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C. Privacy Act

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, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy.

II. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The individual listed in this notice has requested an exemption from 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of the applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist Medical Examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy*: § 391.41(b)(8), paragraphs 3, 4, and 5.]

¹ See https://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171 and <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

The advisory criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. The advisory criteria also state that a variety of functional disorders can cause drowsiness, dizziness, confusion, weakness, or paralysis that may lead to incoordination, inattention, loss of functional control, and susceptibility to accidents while driving.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication.

III. Qualifications of Applicant

Sheila Bennett

Ms. Bennett is a CMV driver in Tennessee. Ms. Bennett self-reports that she was diagnosed with narcolepsy in early 2005, and started a treatment plan immediately. A letter dated October 12, 2021, from Ms. Bennett's sleep medicine provider reports that she is under care for treatment of narcolepsy with stimulants, and that she reports her daytime sleepiness is well-controlled on current medication.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petition described in this notice. We will consider all comments received before the close of business on the closing date indicated in the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021-27222 Filed 12-15-21; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0130]

Registration and Financial Security Requirements for Brokers of Property and Freight Forwarders; Small Business in Transportation Coalition (SBTC) Exemption Application

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

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA denies an application from the Small Business in Transportation Coalition (SBTC) seeking reconsideration of the Agency's March 31, 2015 denial of the Association of Independent Property Brokers and Agents' (AIPBA) application for an exemption from the \$75,000 bond requirement for all property brokers and freight forwarders. FMCSA treats the SBTC request as a new exemption application. After reviewing SBTC's application and the public comments, the Agency has concluded that the exemption request should be denied because it does not meet the statutory factors for an exemption.

DATES: FMCSA denies this application for exemption effective December 16, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Associate Administrator for Policy, FMCSA; Telephone: (202) 366-4012; Email: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number "FMCSA-2020-0130" in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, click "Browse Comments."

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number "FMCSA-2020-0130" in the keyword box, click "Search," and choose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT 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. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

Under 49 U.S.C. 13541(a), the Secretary of Transportation (Secretary) “shall 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. subtitle IV, part B (chapters 131–149)], or use this exemption authority to modify the application of a provision of [49 U.S.C. subtitle IV, part B (chapters 131–149)] as it applies to such person, class, transaction, or service, when the Secretary . . . finds that the application of that provision—

(1) is not necessary to carry out the transportation policy of [49 U.S.C.] section 13101;

(2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and

(3) is in the public interest.”

The Secretary may begin a section 13541 exemption proceeding on the application of an interested party or on the Secretary’s own initiative. 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). In addition, 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).

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.

III. Current Legal Requirements

Under 49 U.S.C. 13906(b) and (c), as amended by section 32918 of the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141, 126 Stat. 405 (MAP–21), all brokers and freight forwarders subject to FMCSA’s jurisdiction must maintain \$75,000 in financial security. The financial security must be in the form of a surety bond or trust fund in accordance with 49 CFR 387.307(a), 387.403T(c).

IV. Background

On December 26, 2013, FMCSA requested public comment on AIPBA’s August 14, 2013 application for an exemption for all property brokers and freight forwarders from the requirement for a \$75,000 surety bond or trust fund. 78 FR 78472. Specifically, FMCSA requested comments on whether the Agency should grant or deny AIPBA’s application, in whole or in part. The Agency also requested comments on how it should apply 49 U.S.C. 13541(a)(1)–(3) to AIPBA’s request. *Id.* at 78473.¹

On March 31, 2015, FMCSA published a **Federal Register** notice denying AIPBA’s request. 80 FR 17142. The Agency concluded that the exemption should be denied on the basis that 49 U.S.C. 13541 does not give FMCSA the authority essentially to nullify a statutory provision by exempting the entire class of persons subject to the provision. *Id.* at 17145. Furthermore, even if the Agency had the authority to issue such a blanket exemption, FMCSA found that the \$75,000 bond requirement was “necessary to carry out the transportation policy of section 13101,” was “needed to protect shippers from the abuse of market power,” and that an exemption was not in the public interest. *Id.* AIPBA did not appeal FMCSA’s decision to federal court within the 60-day limitations period of 28 U.S.C. 2344.

V. Applicant’s Request

In its application,² SBTC seeks a 5-year exemption from the \$75,000 financial security requirements of 49

¹ In 2013, AIPBA also sought judicial review in the U.S. Court of Appeals for the Eleventh Circuit of the FMCSA final rule that implemented MAP–21’s \$75,000 bond requirement. AIPBA alleged that FMCSA had improperly promulgated the rule without notice and comment. The court dismissed the petition, holding that AIPBA lacked standing. *Ass’n of Indep. Prop. Brokers and Agents v. Sec’y, U.S. Dep’t of Transp., et al.* (11th Cir. Mar. 18, 2016).

² As noted in FMCSA’s **Federal Register** publication, SBTC styled its request as a resubmission of an exemption request pursuant to 49 U.S.C. 31315(b)(3) and 49 CFR 381.317. As SBTC’s request did not fall within those provisions, FMCSA had no jurisdiction to entertain SBTC’s request under that authority. 85 FR 20334, 20335 n.2. Rather than dismissing SBTC’s request, the Agency treated SBTC’s request as a new request for exemption under Section 13541, the provision under which AIPBA’s request was filed and which SBTC’s should have been filed as well. SBTC has had ample opportunity to contest FMCSA’s decision to treat its request as a new exemption application and it has not done so. SBTC’s application, which applies to a more limited set of brokers and freight forwarders and a more limited time period than AIPBA’s did, is a new request for exemption, rather than a resubmission, and will be assessed on that basis.

U.S.C. 13906(b) and (c), specifically for brokers and freight forwarders with annual revenues below \$15.010 million.³ SBTC believes granting the exemption “is in the public interest” as it will “ensure an uninterrupted supply chain.”⁴ Moreover, SBTC indicates that the current bond level impedes small motor carriers from adding brokerage operations to their business.⁵ Further, SBTC states that “FMCSA needs to address the fact that 10,000 small business intermediaries, including members of the minority brokerage community, were revoked in the first two weeks of December 2013 and there are anti-competitive obstacles to entry currently in place due to a bond obviously set too high for over 40% of the brokerage industry to handle in 2013.”⁶ Finally, SBTC argues that its exemption request should be granted “to give FMCSA more time to develop its ‘comprehensive enforcement program’⁷ to enforce the licensing and bonding requirement.”⁸

During the public comment period on this request, SBTC submitted a comment in response to a comment filed by the Transportation Intermediaries Association (TIA). SBTC indicated that the increase in the number of FMCSA-registered transportation intermediaries since December 2013 is attributable to a separate MAP–21 requirement mandating motor carriers to obtain brokerage licenses before performing brokerage services, rather than to broker licenses being issued to “new mom and pop small business brokers. . . .”⁹ Moreover, SBTC indicated that the factoring industry alleviates concerns pertaining to “underfunded” brokers. SBTC asserts that “[m]ost factors actually pay the carriers directly before paying their broker clients making a bond not needed for the smallest of brokers.”¹⁰

³ SBTC Application at 10.

⁴ *Id.* at 5.

⁵ *Id.*

⁶ *Id.* at 14.

⁷ In a 2013 **Federal Register** Notice, FMCSA indicated it would “phase in its enforcement of the broker registration requirements for motor carriers that also broker loads.” 78 FR 54720, 54722 (Sept. 5, 2013). MAP–21 required motor carriers to obtain broker authority for their brokerage operations. *Id.* at 54720.

⁸ SBTC Application, at 4.

⁹ SBTC May 29 comments, at 3.

¹⁰ *Id.* at 4. SBTC also sought leave to late file a comment dated June 5, 2020 to respond to comments filed by the Motor Carrier Regulatory Reform Coalition. FMCSA accepts the late-filed comment for consideration but does not believe its contents, which pertain to “dispatch services,” are relevant to this proceeding. MCRR late filed a June 10, 2020 response to SBTC’s letter and FMCSA will accept that letter in the docket as well.

VI. Public Comments

On April 10, 2020, FMCSA requested public comment on SBTC's exemption application. 85 FR 20334.¹¹ Specifically, FMCSA requested comments on whether the Agency should grant or deny the application, in whole or in part. The Agency also requested comments on how it should apply 49 U.S.C. 13541(a)(1)–(3) to SBTC's request. 85 FR at 20335. In addition to SBTC's comments, which are discussed above, the Agency received 22 comments in response to the **Federal Register** notices. Seventeen commenters opposed the request for exemption. Five commenters did not directly address the request, with two of those commenters expressing general opposition to the broker bond. The commenters are: Amy Bourne, James Anonymous, Stephen Oatley, Navpreet Khaira, Jas Pannu, Amandeep Ghuman, Brian Klink, Don Juan, Rajdeep Singh, Patricia Newkirk, Melissa Carbonell, Jim Asad, Lisa Schmitt, Small Business in Transportation Coalition (SBTC), JW Surety Bonds, Motor Carrier Regulatory Reform (MCCR Coalition),¹² Owner-Operator Independent Drivers Association (OOIDA), American Trucking Associations (ATA), The Surety & Fidelity Association of America (SFAA), Transportation and Logistics Council, Inc. (TL Council), TIA, and two anonymous commenters.

Specific Comments by Opponents of SBTC's Application

FMCSA provides a sampling of comments provided by opponents of SBTC's application below.

ATA indicated that granting SBTC's request would deprive motor carriers of the bond protection where it is most needed—in dealings “with brokers who turn out to be financially precarious.”¹³ ATA also indicated that if FMCSA had the authority to decide this exemption, which it questions due to Separation of Powers concerns, SBTC's request does not meet the standard pursuant to 49 U.S.C. 13541.¹⁴

¹¹ On May 4, 2020, FMCSA corrected the public docket number referenced in its April 10 notice and extended the public comment period until June 3, 2020. 85 FR 26516.

¹² MCCR Coalition is composed of Air & Expedited Motor Carrier Association (AEMCA), Alliance for Safe, Efficient and Competitive Truck Transportation (ASECTT), American Home Furnishings Alliance (AHFA)/Specialized Furniture Carriers, Apex Capital Corp., Auto Haulers Association of America (AHAA), National Association of Small Trucking Companies (NASTC), The Expedite Alliance of North America (TEANA) and the Transportation Loss Prevention & Security Association (TLP&SA).

¹³ Comments of the American Trucking Associations (ATA), at 2.

¹⁴ *Id.* at 2–3.

TL Council, whose members include approximately 300 shippers, carriers, transportation intermediaries and other transportation service providers, described concerns over “unfit or illegal operators” and stated that “the Exemption Application should be denied.”¹⁵

JW Surety Bonds (JW Surety) stated, “The SBTC seeks a frictionless environment for freight brokers to transact business without the need of financial security in the \$75,000 bond without taking into consideration the consequences if such an exception was granted. The surety bond industry which issues the BMC–84 product has paid more than \$3 [m]illion in claims to carriers and shippers which licensed freight brokers had defaulted upon their obligations for payment. Most recently during the COVID crisis, we have only seen claim occurrences increase. Our estimates for 2020, are that the surety industry will pay out \$3.2–\$3.5 [m]illion in carrier claims on freight brokers.”¹⁶ JW Surety also indicated that surety bonds are not a barrier to entry for legitimate brokers and that surety premiums are consistently low. According to JW Surety, “exemption of the bond requirement would be of greatest benefit to repeat offenders that are regularly in breach of their payment commitments harming carriers.”¹⁷

OOIDA stated, “FMCSA must deny any exemptions that would weaken current broker bond standards and further defraud professional truck drivers and motor carriers from their rightful compensation.”¹⁸

SFAA explained, “The bonds required under 49 U.S.C. 13906 are intended to ensure that commercial entities, such as motor carriers and shippers, are protected if the freight forwarder fails to pay freight charges under its contracts, agreements or arrangements for transportation. The protections for shippers and carriers, who may also be small businesses themselves, should not be sacrificed in the interest of the Small Business [in] Transportation Coalition. The loss experience from this type of bond demonstrates it is serving its intended purpose, which Congress believed was necessary when it raised the bond requirement to \$75,000.”¹⁹ SFAA further indicated that the increased bond amount has not had an impact on

¹⁵ Comments of the Transportation and Logistics Council, Inc. at 2.

¹⁶ Comments of JW Surety Bonds, at 1.

¹⁷ *Id.*

¹⁸ Comments of the Owner-Operator Independent Drivers Association, at 3.

¹⁹ Comments of the Surety & Fidelity Association of America, at 1.

the availability of surety bonds “for small businesses operating as forwarders or brokers.”²⁰

TIA indicated that “the requested exemption would frustrate Congress's intent to protect payments to motor carriers and prevent unauthorized brokering.”²¹

MCCR Coalition included statements from its member associations in opposition to SBTC's request. Tom Ogradowski, of the Auto Haulers Association of America, stated that the increased bond requirement has not hindered the growth of brokers in the auto hauler sector.²² In an affidavit, David Gee, President of the Alliance for Safe, Efficient and Competitive Truck Transportation (ASECTT), indicated that the price of a broker bond “has crashed” since 2013 where “with a personal guarantee by the owner, a yearly bond cost of approximately \$2,000 or less is involved.”²³ And, in an affidavit, David Owen, the President of the National Association of Small Trucking Companies (NASTC), a 12,000 member organization “the vast majority of which are small motor carriers operating less than 20 trucks,” indicated that “[o]ur initial fear that the bonding amount would be cost prohibitive for small brokers and have an anti-competitive effect on the industry did not come to pass. Our experience in helping new members shows that bonds from reputable sureties are available and commercially reasonable.”²⁴

Melissa Carbonell wrote, “We are a broker and have been since 2006. We were also a carrier for a few years so we know both sides of this story. We have watched brokers get licenses, get cheap bonds, rack up large carrier bills and then go out of business and the carriers never get paid. The broker will restart another license and cheap bond and do it all over again! \$10,000 is not enough to cover sometimes 3 freight bills. The bond needs to stay \$75,000. We have \$10,000 in a trust account and only pay \$2,500 a year for our broker bond. Any broker doing more than \$1 Million a year in business should be able to afford this amount! If they can't afford the bond then they are not solvent enough to be getting hundreds of thousands of dollars in credit on the backs of carriers. Please keep the broker bond the same! Please do not lower the broker bond!”

²⁰ *Id.* at 3.

²¹ Comments of the Transportation Intermediaries Association, at 4.

²² Comments of the Motor Carrier Regulatory Reform Coalition, Statement of Tom Ogradowski.

²³ Comments of the Motor Carrier Regulatory Reform Coalition, Affidavit of David Gee, at 1.

²⁴ Comments of the Motor Carrier Regulatory Reform Coalition, Affidavit of David Owen, at 1.

Brian Klink stated: “Having worked in the industry when the bond requirement was only \$10,000, there was rampant abuse of the system that had an adverse [e]ffect primarily on small, non-fleet trucking companies. The MAP–21 protections which required among other things the bond face amount be increased to \$75,000 was a positive step in limiting the ‘here today, gone tomorrow’ freight broker market. There are adequate resources available online to determine the financial stability of Property Brokers and Freight Forwarders which is yet another step in the right direction. Enforcement of the current regulations against those scamming the system needs to be enhanced rather than opening the door leaving little or no protection for the trucking industry as is being proposed here.”

Patricia Newkirk said, “We are STRONGLY AGAINST ANY exemptions from the Broker Surety Bond. As a small carrier and a small broker we understand the importance of having a fail safe against disreputable brokers failing to pay. Our premium for our bond is \$1,600 per year. When you calculate that on a daily cost of operation, 261 working days per calendar year, its \$6.13 per day. It is not an unreasonable burden[] when you look at the cost to small carriers when brokers open, double broker and close the doors in a few months. We have filed against broker bonds 3 times in the past 10 years, once declined because it was inTRAsate commerce, once paid by bond and finally paid by the broker at 140 days past due AFTER we contacted their bonding agent. If any changes are brought to the Surety bond, an increase would actually be more fitting.”

Stephen Oatley commented, “As far as the mention of dispatchers, I agree there is a need for enforcement of these ‘truck dispatchers’ as many are working as illegal brokers, under the mask of being load finders for trucking. With that said, removing the bonding requirement for a freight broker authority will do very little to help the industry. Saying that the bonding requirement is a ‘barrier to entry’ is correct and it should be. If an aspiring broker can not afford the \$1,200–\$5,000 yearly cost of the bond, they really have no business being a broker. A broker has a fiduciary duty to pay their carriers, and it is not cheap.”

Opposition to the Bond

An anonymous commenter wrote, “The trucking industry has become more complex than it really needs to be which in turn adds wasted funds. Bonds such as this force small, honest brokers

to close doors whose hearts are typically [sic] after seeing the truck make adequate revenue and providing good service to their customer.”

Don Juan commented, “Prior to the 75K requirement that dollar figure would be \$5,000 to \$7,500 in valid claims to trigger a cancellation. Now with the 75K requirement, that valid claim amount rises to \$35,000 to nearly \$60,000 BEFORE a cancellation is made. By increasing the financial requirement to 75K, in essence crooked brokers can now rack up almost \$40,000 in claims BEFORE their authority is even jeopardized! Then, when a cancellation IS made on the bond or trust, they still are LEGALLY allowed to operate for another 30 days before they have their broker authority revoked. MAP–21 stipulated insurance limits to be reviewed every 5 years[.] [Seven] years later it has yet to be reviewed. In the meantime, dispatch services continue to operate illegally and crooks post loads for \$8 a mile with no intention of paying the carrier. The shipper is ultimately responsible for freight charges. [L]et them post the financial requirement!”

VII. Agency Decision

The Agency has thoroughly reviewed SBTC’s request as well as the public comments. The Agency is denying SBTC’s request as it does not meet the three-part test for issuance of an exemption pursuant to 49 U.S.C. 13541.

In its request, SBTC does not present a clear argument as to why its 2019 request for a 5- year exemption for brokers and freight forwarders with annual revenues below \$15.01 million should be granted pursuant to section 13541. Instead, its argument appears to be limited to indicating that FMCSA, in its 2015 decision denying AIPBA’s request for an exemption, did “not offer any rationale or explanation” besides conclusory statements as to why the granting of an exemption was not appropriate under section 13541.²⁵ SBTC’s argument is factually incorrect. In its 2015 decision, FMCSA provided extensive analysis showing (1) why AIPBA’s application was not in the public interest, (2) that AIPBA did not show that regulation was not necessary to protect shippers from the abuse of market power, and (3) that regulation was necessary to implement the National Transportation Policy (NTP) of 49 U.S.C. 13101. 80 FR at 17146–17147. Moreover, even if FMCSA had not carefully analyzed the statutory factors in 2015, SBTC’s arguments related to AIPBA’s 2013 exemption request are time barred. As noted above, AIPBA did

not appeal FMCSA’s 2015 decision in a timely manner, nor did it seek any administrative reconsideration of the Agency’s decision for over 4 years. Instead, SBTC sought an exemption for a more limited group of entities. SBTC’s application fails to address the section 13541 requirements for granting an exemption, which on its own is grounds for denying the application. FMCSA nevertheless provides a merit analysis of SBTC’s request and concludes that, while the Agency has authority to grant SBTC’s request, unlike in 2015 when AIPBA sought an exemption for all brokers and freight forwarders from the bond requirement, the Agency nevertheless will deny the request, for the reasons discussed below.²⁶

First, in order for FMCSA to grant SBTC’s exemption request, it would need to find that, for the next 5 years, the \$75,000 bond requirement, as applied to brokers and freight forwarders with annual revenues under \$15.01 million, “is not necessary to carry out the transportation policy of section 13101.” 49 U.S.C. 13541(a)(1). As noted above, aside from unsupported arguments challenging FMCSA’s 2015 treatment of this issue, SBTC makes no current arguments why regulation is not necessary to advance the NTP.

To the contrary, and as evidenced by the comments opposing SBTC’s request, the bond is necessary to implement the NTP. The NTP states that, in overseeing the motor carrier industry, it is the policy of the federal government to “meet the needs of shippers” and to “enable efficient and well-managed carriers to earn adequate profits [and] attract adequate capital. . . .” 49 U.S.C. 13101 (a)(2)(C),(F). By providing financial recovery for motor carriers (and shippers) in the event of broker or freight forwarder non-payment, the \$75,000 bond serves to strengthen the finances of motor carriers and shippers. An exemption, even a temporary one, from the bond requirement for a wide swath of the broker and freight forwarder industry, as SBTC requests, would harm congressional goals. Moreover, as described above, numerous public comments in the docket support FMCSA’s determination that the \$75,000 bond benefits motor carriers.²⁷

²⁶ In its 2015 Decision, FMCSA indicated that it did “not have the authority to effectively nullify a statute by exempting the entire class of persons subject to the bond requirement.” 80 FR at 17145. While ATA questions the Agency’s authority to entertain this request, ATA Comments at 2, “TIA believes the Agency is authorized to consider SBTC’s exemption request.” TIA comments, at 3.

²⁷ Comments of the Transportation Intermediaries Association, at 4–5; comments of the Surety &

²⁵ SBTC Application, at 12.

Next, for FMCSA to grant an exemption, FMCSA would have to conclude that the \$75,000 bond requirement “is not needed to protect shippers from the abuse of market power” or that the requested exemption is of “limited scope.” 49 U.S.C. 13541(a)(2). SBTC, like AIPBA before it,²⁸ did not address the “limited scope” provision.²⁹ SBTC fails to argue why in 2019 the broker bond was “not needed to protect shippers from the abuse of market power.” Instead, SBTC states that in 2015 FMCSA did not provide adequate support for its determination that AIPBA did not make an adequate showing that the broker bond is not necessary to protect shippers from the abuse of market power.³⁰ SBTC has the burden of showing that regulation is not necessary; it is not FMCSA’s burden to show why regulation is necessary.³¹ Such a standard would turn the exemption statute on its head and undermine the Administrative Procedure Act.

Finally, in order to grant SBTC’s request, FMCSA would need to determine that its proposed exemption is in the public interest. As the overwhelming majority of public comments attest,³² SBTC has failed to show that the proposed exemption is in the public interest. Aside from unsupported statements addressed below, SBTC does not attempt to show why exempting a large swath of the brokerage and freight forwarder industries from the \$75,000 bond requirement for 5 years is in the public interest. Instead, SBTC critiques FMCSA for purportedly not showing how AIPBA’s proposed exemption was not in the public interest.³³ As noted above, FMCSA provided extensive reasoning as to why AIPBA’s request was not in the public interest in 2015. 80 FR at 17146.

SBTC claims, without offering support, that granting the exemption “is in the public interest to ensure an

uninterrupted supply chain.”³⁴ In reality, as explained above, granting SBTC’s request would harm the finances of motor carriers and therefore interfere with the supply chain.³⁵ Having the bond available benefits motor carriers in the event of broker or freight forwarder non-payment.³⁶ In addition, SBTC’s contentions that (1) the \$75,000 bond impedes small carriers’ ability to add brokerage operations,³⁷ and (2) “the current broker census” (as of September 2019), which featured an increase in the number of brokers since an initial decline following the bond increase in 2013, “cannot be fairly attributed to a return of these small business brokers that were utterly decimated in December 2013”³⁸ are unsupported. In fact, commenters point out how the bond requirement has not harmed small businesses. The MCRR Coalition, an organization that includes associations with over 15,000 small regulated motor carriers,³⁹ indicated that the argument that the increased bond amount prejudices small businesses is meritless. The annual surety bond premium is less than \$2,000 on average, according to the MCRR Coalition.⁴⁰ David Owen, the President of the National Association of Small Trucking Companies (NASTC), in an affidavit attached to the MCRR Coalition’s comments, stated that the fear that the increased bond amount would be cost prohibitive for small brokers and have an anti-competitive effect did not materialize.⁴¹

As noted above, SBTC argues that the factoring industry’s direct payment of motor carriers obviates the need for the “smallest of brokers” to have a broker bond.⁴² SBTC’s argument is unsupported by any evidence, however, and therefore FMCSA has no basis for a finding that the presence of factors in motor carrier transportation means the public interest will be served by granting the requested exemption. SBTC also argues that a 5-year exemption is warranted to give FMCSA time to implement its “comprehensive

enforcement program” to enforce the broker bonding and licensing requirement.⁴³ But SBTC’s argument on this point falls short as well. SBTC fails to show how exempting a large segment of the broker industry from the bond requirement would be in the public interest merely because some entities are currently not complying. The core public interest implicated in Congress’s imposition of the \$75,000 financial security requirement is that motor carriers (and shippers) be paid in the event of broker or freight forwarder non-payment. SBTC’s exemption request, if granted, would undermine that goal.

FMCSA therefore does not find that the \$75,000 financial responsibility requirement for brokers/freight forwarders is “not necessary to carry out the transportation policy of section 13101.” 49 U.S.C. 13541(a)(1). Nor does FMCSA find that continued regulation under section 13906(b) and (c) “is not needed to protect shippers from the abuse of market power.” 49 U.S.C. 13541(a)(2). Finally, granting the exemption requested by SBTC is not in the public interest. 49 U.S.C. 13541(a)(3). Accordingly, SBTC’s request is denied.

Meera Joshi,

Deputy Administrator.

[FR Doc. 2021–27220 Filed 12–15–21; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0278]

Agency Information Collection Activities; Emergency Approval of a Revision to a Currently-Approved Collection Request: Crime Prevention for Truckers

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

ACTION: Notice of request for emergency OMB approval.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that a revision to the Information Collection Request (ICR) discussed below has been forwarded to the Office of Management and Budget (OMB) for review and emergency approval. FMCSA will no longer be offering a \$25 incentive for those who complete the survey. FMCSA is also making non-substantive changes

Fidelity Association of America, at 1; comments of JW Surety Bonds, at 1; comments of the Owner-Operator Independent Drivers Association, at 1–2.

²⁸ 80 FR at 17145 n.2.

²⁹ While FMCSA need not resolve the issue in today’s decision, the Agency questions whether, in an industry dominated by small businesses, a 5-year exemption for brokers and freight forwarders with annual revenues below \$15.01 million could fairly be considered one “of limited scope.”

³⁰ SBTC Application, at 12.

³¹ ATA also noted this burden in its comments. Comments of the American Trucking Associations, at 3 (“the burden of course is not on the Agency to demonstrate that the requirement is necessary, but on SBTC to establish that it is unnecessary.”).

³² FMCSA notes that the unanimity among multiple associations representing multiple industries in opposition to SBTC’s request is striking.

³³ SBTC Application, at 12.

³⁴ *Id.* at 5.

³⁵ The supply chain is a critical issue that the Department of Transportation is addressing in response to disruptions caused by the COVID–19 pandemic.

³⁶ See footnote 21 above.

³⁷ SBTC Application, at 5.

³⁸ *Id.* at 14. See also May 29, 2020 comments of the Small Business in Transportation Coalition, at 3.

³⁹ Comments of the Motor Carrier Regulatory Reform Coalition, at 2.

⁴⁰ *Id.* at 8. JW Surety Bonds also indicates that surety premiums are consistently low. Comments of JW Surety Bonds, at 1.

⁴¹ Comments of the Motor Carrier Regulatory Reform Coalition, Affidavit of David Owen, at 1.

⁴² SBTC May 29 comments, at 4.

⁴³ SBTC Application, at 4.