

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 386 and 387**

**[Docket No. FMCSA-2024-0280]**

**RIN 2126-AC76**

**Broker and Freight Forwarder Financial Responsibility; Extension of Compliance**

**Date**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FMCSA proposes to amend its November 16, 2023, final rule, “Broker and Freight Forwarder Financial Responsibility,” by extending the compliance date for certain provisions from January 16, 2025, to January 16, 2026. This action is being proposed because FMCSA has determined that only its forthcoming online registration system will be used to accept filings and track notifications, and this functionality will not be added to its legacy systems. As the new system is not expected to be available before January 16, 2025, FMCSA proposes to extend the compliance date to provide regulated entities time to begin using and familiarizing themselves with the system before compliance is required.

**DATES:** Comments must be received on or before [Insert date 15 days after date of publication in the FEDERAL REGISTER]. Comments should be limited to the proposed change in the compliance date.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA–2024-0280 using any one of the following methods:

- Federal Rulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- Hand Delivery or Courier: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, 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.
- Fax: (202) 493–2251.

**FOR FURTHER INFORMATION CONTACT:** Ana Alvarez, Financial Analyst, Office of Registration, Financial Responsibility Filings Division, FMCSA, 1200 New Jersey Avenue SE, West Building, 6th Floor, Washington, DC 20590; (202) 366-0401; [ana.alvarez@dot.gov](mailto:ana.alvarez@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 NPRM as follows:

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## **I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS**

### **A. Submitting Comments**

If you submit a comment, please include the docket number for this NPRM (FMCSA-2024-0280), indicate the specific section of this document to which your 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 email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2024-0280/document>, click on this NPRM, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

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

### **Confidential Business Information (CBI)**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM.

Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at [brian.g.dahlin@dot.gov](mailto:brian.g.dahlin@dot.gov). At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

### **B. Viewing Comments and Documents**

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2024-0280/document> and choose the document to review. To view comments, click this NPRM, then click “Browse

Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 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.

### **C. Privacy**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov) as described in the system of records notice (DOT/ALL 14—Federal Docket Management System (FDMS)), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-recordsnotices>. The comments are posted without edit and are searchable by the name of the submitter.

## **II. EXECUTIVE SUMMARY**

### **A. Purpose and Summary of the Regulatory Action**

FMCSA proposes to extend certain compliance dates in the 2023 final rule, “Broker and Freight Forwarder Financial Responsibility” (88 FR 78656, Nov. 16, 2023) from January 16, 2025, to January 16, 2026, creating a single compliance date for all provisions in the rule. This extension will ensure that parties required to comply with the regulations have sufficient opportunity to register in the new system and begin using it, and that FMCSA is able to properly process and respond to such filings. The provisions affected by this extension are:

1. Immediate suspension of broker/freight forwarder operating authority. When a

broker or freight forwarder's available financial security falls below \$75,000, FMCSA shall suspend its operating authority registration.

2. Surety or trust responsibilities in cases of broker/freight forwarder financial failure or insolvency. If a 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.

3. Enforcement authority and penalties for financial responsibility providers who do not comply with the regulations. FMCSA is incorporating the statutorily mandated penalties into its regulations. After notice and an opportunity for a hearing, surety companies or financial institutions who violate 49 CFR 387.307 will be ineligible to provide financial responsibility for 3 years and may also be subject to a civil penalty.

This extension is necessary so that FMCSA can implement its new online registration system and make it available to entities required to register and make filings in the system. This extension is also intended to provide users with an opportunity to begin using, and become familiar with, the new online registration system before compliance with the system becomes mandatory. The planned release for the new modernized registration system is 2025.

## **B. Costs and Benefits**

The 2023 Broker and Freight Forwarder Financial Responsibility final regulatory impact analysis (RIA) estimated costs for compliance and implementation among brokers, freight forwarders, surety bond and trust fund providers, and the Federal government. This proposed rule would delay certain provisions requiring filings in the online registration system until January 16, 2026, resulting in all provisions of the rule

becoming effective at the same time.

Despite the delayed compliance for certain provisions, FMCSA finds that the benefits stipulated in the 2023 final rule remain unchanged by this proposed rule. The provision mandating that brokers and freight forwarders maintain assets readily available in trust funds, will still take effect as originally scheduled, on January 16, 2026. Brokers and freight forwarders, surety bond and trust fund providers would incur cost savings by not being required to file documentation relating to certain other provisions until January 16, 2026. FMCSA would also incur cost savings in delaying the enforcement of several provisions of the 2023 final rule. In conclusion, the Agency finds that this proposed rule would maintain all benefits and reduce costs by a de minimis amount for all parties subject to the 2023 final rule.

### **III. Abbreviations**

CBI	Confidential Business Information
CE	Categorical exclusion
CFR	Code of Federal Regulations
DOT	Department of Transportation
E.O.	Executive Order
FMCSA	Federal Motor Carrier Safety Administration
FR	Federal Register
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
PIA	Privacy Impact Assessment
PII	Personally Identifiable Information
PTA	Privacy Threshold Assessment
RIA	Regulatory Impact Analysis
URS	Unified Registration System
UMRA	Unfunded Mandates Reform Act
U.S.C.	United States Code

### **IV. LEGAL BASIS**

The legal basis of the Broker and Freight Forwarder Financial Responsibility final

rule, set forth at 88 FR 78658, also serves as the legal basis for this NPRM. The statutory authority identified in that discussion is 49 U.S.C. 13906, which contains requirements for the financial security of brokers and freight forwarders and directs the Secretary to issue regulations to implement and enforce these requirements. Authority to carry out and enforce these provisions has been delegated to the Administrator of FMCSA (49 CFR 1.87(a)(5)).

As discussed in the final rule, 49 CFR 387.403T(c) makes any requirements applicable to broker of property surety bonds and trust funds in § 387.307 applicable to the surety bond or trust fund required of freight forwarders as well.<sup>1</sup> Therefore, any time this NPRM refers to brokers, the same requirements are also applicable to freight forwarders.

## **V. BACKGROUND**

On November 16, 2023, FMCSA published a final rule adopting regulations to implement 49 U.S.C. 13906(b) and (c) (88 FR 78656). The final rule became effective 60 days later, on January 16, 2024. However, compliance with the provisions relating to immediate suspension, financial failure or insolvency, and penalties for trust or surety providers who fail to comply with the regulations is not required until January 16, 2025, and full compliance with all of the final rule's provisions is not required until 2 years after the effective date, beginning on January 16, 2026.

## **VI. DISCUSSION OF THE PROPOSED RULEMAKING**

FMCSA proposes to extend the compliance date for the provisions of the Broker

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<sup>1</sup> Although 49 CFR 387.403 is currently suspended, it contains the same language making § 387.307 applicable to freight forwarders. Thus, when the suspension is ultimately lifted, it will have no effect on the analysis here.



and Freight Forwarder Financial Responsibility rule relating to immediate suspension, financial failure or insolvency, and penalties for trust or surety providers who fail to comply with the regulations from January 16, 2025, to January 16, 2026, by amending the expiration date of the temporary rule governing current practices, § 387.307T, and the compliance dates in § 387.307. This extension will create a single compliance date for all provisions in the rule, allow FMCSA to implement the new online registration system, and ensure that filers are familiar with the online registration system and able to perform all duties mandated by the rule prior to the compliance date.

The final rule discusses and requires online filing of documents. FMCSA always intended to build this functionality into its forthcoming online registration system.<sup>2</sup> After engaging with stakeholders and work developing the new platform, the Agency has determined that it would not be an efficient use of resources to add the functionality to the legacy registration system. Instead, the Agency is focused on implementing the new online registration system and publishing the NPRM concerning the new system, as described in the Unified Agenda (see Regulation Identification Number 2126-AB56), as expeditiously as possible. By extending the compliance date for the Broker and Freight Forwarder Financial Responsibility final rule, FMCSA intends to allow the regulated community sufficient time to begin utilizing the new system and become familiar with it before compliance is required.

In addition, FMCSA finds that without certain automated processes currently under development in the new system, effective compliance management would be compromised. Specifically, the Agency believes that tracking and processing drawdown

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<sup>2</sup> See 88 FR 78657 and 78666, Nov. 16, 2023.

notifications manually would be inefficient, leading to delays, higher administrative costs, and potential compliance risks for both FMCSA and the industry. The ability to efficiently suspend the operating authority of brokers and freight forwarders who fail to maintain the required financial security within the 7-day regulatory time frame depends upon both the regulated entities and the Agency being able to utilize a fully functional online filing system. For more detailed information regarding the launching of the new online registration system, stakeholders are encouraged to visit <https://www.fmcsa.dot.gov/registration/resources-hub>.

For the reasons mentioned above, as well as to provide the public with the notice and opportunity for comment required by the Administrative Procedure Act (5 U.S.C. 553) FMCSA proposes to extend the compliance date for the provisions relating to immediate suspension, financial failure or insolvency, and penalties for trust or surety providers who fail to comply with the regulations. The new compliance date, January 16, 2026, would align with the date already set for the other provisions in the rule.

## **VII. 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 NPRM under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and amended by E.O. 14094 (88 FR 21879, Apr. 11, 2023), Modernizing Regulatory Review, as well as the impact under DOT regulatory policies and procedures (DOT Order

2100.6A, dated June 7, 2021). This NPRM is not a significant regulatory action under section 3(f) of E.O. 12866, as amended. Accordingly, OMB has not reviewed it under that E.O.

**B. Regulatory Flexibility Act (Small Entities)**

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996<sup>3</sup> 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 (5 U.S.C. 601(6)). 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.

This proposed rule would extend the compliance date for specific provisions of the 2023 final rule, “Broker and Freight Forwarder Financial Responsibility,” to January 16, 2026. The provisions already scheduled for compliance on January 16, 2026, would not be affected. The rule would impact small entities such as surety bond and trust fund providers, brokers, and freight forwarders. The extension would provide small entities with additional time to register in the new online registration system and understand its operations and functionalities. By delaying the submission of documentation for certain provisions until January 16, 2026, these entities would also realize de minimis cost savings.

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<sup>3</sup> Pub. L. 104–121, 110 Stat. 857 (Mar. 29, 1996).

Consequently, I certify that this action would not have a significant economic impact on a substantial number of 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 proposed rule so they can better evaluate its potential effects on themselves and participate in the rulemaking initiative. If the proposed rule would 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.

**D. 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 State, local, or Tribal government, in the aggregate, or by the private sector of \$200 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2023 levels) or more in any 1 year. This proposed rule would not result in such an expenditure, so the analytical requirements of UMRA do not apply.

**E. Paperwork Reduction Act**

Due to the proposed change of compliance date, the existing Information Collection Requirements pertaining to broker and freight forwarder financial responsibilities would be updated at a later date.

**F. 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 proposal would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

**G. Privacy**

The Consolidated Appropriations Act, 2005,<sup>4</sup> requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM

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<sup>4</sup> Pub. L. 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

would not change any previously analyzed collections of personally identifiable information (PII).

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,<sup>5</sup> 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 for this rule. However, FMCSA will publish a PIA and a System of Records Notice covering all information that will be collected in the new online registration system.

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 PTA has been submitted to FMCSA's Privacy Officer for review and preliminary adjudication and will be submitted to DOT's Privacy Officer for review and final adjudication.

#### **H. E.O. 13175 (Indian Tribal Governments)**

This rulemaking does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between

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<sup>5</sup> Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### **I. National Environmental Policy Act of 1969**

FMCSA analyzed this rule pursuant to the National Environmental Policy Act of 1969 (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 proposed requirements in this rule are covered by these CEs and do not have any effect on the quality of the environment.

#### **J. Rulemaking Summary**

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found on the FMCSA website at <https://www.fmcsa.dot.gov/regulations/broker-freight-forwarder-compliance-date-extension> and in the docket for this rulemaking, which is available online at [www.regulations.gov](http://www.regulations.gov).

#### **List of Subjects**

##### *49 CFR Part 386*

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Highway and roads, 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 proposes to amend 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:** 28 U.S.C. 2461 note; 49 U.S.C. 113; 1301 note, 31306a; 49 U.S.C. chapters 5, 51, 131–141, 145–149, 311, 313, and 315; and 49 CFR 1.81, 1.87.

2. In Appendix B, revise and republish paragraph (g)(24) to read as follows:

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

\* \* \* \* \*

(g) \* \* \*

(24) Beginning on January 16, 2026, a surety company or financial institution for a broker or freight forwarder pursuant to § 387.307 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 3 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, 31139; sec. 204(a), Pub. L. 104–88, 109 Stat. 803, 941; and 49 CFR 1.87.

4. Amend § 387.307 as follows:

- a. Revise and republish the introductory paragraph, and paragraphs (b) and (c)(6);
- b. Remove paragraph (c)(7); and
- c. Redesignate paragraph (c)(8) as paragraph (c)(7).

**§ 387.307 Property broker surety bond or trust fund.**

This section is effective January 16, 2026.

(a) \* \* \*

(b) Acceptable assets. Trust funds under this section must contain assets aggregating to \$75,000 that can be liquidated to cash within 7 calendar days. 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) \* \* \*

(6) An insurance company; or

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

\* \* \* \* \*

5. Revise and republish the introductory paragraph of § 387.307T to read as follows:

**§ 387.307T Property broker surety bond or trust fund**

This section will remain in effect until January 16, 2026.

\* \* \* \* \*

Issued under the authority of delegation in 49 CFR 1.87.

**Vincent G. White,**  
*Deputy Administrator.*