



## Owner-Operator Independent Drivers Association

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### **Broker and Freight Forwarder Financial Responsibility Notice of Proposed Rulemaking FMCSA-2016-0102, Comments Due April 6<sup>th</sup>**

FMCSA has proposed modifications to broker and freight forwarder financial responsibility requirements. The goal of this proposal is to crack down on brokers and other financial entities that let claims from motor carriers accrue against the minimum \$75,000 broker bond, which results in dragged out legal proceedings and inequitable payouts.

However, the processes outlined in the Notice of Proposed Rulemaking that could help mitigate the need to initiate interpleader proceedings and alleviate the concern of broker non-payment of claims are not satisfactory to fix the problems facing motor carriers.

#### **WHAT YOU CAN DO**

- [Click here to submit your comments on this proposal. Let FMCSA know how these deceptive brokers are impacting your business and hurting highway safety!](#)

#### **WHY YOU SHOULD CARE**

- In 2012, Congress enacted broker security regulations to increase the minimum broker bond to \$75,000 and implement financial requirements for brokers, freight forwarders, and their financial backers.
- The law required FMCSA to immediately suspend the registration of a broker if the available bond falls below \$75,000, but the agency has never taken action to follow through on the 2012 provisions.
- Raising the bond to \$75,000 has not stopped brokers from continuing to steal transportation services in excess of the bond amount. When making a claim against a bond, motor carriers have often only collected cents on the dollar for what they should have been rightfully paid.

## **WHAT'S THE SOLUTION?**

- FMCSA must provide the necessary transparency and accountability from brokers and freight forwarders to absolutely know if and when there has been a drawdown on the bond below \$75,000.
- The current proposal does not establish a mandatory deadline for a surety to give the broker notice of a claim (and no definition of “adequate notice”) or for a broker to respond to a surety’s notice of a claim.
- FMCSA does not set a standard for what a broker can say in response to a surety’s notice of claim for the surety to deny the claim. There is no mandatory deadline for the surety to pay a claim after one of the conditions outlined by FMCSA requiring payment of the claim is met, and there is no deadline for the surety to give FMCSA notice that the bond has been reduced such that FMCSA should suspend the broker’s registration.
- The surety must pay on the claim either (1) as soon as the broker acknowledges it did not pay the carrier and has no claim from a shipper, (2) after a broker fails to respond within a mandatory period of time after receiving notice of a claim, or (3) when a carrier presents the surety with a notice of judgment on the claim.
- FMCSA must adopt a framework that sets definitive time periods for responses from brokers and sureties.
- FMCSA must publicize when a broker is considered insolvent in an easily accessible location such as FMCSA’s SAFER page for the broker and also on the Licensing and Insurance page for the broker bond in question.
- While this proposal is a major step towards implementing the 2012 broker regulations, FMCSA must better detail how they will take enforcement action against unscrupulous brokers. OOIDA has been disappointed by FMCSA’s reluctance about taking a proactive role in suspending broker authority and enforcing broker regulations. Congress has clearly given the agency authority to regulate these areas of the broker industry.

**[Read OOIDA’s Full Comments Here](#)**