(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.

**EFFECTIVE DATE NOTE:** At 78 FR 52647, Aug. 23, 2013, §365.507 was amended by revising paragraph (e)(2), effective Aug. 23, 2015. For the convenience of the user, the revised text is set forth as follows:

§ 365.507 FMCSA action on the application.

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(e)</td>
<td>* * * * *</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) Electronically file, or have its process agent(s) electronically file, Form BOC–3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, as required by part 366 of this subchapter; and</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

(a) A motor carrier subject to this subpart must notify the FMCSA of any changes or corrections to the information in parts I, IA, or II of Form OP–1(MX), or in 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 30 days of the change or correction.

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 365.511 Requirement for CVSA inspection of vehicles during first three consecutive years of permanent operating authority.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

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

I. GENERAL

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

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

(c) The safety audit will include:

(1) Verification of available performance data and safety management programs;
(2) Verification of a controlled substances and alcohol testing program consistent with part 40 of this title;

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

(4) Verification of proof of financial responsibility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Verify proof of financial responsibility;

(4) Verify records of periodic vehicle inspections; and

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

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

IV. EVALUATION OF REGULATORY COMPLIANCE

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

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

(c) Critical regulations are those where noncompliance is not significant or is not indicative of breakdowns in a carrier’s management controls.

(d) The list of the acute and critical regulations, which are used in determining if a carrier has basic safety management controls in place, is included in Appendix B, VII.

List of Acute and Critical Regulations to part 385 of this subchapter.

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

(2) Noncompliance with acute and critical regulations is used in determining if a carrier has basic safety management controls and usually higher than average accident rates.

(3) Noncompliance with the acute and critical regulations of part 396 to part 385 of this subchapter.

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

(5) The FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its
accident factor. Preventability will be determined according to the following standard:

“If a driver, who exercises normal judgment and foresight, could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.”

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

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

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

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

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

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

Under this example, the carrier will not receive provisional operating authority because it scored three or more points for Factors 2, 4, and 5 and FMCSA determined the carrier had inadequate basic safety management controls in at least three separate factors.


PART 366—DESIGNATION OF PROCESS AGENT

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

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

EFFECTIVE DATE NOTE: At 78 FR 52648, Aug. 23, 2013, the authority citation for part 366 was revised, effective Aug. 23, 2015. For the convenience of the user, the revised text is set forth as follows:

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


§ 366.1 Applicability.

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


EFFECTIVE DATE NOTE: At 78 FR 52648, Aug. 23, 2013, § 366.1 was revised, effective Aug. 23, 2015. For the convenience of the user, the revised text is set forth as follows:

§ 366.1 Applicability.

The rules in this part, relating to the filing of designations of persons upon whom court process may be served, apply to for-hire and private motor carriers, brokers, freight forwarders and, as of the moment of succession, their fiduciaries (as defined at 49 CFR 387.319(a)).


EFFECTIVE DATE NOTE: At 78 FR 52648, Aug. 23, 2013, § 366.1 was revised, effective Aug. 23, 2015. For the convenience of the user, the revised text is set forth as follows:

§ 366.1 Applicability.

The rules in this part, relating to the filing of designations of persons upon whom court process may be served, apply to for-hire and private motor carriers, brokers, freight forwarders and, as of the moment of succession, their fiduciaries (as defined at 49 CFR 387.319(a)).

§ 366.2 Form of designation.

Designations shall be made on Form BOC–3, Designation of Agent for Service of Process. Only one completed current form may be on file. It must include all States for which agent designations are