§ 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

§ 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).


§ 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, or the merger of two or more carriers or a carrier into a noncarrier) subject to 49 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

1 The 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.
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.


§ 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-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 approved the transaction. 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 Certificate 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.