

MAP-21 Broker/Carrier Provisions

MAP-21, signed into law on July 6, 2012 as Public Law No. 112-141, contained several provisions intended to better regulate freight brokers, freight forwarders and the companies that provide the financial security for authorized brokers (and now freight forwarders). **Some of these provisions may have an impact on existing carrier practices, including, as noted below, applying to some motor carriers who heretofore did not consider themselves brokers.**

Minimum financial security – Beginning on October 1, 2013, brokers and freight forwarders will be required to provide financial security (in the form of surety bond or trust fund agreement) in the amount of \$75,000. This represents an increase from the \$10,000 amount currently required.

Distinction between motor carrier and broker activities – Under MAP-21, a motor carrier will only be authorized to provide transportation services where it transports the freight some portion of the way using self-propelled vehicles it owns, rents or leases. Where a motor carrier is simply arranging for transportation without providing any portion of the movement, the motor carrier will have to register for broker authority. It is anticipated that this new requirement will be further distilled in a FMCSA rulemaking process, which is not expected to commence until December 2013, but it is possible that the provision may be included in direct final rule and thus be effective October 1. MAP-21 makes it unlawful to engage in brokerage activities without authority and without the proper financial security, subject to civil penalties.

Registration of brokers and freight forwarders – Brokers today are required to register for authority with FMCSA. MAP-21 requires that, to qualify for registration, the registering entity must employ as an officer an individual with: 1) at least 3 years relevant experience; or 2) provides the Secretary with satisfactory evidence of the individual's knowledge of related rules, regulations and industry practices. It is anticipated that this new requirement will be further distilled in a FMCSA rulemaking process, which is not expected to commence until December 2013. Therefore, the effective date of this requirement is unknown. MAP-21 further establishes a maximum 5-year duration for registration renewals.

Registration generally (for motor carriers, brokers and freight forwarders) – MAP-21 directs the Secretary of Transportation to issue a distinctive registration number for each type of authority (motor carrier, broker, or freight forwarder) that an entity is registered for. This registration number shall include an indicator of the type of authority for which it is issued.

Specification of authority – For each agreement or provide transportation or service for which registration is required, the registered entity must specify in writing the authority under which it is providing the service. It is anticipated that this new requirement will be further distilled in a FMCSA rulemaking process, which is not expected to commence until December 2013.

What it does not do – While attorney may advise an entity with motor carrier and brokerage operations to separate the two entities for liability limitation purposes, nothing in the MAP-21 provisions requires separate incorporation. That decision remains a business decision left to the entity with multiple authorities.