



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Parts 365, 371, and 375

[Docket No. FMCSA-2012-0322]

FMCSA Policy on the Suspension of Operating Authority for Hostage Load Violations

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

ACTION: Notice of enforcement policy.

SUMMARY: FMCSA provides notice of the Agency's new policy concerning enforcement of its household goods (HHG) motor carrier and broker regulations. FMCSA may take enforcement action when a HHG motor carrier or broker knowingly and willfully fails, in violation of a contract, to deliver or unload at the destination a shipment of HHG for which charges have been estimated and for which payment has been tendered. A motor carrier or broker found holding a HHG shipment hostage may be subject to suspension of registration for a period of not less than 12 months to not more than 36 months.

DATES: This decision is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Brodie Mack, Jr., Commercial Enforcement and Investigations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590, (202) 366-8045; e-mail brodie.mack@dot.gov.

SUPPLEMENTARY INFORMATION

Background

The U.S. Department of Transportation (DOT) assumed responsibility for regulating the HHG industry in 1996 from the Interstate Commerce Commission (ICC). Congress terminated the ICC in the ICC Termination Act of 1995 (Pub.L. 104-88, 109 Stat. 803). Consequently, DOT inherited the responsibility of handling consumer complaints regarding deceptive business practices and hostage shipments. In 2000, FMCSA was delegated the responsibility for enforcement of HHG consumer protection in the Motor Carrier Safety Improvement Act of 1999 (MCSIA), Pub. L. 106-159, 113 Stat. 1748. However, FMCSA lacked the authority to fully address brokers and motor carriers engaged in the practice of holding HHG shipments hostage in violation of a contract. Congress responded by including the “Household Goods Movers Oversight Enforcement and Reform Act of 2005” in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). In SAFETEA-LU, Congress specifically addressed (codified at 49 U.S.C. 14915) the problem of persons, including, but not limited to, brokers and motor carriers, who hold HHG shipments hostage. The statute defines a hostage shipment, establishes civil and criminal penalties, and permits the suspension of the operating authority registration of a motor carrier or broker from 12 to 36 months when it holds a shipment hostage.

Policy

Pursuant to 49 U.S.C. 14915, any person, including a motor carrier or broker, that holds a HHG shipment hostage is subject to a \$10,000 civil penalty for each violation. Each day the goods are held hostage may constitute a separate violation. In addition with the publication of this policy statement FMCSA may suspend a broker or motor carrier's registration for a period of not less than 12 months or more than 36 months. The suspension of a carrier's or broker's registration extends to and includes any carrier or broker having the same ownership or operational control as the suspended carrier or broker.

FMCSA may suspend a carrier's or broker's registration upon a determination by FMCSA that the carrier or broker knowingly and willfully failed, in violation of a contract, to deliver or unload at the destination of a shipment of HHG for which charges have been estimated and for which payment has been tendered. Pursuant to 49 U.S.C. 13707(b)(3)(A), payment is tendered when a shipper pays: (1) 100 percent of the charges contained in a binding estimate provided by the carrier; (2) not more than 110 percent of the charges contained in a nonbinding estimate provided by the carrier; (3) or in the case of a partial delivery of the shipment, the prorated percentage of the charges.

FMCSA will take action to suspend a carrier's or broker's registration for hostage load violations in accordance with the procedures in 49 U.S.C. 13905. FMCSA may determine that a hostage load violation has occurred based on the results of an investigation, an Agency determination as stated in a final order, or admission by the motor carrier or broker. FMCSA initiates a proceeding to suspend the carrier's or broker's registration by issuing an order to the carrier or broker to show good cause why

the registration should not be suspended in accordance with 49 U.S.C. 13905. The order provides notice of the alleged violation, explains how to submit a written response with supporting documentation, and informs the registered entity that failure to respond and demonstrate good cause will result in suspension of its registration.

The Agency Official who issued the order reviews the registered entity's response. After reviewing the response, the Agency Official issues a written decision and may take one of three actions. First, he or she may enter an order suspending the entity's registration, if the registered entity failed to show good cause why its registration should not be suspended. Second, the Agency Official may enter an order directing the registered entity to come into compliance, if the Agency Official determines that corrective action is more appropriate than suspension. The compliance order informs the carrier or broker that willful failure to comply may result in suspension or revocation of registration. Third, the Agency Official may determine that suspension is not appropriate and enter an order terminating the proceeding. This mirrors the procedure the Agency follows when taking action under 49 U.S.C. 13905 to suspend, amend or revoke operating authority registration generally, for non-HHG motor carriers as well as HHG carriers. *See* 77 FR 46147, 46149 (Aug. 2, 2012).

In determining whether to initiate a registration suspension for hostage load violations FMCSA generally considers a motor carrier's six-year compliance history. The six-year period is consistent with FMCSA's penalty assessment policies regarding "history of prior offenses" under 49 U.S.C. 521(b)(2)(D) and "pattern of violations" warranting assessment of maximum civil penalties under section 222 of MCSIA, see 69 FR 77828 (Dec. 28, 2004) and 74 FR 14184 (Mar. 30, 2009), and its determinations

under 49 U.S.C. 13902 and 13905 on willingness and ability to comply with applicable regulations. See 77 FR 46147, 46144-46149 (Aug. 2, 2012). Accordingly, FMCSA may suspend the registration of a carrier or broker found holding a shipment hostage for a first time for no less than 12 months pursuant to 49 U.S.C. 14915. If a carrier or broker commits a second hostage load violation within 6 years of the first violation, FMCSA may suspend its registration for 24 months. If a carrier or broker commits a third violation within 6 years of the first violation, FMCSA may suspend its registration for 36 months.

Issued on: September 18, 2012

William A. Bronrott
Deputy Administrator

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