pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 29, 2015.

Any OFA under 49 CFR 1152.27(b)(2) will be due by July 9, 2015, or 10 days after service of a decision granting the petition for exemption, whichever occurs first. Each OFA must be accompanied by a $1,600 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 20, 2015. Each trail request must be accompanied by a $300 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 303 (Sub-No. 46X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832. Replies to the petition are due on or before April 20, 2015.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any other agencies or persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: March 25, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2015–07243 Filed 3–30–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA–2013–0513]

Registration and Financial Security Requirements for Brokers of Property and Freight Forwarders; Association of Independent Property Brokers and Agents' Exemption Application

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of denial of application for exemption.

SUMMARY: FMCSA denies an application from the Association of Independent Property Brokers and Agents (AIPBA) for an exemption for all property brokers and freight forwarders from the $75,000 bond provision included in section 32918 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), now codified in 49 U.S.C. 13906. AIPBA filed its request pursuant to 49 U.S.C. 13541 on August 14, 2013. On December 26, 2013, FMCSA published a notice in the **Federal Register** requesting comments from all interested parties on AIPBA's exemption application. After reviewing the public comments, the Agency has concluded that the exemption should be denied on the basis that 49 U.S.C.13541 does not give FMCSA the authority to essentially nullify a statutory provision by exempting the entire class of persons subject to the provision. Furthermore, even if the Agency had the authority to issue such a blanket exemption, AIPBA's exemption application does not meet the factors provided in section 13541 because (1) the new $75,000 bond requirement is necessary to carry out the National Transportation Policy at 49 U.S.C.13101, (2) there has been no showing that the $75,000 requirement ''is not needed to protect shippers from the abuse of market power'' and (3) the requested exemption is not in the public interest.

DATES: This decision is effective March 31, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief of Driver and Carrier Operations, (202) 366–4001 or *thomas.yager@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590.

ADDRESSES: For access to the docket to read background documents, including those referenced in this document, or to read comments received, go to:

- Regulations.gov, *http://www.regulations.gov,* at any time and insert FMCSA–2013–0513 in the ''Keyword'' box, and then click ''Search.''
- Docket Management Facility, Room W12–140, DOT Building, 1200 New Jersey Ave. SE., Washington, DC 20590. You may view the docket online by visiting the facility between 9 a.m. and 5 p.m., Monday through Friday except Federal holidays.

Viewing Comments and Documents

AIPBA's exemption application and all public comments are available in the public docket. To view comments filed in this docket, go to *http://www.regulations.gov* and click on the ''Read Comments'' box in the upper right hand side of the screen. Then, in the ''Keyword'' box, insert ''FMCSA–2013–0513'' and click ''Search.'' Next, click ''Open Docket Folder'' in the ''Actions'' column. Finally, in the ''Title'' column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket by visiting the Docket Management Facility at the address above.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

SUPPLEMENTARY INFORMATION:

Legal Basis for the Exemption Application and Proceeding

Section 13541(a) of title 49 of the United States Code (49 U.S.C. 13541) requires the Secretary of Transportation (Secretary) to exempt a person, class of persons, or a transaction or service from the application, in whole or in part, of a provision of 49 U.S.C., Subtitle IV, Part B (Chapters 131–149), or to use the exemption authority to modify the application of a provision of 49 U.S.C. Chapters 131–149 as it applies to such person, class, transaction, or service when the Secretary finds that the application of the provision:

- Is not necessary to carry out the transportation policy of 49 U.S.C. 13101

- Is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and
- Is in the public interest.

The exemption authority provided by section 13541 ''may not be used to relieve a person from the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damage [or] insurance . . . .'' 49 U.S.C. 13541(e)(1).

AIPBA seeks an exemption from the $75,000 financial security requirements for brokers and freight forwarders at 49 U.S.C. 13906 (b) & (c). Section 13906 is located in 49 U.S.C. Subtitle IV Part B (chapter 139) and therefore may be considered within the general scope of the exemption authority provided by section 13541. The Secretary may begin a section 13541 exemption proceeding on the application of an interested party. 49 U.S.C. 13541(b). *See, e.g., Motor Carrier Financial Information Reporting Requirements-Request for Public Comments,* 68 FR 48987 (Aug. 15, 2003). The Secretary may ''specify the period of time during which an exemption'' is effective and may revoke the exemption ''to the extent specified, on finding that application of a provision of [49 U.S.C. Chapters 131–149] to the person, class, or transportation is necessary to carry out the transportation policy of [49 U.S.C.] section 13101.'' 49 U.S.C. 13541(c), (d).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. 13541.

Background

On July 6, 2012, the President signed MAP–21 into law, which included a number of mandatory, non-discretionary changes to FMCSA programs. Some of these changes amended the financial security requirements applicable to property brokers and freight forwarders operating under FMCSA's jurisdiction. Pub.L. 112–141, § 32918, 126 Stat. 405 (codified at 49 U.S.C. 13906(b) & (c)). More specifically, 49 U.S.C. 13906(b) and (c) requires brokers and freight forwarders to provide evidence of minimum financial security in the amount of $75,000.

On September 5, 2013, FMCSA published guidance (78 FR 54720) ''concerning the implementation of certain provisions of . . . (MAP–21) concerning persons acting as a broker or a freight forwarder.'' On October 1, 2013, FMCSA issued regulations requiring brokers and freight forwarders to have a $75,000 surety bond or trust fund in effect. 49 CFR 387.307(a), 387.403(c); 78 FR 60226, 60233.

On November 14, 2013, after initially filing a complaint and then voluntarily dismissing the case in district court, AIPBA filed a petition for review in the U.S. Court of Appeals for the Eleventh Circuit. *Association of Independent Property Brokers and Agents, Inc.* v. *Foxx,* No. 13–15238–D (11th Cir.). The petition alleges that the Agency's October 1, 2013 final rule was improperly issued without notice and comment. The court, upon AIPBA's request, has stayed the case pending the resolution of this exemption proceeding.

On January 23, 2015, AIPBA instituted another proceeding in the United States District Court for the Middle District of Florida, seeking to invalidate the $75,000 bond requirement from 49 U.S.C. 13906. *Association of Independent Property Brokers and Agents, Inc.* v. *Foxx et al,* No. 5:15–cv–00038–JSM–PRL (M.D. Fla.). No additional briefs or rulings have been filed in the district court case.

AIPBA Exemption Application

In an August 14, 2013 letter to the Secretary, AIPBA, through its counsel, requested that the Department ''permanently exempt all property brokers and freight forwarders from the $75,000 broker bond provision of MAP–21. . . .'' AIPBA argues that the ''$75,000 broker surety bond amount is not necessary to carry out the transportation policy of section 13101, [or] . . . to protect shippers from the abuse of market power . . . and . . . is not in the public interest.'' AIPBA seeks a categorical exemption ''so that property brokers and forwarders can continue to do business under the existing bond regulations.'' A copy of the exemption application is included in the docket referenced at the beginning of this notice.

First, AIPBA believes that the $75,000 bond requirement is contrary to the transportation policy of 49 U.S.C. 13101 because it violates the federal government's policy to ''encourage fair competition, and reasonable rates for transportation by motor carriers of property'' and to ''allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public,'' citing 49 U.S.C. 13101(a) (2)(A),(D).

AIPBA also argues that the $75,000 broker bond requirement ''is not necessary to protect shippers from the abuse of market power.'' According to AIPBA,''[t]he unnecessarily high $75,000 broker bond requirement will cause the majority of property brokers to leave the marketplace, which will expose shippers to abuses of market power by the few large property brokers able to stay in business.''

With regard to the public interest, AIPBA believes that the new bond requirement will ''cause a significant increase in consumer prices once the supply of property brokers is drastically reduced.'' AIPBA indicated that a lack of competition will require shippers to pay more for transportation services. In addition to predicting that small and mid-sized brokers will be forced out of the marketplace due to the new higher bond requirement, AIPBA believes the new requirement will serve as a barrier to entry into the marketplace for other property brokers.

Finally, while AIPBA acknowledges that ''there are certain regulations from which [the Secretary] cannot issue exemptions,'' it believes that:

> ''. . . the broker bond does not fall into one of the listed categories. Specifically, the bond is a financial security rather than a type of required insurance, a distinction emphasized in 49 U.S.C 13906 by the choice of a bond or insurance as well as MAP–21's proposed amendment to 49 U.S.C. 13906, which still requires the broker bond but deletes all reference to insurance.''

Request for Comments

On December 26, 2013, FMCSA requested public comment on the AIPBA exemption application (78 FR 78472). Specifically, FMCSA requested comments on whether the Agency should grant or deny AIPBA's application, in whole or in part. The Agency also requested comments on how it should apply 49 U.S.C. 13541(a)(1–3) to AIPBA's request.

Discussion of Public Comments

General Discussion

FMCSA received 80 responses to the December 26, 2013, notice, 23 of which were anonymous. Most of the commenters (52, including 16 of the anonymous commenters) supported the AIPBA application for an exemption and 26 (including 7 of the anonymous commenters) opposed the request. The named commenters are: Micah Applebee; AIPBA; Dave Britton; William Cohen; Gerard Coyle; Sue Cuthbertson; Raymond Donahue; Rodney Falkenstein; Christine Friend; Philip Fulmer; Kelley Gabor; Ray Gerdes; Kathy Harris; David Hoke; Scott Housely; Matt Kloss; James Lamb (2 responses); Deborah J. Larson; Lew Levy; Stuart Looney (LineHaul Logistics, Inc.); Angela Maccombs; Michael Majerek; Mike Manzella; Aaron Menice; Deborah McCoy; Jenny Merkey; Michael Millard (2 responses); John Miller; Gaetono P. Monteleone

(Transport Management Service Corporation); Ronald Morales; Hugh Nolan; Chris Olson; Charles Onsum; the Owner-Operator Independent Drivers Association (OOIDA); M. Peters; James Powers; Roger's Freight, LLC; James Randolph; Kevin Reidy; Paul Rosenweig, Jr.; Bev Smith; Michael Stanley (SMS Transportation); Robert Schwartz; Tracey Spence; the Surety & Fidelity Association of America (SFAA); Kelly Swickard; John Thomas; The Transportation Intermediaries Association (TIA); Veles Logistics, Inc.; Patrick Walsh; Werner Enterprises, Inc.; and, Gregory Williamson (Williamson's Enterprises). One commenter provided only his first name, Larry, and one hand-written comment (from Mike) included an illegible last name.

Many of the commenters who wrote in support of AIPBA's application believe the increased bond requirement has resulted in a significant decrease in the number of freight forwarders and brokers with the requisite authority from FMCSA. Some of these commenters argue that the increased bond requirement has resulted in the loss of jobs and an adverse impact on consumer prices. A number of the commenters who identified themselves as brokers argued the new requirement is intended to reduce competition by eliminating small businesses rather than to reduce fraud. Several commenters also argue that implementation of the $75,000 bond requirement is inconsistent with the transportation policy in 49 U.S.C. 13101.

Commenters writing in opposition to AIPBA's application argue that the previous $10,000 bond requirement was originally set in 1979 and that small trucking companies, especially owner operators, will be better protected and have better business opportunities with the $75,000 bond. A number of these commenters include brokers who state that obtaining the higher bond amount was relatively easy. And some state that the previous $10,000 bond was insufficient and resulted in transportation service providers being left unpaid after the broker went out of business.

Specific Issues Raised by AIPBA and Supporters of AIPBA's Application

Unintended Consequences

A number of the commenters writing in support of AIPBA's application believe the increased bond requirement has resulted in unintended consequences such as brokers and freight forwarders being forced out of the industry, a loss of jobs and decreased rates for trucking companies. AIPBA indicated in its comments that the total number of property brokers on October 1, 2013, was 21,565 and that 8,218 broker operating authority registrations have been revoked since December 1, 2013. AIPBA indicated that the total number of freight forwarders on October 1, 2013, was 2,212 with 1,583 freight forwarder operating authority registrations revoked since December 1, 2013.[1] AIPBA believes there will be a secondary wave of revocations when bonding companies that rushed to acquire market share adjust their rates after the financial security market settles.

AIPBA also argues the increase in the bond requirements has resulted in the loss of jobs and an adverse impact on consumer prices. AIPBA believes the increase in bonds has had an adverse impact on rates for truckers as well.

Incremental Increase in Bond Requirement

Matt Kloss supports the AIPBA exemption in part and believes FMCSA should consider an incremental increase in the bond limit rather than leaving the limit at $75,000. He states that he has been in the brokerage business for 12 years and he has never had a successful filing against his bond. He explains that he is not in the business to steal money from trucking companies. He argues that ''[e]stablished companies with good histories should have been required to increase the bond to $20,000 this year, with future increases that are manageable.''

An anonymous commenter believes that the bond requirement ''. . . should be initially lowered to a more reasonable amount of $25,000.'' This commenter also argued that the rules should require a $25,000 fee per agent for large brokers.

Costs of the $75,000 Bond Will Drive Brokers Out of the Industry

Sue Cuthbertson discusses the premiums that she had to pay to comply with the $75,000 bond requirement. She explains that she used to pay $900 per year for her broker bond and she now has to pay $3,500 per year for the $75,000 bond. She says that she could barely stay in business paying the $900.

An anonymous commenter writing in support of the AIPBA application describes a similar experience with premiums for the $75,000 bond. The commenter explains that initially the premium quoted was $3,500. However, after the commenter shopped around for better rates, the same company quoted the commenter a more favorable premium of $1,300.

[1] AIPBA's comments were dated January 22, 2014.

Specific Comments by Opponents of AIPBA's Application

Protection of the General Public's, Shippers' and Carriers' Financial Interests

OOIDA believes that the $75,000 bond requirement helps to increase carriers' comfort in dealing with brokers they do not know and as such helps promote efficiency in the marketplace. According to OOIDA:

> ''Many of OOIDA's members are small business men and women who operate under their own federal operating authority and rely upon brokers to find freight to meet their business goals. Part of the efficiency of the current transportation marketplace is that brokers match motor carriers available to haul freight and shippers needing to move freight—parties who do not have an ongoing relationship, but who might make mutually beneficial connections on a load by load basis. This efficiency in the marketplace is increased greatly when motor carriers feel comfortable taking loads from brokers who they do [not] know *(apparent omission in original).* By securing the debts of brokers to the motor carrier, the federal broker bond or trust is intended to give motor carriers confidence that they will be paid when they are doing business with a broker they do not know.''

OOIDA also argues that ''raising the bond or trust amount to $75,000 is intended to reduce harm caused by undercapitalized brokers who steal transportation service from motor carriers—the protected parties under the broker bond or trust statute . . . The $10,000 bond or trust was simply not sufficient to serve its intended purpose—to protect the motor carriers from non-payment by brokers.'' OOIDA also comments on the connection between the new $75,000 financial responsibility requirement and the National Transportation Policy (NTP) at 49 U.S.C. 13101. According to OOIDA, ''[b]y this statute, Congress burnished the national transportation goals of encouraging 'sound economic conditions in transportation, including sound economic conditions among carriers;' 49 U.S.C. 13101(a)(1)(C), and acted to promote efficient transportation and to enable efficient and well-managed carriers to . . . maintain fair wages and working conditions. Sections 13101(a)(2)(B)&(F).''

Stuart Looney states:

> ''The purpose for requiring the posting of a bond is well established as furthering protection to the general public. The public is well served with this requirement as freight brokering is an easy entry undertaking and is fraught with many thinly capitalized and reasonably unprofessional participants.''

The Surety & Fidelity Association of America (SFAA) believes a bond requirement of less than $75,000 would deprive shippers and carriers of the additional protection that Congress thought was necessary. According to SFAA ''the intent of the bond is to protect shippers and motor carriers . . . There are a number of cases in which the $10,000 bond was not sufficient to pay all claims in the full amount . . . .'' SFAA cited multiple cases for its proposition.

SFAA also argues that the surety bond:

''. . . protects the public interest by ensuring that FMCSA licenses are provided to qualified, well-capitalized brokers and freight forwarders . . . While claims handling is a critical function of the surety, another equally critical function is the surety's prequalification of a principal before the surety will write a bond. A surety will review the capabilities and financial strength of bonds applicants and provide bonds only to those entities that the surety has determined are capable of performing the underlying obligation . . . The bond provides financial protection to shippers and carriers, which serves to reduce costs in the long run by eliminating the need for a carrier or shipper to include the risk of nonpayment in its pricing.''

The Transportation Intermediaries Association (TIA) indicates that eliminating the bond requirement is ''not acceptable'' to shippers or carriers. According to TIA, 2 major trucking organizations, the American Trucking Associations (ATA) and OOIDA have supported increasing the bond well above the new $75,000 amount. According to TIA, in a 2009 letter, ''ATA cited a study they conducted indicating that only 13 percent of carriers' claims against brokers were satisfied by the $10,000 bond.'' According to TIA, in recent years, its members have seen shippers demand $100,000 bonds to exclusively protect one shipper.

Werner Enterprises, Inc. (Werner) argues that ''[t]he eroded value of the bond since it was last adjusted to $10,000 in 1977'' means ''there is essentially no real security for broker misconduct.''

Veles Logistics Inc. (Veles), which describes itself as a ''small group of owner-operators,'' believes the $75,000 bond will help to get rid of ''unstable unsafe financially weak and fraudulent brokers.'' Veles also believes the new bond requirement will increase the prices of loads by eliminating ''third and fourth and fifth resellers out of the freight moving chain.''

Scott Housely argues:

''The brokerage limit as it stand[s] at $75,000.00 addresses a larger problem of unethical brokers who have not invested in the industry and don't intend to. Carriers in the past had little recourse in collecting bad debt from brokers or the shippers that they worked for due to the transient nature of many brokers. The limit as it stands does not [impede] any good brokers and enhances the relationship with the asset based carriers who are the backbone of the entire system. Please keep the current rule in place.''

Granting the Exemption Would Eliminate the Bond Requirement

OOIDA expresses concern that if FMCSA granted AIPBA's request, the Agency would not have the discretion to return to the $10,000 bond limit; the Agency would have to allow brokers to operate without having a bond. OOIDA argues:

''The application would have the effect of permitting all brokers to operate without a broker bond or trust of *any* amount. When Congress enacted a $75,000 bond or trust statute, it repealed the $10,000 bond or trust statute. AIPBA's requested exemption would not reenact the $10,000 bond or trust requirement; it would exempt all property brokers from the requirement to carry *any* bond or trust. The statute found at 49 U.S.C. 13541 only permits FMCSA to grant exemptions from certain statutory requirements. It does not permit FMCSA to amend or revise applicable statutes. FMCSA has no power to institute a bond or trust requirement of any amount other than the statutorily set $75,000 amount. The goal of AIPBA's application, the creation of a broker industry with no bond or trust protecting the motor carrier industry, would completely subvert congressional intent.''

Costs of the Bond are Reasonable

Werner states:

''The bond cost is a problem for some brokers for good reason. A bond such as this which is designed to guaranty the integrity and ability of a party to respond for their failures to another party is priced not only upon the total exposure of the company writing the bond but also upon the financial strength of the party being bonded. Our experience was that the cost of our $10,000 bond was $77 per year which increased to $338 for a $75,000 bond. The cost increase is not significant. Companies that are experiencing higher costs may be the companies for whom the shippers and motor carriers need protection.''

TIA states:

It is ironic that those making the argument to eliminate the bond increase because some brokers and forwarders cannot afford it, actually make the case for the higher bond. Congress determined that companies should not handle other people's money if they cannot afford to protect it. Broker and forwarder bonds are available in the marketplace today for less than $6,000 per year.

TIA argues that when the cost for the bond is spread over an average of 5 loads per day, the bond premium works out to be less than $5.00 per load.

FMCSA Decision

FMCSA has considered AIPBA's exemption request and all of the comments received, including AIPBA's subsequent comments, and FMCSA denies the request. FMCSA does not have the authority to disregard Congress's directive in the revised statutory provision by exempting all property brokers and freight forwarders from the bond requirement. Essentially, AIPBA's opposition to the increase in the bond amount is a challenge to Congress's judgment that the increase is necessary and appropriate, indeed in the public interest.

Furthermore, even if the Agency had the authority to grant AIPBA's exemption application, AIPBA's request does not meet the three part statutory test in 49 U.S.C. 13541. Specifically, FMCSA finds that the $75,000 bond requirement at 49 U.S.C. 13906(b)–(c) is necessary to carry out the transportation policy of section 13101, and is needed to protect shippers from the abuse of market power. . . .'' [2] Moreover, and most critically, an industry-wide exemption for brokers and freight forwarders from the $75,000 bond requirement is not in the public interest.

The Scope of FMCSA's Exemption Authority

In Section 32918 of MAP–21, Congress expressly mandated that all FMCSA regulated brokers and freight forwarders have a minimum of $75,000 in financial security. 49 U.S.C. 13906(b),(c). AIPBA asks the Agency to permanently exempt all property brokers and freight forwarders subject to section 32918's $75,000 bond requirement. FMCSA is denying AIPBA's exemption application because the Agency lacks the authority to issue the kind of blanket exemption that AIPBA seeks.

While section 13541 gives the Agency broad authority to exempt certain persons or transactions, FMCSA does not have the authority to effectively nullify a statute by exempting the entire class of persons subject to the bond requirement, as AIPBA requests. 49 U.S.C. 13541(a); *Terran ex rel. Terran* v. *Secretary of Health and Human Services,* 195 F.3d 1302, 1312 (Fed. Cir. 1999) (''The Constitution does not authorize members of the executive branch to enact, amend, or repeal statutes.''). AIPBA's request would

[2] AIPBA does not argue that ''the transaction or service is of limited scope,'' 49 U.S.C. 13541(a)(2), nor do other commenters.

amount to a usurpation of a congressional mandate. Therefore, because the Agency lacks the authority to grant AIPBA's blanket exemption, the Agency is denying AIPBA's exemption application.

Public Interest

Even if FMCSA had the authority to grant AIPBA's exemption application, a blanket exemption covering all brokers and freight forwarders is not in the public interest. ''Congress is presumed to legislate in the public interest.'' *Time Warner Entertainment Co. L.P.* v. *F.C.C.,* 810 F.Supp. 1302, 1304 n.6 (D.D.C. 1992). As discussed above, granting an exemption to all brokers and freight forwarders would flout a clear and recent congressional directive and statement of the public interest. Further, numerous commenters have persuaded FMCSA that such an exemption is not in the public interest.

First, FMCSA finds that granting AIPBA's request would undermine the purpose of the bond requirement—the protection of shippers and motor carriers that utilize brokers and freight forwarders as third party intermediaries. FMCSA's predecessor, the Interstate Commerce Commission (ICC), very clearly stated that '' '[t]he legislative history . . . clearly reveals that the primary purpose of Congress in regulating motor transportation brokers is to protect carriers and the traveling and shipping public against dishonest and financially unstable middlemen in the transportation industry.' '' *Clarification of Insurance Regulation,* 3 I.C.C.2d 689, 692 (1987)(quoting *Carla Ticket Service, Inc., Broker Application,* 94 M.C.C. 579, 580 (1964)).

According to OOIDA, ''[t]he $10,000 bond or trust was simply not sufficient to serve its intended purpose—to protect the motor carriers from non-payment by brokers.'' And, as SFAA notes, ''the intent of the bond is to protect shippers and motor carriers. A bond in a lesser amount would deprive shippers and carriers of the additional protection that Congress thought was necessary. There are a number of cases in which the $10,000 bond was not sufficient to pay all claims in the full amount. . . .'' Moreover, according to TIA, in 2009, ''ATA cited a study they conducted indicating that only 13 percent of carriers' claims against brokers were satisfied by the $10,000 bond.'' This unanimity of input from members of the three industries most affected by the $75,000 requirement (transportation intermediaries, motor carriers and the surety bond industry) is noteworthy. Given that the purpose of the financial security requirement is to protect shippers and motor carriers, and the widespread view that the previous $10,000 requirement [3] was deficient in performing that function, it would not serve the public interest to grant AIPBA's requested exemption. FMCSA will not perpetuate, through the grant of an exemption, the pre-MAP–21 status quo of shippers and motor carriers not being able to collect from financially insolvent brokers. Neither AIPBA nor any of the commenters that supported its request have shown how the public interest in protecting shippers and motor carriers would be served by granting the requested exemption.

On the other hand, in its exemption application, AIPBA argues that the $75,000 broker surety bond amount is ''not in the public interest.'' AIPBA argues that the $75,000 broker bond would:

> . . . cause a significant increase in consumer prices once the supply of property brokers is drastically reduced . . . In addition, the high amount of the broker bond will not only cause existing small and mid-size property brokers to leave the marketplace, but will also serve as a barrier to entry by other property brokers . . . The statutory loss of broker licenses on October 1, without further warning, will cause chaos in the trucking and shipping industry, and will cause thousands of brokers to lose their livelihood on October 1, 2013, a date now less than 60 days away. This will result in an immediate loss of jobs for these brokers and the agents they employ. It will also cause significant supply chain disruptions. Such a scenario is not in the public interest.

In its January 22, 2014, comments in response to FMCSA's **Federal Register** Notice in this proceeding, AIPBA states ''[w]ith regard to the public interest . . . a lack of competition will require shippers to pay more for transportation services.'' AIPBA also argues that ''it is in the public interest to allow open competition, as the public benefits from lower consumer prices and increased employment. A larger pool of property brokers provides more competition and better access to brokers for shippers, which reduces the overall prices of products to consumers.''

FMCSA acknowledges that the number of FMCSA-registered brokers and freight forwarders declined after the $75,000 bond requirement went into effect on October 1, 2013. Between September 2013 and December 2013, the number of freight forwarders with active authority dropped from 2,351 to 925. The number of freight forwarders then increased to 1,208 by December 2014. During this same period, the number of active brokers dropped from 21,375 to 13,839, and then increased to 15,471 in December 2014. However, AIPBA has provided no proof of a causal connection between the broker license revocations and an adverse impact on consumer prices or an adverse impact on rates for truckers.[4]

Moreover, even if AIPBA had shown that the $75,000 requirement caused all of the consequences it alleges, it has not focused on the key public interest implicated in the broker bond—the protection of motor carriers and shippers. It has not provided, nor have we discerned, any evidence that shippers or motor carriers would be adequately protected by the pre-MAP–21 bond requirement.

Abuse of Market Power

In its exemption application, AIPBA asserts that ''[t]he $75,000 broker surety bond amount is not necessary to protect shippers from the abuse of market power.'' To the contrary, AIPBA asserts that ''[e]xemption from the increased broker amount will protect shippers from an abuse of market power. The unnecessarily high $75,000 broker bond requirement will cause the majority of property brokers to leave the marketplace, which will expose shippers to abuses of market power by the few large property brokers able to stay in business.'' In its subsequent comments, AIPBA reiterates its assertion that the new ''minimum financial security is not necessary to protect shippers from abuse of market power.'' AIPBA argues that ''the new minimum security amount is the direct result of collusion to abuse market power. The exemption would help stop the loss of property brokers and provide more options for shippers, which would protect shippers.'' Other commenters did not address the abuse of market power.

Based on the record before it, FMCSA cannot find that application of the $75,000 broker/freight forwarder bond requirement under 49 U.S.C. 13906(b),(c) ''is not needed to protect shippers from the abuse of market power. . . .'' 49 U.S.C. 13541(a)(2). While AIPBA hypothesizes that a smaller brokerage industry will abuse its market power with regard to shippers, it

[3] FMCSA, by regulation, raised the bond requirement to $25,000 for household goods (HHG) brokers in 2010. 49 CFR 387.307 (2012). Pursuant to regulation, as of October 1, 2013, all FMCSA regulated brokers and freight forwarders (HHG and non-HHG) are required to have $75,000 in financial security. 49 CFR 387.307(a) (brokers); 49 CFR 387.403(c)(freight forwarders).

[4] In late-filed comments, James P. Lamb, AIPBA's president, alleged that the broker bond increase in MAP–21 ''caused 9,800 intermediaries to lose their licenses, first time jobless claims then shot up, consumer prices are on the increase, and truckers' rates are down for all equipment types. . . .''

provides no evidence outlining such abuse. Moreover, it provides no evidence that the new $75,000 bond requirement is not required to protect against such abuse of market power. Without any evidence, FMCSA will not exempt an entire industry from a clearly articulated congressional directive to raise the broker and freight forwarder financial responsibility requirements.

National Transportation Policy (NTP)

Finally, in its application, AIPBA argues that the $75,000 bond requirement is contrary to the transportation policy of 49 U.S.C. 13101, because it violates the federal government's policy to ''encourage fair competition, and reasonable rates for transportation by motor carriers of property'' and to ''allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public. . . .'' 49 U.S.C. 13101(a)(2)(A), (D). AIPBA argues that the new broker bond amount ''will likely result in a loss of tens of thousands of jobs and higher consumer prices as a matter of supply and demand.'' Further, according to AIPBA, ''per Kevin Reid of the National Association for Minority Truckers, the anti-competitive effects of the new broker bond requirement will detrimentally affect the participation of minorities in the motor carrier system, which is another violation of the transportation policy.''

In its docket comments in this proceeding, AIPBA argues that ''a $75,000 bond to protect carriers is not necessary to implement the national transportation policy because there is no shipper bond to protect carriers when they receive loads without the involvement of an intermediary.'' Further, AIPBA argues that ''enforcement of the new financial security minimum is contrary to the national transportation policy of 49 U.S.C. 13101 because it restricts opportunity, competition and reasonable rates.''

On the other hand, with regard to the National Transportation Policy (NTP), OOIDA argues that Congress's new $75,000 requirement ''burnished the national transportation goals of encouraging 'sound economic conditions in transportation, including sound economic conditions among carriers;' 49 U.S.C. 13101(a)(1)(C), and acted to promote efficient transportation and to enable efficient and well-managed carriers to . . . maintain fair wages and working conditions. Sections 13101(a)(2)(B)&(F).'' OOIDA's point is well taken.

While AIPBA is correct that the NTP provides that the policy of the United States Government is to ''encourage fair competition, and reasonable rates for transportation by motor carriers of property,'' ''allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public'', 49 U.S.C. 13101(a)(2)(A), (D), and ''promote greater participation by minorities in the motor carrier system,'' 49 U.S.C. 3101(a)(2)(J), these are not the only elements of the NTP. Among other goals, the NTP provides that federal transportation policy includes ''promot[ing] efficiency in the motor carrier transportation system . . . ,'' 49 U.S.C. 13101(a)(2)(B), meeting the needs of shippers, 49 U.S.C. 13101(a)(2)(C), and ''enabl[ing] efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions. . . .'' 49 U.S.C. 13101(a)(2)(F).

FMCSA finds that application of the $75,000 broker and freight forwarder financial responsibility requirements under 49 U.S.C. 13906(b), (c) is ''necessary to carry out the transportation policy of section 13101. . . .'' 49 U.S.C. 13541(a)(1). First, Congress set that amount as the minimum requirement and in so doing, must be presumed to have acted in a manner consistent with the NTP. Second, as OOIDA, TIA and SFAA have shown, the previous $10,000 bond was inadequate in the event of broker financial problems. In such instances, both shippers and motor carriers faced losses. Accordingly, applying the new $75,000 bond amount is necessary to meet the ''needs of shippers,'' 49 U.S.C. 13101(a)(2)(C), and to allow motor carriers to ''earn adequate profits [and] attract capital,'' 49 U.S.C. 13101(a)(2)(F), as directed by the NTP.

Moreover, AIPBA has not shown why applying the new $75,000 requirement is not necessary to carry out those provisions of the NTP. FMCSA does not believe that AIPBA has provided evidence that there has been a decrease in motor carrier competition or an increase in shipping rates due to the implementation of the $75,000 bond requirement. Indeed at p. 5 of their docket comments, AIPBA admits that rates have actually decreased. Further, aside from an unsubstantiated projection, AIPBA makes no showing that the new $75,000 requirement will undermine the NTP's goal of ''promot[ing] greater participation by minorities in the motor carrier system. . . .'' 49 U.S.C. 13101(a)(2)(J).

FMCSA does not find that the $75,000 financial responsibility requirement for brokers/freight forwarders is ''not necessary to carry out the transportation policy of section 13101. . . .'' 49 U.S.C. 13541(a)(1). Nor does FMCSA find that continued regulation under section 13906(b), (c) ''is not needed to protect shippers from the abuse of market power'' or that the transaction or service at issue is of ''limited scope. . . .'' 49 U.S.C. 13541(a)(2). Finally, granting the exemption requested by AIPBA is not in the public interest. 49 U.S.C. 13541(a)(3). Accordingly, AIBPA's request is denied.

Issued on: March 25, 2015.

T.F. Scott Darling, III,

Chief Counsel.

[FR Doc. 2015–07353 Filed 3–30–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Intent To Prepare an Environmental Impact Statement for the GA 400 Transit Initiative in Fulton County, Georgia

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) and Section 4(f) Evaluation.

SUMMARY: The Federal Transit Administration (FTA) and the Metropolitan Atlanta Rapid Transit Authority (MARTA) issue this Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) and an evaluation per 49 U.S.C, 303 and 23 CFR 774 (''Section 4(f)'') for the extension of high capacity, rapid transit in the Georgia (GA) 400 corridor in north Fulton County, GA from Dunwoody to Alpharetta. The EIS and Section 4(f) Evaluation will be prepared in accordance with regulations implementing the National Environmental Policy Act (NEPA) and 40 CFR parts 1500 through 1508, Section 4(f), as well as FTA's regulations and guidance implementing NEPA (23 CFR 771).

The purpose of this NOI is to: (1) Advise the public and agencies that MARTA in coordination with the FTA is preparing an EIS for the proposed project; (2) provide information including previous planning studies and decision, purpose and need, and alternatives being considered; and, (3) invite public and agency participation in the EIS process, which includes a