

percentage factor to updated direct labor, including current governmental overhead and current operations overhead costs.

(ii) FMCSA general and administrative costs shall be developed each year on the basis of current level costs; i.e., dividing actual FMCSA general and administrative costs for the current fiscal year by total agency expenses for the current fiscal year. Actual updating of FMCSA general and administrative costs will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead, operations overhead and office general and administrative costs.

(4) Publication costs shall be adjusted on the basis of known changes in the costs applicable to publication of material in the FEDERAL REGISTER or FMCSA Register.

(This rounding procedure excludes copying, printing and search fees.)

(e) *Rounding of updated fees.* Updated fees shall be rounded in the following manner:

(1) Fees between \$1 and \$30 will be rounded to the nearest \$1;

(2) Fees between \$30 and \$100 will be rounded to the nearest \$10;

(3) Fees between \$100 and \$999 will be rounded to the nearest \$50; and

(4) Fees above \$1,000 will be rounded to the nearest \$100.

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

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APPENDIX A TO SUBPART E OF PART 365—EXPLANATION OF PRE-AUTHORIZATION SAFETY AUDIT EVALUATION CRITERIA FOR MEXICO-DOMICILED MOTOR CARRIERS

AUTHORITY: 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901-13906, 14708, 31138, and 31144; 49 CFR 1.87.

SOURCE: 59 FR 63728, Dec. 9, 1994, unless otherwise noted. Redesignated at 61 FR 54707, Oct. 21, 1996.

EDITORIAL NOTE: Nomenclature changes to part 365 appear at 66 FR 49870, Oct. 1, 2001.

Subpart A—How To Apply for Operating Authority

§ 365.101 Applications governed by these rules.

These rules govern the handling of applications for operating authority of the following type:

(a) Applications for certificates and permits to operate as a motor common or contract carrier of property or passengers.

(b) Applications for permits to operate as a freight forwarder.

(c) [Reserved]

(d) Applications for licenses to operate as a broker of motor vehicle transportation.

(e) Applications for certificates under 49 U.S.C. 13902(b)(3) to operate as a motor carrier of passengers in intrastate commerce over regular routes if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.

(f) [Reserved]

(g) Applications for temporary motor carrier authority.

(h) Applications for Mexico-domiciled motor carriers to operate in foreign commerce as common, contract or private motor carriers of property (including exempt items) between Mexico and all points in the United States. Under NAFTA Annex I, page I-U-20, a Mexico-domiciled motor carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

(i) Applications for non-North America-domiciled motor carriers to operate in foreign commerce as for-hire motor carriers of property and passengers within the United States.

[59 FR 63728, Dec. 9, 1994, as amended at 60 FR 63981, Dec. 13, 1995; 62 FR 49940, Sept. 24, 1997; 67 FR 12714, Mar. 19, 2002; 67 FR 61820, Oct. 2, 2002; 73 FR 76488, Dec. 16, 2008; 74 FR 2901, Jan. 16, 2009]

§ 365.103 Modified procedure.

The FMCSA will handle licensing application proceedings using the modified procedure, if possible. The applicant and protestants send statements made under oath (verified statements) to each other and to the FMCSA. There

are no personal appearances or formal hearings.

§ 365.105 Starting the application process: Form OP-1.

(a) Each applicant must file the appropriate form in the OP-1 series. Form OP-1 must be filed when requesting authority to operate as a motor property carrier, a broker of general freight, or a broker of household goods; Form OP-1(P) must be filed when requesting authority to operate as a motor passenger carrier; Form OP-1(FF) must be filed when requesting authority to operate as a freight forwarder; Form OP-1(MX) must be filed by a Mexico-domiciled motor property, including household goods, carrier, or a motor passenger carrier requesting authority to operate within the United States; and effective December 16, 2009.

Form OP-1(NNA) must be filed by a non-North America-domiciled motor property, including household goods, carrier or a motor passenger carrier requesting authority to operate within the United States. A separate filing fee in the amount set forth at 49 CFR 360.3(f)(1) is required for each type of authority sought.

(b) Obtain forms at a FMCSA Division Office in each State or at one of the FMCSA Service Centers. Addresses and phone numbers for the Division Offices and Service Centers can be found at: <http://www.fmcsa.dot.gov/aboutus/fieldoffices>. The forms and information about filing procedures can be downloaded at: <http://www.fmcsa.dot.gov/factsfigs/formspubs>; and from the do-it-yourself website at: <http://www.diy.dot.gov>.

[66 FR 49870, Oct. 1, 2001, as amended at 67 FR 12714, Mar. 19, 2002; 67 FR 61820, Oct. 2, 2002; 73 FR 76488, Dec. 16, 2008]

§ 365.107 Types of applications.

(a) Fitness applications. Motor property applications and certain types of motor passenger applications require only the finding that the applicant is fit, willing and able to perform the involved operations and to comply with all applicable statutory and regulatory provisions. These applications can be

opposed only on the grounds that applicant is not fit [*e.g.*, is not in compliance with applicable financial responsibility and safety fitness requirements]. These applications are:

(1) Motor common and contract carrier of property (except household goods), Mexican motor property carriers that perform private carriage and transport exempt items, and motor contract carrier of passengers transportation.

(2) Motor carrier brokerage of general commodities (except household goods).

(3) Certain types of motor passenger applications as described in Form OP-1 (P).

(b) Motor passenger “public interest” applications as described in Form OP-1 (P).

(c) Intrastate motor passenger applications under 49 U.S.C. 13902(b)(3) as described in Form OP-1, Schedule B.

(d) Motor common carrier of household goods applications, including Mexican carrier applicants. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The service proposed will serve a useful public purpose, responsive to a public demand or need.

(e) Motor contract carrier of household goods, household goods property broker, and freight forwarder applications. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The transportation to be provided will be consistent with the public interest and the national transportation policy of 49 U.S.C. 13101.

(f) Temporary authority (TA) for motor and water carriers. These applications require a finding that there is or soon will be an immediate transportation need that cannot be met by existing carrier service.

(g) In view of the expedited time frames established in this part for processing requests for permanent au-

thority, applications for TA will be entertained *only* in exceptional circumstances (*i.e.*, natural disasters or national emergencies) when evidence of immediate service need can be specifically documented in a narrative supplement appended to Form OP-1 for motor property carriers, Form OP-1MX for Mexican property carriers and, Form OP-1(P) for motor passenger carriers.

[59 FR 63728, Dec. 9, 1994, as amended at 60 FR 63981, Dec. 13, 1995; 62 FR 49940, Sept. 24, 1997; 67 FR 61820, Oct. 2, 2002]

§ 365.109 FMCSA review of the application.

(a) FMCSA staff will review the application for correctness, completeness, and adequacy of the evidence (the *prima facie* case).

(1) Minor errors will be corrected without notification to the applicant.

(2) Materially incomplete applications will be rejected. Applications that are in substantial compliance with these rules may be accepted.

(3) All motor carrier applications will be reviewed for consistency with the FMCSA’s operational safety fitness policy. Applicants with “Unsatisfactory” safety fitness ratings from DOT will have their applications rejected.

(4) FMCSA staff will review completed applications that conform with the FMCSA’s safety fitness policy and that are accompanied by evidence of adequate financial responsibility.

(5) Financial responsibility is indicated by filing within 20 days from the date an application notice is published in the FMCSA Register:

(i) *Form BMC-91 or 91X or BMC 82 surety bond*—Bodily injury and property damage (motor property and passenger carriers; household goods freight forwarders that provide pickup or delivery service directly or by using a local delivery service under their control).

(ii) *Form BMC-84*—Surety bond or Form BMC-85—trust fund agreement (property brokers of general commodities and household goods).

(iii) *Form BMC 34 or BMC 83 surety bond*—Cargo liability (household goods motor carriers and household goods freight forwarders).

§ 365.111

(6) Applicants also must submit Form BOC-3—designation of legal process agents—within 20 days from the date an application notice is published in the *FMCSA Register*.

(7) Applicants seeking to conduct operations for which tariffs are required may not commence such operations until tariffs are in effect.

(8) All applications must be completed in English.

(b) A summary of the application will be published as a preliminary grant of authority in the *FMCSA Register* to give notice to the public in case anyone wishes to oppose the application.

[59 FR 63728, Dec. 9, 1994, as amended at 60 FR 63981, Dec. 13, 1995; 67 FR 61820, Oct. 2, 2002; 75 FR 35328, June 22, 2010]

§ 365.111 Appeals to rejections of the application.

(a) An applicant has the right to appeal rejection of the application. The appeal must be filed at the FMCSA within 10 days of the date of the letter of rejection.

(b) If the appeal is successful and the filing is found to be proper, the application shall be deemed to have been properly filed as of the decision date of the appeal.

§ 365.113 Changing the request for authority or filing supplementary evidence after the application is filed.

(a) Once the application is filed, the applicant may supplement evidence only with approval of the FMCSA.

(b) Amendments to the application generally are not permitted, but in appropriate instances may be entertained at the discretion of the FMCSA.

§ 365.115 After publication in the FMCSA Register.

(a) Interested persons have 10 days from the date of *FMCSA Register* publication to file protests. See Subpart B of this part.

(b) If no one opposes the application, the grant published in the *FMCSA Register* will become effective by issuance of a certificate, permit, or license.

§ 365.117 Obtaining a copy of the application.

After publication, interested persons may request a copy of the application

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by contacting the FMCSA-designated contract agent (as identified in the *FMCSA Register*).

§ 365.119 Opposed applications.

If the application is opposed, opposing parties are required to send a copy of their protest to the applicant.

§ 365.121 Filing a reply statement.

(a) If the application is opposed, applicant may file a reply statement. This statement is due within 20 days after *FMCSA Register* publication.

(b) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(c) The reply statement need not be notarized or verified. Applicant understands that the oath in the application form applies to all evidence submitted in the application. Separate legal arguments by counsel need not be notarized or verified.

§ 365.123 Applicant withdrawal.

If the applicant wishes to withdraw an application, it shall request dismissal in writing.

Subpart B—How To Oppose Requests for Authority

§ 365.201 Definitions.

A person wishing to oppose a request for permanent authority files a *protest*. A person filing a valid protest becomes a *protestant*.

§ 365.203 Time for filing.

A protest shall be filed (received at the FMCSA) within 10 days after notice of the application appears in the *FMCSA Register*. A copy of the protest shall be sent to applicant's representative at the same time. Failure timely to file a protest waives further participation in the proceeding.

§ 365.205 Contents of the protest.

(a) All information upon which the protestant plans to rely is put into the protest.

(b) A protest must be verified, as follows:

I, _____, verify under penalty of perjury under laws of the United States of

America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this protest. (See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties.)

(Signature and Date)

(c) A protest not in substantial compliance with applicable statutory standards or these rules may be rejected.

(d) Protests must respond directly to the statutory standards for FMCSA review of the application. As these standards vary for particular types of applications, potential protestants should refer to the general criteria addressed at § 365.107 and may consult the FMCSA at (202) 366-9805 for further assistance in developing their evidence.

[59 FR 63728, Dec. 9, 1994. Redesignated at 61 FR 54707, Oct. 21, 1996, as amended at 62 FR 49940, Sept. 24, 1997]

§ 365.207 **Withdrawal.**

A protestant wishing to withdraw from a proceeding shall inform the FMCSA and applicant in writing.

Subpart C—General Rules Governing the Application Process

§ 365.301 **Applicable rules.**

Generally, all application proceedings are governed by the FMCSA's Rules of Practice at part 386 of this chapter except as designated below.

§ 365.303 **Contacting another party.**

When a person wishes to contact a party or serve a pleading or letter on that party, it shall do so through its representative. The phone and FAX numbers and address of applicant's representative shall be listed in the *FMCSA Register*.

§ 365.305 **Serving copies of pleadings.**

(a) An applicant must serve all pleadings and letters on the FMCSA and all known participants in the proceeding, except that a reply to a motion need only be served on the moving party.

(b) A protestant need serve only the FMCSA and applicant with pleadings or letters.

§ 365.307 **Replies to motions.**

Replies to motions filed under this part are due within 5 days of the date the motion is filed at the FMCSA.

§ 365.309 **FAX filings.**

FAX filings of applications and supporting evidence are not permitted. To assist parties in meeting the expedited time frames established for protesting an application, however, the FMCSA will accept FAX filings of protests and any reply or rebuttal evidence. FAX filings of these pleadings must be followed by the original document, plus one copy for FMCSA recordkeeping purposes.

Subpart D—Transfer of Operating Rights Under 49 U.S.C. 10926

SOURCE: 53 FR 4852, Feb. 18, 1988, unless otherwise noted. Redesignated at 61 FR 54707, Oct. 21, 1996.

§ 365.401 **Scope of rules.**

These rules define the procedures that enable motor passenger and property carriers, property brokers, and household goods freight forwarders to obtain approval from the FMCSA to merge, transfer, or lease their operating rights in financial transactions not subject to 49 U.S.C. 11343. Transactions covered by these rules are governed by 49 U.S.C. 10321 and 10926. The filing fee is set forth at 49 CFR 360.3(f)(8).

[53 FR 4852, Feb. 18, 1988, as amended at 67 FR 61820, Oct. 2, 2002]

§ 365.403 **Definitions.**

For the purposes of this part, the following definitions apply:

(a) *Transfer*. Transfers include all transactions (*i.e.*, the sale or lease of interstate operating rights,¹ or the merger of two or more carriers or a carrier into a noncarrier) subject to 49

¹The execution of a chattel mortgage, deed of trust, or other similar document does not constitute a transfer or require the FMCSA's approval. However, a foreclosure for the purpose of transferring an operating right to satisfy a judgment or claim against the record holder may not be effected without approval of the FMCSA.

§ 365.405

U.S.C. 10926, as well as the sale of property brokers' licenses under 49 U.S.C. 10321.

(b) *Operating rights.* Operating rights include:

(1) Certificates and permits issued to motor carriers;

(2) Permits issued to freight forwarders;

(3) Licenses issued to property brokers; and

(4) Certificates of Registration issued to motor carriers. The term also includes authority held by virtue of the gateway elimination regulations published in the FEDERAL REGISTER as letter-notices.

(c) *Certificate of registration.* The evidence of a motor carrier's right to engage in interstate or foreign commerce within a single State is established by a corresponding State certificate.

(d) *Person.* An individual, partnership, corporation, company, association, or other form of business, or a trustee, receiver, assignee, or personal representative of any of these.

(e) *Record holder.* The person shown on the records of the FMCSA as the legal owner of the operating rights.

(f) *Control.* A relationship between persons that includes actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, a holding or investment company, or any other means.

(g) *Category 1 transfers.* Transactions in which the person to whom the operating rights would be transferred is not an FMCSA carrier and is not affiliated with any FMCSA carrier.

(h) *Category 2 transfers.* Transactions in which the person to whom the operating rights would be transferred is an FMCSA carrier and/or is affiliated with an FMCSA carrier.

[53 FR 4852, Feb. 18, 1988, as amended at 67 FR 61821, Oct. 2, 2002]

§ 365.405 Applications.

(a) *Procedural requirements.* (1) At least 10 days before consummation, an original and two copies of a properly completed Form OP-FC-1 and any attachments (see paragraph (b)(1)(viii) of this section) must be filed with the Federal Motor Carrier Safety Administration, IT Operations Division (MC-

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RIO), 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(2) At any time after the expiration of the 10-day waiting period, applicants may consummate the transaction, subject to the subsequent approval of the application by the FMCSA, as described below. The transferee may commence operations under the rights acquired from the transferor upon its compliance with the FMCSA's regulations governing insurance, and process agents. See 49 CFR parts 387, subpart C, and 366, respectively. In the alternative, applicants may wait until the FMCSA has issued a decision on their application before transferring the operating rights. If the transferee wants the transferor's operating authority to be reissued in its name, it should furnish the FMCSA with a statement executed by both transferor and transferee indicating that the transaction has been consummated. Authority will not be reissued until after the FMCSA has approved the transaction.

(b) *Information required.* (1) In category 1 and category 2 transfers, applicants must furnish the following information:

(i) Full name, address, and signatures of the transferee and transferor.

(ii) A copy of the transferor's operating authority involved in the transfer proceeding.

(iii) A short summary of the essential terms of the transaction.

(iv) If relevant, the status of proceedings for the transfer of State certificate(s) corresponding to the Certificates of Registration being transferred.

(v) A statement as to whether the transfer will or will not significantly affect the quality of the human environment.

(vi) Certification by transferor and transferee of their current respective safety ratings by the United States Department of Transportation (*i.e.*, satisfactory, conditional, unsatisfactory, or unrated).

(vii) Certification by the transferee that it has sufficient insurance coverage under 49 U.S.C. 13906 for the service it intends to provide.

(viii) Information to demonstrate that the proposed transaction is consistent with the national transportation policy and satisfies the criteria

for approval set forth at §365.409 of this part. (Such information may be appended to the application form and, if provided, would be embraced by the oath and verification contained on that form.)

(ix) If motor carrier operating rights are being transferred, certification by the transferee that it is not domiciled in Mexico nor owned or controlled by persons of that country.

(2) Category 2 applicants must also submit the following additional information:

(i) Name(s) of the carrier(s), if any, with which the transferee is affiliated.

(ii) Aggregate revenues of the transferor, transferee, and their carrier affiliates from interstate transportation sources for a 1-year period ending not earlier than 6 months before the date of the agreement of the parties concerning the transaction. If revenues exceed \$2 million, the transfer may be subject to 49 U.S.C. 14303 rather than these rules.

[53 FR 4852, Feb. 18, 1988, as amended at 54 FR 35343, Aug. 25, 1989; 62 FR 49940, Sept. 24, 1997; 67 FR 61821, Oct. 2, 2002; 68 FR 56198, Sept. 30, 2003; 72 FR 55699, Oct. 1, 2007]

§ 365.407 Notice.

The FMCSA will give notice of approved transfer applications through publication in the *FMCSA Register*.

§ 365.409 FMCSA action and criteria for approval.

A transfer will be approved under this section if:

(a) The transaction is not subject to 49 U.S.C. 14303; and

(b) The transaction is consistent with the public interest; however,

(c) If the transferor or transferee has an "Unsatisfactory" safety fitness rating from DOT, the transfer may be denied. If an application is denied, the FMCSA will set forth the basis for its action in a decision or letter notice. If parties with "Unsatisfactory" safety fitness ratings consummate a transaction pursuant to the 10-day rule at §365.405 of this part prior to the notification of FMCSA action, they do so at their own risk and subject to any conditions we may impose subsequently. Transactions that have been consummated but later are denied by the

FMCSA are null and void and must be rescinded. Similarly, if applications contain false or misleading information, they are void *ab initio*.

[53 FR 4852, Feb. 18, 1988, as amended at 56 FR 46735, Sept. 16, 1991; 62 FR 49940, Sept. 24, 1997]

§ 365.411 Responsive pleadings.

(a) Protests must be filed within 20 days after the date of publication of an approved transfer application in the *FMCSA Register*. Protests received prior to the notice will be rejected. Applicants may respond within 20 days after the due date of protests. Petitions for reconsideration of decisions denying applications must be filed within 20 days after the date of service of such decisions.

(b) Protests and petitions for reconsideration must be filed with the Federal Motor Carrier Safety Administration, IT Operations Division (MC-RIO), 1200 New Jersey Ave., SE., Washington, DC 20590-0001, and be served on appropriate parties.

[53 FR 4852, Feb. 18, 1988, as amended at 67 FR 61821, Oct. 2, 2002; 68 FR 56198, Sept. 30, 2003; 72 FR 55699, Oct. 1, 2007]

§ 365.413 Procedures for changing the name or business form of a motor carrier, freight forwarder, or property broker.

(a) *Scope*. These procedures apply in the following circumstances:

(1) A change in the form of a business, such as the incorporation of a partnership or sole proprietorship;

(2) A change in the legal name of a corporation or partnership or change in the trade name or assumed name of any entity;

(3) A transfer of operating rights from a deceased or incapacitated spouse to the other spouse;

(4) A reincorporation and merger for the purpose of effecting a name change;

(5) An amalgamation or consolidation of a carrier and a noncarrier into a new carrier having a different name from either of the predecessor entities; and

(6) A change in the State of incorporation accomplished by dissolving the corporation in one State and reincorporating in another State.

§ 365.501

(b) *Procedures.* To accomplish these changes, a letter must be sent to the Federal Motor Carrier Safety Administration, IT Operations Division (MC-RIO), 1200 New Jersey Ave., SE., Washington, DC 20590-0001. The envelope should be marked "NAME CHANGE". The applicant must provide:

(1) The docket number(s) and name of the carrier requesting the change;

(2) A copy of the articles of incorporation and the State certificate reflecting the incorporation;

(3) The name(s) of the owner(s) of the stock and the distribution of the shares;

(4) The names of the officers and directors of the corporation; and

(5) A statement that there is no change in the ownership, management, or control of the business. When this procedure is being used to transfer operating rights from a deceased or incapacitated spouse to the other spouse, documentation that the other spouse has the legal right to effect such change must be included with the request. The fee for filing a name change request is in § 360.3(f) of this chapter.

[53 FR 4852, Feb. 18, 1988, as amended at 54 FR 47364, Nov. 14, 1989; 62 FR 49940, Sept. 24, 1997; 68 FR 56198, Sept. 30, 2003; 72 FR 55699, Oct. 1, 2007]

Subpart E—Special Rules for Certain Mexico-domiciled Carriers

SOURCE: 67 FR 12714, Mar. 19, 2002, unless otherwise noted.

§ 365.501 Scope of rules.

(a) The rules in this subpart govern the application by a Mexico-domiciled motor carrier to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border.

(b) A Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

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§ 365.503 Application.

(a) Each applicant applying under this subpart must submit an application that consists of:

(1) Form OP-1 (MX)—Application to Register Mexican Carriers for Motor Carrier Authority To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border;

(2) Form MCS-150—Motor Carrier Identification Report; and

(3) A notification of the means used to designate process agents, either by submission in the application package of Form BOC-3—Designation of Agents-Motor Carriers, Brokers and Freight Forwarders or a letter stating that the applicant will use a process agent service that will submit the Form BOC-3 electronically.

(b) The Federal Motor Carrier Safety Administration (FMCSA) will only process your application if it meets the following conditions:

(1) The application must be completed in English;

(2) The information supplied must be accurate, complete, and include all required supporting documents and applicable certifications in accordance with the instructions to Form OP-1 (MX), Form MCS-150, and Form BOC-3;

(3) The application must include the filing fee payable to the FMCSA in the amount set forth at 49 CFR 360.3(f)(1); and

(4) The application must be signed by the applicant.

(c) You must submit the application to the address provided in Form OP-1(MX).

(d) You may obtain the application forms from any FMCSA Division Office or download it from the FMCSA website at: <http://www.fmcsa.dot.gov/factsfigs/formspubs.htm>.

§ 365.505 Re-registration and fee waiver for certain applicants.

(a) If you filed an application using Form OP-1(MX) before May 3, 2002, you are required to file a new Form OP-1(MX). You do not need to submit a new fee when you file a new application under this subpart.

(b) If you hold a Certificate of Registration issued before April 18, 2002, authorizing operations beyond the municipalities along the United States-

Mexico border and beyond the commercial zones of such municipalities, you are required to file an OP-1(MX) if you want to continue those operations. You do not need to submit a fee when you file an application under this subpart.

(1) You must file the application by November 4, 2003.

(2) The FMCSA may suspend or revoke the Certificate of Registration of any applicable holder that fails to comply with the procedures set forth in this section.

(3) Certificates of Registration issued before April 18, 2002, will remain valid until the FMCSA acts on the OP-1(MX) application.

[67 FR 12714, Mar. 19, 2002, as amended at 68 FR 56198, Sept. 30, 2003]

§ 365.507 FMCSA action on the application.

(a) The FMCSA will review and act on each application submitted under this subpart in accordance with the procedures set out in this part.

(b) The FMCSA will validate the accuracy of information and certifications provided in the application by checking data maintained in databases of the governments of Mexico and the United States.

(c) *Pre-authorization safety audit.* Every Mexico-domiciled carrier that applies under this part must satisfactorily complete an FMCSA-administered safety audit before FMCSA will grant provisional operating authority to operate in the United States. The safety audit is a review by the FMCSA of the carrier's written procedures and records to validate the accuracy of information and certifications provided in the application and determine whether the carrier has established or exercises the basic safety management controls necessary to ensure safe operations. The FMCSA will evaluate the results of the safety audit using the criteria in Appendix A to this subpart.

(d) If a carrier successfully completes the pre-authorization safety audit and the FMCSA approves its application submitted under this subpart, FMCSA will publish a summary of the application as a preliminary grant of authority in the FMCSA Register to give notice to the public in case anyone wishes

to oppose the application, as required in § 365.109(b) of this part.

(e) If the FMCSA grants provisional operating authority to the applicant, it will assign a distinctive USDOT Number that identifies the motor carrier as authorized to operate beyond the municipalities in the United States on the U.S.-Mexico international border and beyond the commercial zones of such municipalities. In order to operate in the United States, a Mexico-domiciled motor carrier with provisional operating authority must:

(1) Have its surety or insurance provider file proof of financial responsibility in the form of certificates of insurance, surety bonds, and endorsements, as required by § 387.301 of this subchapter;

(2) File a hard copy of, or have its process agent(s) electronically submit, Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, as required by part 366 of this subchapter; and

(3) Comply with all provisions of the safety monitoring system in subpart B of part 385 of this subchapter, including successfully passing CVSA Level I inspections at least every 90 days and having decals affixed to each commercial motor vehicle operated in the United States as required by § 385.103(c) of this subchapter.

(f) The FMCSA may grant permanent operating authority to a Mexico-domiciled carrier no earlier than 18 months after the date that provisional operating authority is granted and only after successful completion to the satisfaction of the FMCSA of the safety monitoring system for Mexico-domiciled carriers set out in subpart B of part 385 of this subchapter. Successful completion includes obtaining a satisfactory safety rating as the result of a compliance review.

§ 365.509 Requirement to notify FMCSA of change in applicant information.

(a) A motor carrier subject to this subpart must notify the FMCSA of any changes or corrections to the information in parts I, IA or II submitted on the Form OP-1(MX) or the Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders

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during the application process or after having been granted provisional operating authority. The carrier must notify the FMCSA in writing within 45 days of the change or correction.

(b) If a carrier fails to comply with paragraph (a) of this section, the FMCSA may suspend or revoke its operating authority until it meets those requirements.

§ 365.511 Requirement for CVSA inspection of vehicles during first three consecutive years of permanent operating authority.

A Mexico-domiciled motor carrier granted permanent operating authority must have its vehicles inspected by Commercial Vehicle Safety Alliance (CVSA)-certified inspectors every three months and display a current inspection decal attesting to the successful completion of such an inspection for at least three consecutive years after receiving permanent operating authority from the FMCSA.

APPENDIX A TO SUBPART E OF PART 365—EXPLANATION OF PRE-AUTHORIZATION SAFETY AUDIT EVALUATION CRITERIA FOR MEXICO-DOMICILED MOTOR CARRIERS

I. GENERAL

(a) Section 350 of the Fiscal Year 2002 DOT Appropriations Act (Pub. L. 107-87) directed the FMCSA to perform a safety audit of each Mexico-domiciled motor carrier before the FMCSA grants the carrier provisional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico international border.

(b) The FMCSA will decide whether it will conduct the safety audit at the Mexico-domiciled motor carrier's principal place of business in Mexico or at a location specified by the FMCSA in the United States, in accordance with the statutory requirements that 50 percent of all safety audits must be conducted onsite and on-site inspections cover at least 50 percent of estimated truck traffic in any year. All records and documents must be made available for examination within 48 hours after a request is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period.

(c) The safety audit will include:

(1) Verification of available performance data and safety management programs;

(2) Verification of a controlled substances and alcohol testing program consistent with part 40 of this title;

(3) Verification of the carrier's system of compliance with hours-of-service rules in part 395 of this subchapter, including record-keeping and retention;

(4) Verification of proof of financial responsibility;

(5) Review of available data concerning the carrier's safety history, and other information necessary to determine the carrier's preparedness to comply with the Federal Motor Carrier Safety Regulations, parts 382 through 399 of this subchapter, and the Federal Hazardous Material Regulations, parts 171 through 180 of this title;

(6) Inspection of available commercial motor vehicles to be used under provisional operating authority, if any of these vehicles have not received a decal required by § 385.103(d) of this subchapter;

(7) Evaluation of the carrier's safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections;

(8) Verification of drivers' qualifications, including confirmation of the validity of the Licencia de Federal de Conductor of each driver the carrier intends to assign to operate under its provisional operating authority; and

(9) An interview of carrier officials to review safety management controls and evaluate any written safety oversight policies and practices.

(d) To successfully complete the safety audit, a Mexico-domiciled motor carrier must demonstrate to the FMCSA that it has the required elements in paragraphs (c)(2), (3), (4), (7), and (8) above and other basic safety management controls in place which function adequately to ensure minimum acceptable compliance with the applicable safety requirements. The FMCSA developed a "safety audit evaluation criteria," which uses data from the safety audit and roadside inspections to determine that each applicant for provisional operating authority has basic safety management controls in place.

(e) The safety audit evaluation process developed by the FMCSA is used to:

(1) Evaluate basic safety management controls and determine if each Mexico-domiciled carrier and each driver is able to operate safely in the United States beyond municipalities and commercial zones on the United States-Mexico international border; and

(2) Identify motor carriers and drivers who are having safety problems and need improvement in their compliance with the FMCSRs and the HMRs, before FMCSA grants the carriers provisional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico international border.

II. SOURCE OF THE DATA FOR THE SAFETY AUDIT EVALUATION CRITERIA

(a) The FMCSA's evaluation criteria are built upon the operational tool known as the safety audit. The FMCSA developed this tool to assist auditors and investigators in assessing the adequacy of a Mexico-domiciled carrier's basic safety management controls.

(b) The safety audit is a review of a Mexico-domiciled motor carrier's operation and is used to:

(1) Determine if a carrier has the basic safety management controls required by 49 U.S.C. 31144;

(2) Meet the requirements of Section 350 of the DOT Appropriations Act; and

(3) In the event that a carrier is found not to be in compliance with applicable FMCSRs and HMRs, the safety audit can be used to educate the carrier on how to comply with U.S. safety rules.

(c) Documents such as those contained in driver qualification files, records of duty status, vehicle maintenance records, and other records are reviewed for compliance with the FMCSRs and HMRs. Violations are cited on the safety audit. Performance-based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable accident information is also collected.

III. OVERALL DETERMINATION OF THE CARRIER'S BASIC SAFETY MANAGEMENT CONTROLS

(a) The carrier will not be granted provisional operating authority if the FMCSA fails to:

(1) Verify a controlled substances and alcohol testing program consistent with part 40 of this title;

(2) Verify a system of compliance with hours-of-service rules of this subchapter, including recordkeeping and retention;

(3) Verify proof of financial responsibility;

(4) Verify records of periodic vehicle inspections; and

(5) Verify drivers' qualifications of each driver the carrier intends to assign to operate under such authority, as required by parts 383 and 391 of this subchapter, including confirming the validity of each driver's Licencia de Federal de Conductor.

(b) If the FMCSA confirms each item under II (a)(1) through (5) above, the carrier will be granted provisional operating authority, except if FMCSA finds the carrier has inadequate basic safety management controls in at least three separate factors described in part III below. If FMCSA makes such a determination, the carrier's application for provisional operating authority will be denied.

IV. EVALUATION OF REGULATORY COMPLIANCE

(a) During the safety audit, the FMCSA gathers information by reviewing a motor carrier's compliance with "acute" and "critical" regulations of the FMCSRs and HMRs.

(b) Acute regulations are those where non-compliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier.

(c) Critical regulations are those where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls.

(d) The list of the acute and critical regulations, which are used in determining if a carrier has basic safety management controls in place, is included in Appendix B, VII. List of Acute and Critical Regulations to part 385 of this subchapter.

(e) Noncompliance with acute and critical regulations are indicators of inadequate safety management controls and usually higher than average accident rates.

(f) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into six regulatory areas called "factors." The regulatory factors, evaluated on the adequacy of the carrier's safety management controls, are:

(1) Factor 1—General: Parts 387 and 390;

(2) Factor 2—Driver: Parts 382, 383 and 391;

(3) Factor 3—Operational: Parts 392 and 395;

(4) Factor 4—Vehicle: Part 393, 396 and inspection data for the last 12 months;

(5) Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397; and

(6) Factor 6—Accident: Recordable Accident Rate per Million Miles.

(g) For each instance of noncompliance with an acute regulation, 1.5 points will be assessed.

(h) For each instance of noncompliance with a critical regulation, 1 point will be assessed.

(i) *Vehicle Factor.* (1) When at least three vehicle inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months before the safety audit or performed at the time of the review, the Vehicle Factor (part 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute and critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor as follows:

(i) If the motor carrier has had at least three roadside inspections in the twelve months before the safety audit, and the vehicle OOS rate is 34 percent or higher, one point will be assessed against the carrier. That point will be added to any other points assessed for discovered noncompliance with acute and critical regulations of part 396 to

determine the carrier's level of safety management control for that factor.

(i) If the motor carrier's vehicle OOS rate is less than 34 percent, or if there are less than three inspections, the determination of the carrier's level of safety management controls will only be based on discovered noncompliance with the acute and critical regulations of part 396.

(2) Over two million inspections occur on the roadside each year in the United States. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Each safety audit will continue to have the requirements of part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

(j) *Accident Factor.* (1) In addition to the five regulatory factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate, which the carrier has experienced during the past 12 months. Recordable accident, as defined in 49 CFR 390.5, means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(2) Experience has shown that urban carriers, those motor carriers operating entirely within a radius of less than 100 air miles (normally urban areas), have a higher exposure to accident situations because of their environment and normally have higher accident rates.

(3) The recordable accident rate will be used in determining the carrier's basic safety management controls in Factor 6, Accident. It will be used only when a carrier incurs two or more recordable accidents within the 12 months before the safety audit. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.5 will be deemed to have inadequate basic safety management controls for the accident factor. The rates are the result of roughly doubling the United States national average accident rate in Fiscal Years 1994, 1995, and 1996.

(4) The FMCSA will continue to consider preventability when a new entrant contests

the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: "If a driver, who exercises normal judgment and foresight, could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable."

(k) *Factor Ratings.* (1) The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor. Each carrier's level of basic safety management controls with each factor is determined as follows:

- (i) Factor 1—General: Parts 390 and 387;
- (ii) Factor 2—Driver: Parts 382, 383, and 391;
- (iii) Factor 3—Operational: Parts 392 and 395;
- (iv) Factor 4—Vehicle: Parts 393, 396 and the Out of Service Rate;
- (v) Factor 5—Hazardous Materials: Part 171, 177, 180 and 397; and
- (vi) Factor 6—Accident: Recordable Accident Rate per Million Miles;

(2) For paragraphs III (k)(1)(i) through (v) (Factors 1 through 5), if the combined violations of acute and or critical regulations for each factor is equal to three or more points, the carrier is determined not to have basic safety management controls for that individual factor.

(3) For paragraphs III (k)(1)(vi), if the recordable accident rate is greater than 1.7 recordable accidents per million miles for an urban carrier (1.5 for all other carriers), the carrier is determined to have inadequate basic safety management controls.

(1) Notwithstanding FMCSA verification of the items listed in part II (a)(1) through (5) above, if the safety audit determines the carrier has inadequate basic safety management controls in at least three separate factors described in part III, the carrier's application for provisional operating authority will be denied. For example, FMCSA evaluates a carrier finding:

- (1) One instance of noncompliance with a critical regulation in part 387 scoring one point for Factor 1;
- (2) Two instances of noncompliance with acute regulations in part 382 scoring three points for Factor 2;
- (3) Three instances of noncompliance with critical regulations in part 396 scoring three points for Factor 4; and
- (4) Three instances of noncompliance with acute regulations in parts 171 and 397 scoring four and one-half (4.5) points for Factor 5.

Under this example, the carrier will not receive provisional operating authority because it scored three or more points for Factors 2, 4, and 5 and FMCSA determined the

carrier had inadequate basic safety management controls in at least three separate factors.

PART 366—DESIGNATION OF PROCESS AGENT

Sec.

- 366.1 Applicability.
- 366.2 Form of designation.
- 366.3 Eligible persons.
- 366.4 Required States.
- 366.5 Blanket designations.
- 366.6 Cancellation or change.

AUTHORITY: 49 U.S.C. 13303, 13304, and 14704; and 49 CFR 1.87.

SOURCE: 55 FR 11197, Mar. 27, 1990, unless otherwise noted. Redesignated at 61 FR 54707, Oct. 21, 1996.

EDITORIAL NOTE: Nomenclature changes to part 366 appear at 66 FR 49870, Oct. 1, 2001.

§ 366.1 Applicability.

These rules, relating to the filing of designations of persons upon whom court process may be served, govern motor carriers and brokers and, as of the moment of succession, their fiduciaries (as defined at 49 CFR 387.319(a)).

[55 FR 11197, Mar. 27, 1990. Redesignated at 61 FR 54707, Oct. 21, 1996; 62 FR 49940, Sept. 24, 1997]

§ 366.2 Form of designation.

Designations shall be made on Form BOC-3, *Designation of Agent for Service of Process*. Only one completed current form may be on file. It must include all States for which agent designations are required. One copy must be retained by the carrier or broker at its principal place of business.

§ 366.3 Eligible persons.

All persons (as defined at 49 U.S.C. 13102(16)) designated must reside or maintain an office in the State for which they are designated. If a State official is designated, evidence of his willingness to accept service of process must be furnished.

[55 FR 11197, Mar. 27, 1990. Redesignated at 61 FR 54707, Oct. 21, 1996; 62 FR 49940, Sept. 24, 1997]

§ 366.4 Required States.

(a) *Motor carriers*. Every motor carrier (of property or passengers) shall make a designation for each State in

which it is authorized to operate and for each State traversed during such operations. Every motor carrier (including private carriers) operating in the United States in the course of transportation between points in a foreign country shall file a designation for each State traversed.

(b) *Brokers*. Every broker shall make a designation for each State in which its offices are located or in which contracts will be written.

[55 FR 11197, Mar. 27, 1990, as amended at 55 FR 47338, Nov. 13, 1990]

§ 366.5 Blanket designations.

Where an association or corporation has filed with the FMCSA a list of process agents for each State, motor carriers may make the required designations by using the following statement:

Those persons named in the list of process agents on file with the Federal Motor Carrier Safety Administration by _____

(Name of association or corporation) and any subsequently filed revisions thereof, for the States in which this carrier is or may be authorized to operate, including States traversed during such operations, except those States for which individual designations are named.

§ 366.6 Cancellation or change.

A designation may be canceled or changed only by a new designation except that, where a carrier or broker ceases to be subject to § 366.4 in whole or in part for 1 year, designation is no longer required and may be canceled without making another designation.

[55 FR 11197, Mar. 27, 1990. Redesignated at 61 FR 54707, Oct. 21, 1996; 62 FR 49940, Sept. 24, 1997]

PART 367—STANDARDS FOR REGISTRATION WITH STATES

Subpart A [Reserved]

Subpart B—Fees Under the Unified Carrier Registration Plan and Agreement

Sec.

- 367.20 Fees under the Unified Carrier Registration Plan and Agreement for each