

§ 365.107

49 CFR Ch. III (10–1–13 Edition)

(USDOT Number—Operating Authority Application), to request authority pursuant to 49 U.S.C. 13902, 13903 or 13904 to operate as a:

- (1) Motor carrier of property or passengers,
- (2) Broker of general commodities or household goods, or
- (3) Freight forwarder of general commodities or household goods.

(b) A separate filing fee in the amount set forth at 49 CFR 360.3(f) is required for each type of authority sought in §365.105(a).

(c) Form MCSA-1 is an electronic application and is available, including complete instructions, from the FMCSA Web site at <http://www.fmcsa.dot.gov> (Keyword “MCSA-1”).

§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 authority, 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]

EFFECTIVE DATE NOTE: At 78 FR 52646, Aug. 23, 2013, §365.107 was revised, effective Aug. 23, 2015. For the convenience of the user, the revised text is set forth as follows:

§365.107 Types of applications.

(a) *Fitness applications.* Motor property applications and certain types of motor passenger applications require 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 carrier of property (except household goods).
- (2) Broker of general commodities or household goods.

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

(b) Motor carrier of passenger “public interest” applications as described in Form MCSA-1.

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

(d) Motor carrier of household goods applications, including Mexico- or non-North America-domiciled carrier applicants. In addition to meeting the fitness standard under paragraph (a) of this section, an applicant seeking authority to operate as a motor carrier of household goods must:

(1) Provide evidence of participation in an arbitration program and provide a copy of the notice of the arbitration program as required by 49 U.S.C. 14708(b)(2);

(2) Identify its tariff and provide a copy of the notice of the availability of that tariff for inspection as required by 49 U.S.C. 13702(c);

(3) Provide evidence that it has access to, has read, is familiar with, and will observe all applicable Federal laws relating to consumer protection, estimating, consumers’ rights and responsibilities, and options for limitations of liability for loss and damage; and

(4) Disclose any relationship involving common stock, common ownership, common management, or common familial relationships between the applicant and any other motor carrier, freight forwarder, or broker of household goods within 3 years of the proposed date of registration.

(e) Temporary authority (TA) for motor 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.

(1) Applications for TA will be entertained only when an emergency declaration has been made pursuant to §390.23 of this subchapter.

(2) Temporary authority must be requested by filing Form MCSA-1.

(3) Applications for temporary authority are not subject to protest.

(4) Motor carriers granted temporary authority must comply with financial responsibility requirements under part 387 of this subchapter.

(5) Only a U.S.-domiciled motor carrier is eligible to receive temporary authority.

§ 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).

(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]

EFFECTIVE DATE NOTE: At 78 FR 52646, Aug. 23, 2013, §365.109 was amended by revising paragraphs (a)(5) and (6), and (b), effective Aug. 23, 2015. For the convenience of the user, the revised text is set forth as follows: