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DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

Registration and Financial Security Requirements for Brokers of Property and Freight Forwarders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: FMCSA announces guidance concerning the implementation of certain provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21) concerning persons acting as a broker or a freight forwarder. Section 32915 of MAP-21 requires anyone acting as a broker or a freight forwarder and subject to FMCSA jurisdiction, including motor carriers, to register and obtain broker or freight forwarder authority from FMCSA. Section 32918 amended the financial security requirements applicable to property brokers and created new requirements for freight forwarders. FMCSA provides guidance for brokers and freight forwarders on how to comply with the new requirements and information regarding FMCSA's enforcement of these provisions.

DATES: This guidance is effective October 1, 2013.

FOR FURTHER INFORMATION CONTACT: Jeffrey Secrist or Gerald Folsom, Office of Registration and Safety Information, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590-0001, (202) 385-2367/2405 regarding financial security requirements or Kenneth Rodgers, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590-0001, (202) 385-2400 regarding enforcement.

SUPPLEMENTARY INFORMATION:

On July 6, 2012, the President signed MAP-21 (Pub. L. 112-141, 126 Stat. 405 (2012)) 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. Others required motor carriers to register as brokers if they were also performing brokerage functions. The FMCSA provides guidance to ensure that all interested parties are aware of the self-executing statutory provisions that take effect on October 1, 2013, and how those subject to the requirements can achieve compliance with the law.

A. General Broker/Freight Forwarder Information

FMCSA has received a number of requests from motor carriers and other transportation companies requesting additional information about when registration as a broker or freight forwarder is required. The Agency has compiled a list of the most common questions and our responses and presents the information below in question-and-answer format.

Question 1: What is a broker?

Answer: A broker is a person or an entity that, for compensation, arranges, or offers to arrange, for the transportation of property by a motor carrier. A broker does not transport the property and does not assume responsibility for the property. Although MAP-21 left in place the previous statutory definition of "broker," which expressly excludes motor carriers and their agents and employees (49 U.S.C. 13102(2)), the new

law separately prohibits motor carriers from brokering transportation services unless they are registered as a broker (49 U.S.C. 13902(a)(6)).

Question 2: What is a freight forwarder?

Answer: A freight forwarder is a person or entity that holds itself out to the general public as providing transportation of property for compensation, and in the ordinary course of its business:

- Assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;
- Assumes responsibility for the transportation from the place of receipt to the place of destination; and
- Uses for any part of the transportation a rail, motor or water carrier subject to the jurisdiction of either FMCSA or the Surface Transportation Board.

Question 3: Are freight forwarders and brokers required to register with FMCSA?

Answer: Yes. Freight forwarders and brokers that are involved in interstate commerce and subject to FMCSA jurisdiction are required to register with FMCSA. Freight forwarders that perform both freight forwarder services and motor carrier services (beyond the scope of their freight forwarding operations) must register both as freight forwarders and as motor carriers. Additionally, as noted in Q1 above, MAP-21 requires motor carriers that broker loads, even occasionally, to register both as motor carriers and as brokers.

Question 4: How would a motor carrier that also brokers loads apply for broker authority?

Answer: Anyone seeking broker authority must file a Form OP-1 and submit it to FMCSA. Companies with existing motor carrier authority should include their current USDOT Number on the OP-1 form but leave the MC Number field blank. FMCSA will issue a separate MC Number for the broker authority. While MAP-21 requires FMCSA to establish an indicator of the type of transportation or service for which the USDOT registration number is issued, including whether the registration number is issued for registration of a motor carrier, freight forwarder, or broker, FMCSA will implement this provision at a later time.

Question 5: What is freight interlining?

Answer: To interline a shipment is to transfer the property between two or more carriers for movement to its final destination. For example, where the point of origin of the shipment is Washington, DC, and the final destination is Los Angeles, CA, Motor Carrier “A” may transport the shipment from Washington, DC, and then interline with Motor Carrier “B” in San Antonio, TX. Motor Carrier “B” will then complete the transportation of the shipment from San Antonio to Los Angeles.

Question 6: Does FMCSA require an interline carrier to obtain operating authority?

Answer: FMCSA requires all non-exempt for-hire motor carriers to obtain operating authority to provide transportation in interstate commerce. However, a motor carrier that is performing part of a single continuous transportation movement as an interline operation can perform that service under either (1) its own operating authority or (2) the authority of the originating motor carrier.

Question 7: Is a broker required to process loss and damage claims?

Answer: No. A claim for cargo loss and damage must be filed with the appropriate motor carrier, which usually would be the originating carrier responsible for transporting and delivering the freight or the carrier causing the loss and/or damage to the freight.

Brokers may, however, assist shippers in filing claims with the responsible motor carrier.

Question 8: What is the civil penalty for a broker or freight forwarder who engages in interstate operations without the required operating authority (registration)?

Answer: A broker or freight forwarder who knowingly engages in interstate brokerage or freight forwarding operations without the required operating authority is liable to the United States for a civil penalty not to exceed \$10,000 and can be liable to any injured third party for all valid claims regardless of the amount (49 U.S.C. 14916(c)). The penalties and liability to injured parties apply jointly and severally to all corporations or partnerships involved in the transportation and individually to all officers, directors, and principals of these business forms (49 USC 14916(d)). Under 49 USC 14901(d)(3), a broker of household goods (HHG) who engages in interstate operations without the required operating authority is liable to the United States for a civil penalty of not less than \$25,000 for each violation.

B. Financial Security Requirements

FMCSA has received a number of requests from brokers, freight forwarders, bonding companies and other financial institutions requesting additional information about how to comply with these new requirements. The Agency has compiled a list of the most common questions and our responses and presents the information below in question-and-answer format.

Question 1: What is the minimum level of financial security that a broker or freight forwarder must maintain on file with FMCSA?

Answer: Beginning October 1, 2013, all FMCSA regulated brokers and freight forwarders must obtain and file with FMCSA a surety bond or trust fund agreement in the amount of \$75,000.

Question 2: May I use group surety bonds or trust funds to satisfy FMCSA's financial responsibility requirement?

Answer: No. Although FMCSA is authorized, pursuant to 49 U.S.C. 13906(b) and (c), to accept group financial security products to meet property broker and freight forwarder financial responsibility requirements on the condition that those products otherwise meet the requirements set forth in 49 U.S.C. 13906 and 49 CFR part 387, the Agency is not required to accept these group financial security products. At this time, FMCSA is considering the enforcement implications of group sureties as well as the effect on small entities and new entrants. FMCSA is committed to reexamining this issue as part of its enforcement phase-in plan described under section C, FMCSA Implementation and Enforcement Timelines, below.

Question 3: If my surety bonding company or trustee previously filed Forms BMC-84 or BMC-85, do I need to file a new one reflecting the new \$75,000 minimum financial security requirement?

Answer: Yes. All brokers and freight forwarders subject to FMCSA jurisdiction must file new BMC-84 or BMC-85 forms reflecting the new minimum financial security amount of \$75,000 as of October 1, 2013. FMCSA will develop new BMC forms for use

by surety bonding companies and trust fund institutions in advance of the October 1, 2013, deadline.

Question 4: My company has both broker and freight forwarder authority. Is one \$75,000 bond or trust fund sufficient or do I need 2 separate bonds/trust funds?

Answer: One \$75,000 bond or trust fund is sufficient as long as the legal entity holding the authorities is the same. Your company will need to file separate BMC-84/BMC-85 forms for the broker and freight forwarder operations. However, the underlying bond or trust fund can be the same for both operations. If your broker and freight forwarder operations are conducted under separate but affiliated companies, each entity must have a separate bond or trust fund.

Question 5: What happens if my bonding company or trust fund institution does not file new BMC-84 or BMC-85 forms reflecting the new \$75,000 minimum financial security requirement beginning October 1, 2013?

Answer: See “Section C: FMCSA Implementation and Enforcement Timelines” below.

Question 6: MAP-21 says that I have to use a surety bond company that is approved by the U.S. Treasury Department. How do I know whether my surety bond company is approved by the Treasury Department?

Answer: The Treasury Department’s Financial Management Service maintains a list of certified surety bond companies at <http://fms.treas.gov/c570/index.html>. This and other information about certified surety bond companies can be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700

East West Highway, Room 6F01, Hyattsville, MD 20782, Telephone (202) 874-6850 or Fax (202) 874-9978.

Question 7: MAP-21 revised 49 U.S.C. 13906(c)(3)(C) to state that FMCSA may require freight forwarders to provide cargo insurance. How do I know if this applies to me?

Answer: Existing regulations at 49 CFR 387.403 require household goods freight forwarders to obtain cargo insurance in the amount of \$5,000 for loss of, or damage to, household goods carried on any one motor vehicle; and \$10,000 for loss of, or damage to, or the aggregate of losses or damages of, or to, household goods occurring at any one time and place. Non-household goods freight forwarders are not required to obtain cargo insurance. FMCSA did not make any changes to these requirements as a result of MAP-21.

Question 8: MAP-21 instituted a new requirement that surety bond and trust fund institutions “provide electronic notification” to FMCSA at least 30 days before a surety bond or trust fund is cancelled. How do these institutions provide this electronic notice?

Answer. Surety bond and trust fund institutions should send their electronic notification of cancellation through: <http://li-public.fmcsa.dot.gov>.

Question 9: Will existing surety bonds be cancelled and replaced by the new surety bonds? Alternatively, will the existing surety bonds remain in place and be revised by rider or endorsement?

Answer. Pursuant to 49 CFR 387.307(a), a surety bond “for the full limits of liability prescribed” must be in effect before FMCSA will issue property broker or household goods broker operating authority. Riders/endorsements are a permissible

means of complying with the new \$75,000 financial responsibility requirement, provided that a new BMC-84 form for the full limits of liability is on file with FMCSA.

C. FMCSA Implementation and Enforcement Timelines

Companies providing broker or freight forwarder services, including motor carriers, are required to obtain the appropriate operating authorities and, as of October 1, 2013, are required to meet the new minimum financial responsibility requirements. FMCSA will be providing a 60-day phase-in period beginning October 1, 2013, to allow the industry to complete all necessary filings. Beginning November 1, 2013, FMCSA will mail notifications to all brokers and freight forwarders that have not met the \$75,000 minimum financial security requirement. FMCSA will provide 30 days advance notice before revoking the freight forwarder and broker operating authority registrations.

FMCSA acknowledges there are motor carriers that occasionally broker loads that have not previously been required to obtain operating authority registration from FMCSA as brokers. However, FMCSA is unable to determine at this time how many motor carriers may be engaged in some brokering activities, making implementation of a comprehensive enforcement program difficult. Therefore, FMCSA will phase in its enforcement of the broker registration requirements for motor carriers that also broker loads. During the first phase-in period, FMCSA will accept complaints regarding unregistered brokerage activities of motor carriers through our National Consumer Complaint Database (see <http://nccdb.fmcsa.dot.gov/>). FMCSA will work with industry groups to use this complaint information and other data to ascertain the extent of the unlicensed broker population subset within the motor carrier industry. The agency will then work toward developing a comprehensive enforcement program.

FMCSA strongly encourages all motor carriers not to accept loads from unregistered brokers or freight forwarders, as these entities might not have the financial security mandated by MAP-21. FMCSA also notes that motor carriers brokering loads without properly registering with FMCSA as brokers may be subject to private civil actions pursuant to 49 U.S.C. 14707.

Issued on: August 29, 2013.

Anne S. Ferro,
Administrator.

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