<u>Summary of FMCSA Guidance</u>

A. Guidance is effective October 1, 2013.

1. The new statute supersedes prior regulations. The new law prohibits motor carriers from providing brokerage services unless they register as a broker.

2. Unlike motor carriers, freight forwarders are not required to obtain a property broker's license when they assume responsibility for transportation from place of receipt to place of destination and use for any part of the transportation a motor, rail or water carrier subject to FMCSA jurisdiction (thus with a bond, acting as a forwarder, a licensed entity and arranger for transportation it has contracted to provide).

3. Motor carriers may file an OP-1 to obtain broker authority, listing their U.S. DOT Number, but including no MC. The agency acknowledges that MAP-21 requires a separate registration number which it will assign at a later time for those who have or obtain carrier and broker authority in the same name.

4. The agency defines interlining of shipments as the transfer of property between two or more carriers for movement to a final destination excluding from compliance with the new bond requirement only true "joint line" services.

5. The guidance says that brokers are not responsible for cargo claims. Brokers or forwarders who engage in brokerage or forwarding services without operating authority will be liable for civil penalties of up to $10,000 and can be liable to pay valid claims to third parties regardless of the amount.

6. Penalties and liabilities to injured parties may apply jointly and severally to all corporations or partnerships involved in the transportation and individually to <u>all officers, directors, principals</u> of these businesses.

B. Beginning October 1, brokers and freight forwarders must obtain and file surety bonds or trust agreements in the amount of $75,000.

1. Until and unless the agency develops group financial security products, each freight forwarder or broker must file its own separate bond or trust agreement.

2. The agency is developing new BMC forms for use which will be made available in advance of October 1.

3. If a single entity has both broker and forwarding authority, it may file one bond or bank trust agreement. If commonly held companies have brokerage and forwarding authority in separate entities, multiple bonds will be required.

4. The agency is allowing a soft enforcement period of 60 days for carriers to obtain broker (or forwarder) authority and brokers and forwarders to complete the bond filing process.

5. Brokers and forwarders, when obtaining a surety bond, should check the U.S. Department of Treasury list of certified surety bond companies (http://www.fms.treas.gov/c570/c570_a-z.html) to ensure that the surety is licensed.

6. Only household goods freight forwarders are currently required to have evidence of cargo insurance.

7. Surety bonds and trust fund agreements may be canceled electronically through the FMCSA portal.

8. New applications will not be effective until full limits are on file.

C. FMCSA implementation and timelines

1. FMCSA will provide a 60 day phase-in period beginning October 1 to allow the industry to complete all necessary filings.

2. Notices will go out November 1 to brokers and forwarders that have not met the $75,000 minimum requirement. Existing authorities will not be revoked until 30 days thereafter.

3. The agency cannot determine how many motor carriers that have not been previously required to obtain broker authority currently occasionally broker loads. Therefore, the agency will phase-in enforcement of broker regulations for motor carriers and at a later time will develop a comprehensive enforcement program.

4. In the meantime, the agency urges motor carriers not to accept loads from unregistered brokers or forwarders, noting that motor carriers which are not registered as brokers may not have "the financial security mandated by MAP-21."

To avoid the dichotomy between accepting shipments as a carrier (which have liability for cargo loss) and tendering those shipments to other carriers as a property broker (which has no similar liability) carriers faced with complying with the new rules might wish to consider obtaining companion authority as a freight forwarder as the vehicle for posting the $75,000 bond. By diverting excess capacity to your freight forwarder permit, an applicant could comply with both a shipper's mandate that you accept liability for cargo loss or damage and the requirements of MAP-21 that the subcontracting intermediary have the appropriate bond in place.

With the extension afforded by the agency, applicants who act now should be able to have the required broker or forwarder authority and bonds in place by the extended deadline.