

## HAZMAT REGISTRATION

### (Company Name Changes, Mergers, Acquisitions, and Changes in Legal Structure)

GENERAL RULE: Certificates of registration are non-transferable in any merger, acquisition, sale of assets, or other business transaction. If a company purchases a company that is registered, the purchasing company would need to register. Also, certificates of registration are non-transferrable in bankruptcy proceedings, and thus, a debtor may not use a certificate as an asset to sell in order to drive up the purchase price.

Scenario	Question	Answer
Merger	<p>Hazmat companies A, B,C, and D are merging to create new company X, which is legally distinct from its predecessors. Company X wants to perform activities that require a current Certificate of Registration</p> <p>What must be done regarding registration?</p>	<p>Company X must file an initial registration before it engages in regulated activity. 49 CFR § 107.608</p>
Total Purchase	<p>Company A buys Company B. Both companies were previously registered. Company B will now operate under Company A's name.</p> <p>What must be done regarding registration?</p>	<p>Company B submits an amended registration statement within 30 days of the purchase/merger.</p>

<p><b>Asset Purchase</b></p>	<p>Company A buys 100% of Company B’s assets.</p> <p>Company A wants to perform activities that require a current Certificate of Registration.</p> <p>What must be done regarding registration?</p>	<p>Company A must file an initial registration before it engages in regulated activity. 49 CFR § 107.608.</p>
------------------------------	---	---

Scenario	Question	Answer
<p><b>Subsidiaries – Separate Legal Entities</b></p>	<p>X Corporation has three subsidiaries that are distinct legal entities:</p> <ul style="list-style-type: none"> <li>• X LLC,</li> <li>• X Inc., and</li> <li>• X LP.</li> </ul> <p>Who needs to register? It depends on one of the following scenarios...</p> <ol style="list-style-type: none"> <li>1. If the subsidiaries are separately incorporated from the parent, then each subsidiary engaging in regulated activities would have to register. (It’s not necessarily the tax ID, but if their subsidiaries have been incorporated separately).</li> <li>2. However, if subsidiaries are NOT distinct, and operates under the parent’s incorporation, then all locations (subsidiaries) and vehicles operated by the parent would be covered by the parent’s registration and do not need separate registration.</li> </ol>	<p>All four entities must register prior to engaging in activities that require a current Certificate of Registration.</p> <p>Each of these entities is a separate “person” based on the definition PHMSA uses.</p> <p>The term "<u>person</u>" means <u>each separate legal entity</u>, such as a corporation, partnership, association, or LLC or LP. This means that a separately incorporated subsidiary (or LLC or LP) must register if it engages in the specified activities, even when a parent company is also required to register. All locations and vehicles operated by a person are covered by that person's registration.</p>

<p><b>Purchase of Subsidiary</b></p>	<p>A Corp. buys B Inc. and treats B Inc. as a subsidiary entity. B Inc. does not change its corporate structure or its approach to hazmat operations.</p>	<p>B Inc. may continue operating under its current Certificate of Registration.</p> <p>B Inc. cannot operate under A Corp.'s Certificate of Registration.</p>
<p><b>Additional Facilities</b></p>	<p>Company X purchases additional plant location 1.</p> <p>What must be done regarding registration?</p>	<p>If plant location 1 will not be Company X's "principal place of business" then there is no change to its registration.</p> <p>If plant location 1 will be Company X's new "principal place of business" then Company X must submit an amended registration</p>

Scenario	Question	Answer
		<p>statement within 30 days of the purchase.</p>
<p><b>Name Change – Without Change in Legal Status</b></p>	<p>Company X changes its name to "Company Y," but does not change the legal structure or ownership of the company.</p>	<p>Company X must submit an amended registration statement within 30 days of the name change.</p>

<p><b>Name Change Indicating Possible Change in Legal Status, e.g. INC., LLC, LLP</b></p>	<p>Company X changes its name to “Company X, Inc.”</p> <p>Or Company X changes its name to “ZZZ LLC.”</p> <p>What must be done regarding registration?</p>	<p>This change may indicate a change in legal structure. Registrations cannot be transferred from an existing company to a new company. Therefore, the new company (“Company X, Inc.” or “ZZZ LLC”) must file an initial registration before it engages in regulated activity. 49 CFR § 107.608.</p>
<p><b>Foreign Registrations</b></p>	<p>Company K has its principal place of business in Korea and wants to register with PHMSA.</p> <p>What must be done?</p>	<p>Company K must attach to the registration statement the name and address of a permanent resident of the United States, designated in accordance with §105.40, to serve as agent for service of process.</p>
<p><b>Bankruptcy</b></p>	<p>Debtor has a multi-year registration with PHMSA and goes into bankruptcy.</p> <p>Can Debtor’s registration be listed as an asset in the bankruptcy proceeding?</p>	<p>No. Registrations are non-transferrable and cannot be treated as assets for the purpose of a bankruptcy proceeding.</p> <p>However, Debtor may be able to ask for a partial refund of registration fees paid for future years it will not use.</p>
<p><b>Pending Sale</b></p>	<p>A Corp. is negotiating to purchase B Inc. The sale is not yet complete and its terms have not been finalized.</p>	<p>The companies do not need to notify PHMSA until the sale or merger actually occurs.</p>
<p><b>Scenario</b></p>	<p><b>Question</b></p>	<p><b>Answer</b></p>
	<p>Do the companies need to notify PHMSA?</p>	<p>Notify PHMSA within 30 days of the sale.</p>

<p><b>Indications that a company has become a new entity</b></p>	<p><b>What are some indicators that would suggest a company has changed into a new “person” for the purposes of registration?</b></p>	<p>Often this depends on the law of the state where the entity was created, but two things that generally indicate a change of legal structure would be:</p> <ol style="list-style-type: none"> <li>1. Change in Federal Tax ID Number; or</li> <li>2. Change in suffix, e.g. “AAA” becomes “AAA LLC” or “AAA Inc.”</li> </ol>
<p><b>Evidence of Merger Terms</b></p>	<p><b>Four companies want to merge into one, and use the registration of one of the existing companies.</b></p>	<p>The companies may need to provide evidence of the terms of the merger.</p> <p>For example, let’s say A, B, C and D all want to merge into D, and D holds a current registration. The companies might want to provide a redacted copy of the merger agreement that shows that D will absorb A, B, and C.</p> <p>If D’s name or principal place of business change, D would need to file an amended registration with PHMSA within 30 days.</p>