

§ 385.501

(7) The decision of the Chief Safety Officer (including a recommended decision of an administrative law judge that becomes the decision of the Chief Safety Officer under paragraph (c)(5) of this section) constitutes final agency action, and there is no right to further administrative reconsideration or review.

(8) Any appeal of a final agency action under this section must be taken to an appropriate United States Court of Appeals. Unless the Court of Appeals issues a stay pending appeal, the final agency action shall not be suspended while the appeal is pending.

[69 FR 39367, June 30, 2004, as amended at 72 FR 55701, Oct. 1, 2007]

Subpart F—Intermodal Equipment Providers

SOURCE: 73 FR 76819, Dec. 17, 2008, unless otherwise noted.

§ 385.501 Roadability review.

(a) FMCSA will perform roadability reviews of intermodal equipment providers, as defined in § 390.5 of this chapter.

(b) FMCSA will evaluate the results of the roadability review using the criteria in appendix A to this part as they relate to compliance with parts 390, 393, and 396 of this chapter.

§ 385.503 Results of roadability review.

(a) FMCSA will not assign a safety rating to an intermodal equipment provider based on the results of a roadability review. However, FMCSA may cite the intermodal equipment provider for violations of parts 390, 393, and 396 of this chapter and may impose civil penalties resulting from the roadability review.

(b) FMCSA may prohibit the intermodal equipment provider from tendering specific items of intermodal equipment determined to constitute an “imminent hazard” (See § 386.72(b)(1) of this chapter).

(c) FMCSA may prohibit an intermodal equipment provider from tendering any intermodal equipment from a particular location or multiple locations if the agency determines the intermodal equipment provider’s fail-

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ure to comply with the FMCSRs constitutes an imminent hazard under § 386.72(b)(1).

Subpart G [Reserved]

Subpart H—Special Rules for New Entrant Non-North America-Domiciled Carriers

SOURCE: 73 FR 76491, Dec. 16, 2008, unless otherwise noted.

§ 385.601 Scope of rules.

The rules in this subpart govern the application by a non-North America-domiciled motor carrier to provide transportation of property and passengers in interstate commerce in the United States.

§ 385.603 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 360.3(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>.

§ 385.605 New entrant registration driver's license and drug and alcohol testing requirements.

(a) A non-North America-domiciled motor carrier must use only drivers who possess a valid commercial driver's license—a CDL, Canadian Commercial Driver's License, or Mexican Licencia de Federal de Conductor—to operate its vehicles in the United States.

(b) A non-North America-domiciled motor carrier must subject each of the drivers described in paragraph (a) of this section to drug and alcohol testing as prescribed under part 382 of this subchapter.

§ 385.607 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 §365.109(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 §387.301 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 part 385, subpart I of this subchapter, 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) of this subchapter.

(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