



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[FMCSA-2013-0514]

**Registration and Financial Security Requirements for Freight Forwarders;
International Association of Movers Exemption Application**

AGENCY: Federal Motor Carrier Safety Administration (FMCSA)

ACTION: Notice of application for exemption; request for public comments.

SUMMARY: FMCSA announces that it has received an application from the International Association of Movers (IAM) for an exemption for all domestic freight forwarders which operate solely in the Department of Defense's (DOD) household goods (HHG) program from the \$75,000 bond requirement at 49 C.F.R. § 387.403(c). FMCSA promulgated this requirement pursuant to Section 32918 of the Moving Ahead for Progress in the 21st Century Act (MAP-21), now codified at 49 U.S.C. § 13906. On September 5, 2013, FMCSA published guidance in the Federal Register concerning section 32918, and on October 1, 2013, the Agency published a final rule amending 49 CFR part 387 to set a minimum \$75,000 surety bond/trust fund requirement for brokers of property and freight forwarders. FMCSA requests comments from all interested parties on IAM's exemption request.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number FMCSA-2013-0514, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief of Driver and Carrier Operations, (202) 366-4001 or thomas.yager@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590.

Public Participation and Request for Comments

FMCSA encourages you to participate in this proceeding by submitting comments, data, and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal and/or copyrighted information you provide.

Submitting Comments

If you submit a comment, please include the docket number for this proceeding (FMCSA-2013-0514), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission. However, see the Privacy Act section below regarding availability of this information to the public.

To submit your comment online, go to <http://www.regulations.gov> and click on the “Submit a Comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu, select “Rules,” insert “FMCSA-2013-0514” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Submit a Comment” in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

Viewing Comments and Documents

All public comments are available in the public docket. To view comments filed in this docket, go to <http://www.regulations.gov> and click on the “Read Comments” box in the upper right hand side of the screen. Then, in the “Keyword” box, insert “FMCSA-2013-0514” and click “Search.” Next, click the “Open Docket Folder” in the “Actions” column. Finally, in the “Title” column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Privacy Act

Anyone is able to search the electronic docket for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment,

if submitted on behalf of an association, business, labor union, etc.). You may review the DOT Privacy Act system of records notice for the Federal Docket Management System (FDMS) that DOT published in the Federal Register on January 17, 2008 (73 FR 3316).

SUPPLEMENTARY INFORMATION:

Legal Basis

Section 13541 of title 49 of the United States Code (49 U.S.C. 13541) requires the Secretary of Transportation (Secretary) to exempt a person, class of persons, or a transaction or service from the application, in whole or in part, of a provision of 49 U.S.C. Part B (Chapters 131-149), or to use the exemption authority to modify the application of a provision of 49 U.S.C. Part B (Chapters 131-149) as it applies to such person, class, transaction, or service when the Secretary finds that the application of the provision:

- Is not necessary to carry out the transportation policy of 49 U.S.C. § 13101
- Is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and
- Is in the public interest.

Further, the exemption authority provided by section 13541“may not be used to relieve a person from the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damage [or] insurance....” 49 U.S.C. § 13541(e)(1).

IAM seeks an exemption, on behalf of all domestic freight forwarders operating solely in the DOD’s HHG program, from the \$75,000 financial security requirements at 49 C.F.R. § 387.403(c). Section 387.403(c)’s \$75,000 surety bond/trust fund requirement is promulgated pursuant to Section 32918 of MAP-21 (codified at 49 U.S.C. § 13906). Section

13906 is located in 49 U.S.C. Title 49 Part B (chapter 139) and therefore may be considered within the general scope of the exemption authority of section 13541. The Secretary may begin a section 13541 exemption proceeding on the Secretary's own initiative or on the application of an interested party. 49 U.S.C. § 13541(b). See, e.g., *Motor Carrier Financial Information Reporting Requirements-Request for Public Comments*, 68 FR 48987 (Aug. 15, 2003). The Secretary may "specify the period of time during which an exemption" is effective and may revoke the exemption "to the extent specified, on finding that application of a provision of [49 U.S.C. Chapters 131-149] to the person, class, or transportation is necessary to carry out the transportation policy of [49 U.S.C.] section 13101." 49 U.S.C. § 13541(c), (d).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. 13541.

Background

On July 6, 2012, the President signed MAP-21 into law, which included a number of mandatory, non-discretionary changes to FMCSA programs. Some of these changes amended the financial security requirements applicable to property brokers and freight forwarders operating under FMCSA's jurisdiction. P.L. 112-141, § 32918, 126 Stat. 405 (codified at 49 U.S.C. § 13906(b) & (c)).

On September 5, 2013, FMCSA published guidance (78 FR 54720) "concerning the implementation of certain provisions of ... (MAP-21) concerning persons acting as a broker or a freight forwarder." On October 1, 2013, FMCSA issued regulations requiring brokers and freight forwarders to have a \$75,000 surety bond or trust fund in effect. 49 C.F.R. §§ 387.307(a), 387.403(c). 78 FR 60226, 60233.

IAM Exemption Application

In a November 25, 2013 e-mail to FMCSA's Office of Chief Counsel, IAM requested, on behalf of domestic freight forwarders operating solely under the DOD's HHG program, an exemption from the requirement that freight forwarders obtain a \$75,000 bond. IAM's exemption request is included in this docket.

IAM indicated that transportation service providers in the DOD's HHG program must maintain motor carrier or freight forwarder authority from FMCSA. And, because freight forwarders must obtain the \$75,000 bond as a result of FMCSA's requirements, the DOD requires freight forwarders in their HHG program to obtain the requisite \$75,000 bond or face losing their approval to continue operating in the DOD program.

IAM argues that the new bond requirement is "geared toward commercial consumer protection" and therefore it is unnecessary to require freight forwarders in the DOD HHG program to obtain a \$75,000 bond. It believes that the bond is an additional cost of doing business that is being mandated by FMCSA and that this cost is being passed on to DOD with no benefit to the DOD. IAM explains that DOD freight forwarders will be forced to add this cost to the rates they provide DOD.

IAM argues there is a precedent for providing an exemption for transportation service providers for the DOD. It cites the Federal Maritime Commission (FMC) regulation at 46 C.F.R. § 515.4(e), exempting entities exclusively involved in the movement of Federal military and civilian household goods from certain FMC licensing requirements.

Institution of Proceeding and Request for Comments

Pursuant to 49 U.S.C. § 13541(b), FMCSA is instituting a proceeding to consider whether domestic freight forwarders operating solely within the DOD HHG program should be exempt from the new \$75,000 financial security requirements at 49 U.S.C. § 13906(c) and 49 C.F.R. 387.403(c). FMCSA requests public comment, and comment from DOD and FMC, on the IAM exemption application. Specifically, FMCSA requests comments on whether the Agency should grant or deny the application, in whole or in part. The Agency also requests comments on how it should apply 49 U.S.C. § 13541(a)(1-3) to IAM's request. Additionally, FMCSA seeks comment on whether section 13541(e)(1)'s reference to "cargo loss and damage" and/or "insurance" bars FMCSA from granting the requested exemption as a matter of law and without application of the 3-part statutory test under section 13541(a). Commenters are encouraged to provide data or information concerning the impact of the new bond requirements and/or the impact of granting this exemption request on carriers, brokers, freight forwarders and shippers.

Issued on: December 18, 2013

Larry W. Minor
Associate Administrator for Policy

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