



DEPARTMENT OF TRANSPORTATION

4910-EX-P

Federal Motor Carrier Safety Administration

49 CFR Part 365

Transfers of Operating Authority Registration

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Interpretation.

SUMMARY: FMCSA provides notice concerning the Agency's new process and legal interpretation for recording transfers of operating authority registration by non-exempt for-hire motor carriers, property brokers and freight forwarders.

DATES: The process and interpretation are effective [**Insert date 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Secrist, Office of Registration and Safety Information, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Telephone (202) 385-2367 or FMCSAOATransfers@dot.gov. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION

Background

As part of an ongoing assessment of Agency processes and its retrospective review of regulations, *see* E.O. 13563, 76 FR 3221 (Jan. 21, 2011); 5 U.S.C. 610, FMCSA reexamined its legal authority for continued enforcement of 49 CFR part 365, subpart D, "Transfer of Operating Rights under 49 U.S.C. 10926." As discussed in the Supplemental Notice of Proposed Rulemaking for the Unified Registration System (URS), 76 FR 66506, 66511 (October 26, 2011), and in the URS Final Rule, published

elsewhere in today's Federal Register, Congress repealed former 49 U.S.C. 10926 as part of the ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803 (Dec. 29, 1995) (ICCTA), and with it the express authority previously granted to FMCSA's predecessor agency (in this case, the former Interstate Commerce Commission (ICC)) to review and approve transfers of operating authority.

However, Congress did not prohibit the practice -- long recognized under the ICC regulation -- of transferring operating authority rights, nor did it rescind subpart D or otherwise prohibit the Agency from continuing to review and approve such transfers. The ICCTA and its legislative history were silent regarding the continued effect of the regulatory provisions then in place for transfers of operating rights, and the provisions have remained substantially unchanged since 1996, in 49 CFR part 365, subpart D. Moreover, the Agency continues to have a duty under 49 U.S.C. 13902 to register motor carriers that are fit, willing, and able to comply with applicable statutory and regulatory requirements. And transfer approvals historically have been a reasonable and effective part of that program.

As a result of the highly specific and more limited nature of operating authority, which historically was defined by such factors as restricted commodity and territorial scope, specified regular route designations for passenger carriers, and types of service such as contract and common carrier operations, the regulated community came to treat operating authority as an asset of commercial value. Essentially operating authority was recognized as a property right that could be bought and sold, and thus transferred among disparate controlling interests, without disrupting the continuity of regulatory oversight or even warranting a change in registration number to reflect an ownership change. Indeed, when FMCSA's predecessor Agency, the Federal Highway Administration, proposed

removing the 49 CFR part 365, subpart D, transfer regulations in response to the ICCTA's repeal of 49 U.S.C. 10926 (63 FR 7362, February 13, 1998), a number of industry commenters objected, noting that transfers were an institutionalized part of the regulatory environment that minimized registration costs and contributed to oversight and tracking of the carrier population. See 70 FR 28990, 28995-28996 (May 19, 2005). FMCSA subsequently withdrew the proposal to remove the transfer regulations in 49 CFR part 365, subpart D (66 FR 27059, May 16, 2001). But when the Agency again proposed in the URS rulemaking to eliminate the part 365 transfer approval process (70 FR 28990, 28996, May 19, 2005), the public comment record again acknowledged that operating authority transfers were an established industry practice and should be permitted to continue when they were part of purchase transactions involving entire carrier operations, so long as they were effectively monitored by the Agency. See, e.g., the discussion of comments submitted by the Transportation Intermediaries Association in the URS Final Rule, published elsewhere in today's Federal Register.

It is important to note, however, that the concept of motor carrier operating authority registration as an asset of commercial value has lost much of its relevance under today's regulatory structure, where operating authority is defined by comprehensive service options (e.g., without common and contract carrier service distinctions), unrestricted routes, and nationwide territorial scope. See, e.g., 49 U.S.C. 13102(14), as amended (no longer reflecting contract and common carrier operating authority designations in definition of "motor carrier"); Elimination of Route Designation Requirement for Motor Carriers Transporting Passengers Over Regular Routes, 74 FR 2895 (January 16, 2009).

Taking account of these industry and operating authority realities, the repeal of the express transfer approval authority of former 49 U.S.C. 10926, and the nature of the Agency's residual authority to consider transfers, FMCSA is discontinuing the transfer review and approval process. While the Agency will no longer accept or review requests to approve transfers of operating authority, we believe it is in the public interest and a necessary feature of our commercial and safety oversight roles to record information about the resulting ownership and control consequences when non-exempt for-hire motor carriers, brokers, or freight forwarders registered under 49 U.S.C. chapter 139 merge, transfer, or lease their operating rights. Accordingly, we have revised the processes for recording operating authority transfers to ensure that, although formal Agency review and approval is no longer involved, FMCSA's information systems continue to reflect complete and accurate information concerning operating authority registration and enable the Agency to identify parties responsible for the business operations.

For the reasons amplified above, effective **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER]**, the Agency will no longer process applications for transfer of operating authority, issue transfer approvals, or require the \$300 fee formerly associated with such applications. Under the new transfer recordation process, both transferors and transferees will be asked to provide basic identifying information concerning their business operations, ownership, and control, e.g., name, business form, business address, and name(s) of owner(s) and officers. No application form is required, and no transfer fee applies. After the information is entered in FMCSA's information systems, parties to transfer transactions will receive Agency notification of recordation of the resulting operating authority ownership.

Although ICCTA removed the Agency's express authority under former 49 U.S.C. 10926 to approve operating authority transfers, it did not eliminate the inherent authority to oversee transfers nor prohibit FMCSA from recording or monitoring the ownership or commercial and operational safety consequences of the transfer transaction. Indeed, FMCSA's statutory authority permits it to obtain information from motor carriers, brokers, and freight forwarders, and from the employees of such entities, that the Agency deems necessary and relevant to ensure operational safety and commercial integrity.

Legal authority for the Agency to record and track transfers of operating authority in this manner can be found at 49 U.S.C. 13301 and 31133. Under 49 U.S.C. 13301(b), the Agency is delegated broad authority to obtain information regarding carriers, brokers, and forwarders necessary to carry out its commercial regulatory responsibilities, as enumerated in title 49, subtitle IV, part B. In addition, 49 U.S.C. 31133(a)(8) authorizes the Secretary to prescribe recordkeeping and reporting requirements for motor carriers and other entities subject to the Agency's safety oversight.

Information provided under the transfer recordation process will ensure that the Agency's information technology systems are up to date and that the safety history associated with a regulated entity's operating authority and its corresponding USDOT Number remains connected with that operating authority, regardless of any changes in ownership or control.

Issued on: August 15, 2013

Anne S. Ferro
Administrator

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