

Phase-In Provisions Of The Guinta - Carnahan Legislation

On June 24, 2011, Congressmen Guinta and Carnahan introduced a bill which, if passed and signed into law, would amend Section 139 of Title 49, United States Code to increase the effectiveness of Federal oversight of motor carriers and *for other purposes*.

“For other purposes” is typical language descriptive of the legislation and is usually included in the bill’s title.

The bill, currently known as the “Fighting Fraud in Transportation Act” has several key phase-in dates as to when various aspects of the legislation would become effective. The specific legislative language, with phase-in dates follows with an interpretative statement:

- Under “**Re-issuance of licenses and permits**” – not later than **4 years** after the date of enactment of the Fighting Fraud in Transportation Act, freight forwarders and brokers shall acquire new licenses and permits from the Federal Motor Carrier Safety Administration that are subject to the terms and conditions under this subsection. Such licenses and permits shall expire **5 years** after the date of issuance and may be renewed as provided under this chapter.

The above section would require freight forwarders and brokers to acquire licenses and permits from FMCSA within 4 years of the date of enactment of the legislation. The licenses and permits last for a period of 5 years and are renewable.

- Under “**Rulemaking**” Not later than **270 days** after the date of the enactment of this Act, the Administrator of the Federal Motor Carrier Safety Administration shall issue regulations to enforce the requirements under section 13904(d) of Title 49, United States Code, as added by paragraph (1).

The above “Rulemaking” section mandates that within 270 days of enactment of this legislation, the Administrator of the FMCSA will see to it that regulations are published to enforce the legislation and the changes it affected in federal law.

- **Effective Date** – Section 13904(d) of Title 49, United States Code, as added by paragraph (1), shall take effect on the date that is 270 days after the date of enactment of this Act.

The “Effective Date” confirms that the legislation, once passed and signed into law, actually goes into effect 270 days after enactment. While the legislation goes into effect on the “effective date”, freight forwarders and brokers would still have up to an additional 4 years to acquire new licenses and permits, per the above “Re-issuance of licenses and permits” paragraph.

What this all means, is that if the legislation were to pass, existing companies would have between 270 days and 4 years to obtain their new bond depending on how DOT interpreted the legislation.

- **Security and Insurance Amount Assessment.** – Every 5 years, the Administrator of the Federal Motor Carrier Safety Administration shall review, with public notice and comment, the amount of the security and insurance required under Section 13904 of Title 49, United States Code, to determine whether such amounts are sufficient to provide adequate financial security.

The above section gives the FMCSA Administrator the right, once the legislation is enacted, to review every 5 years, the \$100,000 bond requirement to determine if that level is still appropriate.

- **Review by Inspector General** – Not later than 15 months after the date of the enactment of this subsection, the Inspector General of the Department of Transportation shall – (1) review the regulations and enforcement practices of the Federal Motor Carrier Safety Administration under section 13904(d) of Title 49, United States Code, as added by section 4(a) and (2) make any recommendations to the Secretary of Transportation that may be necessary to improve the enforcement of such regulations.

Finally, the above section allows the DOT Inspector General 15 months to review the impact of the legislative changes this bill would cause and determine how effective enforcement procedures have been under the new legislation. The Inspector General may make specific policy recommendations to the DOT Secretary to improve enforcement of the new regulations.

It is difficult to determine if this legislation will move during the current 112th Congress. It's possible the bill may be attached to another larger or more comprehensive transportation-related bill.