preparation of the report or record.

Small financial responsibility providers and brokers will be required to provide notification to FMCSA of specific activity on a broker bond or trust fund. FMCSA anticipates that these notifications can be completed by office clerks.

Though this rulemaking does not modify existing, or create any new, paperwork impacts within the 3-year timeframe, FMCSA acknowledges that due to the impacts of compliance with this rulemaking there will likely be changes to the information collection requirements associated with this rulemaking at a future date due to the requirements set forth in this rulemaking.

6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact of small entities was rejected.

FMCSA made its best effort to draft a rule that would minimize any significant economic impact on small entities.

After reviewing comments to the NPRM, FMCSA understands that brokers may find it easier to comply with the regulations if they know the specific asset classes FMCSA deems acceptable. FMCSA, therefore, determined that cash, ILCs issued by institutions insured by the FDIC or NCUA, and Treasury bonds will constitute the acceptable categories of assets readily available. No other asset types, including but not limited to real estate, stocks, bonds, and other securities, will be considered acceptable. The list of acceptable assets provides the broadest range of assets that meet the criteria set by Congress in MAP–21 while also providing more clarity to small businesses than the proposed list of prohibited assets in the NPRM did.

Most commenters and agency stakeholders support prohibiting loan and finance companies from serving as financial institutions for the broker market. These entities are not regulated to the same extent as other financial institutions at the state or Federal level. For example, they may not undergo safety and soundness examinations that score institutions in various areas, such as capital adequacy or asset quality. This decision is intended to ensure that a small broker's or freight forwarder's surety bond or trust fund assets remain stable, secure, and readily available.

In Chapter 3.3.1 of the final rule's RIA, FMCSA has outlined the process and anticipated timeline for a loan and finance company to become an FDIC-insured depository institution in order to continue serving as a BMC–85 trustee. FMCSA has learned through this knowledge and public comments that the 2-year implementation period is reasonable for loan and finance companies to achieve compliance if they wish to do so.

FMCSA has no data on the number of loan and finance companies currently serving as BMC–85 trustees but understands that the top five BMC–85 trustees currently serve about 93 percent

of the BMC–85 market, while 97 percent of the BMC–85 trustees serve five or fewer brokers. Based on this data, it is safe to assume that providing financial responsibility to brokers is not the main line of business for most trust fund providers. FMCSA also has no quantifiable data or information on what decisions these loan and finance companies will make (*i.e.,* remain an eligible entity or exit the market) nor reliable cost data relating to those decisions.

FMCSA proposed a 3-year compliance date in the NPRM to allow ample time for small entities to meet the requirements of the rule. The comments received from small entities and stakeholders indicate that a three-year compliance date is unnecessarily long. After careful consideration of comments to the NPRM, the Agency determined that reducing the 3-year implementation period to 2 years will be beneficial to stakeholders while still allowing sufficient time for small businesses to comply with the financial requirements, considering their available resources.

The compliance date for the immediate suspension, financial failure or insolvency, and enforcement authority provisions is one year because the Agency believes that these provisions are the most urgently needed to protect motor carriers, shippers, and other parties in the transportation industry from brokers and freight forwarders who are financially unable or unwilling to meet their obligations and from surety providers or financial institutions that do not properly report such brokers to FMCSA. The compliance date for the other provisions (assets readily available and entities eligible to serve as trust providers) is 2 years because the Agency believes and that small businesses will need more time to come into compliance with them. The Agency believes this compliance date is the best way to minimize the economic impact of the rule's implementation on small entities.

FMCSA does not know the asset make-up of brokers, and therefore cannot anticipate how many brokers will be unable to fund the type of assets that we will require in BMC–85 trust funds given their current portfolio. FMCSA estimates that a maximum of 17 percent of brokers could be forced out of the market. FMCSA anticipates that most, if not all, of the brokers who utilize the BMC–85 trust funds will increase their capitalization during the 2-year compliance period. FMCSA believes the 2-year compliance period will allow most brokers to meet the assets readily available requirements.

In the event that a broker does not meet the assets readily available requirement, FMCSA anticipates that at least some of the freight brokerage business will then be shifted, or transferred, to other brokers that maintain their operating authority. FMCSA does not anticipate a substantial disruption to the freight brokerage market resulting from this final rule.

FMCSA has already implemented Congress's directive to set the minimum financial security required of $75,000 and is not altering the amount in this final rule. FMCSA is not aware of any further significant alternatives that would meet the intent of our statutory requirements.

7. Description of steps taken by a covered agency to minimize costs of credit for small entities.

FMCSA is not a covered agency as defined in section 609(d)(2) of the Regulatory Flexibility Act and has taken no steps to minimize the additional cost of credit for small entities.

C. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see *https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman*) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $192 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2022 levels) or more in any 1 year. Though this final rule would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This final rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Though this rulemaking does not modify existing, or create any new, paperwork impacts within the 3-year timeframe, FMCSA acknowledges that due to the impacts of compliance with this rulemaking there will likely be changes to the information collection requirements associated with this rulemaking at a future date due to the requirements set forth in this rulemaking. When those potential changes are identified, FMCSA will publish a notice in the **Federal Register** soliciting comment on those changes.

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

FMCSA has determined that this rule will not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005,[31] requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This rule would not require the collection of personally identifiable

[31] Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

information (PII). The supporting Privacy Impact Analysis (PIA), available for review in the docket, gives a full and complete explanation of FMCSA practices for protecting PII in general and specifically in relation to this final rule.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002,[32] requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

In addition, the Agency submitted a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The DOT Privacy Office has determined that this rulemaking does not create privacy risk.

I. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

J. National Environmental Policy Act of 1969

FMCSA analyzed this rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraphs (6.k) and (6.q). The categorical exclusions (CEs) in paragraphs (6.k) and (6.q) cover broker activities and implementation of record preservation. The requirements in this rule are covered by these CEs and do not have any effect on the quality of the environment.

List of Subjects

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 set forth in the preamble, FMCSA amends 49 CFR parts 386 and 387 as follows:

PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

■ 1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 113; chapters 5, 51, 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. 32402, Pub. L. 112–141, 126 Stat. 405, 795 (49 U.S.C. 31306a); Sec. 701 Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.87.

■ 2. Amend Appendix B by adding paragraph (g)(24) to read as follows:

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

* * * * *

(g) * * *

(24) Beginning on January 16, 2025, a surety company or financial institution for a broker or freight forwarder pursuant to §§ 387.307 or 387.403T that violates subsection (b) or (c) of Title 49 of the United States Code, Section 13906 or § 387.307:—

(i) Is liable to the United States for a penalty of $12,882 for each violation; and

(ii) Will be ineligible to provide broker financial security for three years.

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PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 3. The authority citation continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, and 31139; sec. 204(a), Pub. L. 104–88, 109 Stat. 803, 941; and 49 CFR 1.87.

■ 4. Redesignate § 387.307 as § 387.307T.

■ 5. Add a new § 387.307, to read as follows:

§ 387.307 Property broker surety bond or trust fund.

This section is effective January 16, 2025.

(a) *Security.* A broker must have a surety bond or trust fund of $75,000 in effect. FMCSA will not register a broker until a surety bond or trust fund for the full limits of liability prescribed herein is in effect. The broker registration shall remain in effect only as long as a surety bond or trust fund remains in effect and shall ensure the financial responsibility of the broker. Evidence of a surety bond must be filed using FMCSA's prescribed Form BMC–84. Evidence of a trust fund with a financial institution must be filed using FMCSA's prescribed Form BMC–85. The surety bond or the trust fund shall ensure the financial responsibility of the broker by providing for payments to shippers or motor carriers if the broker fails to carry out its contracts, agreements, or arrangements for the supplying of transportation by authorized motor carriers.

(b) *Acceptable assets.* Beginning on January 16, 2026, trust funds under this section must contain assets aggregating to $75,000 that can be liquidated to cash within 7 calendar days. As of this date, acceptable assets included in any trust fund filed under this section are limited to cash, irrevocable letters of credit issued by a federally insured depository institution, and Treasury bonds.

(c) *Financial institution.* When used in this section and in forms prescribed under this section, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, shall mean each agent, agency, branch or office within the United States of any person, as defined by the ICC Termination Act, doing business in one or more of the capacities:

(1) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));

(2) A commercial bank or trust company;

(3) An agency or branch of a foreign bank in the United States;

(4) An insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));

(5) A thrift institution (savings bank, building and loan association, credit union, industrial bank or other);

(6) An insurance company;

(7) Until January 16, 2026, a loan or finance company; or

[32] Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

(8) A person subject to supervision by any State or Federal bank supervisory authority.

(d) *Forms and Procedures.* (1) Forms for broker surety bonds and trust agreements. Form BMC–84 broker surety bond will be filed with FMCSA for the full security limits under paragraph (a) of this section; or Form BMC–85 broker trust fund agreement will be filed with FMCSA for the full security limits under paragraph (a) of this section.

(2) Broker surety bonds and trust fund agreements in effect continuously. Surety bonds and trust fund agreements shall specify that coverage thereunder will remain in effect continuously until terminated as herein provided in paragraphs (d)(2)(i) and (d)(2)(ii) of this section.

(i) *Cancellation notice.* The surety bond and the trust fund agreement may be cancelled only upon 30 days' written notice to FMCSA, on prescribed Form BMC–36, by the principal or surety for the surety bond, and on prescribed Form BMC–85, by the trustor/broker or trustee for the trust fund agreement. The notice period commences upon the actual receipt of the notice at FMCSA's Washington, DC office.

(ii) *Termination by replacement.* Broker surety bonds or trust fund agreements which have been accepted by FMCSA under these rules may be replaced by other surety bonds or trust fund agreements, and the liability of the retiring surety or trustee under such surety bond or trust fund agreements shall be considered as having terminated as of the effective date of the replacement surety bond or trust fund agreement. However, such termination shall not affect the liability of the surety or the trustee hereunder for the payment of any damages arising as the result of contracts, agreements or arrangements made by the broker for the supplying of transportation prior to the date such termination becomes effective.

(e) *Immediate suspension.* (1) A surety company issuing a Form BMC–84 or a financial institution issuing a Form BMC–85 must notify FMCSA in writing, by electronic means, when the surety company or financial institution:

(i) Makes a payment, with the consent of the broker, from the surety bond or trust fund for a claim by a shipper or motor carrier that causes the surety bond or trust fund to fall below $75,000;

(ii) Makes a payment in any case in which the broker does not respond within 7 business days to address the validity of the claim, and the surety provider or financial institution determines that the claim is valid, and the payment causes the surety bond or trust fund to fall below $75,000;

(iii) Makes a payment due to a judgment against the broker that causes the surety bond or trust fund to fall below $75,000; or

(iv) Determines that the broker is experiencing financial failure or insolvency and that the surety company or financial institution will be required to pay one or more claims pursuant to 49 U.S.C. 13906(b)(6) in an amount that will cause the surety bond or trust fund to fall below $75,000. The surety company or financial institution may make this determination when:

(A) It receives one or more claims that, if paid, would reduce the balance of the trust fund or surety bond below the required minimum;

(B) It has notified the broker of such claims and provided 7 business days for the broker to respond to the determination; and

(C) Either the broker fails to respond within the time period provided in paragraph (e)(1)(D)(ii) of this section, or provides a response and the surety company or financial institution nevertheless determines that the claim is legitimate and that the surety company or financial institution expects to make one or more payments on the claim from the bond or trust fund.

(2) Paragraph (e)(1) of this section does not apply when a broker has filed to initiate a proceeding pursuant to Title 11 of the United States Code.

(3) The notification to FMCSA must include the broker's MC number or USDOT number, a description of the reason for the notification, and either:

(i) Evidence of the date a payment was made under paragraphs (e)(1)(i) through (iii) of this section and amount of such payment, or

(ii) A list of currently pending claims, amounts, and evidence that the surety company or financial institution complied with the notification requirements in paragraph (e)(1)(D) of this section.

(4) The notification to FMCSA must be made within 2 business days of a payment or determination.

(5) Upon notification by the surety company or financial institution in accordance with paragraphs (e)(1) through (4) of this section, FMCSA will provide written notice to the broker that its operating authority registration issued pursuant to part 365 of this chapter will be suspended within 7 business days of the date of the notice unless the broker provides written evidence to FMCSA that the notification was sent in error, the surety bond or trust fund has been restored to the $75,000 amount required by this section, or the pending claims have been satisfied without the use of surety bond or trust fund assets.

(6) If the broker fails to respond to the notice within 7 business days, FMCSA will enter a suspension of the broker's authority and provide written notice to the broker that the suspension is in effect. A broker whose authority has been suspended may request FMCSA to lift the suspension by providing written evidence that the notification was sent in error; the surety bond or trust fund has been restored to the $75,000 amount required by this section; or the pending claims have been satisfied without the use of surety bond or trust fund assets. FMCSA will consider such evidence and provide written notice to the broker of its determination.

(f) *Financial failure or insolvency of the broker.* (1) For purposes of this section, a *financial failure or insolvency* of a broker is defined as any payment made or other default pursuant to § 387.307(e)(1) not cured in accordance with § 387.307(e)(5) or (6).

(2) For purposes of this provision, a filing related to the broker pursuant to Title 11 of the United States Code does not constitute financial failure or insolvency.

(3) If a surety company or financial institution makes a determination as described in paragraph (f)(1) of this section, such surety company or financial institution shall initiate cancellation of the Form BMC–84 or Form BMC–85 pursuant to paragraph (d)(2)(i) of this section.

(4) Upon notification by the surety company or financial institution, FMCSA will provide written notice of the cancellation in the FMCSA Register on its public website. The surety or financial institution must accept claims against the BMC–84 surety bond or BMC–85 trust fund for 60 calendar days (extended to the next business day if the final day of the period falls on a weekend or Federal holiday) following FMCSA's public notification of the financial failure or insolvency in the FMCSA Register.

(5) If a surety company or financial institution notifies FMCSA of its determination pursuant to paragraph (e)(1)(iv) that a broker is experiencing financial failure or insolvency and the broker subsequently satisfies all pending claims that would have reduced the surety bond or trust fund below $75,000, the surety company or financial institution must immediately notify FMCSA that the broker is no longer experiencing financial failure or insolvency. Upon receiving evidence from the broker that the surety company or financial institution has terminated

the cancellation process and reinstituted the bond or trust, or that the broker has obtained a new bond or trust from another eligible surety company or financial institution, FMCSA will promptly provide written notice in the FMCSA Register on its public website that the financial failure or insolvency has been cured.

(g) *Suspension of surety company or financial institution.* (1) If a surety company or financial institution violates the requirements of this section or 49 U.S.C. 13906(b) or (c), FMCSA shall suspend the authorization of such surety company or financial institution to have its instruments filed as evidence of financial responsibility pursuant to § 387.307 for 3 years.

(2) If FMCSA initiates a suspension action pursuant to paragraph (g)(1) of this section it shall provide written notice to the surety company or financial institution, provide 30 calendar days (extended to the next business day if the final day of the period falls on a weekend or Federal holiday) for the surety company or financial institution to provide evidence contesting such proposed suspension, and then render a final decision in writing.

■ 6. Amend newly redesignated § 387.307T by:

■ a. Adding introductory text; and

■ b. Revising paragraph (d)(2)(i).

The addition and revision read as follows:

§ 387.307T Property broker surety bond or trust fund.

This section will remain in effect until January 16, 2025.

* * * * *

(d) * * *

(2) * * *

(i) *Cancellation notice.* The surety bond and the trust fund agreement may be cancelled only upon 30 days' written notice to the FMCSA, on prescribed Form BMC 36, by the principal or surety for the surety bond, and on prescribed Form BMC 85, by the trustor/broker or trustee for the trust fund agreement.

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Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,

Administrator.

[FR Doc. 2023–25312 Filed 11–15–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 221214–0271]

RIN 0648–BL52

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Revolution Wind Offshore Wind Farm Project Offshore Rhode Island; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to a final rule. The document being corrected is the regulations governing the Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Revolution Wind Offshore Wind Farm Project Offshore Rhode Island, published on October 20, 2023.

DATES: Effective on November 20, 2023.

FOR FURTHER INFORMATION CONTACT: Carter Esch, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a final rule in the **Federal Register** on October 20, 2023 (88 FR 72562) announcing the promulgation of regulations governing the incidental take of marine mammals incidental to Revolution Wind, LLC's (Revolution Wind), construction of the Revolution Wind Offshore Wind Energy Project in Federal and State waters offshore Rhode Island, specifically within the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Area OCS–A–0486 and along two export cable routes to sea-to-shore transition points, valid for 5 years from the date of effectiveness.

The regulations, which allow for the issuance of a Letter of Authorization to Revolution Wind for the incidental take of marine mammals during the specified activities within the specified geographical region during the effective dates of the regulations, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking. NMFS refers the reader to the final rule (88 FR 72562, October 20, 2023) for background information concerning the regulations. The regulations contained a codification error requiring correction. Specifically, 50 CFR 217.274(b)(8) was promulgated twice (*i.e.,* two different measures were both designated as 217.274(b)(8), necessitating renumbering), and, therefore, a correction is necessary to properly number 50 CFR 217.274(b).

Correction

■ Effective November 20, 2023, in rule document 2023–22056 at 88 FR 72659 in the issue of October 20, 2023, on page 72662, in the first column, in amendatory instruction 2, paragraph (b) is corrected to read as follows:

§ 217.274 [Corrected]

(b) *Vessel strike avoidance measures.* LOA Holder must comply with the following vessel strike avoidance measures, unless an emergency situation presents a threat to the health, safety, or life of a person or when a vessel, actively engaged in emergency rescue or response duties, including vessel-in-distress or environmental crisis response, requires speeds in excess of 10 kn (11.5 miles per hour (mph)) to fulfill those responsibilities, while in the specified geographical region:

(1) Prior to the start of the Project's activities involving vessels, LOA Holder must receive a protected species training that covers, at a minimum, identification of marine mammals that have the potential to occur where vessels would be operating; detection observation methods in both good weather conditions (*i.e.,* clear visibility, low winds, low sea states) and bad weather conditions (*i.e.,* fog, high winds, high sea states, with glare); sighting communication protocols; all vessel speed and approach limit mitigation requirements (*e.g.,* vessel strike avoidance measures); and information and resources available to the project personnel regarding the applicability of Federal laws and regulations for protected species. This training must be repeated for any new vessel personnel who join the Project. The dedicated visual observers must receive prior training on protected species detection and identification, vessel strike minimization procedures, how and when to communicate with the vessel captain, and reporting requirements in this subpart. Confirmation of the observers' training and understanding of the Incidental