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PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

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Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 31139; and 49 CFR 1.73.

Editorial Note: Nomenclature changes to part 387 appear at 66 FR 49873, Oct. 1, 2001.

Subpart A—Motor Carriers of Property

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§ 387.1 Purpose and scope.

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This subpart prescribes the minimum levels of financial responsibility required to be maintained by motor carriers of property operating motor vehicles in interstate, foreign, or intrastate commerce. The purpose of these regulations is to create additional incentives to motor carriers to maintain and operate their vehicles in a safe manner and to assure that motor carriers maintain an appropriate level of financial responsibility for motor vehicles operated on public highways.

[46 FR 30982, June 11, 1981, as amended at 48 FR 52683, Nov. 21, 1983]

§ 387.3 Applicability.

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(a) This subpart applies to for-hire motor carriers operating motor vehicles transporting property in interstate or foreign commerce.

(b) This subpart applies to motor carriers operating motor vehicles transporting hazardous materials,

hazardous substances, or hazardous wastes in interstate, foreign, or intrastate commerce.

(c) *Exception.* (1) The rules in this part do not apply to a motor vehicle that has a gross vehicle weight rating (GVWR) of less than 10,000 pounds. This exception does not apply if the vehicle is used to transport any quantity of a Division 1.1, 1.2, or 1.3 material, any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A, or to a highway route controlled quantity of a Class 7 material as it is defined in 49 CFR 173.403, in interstate or foreign commerce.

(2) The rules in this part do not apply to the transportation of non-bulk oil, non-bulk hazardous materials, substances, or wastes in intrastate commerce, except that the rules in this part do apply to the transportation of a highway route controlled quantity of a Class 7 material as defined in 49 CFR 173.403, in intrastate commerce.

[46 FR 30982, June 11, 1981; 46 FR 45612, Sept. 14, 1981, as amended at 48 FR 5559, Feb. 7, 1983; 48 FR 52683, Nov. 21, 1983; 49 FR 38290, Sept. 28, 1984; 59 FR 63923, Dec. 12, 1994]

§ 387.5 Definitions.

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As used in this subpart—

Accident includes continuous or repeated exposure to the same conditions resulting in public liability which the insured neither expected nor intended.

Bodily injury means injury to the body, sickness, or disease including death resulting from any of these.

Cancellation of insurance the withdrawal of insurance coverage by either the insurer or the insured.

Endorsement an amendment to an insurance policy.

Environmental restoration restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measure taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Evidence of security a surety bond or a policy of insurance with the appropriate endorsement attached.

Financial responsibility the financial reserves (e.g., insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this subpart covering public liability.

For-hire carriage means the business of transporting, for compensation, the goods or property of another.

In bulk—the transportation, as cargo, of property, except Division 1.1, 1.2, or 1.3 materials, and Division 2.3, Hazard Zone A gases, in containment systems with capacities in excess of 3500 water gallons.

In bulk (Division 1.1, 1.2, and 1.3 explosives)—the transportation, as cargo, of any Division 1.1, 1.2,

or 1.3 materials in any quantity.

In bulk (Division 2.3, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A materials)—the transportation, as cargo, of any Division 2.3, Hazard Zone A, or Division 6.1, packing Group I, Hazard Zone A material, in any quantity.

Insured and principal—the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.

Insurance premium the monetary sum an insured pays an insurer for acceptance of liability for public liability claims made against the insured.

Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes, but is not limited to, a motor carrier's agent, officer, or representative; an employee responsible for hiring, supervising, training, assigning, or dispatching a driver; or an employee concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

Property damage means damage to or loss of use of tangible property.

Public liability liability for bodily injury or property damage and includes liability for environmental restoration.

State means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

[46 FR 30982, June 11, 1981; 46 FR 45612, Sept. 14, 1981; 47 FR 12801, Mar. 25, 1982, as amended at 48 FR 52683, Nov. 21, 1983; 51 FR 33856, Sept. 23, 1986; 53 FR 12160, Apr. 13, 1988; 59 FR 63923, Dec. 12, 1994; 62 FR 16709, Apr. 8, 1997; 63 FR 33275, June 18, 1998]

§ 387.7 Financial responsibility required.

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(a) No motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in §387.9 of this subpart.

(b)(1) Policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated. Cancellation may be effected by the insurer or the insured motor carrier giving 35 days' notice in writing to the other. The 35 days' notice shall commence to run from the date the notice is mailed. Proof of mailing shall be sufficient proof of notice.

(2) *Exception.* Policies of insurance and surety bonds may be obtained for a finite period of time to cover any lapse in continuous compliance.

(3) *Exception.* A Mexico-domiciled motor carrier operating solely in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities with a Certificate of Registration issued under part 368 may meet the minimum financial responsibility requirements of this subpart by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurers that meet the requirements of §387.11 of this subpart. A Mexican motor carrier so insured must have available for inspection in each of its vehicles copies of the following documents:

(i) The Certificate of Registration;

(ii) The required insurance endorsement (Form MCS-90); and

(iii) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the temporary insurance coverage authorized by this exception.

Mexican motor carriers insured under this exception are also exempt from the notice of cancellation requirements stated on Form MCS-90.

(c) Policies of insurance and surety bonds required under this section may be replaced by other policies of insurance or surety bonds. The liability of the retiring insurer or surety, as to events after the termination date, shall be considered as having terminated on the effective date of the replacement policy of insurance or surety bond or at the end of the 35 day cancellation period required in paragraph (b) of this section, whichever is sooner.

(d) Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business. The proof shall consist of—

(1) "Endorsement(s) for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980" (Form MCS-90) issued by an insurer(s);

(2) A "Motor Carrier Surety Bond for Public Liability Under Section 30 of the Motor Carrier Act of 1980" (Form MCS-82) issued by a surety; or

(3) A written decision, order, or authorization of the Federal Motor Carrier Safety Administration authorizing a motor carrier to self-insure under §387.309, provided the motor carrier maintains a satisfactory safety rating as determined by the Federal Motor Carrier Safety Administration under part 385 of this chapter.

(e) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

(f) All vehicles operated within the United States by motor carriers domiciled in a contiguous foreign country, shall have on board the vehicle a legible copy, in English, of the proof of the required financial responsibility (Form MCS-90 or MCS-82) used by the motor carrier to comply with paragraph (d) of this section.

(g) Any motor vehicle in which there is no evidence of financial responsibility required by paragraph (f) of this section shall be denied entry into the United States.

[46 FR 30982, June 11, 1981; 46 FR 45612, Sept. 14, 1981, as amended at 48 FR 5559, Feb. 7, 1983; 48 FR 52683, Nov. 21, 1983; 51 FR 22083, June 18, 1986; 54 FR 49092, Nov. 29, 1989; 59 FR 63923, Dec. 12, 1994; 67 FR 12661, Mar. 19, 2002]

§ 387.9 Financial responsibility, minimum levels.

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The minimum levels of financial responsibility referred to in §387.7 of this subpart are hereby prescribed as follows:

Schedule of Limits_Public

Liability

transported	Type of carriage Jan. 1, 1985	Commodity
(1) For-hire (In interstate or foreign (nonhazardous)..... commerce, with a gross vehicle weight rating of 10,001 or more pounds).	Property \$750,000	
(2) For-hire and Private (In interstate, defined in 49 CFR 5,000,000 foreign, or intrastate commerce, with a gross cargo tanks, portable vehicle weight rating of 10,001 or more vehicles with capacities pounds). water gallons; or in bulk 1.3 materials, Division Division 6.1, Packing material; in bulk highway route of a Class 7 material, as 173.403.	Hazardous substances, as 171.8, transported in tanks, or hopper-type in excess of 3,500 Division 1.1, 1.2, and 2.3, Hazard Zone A, or Group I, Hazard Zone A Division 2.1 or 2.2; or controlled quantities defined in 49 CFR	
(3) For-hire and Private (In interstate or 172.101; hazardous waste, 1,000,000 foreign commerce, in any quantity; or in and hazardous substances intrastate commerce, in bulk only; with a and listed in 49 CFR gross vehicle weight rating of 10,001 or more mentioned in (2) above or (4) pounds).	Oil listed in 49 CFR hazardous materials, defined in 49 CFR 171.8 172.101, but not below.	
(4) For-hire and Private (In interstate or 1.1, 1.2, or 1.3 5,000,000 foreign commerce, with a gross vehicle weight of a Division 2.3, rating of less than 10,000 pounds). Division 6.1, Packing Group material; or highway route of a Class 7 material as 173.403.	Any quantity of Division material; any quantity Hazard Zone A, or I, Hazard Zone A controlled quantities defined in 49 CFR	

[59 FR 63923, Dec. 12, 1994, as amended at 67 FR 61821, Oct. 2, 2002]

§ 387.11 State authority and designation of agent.

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A policy of insurance or surety bond does not satisfy the financial responsibility requirements of this subpart unless the insurer or surety furnishing the policy or bond is—

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates; or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

[46 FR 30982, June 11, 1981, as amended at 48 FR 52683, Nov. 21, 1983]

§ 387.13 Fiduciaries.

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The coverage of fiduciaries shall attach at the moment of succession of such fiduciaries.

[46 FR 30982, June 11, 1981]

§ 387.15 Forms.

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Endorsements for policies of insurance (Illustration I) and surety bonds (Illustration II) must be in the form prescribed by the FMCSA and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated, as required in §387.7 of this subpart. The continuous coverage requirement does not apply to Mexican motor carriers insured under §387.7(b)(3) of this subpart. The endorsement and surety bond shall be issued in the exact name of the motor carrier.

Illustration I

Form MCS-90 (3/82)

Form Approved

OMB No. 2125-0074

Endorsement for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980

Issued to _____

of _____

Dated at _____

this _____ day of _____, 19__

Amending Policy No. _____

Effective Date _____

Name of Insurance Company _____

Countersigned by _____

Authorized Company Representative

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by , for the limits shown:

This insurance is primary and the company shall not be liable for amounts in excess of \$_____ for each accident.

This insurance is excess and the company shall not be liable for amounts in excess of \$_____ for each accident in excess of the underlying limit of \$_____ for each accident.

Whenever required by the FMCSA the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the policy is in force as of a particular date. The telephone number to call is: _____

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's jurisdiction, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, DC).

definitions as used in this endorsement

Accident includes continuous or repeated exposure to conditions which results in bodily injury, property damage, or environmental damage which the insured neither expected or intended.

Motor Vehicle means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Environmental Restoration means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Property Damage means damage to or loss of use of tangible property.

Public Liability means liability for bodily injury, property damage, and environmental restoration.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Administration.

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

Illustration II

Form MCS-82 (4/83)

(Form approved by Office of Management and Budget under control no. 2125-0075)

Motor Carrier Public Liability Surety Bond Under Sections 29 and
30 of the Motor Carrier Act of 1980

Motor carrier		Surety company and	
principal, FMCSA Docket	Parties	principal place of	No. and
principal place		business address	of
business			
.....
.....
.....
.....
.....

Purpose—This is an agreement between the Surety and the Principal under which the Surety, its successors and assignees, agree to be responsible for the payment of any final judgment or judgments against the Principal for public liability, property damage, and environmental restoration liability claims in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing provisions—(1) Sections 29 and 30 of the Motor Carrier Act of 1980 (49 U.S.C. 13906).

(2) Rules and regulations of the Federal Motor Carrier Safety Administration.

Conditions—The Principal is or intends to become a motor carrier of property subject to the applicable governing provisions relating to financial responsibility for the protection of the public.

This bond assures compliance by the Principal with the applicable governing provisions, and shall inure to the benefit of any person or persons who shall recover a final judgment or judgments against the Principal for public liability, property damage, or environmental restoration liability claims (excluding injury to or death of the Principal's employees while engaged in the course of their employment, and loss of or damage to property of the principal, and the cargo transported by the Principal). If every final judgment shall be paid for such claims resulting from the negligent operation, maintenance, or use of motor vehicles in transportation subject to the applicable governing provisions, then this obligation shall be void, otherwise it will remain in full effect.

Within the limits described herein, the Surety extends to such losses regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the Principal or elsewhere.

The liability of the Surety on each motor vehicle subject to the financial responsibility requirements of Section's 29 and 30 of the Motor Carrier Act of 1980 for each accident shall not exceed \$_____, and shall be a continuing one notwithstanding any recovery hereunder.

The surety agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the surety bond is in force as of a particular date. The telephone number is:

This bond is effective from ____ (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described herein. The principal or the Surety may at any time terminate this bond by giving (1) thirty five (35) days notice in writing to the other party (said 35 day notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the Principal is subject to the FMCSA's jurisdiction, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date notice is received by the FMCSA at its office in Washington, DC). The Surety shall not be liable for the payment of any judgment or judgments against the Principal for public liability, property damage, or environmental restoration claims resulting from accidents which occur after the termination of this bond as described herein, but such termination shall not affect the liability of the Surety for the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

(AFFIX CORPORATE SEAL)

Date _____
Surety _____
City _____
State _____
By _____

Acknowledgement of Surety

State of _____
County of _____

On this _____ day of _____, 19____, before me personally came _____, who, being by me duly sworn, did depose and say that he/she resides in _____; that he/she is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the board of directors of said corporation, that he/she signed his/her name thereto by like order, and he/she duly acknowledged to me that he/she executed the same for and on behalf of said corporation.

(OFFICIAL SEAL)

Title of official administering oath _____
Surety Company File No. _____

[46 FR 30982, June 11, 1981, as amended at 48 FR 52683, Nov. 21, 1983; 49 FR 27292, July 2, 1984; 49 FR 38290, Sept. 28, 1984; 51 FR 33856, Sept. 23, 1986; 53 FR 12160, Apr. 13, 1988; 54 FR 49092, Nov. 29, 1989; 59 FR 63924, Dec. 12, 1994]

§ 387.17 Violation and penalty.

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Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for civil penalty of no more than \$11,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the FMCSA's Administrator, by written notice. In determining the amount of such penalty, the Administrator, or his/her authorized delegate shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

[59 FR 63924, Dec. 12, 1994]

Subpart B—Motor Carriers of Passengers

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Source: 48 FR 52683, Nov. 21, 1983, unless otherwise noted.

§ 387.25 Purpose and scope.

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This subpart prescribes the minimum levels of financial responsibility required to be maintained by for-hire motor carriers of passengers operating motor vehicles in interstate or foreign commerce. The purpose of these regulations is to create additional incentives to carriers to operate their vehicles in a safe manner and to assure that they maintain adequate levels of financial responsibility.

§ 387.27 Applicability.

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(a) This subpart applies to for-hire motor carriers transporting passengers in interstate or foreign commerce.

(b) *Exception.* The rules in this subpart do not apply to—

(1) A motor vehicle transporting only school children and teachers to or from school;

(2) A motor vehicle providing taxicab service and having a seating capacity of less than 7 passengers and not operated on a regular route or between specified points;

(3) A motor vehicle carrying less than 16 individuals in a single daily round trip to commute to and from work; and

(4) A motor vehicle operated by a motor carrier under contract providing transportation of preprimary, primary, and secondary students for extracurricular trips organized, sponsored, and paid by a school district.

[48 FR 52683, Nov. 21, 1983, as amended at 63 FR 33275, June 18, 1998]

§ 387.29 Definitions.

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As used in this subpart—

Accident includes continuous or repeated exposure to the same conditions resulting in public liability which the insured neither expected nor intended.

Bodily injury means injury to the body, sickness, or disease including death resulting from any of these.

Endorsement an amendment to an insurance policy.

Financial responsibility the financial reserves (e.g., insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this subpart covering public liability.

For-hire carriage means the business of transporting, for compensation, passengers and their property, including any compensated transportation of the goods or property or another.

Insured and principal the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.

Insurance premium the monetary sum an insured pays an insurer for acceptance of liability for public liability claims made against the insured.

Motor carrier means a for-hire motor carrier. The term includes, but is not limited to, a motor carrier's agent, officer, or representative; an employee responsible for hiring,

supervising, training, assigning, or dispatching a driver; or an employee concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

Property damage means damage to or loss of use of tangible property.

Public liability liability for bodily injury or property damage.

Seating capacity any plan view location capable of accommodating a person at least as large as a 5th percentile adult female, if the overall seat configuration and design and vehicle design is such that the position is likely to be used as a seating position while the vehicle is in motion, except for auxiliary seating accommodations such as temporary or folding jump seats. Any bench or split bench seat in a passenger car, truck or multi-purpose passenger vehicle with a gross vehicle weight rating less than 10,000 pounds, having greater than 50 inches of hip room (measured in accordance with SEA Standards J1100(a)) shall have not less than three designated seating positions, unless the seat design or vehicle design is such that the center position cannot be used for seating.

[48 FR 52683, Nov. 21, 1983, as amended at 63 FR 33276, June 18, 1998]

§ 387.31 Financial responsibility required.

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(a) No motor carrier shall operate a motor vehicle transporting passengers until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in §387.33 of this subpart.

(b) Policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated.

(1) Cancellation may be effected by the insurer or the insured motor carrier giving 35 days notice in writing to the other. The 35 days notice shall commence to run from the date the notice is mailed. Proof of mailing shall be sufficient proof of notice.

(2) *Exception.* Policies of insurance and surety bonds may be obtained for a finite period of time to cover any lapse in continuous compliance.

(3) *Exception.* Mexican motor carriers may meet the minimum financial responsibility requirements of this subpart by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurers that meet the requirements of §387.35 of this subpart. A Mexican motor carrier so insured must have available for inspection in each of its vehicles copies of the following documents:

(i) The required insurance endorsement (Form MCS-90B); and

(ii) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the temporary insurance coverage authorized by this exception.

Mexican motor carriers insured under this exception are also exempt from the notice of cancellation requirements stated on Form MCS-90B.

(c) Policies of insurance and surety bonds required under this section may be replaced by other policies of insurance or surety bonds. The liability of retiring insurer or surety, as to events after the termination date, shall be considered as having terminated on the effective date of the replacement policy of insurance or surety bond or at the end of the 35 day cancellation period required in paragraph (b) of this section, whichever is sooner.

(d) Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business. The proof shall consist of—

(1) “Endorsement(s) for Motor Carriers of Passengers Policies of Insurance for Public Liability Under Section 18 of the Bus Regulatory Reform Act of 1982” (Form MCS-90B) issued by an insurer(s); or

(2) A “Motor Carrier of Passengers Surety Bond for Public Liability Under Section 18 of the Bus Regulatory Reform Act of 1982” (Form MCS-82B) issued by a surety.

(e) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

(f) All passenger carrying vehicles operated within the United States by motor carriers domiciled in a contiguous foreign country, shall have on board the vehicle a legible copy, in English, of the proof of the required financial responsibility (Forms MCS-90B or MCS-82B) used by the motor carrier to comply with paragraph (d) of this section.

(g) Any motor vehicle in which there is no evidence of financial responsibility required by paragraph (f) of this section shall be denied entry into the United States.

[48 FR 52683, Nov. 21, 1983, as amended at 50 FR 7062, Feb. 20, 1985; 54 FR 49092, Nov. 29, 1989; 60 FR 38743, July 28, 1995]

§ 387.33 Financial responsibility, minimum levels.

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The minimum levels of financial responsibility referred to in §387.31 of this subpart are hereby prescribed as follows:

Schedule of Limits

Public Liability

For-hire motor carriers of passengers operating in interstate or foreign commerce.

Vehicle seating capacity	Effective dates	
	Nov. 19, 1983	Nov. 19, 1985
(1) Any vehicle with a seating capacity of 16 passengers or more.....	\$2,500,000	\$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less \1\.....	750,000	1,500,000

\1\ Except as provided in § 387.27(b).

§ 387.35 State authority and designation of agent.

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A policy of insurance or surety bond does not satisfy the financial responsibility requirements of this subpart unless the insurer or surety furnishing the policy or bond is—

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates, or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

§ 387.37 Fiduciaries.

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The coverage of fiduciaries shall attach at the moment of succession of such fiduciaries.

§ 387.39 Forms.

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Endorsements for policies of insurance (Illustration I) and surety bonds (Illustration II) must be in the form prescribed by the FMCSA and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated, as required in §387.31 of this subpart. The continuous coverage requirement does not apply to Mexican motor carriers insured under §387.31(b) (3) of this subpart. The endorsement and surety bond shall be issued in the exact name of the motor carrier.

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(Approved by the Office of Management and Budget under control number 2125–0518)

[48 FR 52683, Nov. 21, 1983, as amended at 49 FR 22326, May 29, 1984; 54 FR 49093, Nov. 29, 1989; 67 FR 61821, 61822, Oct. 2, 2002]

§ 387.41 Violation and penalty.

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Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for civil penalty of no more than \$11,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the Administrator or his/her designee, by written notice. In determining the amount of such penalty, the Administrator or his/her designee shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

[53 FR 47543, Nov. 23, 1988]

Subpart C—Surety Bonds and Policies of Insurance for Motor Carriers and Property Brokers

[top](#) Cross Reference:

Prescribed forms relating to this part are listed in 49 CFR part 1003.

Source: 32 FR 20032, Dec. 20, 1967, unless otherwise noted. Redesignated at 61 FR 54709, Oct. 21, 1996.

§ 387.301 Surety bond, certificate of insurance, or other securities.

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(a) *Public liability.* (1) No common or contract carrier or foreign (Mexican) motor private carrier or foreign motor carrier transporting exempt commodities subject to Subtitle IV, part B, chapter 135 of title 49 of the U.S. Code shall engage in interstate or foreign commerce, and no certificate or permit shall be issued to such a carrier or remain in force unless and until there shall have been filed with and accepted by the FMCSA surety bonds, certificates of insurance, proof of qualifications as self-insurer, or other securities or agreements, in the amounts prescribed in §387.303, conditioned to pay any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance or use of motor vehicles in transportation subject to Subtitle IV, part B, chapter 135 of title 49 of the U.S. Code, or for loss of or damage to property of others, or, in the case of motor carriers of property operating freight vehicles described in §387.303(b)(2) of this part, for environmental restoration.

(2) Motor Carriers of property which are subject to the conditions set forth in paragraph (a) (1) of this section and transport the commodities described in §387.303(b)(2), are required

to obtain security in the minimum limits prescribed in §387.303(b)(2).

(b) *Common carriers-cargo insurance; exempt commodities.* No common carrier by motor vehicle subject to Subtitle IV, part B, chapter 135 of title 49 of the U.S. Code nor any foreign (Mexican) common carrier of exempt commodities shall engage in interstate or foreign commerce, nor shall any certificate be issued to such a carrier or remain in force unless and until there shall have been filed with and accepted by the FMCSA, a surety bond, certificate of insurance, proof of qualifications as a self-insurer, or other securities or agreements in the amounts prescribed in §387.303, conditioned upon such carrier making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of such carrier in connection with its transportation service: *Provided*, That the requirements of this paragraph shall not apply in connection with the transportation of the following commodities:

Agricultural ammonium nitrate.

Agricultural nitrate of soda.

Anhydrous ammonia—used as a fertilizer only.

Ashes, wood or coal.

Bituminous concrete (also known as blacktop or amosite), including mixtures of asphalt paving.

Cement, dry, in containers or in bulk.

Cement, building blocks.

Charcoal.

Chemical fertilizer.

Cinder blocks.

Cinders, coal.

Coal.

Coke.

Commercial fertilizer.

Concrete materials and added mixtures.

Corn cobs.

Cottonseed hulls.

Crushed stone.

Drilling salt.

Dry fertilizer.

Fish scrap.

Fly ash.

Forest products; viz: Logs, billets, or bolts, native woods, Canadian wood or Mexican pine; pulpwood, fuel wood, wood kindling; and wood sawdust or shavings (shingle tow) other than jewelers' or paraffined.

Foundry and factory sweepings.

Garbage.

Gravel, other than bird gravel.

Hardwood and parquet flooring.

Haydite.

Highway construction materials, when transported in dump trucks and unloaded at destination by dumping.

Ice.

Iron ore.

Lime and limestone.

Liquid fertilizer solutions, in bulk, in tank vehicles.

Lumber.

Manure.

Meat scraps.

Mud drilling salt.

Ores, in bulk, including ore concentrates.

Paving materials, unless contain oil hauled in tank vehicles.

Peat moss.

Peeler cores.

Plywood.

Poles and piling, other than totem poles.

Potash, used as commercial fertilizer.

Pumice stone, in bulk in dump vehicles.

Salt, in bulk or in bags.

Sand, other than asbestos, bird, iron, monazite, processed, or tobacco sand.

Sawdust.

Scoria stone.

Scrap iron.

Scrap steel.

Shells, clam, mussel, or oyster.

Slag, other than slag with commercial value for the further extraction of metals.

Slag, derived aggregates—cinders.

Slate, crushed or scrap.

Slurry, as waste material.

Soil, earth or marl, other than infusorial, diatomaceous, tripoli, or inoculated soil or earth.

Stone, unglazed and unmanufactured, including ground agricultural limestone.

Sugar beet pulp.

Sulphate of ammonia, bulk, used as fertilizer.

Surfactants.

Trap rock.

Treated poles.

Veneer.

Volcanic scoria.

Waste, hazardous and nonhazardous, transported solely for purposes of disposal.

Water, other than mineral or prepared—water.

Wood chips, not processed.

Wooden pallets, unassembled.

Wreck or disabled motor vehicles.

Other materials or commodities of low value, upon specific application to and approval by the FMCSA.

(c) *Continuing compliance required.* Such security as is accepted by the FMCSA in accordance with the requirements of section 13906 of title 49 of the U.S. Code, shall remain in effect at all times.

[48 FR 51780, Nov. 14, 1983, as amended at 60 FR 63981, Dec. 13, 1995; 62 FR 49941, Sept. 24, 1997]

§ 387.303 Security for the protection of the public: Minimum limits.

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(a) *Definitions.* (1) *Primary security* means public liability coverage provided by the insurance or surety company responsible for the first dollar of coverage.

(2) *Excess security* means public liability coverage above the primary security, or above any additional underlying security, up to and including the required minimum limits set forth in paragraph (b)(2) of this section.

(b)(1) Motor carriers subject to §387.301(a)(1) are required to have security for the required minimum limits as follows:

(i) *Small freight vehicles:*

Kind of equipment	Transportation provided	Minimum limits
Fleet including only vehicles under 10,000 pounds GVWR.	Commodities not subject to § 387.303(b)(2).	\$300,000

(ii) *Passenger carriers*

Kind of Equipment	Effective dates	
	Nov. 19, 1983	Nov. 19, 1985
Vehicle seating capacity		
(1) Any vehicle with a seating capacity of 16 passengers or more.....	\$2,500,000	\$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less.....	750,000	1,500,000

(2) Motor carriers subject to §387.301(a)(2) are required to have security for the required minimum limits as follows:

July 1, transported	July 1, Kind of equipment	1983*	1984*	Commodity
	(a) Freight Vehicles of 10,001 Pounds or hazardous)..... More GVWR.	\$500,000		Property (non-hazardous)..... \$750,000
	(b) Freight Vehicles of 10,001 Pounds or defined in § 1,000,000 More GVWR. tanks, portable vehicles with 3,500 water or B (Poison A) liquefied compressed gas, or quantity defined in §	5,000,000		Hazardous substances, as 171.8, transported in cargo tanks, or hopper-type capacities in excess of gallons, or in bulk Class A explosives, poison gas compressed gas or highway route controlled radioactive materials as 173.455. Oil listed in § 172.101;
	(c) Freight Vehicles of 10,001 Pounds or hazardous	500,000	1,000,000	

More GVWR.
and hazardous
171.8 and
not mentioned

(d) Freight Vehicles Under 10,001 Pounds
explosives; any 1,000,000 5,000,000
GVWR.
(Poison A); or
quantity
defined in §

waste, hazardous materials
substances defined in §
listed in § 172.101, but
in (b) above or (d) below.
Any quantity of Class A or B
quantity of poison gas
highway route controlled
radioactive materials as
173.455.

*Note: The effective date of the current required minimum limit in §
387.303(b)(2) was January 6, 1983, in
accordance with the requirements of Pub. L. 97-424, 96 Stat. 2097.

(3) Motor carriers subject to the minimum limits governed by this section, which are also subject to Department of Transportation limits requirements, are at no time required to have security for more than the required minimum limits established by the Secretary of Transportation in the applicable provisions of 49 CFR Part 387—Minimum Levels of Financial Responsibility for Motor Carriers.

(4) *Foreign motor carriers and foreign motor private carriers.* Foreign motor carriers and foreign motor private carriers (Mexican), subject to the requirements of 49 U.S.C. 13902(c) and 49 CFR part 368 regarding obtaining certificates of registration from the FMCSA, must meet our minimum financial responsibility requirements by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurance or surety companies, that meet the requirements of 49 CFR 387.315. These carriers must have available for inspection, in each vehicle operating in the United States, copies of the following documents:

- (i) The certificate of registration;
- (ii) The required insurance endorsement (Form MCS-90); and
- (iii) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the insurance coverage.

Notwithstanding the provisions of §387.301(a)(1), the filing of evidence of insurance is not required as a condition to the issuance of a certificate of registration. Further, the reference to continuous coverage at §387.313(a)(6) and the reference to cancellation notice at §387.313(d) are not applicable to these carriers.

(c) *Motor common carriers: Cargo liability.* Security required to compensate shippers or consignees for loss or damage to property belonging to shippers or consignees and coming into the possession of motor carriers in connection with their transportation service, (1) for loss of or damage to property carried on any one motor vehicle—\$5,000, (2) for less of or damage to or aggregate of losses or damages of or to property occurring at any one time and place—\$10,000.

[47 FR 55944, Dec. 14, 1982, as amended at 48 FR 43333, Sept. 23, 1983; 48 FR 45775, Oct. 7, 1983; 48 FR 51780, Nov. 14, 1983; 49 FR 1991, Jan. 17, 1984; 49 FR 27767, July 6, 1984; 50 FR 40030, Oct. 1, 1985; 53 FR 36984, Sept. 23, 1988; 54 FR 52034, Dec. 20, 1989; 55 FR 47338, Nov. 13, 1990; 62 FR 49941, Sept. 24, 1997; 67 FR 61824, Oct. 2, 2002; 68 FR 56198, Sept. 30, 2003]

§ 387.305 Combination vehicles.

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The following combinations will be regarded as one motor vehicle for purposes of this part, (a) a tractor and trailer or semitrailer when the tractor is engaged solely in drawing the trailer or semitrailer, and (b) a truck and trailer when both together bear a single load.

§ 387.307 Property broker surety bond or trust fund.

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(a) *Security.* A property broker must have a surety bond or trust fund in effect for \$10,000. The FMCSA will not issue a property broker license until a surety bond or trust fund for the full limits of liability prescribed herein is in effect. The broker license shall remain valid or effective only as long as a surety bond or trust fund remains in effect and shall ensure the financial responsibility of the broker.

(b) *Evidence of Security.* Evidence of a surety bond must be filed using the FMCSA's prescribed Form BMC 84. Evidence of a trust fund with a financial institution must be filed using the 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.

(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 listed below:

(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 institution (as defined in section 401(a) of the National Housing Act (12 U.S.C. 1724(a));

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

(6) An insurance company;

(7) A loan or finance company; or

(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 the FMCSA for the full security limits under subsection (a); or Form BMC–85 broker trust fund agreement will be filed with the 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.

(i) *Cancellation notice.* The surety bond and the trust fund agreement may be cancelled as 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. The notice period commences upon the actual receipt of the notice at the FMCSA's Washington, DC office.

(ii) *Termination by replacement.* Broker surety bonds or trust fund agreements which have been accepted by the 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.

(3) *Filing and copies.* Broker surety bonds and trust fund agreements must be filed with the FMCSA in duplicate.

[53 FR 10396, Mar. 31, 1988]

§ 387.309 **Qualifications as a self-insurer and other securities or agreements.**

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(a) *As a self-insurer.* The FMCSA will consider and will approve, subject to appropriate and reasonable conditions, the application of a motor carrier to qualify as a self-insurer, if the carrier furnishes a true and accurate statement of its financial condition and other evidence that establishes to the satisfaction of the FMCSA the ability of the motor carrier to satisfy its obligation for bodily injury liability, property damage liability, or cargo liability. Application Guidelines: In addition to filing Form BMC 40, applicants for authority to self-insure against bodily injury and property damage claims should submit evidence that will allow the FMCSA to determine:

(1) The adequacy of the tangible net worth of the motor carrier in relation to the size of operations and the extent of its request for self-insurance authority. Applicant should demonstrate that it will maintain a net worth that will ensure that it will be able to meet its statutory obligations to the public to indemnify all claimants in the event of loss.

(2) *The existence of a sound self-insurance program.* Applicant should demonstrate that it has established, and will maintain, an insurance program that will protect the public against all claims to the same extent as the minimum security limits applicable to applicant under §387.303 of this part. Such a program may include, but not be limited to, one or more of the following: Irrevocable letters of credit; irrevocable trust funds; reserves; sinking funds; third-party financial guarantees, parent company or affiliate sureties; excess insurance coverage; or other similar arrangements.

(3) *The existence of an adequate safety program.* Applicant must submit evidence of a current “satisfactory” safety rating by the United States Department of Transportation. Non-rated carriers need only certify that they have not been rated. Applications by carriers with a less than satisfactory rating will be summarily denied. Any self-insurance authority granted by the FMCSA will automatically expire 30 days after a carrier receives a less than satisfactory rating from DOT.

(4) *Additional information.* Applicant must submit such additional information to support its application as the FMCSA may require.

(b) *Other securities or agreements.* The FMCSA also will consider applications for approval of other securities or agreements and will approve any such application if satisfied that the security or agreement offered will afford the security for protection of the public contemplated by 49 U.S.C. 13906.

[48 FR 51780, Nov. 14, 1983 and 51 FR 15008, Apr. 22, 1986, as amended at 52 FR 3815, Feb. 6, 1987; 62 FR 49941, Sept. 24, 1997; 68 FR 56199, Sept. 30, 2003]

§ 387.311 Bonds and certificates of insurance.

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(a) *Public liability.* Each Form BMC 82 surety bond filed with the FMCSA must be for the full limits of liability required under §387.303(b)(1). Form MCS-82 surety bonds and other forms of similar import prescribed by the Department of Transportation, may be aggregated to comply with the minimum security limits required under §387.303(b)(1) or §387.303(b)(2). Each Form BMC 91 certificate of insurance filed with the FMCSA will always represent the full security minimum limits required for the particular carrier, while it remains in force, under §387.303(b)(1) or §387.303(b)(2), whichever is applicable. Any previously executed Form BMC 91 filed before the current revision which is left on file with the FMCSA after the effective date of this regulation, and not canceled within 30 days of that date will be deemed to certify the same coverage limits as would the filing of a revised Form BMC 91. Each Form BMC 91X certificate of insurance filed with the FMCSA will represent the full security limits under §387.303(b)(1) or §387.303(b)(2) or the specific security limits of coverage as indicated on the face of the form. If the filing reflects aggregation, the certificate must show clearly whether the insurance is primary or, if excess coverage, the amount of underlying coverage as well as amount of the maximum limits of coverage.* Each Form BMC 91MX certificate of insurance filed with the FMCSA will represent the security limits of coverage as indicated on the face of the form. The Form BMC 91MX must show clearly whether the insurance is primary or, if excess coverage, the amount of underlying coverage as well as amount of the maximum limits of coverage.

*Note: Aggregation to meet the requirement of §387.303(b)(1) will not be allowed until the completion of our rulemaking in Ex Parte No. MC-5 (Sub-No. 2), *Motor Carrier and Freight Forwarder Insurance Procedures and Minimum Amounts of Liability*.

(b) *Cargo Liability.* Each form BMC 83 surety bond filed with the FMCSA must be for the full limits of liability required under §387.303(c). Each Form BMC 34 certificate of insurance filed with the FMCSA will represent the full security limits under §387.303(c) or the specific security limits of coverage as indicated on the face of the form. If the filing reflects aggregation, the certificate must show clearly whether the insurance is primary or, if excess coverage, the amount of underlying coverage as well as amount of the maximum limits of coverage.

(c) Each policy of insurance in connection with the certificate of insurance which is filed with the FMCSA, shall be amended by attachment of the appropriate endorsement prescribed by the FMCSA and the certificate of insurance filed must accurately reflect that endorsement.

[47 FR 55944, Dec. 14, 1982, as amended at 48 FR 43332, Sept. 23, 1983; 48 FR 51781, Nov. 14, 1983; 50 FR 40030, Oct. 1, 1985; 62 FR 49941, Sept. 24, 1997; 68 FR 56199, Sept. 30, 2003]

§ 387.313 Forms and procedures.

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(a) *Forms for endorsements, certificates of insurance and others*—(1) *In form prescribed.* Endorsements for policies of insurance and surety bonds, certificates of insurance, applications to qualify as a self-insurer, or for approval of other securities or agreements, and notices of cancellation must be in the form prescribed and approved by the FMCSA.

(2) *Aggregation of Insurance.* ** When insurance is provided by more than one insurer in order to aggregate security limits for carriers operating only freight vehicles under 10,000 pounds Gross Vehicle Weight Rating, as defined in §387.303(b)(1), a separate *Form BMC 90*, with the specific amounts of underlying and limits of coverage shown thereon or appended thereto, and *Form BMC 91X* certificate is required of each insurer.

**Note: See Note for Rule 387.311. Also, it should be noted that DOT is considering prescribing adaptations of the Form MCS 90 endorsement and the Form MCS 82 surety bond for use by passenger carriers and Rules §§387.311 and 387.313 have been written sufficiently broad to provide for this contingency when new forms are prescribed by that Agency.

For aggregation of insurance for all other carriers to cover security limits under §387.303 (b)(1) or (b)(2), a separate Department of Transportation prescribed form endorsement and *Form BMC 91X* certificate is required of each insurer. When insurance is provided by more than one insurer to aggregate coverage for security limits under §387.303(c) a separate Form BMC 32 endorsement and Form BMC 34 certificate of insurance is required for each insurer.

For aggregation of insurance for foreign motor private carriers of nonhazardous commodities to cover security limits under §387.303(b)(4), a separate Form BMC 90 with the specific amounts of underlying and limits of coverage shown thereon or appended thereto, or Department of Transportation prescribed form endorsement, and Form BMC 91MX certificate is required for each insurer.

(3) *Use of Certificates and Endorsements in BMC Series.* *Form BMC 91* certificates of insurance will be filed with the FMCSA for the full security limits under §387.303 (b)(1) or (b)(2).

Form BMC 91X certificate of insurance will be filed to represent full coverage or any level of aggregation for the security limits under §387.303 (b)(1) or (b)(2).

Form BMC 90 endorsement will be used with each filing of *Form BMC 91* or *Form 91X* certificate with the FMCSA which certifies to coverage not governed by the requirements of the Department of Transportation. *Form BMC 32* endorsement and *Form BMC 34* certificate of insurance and *Form BMC 83* surety bonds are used for the limits of cargo liability under §387.303(c).

Form BMC 91MX certificate of insurance will be filed to represent any level of aggregation for the security limits under §387.303(b)(4).

(4) *Use of Endorsements in MCS Series.* When Security limits certified under §387.303 (b) (1) or (b)(2) involves coverage also required by the Department of Transportation a *Form MCS endorsement* prescribed by the Department of Transportation such as, and including, the *Form MCS 90* endorsement is required.

(5) *Surety bonds.* When surety bonds are used rather than certificates of insurance, *Form BMC 82* is required for the security limits under §387.303(b)(1) not subject to regulation by the Department of Transportation, and *Form MCS 82*, or any form of similar import prescribed by the Department of Transportation, is used for the security limits subject also to minimum coverage requirements of the Department of Transportation.

(6) *Surety bonds and certificates in effect continuously.* Surety bonds and certificates of insurance shall specify that coverage thereunder will remain in effect continuously until terminated as herein provided, except: (1) When filed expressly to fill prior gaps or lapses in coverage or to cover grants of emergency temporary authority of unusually short duration and the filing clearly so indicates, or (2) in special or unusual circumstances, when special permission is obtained for filing certificates of insurance or surety bonds on terms meeting other particular needs of the situation.

(b) *Filing and copies.* Certificates of insurance, surety bonds, and notices of cancellation must be filed with the FMCSA in triplicate.

(c) *Name of insured.* Certificates of insurance and surety bonds shall be issued in the full and correct name of the individual, partnership, corporation or other person to whom the certificate, permit, or license is, or is to be, issued. In the case of a partnership, all partners shall be named.

(d) *Cancellation notice.* Except as provided in paragraph (e) of this section, surety bonds, certificates of insurance and other securities or agreements shall not be cancelled or withdrawn until 30 days after written notice has been submitted to the FMCSA at its offices in Washington, DC, on the prescribed form (Form BMC-35, Notice of Cancellation Motor Carrier Policies of Insurance under 49 U.S.C. 13906, and BMC-36, Notice of Cancellation Motor Carrier and Broker Surety Bonds, as appropriate) by the insurance company, surety or sureties, motor carrier, broker or other party thereto, as the case may be, which period of thirty (30) days shall commence to run from the date such notice on the prescribed form is actually received by the FMCSA.

(e) *Termination by replacement.* Certificates of insurance or surety bonds which have been accepted by the FMCSA under these rules may be replaced by other certificates of insurance, surety bonds or other security, and the liability of the retiring insurer or surety under such certificates of insurance or surety bonds shall be considered as having terminated as of the effective date of the replacement certificate of insurance, surety bond

or other security, provided the said replacement certificate, bond or other security is acceptable to the FMCSA under the rules and regulations in this part.

[47 FR 55944, Dec. 14, 1982, as amended at 48 FR 43334, Sept. 23, 1983; 48 FR 51781, Nov. 14, 1983; 50 FR 40030, Oct. 1, 1985; 51 FR 34623, Sept. 30, 1986; 62 FR 49941, Sept. 24, 1997]

§ 387.315 Insurance and surety companies.

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A certificate of insurance or surety bond will not be accepted by the FMCSA unless issued by an insurance or surety company that is authorized (licensed or admitted) to issue bonds or underlying insurance policies:

- (a) In each state in which the motor carrier is authorized by the FMCSA to operate, or
- (b) In the state in which the motor carrier has its principal place of business or domicile, and will designate in writing upon request by the FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any state in which the carrier operates, or
- (c) In any state, and is eligible as an excess or surplus lines insurer in any state in which business is written, and will make the designation of process agent described in paragraph (b) of this section.

[56 FR 28111, June 19, 1991]

§ 387.317 Refusal to accept, or revocation by the FMCSA of surety bonds, etc.

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The FMCSA may, at any time, refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements if, in its judgment such security does not comply with these sections or for any reason fails to provide satisfactory or adequate protection for the public. Revocation of acceptance of any certificate of insurance, surety bond or other security shall not relieve the motor carrier from compliance with §387.301(d).

[47 FR 55945, Dec. 14, 1982, as amended at 62 FR 49942, Sept. 24, 1997]

§ 387.319 Fiduciaries.

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(a) *Definitions.* The terms “insured” and “principal” as used in a certificate of insurance, surety bond, and notice of cancellation, filed by or for a motor carrier, include the motor carrier and its fiduciary as of the moment of succession. The term “fiduciary” means any person authorized by law to collect and preserve property of incapacitated, financially disabled, bankrupt, or deceased holders of operating rights, and assignees of such holders.

(b) *Insurance coverage in behalf of fiduciaries to apply concurrently.* The coverage furnished under the provisions of this section on behalf of fiduciaries shall not apply subsequent to the effective date of other insurance, or other security, filed with and approved by the FMCSA in behalf of such fiduciaries. After the coverage provided in this section shall have been in effect thirty (30) days, it may be cancelled or withdrawn within the succeeding period of thirty (30) days by the insurer, the insured, the surety, or the principal upon ten (10) days' notice in writing to the FMCSA at its office in Washington, DC, which period of ten (10) days shall commence to run from the date such notice is actually received by the FMCSA. After such coverage has been in effect for a total of sixty (60) days, it may be cancelled or withdrawn only in accordance with §1043.7.

[32 FR 20032, Dec. 20, 1967, as amended at 47 FR 49596, Nov. 1, 1982; 47 FR 55945, Dec. 14, 1982; 55 FR 11197, Mar. 27, 1990]

§ 387.321 Operations in foreign commerce.

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No motor carrier may operate in the United States in the course of transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country unless and until there shall have been filed with and accepted by the FMCSA a certificate of insurance, surety bond, proof of qualifications as a self-insurer, or other securities or agreements in the amount prescribed in §387.303(b), conditioned to pay any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles in transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country, insofar as such transportation takes place in the United States, or for loss of or damage to property of others. The security for the protection of the public required by this section shall be maintained in effect at all times and shall be subject to the provisions of §§387.309 through 387.319. The requirements of §387.315(a) shall be satisfied if the insurance or surety company, in addition to having been approved by the FMCSA, is legally authorized to issue policies or surety bonds in at least one of the States in the United States, or one of the Provinces in Canada, and has filed with the FMCSA the name and address of a person upon whom legal process may be served in each State in or through which the motor carrier operates. Such designation may from time to time be changed by like designation similarly filed, but shall be maintained during the effectiveness of any certificate of insurance or surety bond issued by the company, and thereafter with respect to any claims arising during the effectiveness of such certificate or bond. The term “motor carrier” as used in this section shall not include private carriers or

carriers operating under the partial exemption from regulation in 49 U.S.C. 13503 and 13506.

[47 FR 55945, Dec. 14, 1982, as amended at 62 FR 49942, Sept. 24, 1997]

§ 387.323 Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.

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(a) Insurers may, at their option and in accordance with the requirements and procedures set forth in paragraphs (a) through (d) of this section, file forms BMC 34, BMC 35, BMC 36, BMC 82, BMC 83, BMC 84, BMC 85, BMC 91, and BMC 91X electronically, in lieu of using the prescribed printed forms.

(b) Each insurer must obtain authorization to file electronically by registering with the FMCSA. An individual account number and password for computer access will be issued to each registered insurer.

(c) Filings may be transmitted online via the Internet at: *http://fhwa-li.volpe.dot.gov* or via American Standard Code Information Interchange (ASCII). All ASCII transmission must be in fixed format, i.e., all records must have the same number of fields and same length. The record layouts for ASCII electronic transactions are described in the following table:

Electronic Insurance Filing

Transactions

Required	Field name	Number of positions	Description
F=filing	Start End		
C=cancel B=both	field field		

Record type.....	1	Numeric.....	1=Filing
B	1	1	

2=Cancellation.....			
Insurer number.....	8	Text.....	FMCSA Assigned
B	2	9	

With			Insurer Number (Home Office)
			Suffix (Issuing Office), If Different, e.g. 12345-01.
Filing type.....	1	Numeric.....	1 = BI&PD
B	10	10	

Cargo.....			2 =
Bond.....			3 =
Fund.....			4 = Trust
FMCSA docket number.....	8	Text.....	FMCSA Assigned MC
B	11	18	or FF Number, e.g., MC000045.
Insured legal name.....	120	Text.....	Legal
Name.....	B	19	138
Insured d/b/a name.....	60	Text.....	Doing Business As
B	139	198	Name If
Different			From Legal Name.
Insured address.....	35	Text.....	Either street or
B	199	233	mailing address.
Insured city.....	30		
Text.....		B	234
263			
Insured state.....	2		
Text.....		B	264
265			
Insured zip code.....	9	Numeric	(Do not include
B	266	274	dash if using 9
Insured country.....	2	Text.....	digit code).
B	275	276	(Will default to
Form code.....	10	Text.....	US).
B	277	286	BMC-91, BMC-91X,
Full, primary or excess coverage	1	Text.....	BMC-34, BMC-35,
E F	287	287	etc.
excess			If BMC-91X, P or
=			= indicator of
Limit of liability.....	5	Numeric.....	primary or
Thousands.....	F	288	292
Underlying limit of liability...	5	Numeric.....	policy; 1 = Full
F	293	297	under §
Primary).			387.303(b)(1); 2
Effective date.....	8	Text.....	Full under §
for B	298	305	387.303(b)(2).
			\$ in
			\$ in Thousands
			(will default to
			\$000 if
			MM/DD/YY Format

Policy number.....	25	Text.....	both Filing or Cancellation.
B	306	330	Surety companies
			may enter bond number.

(d) All registered insurers agree to furnish upon request to the FMCSA a duplicate original of any policy (or policies) and all endorsements, surety bond, trust fund agreement, or other filing.

[60 FR 16810, Apr. 3, 1995, as amended at 62 FR 49942, Sept. 24, 1997; 66 FR 49873, Oct. 1, 2001]

Subpart D—Surety Bonds and Policies of Insurance for Freight Forwarders

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Source: 55 FR 11201, Mar. 27, 1990, unless otherwise noted. Redesignated at 61 FR 54710, Oct. 21, 1996.

§ 387.401 Definitions.

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(a) *Freight forwarder* means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business:

- (1) Performs or provides for assembling, consolidating, break-bulk, and distribution of shipments; and
- (2) Assumes responsibility for transportation from place of receipt to destination; and
- (3) Uses for any part of the transportation a carrier subject to FMCSA jurisdiction.

(b) *Household goods freight forwarder* (HHGFF) means a freight forwarder of household goods, unaccompanied baggage, or used automobiles.

(c) *Motor vehicle* means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used to transport property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails. The following combinations will be regarded as one motor vehicle:

- (1) A tractor that draws a trailer or semitrailer; and

(2) A truck and trailer bearing a single load.

§ 387.403 General requirements.

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(a) *Cargo.* A freight forwarder (including a HHGFF) may not operate until it has filed with the FMCSA an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at §387.405, for loss of or damage to property.

(b) *Public liability.* A HHGFF may not perform transfer, collection, and delivery service until it has filed with the FMCSA an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at §387.405, conditioned to pay any final judgment recovered against such HHGFF for bodily injury to or the death of any person, or loss of or damage to property (except cargo) of others, or, in the case of freight vehicles described at 49 CFR 387.303(b)(2), for environmental restoration, resulting from the negligent operation, maintenance, or use of motor vehicles operated by or under its control in performing such service.

[55 FR 11201, Mar. 27, 1990. Redesignated at 61 FR 54710, Oct. 21, 1996, as amended at 62 FR 49942, Sept. 24, 1997]

§ 387.405 Limits of liability.

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The minimum amounts for cargo and public liability security are identical to those prescribed for motor carriers at 49 CFR 387.303.

[55 FR 11201, Mar. 27, 1990. Redesignated at 61 FR 54710, Oct. 21, 1996, as amended at 62 FR 49942, Sept. 24, 1997]

§ 387.407 Surety bonds and certificates of insurance.

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(a) The limits of liability under §387.405 may be provided by aggregation under the procedures at 49 CFR part 387, subpart C.

(b) Each policy of insurance used in connection with a certificate of insurance filed with the FMCSA shall be amended by attachment of the appropriate endorsement prescribed by the FMCSA (or the Department of Transportation, where applicable).

[55 FR 11201, Mar. 27, 1990. Redesignated at 61 FR 54710, Oct. 21, 1996, as amended at

62 FR 49942, Sept. 24, 1997]

§ 387.409 Insurance and surety companies.

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A certificate of insurance or surety bond will not be accepted by the FMCSA unless issued by an insurance or surety company that is authorized (licensed or admitted) to issue bonds or underlying insurance policies:

(a) In each state in which the freight forwarder is authorized by the FMCSA to perform service, or

(b) In the state in which the freight forwarder has its principal place of business or domicile, and will designate in writing upon request by the FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any state in which the freight forwarder performs service; or

(c) In any state, and is eligible as an excess or surplus lines insurer in any state in which business is written, and will make the designation of process agent prescribed in paragraph (b) of this section.

[56 FR 28111, June 19, 1991]

§ 387.411 Qualifications as a self-insurer and other securities or agreements.

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(a) *Self-insurer.* The FMCSA will approve the application of a freight forwarder to qualify as a self-insurer if it is able to meet its obligations for bodily-injury, property-damage, and cargo liability without adversely affecting its business.

(b) *Other securities and agreements.* The FMCSA will grant applications for approval of other securities and agreements if the public will be protected as contemplated by 49 U.S.C. 13906(c).

[55 FR 11201, Mar. 27, 1990. Redesignated at 61 FR 54710, Oct. 21, 1996, as amended at 62 FR 49942, Sept. 24, 1997]

§ 387.413 Forms and procedure.

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(a) *Forms.* Endorsements for policies of insurance, surety bonds, certificates of insurance,

applications to qualify as a self-insurer or for approval of other securities or agreements, and notices of cancellation must be in the form prescribed at 49 CFR part 387, subpart C.

(b) *Procedure.* Certificates of insurance, surety bonds, and notices of cancellation must be filed with the FMCSA in triplicate.

(c) *Names.* Certificates of insurance and surety bonds shall be issued in the full name (including any trade name) of the individual, partnership (all partners named), corporation, or other person holding or to be issued the permit.

(d) *Cancellation.* Except as provided in paragraph (e) of this section, certificates of insurance, surety bonds, and other securities and agreements shall not be cancelled or withdrawn until 30 days after the FMCSA receives written notice from the insurance company, surety, freight forwarder, or other party, as the case may be.

(e) *Termination by replacement.* Certificates of insurance or surety bonds may be replaced by other certificates of insurance, surety bonds, or other security, and the liability of the retiring insurer or surety shall be considered as having terminated as of the replacement's effective date, if acceptable to the FMCSA.

[55 FR 11201, Mar. 27, 1990. Redesignated at 61 FR 54710, Oct. 21, 1996, as amended at 62 FR 49942, Sept. 24, 1997]

§ 387.415 Acceptance and revocation by the FMCSA.

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The FMCSA may at any time refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, qualifications as a self-insurer, or other security or agreement that does not comply with these rules or fails to provide adequate public protection.

§ 387.417 Fiduciaries.

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(a) *Interpretations.* The terms “insured” and “principal” as used in a certificate of insurance, surety bond, and notice of cancellation, filed by or for a freight forwarder, include the freight forwarder and its fiduciary (as defined at 49 CFR 387.319(a)) as of the moment of succession.

(b) *Span of security coverage.* The coverage furnished for a fiduciary shall not apply after the effective date of other insurance or security, filed with and accepted by the FMCSA for such fiduciary. After the coverage shall have been in effect 30 days, it may be cancelled or withdrawn within the succeeding 30 days by the insurer, the insured, the surety, or the principal 10 days after the FMCSA receives written notice. After such coverage has been in

effect 60 days, it may be cancelled or withdrawn only in accordance with §387.413(d).

[55 FR 11201, Mar. 27, 1990. Redesignated at 61 FR 54710, Oct. 21, 1996, as amended at 62 FR 49942, Sept. 24, 1997]

§ 387.419 Electronic filing of surety bonds, certificates of insurance and cancellations.

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Insurers may, at their option and in accordance with the requirements and procedures set forth at 49 CFR 387.323, file certificates of insurance, surety bonds, and other securities and agreements electronically.

[60 FR 16811, Apr. 3, 1995, as amended at 62 FR 49942, Sept. 24, 1997]

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Last updated: August 7, 2006