

SEC. 32918. FINANCIAL SECURITY OF BROKERS AND FREIGHT FORWARDERS.

(a) IN GENERAL.—Section 13906 is amended by striking subsections (b) and (c) and inserting the following:

“(b) BROKER FINANCIAL SECURITY REQUIREMENTS.—

“(1) REQUIREMENTS.—

“(A) IN GENERAL.—The Secretary may register a person as a broker under section 13904 only if the person files with the Secretary a surety bond, proof of trust fund, or other financial security, or a combination thereof, in a form and amount, and from a provider, determined by the Secretary to be adequate to ensure financial responsibility.

“(B) USE OF A GROUP SURETY BOND, TRUST FUND, OR OTHER SURETY.—In implementing the standards established by subparagraph (A), the Secretary may authorize the use of a group surety bond, trust fund, or other financial security, or a combination thereof, that meets the requirements of this subsection.

“(C) PROOF OF TRUST OR OTHER FINANCIAL SECURITY.—

For purposes of subparagraph (A), a trust fund or other financial security may be acceptable to the Secretary only if the trust fund or other financial security consists of assets readily available to pay claims without resort to personal guarantees or collection of pledged accounts receivable.

“(2) SCOPE OF FINANCIAL RESPONSIBILITY.—

“(A) PAYMENT OF CLAIMS.—A surety bond, trust fund, or other financial security obtained under paragraph (1) shall be available to pay any claim against a broker arising from its failure to pay freight charges under its contracts, agreements, or arrangements for transportation subject to jurisdiction under chapter 135 if—

“(i) subject to the review by the surety provider, the broker consents to the payment;
Deadline.

PUBLIC LAW 112–141—JULY 6, 2012 126 STAT. 823

“(ii) in any case in which the broker does not respond to adequate notice to address the validity of the claim, the surety provider determines that the claim is valid; or

“(iii) the claim is not resolved within a reasonable period of time following a reasonable attempt by the

claimant to resolve the claim under clauses (i) and (ii), and the claim is reduced to a judgment against the broker.

“(B) RESPONSE OF SURETY PROVIDERS TO CLAIMS.—If a surety provider receives notice of a claim described in subparagraph (A), the surety provider shall—

“(i) respond to the claim on or before the 30th day following the date on which the notice was received; and

“(ii) in the case of a denial, set forth in writing for the claimant the grounds for the denial.

“(C) COSTS AND ATTORNEY’S FEES.—In any action against a surety provider to recover on a claim described in subparagraph (A), the prevailing party shall be entitled to recover its reasonable costs and attorney’s fees.

“(3) MINIMUM FINANCIAL SECURITY.—Each broker subject to the requirements of this section shall provide financial security of \$75,000 for purposes of this subsection, regardless of the number of branch offices or sales agents of the broker.

“(4) CANCELLATION NOTICE.—If a financial security required under this subsection is canceled—

“(A) the holder of the financial security shall provide electronic notification to the Secretary of the cancellation not later than 30 days before the effective date of the cancellation; and

“(B) the Secretary shall immediately post such notification on the public Internet Website of the Department of Transportation.

“(5) SUSPENSION.—The Secretary shall immediately suspend the registration of a broker issued under this chapter if the available financial security of that person falls below the amount required under this subsection.

“(6) PAYMENT OF CLAIMS IN CASES OF FINANCIAL FAILURE OR INSOLVENCY.—If a broker registered under this chapter experiences financial failure or insolvency, the surety provider of the broker shall—

“(A) submit a notice to cancel the financial security to the Administrator in accordance with paragraph (4);

“(B) publicly advertise for claims for 60 days beginning on the date of publication by the Secretary of the notice to cancel the financial security; and

“(C) pay, not later than 30 days after the expiration of the 60-day period for submission of claims—

“(i) all uncontested claims received during such period; or

“(ii) a pro rata share of such claims if the total

amount of such claims exceeds the financial security available.

“(7) PENALTIES.—

“(A) CIVIL ACTIONS.—Either the Secretary or the Attorney General of the United States may bring a civil Deadline.

Notification.

Public

information.

Time period.

Web posting.

Deadline.

Deadline.

126 STAT. 824 PUBLIC LAW 112–141—JULY 6, 2012
action in an appropriate district court of the United States to enforce the requirements of this subsection or a regulation prescribed or order issued under this subsection. The court may award appropriate relief, including injunctive relief.

“(B) CIVIL PENALTIES.—If the Secretary determines, after notice and opportunity for a hearing, that a surety provider of a broker registered under this chapter has violated the requirements of this subsection or a regulation prescribed under this subsection, the surety provider shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000.

“(C) ELIGIBILITY.—If the Secretary determines, after notice and opportunity for a hearing, that a surety provider of a broker registered under this chapter has violated the requirements of this subsection or a regulation prescribed under this subsection, the surety provider shall be ineligible to provider broker financial security for 3 years.

“(8) DEDUCTION OF COSTS PROHIBITED.—The amount of the financial security required under this subsection may not be reduced by deducting attorney’s fees or administrative costs.

“(c) FREIGHT FORWARDER FINANCIAL SECURITY REQUIREMENTS.—

“(1) REQUIREMENTS.—

“(A) IN GENERAL.—The Secretary may register a person as a freight forwarder under section 13903 only if the person files with the Secretary a surety bond, proof of trust fund, other financial security, or a combination of such instruments, in a form and amount, and from a provider, determined by the Secretary to be adequate to ensure financial responsibility.

“(B) USE OF A GROUP SURETY BOND, TRUST FUND, OR OTHER FINANCIAL SECURITY.—In implementing the standards established under subparagraph (A), the Secretary may authorize the use of a group surety bond, trust fund, other financial security, or a combination of such instruments, that meets the requirements of this subsection.

“(C) SURETY BONDS.—A surety bond obtained under this section may only be obtained from a bonding company that has been approved by the Secretary of the Treasury.

“(D) PROOF OF TRUST OR OTHER FINANCIAL SECURITY.—For purposes of subparagraph (A), a trust fund or other financial security may not be accepted by the Secretary unless the trust fund or other financial security consists of assets readily available to pay claims without resort to personal guarantees or collection of pledged accounts receivable.

“(2) SCOPE OF FINANCIAL RESPONSIBILITY.—

“(A) PAYMENT OF CLAIMS.—A surety bond, trust fund, or other financial security obtained under paragraph (1) shall be available to pay any claim against a freight forwarder arising from its failure to pay freight charges under its contracts, agreements, or arrangements for transportation subject to jurisdiction under chapter 135 if—

“(i) subject to the review by the surety provider, the freight forwarder consents to the payment;

PUBLIC LAW 112–141—JULY 6, 2012 126 STAT. 825

“(ii) in the case the freight forwarder does not respond to adequate notice to address the validity of the claim, the surety provider determines the claim is valid; or

“(iii) the claim—

“(I) is not resolved within a reasonable period of time following a reasonable attempt by the claimant to resolve the claim under clauses (i) and (ii); and

“(II) is reduced to a judgment against the freight forwarder.

“(B) RESPONSE OF SURETY PROVIDERS TO CLAIMS.—If a surety provider receives notice of a claim described in subparagraph (A), the surety provider shall—

“(i) respond to the claim on or before the 30th day following receipt of the notice; and

“(ii) in the case of a denial, set forth in writing for the claimant the grounds for the denial.

“(C) COSTS AND ATTORNEY’S FEES.—In any action against a surety provider to recover on a claim described in subparagraph (A), the prevailing party shall be entitled to recover its reasonable costs and attorney’s fees.

“(3) FREIGHT FORWARDER INSURANCE.—

“(A) IN GENERAL.—The Secretary may register a person as a freight forwarder under section 13903 only if the person files with the Secretary a surety bond, insurance policy, or other type of financial security that meets standards prescribed by the Secretary.

“(B) LIABILITY INSURANCE.—A financial security filed by a freight forwarder under subparagraph (A) shall be sufficient to pay an amount, not to exceed the amount of the financial security, for each final judgment against the freight forwarder for bodily injury to, or death of, an individual, or loss of, or damage to, property (other than property referred to in subparagraph (C)), resulting from the negligent operation, maintenance, or use of motor vehicles by, or under the direction and control of, the freight forwarder while providing transfer, collection, or delivery service under this part.

“(C) CARGO INSURANCE.—The Secretary may require a registered freight forwarder to file with the Secretary a surety bond, insurance policy, or other type of financial security approved by the Secretary, that will pay an amount, not to exceed the amount of the financial security, for loss of, or damage to, property for which the freight forwarder provides service.

“(4) MINIMUM FINANCIAL SECURITY.—Each freight forwarder subject to the requirements of this section shall provide financial security of \$75,000, regardless of the number of branch offices or sales agents of the freight forwarder.

“(5) CANCELLATION NOTICE.—If a financial security required under this subsection is canceled—

“(A) the holder of the financial security shall provide electronic notification to the Secretary of the cancellation not later than 30 days before the effective date of the cancellation; and

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Deadline.

Notice.

126 STAT. 826 PUBLIC LAW 112–141—JULY 6, 2012

“(B) the Secretary shall immediately post such notification on the public Internet web site of the Department

of Transportation.

“(6) SUSPENSION.—The Secretary shall immediately suspend the registration of a freight forwarder issued under this chapter if its available financial security falls below the amount required under this subsection.

“(7) PAYMENT OF CLAIMS IN CASES OF FINANCIAL FAILURE OR INSOLVENCY.—If a freight forwarder registered under this chapter experiences financial failure or insolvency, the surety provider of the freight forwarder shall—

“(A) submit a notice to cancel the financial security to the Administrator in accordance with paragraph (5);

“(B) publicly advertise for claims for 60 days beginning on the date of publication by the Secretary of the notice to cancel the financial security; and

“(C) pay, not later than 30 days after the expiration of the 60-day period for submission of claims—

“(i) all uncontested claims received during such period; or

“(ii) a pro rata share of such claims if the total amount of such claims exceeds the financial security available.

“(8) PENALTIES.—

“(A) CIVIL ACTIONS.—Either the Secretary or the Attorney General may bring a civil action in an appropriate district court of the United States to enforce the requirements of this subsection or a regulation prescribed or order issued under this subsection. The court may award appropriate relief, including injunctive relief.

“(B) CIVIL PENALTIES.—If the Secretary determines, after notice and opportunity for a hearing, that a surety provider of a freight forwarder registered under this chapter has violated the requirements of this subsection or a regulation prescribed under this subsection, the surety provider shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000.

“(C) ELIGIBILITY.—If the Secretary determines, after notice and opportunity for a hearing, that a surety provider of a freight forwarder registered under this chapter has violated the requirements of this subsection or a regulation prescribed under this subsection, the surety provider shall be ineligible to provide freight forwarder financial security for 3 years

“(9) DEDUCTION OF COSTS PROHIBITED.—The amount of the financial security required under this subsection may not be reduced by deducting attorney’s fees or administrative costs.”.

(b) RULEMAKING.—Not later than 1 year after the date of enactment

of this Act, the Secretary shall issue regulations to implement and enforce the requirements under subsections (b) and (c) of section 13906 of title 49, United States Code, as amended by subsection (a).

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date that is 1 year after the date of enactment of this Act.

49 USC 13906