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49 CFR Parts 368 and 387

Revision of Regulations and Application Form for Mexico-Domiciled Motor Carriers To Operate in United States Municipalities and Commercial Zones on the United States-Mexico Border; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 368 and 387

[Docket No. FMCSA–98–3297]

RIN 2126–AA33

Revision of Regulations and Application Form for Mexico-Domiciled Motor Carriers To Operate in United States Municipalities and Commercial Zones on the United States-Mexico Border

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

ACTION: Final rule.

SUMMARY: The FMCSA revises its regulations and form that relate to the issuance of Certificates of Registration to those Mexico-domiciled motor carriers (of property) that want to operate in the United States only within the municipalities adjacent to Mexico in Texas, New Mexico, Arizona, and California and within the commercial zones of such municipalities (''border zones''). This rule also revises FMCSA's regulations governing financial responsibility of motor carriers to accurately reflect the requirements placed on these Mexico-domiciled motor carriers. Other types of carriers that currently hold a Certificate of Registration (such as exempt carriers that operate beyond the border zones) must now apply under separate FMCSA regulations that we are issuing in an interim final rule published elsewhere in today's **Federal Register**. The revisions in this action are part of FMCSA's efforts to ensure the safe operation of Mexico-domiciled motor carriers in the United States. They will ensure that the FMCSA receives adequate information to assess a new applicant's safety program and its ability to comply with U.S. safety standards before it is registered to operate in the United States. The FMCSA will evaluate current certificate holders who re-file under these regulations to determine if they meet U.S. safety standards and should be permitted to continue operations within the border zones. As a result of these changes, the agency also will be better able to maintain an accurate census of registered carriers. Additionally, the regulations have been updated to reflect the transfer of motor carrier regulatory functions from the Federal Highway Administration (FHWA) to FMCSA.

EFFECTIVE DATE: This final rule is effective April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Joanne Cisneros, (909) 653–2299, Transborder Office, FMCSA, P.O. Box 530870, San Diego, CA 92153–0870. Office hours are from 7:45 a.m. to 4:15 p.m., p.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Since 1982, significant limitations have been in place concerning operations by Mexico-domiciled motor carriers in the United States. A moratorium has existed on grants of operating authority under the jurisdiction of the former Interstate Commerce Commission (ICC). Access has been allowed only for certain motor carriers that fell outside the ICC's licensing jurisdiction. These carriers receive Certificates of Registration by filing Form OP–2 under the provisions of what is now 49 CFR part 368. Until the effective date of this rulemaking, Mexico-domiciled carriers eligible for Certificates of Registration were those operating solely within the border zones and certain motor private carriers and carriers of exempt goods who operated beyond the border zones.

Summary of the NPRM

The FMCSA published the notice of proposed rulemaking (NPRM) for this action on May 3, 2001 (66 FR 22328). We proposed to use the Form OP–2 (with substantial changes) and the issuance of Certificates of Registration only for those carriers whose operations are limited to the border zones. The FMCSA believes that despite the opportunity for Mexico-domiciled carriers to operate beyond the border zones, there are a substantial number of carriers that are most familiar with the Certificate of Registration and want to continue operating in a limited area.

We additionally proposed that all current holders of Certificates of Registration be required to file new forms with the FMCSA. Those carriers who wish to continue operating only in the border zones would file the Form OP–2 in accordance with the procedures in part 368. All other current holders of Certificates of Registration who want to operate beyond the border zones would file Form OP–1(MX) like all other Mexico-domiciled property carriers seeking the ability to operate under the implementation of the NAFTA entry provisions.

The FMCSA proposed to modify parts 368 and 387 and Form OP–2 as part of our implementation of the NAFTA cross-border access provisions. We asked for comments on our proposal to reissue all existing Certificates of Registration and to require current holders of Certificates of Registration to submit additional safety information about their operations.

The NPRM was one of three proposals related to carriers operating or seeking to operate between Mexico and the United States published in the May 3, 2001, **Federal Register**. The FMCSA made a conscious decision to propose retaining two different application forms and processes, the OP–2 and the OP–1(MX), under 49 CFR part 368 and part 365, respectively. We solicited comments on the need to maintain the Certificate of Registration process. A separate NPRM (66 FR 22371) proposed and sought comments on changes to Form OP–1(MX) and 49 CFR part 365. The third NPRM (66 FR 22415) explained the proposed safety monitoring system for Mexico-domiciled carriers operating in the United States. These three proposals are part of a coordinated effort to assess and monitor the safety performance of Mexico-domiciled carriers before and as they operate in the United States.

Discussion of Comments to the NPRM

In response to the three NPRMs relating to NAFTA implementation, the FMCSA received over 200 comments from motor carrier associations, safety advocates, environmental interest groups, law enforcement agencies, motor carriers, labor groups, State and local government agencies, economic and community development associations, and private citizens. More than 90 percent of the comments opposed the proposed safety monitoring system or the border opening. Most of the comments focused on the proposed safety monitoring system (66 FR 22415) and will be fully discussed elsewhere in today's **Federal Register**. It should be noted, however, that these and other comments urging a delay in the implementation of NAFTA assume that the regulations published today ''open the border'' or lift the current moratorium on the grant of operating authority. The regulations do neither. The President, not the FMCSA, has that authority pursuant to 49 U.S.C. 13902. The President has announced that the United States will comply with its NAFTA obligations regarding Mexico-domiciled motor carrier access in a manner that will not weaken motor carrier safety. The regulations help ensure motor carrier safety and provide an application process for Mexico-domiciled carriers seeking to operate within the United States.

A large percentage of the commenters addressed all three rules together in a single submission that was filed in one

or all three public dockets. We have carefully considered them and have revised the OP–2 application form and the regulations governing the application process as noted in the preamble sections titled ''Discussion of the Final Rule'' and ''Final Revisions to the Form OP–2.'' In this section, FMCSA discusses the comments that directly relate to the proposed changes in parts 368 and 387, as well as some comments that related to all the proposals.

The Friends of the Earth, Natural Resources Defense Council, Sierra Club, and Center for International Law (Friends of the Earth *et al.*) jointly commented that FMCSA is required to perform additional analysis to meet the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and Executive Order 13045 (62 FR 19885, April 23, 1997), concerning the protection of children from environmental and health and safety risks. The International Brotherhood of Teamsters (Teamsters) also expressed this viewpoint. The Friends of the Earth *et al.* believe that 40 CFR 1501.3(b) requires that if DOT is not certain that an environmental impact statement is required, then it must first prepare an environmental assessment. Regarding compliance with Executive Order 13045, the Friends of the Earth *et al.* believe that this action presents increased pollution and safety concerns that pose a disproportionate risk to children.

The FMCSA is preparing an agency order to meet the requirements of DOT Order 5610.1C (that establishes the Department of Transportation's policy for compliance with NEPA by the Department's administrations). The FMCSA has conducted a programmatic environmental assessment (PEA) of the three rulemakings in accordance with the DOT Order and the regulations of the Council on Environmental Quality. A discussion of the PEA and its findings and the FMCSA's responsibilities under E.O. 13045 is presented later in the preamble under ''Regulatory Analyses and Notices.'' A copy of the PEA is in the docket to this rulemaking.

The Attorney General for the State of California submitted a comment in which he asserted that the FMCSA would be required to perform a ''conformity determination'' pursuant to the Clean Air Act (CAA), before finalizing these rulemakings. Under the CAA, Federal agencies are prohibited from supporting in any way, any activity that does not conform to an approved State Implementation Plan (SIP), (42 USC 7006). EPA regulations implementing this provision require Federal agencies to determine whether an action would conform with the SIP (a ''conformity determination''), before taking the action (40 CFR 93.150). The Attorney General asserts that the FMCSA must make a conformity determination before taking final action to implement regulations that would allow Mexican trucks to operate beyond the border. The Attorney General provided technical information to support his assertion that allowing Mexican trucks to operate beyond the border would likely not be in conformity with California's SIP.

We have reviewed our obligations under the CAA and believe that we are in compliance with the general conformity requirements as implemented by the U.S. Environmental Protection Agency (EPA). EPA's implementing regulations exempt certain actions from the general conformity determination requirements. Actions which would result in no increase in emissions or clearly a de minimis increase, such as rulemaking (40 CFR 93.153(c)(iii)), are exempt from requiring a conformity determination. In addition, actions which do not exceed certain threshold emissions rates set forth in 40 CFR 93.153(b) are also exempt from the conformity determination requirements. The FMCSA rulemakings meet both of these exemption standards. First, as noted elsewhere in this preamble to this rule, the actions being taken by the FMCSA are rulemaking actions to improve FMCSA's regulatory oversight, not an action to modify the moratorium and allow Mexican trucks to operate beyond the border. Second, the air quality impacts from each of the FMCSA's rules neither individually nor collectively exceed the threshold emissions rates established by EPA (see Appendix C of the Environmental Assessment accompanying these rulemakings for a more detailed discussion of air quality impacts). As a result, we believe that FMCSA's rulemaking actions comply with the CAA requirements and that no conformity determination is required.

The Laredo (Texas) Chamber of Commerce, the City of Laredo, and the Laredo Development Foundation all submitted comments that specifically addressed the proposed regulations for Mexico-domiciled carriers that operate solely within the border zones. They are concerned that no additional requirements be put in place to slow down traffic through the border entry facilities. The City of Laredo believes that requiring drayage operations drivers, who operate solely within the border zones, to speak English, as well as understand English signage, is unnecessary.

The FMCSA believes that all motor carriers and drivers under its jurisdiction must meet all applicable motor carrier safety regulations when operating within the United States, regardless of the nature of operations. Since many of the Mexican short-haul or ''drayage'' drivers have been operating within the border zones for some time, most of them already comply with the English language proficiency requirements established for all commercial drivers operating in the United States under 49 CFR 391.11.

The Chamber of Commerce (COC) and Teamsters support the proposal to maintain a separate application form and procedures for Mexico-domiciled carriers that operate solely within the border zones. The COC does not want the Mexican short-haul operations to be identified together with long-haul operations operating beyond the border zones.

On the other hand, the Commercial Vehicle Safety Alliance (CVSA), the Camara Nacional del Autotransporte de Cargo (CANACAR) and American Trucking Associations, Inc. (ATA) recommend a single application form and procedures. CVSA recommends combining the OP–2 and OP–1(MX) forms because they are virtually identical. CANACAR believes that the proposed rules, in creating a distinction between applicants who seek to operate only in the border zones and those that seek to operate beyond the border zones, are in conflict with the implementation schedule established in the annex to NAFTA Chapter XII. The fourth phase of the implementation schedule was to allow Mexico-domiciled property carriers to operate from anywhere in Mexico to any point in the United States. CANACAR believes that the proposals set forth in the NPRM to this action appear to violate this principle.

The FMCSA is maintaining a separate registration system for Mexico-domiciled drayage operations, in part, so that we can maintain a more accurate census of these carriers, better assess their safety trends and operational characteristics, and track the impact of opening the border on dedicated drayage operations. Maintaining a separate Certificate of Registration will also enable those Mexico-domiciled carriers who wish to continue limited operations within the border zones to do so without incurring extra expenses for such things as mandatory continuous insurance coverage and additional fees for beyond border zone operations. This rule does not violate the fourth phase of the NAFTA implementation schedule

because it does not prohibit current holders of Certificates of Registration from requesting the broader operating authority available to Mexico-domiciled carriers under part 365 (as provided in an interim final rule published elsewhere in today's **Federal Register**).

The Teamsters support the proposal to require all current holders of Certificates of Registration to re-register, but believe that the one-year time period in which current holders of Certificates of Registration must re-file an OP–2 is too long. The Teamsters acknowledge the need to allow currently operating carriers sufficient time to prepare the application form but recommend that the re-registration period be shortened to 6 months.

The FMCSA believes that a longer re-registration period is required to permit border-zone carriers to continue operating within the border zones while modifying their vehicle fleets to comply with an FMCSA proposed rule published elsewhere in today's **Federal Register**. This rule would require that all commercial vehicles operated in the United States display labels certifying compliance with the Federal Motor Vehicle Safety Standards (FMVSS). However, to avoid disrupting existing border zone operations, the rule would allow border-zone carriers to operate vehicles within the border zone without a certification label for 24 months after the effective date of the rule, provided these vehicles were operated within the border zones before the rule's effective date. The expanded registration period will also provide adequate time to process the large number of applications anticipated. Thus, the final rule provides for an 18-month re-registration requirement.

The Owner-Operator Independent Drivers Association (OOIDA) commented in favor of the current system for Certificates of Registration that does not include publication of applications in the FMCSA Register.

However, the Teamsters oppose proposed § 368.6(f), which states that FMCSA will not provide notice of OP–2 filings in the **Federal Register** or FMCSA Register or permit comments, protests, or public hearings regarding such filings. This section is essentially a recodification of the last three sentences in former § 368.3(a). Applications for Certificates of Registration have not been subject to a public notice and protest requirement since procedures for handling such applications were first established by the ICC in 1985. The predecessor to part 368, 49 CFR part 1171, expressly prohibited public protests and oral hearings. Only the Department of Transportation was permitted to challenge an application. When the authority to issue Certificates of Registration was transferred to DOT effective January 1, 1996, part 1171 was adopted by the Federal Highway Administration and redesignated as part 368 without substantive change, except that the DOT intervention provision was removed as no longer necessary.

Based on 16 years experience in administering the border zone registration procedures, we are not convinced that providing a new right of public protest will measurably impact public safety. Operations under these rules will be confined to a limited geographical territory and we will be carefully scrutinizing border zone carriers through the application process and during the 18-month provisional operating period following issuance of the Certificate of Registration. Under these circumstances, we do not believe that it is necessary to change the regulations to accommodate the Teamsters' concerns.

The Citizens for Reliable and Safe Highways (CRASH) commented that safety audits of all Mexico-domiciled carriers must be conducted before they are allowed to operate in the United States. FMCSA received the same comment from many private citizens who identified themselves as allied with CRASH. The CVSA, Automobile Association of America (AAA), American Association of Motor Vehicle Administrators (AAMVA), Public Citizen, Transportation Consumer Protection Council, and Advocates for Highway and Auto Safety (AHAS) all commented that a paper-based system for allowing Mexican vehicles to cross the border was insufficient and recommended safety audits before allowing Mexico-domiciled carriers to operate in the United States.

The FMCSA does not agree that pre-operating safety audits are a necessary addition to the on-going process of issuing Certificates of Registration. Mexico-domiciled carriers have been conducting drayage operations within the border zones for more than 19 years. They are already familiar with U.S. motor carrier safety standards. The FMCSA will verify the information provided by OP–2 applicants using information from Mexican and U.S. government databases. In addition, OP–2 applicants will also be subject to a safety monitoring program, including a safety audit conducted within the 18-month provisional operating period (as fully described in an interim final rule published elsewhere in today's **Federal Register**).

On the other hand, long-haul operations within the United States by Mexico-domiciled carriers have not been authorized for some time. Mexico-domiciled applicants for long-haul authority will likely accrue more vehicle miles over a larger geographical territory than drayage operators and are less familiar with U.S. safety standards. For these reasons, section 350 of the 2002 DOT Appropriations Act (Pub. L. 107–87) requires FMCSA to subject long-haul carriers, but not border-zone carriers, to pre-authority safety examinations before being granted provisional operating authority to begin operations within the United States.

A company that rents recyclable pallets and plastic containers (CHEP USA), Free Trade-San Antonio, and The National Private Truck Council commented in favor of the proposed regulations.

United Parcel Service (UPS) commented that the application and regulations for Mexico-domiciled carriers requesting Certificates of Registration should identify express delivery as a separate kind of carrier operation. UPS explains that this distinction would enable the United States to accelerate the timeline for lifting the moratorium for express delivery services, without awaiting action on general trucking.

We do not see the need at this time for the rules to distinguish between express delivery services and general trucking services. We do not expect that the moratorium will be lifted for express delivery services before the lifting of the moratorium on general trucking. In addition, the United States maintains a reservation under the NAFTA on the transportation of goods other than international cargo between points in the United States, and the reservation covers both express delivery services and other motor carrier services.

In response to comments about the need for ensuring that vehicles operated by Mexico-domiciled motor carriers comply with the applicable FMVSSs, the FMCSA has published elsewhere in today's **Federal Register** an NPRM that would require all motor carriers operating in the United States to use commercial motor vehicles that display a label certifying compliance with all applicable FMVSSs in effect on the date of manufacture. The FMCSA will enforce these safety standards through pre-authorization safety examinations of Mexican long-haul carriers and roadside inspections of all Mexico-domiciled carriers, including inspections at the border. The FMCSA's State partners will accomplish enforcement through roadside and border inspections.

Roadside inspections provide a means of ensuring that vehicles meet the applicable FMVSSs in effect on the date the vehicle was manufactured.

Title 49 CFR part 393 of the Federal Motor Carrier Safety Regulations (FMCSRs) currently includes cross-references to most of the FMVSSs applicable to heavy trucks and buses. The rules require that motor carriers operating in the United States, including Mexico-domiciled carriers, must maintain the specified safety equipment and features that the National Highway Traffic Safety Administration (NHTSA) requires vehicle manufacturers to install. Failure to maintain these safety devices or features is a violation of the FMCSRs. If the violations are discovered during a roadside inspection, and they are serious enough to meet the current out-of-service criteria used in roadside inspections (i.e., the condition of the vehicle is likely to cause an accident or mechanical breakdown), the vehicle would be placed out of service until the necessary repairs are made. The FMCSA also has the option of imposing civil penalties for violations of 49 CFR part 393. Any FMVSS violations that involve noncompliance with the standards presently incorporated into part 393 could subject motor carriers to a maximum civil penalty of $10,000 per violation. If the FMCSA determines that Mexico-domiciled carriers are operating vehicles that do not comply with the applicable FMVSSs, this information could be used to take appropriate enforcement action for making a false certification on the application for operating authority.

In conjunction with our NPRM that would require all commercial motor vehicles operating in the United States to have FMVSS certification labels, NHTSA is taking three separate actions relating to the certification label. The first action is publication of a draft policy statement that will permit vehicle manufacturers to retroactively apply a label to a commercial motor vehicle certifying that the vehicle complied with all applicable FMVSSs in effect at the time it was originally manufactured. NHTSA recognizes that there are many commercial motor vehicles used by motor carriers in Mexico and Canada that were manufactured in accordance with the FMVSSs, but were not certified as complying with those standards because the vehicles were manufactured for sale and use in Canada or Mexico. NHTSA will, therefore, permit retroactive certification, but only if the manufacturer has sufficient basis for doing so.

NHTSA is also publishing two NPRMs relating to FMVSS certification requirements. One proposes recordkeeping requirements for foreign manufacturers that retroactively certify vehicles; the other proposes to codify, in 49 CFR part 591, NHTSA's long-standing interpretation of the term ''import,'' as used in the National Traffic and Motor Vehicle Safety Act of 1966, Public Law 89–563, to include bringing a commercial motor vehicle into the United States for the purpose of transporting cargo or passengers.

Discussion of the Final Rule

The FMCSA has made changes in the final rule to the proposed revisions to part 368, based on the comments, section 350 of the 2002 DOT Appropriations Act, and our own review of the proposal.

First, § 368.3 has been revised to allow both hard-copy and electronic submission of required information on designation of process agents (Form BOC–3) as part of the application process. The FMCSA currently allows only process agent services to electronically file the Form BOC–3. If a carrier elects to use a process agent service, it must include a letter to that effect with the Form OP–2 and ensure that the service electronically files the Form BOC–3 with the FMCSA. Otherwise, the hardcopy Form BOC–3 must accompany the application. The carrier may not begin operations until the Form BOC–3 has been filed with the FMCSA.

Second, the wording of § 368.5 has been revised to make clear that a current Certificate of Registration remains valid only until the FMCSA acts on an application for re-registration in the same manner that it will act on new applications.

The FMCSA has revised the title of § 368.6 in both the table of sections and the regulatory text to ''FMCSA action on the application'' to accurately reflect how the FMCSA will consider and act on each application. The section now provides that the FMCSA will validate all data and certifications in an application with information in its own databases and in the appropriate databases of the Mexican Government to which it has access as part of the NAFTA implementation process. The FMCSA will issue a provisional Certificate of Registration if it determines that the application is consistent with the FMCSA's safety fitness policy. We will also assign a distinctive USDOT Number that distinguishes the carrier as a Mexico-domiciled carrier authorized to operate solely within the border zones. The provisional Certificate of Registration cannot become permanent for at least 18 months, until the carrier has successfully completed the safety monitoring program, including a safety audit.

Section 368.7 has been modified to require that the copy of the Certificate of Registration carried on board the vehicle be made available upon request to authorized inspectors and enforcement officers.

Finally, the FMCSA has revised § 387.7 to more accurately describe those Mexico-domiciled carriers excepted from certain financial responsibility requirements. These carriers operating solely in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities may obtain insurance coverage for periods of 24 hours or longer rather than continuous coverage.

Final Revisions to the Form OP–2

The final rule reflects numerous typographical corrections and adjustments to the OP–2 application form to make it consistent with the OP–1(MX) form. All requests for supplemental information that must accompany the application are in bold typeface so that they are conspicuous to the applicant. The substantive revisions are discussed below.

The OP–2 application instructions have been revised to discontinue the requirement that applicants submit Internal Revenue Service (IRS) Form 2290, Schedule 1 (Schedule of Heavy Highway Vehicles) with the OP–2 application. Unlike the OP–2 registration procedure, taxes imposed by 26 U.S.C. 4481 are assessed annually. The IRS Form 2290 would only provide evidence of compliance for the current year. However, the applicant must still certify compliance with 26 U.S.C. 4481 under Section VII of the application.

The instructions clarify the definition of ''applicant'' for purposes of determining who must sign the various Certifications and the Section VIII Application Oath.

The instructions caution applicants to enter only the city code and telephone numbers when listing Mexican telephone numbers on the form because previous applicants often submitted invalid or incomplete telephone numbers.

Insurance instructions notify applicants that they must carry a current DOT MCS–90 and evidence of insurance on board the vehicle when operating within the United States.

The information on how to receive additional assistance in completing the

Forms OP–2 and MCS–150 was revised to list a toll-free telephone number accessible from Mexico. We also updated the information for obtaining assistance with hazardous materials registration procedures and regulations.

The form instructions state that applicants that use a process agent service to designate multiple agents for service of process must attach a letter to the application informing the FMCSA of this option. The applicant must also ensure that the service electronically files the Form BOC–3 with the FMCSA within 90 days of the submission of the OP–2 application. The applicant is also notified that it may not begin operations until the Form BOC–3 has been filed with FMCSA.

The FMCSA has added two questions in Section IA regarding whether an applicant has held provisional operating authority or a provisional Certificate of Registration that was revoked. If the applicant answers yes to this question, the applicant must explain how it has corrected the deficiencies that resulted in the revocation, explain what effectively functioning basic safety management systems it now has in place, and provide all information and documents that support its case.

The FMCSA has corrected references in Section IA, and in the corresponding instructions, to an ''SCT registration number.'' An applicant must be registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT) to be issued a Certificate of Registration. However, the SCT does not issue an SCT registration number. It uses the RFC number, a Mexican Federal Taxpayer Registration identifier issued by a separate Government agency, to track the carrier's information in the SCT database. A company is issued a Registro Federal de Contribuyente; individuals are issued a Registro Federal de Causante. The applicant must complete Question 5a under Section IA based upon the applicant's form of business: (1) If the applicant is a sole proprietorship, enter the Registro Federal de Causante; (2) all other business forms should complete Question 5a using the Registro Federal de Contribuyente.

We have deleted a redundant question regarding the applicant's domicile from Section IA and Ownership and Control information from Section II. This information was used to substantiate claims that a carrier was U.S.-owned or controlled and therefore, eligible to operate beyond the border zones under a Certificate of Registration. With the implementation of NAFTA's access liberalization provisions, Mexico-domiciled carriers applying to operate beyond the border zones will no longer file the OP–2 form.

Several safety certifications have been modified or added to Section V. We have added a single safety certification for applicants that are exempt from the Federal Motor Carrier Safety Regulations because of the weight of their vehicles and because they will not transport hazardous materials (as was discussed in the proposed form instructions but inadvertently omitted from the proposed form). These applicants must certify that they will observe safe operating practices and comply with applicable State, local and tribal safety laws.

Under Driver Qualifications, applicants must certify, consistent with 49 CFR 391.23, that they will investigate their drivers' 3-year employment and driving histories. The certification statement concerning the need for carriers to establish a system and instructions for drivers to report criminal convictions has been removed. Current regulations only require domestic drivers to report violations of motor vehicle traffic laws and ordinances. The certification statement relating to the use of properly licensed drivers has been modified to require that the driver's Licencia Federal de Conductor is registered in the SCT database.

The four certification statements proposed under certification section V.8, pertaining to requirements that must be in place once operations within the United States have begun, have been modified to emphasize that the requirements apply only after the Mexico-domiciled carrier has begun operations within the United States and have been integrated into the Hours of Service, Driver Qualifications, and Vehicle Condition certification sections, as appropriate.

In response to comments from ATA, Teamsters, OOIDA, and the Transportation Trades Department of the AFL–CIO, we have extensively revised the Hazardous Materials (HM) and Cargo Tank certification statements. The HM training certification was modified to cite the relevant HM training regulations (49 CFR part 172, subpart H and 49 CFR 177.816) and the specific hazardous materials safety compliance information that must accompany the application.

We reworded the certification statement regarding the establishment of a system and procedures for inspecting, repairing and maintaining ''vehicles for HM transportation in a safe condition.'' The Hazardous Materials Regulations (HMR) require a system and procedures for inspection, repair and maintenance of reusable hazardous materials packages in a safe condition. The vehicle inspection, repair and maintenance requirement is covered in the Vehicle Condition certification statements.

We added a new certification statement requiring carriers to ensure that all HM trucks are marked and placarded in compliance with 49 CFR part 172, subparts D and F.

The HM registration certification statement, which is not restricted to Cargo Tank carriers, has been corrected and moved to the Hazardous Materials section.

The Section VII—Compliance Certification statement concerning process agent(s) has been modified to replace the phrase ''judicial filings and notices'' with ''filings and notices.'' A new Compliance Certification statement has been added to ensure those Mexico-domiciled carriers whose registration has been suspended or revoked from operating any motor vehicle in the United States are not reapplying for operating authority or a Certificate of Registration during the period of suspension or sooner than 30 days after the date of revocation. A signature line has been placed beneath the Compliance Certification statements, consistent with Section V—Safety Certifications and Section VI—Household Goods Arbitration Certifications.

Certain other changes were made to the Section—VII Compliance Certifications after discussions with the U.S. Department of Labor and the U.S. Environmental Protection Agency. The proposed Form OP–2 included a certification that the applicant is willing and able to comply with United States labor laws. Although the certification is included in a section that is prefaced by the direction ''All applicants must certify as follows:'', the instructions for the form, after first stating that FMCSA considers compliance with labor laws to be ''extremely important,'' then indicate that ''registration will not be withheld based solely on the failure by an applicant to certify that it is willing and able to comply with such [DOL and OSHA] requirements * * *.'' The FMCSA has removed those certification statements and the accompanying instructions. We have added new language that compliance with all pertinent Federal, State, local and tribal statutory and regulatory requirements, including labor and environmental laws, is mandatory. Such compliance includes producing requested records for review and inspection, and that inspectors of the Immigration and

Naturalization Service at the port of entry must determine the driver of the vehicle meets the requirements under the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.* The statements do not require certification—they are informational in nature—and have been placed after the signature line.

The Filing Fee Policy and Computation Box that formerly appeared in the form instructions have been moved to the back of the form because a carrier cannot provide filing fee information until completing Section III—Types of Registration. The fee policy also discloses that the FMCSA will place a 30-day hold on the application if the filing fee is paid by personal check.

Finally, FMCSA will translate the form into Spanish for applicants to understand what each question asks and what types of answers they need to provide.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Department of Transportation Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979) because of public interest. It has been reviewed by the Office of Management and Budget. However, it is anticipated that the economic impact of the revisions in this rulemaking would be minimal. The new or revised Form OP–2 is intended to foster and contribute to safety of operations, adherence to U.S. law and regulations, and compliance with U.S. insurance and tax payment requirements on the part of Mexico-domiciled carriers.

Nevertheless, the subject of safe operations by Mexico-domiciled carriers in the United States will likely generate considerable public interest within the meaning of Executive Order 12866. The manner in which the FMCSA carries out its safety oversight responsibilities with respect to this international motor carrier transportation may be of substantial interest to the domestic motor carrier industry, the Congress, and the public at large.

The Regulatory Evaluation analyzes the costs and benefits of this final rule and the two companion NAFTA-related interim final rules published elsewhere in today's **Federal Register**. Because these rules are so closely interrelated, we did not attempt to prepare separate analyses for each rule.

The evaluation estimated costs and benefits based on three different scenarios, with a high, low and medium number of Mexico-domiciled carriers assumed covered by the rules. The costs of these rules are minimal under all three scenarios. Over 10 years, the costs range from $53 million for the low scenario to approximately $76 million for the high scenario. Forty percent of these costs are borne by the FMCSA, while the remaining costs are paid by Mexico-domiciled carriers. The largest costs are those associated with carrying out safety monitoring, including safety audits, during the 18-month period when Mexico-domiciled motor carriers hold provisional Certificates of Registration and the loss of a Mexico-domiciled carrier's ability to operate in the United States.

The FMCSA used the cost effectiveness approach to determine the benefits of these rules. This approach involves estimating the number of crashes that would have to be deterred in order for the proposals to be cost effective. Over ten years, the low scenario would have to deter 640 forecast crashes to be cost beneficial, the medium scenario would have to deter 838, and the high scenario would have to deter 929. While the overall number of crashes to be avoided under the medium and high scenario is fairly high, the number falls rapidly over the 10-year analysis period and beyond. The tenth year deterrence rate is one-quarter to one-sixth the size of the first year's rate.

A copy of the Regulatory Evaluation is in the docket for this rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The United States did not have in place a special system to ensure the safety of Mexico-domiciled carriers operating in the United States. Mexico-domiciled carriers will be subject to all the same safety regulations as domestic carriers. However, FMCSA's enforcement of the FMCSRs has become increasingly data dependent in the last several years. Several programs have been put in place to continually analyze crash rates, out-of-service (OOS) rates, compliance review records, and other data sources to allow the agency to focus on high-risk carriers. This strategy is only effective if the FMCSA has adequate data on carriers' size, operations, and history. Thus, a key component of this and the companion application rule for long-haul carriers, is the requirement that Mexico-domiciled carriers operating in the United States must complete a Form MCS–15—Motor Carrier Identification Report, and must update their Form OP–1(MX)—Application to Register Mexican Carriers for Motor Carrier Authority to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border or Form OP–2—Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902 when their situation changes. This will allow the FMCSA to better monitor these carriers and to quickly determine whether their safety or OOS record changes.

The more stringent oversight procedures established in our safety monitoring interim final rule, RIN 2126–AA35, will also allow the FMCSA to respond more quickly when safety problems emerge. Required safety audits for short-haul carriers, and compliance reviews and CVSA inspections for long-haul carriers, will provide the FMCSA with more detailed information about Mexico-domiciled carriers, and allow the FMCSA to act appropriately upon discovering safety problems.

The objective of these rules is to enhance the safety of Mexico-domiciled carriers operating in the United States. The rules describe what additional information Mexico-domiciled carriers will have to submit, and outline the procedure for dealing with possible safety problems.

The safety monitoring system, the safety certifications and other information to be submitted in the OP–1(MX) and OP–2 applications and the pre-authorization safety audit for long-haul carriers are means of ensuring that: (1) Mexico-domiciled applicants are sufficiently knowledgeable about safety requirements before commencing operations (a prerequisite to being able to comply); and (2) their actual operations in the United States are conducted in accordance with their application certifications and the conditions of their registrations.

These rules will primarily affect Mexico-domiciled small motor carriers who wish to operate in the United States. The amount of information these carriers will have to supply to the FMCSA has been increased, and we estimate that they will spend two additional hours gathering data for the

OP–1(MX) and OP–2 application forms. All Mexico-domiciled carriers will have to undergo some type of safety audit after they receive provisional registration; those granted provisional operating authority for transportation beyond the border zones must demonstrate continuous compliance with motor vehicle safety standards through display of a valid CVSA inspection decal and compliance reviews. We presented three growth scenarios in the regulatory evaluation: a high option, with 11,787 Mexico-domiciled carriers in the baseline; a medium scenario, with 9,500 Mexico-domiciled carriers in the baseline; and a low scenario, with 4,500 Mexico-domiciled carriers in the baseline. Under all three options, the FMCSA believes that the number of applicants will match approximately that observed in the last few years before this publication date, approximately 1,365 applicants per year.

A review of the Motor Carrier Management Information System (MCMIS) census file reveals that the vast majority of Mexico-domiciled carriers are small, with 75 percent having three or fewer vehicles. Carriers at the 95th percentile had only 15 trucks or buses.

These rules should not have any impact on small U.S.-domiciled motor carriers.

The regulatory evaluation includes a description of the recordkeeping and reporting requirements of these rules. Applicants for both the OP–1(MX) and OP–2 will also have to submit the Form MCS–150 and the Form BOC–3-Designation of Agent for Service of Process. In addition, Mexico-domiciled carriers will have to notify the FMCSA of any changes to certain information.

The MCS–150 is approximately two pages long. In addition to requiring basic identifying information, it requires that carriers state the type of operation they run, the number of vehicles and drivers they use, and the types of cargo they haul. The BOC–3 Form merely requires the name, address and other information for a domestic agent to receive legal notices on behalf of the motor carrier. The rules also include other modest changes in the OP–1(MX) and OP–2 forms.

None of these forms requires any special expertise to complete. Any individual with knowledge about the operations of a carrier should be able to fill out these forms.

The FMCSA is not aware of any other rules that duplicate, overlap with, or conflict with these rules.

The FMCSA did not establish any different requirements or timetables for small entities. As noted above, we do not believe these requirements are onerous. Mexico-domiciled carriers applying to operate solely within the border zones will be required to spend two extra hours to complete the relevant forms. They also must undergo one safety audit during the 18-month period while holding provisional Certificates of Registration at four hours each and have their trucks inspected more frequently. The Part 385 rule would not achieve its purposes if small entities were exempt. In order to ensure the safety of all Mexico-domiciled carriers, the rule must have a consistent procedure for addressing safety problems. Exempting small motor carriers (which, as was noted above, are the vast majority of Mexico-domiciled carriers who would operate in the United States) would defeat the purpose of these rules.

The FMCSA did not consolidate or simplify the compliance and reporting requirements for small carriers. Small U.S.-domiciled carriers already have to comply with the paperwork requirements in Part 365. There is no evidence that domestic carriers find these provisions confusing or particularly burdensome. Apropos the Part 385 provisions, we believe the requirements are fairly straightforward, and it would not be possible to simplify them. A simplification of any substance would make the rule ineffectual. Given the compelling interest in guaranteeing the safety of Mexico-domiciled carriers operating in the United States, and the fact that the majority of these carriers are small entities, no special changes were made.

Therefore, the FMCSA certifies that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because as a procedural action it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FMCSA has determined that the changes in this rulemaking would not have an impact of $100 million or more in any one year. The Federal Government reimburses inspectors, funds facilities, and provides support through the MCSAP grant program.

Executive Order 12988 (Civil Justice Reform)

This action 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.

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 that 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.

The agency has determined that this rule is not a ''covered regulatory action'' as defined under Executive Order 13045. First, this rule is not economically significant under Executive Order 12866 because the FMCSA has determined that the changes in this rulemaking would not have an impact of $100 million or more in any one year. The costs range from $53 to $76 million over 10 years. Second, the agency has no reason to believe that the rule would result in an environmental health risk or safety risk that would disproportionately affect children. Mexico-domiciled motor carriers who intend to operate commercial motor vehicles anywhere in the United States must comply with current U.S. Environmental Protection Agency regulations and other United States environmental laws under this rule and others being published elsewhere in today's **Federal Register**. Further, the agency has conducted a programmatic environmental

assessment as discussed later in this preamble. While the PEA did not specifically address environmental impacts on children, it did address whether the rule would have environmental impacts in general. Based on the PEA, the agency has determined that the proposed rule would have no significant environmental impacts.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this proposal would impact a currently approved information collection, OMB Control Number 2126–0019.

The information collection associated with the Form OP–2 has been approved by the OMB under the control number 2126–0019, titled ''Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.'' This current approval covers Form OP–2 and totals 2,000 burden hours (1,000 respondents per year @ 2 hours each) to complete the form.

Revisions to OP–2 Baseline: A PRA review normally involves determining the information collection impacts of a recordkeeping requirement imposed on a person, comparing those impacts with the current regulation (baseline) and measuring the resulting change. The FMCSA finds it necessary to amend the baseline: (1) To be consistent with updated demographic data concerning the number of Mexico-domiciled carriers operating in the U.S. as set forth in the programmatic environmental assessment (PEA) and Regulatory Flexibility Analysis to this rule, and (2) to take into account an imminent Presidential action that is not subject to PRA review—the issuance of a Presidential Order lifting the moratorium on grants of operating authority to Mexico-domiciled motor carriers to operate within the United States beyond the border commercial zones. The PEA and Regulatory Flexibility Analysis to this rule project high, medium, and low estimates for the number of Mexico-domiciled motor carriers now operating within the United States. The PRA review is based on the medium estimate (9,500) because we believe it is the most accurate estimate (rather than the high estimate of 11,787 used in the NPRM). The medium estimate was also used in the PEA and the Regulatory Flexibility Analysis. Therefore, the revised baseline assumes: (1) The medium scenario is used; (2) the moratorium is lifted; and (3) Mexico-domiciled carriers are filing the existing OP–2 application form. It is estimated that 75 percent of new applicants each year will file the OP–2 (with 25 percent filing the OP–1(MX)). The number of new applicants in the baseline assumes a 10 percent increase over the current 1,300 (1,430).

Adjusted burden hour calculation for completion of the currently approved IC under the medium scenario. The FMCSA estimates that 5,823 Mexico-domiciled carriers will request OP–2 certificates of registration in year one (includes half of the 9,500 Mexican carriers (4,750) plus 75 percent of 1,430 new applicants (1,073)); and 1,073 Mexico-domiciled carriers will apply in subsequent years. The existing form takes approximately 2 hours to complete. Since Mexico-domiciled carriers currently are not required to update carrier identification information, there would be zero updates received in year one or subsequent years. The revised baseline medium scenario is calculated as follows:

OP–2 filings 11,646 hours [5,823 × 2 hours per form] (year one)

OP–2 filings 2,146 hours [1,073 × 2 hours per form] (subsequent years)

The revised baseline medium scenario results in the following annual adjusted burden hour estimate for completion of Form OP–2 pursuant to OMB Control Number 2126–0019:

Year One: 11,646

Subsequent Years: 2,146

Impact of the final rule and adjusted burden hour calculation for completion of Form OP–2 under the revised baseline medium scenario. This action proposes to amend 49 CFR part 368 and revise Form OP–2. We propose to use the amended Form OP–2 and the issuance of certificates of registration only for those carriers whose operations are limited to the border commercial zones. The FMCSA believes that despite the opportunity for Mexico-domiciled carriers to operate beyond the border commercial zones, there are a substantial number of carriers that are most familiar with the Certificate of Registration and want to continue operating in a limited area. Under the revised Form OP–2, the FMCSA will require the applicant motor carrier to certify the safety of its operations; this information is not collected on the current form. In addition, all certificates of registration issued under the revised form would be conditioned upon the carrier's successful completion of an 18-month safety monitoring program (established in an interim final rule published elsewhere in today's **Federal Register**), including a safety audit. For these reasons, the FMCSA anticipates that the number of carriers would be lower than the revised baseline. The FMCSA estimates that 5,774 Mexico-domiciled carriers would apply for OP–2 certificates of registration in year one (includes half of the 9,500 Mexican carriers (4,750) plus 75 percent of the 1,365 new applicants (1,024)); and 1,024 carriers thereafter. Due to the additional information requested on the form, the FMCSA estimates that it will take 4 hours to complete, rather than the current estimate of 2 hours.

The FMCSA must be notified in writing of certain key changes in the information on the form within 45 days of the change. For changes and updates, the agency anticipates that annually approximately one quarter of those granted certificates of registration will update their applications. It will take approximately 30 minutes to complete the updates. For simplicity's sake, we based the number of individuals granted certificates of registration on the estimated total number of first-year applicants.

Mexico-domiciled carrier filings of the Form OP–2:

- 50 percent of 9,500 carriers in 1st year (4,750) × 4 hours per form = 19,000
- 75 percent of 1,365 new applicants in 1st year (1,024) × 4 hours = 4,096
- 75 percent of 1,365 new applicants in future years (1,024) × 4 hours = 4,096
- Total burden hours for revised Form OP–2/Year 1 = 23,096
- Total burden hours for revised Form OP–2/Future Years = 4,096

OP–2 Updates/Changes:

- 25 percent of 4,750 carriers filing in 1st year (1,188) × 30 minutes = 594
- 25 percent of 1,024 filings for new carriers in 1st year (256) × 30 min. = 128
- 25 percent of 1,024 filings for new carriers in future years (256) × 30 min. = 128
- Total burden hours for updates/changes in 1st year = 722
- Total burden hours for updates/changes in future years = 128

Therefore, the FMCSA estimates that the final rule will adjust the annual burden hour estimate for the information collection associated with the Form OP–2 as follows:

In the first year: The total burden hours for this information collection in the first year is 23,818 hours [(19,000 hours + 4,096 + 722 hours)]; and in subsequent years: 4,224 hours [4,096 hours + 128].

OMB Control Number: 2126–0019

Title: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.

Respondents: Mexico-domiciled motor carriers.

Estimated Annual Hour Burden for the Information Collection: Year 1 = 23,818; subsequent years = 4,224.

You may submit any additional comments on the *information collection burden* addressed by this final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by April 18, 2002. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

The FMCSA is a new administration within the Department of Transportation (DOT). The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order will be consistent with and reflect the procedures for considering environmental impacts under DOT Order 5610.1C. FMCSA has analyzed this rule under the NEPA and DOT Order 5610.1C, and has issued a Finding Of No Significant Impact (FONSI). The FONSI and the environmental assessment are in the docket to this rule.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E. O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). The FMCSA has determined that this action would not have significant Federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 13166 (Limited English Proficiency)

Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency, requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons seeking government services but limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency. The FMCSA plans to provide a Spanish translation of the application and instructions of the Form OP–2. We believe that this action complies with the principles enunciated in the Executive Order.

List of Subjects

49 CFR Part 368

Administrative practice and procedure, Motor carriers.

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.

For the reasons set forth in the preamble, the FMCSA amends 49 CFR, Chapter III as follows:

1. Revise part 368 to read as follows:

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.

Sec.
368.1 Certificate of registration.
368.2 Definitions.
368.3 Applying for a certificate of registration.
368.4 Requirement to notify FMCSA of change in applicant information.
368.5 Re-registration of certain carriers holding certificates of registration.
368.6 FMCSA action on an application.
368.7 Requirement to carry certificate of registration in the vehicle.
368.8 Appeals.

Authority: 49 U.S.C. 13301 and 13902; Pub. L. 106–159, 113 Stat. 1748; and 49 CFR 1.73.

§ 368.1 Certificate of registration.

(a) A Mexico-domiciled motor carrier must apply to the FMCSA and receive a Certificate of Registration 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) A certificate of registration permits only interstate transportation of property in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities. A holder of a Certificate of Registration who operates a vehicle beyond this area is subject to applicable penalties and out-of-service orders.

§ 368.2 Definitions.

Interstate transportation means transportation described at 49 U.S.C. 13501, and transportation in the United States otherwise exempt from the Secretary's jurisdiction under 49 U.S.C. 13506(b)(1).

Mexico-domiciled motor carrier means a motor carrier of property whose principal place of business is located in Mexico.

§ 368.3 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 360.3(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.*

§ 368.4 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.

§ 368.5 Re-registration of certain carriers holding certificates of registration.

(a) Each holder of a certificate of registration that permits operations only in municipalities in the United States along the United States-Mexico international border or in commercial zones of such municipalities issued before April 18, 2002, who wishes to continue solely in those operations must submit an application according to procedures established under § 368.3 of this part, except the filing fee in paragraph (b)(4) of that section is waived. You must file your application by October 20, 2003.

(b) The FMCSA may suspend or revoke the certificate of registration of any registrant that fails to comply with the procedures set forth in this section.

(c) Certificates of registration issued before April 18, 2002, remain valid until the FMCSA acts on the OP–2 application filed according to paragraph (a) of this section.

§ 368.6 FMCSA action on the application.

(a) The Federal Motor Carrier Safety Administration will review the application for correctness, completeness, and adequacy of information. Non-material errors will be corrected without notice to the applicant. Incomplete applications may be rejected.

(b) If the applicant does not require or is not eligible for a Certificate of Registration, the FMCSA will deny the application and notify the applicant.

(c) The FMCSA will validate the accuracy of information and certifications provided in the application against data maintained in databases of the governments of Mexico and the United States.

(d) If the FMCSA determines that the application and certifications demonstrate that the application is consistent with the FMCSA's safety fitness policy, it will issue a provisional Certificate of Registration, including a distinctive USDOT Number that identifies the motor carrier as permitted to provide interstate transportation of property solely in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities.

(e) The FMCSA may issue a permanent Certificate of Registration to the holder of a provisional Certificate of Registration no earlier than 18 months after the date of issuance of the Certificate and only after 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.

(f) Notice of the authority sought will not be published in either the **Federal Register** or the FMCSA Register. Protests or comments will not be allowed. There will be no oral hearings.

§ 368.7 Requirement to carry certificate of registration in the vehicle.

A holder of a Certificate of Registration must maintain a copy of the Certificate of Registration in any vehicle providing transportation service within the scope of the Certificate, and make it available upon request to any State or Federal authorized inspector or enforcement officer.

§ 368.8 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 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

2. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101,13301,13906, 14701, 31138, and 31139; and 49 CFR 1.73.

3. In § 387.7, revise the first sentence of paragraph (b)(3) introductory text to read as follows:

§ 387.7 Financial responsibility required.

* * * * *

(b) * * *

(3) Exception. A Mexico-domiciled motor carrier operating solely in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities with a Certificate of Registration issued under part 368 may meet the minimum financial responsibility requirements of this subpart by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurers that meet the requirements of § 387.11 of this subpart. * * *

* * * * *

Issued on: March 7, 2002.

Joseph M. Clapp,

Administrator.

Note: The following form will not appear in the Code of Federal Regulations.

BILLING CODE 4910–EX–P

U.S. Department of Transportation

Form Approved
OMB No. 2126-0019

Federal Motor Carrier
Safety Administration

Instructions for Completing Form OP-2 Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902

Please read these instructions before completing the application form. Retain the instructions and a copy of the complete application for the applicant's records. These instructions will assist an applicant in preparing an accurate and complete application. Applications that do not contain the required information will be rejected and may result in a loss of the application fee. **The application must be completed in English** and typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

PURPOSE OF THIS APPLICATION FORM:

The Form OP-2 is required to be filed by Mexico-domiciled for-hire motor carriers and motor private carriers who wish to register to transport property only in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities.

This form is also required to be utilized by Mexico-domiciled for-hire and motor private carriers that hold a Certificate of Registration from the former Interstate Commerce Commission, the Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration issued before April 18, 2002, with a territorial scope of operations limited to municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities and are required to supplement the information in their original applications by completing and re-filing the revised Form OP-2.

This form should not be used for registration by Mexico-domiciled for-hire and motor private carriers to perform transportation in the United States beyond the commercial zones of municipalities on the international border. To register or reregister to conduct operations beyond commercial zones, an applicant should instead complete and file Form OP-1(MX).

This form should not be filed by U.S.-domiciled enterprises owned or controlled by Mexican nationals. Such enterprises must complete and file Form OP-1 or OP-1(P), for property or passengers, respectively.

Under NAFTA Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

WHAT TO FILE:

All applicants must submit the following:

1. An original and one copy of a completed revised Form OP-2, Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign

Motor Private Carriers Under 49 U.S.C. 13902, with all necessary attachments and statements.

2. A signed and dated Form BOC-3, Designation of Agents for Service of Process, which reflects the applicant's full and correct name, as shown on the Form OP-2, and applicant's address, including the street address, the city, State, country and zip code, must be attached to the application. The BOC-3 form must show street address(es), and not post office box numbers, for the person(s) designated as the agent(s) for service of process and administrative notices in connection with the enforcement of any applicable Federal statutes or regulations. A person must be designated in each State in which the applicant will operate. Please refer to the section "Legal Process Agents" for instructions for filing the Form BOC-3 when using a Process Agent Service. **The applicant may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**

3. A completed and signed Form MCS-150 Motor Carrier Identification Report.

4. A filing fee of $300 for **each** type of registration requested in Section III, payable in U.S. dollars on a U.S. bank to the Federal Motor Carrier Safety Administration, by means of a check, money order or an approved credit card. Cash is not accepted.

GENERAL INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM:

- All questions on the application form must be answered completely and accurately. If a question or supplemental attachment does not apply to the applicant, it should be answered "not applicable."

- The application must be typewritten or printed in ink. Applications written in pencil will be rejected.

- The application must be completed in English.

- The completed certification statements and oath must be signed by the applicant only. For example:

    - If the company is a sole proprietorship, the owner must sign.

    - If the company is a partnership, one of the partners must sign.

    - If the company is a corporation, an official of the company must sign (President, Vice President, Secretary, Treasurer, etc.).

  The same person must sign the oath and certifications. An applicant's attorney or any other representative is not permitted to sign.

Form OP-2
Revised March 2002

- Use the attachment pages included, as appropriate, to provide any descriptions, explanations, statements or other information that is required to be furnished with the application. If additional space is needed to respond to any question, please use separate sheets of paper. Identify continuation sheets by using headings that show both the number of the page of the revised OP-2 form or Attachment page on which the question or response appears and the item number of the question.

- Include only the city code and telephone number for Mexican telephone phone numbers. **Do not** include the Mexico international access code (011-52).

ADDITIONAL ASSISTANCE

FORM OP-2 OR MCS-150

Call 001 (800) 832-5660 for additional information on obtaining FMCSA registration numbers (USDOT or MX) or to monitor the status of an application.

SAFETY RATINGS

For information concerning a carrier's assigned safety rating, call: 001 (800) 832-5660.

U.S. DOT HAZARDOUS MATERIALS REGULATIONS

To obtain information on whether the commodities an applicant intends to transport are considered as hazardous materials:

Refer to the provisions governing the transportation of hazardous materials found under Parts 100 through 180 of Title 49 of the Code of Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR § 172.101 or visit the U.S. DOT, Research and Special Programs Administration web site: http://hazmat.dot.gov. The web site also provides information about DOT hazardous materials transportation registration requirements.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION I - APPLICANT INFORMATION

APPLICANT'S LEGAL BUSINESS NAME and DOING BUSINESS AS NAME. The applicant's name should be the applicant's full legal business name -- the name on the incorporation certificate, partnership agreement, tax records, etc. If the applicant uses a trade name that differs from its official business name, indicate this under "Doing Business As Name." Example: If the applicant is John Jones, doing business as Quick Way Trucking, enter "John Jones" under LEGAL BUSINESS NAME and "Quick Way Trucking" under DOING BUSINESS AS NAME.

Because the FMCSA uses computers to retain information about licensed carriers, it is important to spell, space, and punctuate any name the same way each time the applicant writes it. Example: John Jones Trucking Co., Inc.; J. Jones Trucking Co., Inc.; and John Jones Trucking are considered three separate companies.

BUSINESS ADDRESS/MAILING ADDRESS. The business address is the physical location of the business in Mexico. Example: El Camino Real #756, Guadalajara, Jalisco, Mexico. Please include the Mexican "colonia" or "barrio."

If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P. O. Box 3721. **NOTE:** To receive FMCSA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify in writing the Federal Motor Carrier Safety Administration, Room 8218, 400 7th Street, SW., Washington, DC 20590, if the business or mailing address changes. If applicant also maintains an office in the United States, that information should also be provided.

REPRESENTATIVE. If someone other than the applicant is preparing this form, or otherwise assisting the applicant in completing the application, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the person contacted if there are questions concerning this application. Do not include the "colonia" or "barrio" unless the address is in Mexico.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

U.S. DOT NUMBER. Applicants are required to obtain a U.S. DOT Number from the U.S. Department of Transportation (U.S. DOT) before initiating service. Motor carriers that already have been issued a U.S. DOT Number should provide it. Applicants that have not previously obtained a U.S. DOT Number will be issued a U.S. DOT number along with their provisional Certificate of Registration.

NOTE: A completed and signed Form MCS-150 Motor Carrier Identification Report must be submitted separately with this application.

FORM OF BUSINESS. A business is a corporation, a sole proprietorship, or a partnership. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the Owner is the registration applicant. If the business is a partnership, provide the full name of each partner.

SECTION IA – ADDITIONAL APPLICANT INFORMATION

All applicants must answer each question in this section. Applicants cannot obtain a Certificate of Registration unless registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT). Therefore, if the applicant is in the process of obtaining an SCT registration, indicate the date that the applicant applied. When the applicant receives its SCT registration, it must supplement this OP-2 application with that information, including its RFC Number (Registro Federal de Contribuyente if the applicant is a company. Registro Federal de Causante, if applicant is an individual), before the FMCSA will issue a Certificate of Registration. If the applicant currently holds a valid Certificate of Registration and is updating this application as required by 49 CFR 368.5, the SCT Registration information, including the RFC Number, is also required. FMCSA will not suspend an existing Certificate of Registration while an applicant is applying for SCT registration.

SECTION II – AFFILIATIONS INFORMATION

All applicants must disclose pertinent information concerning any relationships or affiliations which the applicant has had with other entities registered with FMCSA or its predecessor agencies. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles anywhere in the United States pursuant to Section 219 of the Motor Carrier Safety Improvement Act of 1999.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION III – TYPE(S) OF REGISTRATION REQUESTED

Check the appropriate box(es) for the type(s) of registration the applicant is requesting. For purposes of this application, for-hire motor carrier means an entity that is transporting the goods of others, and a motor private carrier is an entity that is transporting its own goods, including an entity that is not a for-hire carrier but is providing interstate transportation under an agreement or contract with a shipper or other business.

A separate filing fee is required for each type of registration requested.

If the applicant is re-registering, do not complete Section III unless applicant is requesting a new type of authority. Please refer to the following for a description of the commercial zones:

COMMERCIAL ZONES
UNITED STATES/MEXICO PORTS OF ENTRY

Commercial zones, unless otherwise defined, are determined through a formula dependant upon the population of the municipality (49 CFR 372, Subpart B). The commercial zones for all United States/Mexico ports of entry allow for transportation from the corporate limits of the municipality as follows:

	Location	Population	Commercial Zone
Limits			
Arizona			
	Douglas	13,270	4 miles
	Lukeville	65	3 miles
	Naco	1,000	3 miles
	Nogales	19,745	4 miles
	San Luis	6,405	4 miles
	Sasabe	37	3 miles
California			
	Andrade	20	3 miles
	Calexico	22,246	4 miles
	Otay Mesa	Unknown	20 miles
	San Diego	1,110,500	20 miles
	Tecate	212	20 miles**

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

	Location	Population	Commercial Zone
Limits			
New Mexico			
	Columbus	N/A	+++
	Santa Teresa	Unknown	+++
Texas			
	Brownsville	266,600+	*
	Del Rio	30,705	6 miles
	Eagle Pass	20,651	4 miles
	El Paso	592,400	15 miles
	Fabens	1,599	3 miles
	Hidalgo	384,800++	*
	Laredo	126,300	8 miles
	Presidio	3,072	4 miles
	Progresso	1,951	*
	Rio Grande City	9,891	*
	Roma	8,059	*

*Cameron, Hidalgo, Starr and Willacy Counties, Texas

Transportation within a zone comprised of Cameron, Hidalgo, Starr and Willacy Counties, Texas, by motor carriers of property, in interstate or foreign commerce, not under common control, management, or arrangement for shipments to or from points beyond such zone, is partially exempt from regulation under 49 U.S.C. §13506.

To the extent that commercial zones of municipalities within the above four counties extend beyond the boundaries of such commercial zones, they shall be considered to be part of the zone and partially exempt from regulation under 49 U.S.C. §13506.

**Considered a part of the San Diego commercial zone.
+Population based upon Brownsville-Harlingen metropolitan area.
++Population based upon McAllen-Edinburg-Mission metropolitan area.
+++The area comprised of Dona Ana and Luna counties.

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SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

SECTION IV - INSURANCE INFORMATION

Check the appropriate box(es) that describes the type(s) of business applicant will be conducting.

If applicant is applying for motor property carrier registration and operates vehicles with a gross vehicle weight rating of 10,000 pounds or more and hauls only non-hazardous materials, applicant must maintain $750,000 minimum liability coverage for the protection of the public. Hazardous materials referred to in the FMCSA's insurance regulations in item (c) of the table at 49 CFR 387.303 (b)(2) require $1 million minimum liability coverage; those in item (b) of the table at 49 CFR 387.303 (b)(2) require $5 million minimum liability coverage.

If applicant operates only vehicles with a gross vehicle weight rating under 10,000 pounds, applicant must maintain $300,000 minimum liability coverage. If applicant operates only such vehicles but will be transporting any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials, applicant must maintain $5 million minimum liability coverage.

The FMCSA does not furnish copies of insurance forms. Applicant must contact its insurance company to obtain all required insurance forms.

Applicant does not have to submit evidence of insurance with the application. If applicant is issued a Certificate of Registration, the following must be on each of its vehicles when crossing the border:

- a current DOT Form MCS-90, and
- evidence of insurance. The evidence of insurance must show either trip insurance coverage (24 hours or more coverage), or evidence of continuing insurance.

SECTION V - SAFETY CERTIFICATIONS

Applicants for motor carrier registration must complete the safety certifications. Applicant should check the "YES" response only if it can attest to the truth of the statements. The carrier official's signature at the end of this section applies to the Safety Certifications. The "Applicant's Oath" at the end of the application form applies to all certifications. False certifications are subject to the penalties described in that oath.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

If applicant is exempt from the U.S. DOT safety fitness regulations because applicant operates only vehicles with a gross vehicle weight rating under 10,001 pounds, and it will not transport any hazardous materials, applicant must certify that it is familiar with and will observe general operational safety fitness guidelines and applicable State, local and tribal laws relating to the safe operation of commercial vehicles.

Applicants should complete all applicable Attachment pages and, if necessary to complete the responses, attach additional pages referring to the appropriate Sections and items in the application or Attachment pages. If applicant is exempt from the U.S. DOT safety fitness regulations, applicant must complete all relevant attachment pages to demonstrate its willingness and ability to comply with general operational safety fitness guidelines and applicable State, local and tribal laws.

SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS

For-hire carriers of property operating entirely in commercial zone areas that intend to transport household goods as defined in 49 U.S.C. 13102 (10) must certify their agreement to offer arbitration as a means of settling loss and damage claims as a condition of registration. The signature should be that of the same company official who completes the Applicant's Oath.

SECTION VII - COMPLIANCE CERTIFICATIONS

All applicants are required to certify accurately to their willingness and ability to comply with statutory and regulatory requirements, to their tax payment status, and to their understanding that their agent for service of process is their official representative in the U.S. to receive filings and notices in connection with enforcement of any Federal statutes and regulations.

Applicants are required to certify their willingness to produce records for the purpose of determining compliance with the applicable safety regulations of the FMCSA.

Applicants are required to certify that they are not now disqualified from operating a commercial motor vehicle in the U.S. pursuant to the Motor Carrier Safety Improvement Act of 1999.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

Applicants are required to certify that they are not now prohibited from filing an application because a previously granted FMCSA registration is currently under suspension or was revoked less than 30 days before the filing of this application.

SECTION VIII - APPLICANT'S OATH

The applicant or an authorized representative may prepare applications. In either case, the applicant must sign the oath and all safety certifications. (For information on who may sign, see "General Instructions for Completing the Application Form" in the instructions for this application.)

LEGAL PROCESS AGENTS

All motor carrier applicants must designate a process agent in each State where operations are conducted. For example, if applicant will operate only in commercial zones along the U.S./Mexico border that are located in CA and AZ, applicant must designate an agent in each of those States; if applicant will operate only in one State, an agent must be designated only in that specific State. Process agents who will accept filings and notices on behalf of the applicant are designated on FMCSA Form BOC-3. Form BOC-3 must be filed with the application, unless applicant uses a Process Agent Service. If applicant opts to use a Process Agent Service, applicant must submit a letter with the application informing the FMCSA of this decision and have the Process Agent Service electronically file the BOC-3 with FMCSA within 90 days after applicant submits its application. **Applicants may not begin operations unless the Form BOC-3 has been filed with the FMCSA.**

STATE NOTIFICATION

Before beginning operations, all applicants must contact the appropriate regulatory agencies in every State in which the carrier will operate to obtain information regarding various State rules applicable to interstate registrations. It is the applicant's responsibility to comply with registration, fuel tax, and other State regulations and procedures. Please refer to the additional information provided in the application packet for further information.

SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

MAILING INSTRUCTIONS:

To file for registration applicant must submit an ***original and one copy*** of this application with the appropriate filing fee to FMCSA. **Note:** Retain a copy of the completed application form and any attachments for the applicant's records.

Mailing address for applications:

FOR REGULAR MAIL (CHECK OR MONEY ORDER PAYMENT)
Federal Motor Carrier Safety Administration
P. O. Box 100147
Atlanta, GA 30384-0147

FOR EXPRESS MAIL (CHECK OR MONEY ORDER PAYMENT)
Bank of America, Lockbox 100147
6000 Feldwood Road
3rd Floor East
College Park, GA 30349

FOR CREDIT CARD PAYMENT
FMCSA Trans-border Office
P.O. Box 530870
San Diego, CA 92153-0870

FOR RE-APPLICATION (NO PAYMENT REQUIRED)
FMCSA Trans-border Office
P.O. Box 530870
San Diego, CA 92153-0870

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Revised March 2002

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Form Approved
OMB No. 2126-0019

FORM OP-2
Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902

This application is for all Mexico-domiciled for-hire motor carriers and motor private carriers who wish to register to transport property only in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities; and for Mexico-domiciled for-hire and motor private carriers that hold a Certificate of Registration from the former Interstate Commerce Commission, the Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration issued before April 18, 2002, authorizing operations in the border commercial zones and that are required to file the revised Form OP-2.

For FMCSA Use Only

Docket No. MX_____

DOT No. _____

Filed _____

Fee No. _____

CC Approval Number _____

Application Tracking Number _____

PAPERWORK BURDEN

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. It is estimated that an average of 4 burden hours per response is required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024

SECTION I - APPLICANT INFORMATION

LEGAL BUSINESS NAME:_____

DOING BUSINESS AS NAME: (Trade Name, if any) _____

_____

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BUSINESS ADDRESS: (Actual Street Address):

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

_____
(Colonia)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

MAILING ADDRESS: (If different from above)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

_____
(Colonia)

U.S. ADDRESS: (Does the applicant currently have an office in the United States? If yes, give address and telephone number.)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

APPLICANT'S REPRESENTATIVE: (Person who can respond to inquiries)

_____
(Name and title, position, or relationship to applicant)

_____
(Street Name and Number)

_____
(City) (State) (Country) (Zip Code)

_____
(Colonia – Mexican addresses only)

(_____)_____ (_____)_____
(Telephone Number) (Fax Number)

U.S. DOT NUMBER (If available) _____

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FORM OF BUSINESS (Check one)

☐ CORPORATION (Give Mexican or U.S. State of Incorporation) _____

_____

☐ SOLE PROPRIETORSHIP (Give full name of individual)

_____

(First Name) (Middle Name) (Surname)

☐ PARTNERSHIP (Give full name of each partner)_____

_____

SECTION IA – ADDITIONAL APPLICANT INFORMATION

1. Does applicant currently operate in the United States?

☐ Yes ☐ No

1a. If yes, indicate the locations where applicant operates and the ports of entry utilized.

_____

_____

_____

2. Has the applicant previously completed and submitted a Form MCS-150?

☐ Yes ☐ No

2a. If yes, give the name under which it was submitted.

_____

_____

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3. Does applicant presently hold, or has it ever applied for, regular (MC) or Mexican (MX) authority from the former U.S. Interstate Commerce Commission, the U.S. Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation under the name shown on this application, or under any other name?

☐ Yes ☐ No

3a. If yes, please identify the lead docket number(s) assigned to the application or grant of authority.

_____

_____

3b. If the application was rejected before the time a lead docket number(s) was assigned, please provide the name of the applicant shown on the application.

_____

_____

3c. If yes, did FMCSA revoke applicant's provisional operating authority or provisional Certificate of Registration after April 18, 2002, because applicant failed to receive a Satisfactory safety rating or because the FMCSA otherwise determined applicant's basic safety management controls were inadequate.

☐ Yes ☐ No

3d. If applicant answered yes to 3c above, it must explain how it has corrected the deficiencies that resulted in revocation, explain what effectively functioning basic safety management systems it has in place, and provide any information and documents that support its case. (If applicant requires more space, **attach the information to this application form**.

_____

_____

_____

_____

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4. Does the applicant hold a Federal Tax Number from the U.S. Government?

☐ Yes ☐ No

4a. If yes, enter the number here: _____

5. Is the applicant registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT)?

☐ Yes ☐ No

5a. If yes, give the name under which the applicant is registered with the SCT, the applicant's RFC Number, and the place where the SCT Registration was issued.

_____

_____

_____

_____

_____

5b. If no, indicate the date the applicant applied with SCT.

_____

SECTION II – AFFILIATIONS INFORMATION

Disclose any relationship the applicant has, or has had, with any U.S. or foreign motor carrier, broker, or freight forwarder registered with the former ICC, FHWA, Office of Motor Carrier Safety, or Federal Motor Carrier Safety Administration within the past 3 years. For example, this relationship could be through a percentage of stock ownership, a loan, a management position, a wholly-owned subsidiary, or other arrangement.

If this requirement applies to applicant, provide the name of the affiliated company, the latter's MC or MX number, its U.S. DOT Number, if any, and the company's latest U.S. DOT safety rating. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles anywhere in the United States pursuant to Section 219 of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748)(MCSIA).

(If applicant requires more space, **attach the information to this application form**.

Name of affiliated company	MC or MX Number	U.S. DOT Number	U.S. DOT Safety Rating	Ever Disqualified under Section 219 of the MCSIA?

SECTION III – TYPE(S) OF REGISTRATION REQUESTED

Applicant must submit a filing fee for each type of registration requested (for each checked box). **If applicant will operate beyond the commercial zone, applicant is not eligible for a Certificate of Registration. Please use Form OP-1(MX) to apply for such authority.**

Applicant seeks to provide the following transportation service:

FOR-HIRE MOTOR CARRIER
❑ Service as a **for-hire motor carrier of property (except household goods),** between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to, and commercially a part of the municipality(ies). Under NAFTA Annex I, page I-U-20, a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.
❑ Service as a **for-hire motor carrier of household goods** between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to, and commercially a part of the municipality(ies).
MOTOR PRIVATE CARRIER
❑ Service as a **motor private carrier of property** (handling applicant's own goods) between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to and commercially a part of the municipality(ies).

SECTION IV – INSURANCE INFORMATION

- ❑ Applicant will operate vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or more to transport:
  - ❑ Non-hazardous commodities ($750,000)
  - ❑ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(c) ($1,000,000).
  - ❑ Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(b) ($5,000,000).
- ❑ Applicant will operate only vehicles having a GVWR under 10,000 pounds to transport:
  - ❑ Any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials ($5,000,000).
  - ❑ Commodities other than those listed above ($300,000).

Does the applicant presently hold public liability insurance?

☐ Yes ☐ No

If applicant does hold such insurance, please provide the information below:

Insurance Company: _____
Address: _____
_____
Maximum Insurance Amount: _____
Policy Number: _____
Date Issued: _____
Insurance Effective Date: _____
Insurance Expiration Date: _____

Does applicant presently operate or has it operated under trip insurance issued for movements in U.S. border commercial zones?

☐ Yes ☐ No

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SECTION V – SAFETY CERTIFICATIONS

Applicant certifies that it is exempt from the U.S. DOT Federal Motor Carrier Safety Regulations (FMCSRs) because it will operate only small vehicles (GVWR under 10,001 pounds) and will not transport hazardous materials.

_____Yes _____No

If applicant answered yes, it must complete the following single safety certification, skip to the end of this section, sign the certification, and complete questions 1 and 2 under the next section – **Safety and Compliance Information and Attachments to Section V.**

Applicant certifies that it is familiar with and will observe general operational safety fitness guidelines and applicable State, local and tribal laws relating to the safe operation of commercial vehicles.

_____Yes

If applicant answered No, it must complete the remaining questions in Section V, sign the certification, and **complete the Safety and Compliance Information and Attachments for Section V**.

Applicant maintains current copies of all U.S. DOT Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards and the Hazardous Materials Regulations (if a property carrier transporting hazardous materials), understands and will comply with such Regulations, and has ensured that all company personnel are aware of the current requirements.

_____Yes

Applicant certifies that the following tasks and measures will be fully accomplished and procedures fully implemented before it commences operations in the United States:

1. Driver qualifications:

The carrier has in place a system and procedures for ensuring the continued qualification of drivers to operate safely, including a safety record for each driver, procedures for verification of proper licensing of each driver, procedures for identifying drivers who are not complying with the U.S. and

Mexican safety regulations, and a description of a retraining and educational program for poorly performing drivers.

_____Yes

The carrier has procedures in place to review drivers' employment and driving histories for at least the last 3 years, to determine whether the individual is qualified and competent to drive safely.

_____Yes

The carrier has established a program to review the records of each driver at least once every 12 months and will maintain a record of the review.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all of its drivers operating in the United States are at least 21 years of age and possess a valid Licencia Federal de Conductor (LFC) and that the driver's LFC is registered in the SCT database.

_____Yes

2. Hours of service:

The carrier has in place a record keeping system and procedures to monitor the hours of service performed by drivers, including procedures for continuing review of drivers' log books, and for ensuring that all operations requirements are complied with.

_____Yes

The carrier has ensured that all drivers to be used in the United States are knowledgeable of the U.S. hours of service requirements, and has clearly and specifically instructed the drivers concerning the application to them of the 10 hour, 15 hour, and 60 and 70 hour rules, as well as the requirement for preparing daily log entries in their own handwriting for each 24 hour period.

_____Yes

The carrier has **attached to this application** statements describing the carrier's monitoring procedures to ensure that drivers complete logbooks correctly, and describing the carrier's record keeping and driver review procedures.

_____Yes

The carrier will ensure, once operations in the United States have begun, that its drivers operate within the hours of service rules and are not fatigued while on duty.

_____Yes

3. Drug and alcohol testing:

The carrier is familiar with the alcohol and controlled substances testing requirements of 49 CFR part 382 and 49 CFR part 40 and has in place a program for systematic testing of drivers.

_____Yes

The carrier has **attached to this application** the name, address, and telephone number of the person(s) responsible for implementing and overseeing alcohol and drug programs, and also of the drug testing laboratory and alcohol testing services that are used by the company.

_____Yes

4. Vehicle condition:

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT's Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations.

_____Yes

The carrier has inspected all vehicles that will be used in the United States before the beginning of such operations and has proof of the inspection on-board the vehicle as required by 49 CFR 396.17.

_____Yes

The carrier's vehicles were manufactured or have been retrofitted in compliance with the applicable U.S. DOT Federal Motor Vehicle Safety Standards.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all vehicles operated in the United States are inspected on an annual basis.

_____Yes

The carrier will ensure, once operations in the United States have begun, that all violations and defects noted on inspection reports are corrected before vehicle and drivers are permitted to enter the United States.

_____Yes

5. Accident monitoring program:

The carrier has in place a program for monitoring vehicle accidents and maintains an accident register in accordance with 49 CFR 390.15

_____Yes

The carrier has **attached to this application** a copy of its accident register for the previous 12 months, or a description of how the company will maintain this register once it begins operations in the United States.

_____Yes

The carrier has established an accident countermeasures program and a driver training program to reduce accidents.

_____Yes

The carrier has **attached to the application** a description and explanation of the accident monitoring program it has implemented for its operations in the United States.

_____Yes

6. Production of records:

The carrier can and will produce records demonstrating compliance with the safety requirements within 48 hours of receipt of a request from a representative of the USDOT/FMCSA or other authorized Federal or State official.

_____Yes

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The carrier is including as **an attachment to this application** the name, address and telephone number of the employee to be contacted for requesting records.

_____Yes

7. Hazardous Materials (to be completed by carriers of hazardous materials only).

The HM carrier has full knowledge of the U.S. DOT Hazardous Materials Regulations, and has established programs for the thorough training of its personnel as required under 49 CFR part 172, Subpart H and 49 CFR 177.816. The HM carrier has **attached to this application** a statement providing information concerning (1) the names of employees responsible for ensuring compliance with HM regulations, (2) a description of their HM safety functions, and (3) a copy of the information used to provide HM training.

_____Yes

The carrier has established a system and procedures for inspection, repair and maintenance of its reusable hazardous materials packages (cargo tanks, portable tanks, cylinders, intermediate bulk containers, etc.) in a safe condition, and for preparation and maintenance of records of inspection, repair, and maintenance in accordance with the U.S. DOT Hazardous Materials Regulations.

_____Yes

The HM carrier has established a system and procedures for filing and maintaining HM shipping documents.

_____Yes

The HM carrier has a system in place to ensure that all HM trucks are marked and placarded as required by 49 CFR part 172, Subparts D and F.

_____Yes

The carrier will register under 49 CFR part 107, Subpart G, if transporting any quantity of hazardous materials requiring the vehicle to be placarded.

_____Yes

7A. For Cargo Tank (CT) Carriers (of HM):

The carrier **submits with this application** a certificate of compliance for each cargo tank the company utilizes in the U.S., together with the name, qualifications, CT number, and CT number registration statement of the facility the carrier will be utilizing to conduct the test and inspections of such tanks required by 49 CFR part 180.

_____Yes

_____

Signature of applicant

By signing these certifications, the carrier official is on notice that the representations made herein are subject to verification through inspections in the United States and through the request for and examination of records and documents. Failure to support the representations contained in this application could form the basis of a proceeding to assess civil penalties and/or lead to the revocation of the authority granted.

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Safety and Compliance Information and Attachments for Section V

1. Individual responsible for safe operations and compliance with applicable regulatory and safety requirements.

NAME	ADDRESS	POSITION

2. Location where current copies of the Federal Motor Carrier Safety Regulations and other regulations are maintained.

_____

_____

_____

_____

_____

_____

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ATTACHMENT FOR SECTION V, NO. 1, DRIVER QUALIFICATIONS
Intentionally Left Blank

ATTACHMENT FOR SECTION V, NO. 2, HOURS OF SERVICE

MONITORING STATEMENTS

Statements describing monitoring procedures for ensuring correctness of logbook completion by drivers and describing record keeping and driver review procedures.

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ATTACHMENT FOR SECTION V, NO. 3, DRUG AND ALCOHOL TESTING

Person(s) responsible for implementing and overseeing alcohol and drug programs

NAME	ADDRESS	POSITION

The drug testing laboratory and the alcohol testing services that are used by the carrier.

NAME	ADDRESS	TELEPHONE NO.

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ATTACHMENT FOR SECTION V, NO. 4,
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ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

1. Describe how company will maintain accident register (49 CFR 390.15(b)) once it begins operations in U.S.

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ATTACHMENT FOR SECTION V, NO. 5, ACCIDENT MONITORING PROGRAM

2. Describe and explain accident monitoring program for operations in U.S (49 CFR 391.25 and 391.27).

ATTACHMENT FOR SECTION V, NO. 6, PRODUCTION OF RECORDS

Contact person(s) for requesting records:

Name	Address	Telephone Number

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ATTACHMENT FOR SECTION V, NO. 7, HAZARDOUS MATERIALS (TO BE COMPLETED BY CARRIERS OF HAZARDOUS MATERIALS ONLY)

Statement respecting person(s) (other than drivers) responsible for ensuring compliance with HM regulations (49 CFR 172.704) for HM activities.

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ATTACHMENT FOR SECTION V, NO. 7A, FOR CARGO TANK CARRIERS OF HM)

Cargo Tank Information (HM)(49 CFR part 180, Subpart E):

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SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS

If applicant will be transporting household goods between Mexico and border commercial zones, it must certify as follows:

Household goods carrier registration is now conditioned on the carrier's agreement to offer arbitration as a means of settling loss and damage claims.

Applicant certifies that it will offer arbitration in accordance with the requirements of 49 U.S.C. § 14708.

_____
Signature

SECTION VII – COMPLIANCE CERTIFICATIONS

All applicants must certify as follows:

- Applicant is willing and able to provide the proposed operations or service and to comply with all pertinent statutory and regulatory requirements and regulations issued or administered by the U.S. Department of Transportation, including operational regulations, safety fitness requirements, motor vehicle safety standards, and minimum financial responsibility requirements.

  _____ Yes

- Applicant has paid any taxes it owes under Section 4481 of the U.S. Internal Revenue Service (26 U.S.C. §4481) for the most recent taxable period as defined under Section 4482(c) of the Internal Revenue Code.

  _____ Yes

- Applicant understands that the agent(s) for service of process designated on FMCSA Form BOC-3 will be deemed applicant's official representative(s) in the United States for receipt of filings and notices in administrative proceedings under 49 U.S.C. 13303, and for receipt of filings and notices issued in connection with the enforcement of any Federal statutes or regulations.

  _____ Yes

- Applicant is willing and able to produce for review or inspection documents which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations, Federal Motor Vehicle Safety Standards and Hazardous Materials Regulations, within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.

  _____ Yes

- Applicant is not presently disqualified from operating a commercial vehicle in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999.

  _____ Yes

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➢ Applicant is not prohibited from filing this application because its FMCSA registration is currently under suspension or was revoked less than 30 days before the filing of this application.

_____ Yes

_____
Signature

All motor carriers operating within the United States, including Mexico-domiciled motor carriers applying for operating authority under this form, must comply with all pertinent Federal, State, local and tribal statutory and regulatory requirements when operating within the United States. Such requirements include, but are not limited to, all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by an OSHA State plan agency pursuant to Section 18 of the Occupational Safety and Health Act of 1970. Such requirements also include all applicable statutory and regulatory environmental standards and requirements administered by the U.S. Environmental Protection Agency or a State, local or tribal environmental protection agency. Compliance with these statutory and regulatory requirements may require motor carriers and/or individual operators to produce documents for review and inspection for the purpose of determining compliance with such statutes and regulations.

SECTION VIII – APPLICANT'S OATH

APPLICANT'S OATH MUST BE COMPLETED AND SIGNED BY APPLICANT

I, _____,

(First Name) Middle Name) (Surname) (Title)

verify under penalty of perjury, under the laws of the United States of America, that I understand the foregoing certifications and that all responses are true and correct. I certify that I am qualified and authorized to file this application. I know that willful misstatement or omission of material facts constitute Federal criminal violations under 18 U.S.C. §§ 1001 and 1621 and that each offense is punishable by up to 5 years imprisonment and a fine under Title 18, United States Code, or civil penalties under 49 U.S.C. § 521(b)(2)(B) and 49 U.S.C. Chapter 149.

I further certify that I have not been convicted in U.S. Federal or State courts, after September 1, 1989, of any offense involving the distribution or possession of controlled substances, or that if I have been so convicted, that I am not ineligible to receive U.S. Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862).

_____ _____
(Signature) (Date)

_____
(Relationship to applicant, e.g., President or Owner)

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FMCSA FILING FEES

Fee Schedule effective January 1996
Fee for Registration . . . $300.00

FEE POLICY

- Filing fees must be payable to the **Federal Motor Carrier Safety Administration**, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for each **type of registration** requested. If applicant requests registration as a for-hire motor carrier and as a motor private carrier, multiple fees are required. The applicant may submit a single payment for the sum of the applicable fees.
- Filing fees must be **sent along with the original and one copy of the application** to the appropriate address under the paragraph titled **MAILING INSTRUCTIONS** on page 11 of the instructions to this form.
- After an application is received, the filing fee is non-refundable.
- An application submitted with a personal check will be held for 30 days from the date received. The FMCSA reserves the right to discontinue processing any application for which a check is returned due to insufficient funds. No application will be processed until the fee is paid in full.
- **NO FILING FEE IS REQUIRED FOR CURRENT CERTIFICATE OF REGISTRATION HOLDERS WHO OPERATE ONLY IN MUNICIPALITIES IN THE U.S. ON THE U.S.-MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES AND ARE ONLY UPDATING THEIR APPLICATION INFORMATION**. However, if applicant is expanding the territorial scope of its current operations beyond this area, it must submit a new application using Form OP-1(MX), and a $300 filing fee. The application will be processed as a new application.

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FILING FEE INFORMATION

All applicants must submit a filing fee of $300.00 for each type of registration requested. The total amount due is equal to the fee(s) times the number of boxes checked in ***Section III*** of the Form OP-2. Fees for multiple authorities may be combined in a single payment.

Total number of boxes
checked in ***Section III*** _____ x filing fee $ _____ = $ _____

INDICATE AMOUNT $_____ AND METHOD OF PAYMENT:

☐ CHECK OR ☐ MONEY ORDER, PAYABLE TO: **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

☐ VISA ☐ MASTERCARD

Credit Card Number _____

Expiration Date: _____

Signature _____ Date: _____

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BILLING CODE 4910–EX–C