

## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

49 CFR Parts 360, 365, 366, 368, 385, 387, and 390

[Docket No. FMCSA–1997–2349]

RIN 2126–AC00

## Unified Registration System; Suspension of Effectiveness

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

**ACTION:** Final rule; suspension of effective date and temporary final rule.

**SUMMARY:** The FMCSA suspends its regulations requiring existing interstate motor carriers, freight forwarders, brokers, intermodal equipment providers (IEPs), hazardous materials safety permit (HMSP) applicants, and cargo tank facilities under FMCSA jurisdiction to submit required registration and biennial update information to the Agency via a new electronic on-line Unified Registration System (URS). During this suspension, entities needing to file will follow the same procedures and forms used to submit information to FMCSA as they do today.

**DATES:** *Effective Dates:* This rule is effective January 14, 2017.

*Comment Dates:* Petitions for reconsideration must be received by February 16, 2017.

**ADDRESSES:** Petitions for reconsideration must be submitted to: Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

All background documents, comments, and materials related to this rule may be viewed in docket number FMCSA–1997–2349 using either of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

- Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Riddle, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–9616 or via email at [kenneth.riddle@dot.gov](mailto:kenneth.riddle@dot.gov). Office hours are from 8:00 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

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## I. Public Participation

## A. Viewing Comments and Documents

To view comments, as well as documents identified in this preamble as available in the docket, go to <http://www.regulations.gov> and click on the “Read Comments” box in the upper right hand side of the screen. Then, in the “Keyword” box, insert “FMCSA–1997–2349” and click “Search.” Next, click “Open Docket Folder” in the “Actions” column. Finally, in the “Title” column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

## B. Privacy Act

All comments received are posted without change to <http://www.regulations.gov>. Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, or other organization). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E-785.pdf>.

## II. Acronyms and Abbreviations

APA Administrative Procedure Act  
 ANPRM Advance Notice of Proposed Rulemaking  
 ASCII American Standard Code Information Interchange  
 BI&PD Bodily Injury & Property Damage  
 CAA Clean Air Act  
 CE Categorical Exclusion  
 CFR Code of Federal Regulations  
 CMV Commercial motor vehicle  
 USDOT/DOT U.S. Department of Transportation  
 EMAIL Electronic Mail  
 E.O. Executive Order  
 FMCSA Federal Motor Carrier Safety Administration  
 FF Freight Forwarder  
 FMVSS Federal Motor Vehicle Safety Standard  
 HHGFF Household Goods Freight Forwarder  
 ICCTA ICC Termination Act of 1995  
 IEP Intermodal Equipment Provider  
 GCWR Gross Combination Weight Rating  
 GVW Gross Vehicle Weight  
 GVWR Gross Vehicle Weight Rating  
 HMSP Hazardous Materials Safety Permit  
 HMR Hazardous Material Regulations, 49 CFR parts 100 through 185  
 MC Motor Carrier  
 MC–ECI Office of Enforcement and Compliance, Insurance Compliance Division  
 MCMIS Motor Carrier Management Information System  
 MC–RI Office of Information Technology  
 MC–RIS Office of Data Analysis and Information Systems  
 MC–RS Office of Registration and Safety Information  
 MX Mexico Owned or Controlled  
 NEPA National Environmental Policy Act of 1969  
 NNA Non-North America-Domiciled Motor Carrier  
 NPRM Notice of Proposed Rulemaking  
 OMB Office of Management and Budget  
 PHMSA Pipeline and Hazardous Materials Safety Administration  
 PIA Privacy Impact Assessment  
 PII Personally Identifiable Information  
 PRISM Performance and Registration Information Systems Management  
 RFA Regulatory Flexibility Act  
 RQ Reportable Quantity

SAFETEA—LU Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, 119 Stat. 1714, August 10, 2005

SCAC Standard Carrier Alpha Code

SSRS Single State Registration System

URS Unified Registration System

URS–1 Unified Registration System Final Rule, 78 FR 52608 (Aug. 23, 2013), as amended at 80 FR 63695, October 21, 2015, and at 81 FR 49553, July 28, 2016

VIN Vehicle Identification Number

### III. Executive Summary

This final rule is being issued to further delay the effective and compliance dates of the Unified Registration System final rule (URS 1 final rule), issued on August 23, 2013 and revised as noted below in the Regulatory History section. The URS 1 final rule was issued to improve the registration process for motor carriers, property brokers, freight forwarders, Intermodal Equipment Providers (IEPs), hazardous materials safety permit (HMSP) applicants, and cargo tank facilities required to register with FMCSA, and streamline the existing Federal registration processes to ensure the Agency can more efficiently track these entities. FMCSA is extending the implementation date of the final stage of the URS 1 final rule beyond January 14, 2017 because additional time is needed to securely migrate data from multiple legacy platforms into a new central database and to conduct further compatibility testing with its State partners. The Agency recently migrated its information technology systems to a “cloud” environment. This migration effort was a necessary step in order to provide a foundation to successfully implement URS.

By moving the implementation date, FMCSA is providing its State partners more time to develop, update, and verify data connectivity and system reliability. The additional time will also enable the Agency to conduct more thorough training and to implement broader outreach and education activities that will provide for a seamless transition.

Due to the numerous revisions and corrections that have been made to the URS 1 final rule, FMCSA, in consultation with the Office of the Federal Register (OFR), is allowing the URS 1 rule to come into effect, immediately suspending it, and replacing it with temporary regulations. FMCSA intends to lift the suspension once the technology to implement URS 1 is complete, and effectively replace the temporary regulations with the URS 1 final rule, as issued on August 23, 2013. FMCSA and the OFR have determined that this procedure will

result in a compilation of rules that is relatively easy to understand and follow. The temporary provisions read almost exactly as the regulations in existence on January 13, 2017 (the day before URS 1 becomes effective). Their only differences are the “T” notation in their section designation, which denotes them as temporary provisions within the Code of Federal Regulations, and new paragraph designations in some cases, to align with current guidelines for publication in the CFR.

### IV. Background

#### A. Legal Authority

FMCSA relies upon the same legal authority cited in the August 23, 2013, Unified Registration System final rule (URS 1).<sup>1</sup> The Agency suspends those portions of the URS 1 final rule that will become effective on January 14, 2017, and replaces them with the provisions in effect on January 13, 2017. Because there are no substantive changes to the content of the 2013 final rule, nor to the previous provisions, we will not expand upon the previous legal authority discussion presented in the URS 1 final rule.<sup>2</sup>

The Administrative Procedure Act (APA) (5 U.S.C. 551-706) specifically provides exceptions to its notice and public comment rulemaking requirements where the Agency finds there is good cause (and incorporates the finding and a brief statement of reasons therefore in the rules issued) to dispense with them. Generally, good cause exists where the Agency determines that notice and public procedures are impractical, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(3)(B)). This URS final rule is being issued to, in effect, delay the effective date of the original URS 1 final rule. FMCSA will not have the technological ability to support the changes made by the August 23, 2013, final rule by the final rule’s current effective date (January 14, 2017), which would make it impossible for motor carriers to comply with the regulations. If FMCSA does not suspend these regulations and replace them with temporary provisions, existing motor carriers would find themselves unable to obtain a USDOT number, request additional registration, or file evidence of meeting financial responsibility requirements, among other things. The motor carrier registration process would grind to a halt, likely posing significant harm to motor carriers, other FMCSA-regulated entities, drivers, and those

who use their services. For these reasons, FMCSA finds good cause to dispense with notice and public comment on this final rule, as providing for public notice and comment would be contrary to the public interest.

For these same reasons, and also pursuant to the APA (5 U.S.C. 553 (d)(3)), this final rule will be effective on January 14, 2017. Delaying the effective date for 30 days after publication would result in the URS 1 rule remaining in effect, causing the same complications described above.

#### B. Regulatory History

The Federal Highway Administration (FMCSA’s predecessor agency) issued an advance notice of proposed rulemaking (ANPRM), announcing plans to develop a single, online, Federal information system in August 1996.<sup>3</sup> The ANPRM solicited specific detailed information from the public about each of the systems to be replaced by the URS, the conceptual design of the URS, uses and users of the information to be collected, and potential costs.

On May 19, 2005, FMCSA published an NPRM describing a proposal to merge all of the prescribed information systems except the Single State Registration System (SSRS) into a unified, online Federal system.<sup>4</sup> The Agency subsequently revised the May 2005 proposal in an October 26, 2011, SNPRM to incorporate new congressionally mandated provisions in SAFETEA—LU,<sup>5</sup> and modified certain proposals in response to comments to the NPRM.<sup>6</sup> The SNPRM also included changes necessitated by final rules published subsequent to publication of the NPRM that directly impacted the URS. In the SNPRM, the Agency substantially altered the regulatory drafting approach proposed in the NPRM by creating a straightforward requirement for all entities to register and biennially update registration information under the new URS and by compiling a centralized cross-reference to existing safety and commercial regulations necessary for compliance with the registration requirements. The Agency abandoned previous efforts to reorganize all registration and new entrant requirements under a single part

<sup>3</sup> *Advance Notice of Proposed Rulemaking, Motor Carrier Replacement Information/Registration System*, 61 FR 43816 (Aug. 26, 1996).

<sup>4</sup> *Notice of Proposed Rulemaking, Unified Registration System*, 70 FR 28990 (May 19, 2005).

<sup>5</sup> *Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA—LU)*, Public Law 109–59, 119 Stat. 1714, August 10, 2005.

<sup>6</sup> *Supplemental Notice of Proposed Rulemaking, Unified Registration System*, 76 FR 66506 (Oct. 26, 2011).

<sup>1</sup> *Final Rule, Unified Registration System*, 78 FR 52608 (August 23, 2013).

<sup>2</sup> *Id.* at 52615.

under title 49, Code of Federal Regulations (CFR) chapter III. FMCSA issued the final rule for URS (“URS 1”) on August 23, 2013.<sup>7</sup> That rule had an effective date of October 23, 2015.<sup>8</sup>

On October 21, 2015, FMCSA published a final rule delaying the URS 1 effective date until September 30, 2016.<sup>9</sup> This delay, however, included several new, temporary regulations which directed new applicants (who were also defined in the final rule) to utilize the online MCSA–1 application in order to request registration and a USDOT number. On July 28, 2016, FMCSA again delayed the URS 1 effective dates, this time until January 14, 2017, via a correction to the October 21, 2015 final rule document.<sup>10</sup> That correction also extended the effective period for the temporary provisions from the October 21, 2015 document.

**V. Section-by-Section Analysis**

This rule amends 49 CFR part 360 in reference to fees; part 365 procedures governing applications for operating authority and transfers of operating authority; part 366 procedures for designations of process agents; part 368 procedures governing applications to operate in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities; part 385 safety fitness procedures; part 387 levels of financial responsibility; and part 390 general applicability of the FMCSRs. In each part, the provisions enacted by the URS 1 final rule that go into effect January 14, 2017, are being immediately suspended and replaced by temporary provisions that contain the same

requirements in place on January 13, 2017. The only changes being made to the regulatory text are to replace internal cross references to CFR parts or sections that are either being suspended or have been removed with the corresponding temporary provision (found in the table below), and to include paragraph designations on previously undesignated text, in order to align with current guidelines for publication in the CFR. The following table lays out those provisions being suspended, and the corresponding temporary provision being added to replace the suspended regulations. Note that in some cases, there is not a corresponding suspended or temporary provision, as the URS 1 final rule both added new regulatory sections and removed sections without replacing them.

Suspended CFR part or section	Corresponding temporary CFR section(s)	Section title
360.1	360.1T	Fees for registration-related services.
360.3	360.3T	Filing fees.
360.5	360.5T	Updating user fees.
365.101	365.101T	Applications governed by these rules.
365.103	365.103T	Modified procedure.
365.105	365.105T	Starting the application process: Form OP–1.
N/A	365.106T	Starting the application process: URS online application.
365.107	365.107T	Types of applications.
365.109	365.109T	FMCSA review of the application.
365.111	365.111T	Appeals to rejections of the application.
365.119	365.119T	Opposed applications.
365.201	365.201T	Definitions.
365.203	365.203T	Time for filing.
365.301	365.301T	Applicable rules.
Part 365, Subpart D	365.401T, 365.403T, 365.405T, 365.407T, 365.409T, 365.411T, 365.413T.	Transfer of Operating Rights Under 49 U.S.C. 10926.
365.507	365.507T	FMCSA action on the application.
365.509	365.509T	Requirement to notify FMCSA of change in applicant information.
366.1	366.1T	Applicability.
366.2	366.2T	Form of designation.
366.3	366.3T	Eligible persons.
366.4	366.4T	Required States.
366.5	366.5T	Blanket designations.
366.6	366.6T	Cancellation or change.
N/A	368.3–1T <sup>11</sup>	Starting the application process: URS online application.
368.3	368.3T	Applying for a certificate of registration.
368.4	368.4T	Requirement to notify FMCSA of change in applicant information.
368.8	368.8T	Appeals.
385.301	385.301T	What is a motor carrier required to do before beginning interstate operations?
385.303	385.303T	How does a motor carrier register with the FMCSA?
385.305	385.305T	What happens after the FMCSA receives a request for new entrant registration?
385.329	385.329T	May a new entrant that has had its USDOT new entrant registration revoked and its operations placed out of service reapply?
385.405	385.405T	How does a motor carrier apply for a safety permit?
385.409	385.409T	When may a temporary safety permit be issued to a motor carrier?
385.419	385.419T	How long is a safety permit effective?
385.421	385.421T	Under what circumstances will a safety permit be subject to revocation or suspension by FMCSA?
385.603	385.603T	Application.

<sup>7</sup> Final Rule, Unified Registration System, 78 FR 52608 (Aug. 23, 2013).

<sup>8</sup> Certain provisions in the URS 1 final rule became effective on November 1, 2013. Specifically, the changes to 49 CFR 390.19 and 392.2b came into

effect earlier than the rest of the final rule. The changes to 49 CFR 366.2 were not effective until April 25, 2016.

<sup>9</sup> Final Rule; extension of effective dates, Unified Registration System, 80 FR 63695 (Oct. 21, 2015).

The delay did not impact those portions of the URS 1 final rule that had already become effective.

<sup>10</sup> Final Rule; correction, Unified Registration System; Correction, 81 FR 49553 (Jul. 28, 2016).

Suspended CFR part or section	Corresponding temporary CFR section(s)	Section title
385.607 .....	385.607T .....	FMCSA action on the application.
385.609 .....	385.609T .....	Requirement to notify FMCSA of change in applicant information.
385.713 .....	385.713T .....	Reapplying for new entrant registration.
387.19 .....	N/A .....	Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.
387.33 .....	387.33T .....	Financial responsibility, minimum levels.
387.43 .....	N/A .....	Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.
387.301 .....	387.301T .....	Surety bond, certificate of insurance, or other securities.
387.303 .....	387.303T .....	Security for the protection of the public: Minimum limits.
387.313 .....	387.313T .....	Forms and procedures.
387.323 .....	387.323T .....	Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.
387.403 .....	387.403T .....	General requirements.
387.413 .....	387.413T .....	Forms and procedures.
387.419 .....	387.419T .....	Electronic filing of surety bonds, certificates of insurance and cancellations.
390.3 .....	390.3T .....	General applicability.
390.5 .....	390.5T .....	Definitions.
390.19 .....	390.19T .....	Motor carrier identification reports for certain Mexico-domiciled motor carriers.
390.21 .....	390.21T .....	Marking of self-propelled commercial motor vehicles (CMVs) and intermodal equipment.
390.40 .....	390.40T .....	What responsibilities do intermodal equipment providers have under the Federal Motor Carrier Safety Regulations (49 CFR parts 350 through 399)?
Part 390, Subpart E .....	390.200T .....	USDOT Registration.

## VI. Rulemaking Analyses and Notices

### A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563

FMCSA has determined that this final rule, essentially delaying the effective date of the URS rules, is not a significant regulatory action within the meaning of E.O. 12866, as supplemented by E.O. 13563, or within the meaning of DOT regulatory policies and procedures. The Agency does not expect this action to have any new costs; this action suspending the provisions of the August 23, 2013 and reinstating the pre-existing registration provisions will delay the associated costs of the August 23, 2013, final rule. As discussed previously, this action is necessary because the URS 1 technological solution, required to implement the URS 1 final rule, is not ready. Not suspending the URS 1 final rule may result in additional costs, as allowing the URS 1 final rule to come into effect without having the required technological pieces (such as the URS online application and the integrated database required by statute) would require motor carriers, freight forwarders, brokers, and others to use a system that does not exist, with no

alternative for seeking registration authorities. This could lead to a delay in processing registrations, which could then impact the applicants. Suspending the URS final rule and temporarily reinstating the pre-existing rules avoids these potential costs, without adding new costs over what was originally estimated in the August 2013 RIA. The August 2013 RIA can be found in the docket for this final rule.

### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis. This is because this rule does not require publication of a general notice of proposed rulemaking. However, in compliance with the RFA, FMCSA has evaluated the effects of this final rule on small entities, and determined that delaying the effective date for the URS 1 final rule will not result in a significant economic impact on a substantial number of small entities. Accordingly, the Administrator of FMCSA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

### C. Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will

result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$156 million (which is the value of \$100 million adjusted for inflation) or more in any one year.

### D. National Environmental Policy Act

The Agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action is categorically excluded (CE) under Appendix 2, paragraphs 6(e), 6(h) and 6(y)(2) of the Order from further environmental documentation. The CE under Appendix 2, paragraph 6(e) relates to establishing regulations and actions taken pursuant to the requirements concerning applications for operating authority and certificates of registration. The CE under Appendix 2, paragraph 6(h), relates to establishing regulations and actions taken pursuant to the requirements implementing procedures to collect fees that will be charged for motor carrier registrations and insurance for the following activities: (1) Application filings; (2) records searches; and (3) reviewing, copying, certifying, and related services. The CE under Appendix 2, paragraph 6(y)(2), addresses regulations implementing motor carrier identification and registration reports. In addition, the Agency believes that

<sup>11</sup> This abnormal numbering scheme represents a slight change to the regulation. It is being made because without it, there would be two separate provisions designated as 49 CFR 368.3T, which is not allowable.

this rule includes no extraordinary circumstances that will have any effect on the quality of the human environment. Thus, this rule does not require an environmental assessment or an environmental impact statement.

FMCSA also has analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement because it involves policy development and rulemaking activities regarding registration of regulated entities with FMCSA for commercial, safety and financial responsibility purposes. See 40 CFR 93.153(c)(2)(vi). The changes would not result in any emissions increases, nor will they have any potential to result in emissions that are above the general conformity rule's de minimis emission threshold levels. Moreover, it is reasonably foreseeable that the actions will not increase total CMV mileage or change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers.

#### *E. Paperwork Reduction Act*<sup>12</sup>

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal Agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. The FMCSA analyzed the August 23, 2013, final rule and determined that its implementation would streamline the information collection burden on motor carriers and other regulated entities, relative to the baseline, or current paperwork collection processes. This included streamlining the FMCSA registration, insurance, and designation of process agent filing processes and implementing mandatory electronic online filing of these applications, as well as eliminating some outdated filing requirements. A full analysis of the impacted collections of information, both existing and new, can be found in that final rule,<sup>13</sup> a copy of which is in the docket for this final rule. This final rule makes no changes to the collections described in that final rule.

#### *F. Executive Order 12630 (Taking of Private Property)*

This final rule will not result in a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental

Actions and Interference with Constitutionally Protected Property Rights.

#### *G. Executive Order 12988 (Civil Justice Reform)*

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### *H. Executive Order 13045 (Protection of Children)*

Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (April 23, 1997, 62 FR 19885), requires that agencies issuing economically significant rules, which also concern an environmental health or safety risk that an Agency has reason to believe may disproportionately affect children, must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an Agency to submit for a covered regulatory action an evaluation of its environmental health or safety effects on children. This final rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### *I. Executive Order 13132 (Federalism)*

This rule has been analyzed in accordance with the principles and criteria in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). The FMCSA consulted with State licensing agencies participating in its PRISM Program to discuss anticipated impacts of the May 2005 NPRM upon their operations. The Agency has taken into consideration their comments in its decision-making process for this rule. Thus, FMCSA has determined that this rule will not have significant Federalism implications or limit the policymaking discretion of the States.

#### *J. Executive Order 12372 (Intergovernmental Review)*

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this final rule.

#### *K. Executive Order 13211 (Energy Supply, Distribution, or Use)*

FMCSA has analyzed this rule under Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use,” and has determined that this is not a significant energy action within the meaning of section 4(b) of the Executive Order. This final rule is not economically significant, and will not have a significant adverse effect on the supply, distribution, or use of energy.

#### *L. Privacy Impact Analysis*

The FMCSA conducted a privacy impact assessment (PIA) of the August 23, 2013, final rule as required by section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considered any impacts of the final rule on the privacy of information in an identifiable form and related matters. FMCSA determined that the August 23, 2013, final rule will impact the handling of personally identifiable information (PII). FMCSA also determined the risks and effects the rulemaking might have on collecting, storing, and sharing PII and examined and evaluated protections and alternative information handling processes in order to mitigate potential privacy risks. This final rule makes no changes to the information being collected, or to the manner that it is stored and shared. FMCSA believes that the PIA for the August 23, 2013, final rule adequately covers this action; that PIA remains available for review in the docket for this final rule.

#### **List of Subjects**

##### *49 CFR Part 360*

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

##### *49 CFR Part 365*

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Motor carriers, Moving of household goods.

##### *49 CFR Part 366*

Brokers, Motor carriers, Freight forwarders, Process agents.

##### *49 CFR Part 368*

Administrative practice and procedure, Insurance, Motor carriers.

##### *49 CFR Part 385*

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

<sup>12</sup> The calculations presented in this section may be subject to rounding errors.

<sup>13</sup> See 78 FR 52608, 52642.

## 49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

## 49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA amends 49 CFR chapter III as set forth below:

### PART 360—FEES FOR MOTOR CARRIER REGISTRATION AND INSURANCE

■ 1. The authority citation for part 360 is revised to read as follows:

**Authority:** 31 U.S.C. 9701; 49 U.S.C. 13908; and 49 CFR 1.87.

#### §§ 360.1 through 360.5 [Suspended]

■ 2. Suspend §§ 360.1 through 360.5.

■ 3. Add § 360.1T to read as follows:

#### § 360.1T Fees for registration-related services.

Certifications and copies of public records and documents on file with the Federal Motor Carrier Safety Administration will be furnished on the following basis, pursuant to the Freedom of Information Act regulations at 49 CFR part 7:

(a) Certificate of the Director, Office of Data Analysis and Information Systems, as to the authenticity of documents, \$9.00;

(b) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., incidental thereto, at the rate of \$16.00 per hour;

(c) Copies of the public documents, at the rate of \$.80 per letter size or legal size exposure. A minimum charge of \$5.00 will be made for this service; and

(d) Search and copying services requiring ADP processing, as follows:

(1) A fee of \$42.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

(2) The fee for computer searches will be set at the current rate for computer service. Information on those charges can be obtained from the Office of Data Analysis and Information Systems (MC-RIS).

(3) Printing shall be charged at the rate of \$.10 per page of computer

generated output with a minimum charge of \$.25. A charge of \$30 per reel of magnetic tape will be made if the tape is to be permanently retained by the requestor.

■ 4. Add § 360.3T to read as follows:

#### § 360.3T Filing fees.

(a) *Manner of payment.* (1) Except for the insurance fees described in the next sentence, all filing fees will be payable at the time and place the application, petition, or other document is tendered for filing. The service fee for insurance, surety or self-insurer accepted certificate of insurance, surety bond or other instrument submitted in lieu of a broker surety bond must be charged to an insurance service account established by the Federal Motor Carrier Safety Administration in accordance with paragraph (a)(2) of this section.

(2) *Billing account procedure.* A written request must be submitted to the Office of Enforcement and Compliance, Insurance Compliance Division (MC-ECI) to establish an insurance service fee account.

(i) Each account will have a specific billing date within each month and a billing cycle. The billing date is the date that the bill is prepared and printed. The billing cycle is the period between the billing date in one month and the billing date in the next month. A bill for each account which has activity or an unpaid balance during the billing cycle will be sent on the billing date each month. Payment will be due 20 days from the billing date. Payments received before the next billing date are applied to the account. Interest will accrue in accordance with 4 CFR 102.13.

(ii) The Debt Collection Act of 1982, including disclosure to the consumer reporting agencies and the use of collection agencies, as set forth in 4 CFR 102.5 and 102.6 will be utilized to encourage payment where appropriate.

(iii) An account holder who files a petition in bankruptcy or who is the subject of a bankruptcy proceeding must provide the following information to the Office of Enforcement and Compliance, Insurance Division (MC-ECI):

(A) The filing date of the bankruptcy petition;

(B) The court in which the bankruptcy petition was filed;

(C) The type of bankruptcy proceeding;

(D) The name, address, and telephone number of its representative in the bankruptcy proceeding; and

(E) The name, address, and telephone number of the bankruptcy trustee, if one has been appointed.

(3) Fees will be payable to the Federal Motor Carrier Safety Administration by

a check payable in United States currency drawn upon funds deposited in a United States or foreign bank or other financial institution, money order payable in United States' currency, or credit card (VISA or MASTERCARD).

(b) Any filing that is not accompanied by the appropriate filing fee is deficient except for filings that satisfy the deferred payment procedures in paragraph (a) of this section.

(c) *Fees not refundable.* Fees will be assessed for every filing in the type of proceeding listed in the schedule of fees contained in paragraph (f) of this section, subject to the exceptions contained in paragraphs (d) and (e) of this section. After the application, petition, or other document has been accepted for filing by the Federal Motor Carrier Safety Administration, the filing fee will not be refunded, regardless of whether the application, petition, or other document is granted or approved, denied, rejected before docketing, dismissed, or withdrawn.

(d) *Related or consolidated proceedings.* (1) Separate fees need not be paid for related applications filed by the same applicant which would be the subject of one proceeding. (This does not mean requests for multiple types of operating authority filed on forms in the OP-1 series under the regulations at 49 CFR part 365. A separate filing fee is required for each type of authority sought in each transportation mode, e.g., common, contract, and broker authority for motor property carriers.)

(2) Separate fees will be assessed for the filing of temporary operating authority applications as provided in paragraph (f)(6) of this section, regardless of whether such applications are related to an application for corresponding permanent operating authority.

(3) The Federal Motor Carrier Safety Administration may reject concurrently filed applications, petitions, or other documents asserted to be related and refund the filing fee if, in its judgment, they embrace two or more severable matters which should be the subject of separate proceedings.

(e) *Waiver or reduction of filing fees.* It is the general policy of the Federal Motor Carrier Safety Administration not to waive or reduce filing fees except as described as follows:

(1) Filing fees are waived for an application or other proceeding which is filed by a Federal government agency, or a State or local government entity. For purposes of this section the phrases "Federal government agency" or "government entity" do not include a quasi-governmental corporation or

government subsidized transportation company.

(2) In extraordinary situations the Federal Motor Carrier Safety Administration will accept requests for waivers or fee reductions in accordance with the following procedure:

(i) *When to request.* At the time that a filing is submitted to the Federal

Motor Carrier Safety Administration the applicant may request a waiver or reduction of the fee prescribed in this part. Such request should be addressed to the Director, Office of Data Analysis and Information Systems.

(ii) *Basis.* The applicant must show the waiver or reduction of the fee is in the best interest of the public, or that

payment of the fee would impose an undue hardship upon the requestor.

(iii) *Federal Motor Carrier Safety Administration action.* The Director, Office of Data Analysis and Information Systems, will notify the applicant of the decision to grant or deny the request for waiver or reduction.

(f) *Schedule of filing fees.*

Type of proceeding		Fee
<b>Part I: Licensing:</b>		
(1) .....	An application for motor carrier operating authority, a certificate of registration for certain foreign carriers, property broker authority, or freight forwarder authority.	\$300.
(2) .....	A petition to interpret or clarify an operating authority .....	3,000.
(3) .....	A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plant site, or the change of a highway name or number.	50.
(4) .....	A petition to renew authority to transport explosives .....	250.
(5) .....	An application for authority to deviate from authorized regular-route authority.	150.
(6) .....	An application for motor carrier temporary authority issued in an emergency situation.	100.
(7) .....	Request for name change of a motor carrier, property broker, or freight forwarder.	14.
(8) .....	An application involving the merger, transfer, or lease of the operating rights of motor passenger and property carriers, property brokers, and household goods freight forwarders under 49 U.S.C. 10321 and 10926.	300.
(9)–(49) .....	[Reserved] .....	
<b>Part II: Insurance:</b>		
(50) .....	(i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD).	4,200.
	(ii) An application for original qualification as self-insurer for cargo insurance.	420.
(51) .....	A service fee for insurer, surety, or self-insurer accepted certificate of insurance, surety bond, and other instrument submitted in lieu of a broker surety bond.	\$10 per accepted certificate, surety bond or other instrument submitted in lieu of a broker surety bond.
(52) .....	A petition for reinstatement of revoked operating authority .....	80.
(53)–(79) .....	[Reserved] .....	
<b>Part III: Services:</b>		
(80) .....	Request for service or pleading list for proceedings .....	13 per list.
(81) .....	Faxed copies of operating authority to applicants or their representatives who did not receive a served copy.	5.

(g) *Returned check policy.* (1) If a check submitted to the FMCSA for a filing or service fee is dishonored by a bank or financial institution on which it is drawn, the FMCSA will notify the person who submitted the check that:

(i) All work will be suspended on the filing or proceeding, until the check is made good;

(ii) A returned check charge of \$6.00 and any bank charges incurred by the FMCSA as a result of the dishonored check must be submitted with the filing fee which is outstanding; and

(iii) If payment is not made within the time specified by the FMCSA, the proceeding will be dismissed or the filing may be rejected.

(2) If a person repeatedly submits dishonored checks to the FMCSA for filing fees, the FMCSA may notify the person that all future filing fees must be submitted in the form of a certified or

cashier's check, money order, or credit card.

■ 5. Add § 360.5T to read as follows:

**§ 360.5T Updating user fees.**

(a) *Update.* Each fee established in this part may be updated in accordance with this section as deemed necessary by the FMCSA.

(b) *Publication and effective dates.* Updated fees shall be published in the **Federal Register** and shall become effective 30 days after publication.

(c) *Payment of fees.* Any person submitting a filing for which a fee is established shall pay the fee in effect at the time of the filing.

(d) *Method of updating fees.* Each fee shall be updated by updating the cost components comprising the fee. Cost components shall be updated as follows:

(1) Direct labor costs shall be updated by multiplying base level direct labor

costs by percentage changes in average wages and salaries of FMCSA employees. Base level direct labor costs are direct labor costs determined by the cost study in Regulations Governing Fees For Service, 1 I.C.C. 2d 60 (1984), or subsequent cost studies. The base period for measuring changes shall be April 1984 or the year of the last cost study.

(2) Operations overhead shall be developed each year on the basis of current relationships existing on a weighted basis, for indirect labor applicable to the first supervisory work centers directly associated with user fee activity. Actual updating of operations overhead will be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead costs.

(3)(i) Office general and administrative costs shall be developed

each year on the basis of current levels costs, *i.e.*, dividing actual office general and administrative costs for the current fiscal year by total office costs for the office directly associated with user fee activity. Actual updating of office general and administrative costs will be accomplished by applying the current 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 procedures 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**

■ 6. The authority citation for part 365 is revised to read as follows:

**Authority:** 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 13908, 14708, 31133, 31138, and 31144; 49 CFR 1.87.

#### **§§ 365.101 through 365.109— [SUSPENDED]**

■ 7. Suspend §§ 365.101 through 365.109.

■ 8. Add § 365.101T to read as follows:

#### **§ 365.101T 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.

(j) The rules in this part do not apply to “pipeline welding trucks” as defined in 49 CFR 390.38(b).

■ 9. Add § 365.103T to read as follows:

#### **§ 365.103T 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.

■ 10. Add § 365.105T to read as follows:

#### **§ 365.105T Starting the application process: Form OP–1.**

(a)(1) 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.

(2) 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 360.3T(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: <https://www.fmcsa.dot.gov/mission/field-offices>. The forms and information about filing procedures can be downloaded at: <https://www.fmcsa.dot.gov/registration/registration-forms>.

■ 11. Add § 365.106T to read as follows:

#### **§ 365.106T Starting the application process: URS online application.**

(a) Notwithstanding § 365.105T, new applicants as defined in paragraph (b) of this section must apply for a USDOT number and if applicable, operating authority by electronically filing Form MCSA–1, the URS online application, to request authority pursuant to 49 U.S.C. 13902, 13903, or 13904 to operate as a:

(1) Motor carrier of property (not household goods), property (household goods) or passengers;

(2) Broker of general commodities or household goods; or

(3) Freight forwarder of general commodities or household goods.

(b) For purposes of this section, a “new applicant” is an entity applying for a USDOT number and if applicable, operating authority who does not at the time of application have an active registration or USDOT, Motor Carrier (MC), Mexico owned or controlled (MX) or Freight Forwarder (FF) number, and who has never had an active registration or USDOT, MC, MX, or FF number.

(c) Form MCSA–1 is the URS online application, and both the application and its instructions are available from the FMCSA Web site at <http://www.fmcsa.dot.gov/urs>.

■ 12. Add § 365.107T to read as follows:

#### **§ 365.107T 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.

■ 13. Add § 365.109T to read as follows:

**§ 365.109T 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.

**§ 365.111 [SUSPENDED]**

■ 14. Suspend § 365.111.

■ 15. Add § 365.111T to read as follows:

**§ 365.111T 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.

**§ 365.119 [SUSPENDED]**

■ 16. Suspend § 365.119.

■ 17. Add § 365.119T to read as follows:

**§ 365.119T Opposed applications.**

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

**§§ 365.201 and 365.203 [SUSPENDED]**

■ 18. Suspend §§ 365.201 and 365.203.

■ 19. Add § 365.201T to read as follows:

**§ 365.201T Definitions.**

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

■ 20. Add § 365.203T to read as follows:

**§ 365.203T 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.

**§ 365.301 [SUSPENDED]**

■ 21. Suspend § 365.301.

■ 22. Add § 365.301T to read as follows:

**§ 365.301T 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.

**Subpart D—[SUSPENDED]**

■ 23. Suspend subpart D, consisting of §§ 365.401 through 365.413.

■ 24. Add new subpart D, consisting of §§ 365.401T through 365.413T, to read as follows:

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

Sec.

365.401T Scope of rules.

365.403T Definitions.

365.405T Applications.

365.407T Notice.

365.409T FMCSA action and criteria for approval.

365.411T Responsive pleadings.

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

**§ 365.401T 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 360.3T(f)(8).

**§ 365.403T 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,<sup>1</sup> 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.

<sup>1</sup> 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.

(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.

**§ 365.405T 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, Office of Registration and Safety Information (MC-RS), 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 § 365.409T. (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.

**§ 365.407T Notice.**

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

**§ 365.409T 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 § 365.405T 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*.

**§ 365.411T 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, Office of Registration and Safety Information (MC-RS), 1200 New Jersey Ave. SE., Washington, DC 20590-0001, and be served on appropriate parties.

**§ 365.413T 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.

(b) *Procedures*. To accomplish these changes, a letter or signed copy of form MCSA-5889, "Motor Carrier Records Change Form," OMB No. 2126-0060, must be submitted to the Federal Motor Carrier Safety Administration. It must be submitted in one of the following three ways.

(1) Scanned and submitted via the web form at <https://www.fmcsa.dot.gov/ask>;

(2) Faxed to (202-366-3477); or

(3) Mailed to the Federal Motor Carrier Safety Administration, Office of Registration and Safety Information (MC-RS), 1200 New Jersey Ave. SE., Washington, DC 20590-0001. The envelope should be marked "NAME CHANGE".

(c) The registrant must provide:

(1) The docket number(s) and name of the carrier, freight forwarder, or property broker 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 § 360.3T(f) of this chapter.

**§§ 365.507 and 365.509 [SUSPENDED]**

■ 25. Suspend §§ 365.507 and 365.509.

■ 26. Add § 365.507T to read as follows:

**§ 365.507T 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 § 365.109T(b).

(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 § 387.301T 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.

■ 26. Add § 365.509T to read as follows:

**§ 365.509T 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 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.

**PART 366—DESIGNATION OF PROCESS AGENT**

■ 27. The authority citation for part 366 is revised to read as follows:

**Authority:** 49 U.S.C. 502, 503, 13303, 13304 and 13908; and 49 CFR 1.87.

**§§ 366.1 through 366.6 [SUSPENDED]**

- 28. Suspend §§ 366.1 through 366.6.
- 29. Add §§ 366.1T through 366.6T to read as follows:

Sec.

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

**§ 366.1T 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)).

**§ 366.2T 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.

**§ 366.3T Eligible persons.**

All persons (as defined at 49 U.S.C. 13102(18)) designated as process agents must reside in or maintain an office in the State for which they are designated. If a State official is designated, evidence of his or her willingness to accept service of process must be furnished.

**§ 366.4T 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.

**§ 366.5T 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.

**§ 366.6T 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 § 366.4T in whole or in part for 1 year, designation is no longer required and may be canceled without making another designation.

**PART 368—APPLICATION FOR A CERTIFICATE OF REGISTRATION TO OPERATE IN MUNICIPALITIES IN THE UNITED STATES ON THE UNITED STATES-MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES**

- 30. The authority citation for part 368 is revised to read as follows:

**Authority:** 49 U.S.C. 13301, 13902 and 13908; Pub. L. 106-159, 113 Stat. 1748; and 49 CFR 1.87.

- 31. Add § 368.3-1T to read as follows:

**§ 368.3-1T Starting the application process: URS online application.**

(a) Notwithstanding any other provision of this part, new applicants as defined in paragraph (b) of this section must apply for a USDOT number and operating authority by electronically filing Form MCSA-1, the URS online application (available at <http://www.fmcsa.dot.gov/urs>) to request authority pursuant to 49 U.S.C. 13902 to provide interstate transportation in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities as defined in 49 U.S.C. 13902(c)(4)(A).

(b) For purposes of this section, a “new applicant” is an citizen of Mexico or a motor carrier owned or controlled by a citizen of Mexico, applying for a USDOT number and operating authority who does not at the time of application have an active registration or USDOT, Motor Carrier (MC), Mexico owned or controlled (MX) or Freight Forwarder (FF) number, and who has never had an active registration or USDOT, MC, MX, or FF number.

(c) Form MCSA-1, is the URS online application, and both the application and its instructions are available from the FMCSA Web site at <http://www.fmcsa.dot.gov/urs>.

**§§ 368.3 and 368.4 [SUSPENDED]**

- 32. Suspend §§ 368.3 and 368.4.
- 33. Add § 368.3T to read as follows:

**§ 368.3T Applying for a certificate of registration.**

(a) If you wish to obtain a certificate of registration under this part, you must submit an application that includes the following:

(1) Form OP-2—Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902;

(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 FMCSA will only process your application for a Certificate of Registration if it meets the following conditions:

(1) The application must be completed in English;

(2) The information supplied must be accurate and complete in accordance with the instructions to the Form OP-2, Form MCS-150 and Form BOC-3;

(3) The application must include all the required supporting documents and applicable certifications set forth in the instructions to the Form OP-2, Form MCS-150 and Form BOC-3;

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

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

(c) If you fail to furnish the complete application as described under paragraph (b) of this section your application may be rejected.

(d) If you submit false information under this section, you will be subject to applicable Federal penalties.

(e) You must submit the application to the address provided in the instructions to the Form OP-2.

(f) You may obtain the application described in paragraph (a) of this section from any FMCSA Division Office or download it from the FMCSA Web site at: <http://www.fmcsa.dot.gov/factsfigs/formspubs.htm>.

- 34. Add § 368.4T to read as follows:

**§ 368.4T Requirement to notify FMCSA of change in applicant information.**

(a) You must notify the FMCSA of any changes or corrections to the information in Parts I, IA or II submitted on the Form OP-2 or the Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders during

the application process or while you have a Certificate of Registration. You must notify the FMCSA in writing within 45 days of the change or correction.

(b) If you fail to comply with paragraph (a) of this section, the FMCSA may suspend or revoke the Certificate of Registration until you meet those requirements.

#### § 368.8 [SUSPENDED]

- 35. Suspend § 368.8.
- 36. Add § 368.8T to read as follows:

#### § 368.8T Appeals.

An applicant has the right to appeal denial of the application. The appeal must be in writing and specify in detail why the agency's decision to deny the application was wrong. The appeal must be filed with the Director, Office of Data Analysis and Information Systems within 20 days of the date of the letter denying the application. The decision of the Director will be the final agency order.

### PART 385—SAFETY FITNESS PROCEDURES

- 37. The authority citation for part 385 is revised to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 13908, 31136, 31144, 31148, 31151, and 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.87.

#### §§ 385.301 through 385.305 [SUSPENDED]

- 38. Suspend §§ 385.301 through 385.305.
- 39. Add § 385.301T to read as follows:

#### § 385.301T What is a motor carrier required to do before beginning interstate operations?

(a) Before a motor carrier of property or passengers begins interstate operations, it must register with the FMCSA and receive a USDOT number. In addition, for-hire motor carriers must obtain operating authority from FMCSA following the registration procedures described in 49 CFR part 365, unless providing transportation exempt from 49 CFR part 365 registration requirements.

(b) This subpart applies to motor carriers domiciled in the United States and Canada.

(c) A Mexico-domiciled motor carrier of property or passengers must register with the FMCSA by following the registration procedures described in 49 CFR part 365 or 368, as appropriate. The regulations in this subpart do not apply to Mexico-domiciled carriers.

- 40. Add § 385.303T to read as follows:

#### § 385.303T How does a motor carrier register with the FMCSA?

A motor carrier may contact the FMCSA by internet ([www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)); or Washington, DC headquarters by mail at, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001; fax 202–366–3477; or telephone 1–800–832–5660, and request the application materials for a new entrant motor carrier. Forms can also be downloaded from <https://www.fmcsa.dot.gov/registration/registration-forms>. A motor carrier which does not already have a USDOT number must apply online via the Unified Registration System (URS) at [www.fmcsa.dot.gov/urs](http://www.fmcsa.dot.gov/urs).

- 41. Add § 385.305T to read as follows:

#### § 385.305T What happens after the FMCSA receives a request for new entrant registration?

(a) The requester for new entrant registration will be directed to the FMCSA Internet Web site ([www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)) to secure and/or complete the application package online.

(b) The application package will contain the following:

(1) Educational and technical assistance material regarding the requirements of the FMCSRs and HMRs, if applicable.

(2) The Form MCS–150, The Motor Carrier Identification Report.

(3) Application forms to obtain operating authority under 49 CFR part 365, as appropriate.

(c) Upon completion of the application forms, the new entrant will be issued a USDOT number.

(d) For-hire motor carriers, unless providing transportation exempt from 49 CFR part 365 registration requirements, must also comply with the procedures established in 49 CFR part 365 to obtain operating authority before operating in interstate commerce.

#### § 385.329 [SUSPENDED]

- 42. Suspend § 385.329.
- 43. Add § 385.329T to read as follows:

#### § 385.329T May a new entrant that has had its USDOT new entrant registration revoked and its operations placed out of service reapply?

(a) A new entrant whose USDOT new entrant registration has been revoked, and whose operations have been placed out of service by FMCSA, may reapply for new entrant registration no sooner than 30 days after the date of revocation.

(b) If the USDOT new entrant registration was revoked because of a failed safety audit, the new entrant must do all of the following:

- (1) Submit an updated MCS–150.
- (2) Submit evidence that it has corrected the deficiencies that resulted in revocation of its registration and will otherwise ensure that it will have basic safety management controls in effect.
- (3) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.
- (c) If the USDOT new entrant registration was revoked because FMCSA found that the new entrant had failed to submit to a safety audit, it must do all of the following:
  - (1) Submit an updated MCS–150.
  - (2) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.
  - (3) Submit to a safety audit.
  - (d) If the new entrant is a for-hire carrier subject to the registration provisions under 49 U.S.C. 13901 and also has had its operating authority revoked, it must re-apply for operating authority as set forth in part 365 of this chapter.

#### § 385.405 [SUSPENDED]

- 44. Suspend § 385.405.
- 45. Add § 385.405T to read as follows:

#### § 385.405T How does a motor carrier apply for a safety permit?

(a) *Application form(s)*. (1) To apply for a new safety permit or renewal of the safety permit, a motor carrier must complete and submit Form MCS–150B, Combined Motor Carrier Identification Report and HM Permit Application.

(2) The Form MCS–150B will also satisfy the requirements for obtaining and renewing a USDOT Number; there is no need to complete Form MCS–150, Motor Carrier Identification Report.

(b) *Where to get forms and instructions*. The forms listed in paragraph (a) of this section, and instructions for completing the forms, may be obtained on the Internet at <http://www.fmcsa.dot.gov>, or by contacting FMCSA at Federal Motor Carrier Safety Administration, Office of Information Technology (MC–RI), 1200 New Jersey Ave. SE., Washington, DC 20590–0001, Telephone: 1–800–832–5660.

(c) *Registration with the Pipeline and Hazardous Materials Safety Administration (PHMSA)*. The motor carrier must be registered with PHMSA in accordance with part 107, subpart G, of this title.

(d) *Updating information on Form MCS–150B*. A motor carrier holding a safety permit must report to FMCSA any change in the information on its Form MCS–150B within 30 days of the change. The motor carrier must use Form MCS–150B to report the new

information (contact information in paragraph (b) of this section).

**§ 385.409 [SUSPENDED]**

■ 46. Suspend § 385.409.

■ 47. Add § 385.409T to read as follows:

**§ 385.409T When may a temporary safety permit be issued to a motor carrier?**

(a) *Temporary safety permit.* If a motor carrier does not meet the criteria in § 385.407(a), FMCSA may issue it a temporary safety permit. To obtain a temporary safety permit a motor carrier must certify on Form MCS-150B that it is operating in full compliance with the HMRs; with the FMCSRs, and/or comparable State regulations, whichever is applicable; and with the minimum financial responsibility requirements in part 387 of this chapter or in State regulations, whichever is applicable.

(b) FMCSA will not issue a temporary safety permit to a motor carrier that:

(1) Does not certify that it has a satisfactory security program as required in § 385.407(b);

(2) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA's Motor Carrier Management Information System (MCMIS); or

(3) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS.

(c) A temporary safety permit shall be valid for 180 days after the date of issuance or until the motor carrier is assigned a new safety rating, whichever occurs first.

(1) A motor carrier that receives a Satisfactory safety rating will be issued a safety permit (see § 385.421T).

(2) A motor carrier that receives a less than Satisfactory safety rating is ineligible for a safety permit and will be subject to revocation of its temporary safety permit.

(d) If a motor carrier has not received a safety rating within the 180-day time period, FMCSA will extend the effective date of the temporary safety permit for an additional 60 days, provided the motor carrier demonstrates that it is continuing to operate in full compliance with the FMCSRs and HMRs.

**§§ 385.419 and 385.421 [SUSPENDED]**

■ 48. Suspend §§ 385.419 and 385.421.

■ 49. Add § 385.419T to read as follows:

**§ 385.419T How long is a safety permit effective?**

Unless suspended or revoked, a safety permit (other than a temporary safety permit) is effective for two years, except that:

(a) A safety permit will be subject to revocation if a motor carrier fails to

submit a renewal application (Form MCS-150B) in accordance with the schedule set forth for filing Form MCS-150 in § 390.19T(a) of this chapter; and

(b) An existing safety permit will remain in effect pending FMCSA's processing of an application for renewal if a motor carrier submits the required application (Form MS-150B) in accordance with the schedule set forth in § 390.19T(a)(2) and (3) of this chapter.

■ 50. Add § 385.421T to read as follows:

**§ 385.421T Under what circumstances will a safety permit be subject to revocation or suspension by FMCSA?**

(a) *Grounds.* A safety permit will be subject to revocation or suspension by FMCSA for the following reasons:

(1) A motor carrier fails to submit a renewal application (Form MCS-150B) in accordance with the schedule set forth in § 390.19T(a)(2) and (3) of this chapter;

(2) A motor carrier provides any false or misleading information on its application (Form MCS-150B) or as part of updated information it is providing on Form MCS-150B (see § 385.405T(d)).

(3) A motor carrier is issued a final safety rating that is less than Satisfactory;

(4) A motor carrier fails to maintain a satisfactory security plan as set forth in § 385.407(b);

(5) A motor carrier fails to comply with applicable requirements in the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner showing that the motor carrier is not fit to transport the hazardous materials listed in § 385.403;

(6) A motor carrier fails to comply with an out-of-service order;

(7) A motor carrier fails to comply with any other order issued under the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner showing that the motor carrier is not fit to transport the hazardous materials listed in § 385.403;

(8) A motor carrier fails to maintain the minimum financial responsibility required by § 387.9 of this chapter or an applicable State requirement;

(9) A motor carrier fails to maintain current hazardous materials registration with the Pipeline and Hazardous Materials Safety Administration; or

(10) A motor carrier loses its operating rights or has its registration suspended in accordance with § 386.83 or § 386.84 of this chapter for failure to pay a civil penalty or abide by a payment plan.

(b) *Determining whether a safety permit is revoked or suspended.* A

motor carrier's safety permit will be suspended the first time any of the conditions specified in paragraph (a) of this section are found to apply to the motor carrier. A motor carrier's safety permit will be revoked if any of the conditions specified in paragraph (a) of this section are found to apply to the motor carrier and the carrier's safety permit has been suspended in the past for any of the reasons specified in paragraph (a) of this section.

(c) *Effective date of suspension or revocation.* A suspension or revocation of a safety permit is effective:

(1) Immediately after FMCSA determines that an imminent hazard exists, after FMCSA issues a final safety rating that is less than Satisfactory, or after a motor carrier loses its operating rights or has its registration suspended for failure to pay a civil penalty or abide by a payment plan;

(2) Thirty (30) days after service of a written notification that FMCSA proposes to suspend or revoke a safety permit, if the motor carrier does not submit a written request for administrative review within that time period; or

(3) As specified in § 385.423(c), when the motor carrier submits a written request for administrative review of FMCSA's proposal to suspend or revoke a safety permit.

(4) A motor carrier whose safety permit has been revoked will not be issued a replacement safety permit or temporary safety permit for 365 days from the time of revocation.

**§ 385.603 [SUSPENDED]**

■ 51. Suspend § 385.603.

■ 52. Add § 385.603T to read as follows:

**§ 385.603T Application.**

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

(1) Form OP-1(NNA)—Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers;

(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) FMCSA will only process an 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(NNA), 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 360.3T(f)(1); and

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

(c) An applicant must submit the application to the address provided in Form OP-1(NNA).

(d) An applicant may obtain the application forms from any FMCSA Division Office or download them from the FMCSA Web site at: <http://www.fmcsa.dot.gov/forms/forms.htm>.

**§§ 385.607 and 385.609 [SUSPENDED]**

■ 53. Suspend §§ 385.607 and 385.609.

■ 54. Add § 385.607T to read as follows:

**§ 385.607T FMCSA action on the application.**

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

(b) FMCSA will validate the accuracy of information and certifications provided in the application by checking, to the extent available, data maintained in databases of the governments of the country where the carrier's principal place of business is located and the United States.

(c) Pre-authorization safety audit. Every non-North America-domiciled motor carrier that applies under this part must satisfactorily complete an FMCSA-administered safety audit before FMCSA will grant new entrant registration to operate in the United States. The safety audit is a review by 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. FMCSA will evaluate the results of the safety audit using the criteria in the appendix to this subpart.

(d) An application of a non-North America-domiciled motor carrier requesting for-hire operating authority under part 365 of this subchapter may be protested under § 365.109T(b). Such a carrier will be granted new entrant registration after successful completion of the pre-authorization safety audit and the expiration of the protest period, provided the application is not

protested. If a protest to the application is filed with FMCSA, new entrant registration will be granted only if FMCSA denies or rejects the protest.

(e) If FMCSA grants new entrant registration to the applicant, it will assign a distinctive USDOT Number that identifies the motor carrier as authorized to operate in the United States. In order to initiate operations in the United States, a non-North America-domiciled motor carrier with new entrant registration 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 §§ 387.7(e)(2), 387.31(e)(2), and 387.301T of this subchapter, as applicable; and

(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.

(f) A non-North America-domiciled motor carrier must comply with all provisions of the safety monitoring system in subpart I of this part, including successfully passing North American Standard commercial motor vehicle inspections at least every 90 days and having safety decals affixed to each commercial motor vehicle operated in the United States as required by § 385.703(c).

(g) FMCSA may not re-designate a non-North America-domiciled carrier's registration from new entrant to permanent prior to 18 months after the date its USDOT Number is issued and subject to successful completion of the safety monitoring system for non-North America-domiciled carriers set out in subpart I of this part. Successful completion includes obtaining a Satisfactory safety rating as the result of a compliance review.

■ 55. Add § 385.609T to read as follows:

**§ 385.609T Requirement to notify FMCSA of change in applicant information.**

(a)(1) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information the Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders that occur during the application process or after having been granted new entrant registration.

(2) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information in Section I, IA or II of Form OP-1(NNA)—Application for U.S. Department of Transportation (USDOT)

Registration by Non-North America-Domiciled Motor Carriers that occurs during the application process or after having been granted new entrant registration.

(3) A motor carrier must notify FMCSA in writing within 45 days of the change or correction to information under paragraph (a)(1) or (2) of this section.

(b) If a motor carrier fails to comply with paragraph (a) of this section, FMCSA may suspend or revoke its new entrant registration until it meets those requirements.

**§ 385.713 [SUSPENDED]**

■ 56. Suspend § 385.713.

■ 57. Add § 385.713T to read as follows:

**§ 385.713T Reapplying for new entrant registration.**

(a) A non-North America-domiciled motor carrier whose provisional new entrant registration has been revoked may reapply for new entrant registration no sooner than 30 days after the date of revocation.

(b) If the provisional new entrant registration was revoked because the new entrant failed to receive a Satisfactory rating after undergoing a compliance review, the new entrant must do all of the following:

(1) Submit an updated MCS-150.

(2) Submit evidence that it has corrected the deficiencies that resulted in revocation of its registration and will otherwise ensure that it will have basic safety management controls in effect.

(3) Successfully complete a pre-authorization safety audit in accordance with § 385.607T(c).

(4) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(c) If the provisional new entrant registration was revoked because FMCSA found that the new entrant had failed to submit to a compliance review, it must do all of the following:

(1) Submit an updated MCS-150.

(2) Successfully complete a pre-authorization safety audit in accordance with § 385.607T(c).

(3) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(4) Submit to a compliance review upon request.

(d) If the new entrant is a for-hire carrier subject to the registration provisions under 49 U.S.C. 13901 and also has had its operating authority revoked, it must re-apply for operating authority as set forth in part 365 of this subchapter.

**PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS**

■ 58. The authority citation for part 387 is revised to read as follows:

**Authority:** 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, and 31139; and 49 CFR 1.87.

**§ 387.19 [SUSPENDED]**

■ 59. Suspend § 387.19.

**§ 387.33 [SUSPENDED]**

■ 60. Suspend § 387.33.

■ 61. Add § 387.33T to read as follows:

**§ 387.33T Financial responsibility, minimum levels.**

The minimum levels of financial responsibility referred to in § 387.31 are hereby prescribed as follows:

**Schedule of Limits**

*Public Liability*

For-hire motor carriers of passengers operating in interstate or foreign commerce.

Vehicle seating capacity	Effective dates	
	Nov. 19, 1983	Nov. 19, 1985
(1) Any vehicle with a seating capacity of 16 passengers or more .....	\$2,500,000	\$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less <sup>1</sup> .....	750,000	1,500,000

<sup>1</sup> Except as provided in § 387.27(b).

**§ 387.43 [Suspended]**

■ 62. Suspend § 387.43.

**§§ 387.301 and 387.303 [Suspended]**

■ 63. Suspend §§ 387.301 and 387.303.

■ 64. Add § 387.301T to read as follows:

**§ 387.301T Surety bond, certificate of insurance, or other securities.**

(a) *Public liability.* (1) No common or contract carrier or foreign (Mexican) motor private carrier or foreign motor carrier transporting exempt commodities subject to Subtitle IV, part B, chapter 135 of title 49 of the U.S. Code shall engage in interstate or foreign commerce, and no certificate or permit shall be issued to such a carrier or remain in force unless and until there shall have been filed with and accepted by the FMCSA surety bonds, certificates of insurance, proof of qualifications as self-insurer, or other securities or agreements, in the amounts prescribed in § 387.303T, conditioned to pay any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance or use of motor vehicles in transportation subject to Subtitle IV, part B, chapter

135 of title 49 of the U.S. Code, or for loss of or damage to property of others, or, in the case of motor carriers of property operating freight vehicles described in § 387.303T(b)(2), for environmental restoration.

(2) Motor Carriers of property which are subject to the conditions set forth in paragraph (a)(1) of this section and transport the commodities described in § 387.303T(b)(2), are required to obtain security in the minimum limits prescribed in § 387.303T(b)(2).

(b) *Household goods motor carriers-cargo insurance.* No household goods motor carrier subject to subtitle IV, part B, chapter 135 of title 49 of the U.S. Code shall engage in interstate or foreign commerce, nor shall any certificate be issued to such a household goods motor carrier or remain in force unless and until there shall have been filed with and accepted by the FMCSA, a surety bond, certificate of insurance, proof of qualifications as a self-insurer, or other securities or agreements in the amounts prescribed in § 387.303T, conditioned upon such carrier making compensation to individual shippers for all property belonging to individual shippers and coming into the possession

of such carrier in connection with its transportation service. The terms “household goods motor carrier” and “individual shipper” are defined in part 375 of this subchapter.

(c) *Continuing compliance required.* Such security as is accepted by the FMCSA in accordance with the requirements of section 13906 of title 49 of the U.S. Code, shall remain in effect at all times.

■ 65. Add § 387.303T to read as follows:

**§ 387.303T Security for the protection of the public: Minimum limits.**

(a) *Definitions.* (1) *Primary security* means public liability coverage provided by the insurance or surety company responsible for the first dollar of coverage.

(2) *Excess security* means public liability coverage above the primary security, or above any additional underlying security, up to and including the required minimum limits set forth in paragraph (b)(2) of this section.

(b)(1) Motor carriers subject to § 387.301T(a)(1) are required to have security for the required minimum limits as follows:

(i) *Small freight vehicles.*

Kind of equipment	Transportation provided	Minimum limits
Fleet including only vehicles under 10,001 pounds (4,536 kilograms) GVWR .....	Property (non-hazardous) .....	\$300,000

(ii) *Passenger carriers.*

**PASSENGER CARRIERS: KIND OF EQUIPMENT**

Vehicle seating capacity	Minimum limits
(A) Any vehicle with a seating capacity of 16 passengers or more (including the driver) .....	\$5,000,000
(B) Any vehicle designed or used to transport 15 passengers or less (including the driver) for compensation .....	1,500,000



(2) Motor carriers subject to § 387.301T(a)(2) are required to have

security for the required minimum limits as follows:

Kind of equipment	Commodity transported	Minimum limits
(i) Freight vehicles of 10,001 pounds (4,536 kilograms) or more GVWR.	Property (non-hazardous) .....	\$750,000
(ii) Freight vehicles of 10,001 (4,536 kilograms) pounds or more GVWR.	Hazardous substances, as defined in § 171.8 of this title, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons, or in bulk explosives Division 1.1, 1.2 and 1.3 materials. Division 2.3, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in § 173.403 of this title.	5,000,000
(iii) Freight vehicles of 10,001 pounds (4,536 kilograms) or more GVWR.	Oil listed in § 172.101 of this title; hazardous waste, hazardous materials and hazardous substances defined in § 171.8 of this title and listed in § 172.101 of this title, but not mentioned in paragraph (b) or (d) of this section.	1,000,000
(iv) Freight vehicles under 10,001 pounds (4,536 kilograms) GVWR.	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of Class 7 material as defined in § 173.455 of this title.	5,000,000

(3) Motor carriers subject to the minimum limits governed by this section, which are also subject to Department of Transportation limits requirements, are at no time required to have security for more than the required minimum limits established by the Secretary of Transportation in the applicable provisions of this part.

(4) *Foreign motor carriers and foreign motor private carriers.* Foreign motor carriers and foreign motor private carriers (Mexican), subject to the requirements of 49 U.S.C. 13902(c) and 49 CFR part 368 regarding obtaining certificates of registration from the FMCSA, must meet our minimum financial responsibility requirements by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurance or surety companies, that meet the requirements of § 387.315. These carriers must have available for inspection, in each vehicle operating in the United States, copies of the following documents:

- (i) The certificate of registration;
- (ii) The required insurance endorsement (Form MCS-90); and
- (iii) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the insurance coverage.

Notwithstanding the provisions of § 387.301T(a)(1), the filing of evidence of insurance is not required as a condition to the issuance of a certificate of registration. Further, the reference to continuous coverage at § 387.313T(a)(6) and the reference to cancellation notice at § 387.313T(d) are not applicable to these carriers.

(c) *Household goods motor carriers: Cargo liability.* Security required to compensate individual shippers for loss or damage to property belonging to them

and coming into the possession of household goods motor carriers in connection with their transportation service:

- (1) For loss of or damage to household goods carried on any one motor vehicle—\$5,000; and
- (2) For loss of or damage to or aggregate of losses or damages of or to household goods occurring at any one time and place—\$10,000.

**§ 387.313 [Suspended]**

- 66. Suspend § 387.313.
- 67. Add § 387.313T to read as follows:

**§ 387.313T Forms and procedures.**

(a) *Forms for endorsements, certificates of insurance and others—(1) In form prescribed.* Endorsements for policies of insurance and surety bonds, certificates of insurance, applications to qualify as a self-insurer, or for approval of other securities or agreements, and notices of cancellation must be in the form prescribed and approved by the FMCSA.

(2) *Aggregation of insurance.* (i) When insurance is provided by more than one insurer in order to aggregate security limits for carriers operating only freight vehicles under 10,000 pounds Gross Vehicle Weight Rating, as defined in § 387.303T(b)(1), a separate *Form BMC 90*, with the specific amounts of underlying and limits of coverage shown thereon or appended thereto, and *Form BMC 91X* certificate is required of each insurer.

**\*\*Note:** See Note for Rule 387.311. Also, it should be noted that DOT is considering prescribing adaptations of the *Form MCS 90* endorsement and the *Form MCS 82* surety bond for use by passenger carriers and Rules §§ 387.311 and 387.313T have been written sufficiently broad to provide for this contingency when new forms are prescribed by that Agency.

(ii) For aggregation of insurance for all other carriers to cover security limits under § 387.303T(b)(1) or (2), a separate Department of Transportation prescribed form endorsement and *Form BMC 91X* certificate is required of each insurer. When insurance is provided by more than one insurer to aggregate coverage for security limits under § 387.303T(c) a separate *Form BMC 32* endorsement and *Form BMC 34* certificate of insurance is required for each insurer.

(iii) For aggregation of insurance for foreign motor private carriers of nonhazardous commodities to cover security limits under § 387.303T(b)(4), a separate *Form BMC 90* with the specific amounts of underlying and limits of coverage shown thereon or appended thereto, or Department of Transportation prescribed form endorsement, and *Form BMC 91MX* certificate is required for each insurer.

(3) *Use of certificates and endorsements in BMC Series.* Form BMC 91 certificates of insurance will be filed with the FMCSA for the full security limits under § 387.303T(b)(1) or (2).

(i) *Form BMC 91X* certificate of insurance will be filed to represent full coverage or any level of aggregation for the security limits under § 387.303T(b)(1) or (2).

(ii) *Form BMC 90* endorsement will be used with each filing of *Form BMC 91* or *Form 91X* certificate with the FMCSA which certifies to coverage not governed by the requirements of the Department of Transportation. *Form BMC 32* endorsement and *Form BMC 34* certificate of insurance and *Form BMC 83* surety bonds are used for the limits of cargo liability under § 387.303T(c).

(iii) *Form BMC 91MX* certificate of insurance will be filed to represent any level of aggregation for the security limits under § 387.303T(b)(4).

(4) *Use of endorsements in MCS Series.* When Security limits certified under § 387.303T(b)(1) or (b)(2) involves coverage also required by the Department of Transportation a Form MCS endorsement prescribed by the Department of Transportation such as, and including, the Form MCS 90 endorsement is required.

(5) *Surety bonds.* When surety bonds are used rather than certificates of insurance, Form BMC 82 is required for the security limits under § 387.303T(b)(1) not subject to regulation by the Department of Transportation, and Form MCS 82, or any form of similar import prescribed by the Department of Transportation, is used for the security limits subject also to minimum coverage requirements of the Department of Transportation.

(6) *Surety bonds and certificates in effect continuously.* Surety bonds and certificates of insurance shall specify that coverage thereunder will remain in effect continuously until terminated as herein provided, except:

(i) When filed expressly to fill prior gaps or lapses in coverage or to cover grants of emergency temporary authority of unusually short duration and the filing clearly so indicates; or

(ii) In special or unusual circumstances, when special permission is obtained for filing certificates of insurance or surety bonds on terms meeting other particular needs of the situation.

(b) *Filing and copies.* Certificates of insurance, surety bonds, and notices of cancellation must be filed with the FMCSA in triplicate.

(c) *Name of insured.* Certificates of insurance and surety bonds shall be

issued in the full and correct name of the individual, partnership, corporation or other person to whom the certificate, permit, or license is, or is to be, issued. In the case of a partnership, all partners shall be named.

(d) *Cancellation notice.* Except as provided in paragraph (e) of this section, surety bonds, certificates of insurance and other securities or agreements shall not be cancelled or withdrawn until 30 days after written notice has been submitted to the FMCSA at its offices in Washington, DC, on the prescribed form (*Form BMC-35*, Notice of Cancellation Motor Carrier Policies of Insurance under 49 U.S.C. 13906, and *BMC-36*, Notice of Cancellation Motor Carrier and Broker Surety Bonds, as appropriate) by the insurance company, surety or sureties, motor carrier, broker or other party thereto, as the case may be, which period of thirty (30) days shall commence to run from the date such notice on the prescribed form is actually received by the FMCSA.

(e) *Termination by replacement.* Certificates of insurance or surety bonds which have been accepted by the FMCSA under these rules may be replaced by other certificates of insurance, surety bonds or other security, and the liability of the retiring insurer or surety under such certificates of insurance or surety bonds shall be considered as having terminated as of the effective date of the replacement certificate of insurance, surety bond or other security, provided the said replacement certificate, bond or other security is acceptable to the FMCSA under the rules and regulations in this part.

(f) *Termination of Forms BMC-32 and BMC-34 for motor carriers transporting property other than household goods.*

*Form BMC-32* endorsements and *Form BMC-34* certificates of insurance issued to motor carriers transporting property other than household goods that have been accepted by the FMCSA under these rules will expire on March 21, 2011.

**§ 387.323 [Suspended]**

■ 68. Suspend § 387.323.

■ 69. Add § 387.323T to read as follows:

**§ 387.323T Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.**

(a) Insurers may, at their option and in accordance with the requirements and procedures set forth in paragraphs (a) through (d) of this section, file forms BMC 34, BMC 35, BMC 36, BMC 82, BMC 83, BMC 84, BMC 85, BMC 91, and BMC 91X electronically, in lieu of using the prescribed printed forms.

(b) Each insurer must obtain authorization to file electronically by registering with the FMCSA. An individual account number and password for computer access will be issued to each registered insurer.

(c) Filings may be transmitted online via the Internet at: <http://fhwa-li.volpe.dot.gov> or via American Standard Code Information Interchange (ASCII). All ASCII transmission must be in fixed format, *i.e.*, all records must have the same number of fields and same length. The record layouts for ASCII electronic transactions are described in the following table:

**ELECTRONIC INSURANCE FILING TRANSACTIONS**

Field name	Number of positions	Description	Required F = filing C = cancel B = both	Start field	End field
Record type .....	1 Numeric .....	1 = Filing, 2 = Cancellation .....	B	1	1
Insurer number .....	8 Text .....	FMCSA Assigned Insurer Number (Home Office) With Suffix (Issuing Office), If Different, <i>e.g.</i> , 12345-01.	B	2	9
Filing type .....	1 Numeric .....	1 = BI&PD, 2 = Cargo, 3 = Bond, 4 = Trust Fund.	B	10	10
FMCSA docket number	8 Text .....	FMCSA Assigned MC or FF Number, <i>e.g.</i> , MC000045.	B	11	18
Insured legal name .....	120 Text .....	Legal Name .....	B	19	138
Insured d/b/a name .....	60 Text .....	Doing Business As Name If Different From Legal Name.	B	139	198
Insured address .....	35 Text .....	Either street or mailing address .....	B	199	233
Insured city .....	30 Text .....	.....	B	234	263
Insured state .....	2 Text .....	.....	B	264	265
Insured zip code .....	9 Numeric .....	(Do not include dash if using 9 digit code) .....	B	266	274
Insured country .....	2 Text .....	(Will default to U.S.) .....	B	275	276
Form code .....	10 Text .....	BMC-91, BMC-91X, BMC-34, BMC-35, etc ...	B	277	286

## ELECTRONIC INSURANCE FILING TRANSACTIONS—Continued

Field name	Number of positions	Description	Required F = filing C = cancel B = both	Start field	End field
Full, primary or excess coverage.	1 Text .....	If BMC-91X, P or E = indicator of primary or excess policy; 1 = Full under § 387.303T(b)(1); 2 = Full under § 387.303T(b)(2).	F	287	287
Limit of liability .....	5 Numeric .....	\$ in Thousands .....	F	288	292
Underlying limit of liability.	5 Numeric .....	\$ in Thousands (will default to \$000 if Primary)	F	293	297
Effective date .....	8 Text .....	MM/DD/YY Format for both Filing or Cancellation.	B	298	305
Policy number .....	25 Text .....	Surety companies may enter bond number .....	B	306	330

(d) All registered insurers agree to furnish upon request to the FMCSA a duplicate original of any policy (or policies) and all endorsements, surety bond, trust fund agreement, or other filing.

#### § 387.403 [Suspended]

■ 70. Suspend § 387.403.

■ 71. Add § 387.403T to read as follows:

#### § 387.403T General requirements.

(a) *Cargo*. A household goods freight forwarder may not operate until it has filed with FMCSA an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed in § 387.405, for loss of or damage to household goods.

(b) *Public liability*. A HHGFF may not perform transfer, collection, and delivery service until it has filed with the FMCSA an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 387.405, conditioned to pay any final judgment recovered against such HHGFF for bodily injury to or the death of any person, or loss of or damage to property (except cargo) of others, or, in the case of freight vehicles described at § 387.303T(b)(2), for environmental restoration, resulting from the negligent operation, maintenance, or use of motor vehicles operated by or under its control in performing such service.

(c) *Surety bond or trust fund*. A freight forwarder must have a surety bond or trust fund in effect. The FMCSA will not issue a freight forwarder license until a surety bond or trust fund for the full limit of liability prescribed in § 387.405 is in effect. The freight forwarder license shall remain valid or effective only as long as a surety bond or trust fund remains in effect and shall ensure the financial responsibility of the freight forwarder. The requirements applicable to property broker surety bonds and

trust funds in § 387.307 shall apply to the surety bond or trust fund required by this paragraph (c).

#### § 387.413 [Suspended]

■ 72. Suspend § 387.413.

■ 73. Add § 387.413T to read as follows:

#### § 387.413T Forms and procedures.

(a) *Forms*. Endorsements for policies of insurance, surety bonds, certificates of insurance, applications to qualify as a self-insurer or for approval of other securities or agreements, and notices of cancellation must be in the form prescribed at subpart C of this part.

(b) *Procedure*. Certificates of insurance, surety bonds, and notices of cancellation must be filed with the FMCSA in triplicate.

(c) *Names*. Certificates of insurance and surety bonds shall be issued in the full name (including any trade name) of the individual, partnership (all partners named), corporation, or other person holding or to be issued the permit.

(d) *Cancellation*. Except as provided in paragraph (e) of this section, certificates of insurance, surety bonds, and other securities and agreements shall not be cancelled or withdrawn until 30 days after the FMCSA receives written notice from the insurance company, surety, freight forwarder, or other party, as the case may be.

(e) *Termination by replacement*. Certificates of insurance or surety bonds may be replaced by other certificates of insurance, surety bonds, or other security, and the liability of the retiring insurer or surety shall be considered as having terminated as of the replacement's effective date, if acceptable to the FMCSA.

(f) *Termination of Forms BMC-32 and BMC-34 for freight forwarders of property other than household goods*. Form BMC-32 endorsements and Form BMC-34 certificates of insurance issued to freight forwarders of property other than household goods that have been

accepted by the FMCSA under these rules will expire on March 21, 2011.

#### § 387.419 [Suspended]

■ 74. Suspend § 387.419.

■ 75. Add § 387.419T to read as follows:

#### § 387.419T Electronic filing of surety bonds, certificates of insurance and cancellations.

Insurers may, at their option and in accordance with the requirements and procedures set forth at § 387.323T, file certificates of insurance, surety bonds, and other securities and agreements electronically.

#### PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 76. The authority citation for part 390 is revised to read as follows:

**Authority:** 49 U.S.C. 508, 13301, 13902, 13908, 31132, 31133, 31136, 31151, 31502, 31504; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 217, Pub. L. 106-159, 113 Stat. 1748, 1767; sec. 4136, Pub. L. 109-59, 119 Stat. 1144, 1745; and 49 CFR 1.87.

#### § 390.3 [Suspended]

■ 77. Suspend § 390.3.

■ 78. Add § 390.3T to read as follows:

#### § 390.3T General applicability.

(a)(1) The rules in this subchapter are applicable to all employers, employees, and commercial motor vehicles that transport property or passengers in interstate commerce.

(2) The rules in 49 CFR 386.12(e) and 390.6 prohibiting the coercion of drivers of commercial motor vehicles operating in interstate commerce:

(i) To violate certain safety regulations are applicable to all motor carriers, shippers, receivers, and transportation intermediaries; and

(ii) To violate certain commercial regulations are applicable to all operators of commercial motor vehicles.

(b) The rules in part 383 of this chapter, Commercial Driver's License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in § 383.5 of this subchapter, in interstate or intrastate commerce and to all employers of such persons.

(c) The rules in part 387 of this chapter, Minimum Levels of Financial Responsibility for Motor Carriers, are applicable to motor carriers as provided in § 387.3 or § 387.27 of this subchapter.

(d) *Additional requirements.* Nothing in this subchapter shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(e) *Knowledge of and compliance with the regulations.* (1) Every employer shall be knowledgeable of and comply with all regulations contained in this subchapter which are applicable to that motor carrier's operations.

(2) Every driver and employee shall be instructed regarding, and shall comply with, all applicable regulations contained in this subchapter.

(3) All motor vehicle equipment and accessories required by this subchapter shall be maintained in compliance with all applicable performance and design criteria set forth in this subchapter.

(f) *Exceptions.* Unless otherwise specifically provided, the rules in this subchapter do not apply to—

(1) All school bus operations as defined in § 390.5T, except for the provisions of §§ 391.15(e) and (f), 392.80, and 392.82 of this chapter.

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States;

(3) The occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise;

(4) The transportation of human corpses or sick and injured persons;

(5) The operation of fire trucks and rescue vehicles while involved in emergency and related operations;

(6) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, except that motor carriers and drivers operating such vehicles are required to comply with §§ 390.15, 390.19T, 390.21T(a) and (b)(2), 391.15(e) and (f), 392.80 and 392.82 of this chapter.

(7) Either a driver of a commercial motor vehicle used primarily in the transportation of propane winter heating fuel or a driver of a motor vehicle used to respond to a pipeline emergency, if such regulations would prevent the driver from responding to an emergency condition requiring immediate response as defined in § 390.5T.

(g) *Motor carriers that transport hazardous materials in intrastate commerce.* The rules in the following provisions of this subchapter apply to motor carriers that transport hazardous materials in intrastate commerce and to the motor vehicles that transport hazardous materials in intrastate commerce:

(1) Part 385, subparts A and E, of this chapter for carriers subject to the requirements of § 385.403 of this chapter.

(2) Part 386 of this chapter, Rules of practice for motor carrier, broker, freight forwarder, and hazardous materials proceedings.

(3) Part 387 of this chapter, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in § 387.3 of this chapter.

(4) Section 390.19T, Motor carrier identification report, and § 390.21T, Marking of CMVs, for carriers subject to the requirements of § 385.403 of this chapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from § 390.19T(a)(1).

(h) *Intermodal equipment providers.* On and after December 17, 2009, the rules in the following provisions of this subchapter apply to intermodal equipment providers:

(1) Subpart F, Intermodal Equipment Providers, of part 385 of this chapter, Safety Fitness Procedures.

(2) Part 386 of this chapter, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(3) This part, Federal Motor Carrier Safety Regulations; General, except § 390.15(b) concerning accident registers.

(4) Part 393 of this chapter, Parts and Accessories Necessary for Safe Operation.

(5) Part 396 of this chapter, Inspection, Repair, and Maintenance.

#### § 390.5 [Suspended]

■ 79. Suspend § 390.5.

■ 80. Add § 390.5T to read as follows:

#### § 390.5T Definitions.

Unless specifically defined elsewhere, in this subchapter:

*Accident* means—

(1) Except as provided in paragraph (2) of this definition, an occurrence

involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

(2) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo.

*Alcohol concentration (AC)* means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

*Bus* means any motor vehicle designed, constructed, and/or used for the transportation of passengers, including taxicabs.

*Business district* means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

*Charter transportation of passengers* means transportation, using a bus, of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin.

*Coerce or Coercion* means either—

(1) A threat by a motor carrier, shipper, receiver, or transportation intermediary, or their respective agents, officers or representatives, to withhold business, employment or work opportunities from, or to take or permit any adverse employment action against, a driver in order to induce the driver to operate a commercial motor vehicle under conditions which the driver stated would require him or her to violate one or more of the regulations, which the driver identified at least generally, that are codified at 49 CFR parts 171 through 173, 177 through 180, 380 through 383, or 390 through 399, or § 385.415 or § 385.421T of this chapter,

or the actual withholding of business, employment, or work opportunities or the actual taking or permitting of any adverse employment action to punish a driver for having refused to engage in such operation of a commercial motor vehicle; or

(2) A threat by a motor carrier, or its agents, officers or representatives, to withhold business, employment or work opportunities or to take or permit any adverse employment action against a driver in order to induce the driver to operate a commercial motor vehicle under conditions which the driver stated would require a violation of one or more of the regulations, which the driver identified at least generally, that are codified at 49 CFR parts 356, 360, or 365 through 379, or the actual withholding of business, employment or work opportunities or the actual taking or permitting of any adverse employment action to punish a driver for refusing to engage in such operation of a commercial motor vehicle.

*Commercial motor vehicle* means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

(2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

(3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

*Conviction* means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or prorated.

*Covered farm vehicle* means—

(1) A straight truck or articulated vehicle—

(i) Registered in a State with a license plate or other designation issued by the State of registration that allows law enforcement officials to identify it as a farm vehicle;

(ii) Operated by the owner or operator of a farm or ranch, or an employee or family member of a an owner or operator of a farm or ranch;

(iii) Used to transport agricultural commodities, livestock, machinery or supplies to or from a farm or ranch; and

(iv) Not used in for-hire motor carrier operations; however, for-hire motor carrier operations do not include the operation of a vehicle meeting the requirements of paragraphs (1)(i) through (iii) of this definition by a tenant pursuant to a crop share farm lease agreement to transport the landlord's portion of the crops under that agreement.

(2) Meeting the requirements of paragraphs (1)(i) through (iv) of this definition:

(i) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, of 26,001 pounds or less may utilize the exemptions in § 390.39 anywhere in the United States; or

(ii) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, of more than 26,001 pounds may utilize the exemptions in § 390.39 anywhere in the State of registration or across State lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

*Crash*. See accident.

*Direct assistance* means transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

*Direct compensation* means payment made to the motor carrier by the passengers or a person acting on behalf of the passengers for the transportation services provided, and not included in a total package charge or other assessment for highway transportation services.

*Disabling damage* means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusions*. Damage to motor vehicles that could have been driven,

but would have been further damaged if so driven.

(2) *Exclusions*. (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

*Driveaway-towaway operation* means an operation in which an empty or unladen motor vehicle with one or more sets of wheels on the surface of the roadway is being transported:

(1) Between vehicle manufacturer's facilities;

(2) Between a vehicle manufacturer and a dealership or purchaser;

(3) Between a dealership, or other entity selling or leasing the vehicle, and a purchaser or lessee;

(4) To a motor carrier's terminal or repair facility for the repair of disabling damage (as defined in this section) following a crash; or

(5) To a motor carrier's terminal or repair facility for repairs associated with the failure of a vehicle component or system; or

(6) By means of a saddle-mount or tow-bar.

*Driver* means any person who operates any commercial motor vehicle.

*Driving a commercial motor vehicle while under the influence of alcohol* means committing any one or more of the following acts in a CMV: Driving a CMV while the person's alcohol concentration is 0.04 or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of Table 1 to § 383.51 or § 392.5(a)(2) of this subchapter.

*Electronic device* includes, but is not limited to, a cellular telephone; personal digital assistant; pager; computer; or any other device used to input, write, send, receive, or read text.

*Emergency* means any hurricane, tornado, storm (e.g. thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout or other occurrence, natural or man-made, which interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, provided

such hurricane, tornado, or other event results in:

(1) A declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the FMCSA Field Administrator for the geographical area in which the occurrence happens; or by other Federal, State or local government officials having authority to declare emergencies; or

(2) A request by a police officer for tow trucks to move wrecked or disabled motor vehicles.

*Emergency condition requiring immediate response* means any condition that, if left unattended, is reasonably likely to result in immediate serious bodily harm, death, or substantial damage to property. In the case of transportation of propane winter heating fuel, such conditions shall include (but are not limited to) the detection of gas odor, the activation of carbon monoxide alarms, the detection of carbon monoxide poisoning, and any real or suspected damage to a propane gas system following a severe storm or flooding. An “emergency condition requiring immediate response” does not include requests to refill empty gas tanks. In the case of a pipeline emergency, such conditions include (but are not limited to) indication of an abnormal pressure event, leak, release or rupture.

*Emergency relief* means an operation in which a motor carrier or driver of a commercial motor vehicle is providing direct assistance to supplement State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section.

*Employee* means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle), a mechanic, and a freight handler. Such term does not include an employee of the United States, any State, any political subdivision of a State, or any agency established under a compact between States and approved by the Congress of the United States who is acting within the course of such employment.

*Employer* means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it, but such terms does not

include the United States, any State, any political subdivision of a State, or an agency established under a compact between States approved by the Congress of the United States.

*Exempt intracity zone* means the geographic area of a municipality or the commercial zone of that municipality described in appendix F to this subchapter. The term “exempt intracity zone” does not include any municipality or commercial zone in the State of Hawaii. For purposes of § 391.62 of this chapter, a driver may be considered to operate a commercial motor vehicle wholly within an exempt intracity zone notwithstanding any common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone.

*Exempt motor carrier* means a person engaged in transportation exempt from economic regulation by the Federal Motor Carrier Safety Administration (FMCSA) under 49 U.S.C. 13506. “Exempt motor carriers” are subject to the safety regulations set forth in this subchapter.

*Farm vehicle driver* means a person who drives only a commercial motor vehicle that is—

- (1) Controlled and operated by a farmer as a private motor carrier of property;
- (2) Being used to transport either—
  - (i) Agricultural products; or
  - (ii) Farm machinery, farm supplies, or both, to or from a farm;
- (3) Not being used in the operation of a for-hire motor carrier;
- (4) Not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with § 177.823 of this subtitle; and
- (5) Being used within 150 air-miles of the farmer’s farm.

*Farmer* means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which—

- (1) Are owned by that person; or
- (2) Are under the direct control of that person.

*Fatality* means any injury which results in the death of a person at the time of the motor vehicle accident or within 30 days of the accident.

*Federal Motor Carrier Safety Administrator* means the chief executive of the Federal Motor Carrier Safety Administration, an agency within the Department of Transportation.

*For-hire motor carrier* means a person engaged in the transportation of goods or passengers for compensation.

*Gross combination weight rating (GCWR)* is the greater of:

(1) A value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration; or

(2) The sum of the gross vehicle weight ratings (GVWRs) or the gross vehicle weights (GVWs) of the power unit and the towed unit(s), or any combination thereof, that produces the highest value. Exception: The GCWR of the power unit will not be used to define a commercial motor vehicle when the power unit is not towing another vehicle.

*Gross vehicle weight rating (GVWR)* means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

*Hazardous material* means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

*Hazardous substance* means a material, and its mixtures or solutions, that is identified in the appendix to § 172.101 of this title, List of Hazardous Substances and Reportable Quantities, of this title when offered for transportation in one package, or in one transport motor vehicle if not packaged, and when the quantity of the material therein equals or exceeds the reportable quantity (RQ). This definition does not apply to petroleum products that are lubricants or fuels, or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in § 171.8 of this title, based on the reportable quantity (RQ) specified for the materials listed in the appendix to § 172.101 of this title.

*Hazardous waste* means any material that is subject to the hazardous waste manifest requirements of the EPA specified in 40 CFR part 262 or would be subject to these requirements absent an interim authorization to a State under 40 CFR part 123, subpart F.

*Highway* means any road, street, or way, whether on public or private property, open to public travel. “Open to public travel” means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of

public toll roads are not considered restrictive gates.

*Interchange* means—

(1) The act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider, but it does not include the leasing of equipment to a motor carrier for primary use in the motor carrier's freight hauling operations; or

(2) The act of providing a passenger-carrying commercial motor vehicle by one motor carrier of passengers to another such carrier, at a point which both carriers are authorized to serve, with which to continue a through movement.

(3) For property-carrying vehicles, see § 376.2 of this subchapter.

*Intermodal equipment* means trailing equipment that is used in the intermodal transportation of containers over public highways in interstate commerce, including trailers and chassis.

*Intermodal equipment interchange agreement* means the Uniform Intermodal Interchange and Facilities Access Agreement (UIIFA) or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities and liabilities of both parties with respect to the interchange of the intermodal equipment.

*Intermodal equipment provider* means any person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.

*Interstate commerce* means trade, traffic, or transportation in the United States—

(1) Between a place in a State and a place outside of such State (including a place outside of the United States);

(2) Between two places in a State through another State or a place outside of the United States; or

(3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

*Intrastate commerce* means any trade, traffic, or transportation in any State which is not described in the term "interstate commerce."

*Lease*, as used in § 390.21T(f) and subpart F of this part, means a contract or arrangement in which a motor carrier

grants the use of a passenger-carrying commercial motor vehicle to another motor carrier, with or without a driver, for a specified period for the transportation of passengers, in exchange for compensation. The term lease includes an interchange, as defined in this section, or other agreement granting the use of a passenger-carrying commercial motor vehicle for a specified period, with or without a driver, whether or not compensation for such use is specified or required. For a definition of lease in the context of property-carrying vehicles, see § 376.2 of this subchapter.

*Lessee*, as used in subpart F of this part, means the motor carrier obtaining the use of a passenger-carrying commercial motor vehicle, with or without the driver, from another motor carrier. The term lessee includes a motor carrier obtaining the use of a passenger-carrying commercial motor vehicle from another motor carrier under an interchange or other agreement, with or without a driver, whether or not compensation for such use is specified. For a definition of lessee in the context of property-carrying vehicles, see § 376.2 of this subchapter.

*Lessor*, as used in subpart F of this part, means the motor carrier granting the use of a passenger-carrying commercial motor vehicle, with or without a driver, to another motor carrier. The term lessor includes a motor carrier granting the use of a passenger-carrying commercial motor vehicle to another motor carrier under an interchange or other agreement, with or without a driver, whether or not compensation for such use is specified. For a definition of lessor in the context of property-carrying vehicles, see § 376.2 of this subchapter.

*Medical examiner* means the following:

(1) For medical examinations conducted before May 21, 2014, a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to perform physical examinations. The term includes but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic.

(2) For medical examinations conducted on and after May 21, 2014, an individual certified by FMCSA and listed on the National Registry of Certified Medical Examiners in accordance with subpart D of this part.

*Medical variance* means a driver has received one of the following from

FMCSA that allows the driver to be issued a medical certificate:

(1) An exemption letter permitting operation of a commercial motor vehicle pursuant to part 381, subpart C, of this chapter or § 391.64 of this chapter;

(2) A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to § 391.49 of this chapter.

*Mobile telephone* means a mobile communication device that falls under or uses any commercial mobile radio service, as defined in regulations of the Federal Communications Commission, 47 CFR 20.3. It does not include two-way or Citizens Band Radio services.

*Motor carrier* means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of this subchapter, this definition includes the terms employer, and exempt motor carrier.

*Motor vehicle* means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Federal Motor Carrier Safety Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

*Motor vehicle record* means the report of the driving status and history of a driver generated from the driver record, provided to users, such as, drivers or employers, and subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721–2725.

*Multiple-employer driver* means a driver, who in any period of 7 consecutive days, is employed or used as a driver by more than one motor carrier.

*Operating authority* means the registration required by 49 U.S.C. 13902, 49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a.

*Operator*. See driver.

*Other terms*. Any other term used in this subchapter is used in its commonly accepted meaning, except where such other term has been defined elsewhere in this subchapter. In that event, the definition therein given shall apply.

*Out-of-service order* means a declaration by an authorized enforcement officer of a Federal, State, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 CFR 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible laws, or the North American Standard Out-of-Service Criteria.

*Person* means any individual, partnership, association, corporation, business trust, or any other organized group of individuals.

*Previous employer* means any DOT regulated person who employed the driver in the preceding 3 years, including any possible current employer.

*Principal place of business* means the single location designated by the motor carrier, normally its headquarters, for purposes of identification under this subchapter. The motor carrier must make records required by parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter available for inspection at this location within 48 hours (Saturdays, Sundays, and Federal holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Motor Carrier Safety Administration.

*Private motor carrier* means a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier.

*Private motor carrier of passengers (business)* means a private motor carrier engaged in the interstate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large.

*Private motor carrier of passengers (nonbusiness)* means private motor carrier involved in the interstate transportation of passengers that does not otherwise meet the definition of a private motor carrier of passengers (business).

*Radar detector* means any device or mechanism to detect the emission of radio microwaves, laser beams or any other future speed measurement technology employed by enforcement personnel to measure the speed of commercial motor vehicles upon public roads and highways for enforcement purposes. Excluded from this definition are radar detection devices that meet both of the following requirements:

(1) Transported outside the driver's compartment of the commercial motor vehicle. For this purpose, the driver's compartment of a passenger-carrying CMV shall include all space designed to

accommodate both the driver and the passengers; and

(2) Completely inaccessible to, inoperable by, and imperceptible to the driver while operating the commercial motor vehicle.

*Receiver or consignee* means a person who takes delivery from a motor carrier or driver of a commercial motor vehicle of property transported in interstate commerce or hazardous materials transported in interstate or intrastate commerce.

*Regional Director of Motor Carriers* means the Field Administrator, Federal Motor Carrier Safety Administration, for a given geographical area of the United States.

*Residential district* means the territory adjacent to and including a highway which is not a business district and for a distance of 300 feet or more along the highway is primarily improved with residences.

*School bus* means a passenger motor vehicle which is designed or used to carry more than 10 passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting preprimary, primary, or secondary school students to such schools from home or from such schools to home.

*School bus operation* means the use of a school bus to transport only school children and/or school personnel from home to school and from school to home.

*Secretary* means the Secretary of Transportation.

*Shipper* means a person who tenders property to a motor carrier or driver of a commercial motor vehicle for transportation in interstate commerce, or who tenders hazardous materials to a motor carrier or driver of a commercial motor vehicle for transportation in interstate or intrastate commerce.

*Single-employer driver* means a driver who, in any period of 7 consecutive days, is employed or used as a driver solely by a single motor carrier. This term includes a driver who operates a commercial motor vehicle on an intermittent, casual, or occasional basis.

*Special agent.* See appendix B to this subchapter—Special agents.

*State* means a State of the United States and the District of Columbia and includes a political subdivision of a State.

*Texting* means manually entering alphanumeric text into, or reading text from, an electronic device.

(1) This action includes, but is not limited to, short message service, emailing, instant messaging, a command or request to access a World Wide Web

page, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any other form of electronic text retrieval or entry, for present or future communication.

(2) Texting does not include:

(i) Inputting, selecting, or reading information on a global positioning system or navigation system; or

(ii) Pressing a single button to initiate or terminate a voice communication using a mobile telephone; or

(iii) Using a device capable of performing multiple functions (e.g., fleet management systems, dispatching devices, smart phones, citizens band radios, music players, etc.) for a purpose that is not otherwise prohibited in this subchapter.

*Trailer* includes:

(1) Full trailer means any motor vehicle other than a pole trailer which is designed to be drawn by another motor vehicle and so constructed that no part of its weight, except for the towing device, rests upon the self-propelled towing motor vehicle. A semitrailer equipped with an auxiliary front axle (converter dolly) shall be considered a full trailer.

(2) Pole trailer means any motor vehicle which is designed to be drawn by another motor vehicle and attached to the towing motor vehicle by means of a "reach" or "pole," or by being "boomed" or otherwise secured to the towing motor vehicle, for transporting long or irregularly shaped loads such as poles, pipes, or structural members, which generally are capable of sustaining themselves as beams between the supporting connections.

(3) Semitrailer means any motor vehicle, other than a pole trailer, which is designed to be drawn by another motor vehicle and is constructed so that some part of its weight rests upon the self-propelled towing motor vehicle.

*Transportation intermediary* means a person who arranges the transportation of property or passengers by commercial motor vehicle in interstate commerce, or who arranges the transportation of hazardous materials by commercial motor vehicle in interstate or intrastate commerce, including but not limited to brokers and freight forwarders.

*Truck* means any self-propelled commercial motor vehicle except a truck tractor, designed and/or used for the transportation of property.

*Truck tractor* means a self-propelled commercial motor vehicle designed and/or used primarily for drawing other vehicles.

*Use a hand-held mobile telephone* means:



(1) Using at least one hand to hold a mobile telephone to conduct a voice communication;

(2) Dialing or answering a mobile telephone by pressing more than a single button; or

(3) Reaching for a mobile telephone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position, restrained by a seat belt that is installed in accordance with 49 CFR 393.93 and adjusted in accordance with the vehicle manufacturer's instructions.

*United States* means the 50 States and the District of Columbia.

**§ 390.19 [SUSPENDED]**

■ 81. Suspend § 390.19.

■ 82. Add § 390.19T to read as follows:

**§ 390.19T Motor carrier identification reports for certain Mexico-domiciled motor carriers.**

(a) *Applicability.* Each motor carrier and intermodal equipment provider must file Form MCS-150, Form MCS-150B or Form MCS-150C with FMCSA as follows:

(1) A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce must file a Motor Carrier Identification Report, Form MCS-150.

(2) A motor carrier conducting operations in intrastate commerce and requiring a Safety Permit under 49 CFR part 385, subpart E, must file the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS-150B.

(3) Each intermodal equipment provider that offers intermodal equipment for transportation in interstate commerce must file an Intermodal Equipment Provider Identification Report, Form MCS-150C.

(b) *Filing schedule.* Each motor carrier or intermodal equipment provider must file the appropriate form under paragraph (a) of this section at the following times:

- (1) Before it begins operations; and
- (2) Every 24 months, according to the following schedule:

USDOT No. ending in	Must file by last day of
1 .....	January.
2 .....	February.
3 .....	March.
4 .....	April.
5 .....	May.
6 .....	June.
7 .....	July.
8 .....	August.
9 .....	September.
0 .....	October.

(3) If the next-to-last digit of its USDOT Number is odd, the motor carrier or intermodal equipment provider shall file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT Number is even, the motor carrier or intermodal equipment provider shall file its update in every even-numbered calendar year.

(4) A person that fails to complete biennial updates to the information pursuant to paragraph (b)(2) of this section is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B) or 49 U.S.C. 14901(a), as appropriate, and deactivation of its USDOT Number.

(c) *Availability of forms.* The forms described under paragraph (a) of this section and complete instructions are available from the FMCSA Web site at <http://www.fmcsa.dot.gov> (Keyword "MCS-150," or "MCS-150B," or "MCS-150C"); from all FMCSA Service Centers and Division offices nationwide; or by calling 1-800-832-5660.

(d) *Where to file.* The required form under paragraph (a) of this section must be filed with the FMCSA Office of Registration and Safety Information. The form may be filed electronically according to the instructions at the Agency's Web site, or it may be sent to Federal Motor Carrier Safety Administration, Office of Registration and Safety Information (MC-RS), 1200 New Jersey Avenue SE., Washington, DC 20590.

(e) *Special instructions for for-hire motor carriers.* A for-hire motor carrier should submit the Form MCS-150, or Form MCS-150B, along with its application for operating authority (Form OP-1, OP-1(MX), OP-1(NNA) or OP-2), to the appropriate address referenced on that form, or may submit it electronically or by mail separately to the address mentioned in paragraph (d) of this section.

(f) Only the legal name or a single trade name of the motor carrier or intermodal equipment provider may be used on the forms under paragraph (a) of this section (Form MCS-150, MCS-150B, or MCS-150C).

(g) A motor carrier or intermodal equipment provider that fails to file the form required under paragraph (a) of this section, or furnishes misleading information or makes false statements upon the form, is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B).

(h)(1) Upon receipt and processing of the form described in paragraph (a) of this section, FMCSA will issue the motor carrier or intermodal equipment provider an identification number (USDOT Number).

(2) The following applicants must additionally pass a pre-authorization safety audit as described below before being issued a USDOT Number:

(i) A Mexico-domiciled motor carrier seeking 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 must pass the pre-authorization safety audit under § 365.507T of this subchapter. The Agency will not issue a USDOT Number until expiration of the protest period provided in § 365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest.

(ii) A non-North America-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce within the United States must pass the pre-authorization safety audit under § 385.607T(c) of this subchapter. The Agency will not issue a USDOT Number until expiration of the protest period provided in § 365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest.

(3) The motor carrier must display the number on each self-propelled CMV, as defined in § 390.5T, along with the additional information required by § 390.21T.

(4) The intermodal equipment provider must identify each unit of interchanged intermodal equipment by its assigned USDOT number.

(i) A motor carrier that registers its vehicles in a State that participates in the Performance and Registration Information Systems Management (PRISM) program (authorized under section 4004 of the Transportation Equity Act for the 21st Century [Public Law 105-178, 112 Stat. 107]) is exempt from the requirements of this section, provided it files all the required information with the appropriate State office.

**§ 390.21 [Suspended]**

■ 83. Suspend § 390.21.

■ 84. Add § 390.21T to read as follows:

**§ 390.21T Marking of self-propelled CMVs and intermodal equipment.**

(a) *General.* Every self-propelled CMV subject to this subchapter must be marked as specified in paragraphs (b), (c), and (d) of this section, and each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject to this subchapter must be marked as specified in paragraph (g) of this section.

(b) *Nature of marking.* The marking must display the following information:

(1) The legal name or a single trade name of the motor carrier operating the self-propelled CMV, as listed on the motor carrier identification report (Form MCS-150) and submitted in accordance with § 390.19T.

(2) The identification number issued by FMCSA to the motor carrier or intermodal equipment provider, preceded by the letters “USDOT.”

(3) If the name of any person other than the operating carrier appears on the CMV, the name of the operating carrier must be followed by the information required by paragraphs (b)(1) and (2) of this section, and be preceded by the words “operated by.”

(4) Other identifying information may be displayed on the vehicle if it is not inconsistent with the information required by this paragraph (b).

(c) *Size, shape, location, and color of marking.* The marking must—

(1) Appear on both sides of the self-propelled CMV;

(2) Be in letters that contrast sharply in color with the background on which the letters are placed;

(3) Be readily legible, during daylight hours, from a distance of 50 feet (15.24 meters) while the CMV is stationary; and

(4) Be kept and maintained in a manner that retains the legibility required by paragraph (c)(3) of this section.

(d) *Construction and durability.* The marking may be painted on the CMV or may consist of a removable device, if that device meets the identification and legibility requirements of paragraph (c) of this section, and such marking must be maintained as required by paragraph (c)(4) of this section.

(e) *Rented property-carrying commercial motor vehicles.* A motor carrier operating a self-propelled property-carrying commercial motor vehicle under a rental agreement having a term not in excess of 30 calendar days meets the requirements of this section if:

(1) The CMV is marked in accordance with the provisions of paragraphs (b) through (d) of this section; or

(2) The CMV is marked as set forth in paragraphs (e)(2)(i) through (iv) of this section:

(i) The legal name or a single trade name of the lessor is displayed in accordance with paragraphs (c) and (d) of this section.

(ii) The lessor’s identification number preceded by the letters “USDOT” is displayed in accordance with paragraphs (c) and (d) of this section.

(iii) The rental agreement entered into by the lessor and the renting motor

carrier conspicuously contains the following information:

(A) The name and complete physical address of the principal place of business of the renting motor carrier;

(B) The identification number issued the renting motor carrier by the FMCSA, preceded by the letters “USDOT,” if the motor carrier has been issued such a number. In lieu of the identification number required in this paragraph (e)(2)(iii)(B), the following may be shown in the rental agreement:

(1) Information which indicates whether the motor carrier is engaged in “interstate” or “intrastate” commerce; and

(2) Information which indicates whether the renting motor carrier is transporting hazardous materials in the rented CMV; and

(C) The sentence: “This lessor cooperates with all Federal, State, and local law enforcement officials nationwide to provide the identity of customers who operate this rental CMV”.

(iv) The rental agreement entered into by the lessor and the renting motor carrier is carried on the rental CMV during the full term of the rental agreement. See the leasing regulations at 49 CFR part 376 for information that should be included in all leasing documents.

(f) *Leased and interchanged passenger-carrying commercial motor vehicles.* A motor carrier operating a leased or interchanged passenger-carrying commercial motor vehicle meets the requirements of this section if:

(1) The passenger-carrying CMV is marked in accordance with the provisions of paragraphs (b) through (d) of this section, except that marking is required only on the right (curb) side of the vehicle; and

(2) The passenger-carrying CMV is marked with a single placard, sign, or other device affixed to the right (curb) side of the vehicle on or near the front passenger door. The placard, sign or device must display the legal name or a single trade name of the motor carrier operating the CMV and the motor carrier’s USDOT number, preceded by the words “Operated by.”

(g) *Driveaway services.* In driveaway services, a removable device may be affixed on both sides or at the rear of a single driven vehicle. In a combination driveaway operation, the device may be affixed on both sides of any one unit or at the rear of the last unit. The removable device must display the legal name or a single trade name of the motor carrier and the motor carrier’s USDOT number.

(h) *Intermodal equipment.* (1) The requirements for marking intermodal equipment apply to each intermodal equipment provider, as defined in § 390.5T, that interchanges or offers for interchange intermodal equipment to a motor carrier.

(2) Each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject to this subchapter must identify the intermodal equipment provider.

(3) The intermodal equipment provider must be identified by its legal name or a single trade name and the identification number issued by FMCSA, preceded by the letters “USDOT.”

(4) The intermodal equipment must be identified as follows, using any one of the following methods:

(i) The identification marking must appear on the curb side of the item of equipment. It must be in letters that contrast sharply in color with the background on which the letters are placed. The letters must be readily legible, during daylight hours, from a distance of 50 feet (15.24 meters) while the CMV is stationary; and be kept and maintained in a manner that retains this legibility; or

(ii) The identification marking must appear on a label placed upon the curb side of the item of equipment. The label must be readily visible and legible to an inspection official during daylight hours when the vehicle is stationary. The label must be a color that contrasts sharply with the background on which it is placed, and the letters must also contrast sharply in color with the background of the label. The label must be kept and maintained in a manner that retains this legibility; or

(iii) The USDOT number of the intermodal equipment provider must appear on the interchange agreement so that it is clearly identifiable to an inspection official. The interchange agreement must include additional information to identify the specific item of intermodal equipment (such as the Vehicle Identification Number (VIN) and 4-character Standard Carrier Alpha Code (SCAC) code and 6-digit unique identifying number); or

(iv) The identification marking must be shown on a document placed in a weathertight compartment affixed to the frame of the item of intermodal equipment. The color of the letters used in the document must contrast sharply in color with the background of the document. The document must include additional information to identify the specific item of intermodal equipment (such as the VIN and 4-character SCAC

code and 6-digit unique identifying number).

(v) The USDOT number of the intermodal equipment provider is maintained in a database that is available via real-time internet and telephonic access. The database must:

(A) Identify the name and USDOT number of the intermodal equipment provider responsible for the intermodal equipment, in response to an inquiry that includes:

(i) SCAC plus trailing digits; or  
(ii) License plate number and State of license; or  
(iii) VIN of the item of intermodal equipment.

(B) Offer read-only access for inquiries on individual items of intermodal equipment, without requiring advance user registration, a password, or a usage fee.

#### § 390.40 [SUSPENDED]

■ 85. Suspend § 390.40.

■ 86. Add § 390.40T to read as follows:

#### § 390.40T What responsibilities do intermodal equipment providers have under the Federal Motor Carrier Safety Regulations (49 CFR parts 350 through 399)?

An intermodal equipment provider must—

(a) Identify its operations to the FMCSA by filing the Form MCS-150C required by § 390.19T.

(b) Mark its intermodal equipment with the USDOT number as required by § 390.21T before tendering the equipment to a motor carrier.

(c) Systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, in a manner consistent with § 396.3(a)(1) of this chapter, as applicable, all

intermodal equipment intended for interchange with a motor carrier.

(d) Provide intermodal equipment intended for interchange that is in safe and proper operating condition.

(e) Maintain a system of driver vehicle inspection reports submitted to the intermodal equipment provider as required by § 396.11 of this chapter.

(f) Maintain a system of inspection, repair, and maintenance records as required by § 396.3(b)(3) of this chapter for equipment intended for interchange with a motor carrier.

(g) Periodically inspect equipment intended for interchange, as required under § 396.17 of this chapter.

(h) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, have procedures in place, and provide sufficient space, for drivers to perform a pre-trip inspection of tendered intermodal equipment.

(i) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection, or replace the equipment, prior to the driver's departure. The repairs or replacement must be made after being notified by a driver of such damage, defects, or deficiencies.

(j) Refrain from placing intermodal equipment in service on the public highways if that equipment has been found to pose an imminent hazard, as defined in § 386.72(b)(3) of this chapter.

#### Subpart E—[SUSPENDED]

■ 87. Suspend subpart E, consisting of §§ 390.201 through 390.209.

■ 88. Add a new subpart E, consisting of § 390.200T, to read as follows:

#### Subpart E—URS Online Application

##### § 390.200T USDOT Registration.

(a) *Purpose.* This section establishes who must register with FMCSA using the Form MCSA-1, the URS online application, beginning January 14, 2017.

(b) *Applicability.* Notwithstanding any other provisions of this part or 49 CFR 385.305T(b)(2), a new applicant private motor carrier or new applicant exempt for-hire motor carrier subject to the requirements of this subchapter must file Form MCSA-1 with FMCSA to identify its operations with the Federal Motor Carrier Safety Administration for safety oversight. Form MCSA-1 is the URS online application, and both the application and its instructions are available from the FMCSA Web site at <http://www.fmcsa.dot.gov/urs>.

(c) *Definition.* For purposes of this section, a “new applicant” is an entity applying for operating authority registration and a USDOT number who does not at the time of application have an active registration or USDOT, Motor Carrier (MC), Mexican owned or controlled (MX), or Freight Forwarder (FF) number, and who has never had an active registration or USDOT, MC, MX, or FF number.

Issued under authority delegated under 49 CFR 1.87 on: December 23, 2016.

**T.F. Scott Darling III,**

*Administrator.*

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