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49 CFR Parts 360, 365, 366, *et al.*

Unified Registration System; Final Rule

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

49 CFR Parts 360, 365, 366, 368, 385, 387, 390 and 392

[Docket No. FMCSA–1997–2349]

RIN 2126–AA22

Unified Registration System

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

ACTION: Final rule.

SUMMARY: The FMCSA amends its regulations to require interstate motor carriers, freight forwarders, brokers, intermodal equipment providers (IEPs), hazardous materials safety permit (HMSP) applicants, and cargo tank facilities under FMCSA jurisdiction to submit required registration and biennial update information to the Agency via a new electronic on-line Unified Registration System (URS). FMCSA establishes fees for the registration system, discloses the cumulative information to be collected in the URS, and provides a centralized cross-reference to existing safety and commercial regulations necessary for compliance with the registration requirements. The final rule implements statutory provisions in the ICC Termination Act of 1995 (ICCTA) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, 2005 (SAFETEA–LU). The URS will streamline the registration process and serve as a clearinghouse and depository of information on, and identification of, motor carriers, brokers, freight forwarders, IEPs, HMSP applicants, and cargo tank facilities required to register with FMCSA.

DATES: Effective Dates: The final rule is effective October 23, 2015, except for § 390.19 (amendatory instruction number 55) and § 392.9b (amendatory instruction 61), which are effective November 1, 2013, and except for § 366.2 (amendatory instruction 19), which is effective April 25, 2016.

Compliance Dates: The compliance date for this final rule is October 23, 2015, except that the compliance date for §§ 390.19 and 392.9b is November 1, 2013, and the compliance date for § 366.2 is April 25, 2016.

Petitions for reconsideration must be received by September 23, 2013.

ADDRESSES: Petitions for reconsideration must be submitted to: Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey

Avenue SE., Washington, DC 20590–0001.

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

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Wesley Ray, IT Specialist, IT Development Division, (202) 366–3876, or by email at Wesley.Ray@dot.gov. Business hours are from 8:00 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays.

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I. Public Participation**A. Viewing Comments and Documents**

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

B. Privacy Act

All comments received are posted without change to <http://www.regulations.gov>. Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, or other organization). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

II. Acronyms and Abbreviations

ADA Americans with Disabilities Act
 ANPRM Advance Notice of Proposed Rulemaking
 APA Administrative Procedure Act
 ATA American Trucking Associations
 BASIC Behavioral Analysis Safety Improvement Category
 BI&PD Bodily Injury and Property Damage
 CDL Commercial Driver's License
 CFR Code of Federal Regulations
 CMV Commercial Motor Vehicle
 CR Compliance Review
 CSA Compliance Safety Accountability
 CVIEW Commercial Vehicle Information Exchange Window
 DBA Doing Business As
 DOJ U.S. Department of Justice
 eFOTM Electronic Field Operations Training Manual
 EPT Example Private Trucking
 FF Freight Forwarder
 FMCSA Federal Motor Carrier Safety Administration
 FMCSRs Federal Motor Carrier Safety Regulations
 FR Federal Register
 FTA Federal Transit Administration
 GVWR Gross Vehicle Weight Rating
 HHG Household Goods
 HM Hazardous Materials
 HMSP Hazardous Materials Safety Permit
 ICC Interstate Commerce Commission
 ICCTA ICC Termination Act of 1995
 IEP Intermodal Equipment Provider
 IRP International Registration Plan
 IT Information Technology
 LLP Limited Liability Partnership
 MAP-21 Moving Ahead for Progress in the 21st Century Act
 MC Motor Carrier
 MCMIS Motor Carrier Management Information System
 MCSA-1 Application for USDOT Registration/Operating Authority
 MoDOT Missouri Department of Transportation
 NADA-ATDD National Automobile Dealers Association—American Truck Dealers Division
 NAFTA North American Free Trade Agreement
 NIST National Institute of Standards and Technology
 NPRM Notice of Proposed Rulemaking
 NPTC National Private Truck Council

NSTA National School Transportation Association
 NTSB National Transportation Safety Board
 NTTCC National Tank Truck Carriers
 OOIDA Owner-Operator Independent Drivers Association
 OTRB Act Over-the-Road Bus Transportation Accessibility Act of 2007
 PHMSA Pipeline and Hazardous Materials Safety Administration
 PU Power Unit
 PRISM Performance and Registration Information Systems Management
 SAFETEA-LU Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users
 SBA Small Business Administration
 SNPRM Supplemental Notice of Proposed Rulemaking
 SSRS Single State Registration System
 TIA Transportation Intermediaries Association
 UCR Unified Carrier Registration
 URS Unified Registration System
 U.S.C. United States Code
 USDOT U.S. Department of Transportation
 VMT Vehicle Miles Traveled

III. Executive Summary

A. Purpose of the URS

This final rule establishes the Unified Registration System (URS) required by the ICC Termination Act of 1995¹ (ICCTA) and the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).² In the ICCTA, Congress enacted 49 U.S.C. 13908, which directed the Secretary of Transportation (Secretary) to issue regulations to replace certain existing registration and information systems with a single, online, Federal system.³ SAFETEA-LU modified the requirements for a unified registration system contained in the ICCTA. The details of these requirements are discussed in section IV.A below (Legal Authority).

The implementation of the URS final rule will consolidate the following registration and information systems: (1) The U.S. Department of Transportation (USDOT) identification number system; (2) the 49 U.S.C. chapter 139 commercial registration system; (3) the 49 U.S.C. 13906 financial responsibility information system; and (4) the service of process agent designation system (49 U.S.C. 503 and 13304).

The URS will improve the registration process for motor carriers, property brokers, freight forwarders, IEPs, HMSP

applicants and cargo tank facilities required to register with FMCSA, and streamline the existing Federal registration processes to ensure the Agency can more efficiently track these entities. The URS also will increase public accessibility to data about interstate motor carriers, property brokers, freight forwarders, IEPs, HMSP applicants, and cargo tank facilities.

The Moving Ahead for Progress in the 21st Century Act (MAP-21) was enacted on July 6, 2012.⁴ This legislation includes several provisions that are relevant to the implementation of the URS. However, many of these statutory provisions will require notice-and-comment rulemakings because they are not self-executing and provide discretion in establishing the details for the implementing regulations. Rather than delay issuance of this final rule, and to ensure an appropriate opportunity for public participation in the regulatory changes necessitated by MAP-21, the Agency will initiate a separate rulemaking proceeding(s) to address the necessary regulatory changes. The Agency notes that in some instances, these changes to the planned implementation of the URS program will not require rulemaking but may be addressed during the implementation phase of the URS. The enactment of MAP-21 also necessitates minor changes in the MCSA-1 Form and Instructions presented in the supplemental notice of proposed rulemaking (SNPRM). These changes do not require notice-and-comment rulemaking,⁵ and FMCSA incorporates some of those changes in today's final rule.

B. Summary of Major Provisions

1. Entities Included in the URS

The URS final rule applies to every entity under FMCSA's commercial and/or safety jurisdiction, except for Mexico-domiciled motor carriers seeking authority to operate beyond the border commercial zones (Mexico-domiciled

⁴ Public Law 112-141, 126 Stat. 405 (July 6, 2012).

⁵ Under section 553(b)(3)(B) of the Administrative Procedure Act [5 U.S.C. 553(b)(3)(B)] (APA), notice and comment rulemaking is not required when the Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The changes made in response to MAP-21 were limited to modifying the MCSA-1 Form and Instructions to incorporate new statutory language regarding affiliations with other regulated entities. The SNPRM had proposed different, but similar language; thus the modification was clearly within the scope of the issues that were subject to notice and comment in the SNPRM. For this reason, the agency believes that, consistent with the APA, providing further opportunity for further public comment on these limited changes is unnecessary.

¹ Public Law 104-88, 109 Stat. 803 (Dec. 29, 1995).

² Public Law 109-59, 119 Stat. 1144 (Aug. 10, 2005).

³ The Secretary of Transportation has delegated to the Administrator of the FMCSA this authority to carry out functions relating to registration requirements. See 49 CFR 1.87(a)(5).

long-haul carriers). SAFETEA-LU amended 49 U.S.C. 13908(b) to require the URS to “serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic motor carriers, motor private

carriers, brokers, freight forwarders, and others required to register with [DOT].” FMCSA is excluding Mexico-domiciled long-haul carriers at this time because the U.S.-Mexico border is not open to such carriers, other than the participants

in the current cross-border long-haul trucking pilot program.⁶ Table 1 describes in detail the different type of entities that must register under the URS established in today’s final rule.

TABLE 1—ENTITIES REQUIRED TO REGISTER UNDER THE UNIFIED REGISTRATION SYSTEM

| Entity | Description |
|---|--|
| 1. For hire (exempt and non-exempt) or private motor carrier: | |
| a. For-hire motor carrier | A person engaged in the transportation of goods or passengers for compensation. |
| i. Exempt | A person engaged in transportation exempt from commercial regulation under 49 U.S.C. chapter 135. Exempt motor carriers that operate commercial motor vehicles as defined in 49 U.S.C. 31101 are subject to the safety regulations set forth in 49 CFR chapter III. |
| ii. Non-exempt | A person engaged in transportation subject to commercial regulation under 49 U.S.C. chapter 139, regardless of whether such transportation is subject to the safety regulations. |
| b. Private motor carrier | A person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier. |
| 2. Broker | A person who, for compensation, arranges, or offers to arrange, the transportation of property in interstate commerce by a non-exempt for-hire motor carrier. |
| 3. Freight forwarder | A person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business: (1) Performs or provides for assembling or consolidating of break-bulk, and distributing of shipments; (2) assumes responsibility for transportation from place of receipt to destination; and (3) uses for any part of the transportation a for-hire motor carrier subject to FMCSA commercial jurisdiction. |
| 4. Intermodal equipment provider | A person who interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment. |
| 5. Hazardous Materials Safety Permit applicant | A motor carrier that is approved to transport in interstate or intrastate commerce any of the hazardous materials, in the quantity indicated for each, listed under 49 CFR 385.403. |
| 6. Cargo tank facility | A cargo tank and cargo tank motor vehicle manufacturer, assembler, repairer, inspector, tester, or design-certifying engineer that is subject to registration requirements under 49 CFR 107.502 and 49 U.S.C. 5108. |

2. The Application Process

The entities covered by the URS will be required to register with FMCSA and update registration information provided on the new Form MCSA-1 periodically as required. Entities that already have a USDOT Number do not need to file the Form MCSA-1 until they need to update registration information. FMCSA is requiring that regulated entities fill out and update their registration information electronically using a web-based, online version of Form MCSA-1. The Agency believes mandatory electronic filing will result in substantial cost savings to both applicants and FMCSA. The Agency is developing the online Form MCSA-1 application process to guide the applicant to only the MCSA-1

information pertinent to its operations, and to skip any irrelevant sections. The application process will mimic the interactive, interview format of popular tax preparation software, rather than a static fillable format. Applicants will only be asked questions applicable to their specific operations.

Under the URS application process, a new applicant will be issued an inactive USDOT Number. The inactive USDOT Number will be activated by the Agency only after the Agency has determined that the applicant is willing and able to comply with applicable regulatory requirements and the applicant has satisfied applicable administrative filing requirements, such as evidence of financial responsibility, if applicable, and a process agent designation (49 CFR 390.201(c)(2)).⁷ If a carrier also is

seeking operating authority registration (non-exempt for-hire carriers only), the USDOT Number will remain inactive until all protests filed under 49 CFR part 365 have been resolved and the applicant has satisfied all applicable administrative filing requirements. An applicant with an inactive USDOT Number is prohibited from operating in interstate commerce by 49 CFR 392.9b.

3. Updating URS Information

This final rule requires all regulated entities to update registration information every 24 months. When there are changes to an entity’s legal name, form of business, or address, registration information must be updated sooner. An entity also may update its record with FMCSA at any time within this 24-month period to

⁶ See *Pilot Program on the North American Free Trade Agreement (NAFTA) Long-Haul Trucking Provisions*, 76 FR 40420 (July 8, 2011); see also <http://www.fmcsa.dot.gov/intl-programs/trucking/trucking-program.aspx> (last accessed July 31, 2012).

⁷ The term “evidence of financial responsibility” refers to the forms filed with FMCSA by insurance companies, surety companies, or financial

institutions, in accordance with 49 CFR part 387. FMCSA considers the filing of such forms to be evidence that motor carriers and freight forwarders have the necessary insurance coverage, and brokers have the necessary surety bonds or trust fund agreements, in the minimum amounts prescribed by law. Unlike insurance policies, which may cover numerous claims cumulatively exceeding the dollar limits of the policy, broker bonds or trust fund

agreements may be depleted if the cumulative amounts of claims filed against the broker for non-performance of its legal obligations exceed the maximum amount of the bond or trust fund agreement. In accordance with sec. 32918(a) of MAP-21, the Agency will immediately suspend the registration of a broker or freight forwarder with a depleted or partially depleted bond.

provide changes to other information. However, such changes will not relieve an entity of complying with the biennial update requirement. Beginning on November 1, 2013 (the compliance date of the revised biennial update provision), the Agency will issue a warning letter 30 days in advance of a biennial update deadline to notify the entity that its USDOT Number will be deactivated if it fails to comply with the biennial update requirement.

This final rule also requires all entities to notify FMCSA of any changes to legal name, form of business, or address within 30 days of the precipitating change (new 49 CFR 390.201(d)(4)). This requirement will ensure the continuing relevance and viability of the USDOT Number as a unique identifier and repository for safety data associated with a particular entity. In particular, this requirement will allow FMCSA to monitor in a timely manner informational changes affecting all entities holding USDOT Numbers.

4. Identification Solely by USDOT Number

FMCSA will use the USDOT Number as its sole unique identifier for motor carriers, brokers, and freight forwarders subject to its regulations. The old registration systems administered by FMCSA used four identification numbers: The USDOT Number, which most motor carriers subject to FMCSA jurisdiction are required to obtain; the Motor Carrier (MC) Number, which was assigned to non-exempt for-hire motor carriers and brokers; the FF Number, which is assigned to freight forwarders;⁸ and the MX Number, which is assigned to Mexico-domiciled carriers operating within the U.S.-

Mexico international border commercial zones.⁹ The URS will discontinue issuance of MC, MX, and FF Numbers to those entities who register with FMCSA. However, today’s rule will not require motor carriers to remove the obsolete numbers from their vehicles, and those numbers may be used for other purposes such as advertising or marketing. But the Agency encourages carriers to omit these obsolete numbers from new or repainted vehicles.

5. User Fees

FMCSA is revising user fees for URS registration, insurance filings, and other services as detailed in Table 2 below. The Agency will charge a \$300 registration fee for all entities filing new registration applications. Currently, only non-exempt for-hire motor carriers, property brokers, and freight forwarders must pay a one-time registration fee to FMCSA of \$300. SAFETEA-LU provided that the fee for new applicants must as nearly as possible cover the costs of processing the registration, but shall not exceed \$300. The recently enacted MAP-21, however, removed this \$300 cap on the initial registration fee. FMCSA determined that the amount needed to cover the costs associated with processing the registration filings based on projections of annual new applicants and Agency processing costs substantially exceeded what could be collected through charging \$300 per applicant. Consequently, the October 26, 2011 URS supplemental notice of proposed rulemaking¹⁰ (SNPRM) proposed to charge the statutory maximum established by SAFETEA-LU for this final rule.

Although MAP-21 eliminated the \$300 limit, the final rule retains the \$300 fee proposed in the SNPRM

because the Agency has not developed preliminary estimates on appropriate fees to cover the full costs of operating its URS program, or issued for public comment a proposal concerning such fees. The Agency has opted to initiate, at a later date, a separate rulemaking proceeding to solicit public comment on this issue, rather than delay issuance of this final rule.

FMCSA is reducing the fee currently charged for reinstating operating authority registration after such authority has been revoked from \$80 to \$10. The Agency is eliminating the existing \$10 process agent designation filing fee in keeping with provisions in SAFETEA-LU.¹¹ The current \$10 fee for filings related to financial responsibility remains unchanged. The fees charged under URS will enable the Agency to recoup the costs associated with processing registration applications and administrative filings to the extent permitted by law. FMCSA retains the existing fees for self-insurance pending resolution of changes in these fees in a separate rulemaking.

The Agency codifies its existing practice of waiving filing fees for Federal Transit Administration (FTA) grantees. FMCSA also exempts any agency of the Federal government or a State or local government from paying filing fees or user fees to access or retrieve URS data for its own use. Generally, the Agency will charge for clerical, administrative, and information technology (IT) services involved in locating, copying, and certifying records. However, FMCSA will exempt any registered entity from paying fees to access or retrieve its own data. Additional fees are explained in the table below:

TABLE 2—URS USER FEES AS ESTABLISHED UNDER 49 CFR 360.3(f)

| Type of Proceeding | | Fee |
|-----------------------------|---|--------|
| Part I: Registration | | |
| (1) | An application for USDOT registration pursuant to 49 CFR part 390, subpart C. | \$300. |
| (2) | An application for motor carrier temporary authority to provide emergency relief in response to a national emergency or natural disaster following an emergency declaration under §390.23 of this subchapter. | \$100. |
| (3) | Biennial update of registration | \$0. |
| (4) | Request for change of name, address, or form of business | \$0. |
| (5) | Request for cancellation of registration | \$0. |
| (6) | Request for registration reinstatement | \$10. |
| (7) | Designation of process agent | \$0. |
| (8) | Notification of transfer of operating authority | \$0. |
| Part II: Insurance | | |

⁸ See 49 U.S.C. 13903.

⁹ See 49 U.S.C. 13902(c).

¹⁰ Supplemental Notice of Proposed Rulemaking, Unified Registration System, 76 FR 66506 (Oct. 26, 2011).

¹¹ SAFETEA-LU, § 4304, codified at 49 U.S.C. 13908(d)(2).

TABLE 2—URS USER FEES AS ESTABLISHED UNDER 49 CFR 360.3(f)—Continued

| Type of Proceeding | | Fee |
|--------------------|--|---|
| (9) | A service fee for insurer, surety, or self-insurer accepted certificate of insurance, surety bond, and other instrument submitted in lieu of a broker surety bond. | \$10 per accepted certificate, surety bond or other instrument submitted in lieu of a broker surety bond. |
| (10) | (i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD). | \$4,200. |
| | (ii) An application for original qualification as self-insurer for cargo insurance. | \$420. |

6. Evidence of Financial Responsibility

This final rule requires all for-hire motor carriers and private motor carriers that transport hazardous materials (HM) in interstate commerce, as well as property brokers and freight forwarders, to electronically file evidence of financial responsibility to receive USDOT registration. Existing regulations require only non-exempt for-hire motor carriers, property brokers, and household goods freight forwarders performing transfer, collection, and delivery services, to file evidence of financial responsibility with the Agency, and they allow hard copy submissions. SAFETEA—LU section 4303(b) amended 49 U.S.C. 13906 to require “all persons, other than a motor private carrier, registered with the Secretary to provide transportation or service as a motor carrier” to file evidence of financial responsibility with the Agency. Section 13906 also requires all property brokers and all freight forwarders performing transfer, collection, and delivery services to file evidence of financial responsibility with the Agency. FMCSA interprets these statutory requirements to mandate financial responsibility filings by all for-hire motor carriers, freight forwarders, and property brokers.

The Agency also requires certain private motor carriers transporting HM in interstate commerce to file evidence of financial responsibility with the Agency. These carriers are already required by statute and regulations to obtain and maintain Bodily Injury and Property Damage (BI&PD) insurance; this final rule requires the filing of evidence of such insurance with FMCSA. The Agency will be addressing the financial responsibility requirements for private non-hazardous material carriers separately from the URS final rule.

The Agency is requiring filings of evidence of financial responsibility for new applicants to be completed within 90 days of the date that an application is submitted (49 CFR 390.205(a)), or within 90 days of the date that the notice of application is published in the

FMCSA Register, if a carrier is also seeking operating authority registration (49 CFR 365.109). The Agency is not providing a grace period for financial responsibility filing by existing exempt for-hire motor carriers or private motor carriers hauling HM. Such carriers must file by the compliance date of the final rule.

FMCSA is requiring insurers, surety companies, and financial institutions to convert to a web-based format when electronically filing evidence of financial responsibility (49 CFR 387.323). FMCSA currently accepts insurance filings in three formats: paper filings, electronic (ASCII) filings, and web-based filings. Web-based filings will promote efficiencies for FMCSA, insurers, sureties, financial institutions, and the public.

7. Process Agent Designations

FMCSA requires all for-hire and private motor carriers, brokers, and freight forwarders to designate process agents via electronic submission as a precondition for receiving USDOT registration and/or operating authority registration, when applicable (49 CFR 366.1). Current regulations require only entities that must register under 49 U.S.C. chapter 139 to designate a process agent (i.e., non-exempt for-hire motor carriers, property brokers, and freight forwarders), and the regulations permit hard copy submissions. Private motor carriers are already mandated by 49 U.S.C. 503 to designate process agents, although FMCSA has not until now promulgated a rule requiring them to do so. Although there is no statutory requirement that exempt for-hire carriers file process agent designations, the Secretary is authorized under 49 U.S.C. 31133(a)(8) to prescribe recordkeeping and reporting requirements for motor carriers and other entities subject to the Agency’s safety oversight. Thus, FMCSA will extend the process agent designation requirement to include such carriers, as well as private carriers, to enhance the public’s ability to serve legal process on responsible individuals when seeking

compensation for losses resulting from a crash involving a commercial motor vehicle (CMV) operated by any motor carrier, regardless of the carrier’s regulatory status.

The final rule also makes revisions to the Agency’s designation of process agent regulations to provide greater certainty that process agent designations are accurate and that process agents are able to receive and serve on their client principals notices in court or administrative proceedings against regulated entities. Current regulations permit a carrier to fulfill its process agent designation requirements by listing an association or corporation that has filed with FMCSA a list of process agents for each State (blanket agent). To help ensure that such designations are up to date, new § 366.6(b) requires that changes to designations be reported to FMCSA within 30 days of the change. In response to public comments, the Agency has added, in § 366.6(c), a new requirement that a motor carrier, broker, or freight forwarder report changes in name, address, or contact information to its process agents and/or the company making a blanket designation on its behalf within 30 days of the change. Finally, the Agency has added § 366.6(d) to require process agents and blanket agents who file process agent designations on behalf of motor carriers, brokers, and freight forwarders to report termination of their contracts to provide process agent services for designated entities within 30 days of termination.

The Agency is requiring that new filings of designation of process agents be completed within 90 days of the date that an application is submitted, or within 90 days of the date that the notice of the application is published in the FMCSA Register if a carrier is also seeking operating authority registration under 49 CFR 365.109. An applicant is prohibited from operating until these filings are made and its USDOT Number has been activated. Existing private and exempt for-hire motor carriers will have a 180-day grace period (starting from the final rule compliance date) to file process agent designations. (49 CFR

366.2(b)). The grace period is necessary to accommodate the anticipated high volume of new filings under the URS.

8. Transfers of Operating Authority

FMCSA amends its regulations to require notification of transfers of operating authority registration. This final rule revises subpart D of title 49 CFR part 365, *Transfers of Operating Authority*, to reflect the Agency's current statutory authority over transfers of operating authority. Although FMCSA proposed to repeal this subpart, the Agency has since determined that it is in the public interest to require non-exempt for-hire motor carriers, property brokers, and freight forwarders that register under chapter 139 to notify FMCSA when these entities merge, transfer, or lease their operating rights. The Agency no longer accepts or reviews requests for transfers of operating authority. FMCSA believes, however, that it is necessary to require the reporting aspects of the regulations governing these transactions. These reporting requirements will enable the Agency to identify the parties responsible for the business operations of a for-hire motor carrier, broker, or freight forwarder.

9. Impacts on State Registration Systems

This final rule allows motor carriers registering their vehicles in States that participate in the Performance and Registration Information System Management (PRISM) Program to satisfy the USDOT registration and biennial update requirements by electronically filing the required information with the State¹² according to its policies and procedures, provided the State has integrated the USDOT registration/update capability into its vehicle registration program (49 CFR 390.203). If State procedures do not allow a motor carrier to file the Form MCSA-1 or to submit updates within the required 24-month window, the motor carrier will need to complete such filing directly with FMCSA. The Agency plans to work collaboratively with PRISM States to implement IT specifications to ensure a seamless transition to the URS.

¹² As used in this context, State refers to the agency in a PRISM Program State responsible for CMV registration (for example, a Department of Motor Vehicles, Motor Vehicle Administration, State Driver Licensing Agency, or Taxation and Revenue Authority).

10. Compliance Dates

The compliance date for the majority of this final rule is 26 months from the date of publication in the **Federal Register**. We have set this date to ensure sufficient time to develop URS. The Agency determined that enforcement of the biennial update requirement through the imposition of civil penalties is so important that the compliance date for this requirement (49 CFR 390.19(b)(4)) will occur as soon as possible (November 1, 2013). Motor carriers and intermodal equipment providers are already required to update their registration information every 24 months under § 390.19. The Agency believes it is very important for regulated entities to update their registration information biennially. Timely updates are critical to FMCSA's compliance and enforcement program because they increase the likelihood that the Agency will be able to accurately identify, locate, and contact regulated entities to carry out its mission. The Agency, therefore, is implementing the regulatory provision stating that anyone failing to comply with the biennial update requirement is subject to civil penalties beginning November 1, 2013 rather than waiting an additional 24 months to implement this significant enforcement tool. For similar reasons, FMCSA is implementing the new enforcement provision that states the penalties for operating a CMV providing transportation in interstate commerce without a USDOT Registration and an active USDOT Number (§ 392.9b).

C. Benefits and Costs¹³

FMCSA classified the costs and benefits calculated in the regulatory evaluation as either changes in fees, resource costs,¹⁴ or benefits. Changes in fees are neutral and will not result in a net gain (benefit) or loss (cost) from a societal perspective. For example, if FMCSA were to eliminate a fee previously paid by motor carriers, that group would receive a benefit. However, the benefit would be offset by an equal cost to the Agency in the form of lost revenues. Unlike changes in fees, changes in resource costs and benefits do result in either a cost or a benefit to society. The Agency estimated the costs and benefits associated with

¹³ Calculations presented in this section may be subject to rounding errors.

¹⁴ Resource costs are expenditures of capital or labor incurred by the industry or Agency.

implementing the following major URS provisions:

- A new requirement for private and exempt for-hire motor carriers, cargo tank facilities, and intermodal equipment providers (IEPs) to pay FMCSA registration fees;¹⁵
- A new requirement for private carriers and exempt for-hire motor carriers to acquire the services of process agents and file proof of designations with FMCSA;
- A new requirement for private HM and exempt for-hire motor carriers to file proof of liability insurance with FMCSA—these entities are already subject to the financial responsibility requirements of 49 CFR part 387;
- A reduction of the current reinstatement fee for non-exempt for-hire motor carriers, brokers, and freight forwarders and new reinstatement fees for exempt for-hire and private HM carriers;
- Elimination of FMCSA review and approval of operating authority registration transfers, including the \$300 fee, while still requiring notification of transfers of operating authority;
- Elimination of filing fees for name changes;
- Introduction of new Form MCSA-1 filing requirements; and
- Mandatory electronic filing of Form MCSA-1.

Table 3 presents the total benefits of the URS rule for each provision. For the industry, total benefits amount to \$1.4 million and fee savings amount to \$7.3 million over the 10-year analysis period (2014–2023). For the Agency, total benefits during this period amount to \$27.4 million and an additional \$65.3 million in fees received.

This rule will improve the ability of FMCSA safety investigators to locate small and medium-sized private and exempt for-hire motor carriers for enforcement action because investigators will be able to work with the newly-designated process agents to locate hard-to-find motor carriers. The Agency believes that a more efficient Compliance, Safety, Accountability (CSA) Program due to the URS Rule will lead to increased safety benefits. However, to present a conservative estimate of the benefits of the URS rule, we only estimate the benefit of time saved by the Agency due to a more efficient CSA Program.

¹⁵ Throughout the Regulatory Evaluation, cargo tank facilities and IEPs are referred to as "other entities."

TABLE 3—TOTAL BENEFITS OF URS RULE
[10-year present value]

| URS Rule provision | Benefits | | Fees received/saved | |
|---|------------------|-------------------|---------------------|-------------------|
| | Industry | Agency | Industry | Agency |
| Mandatory Electronic Filing | \$0 | \$20,922,981 | \$0 | \$0 |
| Eliminating Transfer/Name Change Requirements | 0 | 0 | 2,522,258 | 0 |
| New Applicant Fee | 0 | 0 | 0 | 63,583,722 |
| Insurance Filing | 0 | 0 | 0 | 1,691,808 |
| Process Agent Filing | 0 | 3,130,736 | 0 | 0 |
| Cancellations and Reinstatements | 0 | 0 | 4,808,126 | 0 |
| New MCSA-1 Application Form | 1,354,631 | 3,391,089 | 0 | 0 |
| Total Benefits | 1,354,631 | 27,444,807 | 7,330,384 | 65,275,530 |

Note: Numbers may not add due to rounding.

Table 4 presents the total costs associated with the URS final rule. The URS final rule will result in an anticipated resource cost to industry of \$26.4 million and a resource cost to

FMCSA of approximately \$135,000 over the 10-year analysis period (2014–2023).¹⁶ The total societal cost of the URS final rule is thus approximately \$26.5 million (\$26,380,935+\$135,158).

The industry also will pay additional fees of \$65.3 million, and the Agency will experience an average decrease in fee revenues of \$7.3 million over the 10-year analysis period.

TABLE 4—TOTAL COSTS OF URS RULE
[10-year present value]

| URS Rule provision | Resource costs | | Fees paid/lost | |
|---|-------------------|----------------|-------------------|------------------|
| | Industry | Agency | Industry | Agency |
| Mandatory Electronic Filing | \$538,894 | \$0 | \$0 | \$0 |
| Eliminating Transfer/Name Change Requirements | 38,236 | 0 | 0 | 2,522,258 |
| New Applicant Fee | 0 | 0 | 63,583,722 | 0 |
| Insurance Filing | 676,723 | 0 | 1,691,808 | 0 |
| Process Agent Filing | 25,067,012 | 0 | 0 | 0 |
| Cancellations and Reinstatements | 60,070 | 135,158 | 0 | 4,808,126 |
| New MCSA-1 Application Form | 0 | 0 | 0 | 0 |
| Total Costs | 26,380,935 | 135,158 | 65,275,530 | 7,330,384 |

Note: Numbers may not add due to rounding.

FMCSA calculated the net societal benefits of the URS final rule by subtracting the total (industry and Agency) 10-year costs from the total 10-year benefits for each provision. The cost to industry associated with fee changes is offset by an equal gain to FMCSA due to increased revenues from

fees. Table 5 presents the net benefits of the proposed rule. Total societal net benefits of the URS final rule are estimated to be \$2.3 million, negative \$25.0 million for the industry (which is less than \$50 per entity) and positive \$27.3 million for FMCSA. The industry will pay \$57.9 million more in fees

(total fees paid and fees saved). This increase in fees to the industry is offset by a total \$57.9 million increase in fees received by FMCSA (representing a net of fees lost and fees received). FMCSA believes the fees and costs of the URS rule will not lead to a reduction in industry competitiveness.

TABLE 5—NET BENEFITS OF URS RULE
[10-year present value]

| URS Rule provision | Net benefits | | Net fees | |
|---|---------------------|-------------------|---------------------|-------------------|
| | Industry | Agency | Industry | Agency |
| Mandatory Electronic Filing | – \$538,891 | \$20,922,981 | \$0 | \$0 |
| Eliminating Transfer/Name Change Requirements | – 38,236 | 0 | 2,522,258 | – 2,522,258 |
| New Applicant Fee | 0 | 0 | – 63,583,722 | 63,583,722 |
| Insurance Filing | – 676,723 | 0 | – 1,691,808 | 1,691,808 |
| Process Agent Filing | – 25,067,012 | 3,130,736 | 0 | 0 |
| Cancellations and Reinstatements | – 60,070 | – 135,158 | 4,808,126 | – 4,808,126 |
| New MCSA-1 Application Form | 1,354,631 | 3,391,089 | 0 | 0 |
| Net Benefits | – 25,026,304 | 27,309,648 | – 57,945,146 | 57,945,146 |

¹⁶ The resource cost to FMCSA for building the IT system is not included in the economic analysis.

TABLE 5—NET BENEFITS OF URS RULE—Continued
[10-year present value]

| URS Rule provision | Net benefits | | Net fees | |
|-----------------------------|--------------|--------|----------|--------|
| | Industry | Agency | Industry | Agency |
| Societal Net Benefits | 2,283,344 | | 0 | |

Note: Numbers may not add due to rounding.

IV. Background

A. Legal Authority

FMCSA promulgates the Unified Registration System final rule in response to sec. 103 of the ICC Termination Act of 1995 (ICCTA) [Pub. L. 104–88, 109 Stat. 803, 888, Dec. 29, 1995] and subtitle C of title IV of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1144, 1761, Aug. 10, 2005]. This rulemaking action is also consistent with the requirements of 31 U.S.C. 9701 and 49 U.S.C. 13301, 31133(a)(8), 31134, and 31136(a).

Pursuant to 49 U.S.C. 13908, which was enacted into law by section 103 of the ICCTA, Congress directed the Secretary in cooperation with the States, and after notice and opportunity for public comment, to issue regulations to replace four existing information systems with a single, on-line, Federal system. These Agency systems were: (1) The USDOT identification number system; (2) the since-repealed Single State Registration System (SSRS) under 49 U.S.C. 14504; (3) the registration system contained in 49 U.S.C. chapter 139; and (4) the financial responsibility information system under 49 U.S.C. 13906.

Congress also directed the Secretary, in developing this rulemaking, to consider whether to integrate the requirements of 49 U.S.C. 13304 regarding service of process in court proceedings into the new system. Congress intended for the new system to serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic motor carriers, brokers, and freight forwarders, and other entities required to register with the Department as well as information on safety fitness and compliance with minimum levels of financial responsibility.

The language of 49 U.S.C. 13908(c), as enacted by the ICCTA, also authorized the Secretary to “establish, under section 9701 of title 31 [of the U.S. Code], a fee system for registration and filing evidence of financial responsibility under the new system under subsection (a). Fees collected

under the fee system shall cover the costs of operating and upgrading the registration system, including all personnel costs associated with the system.”

Pursuant to the Unified Carrier Registration Act of 2005, subtitle C of title IV of SAFETEA–LU, Congress modified some of the elements of the unified registration system required by the ICCTA. In particular, SAFETEA–LU changed the scope of the Secretary’s responsibility to develop a registration system to replace the SSRS. It also modified the requirement that fees collected under the new system cover the costs of operating and upgrading the registration system and placed limitations on certain fees that the Agency could charge. Section 4304 of SAFETEA–LU reiterated the congressional requirement for a single, on-line, Federal system to replace the four individual systems identified under 49 U.S.C. 13908 and also mandated inclusion of the service of process agent systems under 49 U.S.C. 503 and 13304. SAFETEA–LU refers to the Federal online replacement system as the Unified Carrier Registration System. The Agency considers the URS announced in both the May 2005 notice of proposed rulemaking (NPRM) and the October 2011 SNPRM to be the Unified Carrier Registration System.¹⁷

Notwithstanding the reference to 49 U.S.C. 14504 in section 4304 of SAFETEA–LU, section 4305(a) of SAFETEA–LU repealed 49 U.S.C. 14504, which governed the SSRS, effective January 1, 2007. The legislative history indicates that the purpose of the UCR Plan and Agreement is both “to replace the existing outdated system [SSRS]” for registration of interstate motor carrier entities with the States and to “ensure that States don’t lose current revenues derived from SSRS”

¹⁷ Under section 4305 of SAFETEA–LU (which enacted 49 U.S.C. 14504a), Congress replaced the SSRS with the Unified Carrier Registration (UCR) Agreement. Registration and payment of fees under the UCR Agreement are not the responsibility of FMCSA; the SSRS was, and the UCR Plan and Agreement is, administered by the participating States. However, as provided by 49 U.S.C. 13908(b), information about the compliance of entities subject to the UCR Agreement will be available through the URS when that system has been developed.

(S. Rep. 109–120, at 2 (2005)).¹⁸ Today’s final rule incorporates the requirements imposed by SAFETEA–LU.

Title 31 U.S.C. 9701 (the so-called “User Fee Statute”) establishes general authority for agencies to “charge for a service or thing of value provided by the Agency.” Accordingly, FMCSA is authorized to charge fees under URS that will enable the Agency to recoup costs associated with processing registration applications and administrative filings. Prior to the enactment of the Moving Ahead for Progress in the 21st Century Act (MAP–21),¹⁹ 49 U.S.C. 13908(d) required establishment of registration fees that, as nearly as possible, cover the costs of processing the registration, provided the fees do not exceed \$300. MAP–21 removed the \$300 fee cap.

Section 206 of the Motor Carrier Safety Act of 1984 [Pub. L. 98–554, title II, 98 Stat. 2832, October 30, 1985, 49 U.S.C. App. 2505, recodified at 49 U.S.C. 31136] requires the Secretary to prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for CMVs. At a minimum, the regulations shall ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)). Section 32911 of MAP–21 added a new subsection (5) to sec. 31136(a), requiring FMCSA regulations to ensure that an operator of a CMV is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a CMV in violation of a regulation promulgated under section 31136 or 49 U.S.C. chapters 51 or 313.

Today’s final rule streamlines the existing registration process and ensure

¹⁸ The Senate bill’s provisions were enacted “with modifications.” H. Conf. Rep. No. 109–203, at 1020 (2005).

¹⁹ Public Law 112–141, 126 Stat. 405. MAP–21 was signed into law on July 6, 2012.

that FMCSA can more efficiently track motor carriers, freight forwarders, brokers, intermodal equipment providers and cargo tank facilities to maximize safety. It implements the mandate under 49 U.S.C. 31136(a)(1) that FMCSA's regulations ensure that CMVs are maintained and operated safely. Because the rule applies almost entirely to motor carriers and imposes no operational responsibilities on drivers, FMCSA believes that coercion of drivers to violate the rule, in contravention of section 31136(a)(5), will not occur. This regulation will not impair a driver's ability to operate vehicles safely (49 U.S.C. 31136(a)(2)), and will not impact the physical condition of drivers (49 U.S.C. 31136(a)(3) and (4)).

Legal authority for requiring notification to the Agency of transfers of operating authority registration (and for requiring exempt for-hire motor carriers to file process agent designations) can be found at 49 U.S.C. 13301 and 31133. Under 49 U.S.C. 13301(b), the Secretary has broad authority to obtain from persons information regarding carriers and brokers the Secretary decides is necessary to carry out the Agency's commercial regulatory responsibilities, as enumerated in title 49, subtitle IV, part B. The term "carriers" includes freight forwarders (49 U.S.C. 13102(3)). In addition, 49 U.S.C. 31133(a)(8) authorizes the Secretary to prescribe recordkeeping and reporting requirements for motor carriers and other entities subject to the Agency's safety oversight.

B. Regulatory History

The Federal Highway Administration (FMCSA's predecessor agency) issued an advance notice of proposed rulemaking (ANPRM) announcing plans to develop a single, online, Federal information system in August 1996.²⁰ The ANPRM solicited specific detailed information from the public about each of the systems to be replaced by the URS, the conceptual design of the URS, uses and users of the information to be collected, and potential costs.

On May 19, 2005, FMCSA published an NPRM describing a proposal to merge all of the prescribed information systems except the SSRS into a unified, online Federal system.²¹ The Agency subsequently revised the May 2005 proposal in an October 26, 2011 SNPRM to incorporate new congressionally mandated provisions in SAFETEA-LU,

and modified certain proposals in response to comments to the NPRM.²² The SNPRM also included changes necessitated by final rules published subsequent to publication of the NPRM that directly impacted the URS. In the SNPRM, the Agency substantially altered the regulatory drafting approach proposed in the NPRM by creating a straightforward requirement for all entities to register and biennially update registration information under the new URS and by compiling a centralized cross-reference to existing safety and commercial regulations necessary for compliance with the registration requirements. The Agency abandoned previous efforts to reorganize all registration and new entrant requirements under a single part under title 49, Code of Federal Regulations (CFR) chapter III.

MAP-21 affects a number of rules that FMCSA is currently working on, including this one. Because MAP-21 was enacted several months after the close of the comment period for the SNPRM, the public has not had an opportunity to comment on provisions of the Act that may have an impact on the URS. Rather than delay issuance of this final rule, and to ensure an appropriate opportunity for public participation in the changes necessitated by MAP-21, the Agency will initiate a separate rulemaking proceeding(s) to address most of the needed changes. In some cases, these changes will not require rulemaking and will be addressed during the implementation phase of the URS. In other cases, minor or technical changes that involve little exercise of Agency discretion in the MCSA-1 Form and Instructions, which would not require notice and comment rulemaking, have been made to conform with MAP-21.²³

²² Supplemental Notice of Proposed Rulemaking, Unified Registration System, 76 FR 66506 (Oct. 26, 2011).

²³ Under section 553(b)(3)(B) of the Administrative Procedure Act [5 U.S.C. 553(b)(3)(B)] (APA), notice and comment rulemaking is not required when the Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The changes made in response to MAP-21 were limited to modifying the MCSA-1 Form and Instructions to incorporate new statutory language regarding affiliations with other regulated entities. The SNPRM had proposed different, but similar language; thus the modification was clearly within the scope of the issues that were subject to notice and comment in the SNPRM. For this reason, the agency believes that, consistent with the APA, providing further opportunity for further public comment on these limited changes is unnecessary.

V. Discussion of Comments

A. Summary of Comments

FMCSA received comments to the URS SNPRM from nine respondents: American Trucking Associations (ATA),²⁴ Greyhound, Inc. (Greyhound),²⁵ the Missouri Department of Transportation (MoDOT),²⁶ the National Automobile Dealers Association—American Truck Dealers Division (NADA-ATDD),²⁷ the National Private Truck Council (NPTC),²⁸ the National School Transportation Association (NSTA),²⁹ the National Tank Truck Carriers (NTTC),³⁰ the Owner-Operator Independent Drivers Association (OOIDA),³¹ and the Transportation Intermediaries Association (TIA).³² These entities consist of industry trade groups, a State government, and a motor carrier.

Respondents generally supported the concept of a unified registration system as described in the SNPRM, but some expressed concerns about potential negative impacts on Federal/State partnership initiatives such as the UCR Agreement, the PRISM Program, the CSA Program, and the New Entrant Safety Assurance Program. There were also comments about the proposed Form MCSA-1 being too lengthy and overly complicated to use. OOIDA, ATA, and MoDOT proposed extensive corrections, revisions, and enhancements to the proposed form and instructions. NTTC commented that it wished to be associated with ATA's comments.

B. Overly Complex Application Form

NPTC, ATA, and NADA-ATDD commented that the proposed MCSA-1 Form and its Instructions were overly complex. NPTC commented that the proposed MCSA-1 Form was too long and complicated for applicants to use without professional assistance. NADA-ATDD commented that the proposed form was unnecessarily long and overly complex for FMCSA to expect accurate compliance. Similarly, ATA commented that the proposed Form MCSA-1 was too lengthy, awkward, and complicated to encourage, or even permit, compliance by entities that would have to use it. However, these commenters did express support for an online application process.

²⁴ Docket No. FMCSA-1997-2349-0184.

²⁵ Docket No. FMCSA-1997-2349-0182.

²⁶ Docket No. FMCSA-1997-2349-0186.

²⁷ Docket No. FMCSA-1997-2349-0188.

²⁸ Docket No. FMCSA-1997-2349-0187.

²⁹ Docket No. FMCSA-1997-2349-0185.

³⁰ Docket No. FMCSA-1997-2349-0189.

³¹ Docket No. FMCSA-1997-2349-0190.

³² Docket No. FMCSA-1997-2349-0183.

²⁰ Advance Notice of Proposed Rulemaking, Motor Carrier Replacement Information/Registration System, 61 FR 43816 (Aug. 26, 1996).

²¹ Notice of Proposed Rulemaking, Unified Registration System, 70 FR 28990 (May 19, 2005).

Specifically, ATA commented that while it supported the requirement to file the MCSA-1 Form online, the proposed MCSA-1 was not well-suited for online filing because a longer form requires different treatment online. If the MCSA-1 Form could not be simplified, this commenter recommended that the form be split into a number of separate forms, along either functional lines or according to the type of entity required to report. NADA-ATTD strongly urged FMCSA to consider revisions to the MCSA-1 to make it more applicable to small, private motor carriers. This commenter recommended that the Agency issue another SNPRM outlining these changes before implementation of the URS. NADA-ATTD commented that FMCSA had not explained sufficiently why the substantial additions to this form were necessary, especially for small motor carriers.

FMCSA Response. The Agency included the proposed Form MCSA-1 and Instructions in the SNPRM to illustrate the new unified application form around which the URS will be built, to disclose the complete list of registration information that the Agency will collect from the public and record in the URS, and to announce that the Agency will no longer require the individual forms associated with safety and commercial registration today. The paper Form MCSA-1 and Instructions included in the SNPRM was necessary to provide notice of and seek comment on the information FMCSA was proposing to collect and the Agency's explanation of those data fields. Form MCSA-1 is not intended to be completed in hardcopy but as an online, interactive application.

When the URS program is fully implemented, the electronic version of the Form MCSA-1 will be considerably less complex and lengthy than the paper version because URS will guide the applicant to only those portions of the MCSA-1 Form pertinent to the particular applicant's operations, thus skipping all irrelevant sections that do not apply. The application process will mimic the interactive, interview format of popular tax preparation software, and will use software similar to that used by the U.S. Department of Education in the Free Application for Student Aid (FAFSA), in contrast with a static PDF fillable form. Applicants will be asked only those questions applicable to their specific operations. An applicant's answers to the initial MCSA-1 questions, including operation classification (Section A, question 15) and reason for filing (pre-Section A), will determine which sections of the

MCSA-1 Form that entity will be subsequently prompted to fill. As suggested in ATA's comments, an applicant will not need to view the sections of the MCSA-1 Form that were not applicable to that entity. The Agency's goal is to eliminate as much of the guesswork as possible from the electronic registration process and to receive accurate information. As explained throughout this final rule, FMCSA received and has adopted many helpful suggestions for corrections, improvements, and clarifications to the MCSA-1 Form and Instructions. The updated MCSA-1 Form and Instructions are available in the docket FMCSA-1997-2349 for the public to view.

The online, interactive application process will particularly assist small carriers by requiring applicants to view only the portions of the MCSA-1 Form that are relevant to them, based on their answers to the first few questions. Thus, the electronic filing process will save a small carrier the needless effort of reading through portions of a form or instructions that they need not submit. Questions will display on the left side of the screen and a pop-up screen will appear on the right with instructions, as well as examples of acceptable responses.

To explain how the system will work, we will walk through a mock registration scenario for a private non-HM property motor carrier we will call "Example Private Trucking" (EPT). Since EPT is applying to operate as a private carrier, the regulations for obtaining operating authority registration under 49 CFR part 365, or filing evidence of financial responsibility under 49 CFR part 387, would not apply. To obtain a USDOT registration, EPT will be prompted to complete only 5 of the 16 sections on Form MCSA-1: Section A (Business Description); Section B (Operation Classification); Section M (Compliance Certifications); Section N (Applicant's Oath); and Section P (Filing Fee). The online URS would also prompt EPT to designate a process agent. After EPT completes the registration information and process agent designation, FMCSA would immediately issue an active USDOT Number and flag the motor carrier for participation in the New Entrant Safety Assurance Program. The biennial update will require EPT to submit even less information than the initial registration process.

C. Insufficient Technical Information

ATA expressed concern about the lack of technical details regarding the planned URS design in the SNPRM. ATA stated that because the URS is a

data-processing system, the technical details of its design are of critical importance to its eventual effectiveness in accomplishing its stated purpose and functions.

In particular, ATA expressed concern about the lack of details regarding the proposal that motor carriers could fulfill their biennial registration update obligations by filing with their base States under the PRISM Program. ATA stated that this procedure would be difficult to coordinate, and commented that the SNPRM disclosed so little detail with respect to these plans that it could not assess their feasibility, or their chances for success. Therefore, this commenter recommended that FMCSA provide a clearer description of what is intended in connection with PRISM State registration in an additional SNPRM. ATA commented that the public interest in this key element of the registration function was too great for the matter to be handled by amendments to the PRISM procedures.

FMCSA Response. With regards to system specifications, FMCSA is unable to provide these details at this time because the Agency is completing the regulatory aspects of the URS project in advance of the completion of the IT system requirements development. The Agency has published several final rules with associated IT requirements that must be scheduled to coincide with imminent regulatory compliance dates earlier than the URS compliance date. Meanwhile, each year the Agency delays finalization of the URS rule increases the possibility that new requirements and corresponding system changes could be imposed. The Agency opted to complete the URS rulemaking project separately from the associated IT development project to provide adequate notice of the new registration requirement, and set a compliance date that builds in sufficient lead time for regulatory compliance and system development. The Agency plans to work collaboratively with PRISM States to implement IT specifications to ensure a seamless transition to the URS.

D. Applicability

1. Cargo Tank Program

ATA recommended that FMCSA's cargo tank registration program be excluded from the URS, or at least not included in Form MCSA-1. To support its recommendation, ATA asserted that the cargo tank program's exclusion would help to prune the MCSA-1 Form to a more manageable size. ATA further stated that the cargo tank program is not

per se a transportation program,³³ and can reasonably be handled in another manner.

FMCSA Response. The Agency believes all FMCSA-regulated entities must be subject to the URS registration requirement because section 4304 of SAFETEA-LU amended 49 U.S.C. 13908(b) to require the Federal on-line replacement system to:

“serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic motor carriers, motor private carriers, brokers, freight forwarders, and others required to register with the U.S. Department of Transportation, including information with respect to a carrier’s safety rating, compliance with required levels of financial responsibility, and compliance with the provisions of 49 U.S.C. 14504a.” (Emphasis added).

As explained in the SNPRM, FMCSA interprets this statutory provision as authorizing the inclusion of all entities regulated by FMCSA in the URS.³⁴ Although the cargo tank registration program is not a motor carrier program, FMCSA believes that merging the Cargo Tank Registration Process with the URS will best further the congressional intent to create a unified system of information and registration, as expressed in the SAFETEA-LU provision quoted above.

Moreover, Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations at 49 CFR part 107, subpart F govern the registration procedures for persons who are engaged in the manufacture, assembly, inspection and testing, certification, or repair of a cargo tank or a cargo tank motor vehicle manufactured in accordance with a DOT specification under subchapter C of 49 CFR chapter III or under terms of a special permit issued under 49 CFR part 107.³⁵ Under § 107.502(d), PHMSA requires cargo tank facilities to complete their registration requirements with FMCSA. As previously mentioned, the electronic Form MCSA-1 will be designed so only cargo tank facility applicants would encounter the questions that apply exclusively to cargo tank registration.

See section V.M for a discussion of FMCSA’s rationale not to collect additional cargo tank information on the Form MCSA-1.

³³ In its comments to the NPRM, ATA stated that the cargo tank registration program is not a motor carrier program because it applies only to persons engaged in the manufacture, assembly, inspection and testing, certification, or repair of a cargo tank. Docket No. FMCSA-1997-2349-0168.

³⁴ See 76 FR 66506, 66512-66513.

³⁵ See 49 CFR part 107, subpart F, *Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers.*

2. Certain Intrastate HM Carriers

NTTC recommended that FMCSA require all transporters of bulk HM in tank vehicles to register with the Agency using Form MCSA-1, including intrastate-only carriers. This commenter stated “that while it believed all intrastate [HM] carriers should be required to register with FMCSA,” it was limiting its request “to those carriers who transport [hazardous] materials in bulk in tank vehicles.” NTTC expressed concern that under the CSA Program, HM carriers will only be measured against other interstate carriers or intrastate carriers from States that require them to get a USDOT Number. NTTC asserted that because only 31 States require intrastate HM carriers to obtain a USDOT Number, the Safety Measurement System HM Behavioral Analysis Safety Improvement Category (BASIC) may not truly measure HM carriers against their peers since it will not have information on all HM carriers.

NTTC encouraged the DOT to incorporate into its registration process a requirement whereby intrastate tank truck carriers of HM register with FMCSA. NTTC commented that if this rule is not the appropriate vehicle to require registration of intrastate tank truck carriers of HM with FMCSA, then it requested that the Department consider its comment submission to be a petition for rulemaking. NTTC commented that a “OneDOT” approach in the near term would be to require that any HM tank truck carrier applying to register with PHMSA must first be registered with FMCSA. This commenter stated that the PHMSA transporter registration program does not exclude intrastate carriers.

FMCSA Response. Generally, the Agency does not have authority to regulate motor carriers that operate exclusively in intrastate commerce because the statutes on which most of FMCSA’s commercial regulations and safety regulations are based apply primarily to transportation in interstate commerce.³⁶ The only Federal safety regulations applicable to motor carriers that operate exclusively in intrastate commerce are the commercial driver’s license (CDL) requirement for drivers operating commercial motor vehicles (CMVs) as defined in 49 CFR 383.5; controlled substances and alcohol

³⁶ See 49 U.S.C. 31132(1) (defining “commercial motor vehicle” for purposes of safety regulation as “a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property . . .”) (emphasis added); 49 U.S.C. 13501 (giving FMCSA general jurisdiction over transportation in interstate and foreign commerce for purposes of commercial regulation).

testing for all persons required to possess a CDL; minimum levels of financial responsibility for intrastate transportation of certain quantities of HM; applicable portions of the HM regulations in 49 CFR parts 100-180; and the requirement to obtain a Hazardous Materials Safety Permit (HMSP). As a result, the Agency will not accommodate this request at this time. The Agency, however, will accept NTTC’s filing as a petition for rulemaking, and will handle the issue at a later date.

3. Hazardous Materials Safety Permit Applicants

The SNPRM table entitled “Entities Required to Register under the Unified Registration System” explained that an HMSP applicant was a “motor carrier that transports in interstate or intrastate commerce any of the HM, in the quantity indicated for each, listed under 49 CFR 385.403.”³⁷ NTTC recommended that FMCSA change this SNPRM table so that the entry that described HMSP applicants would read as follows: “A motor carrier that transports in interstate or intrastate commerce any of the HM, in the quantity indicated for each, listed under 49 CFR 172.101.”

FMCSA Response. FMCSA intentionally referenced the list of HM and quantities in 49 CFR 385.403, because the HMSP is not required for every hazardous material listed under 49 CFR 172.101 titled, “Table of Hazardous Materials and Special Provisions.” The HMSP is required only for the HM transported in an amount or manner listed under § 385.403.

Under 49 U.S.C. 5109(b), Congress authorized the Secretary to prescribe the types and quantities of HM which are subject to an HMSP, stipulating that the list must, at a minimum, include the four types of HMs listed in section 5109(b). The Secretary delegated responsibility for implementing section 5109 to the FMCSA Administrator. See 49 CFR 1.87(d)(2). In 2004, FMCSA published a final rule establishing a national HMSP program for motor carriers that transport in interstate or intrastate commerce the HM listed and transported in the amount or manner prescribed in § 385.403(a)-(f).³⁸

4. Mexico-Domiciled Motor Carriers

MoDOT commented that the Agency should exclude all Mexican carriers from completing Form MCSA-1, including carriers with operations

³⁷ See 76 FR 66506, 66514.

³⁸ See *Final Rule, Hazardous Materials Safety Permits*, 69 FR 39350 (June 30, 2004).

limited to the border commercial zones. This commenter asserted that it is confusing to have some of the Mexican carriers complete this form and others complete the old OP-1(MX) and MCS-150 forms.

FMCSA Response. The Agency is adopting the approach proposed for Mexico-domiciled carriers in the SNPRM. FMCSA will subject all entities under its jurisdiction to the URS registration requirement, to the extent practicable. Applications from Mexico-domiciled long-haul carriers, however, will continue to be processed separate from the URS because the U.S.-Mexico border is open to only those carriers participating in the pilot program with distinct requirements.³⁹ The North American Free Trade Agreement (NAFTA) authorized the Agency to apply different standards for long-haul Mexico-domiciled carriers due to concerns about regulatory disparities between Mexico and the United States. Because the results of the pilot program are still uncertain, it would be premature to include long-haul Mexico-domiciled carriers in the URS at this time. FMCSA may include such carriers in the URS in the future, if appropriate.

FMCSA disagrees with MoDOT that all Mexico-domiciled carriers, including those confined to the border commercial zones, should be excluded from the URS based on possible confusion. Commercial zone Mexico-domiciled carriers already file different forms, and are subject to different rules, than Mexico-domiciled long-haul carriers. Including Mexico-domiciled commercial zone carriers in the URS, moreover, is consistent with the statutory mandate to include foreign carriers in the system.

5. Non-Motor Carrier Leasing Companies

MoDOT requested that the Agency provide a specific definition for the term "leasing company" and instructions for how these entities should complete Form MCSA-1. According to MoDOT, there may be instances where such companies act as a motor carrier, but in other cases they do not. When the leasing company is not a motor carrier, MoDOT commented that the company needs to know how to complete the MCSA-1 Form, which sections apply to it, and how to report or not report its number of vehicles.

FMCSA Response. FMCSA contacted MoDOT to gain a clearer understanding

of this comment and learned it is actually a request for FMCSA to require non-motor carrier leasing companies to register in URS so that States have a source through which they can identify these entities to collect UCR Agreement fees.⁴⁰ Therefore, the Agency regards this as an "applicability" issue rather than a form-related one.

Under new FMCSA PRISM procedures that took effect on or about September 1, 2012, non-motor carrier leasing companies are no longer required to obtain USDOT Numbers. On August 9, 2010, FMCSA announced the elimination of "registrant-only" USDOT Numbers as part of the PRISM Program.⁴¹ As stated in that notice, FMCSA originally developed the concept of a registrant-only USDOT Number to identify registered owners of CMVs that are not motor carriers, but lease their CMVs to entities that are motor carriers. FMCSA concluded, however, that registrant-only USDOT Numbers were being used differently than the Agency intended, impeding its ability to track motor carriers' safety violations.

For example, in several cases, law enforcement personnel conducting inspections and crash investigations were presented with registrant-only numbers of the leasing companies providing the vehicles instead of the USDOT Numbers of the motor carriers operating the vehicles. In these instances, the data could not be assigned to the record of a motor carrier. Motor carriers that improperly used registrant-only numbers, therefore, were evading FMCSA safety oversight, including compliance reviews and New Entrant Safety Audits. If safety events are not properly attributed to the motor carrier operating the CMVs, FMCSA cannot factor those events into the motor carriers' safety ratings and other assessments. This situation results from the misidentification of a vehicle and is a marking issue, rather than an IT or URS issue.

Accordingly, FMCSA decided to eliminate the PRISM procedure that requires non-motor carrier applicants, including leasing companies, to obtain registrant-only USDOT Numbers. PRISM Program States were directed to modify their systems, forms, instruction

⁴⁰ See Memorandum, Telephone Conversation with Barbara Hague, Missouri Department of Transportation, Motor Carrier Services, Document ID No. FMCSA-1997-2349-0178-0193; Memorandum and Contact with Missouri Department of Transportation Clarification of Issue Involving Leasing Companies, Document ID No. FMCSA-1997-2349-0192.

⁴¹ Notice of Procedural Changes to the Performance and Registration Information Systems Management Program, 75 FR 47883 (Aug. 9, 2010).

manuals, computer systems' validation and safety edits, renewal applications and MCS-150 edits and procedures by August 31, 2011. FMCSA planned to eliminate the practice of allowing non-motor carrier applicants to obtain registrant-only USDOT Numbers by September 1, 2011. On August 31, 2011, however, FMCSA extended the effective date for making the change to eliminate the registrant-only entry to September 1, 2012.⁴²

Because FMCSA does not regulate non-motor carrier leasing companies, they will not be included within the URS and will not have to complete the Form MCSA-1. FMCSA will deactivate the USDOT Numbers issued to leasing companies prior to October 23, 2015. Beginning September 1, 2012, the Agency notified each entity registered as a Registrant to either deactivate its USDOT Number or change its operation type to the appropriate carrier operation. If such actions are not taken, the Agency will deactivate those USDOT Numbers.

6. School Bus Operations

The NSTA commented that, as it understood the proposed rule, school bus operations (home-to-school-to-home routes) continue to be exempt from URS. Therefore, a for-hire school bus contractor would register under URS only if the contractor also provides charter transportation, such as school activity trips. If this were the case, the NSTA commented that it believed the contractor would check the box on the proposed form in Section A, question 17a, for Charter and Special Operations. The NSTA requested clarification from FMCSA that under the sections on the Form MCSA-1 that ask for the number of vehicles and the number of drivers who will be operating in the United States, the contractor need enter only the portion of its vehicles and drivers that are used in charter operations, and not the portion that are used in school bus operations. NSTA also requested clarification as to whether Section G, question 36 (Government Funding Status) of Form MCSA-1 includes a contract between a municipality and a school bus contractor for school transportation service, if such contract includes activity transportation.

FMCSA Response. This final rule does not in any way affect the school bus exemption. Motor carriers that provide charter transportation services under contract to schools, and that are subject to FMCSA jurisdiction, remain subject to registration requirements with regard

⁴² See Notice, Extension of Effective Date, 76 FR 54288 (Aug. 31, 2011).

³⁹ See Pilot Program on the North American Free Trade Agreement (NAFTA) Long-Haul Trucking Provisions, 76 FR 40420 (July 8, 2011); see generally <http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx> (last accessed Apr. 2, 2012).

to the need to obtain authority to operate an interstate for-hire motor carrier, maintain minimum levels of financial responsibility and file proof of coverage, and acquire and maintain proof of designation of process. The drivers employed by these carriers are subject to FMCSA's requirements for commercial driver's licenses and the controlled substances and alcohol testing rules. Such a contractor that provides charter transportation would check the box on the MCSA-1 Form in Section A for Charter and Special Operations, which has been renumbered as question 15a. In response to the NSTA's specific questions, the contractor need enter only the portion of its vehicles and drivers that are used in interstate charter operations, and not the portion that are used solely in school bus operations, as defined in 49 CFR 390.5. In compliance reviews, the Agency also does not count the number of buses used for exempt transportation.

Regarding Form MCSA-1, the question regarding Government Funding Status, which has been renumbered as question 34, does not include a contract between a municipality and a school bus contractor for school transportation service, if such contract includes activity transportation. The question is directly related to the requirements of 49 U.S.C. 13902. Under 49 U.S.C. 13902(b), the Agency is obligated to grant an application for regular-route operating authority filed by a private recipient of government financial assistance if the applicant can show that it is fit, willing, and able to serve the route, unless a protestant comes forward and affirmatively demonstrates that granting the application would be inconsistent with the public interest. Under 49 U.S.C. 13902(b)(8)(B), the term "private recipient of government assistance" is defined as "any person (other than a public recipient of government assistance) who received governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus." Based on this definition, FMCSA believes that payments made by a municipality to a for-hire school bus operator to provide non-exempt transportation of students would be considered compensation rather than a subsidy and, thus, not within the confines of section 13902(b)(8)(B). Therefore, such an applicant would not be considered a private recipient of government assistance under these circumstances, and the public interest standard would not apply.

Generally, for specific interpretations of existing regulatory requirements, any member of the public may contact the

FMCSA Office of Policy or visit the FMCSA regulatory guidance Web site at http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.aspx?section_type=G.

E. Mandatory Electronic Filing

The SNPRM proposed the adoption of an exclusively online electronic registration system.⁴³ ATA endorsed requiring entities filing applications or updating their information with FMCSA to do so electronically. However, this commenter recommended that FMCSA establish a backup process for the mandatory electronic filing requirement, should the Agency's electronic system be temporarily unavailable for some reason, such as a natural disaster or terrorist attack.

FMCSA Response. The Federal government, including FMCSA, recognizes the need for emergency planning. FMCSA already builds in redundancies for its systems under its Continuity of Operations Planning (COOP) to prevent such failures. In accordance with National Institute of Standards and Technology (NIST) guidelines (NIST 800-34, Contingency Planning Guide for Information Technology Systems), the FMCSA IT Security Team will develop a Contingency Plan and Disaster Recovery Plan for the URS in the event that a disaster occurs to ensure the continuation of vital business processes. This plan will provide an effective solution that can be used to recover all vital business processes within the required time frame.

F. Biennial Update

FMCSA proposed to require electronic updates to Form MCSA-1 biennially.⁴⁴ MoDOT asked if FMCSA will automatically deactivate the USDOT Number (and revoke corresponding operating authority registration) of those entities that have not updated their MCS-150s within the 2-year requirement as of the final rule effective date. MoDOT believes that doing so would be extremely helpful in cleaning old data from the system.

FMCSA Response. The Agency will not automatically deactivate a USDOT Number for any entity currently registered within the system solely on the basis that it has not completed a biennial update requirement that may come due on the compliance date of the final rule. The Agency believes that such entities should first receive a warning regarding this regulatory

change. Therefore, beginning November 1, 2013 (the compliance date of the revised biennial update provision), the Agency will issue a warning letter 30 days in advance of a biennial update deadline to notify the entity that its USDOT Number will be deactivated if it fails to comply with the biennial update requirement.

Only after an entity has failed to heed that warning will the Agency begin deactivating USDOT registrations for failure to update the information on Form MCSA-1 and consider imposing civil penalties. FMCSA, however, would not retroactively apply sanctions against entities that had not met the biennial update requirement by November 1, 2013.

G. Administrative Filings

1. Timeframe for Filing Changes to Name, Address

FMCSA proposed to require all entities to notify FMCSA of any changes to the information in Section A of Form MCSA-1 (e.g., a change in legal name, form of business, or address) within 20 days of the precipitating change.⁴⁵ ATA recommended retaining the current 45-day deadline for notification of such changes. In support of its request, ATA stated that because the nature of many of these changes (e.g., a change of address, change of business name, etc.) implies a disruption in the ordinary routines of a business entity, it may be unrealistic to expect such expeditious notification. This commenter also stated that the SNPRM proposed no changes to 49 CFR 365.413, regarding the procedure for motor carrier name changes.

FMCSA Response. Although ATA does not provide specific regulatory references to a 45-day notification requirement, the only current regulations containing such a requirement are §§ 365.509, 368.4, and 385.609. These regulations apply to motor carriers domiciled in Mexico or outside of North America.

In response to ATA's comments and for purposes of consistency, FMCSA amends all change reporting deadlines to 30 days after the date of the change event (see §§ 390.201(d)(4), 365.509(a), 366.6(b), 368.4(a), 385.405(d), and 385.609(a)(2)). FMCSA has added an additional 10 days to the update requirement and believes that a 30-day requirement is reasonable and would not be more disruptive to a carrier's business than the 45-day requirement proposed by ATA.

⁴³ See 76 FR 66506, 66519.

⁴⁴ See 76 FR 66506, 66594 (proposed 49 CFR 390.101(d)).

⁴⁵ See 76 FR 66506, 66586 (proposed 49 CFR 365.509(a)).

2. Financial Responsibility for Certain FTA Grantees

The SNPRM explained that for a passenger carrier that provides transportation within a transit service area located in more than one State under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under 49 U.S.C. 5307, 5310, or 5311, the minimum financial responsibility requirement is the highest level of financial responsibility required for any of the States in which it operates.⁴⁶ FMCSA explained that this aspect of the proposal was a consequence of 49 U.S.C. 31138(e)(4), which exempts section 5307, 5310, and 5311 grantees from the Federal general financial responsibility requirements and instead subjects them to applicable State requirements.

Greyhound expressed support for the proposed financial responsibility requirements for such FTA grantees, particularly the language added to the Form MCSA-1 Instructions that states that the FMCSA financial responsibility requirements “do not apply to entities providing transportation service within a transit service area under an agreement with a Federal, State, or local government funded in whole or in part with a grant under 49 U.S.C. 5307, 5310, or 5311.” However, Greyhound expressed concern that the proposed amendments to 49 CFR 387.33, *Financial responsibility, minimum levels*, only referred to entities that provide transportation services within a transit service area located in more than one State.⁴⁷ This commenter stated that it believes FMCSA’s changes were intended to apply to transit operators whether they are operating in just one State or across State lines. Greyhound suggested that, because of the complexity of this issue, FMCSA should state clearly that it is using its authority under 49 U.S.C. 31138(e)(4) to authorize transit providers that operate in only one State, but participate in interline relationships with interstate carriers, to meet their FMCSA financial responsibility requirements by complying with the financial responsibility requirements of the State in which they operate. This commenter requested similar clarifying language to 49 CFR 387.33.

FMCSA Response. FMCSA has, at Greyhound’s suggestion, added language to 49 CFR 387.33(b), as well as to 49 CFR 387.303, *Security for the protection of the public: minimum*

limits, to clarify that FTA grantees providing service within a transit service area and are subject to the special insurance requirements of 49 U.S.C. 31138(e), are also subject to these requirements when they operate in a single State, but participate in providing interstate service by entering into interline agreements with interstate carriers. The instructions to Form MCSA-1 (Section K) have also been modified to incorporate this clarification, as requested by the commenter.

3. Financial Responsibility for Private HM Carriers

FMCSA proposed to require a private motor carrier hauling HM in interstate commerce to file evidence of financial responsibility with the Agency.⁴⁸ The NPRM explained that these carriers are already required by statute (49 U.S.C. 31138 and 31139) and regulations (49 CFR part 387) to obtain and maintain public liability insurance, and that the proposed change would merely require filing of evidence of financial responsibility with FMCSA.⁴⁹

NPTC questioned the need to require private motor carriers transporting HM in interstate commerce to file evidence of financial responsibility with FMCSA as a condition for obtaining registration and believes the Agency offered no compelling policy reason for requiring private HM carriers to now file evidence of liability coverage. NPTC stated that currently, regulations permit private HM carriers to meet financial responsibility requirements by maintaining a copy of the HM liability endorsement (Form MCS-90) at the company’s principal place of business, subject to review upon reasonable demand by enforcement officials. This commenter asserted that absent evidence of lack of compliance with liability insurance requirements, it sees no need to impose a new filing mandate on private motor carriers transporting HM.

FMCSA Response. Congress expressly authorized FMCSA to require a private motor carrier to file evidence of financial responsibility with the Agency (49 U.S.C. 31139; SAFETEA-LU section 4120). At this time, the Agency has elected to require only those private motor carriers that transport HM in interstate commerce to make these filings.

FMCSA believes that the potentially greater human toll and environmental consequences of HM-involved CMV

incidents make it even more important to ensure that private HM carriers under its jurisdiction can adequately cover liabilities arising from such incidents as a condition for granting registration. Further, the filing requirement for private HM carriers would assure members of the public that such carriers have the financial means to compensate them for injuries or damages caused by negligence. These filings also would increase public accessibility to insurance information and would enable FMCSA to more effectively track insurance cancellations. This new requirement for private HM carriers will not impose a significant new burden because, as explained above, these carriers are already required to maintain public liability insurance. Filing evidence of insurance coverage with FMCSA, as opposed to maintaining evidence of coverage at the place of business, will require the filing of a form with the Agency.⁵⁰ FMCSA believes that this nominal cost for private HM carriers is warranted to achieve the benefits noted above. As discussed in the SNPRM, there will be a 3-month moratorium on enforcement of the filing requirement after the compliance date of this final rule. The moratorium would not apply to new applicants for USDOT registration. Therefore, the Agency is establishing the financial responsibility filing requirement for private HM carriers as proposed.

4. Blanket Agents

FMCSA proposed to expand its existing designation of process agent requirements to private and exempt for-hire carriers.⁵¹ The Agency’s designation of process agent regulations (49 CFR part 366) permit a carrier to fulfill its process agent designation requirements by listing an association or corporation that has filed with FMCSA a list of process agents for each State (blanket agent) on the required Form BOC-3.

OOIDA suggested that the designation of process agent requirements could be made more effective if motor carriers using a blanket agent are required to update the BOC-3 designation form along with the biennial update of the MCSA-1. OOIDA also noted that service of process on a motor carrier may be impeded if the motor carrier does not report address changes to the blanket agent, or if the blanket agent withdraws from offering process agent services without notice. This commenter pointed

⁴⁶ See 76 FR 66506, 66520.

⁴⁷ See 76 FR 66506, 66589 (proposed 49 CFR 387.33(b)).

⁴⁸ See 76 FR 66506, 66515, 66594 (proposed 49 CFR 390.103(a)(2)(ii)).

⁴⁹ See 70 FR 28990, 28997.

⁵⁰ See 49 CFR 387.15, *Forms*.

⁵¹ See 76 FR 66506, 66525 and 70 FR 28990, 28999.

out that 49 CFR 366.5 permits a carrier to satisfy its process agent designation requirements by listing a blanket agent on its BOC-3, and that such listing could satisfy the carrier's designation requirement indefinitely, regardless of whether any relationship is maintained between the blanket agent and the motor carrier. OOIDA commented that the regulations would not ensure that a motor carrier's process agent designations are updated and accurate unless the biennial update requirement is also expanded to include the BOC-3 Form. Further, OOIDA stated that 49 CFR 366.6, *Cancellation or change*, is silent concerning the ability of the blanket agent to cancel the designation, and only allows the motor carrier to take such action.

FMCSA Response: The Agency has revised the final rule to accommodate this commenter's concerns. FMCSA agrees that the current service of process agent requirements should be modified to provide greater certainty that process agent designations are accurate and that process agents are able to receive and serve on their clients/principals notices in court or administrative proceedings on regulated entities. Accordingly, the Agency has revised 49 CFR 366.6 in several respects. First, in § 366.6(a), we have clarified that the process agent or blanket agent, in addition to the motor carrier, broker, or freight forwarder, may cancel or change a process agent designation by filing a new designation with the Agency. To help ensure that such designations are up to date, § 366.6(b) requires that changes to designations be reported to FMCSA within 30 days of the change. This will provide more timely notice of such changes than a biennial update requirement would and are consistent with other notifications of change required by the rule.

In response to OOIDA's concern that a process agent would be unable to serve notices on a motor carrier if the carrier does not notify the agent of a change of address, the Agency has added, in § 366.6(c), a new requirement that a motor carrier, broker or freight forwarder report changes in name, address, or contact information to its process agents and/or the company making a blanket designation on its behalf within 30 days of the change.

Finally, while FMCSA does not have jurisdiction over process agents and blanket agents, they should report to the Agency when their contract or relationship with the entity they represent terminates. Motor carriers, other entities we regulate, and the public depend upon these process agents and blanket agents to keep their

information current. Thus, the Agency has added new § 366.6(d), which requires process agents and/or companies to provide FMCSA with a notice of termination within 30 days of the termination. FMCSA's Office of Registration and Safety Information currently authorizes blanket agents to submit process agent designations on behalf of regulated entities. Failure to keep process agent information up to date may result in the withdrawal of Agency authorization.

Overall, the amendments to the requirements in part 366 will help ensure that the process agent designation regulations serve their purpose of assisting members of the public seeking compensation for losses involving a CMV. Accurate process agent information from all parties to the transaction enables the public to serve process in lawsuits on the correct party in any State in which a motor carrier, broker, or freight forwarder operates. Additionally, FMCSA uses the information to locate hard-to-find carriers for compliance interventions and to serve notices for civil penalty enforcement actions, out-of-service orders, and other administrative proceedings. Therefore, these requirements will ensure that the Agency can properly enforce its regulations against violators.

H. Potential URS Impacts on Existing Systems and Programs

A few commenters expressed concerns about potential negative impacts of URS implementation on Federal/State partnership initiatives such as the UCR Agreement, the PRISM Program, the CSA Program, and the New Entrant Safety Assurance Program. FMCSA assures stakeholders that the Agency will consult with them in planning, developing and testing the new URS information system to prevent conflicts with such programs.

1. Impacts on PRISM Program

Inconsistent Motor Carrier Registration Data

MoDOT requested that FMCSA clarify how the proposed URS information requirements will impact the PRISM Program. In particular, MoDOT commented that information concerning carrier registration is passed to the States within the States' Commercial Vehicle Information Exchange Window (CVIEW) snapshot, and is used when companies plate their vehicles under the International Registration Plan (IRP). This commenter stated that inconsistent data when information is validated for

the PRISM Program is confusing for the States and the industry.

FMCSA Response. PRISM ensures that a vehicle does not receive license plates without identification of the carrier responsible for the safety of the vehicle during the registration year. By using vehicle registration sanctions, PRISM serves as a powerful incentive for unsafe carriers to improve their safety performance. CVIEW data has various purposes while PRISM data specifically targets certain vehicles and motor carriers. FMCSA believes these data programs are complementary, not inconsistent.

PRISM Program States should transition to the Form MCSA-1 and the Agency will provide training to ensure seamless implementation. PRISM grant funds may also be available to provide financial assistance. Aside from use of the new Form MCSA-1 as described in this final rule, FMCSA does not anticipate that the changes to the URS will significantly impact the operations of the State's PRISM or CVIEW program. States participating in PRISM will continue to perform PRISM functions such as issuing USDOT Numbers, mandating the update to the MCSA-1, and applying vehicle registration sanctions when appropriate.

Type of Operation Classification on the MCSA-1 Form

MoDOT expressed concerns regarding how the practice of changing a carrier's interstate operation classification to intrastate when no interstate transportation has been performed would be affected by the proposed URS requirements. This commenter explained that the FMCSA Electronic Field Operations Training Manual (eFOTM) states that if a State attempts to perform a New Entrant Safety Audit and determines that the carrier has not performed any interstate transportation, the State should not perform a New Entrant Safety Audit, but instead should change the carrier's interstate operation classification to intrastate. The eFOTM further instructs States to tell the motor carrier to go online and change its operation from "Intrastate" to "Interstate" when it begins to operate in interstate commerce.

MoDOT also requested clarification regarding proposed 49 CFR 365.110, which stated that the operating authority will not become permanent until the applicant satisfactorily completes the New Entrant Safety Assurance Program. The commenter asked what would happen to a carrier's operating authority when no interstate transportation has been performed within a designated period of time and

the States are told not to perform a safety audit (per the eFOTM procedures). MoDOT asked whether States should be permitted to deactivate the USDOT Number if no interstate activity has been performed within a designated time frame and the State does not require a USDOT Number for intrastate operations. MoDOT further asked whether States should be allowed to perform the safety audit if the carrier intends to operate in interstate commerce in order to ensure that the company is “ready” and meets all requirements for operating in interstate commerce.

FMCSA Response. Currently, the eFOTM procedures direct a safety investigator/auditor not to conduct a safety audit if he or she learns the motor carrier has not yet begun interstate operations when the audit is being scheduled and to reclassify its interstate operation classification within the Motor Carrier Management Information System (MCMIS) to intrastate. The Agency is aware of this issue and will ensure it is not carried over into the URS, which will resolve other issues raised by MoDOT regarding the intrastate/interstate operation classification. Because the issue is not caused by the URS registration requirements, it is considered beyond the scope of the final rule and will be dealt with separately. The Agency is developing and will implement policies and procedures to address this unintended consequence of changing the operation classification for New Entrant Safety Assurance Program purposes. Any changes to the eFOTM that are needed will be made as the policies and procedures are developed, independently of this final rule.

Contradiction With PRISM Program State’s International Registration Plan

MoDOT expressed concern about changing any requirement within the PRISM procedures to suspend a license plate when an application for USDOT registration is rejected during FMCSA’s review because this could contradict the terms of the IRP. This commenter stated that depending on the timeframe of the vehicle registration and the reporting period, applicants may be allowed to operate within two different registration periods with estimated mileage only.

FMCSA Response. As has historically been the case, PRISM States impose vehicle registration sanctions when a motor carrier has been prohibited from operating by FMCSA, normally when an out-of-service order has been issued. An application rejected during FMCSA review, however, is not the result of an out-of-service order.

In this final rule, the applicant cannot begin operations or mark a CMV with the USDOT Number until after the date of the Agency’s written notice that the USDOT Number has been activated. PRISM State vehicle registration sanctions will continue to apply only in those cases when FMCSA has issued an out-of-service order.

PRISM Program State Assistance With Electronic Filing

Given the electronic filing requirement for Form MCSA–1 under URS, MoDOT expressed concern about how it could help Missouri carriers with the new registration filing or biennial updates associated with the PRISM Program. MoDOT commented that it would not want to receive or input information from a paper application form to assist its customers in complying with the new registration requirement.

FMCSA Response. As noted above, PRISM Program States should update their IRP to comply with the new URS registration requirement, including mandatory electronic filing. The Agency continues to believe that mandatory electronic filing is feasible and would result in cost and time savings to both applicants and FMCSA.⁵² In 2008, an estimated 78 percent of U.S. motor carrier new applicants electronically filed their initial registrations, and this number is projected to steadily increase to 88 percent by 2016.⁵³ Furthermore, the Internet is publicly accessible via libraries and other public facilities. FMCSA recognizes that this change could impose a burden on entities that do not have readily accessible means to file electronically or that do not wish to file electronically, and has estimated these costs in detail in the Regulatory Evaluation.⁵⁴ In future years, the FMCSA estimates that only 12 percent of applicants would be expected to still file by paper, if that option were available. The estimated cost savings of a mandatory electronic filing requirement that would accrue to other carriers and to the Agency is much greater than the costs to those carriers that would choose to continue to file by paper; mandatory electronic filing, therefore, is a cost effective requirement. The Agency sought, but did not receive comment on the SNPRM’s Regulatory

Evaluation’s estimate of the impact of mandatory electronic filing.

2. Impacts on UCR Agreement

The SNPRM explained that Congress established the UCR Plan and Agreement to replace the SSRS for registration of interstate motor carriers with the States, and to ensure that States did not lose revenues derived from the SSRS.⁵⁵ The UCR Plan and Agreement established fee schedules under which States collect fees from carriers based on the number of qualifying CMVs in their fleets.

MoDOT pointed out unintended impacts of MCMIS and PRISM on the UCR Agreement and urged the Agency to address them within the URS final rule. For example, information on the Form MCS–150 is used to determine fees paid to the States under the UCR Agreement. MoDOT requested that FMCSA ensure that replacing Form MCS–150 with Form MCSA–1 would not jeopardize such fee determination.

OIDA identified an existing problem that could inappropriately create a liability to pay UCR fees for a year when a carrier was not operating. Specifically, this commenter stated that when a carrier attempts to provide the data needed to reactivate suspended or inactive authority, the current system will not allow the numerical value of “0” (zero) miles to be inputted for the previous year even where there has been no activity. The carrier must input a value of “1” mile in order for the system to accept the application. Having to make any mileage declaration could create a liability to pay UCR fees for a year where there was no operation. OIDA recommended allowing carriers to enter zero miles in the data field to resolve the issue.

FMCSA Response. The Agency has revised Form MCSA–1 to ensure that replacing Form MCS–150 with Form MCSA–1 will not jeopardize fee determination under the UCR Agreement. A Federal statute, 49 U.S.C. 14504a(f)(3), allows States to use the Form MCS–150 as a source of information about the number of vehicles in a motor carrier’s fleet for purposes of determining a carrier’s fees under the UCR Agreement. The number of CMVs owned or operated for the purpose of determining the level of fees charged for registering with the UCR Plan is either “the number of commercial motor vehicles the [carrier] or freight forwarder has indicated it operates on its most recently filed MCS–150 or the total number of such vehicles it owned or operated for the 12-month

⁵² See section 3.2 of the Final Regulatory Evaluation of the Unified Registration System, which is available in the docket, for a discussion of the costs and benefits of the mandatory electronic filing.

⁵³ See Appendix A of the Final Regulatory Evaluation of the Unified Registration System, which is available in the docket.

⁵⁴ *Id.*

⁵⁵ See 76 FR 66506, 66507.

period ending on June 30 of the year immediately prior to the registration year of the Unified Carrier Registration System.”⁵⁶ The new Form MCSA-1 is the functional equivalent of the MCS-150. FMCSA construes the reference at the end of the statutory quote above to the “Unified Carrier Registration System” as the UCR Agreement because the Unified Carrier Registration System (which FMCSA calls the URS) does not have a registration year.

The Agency has revised Form MCSA-1 to collect information about the number of vehicles in an applicant’s fleet that are used solely in intrastate commerce. See Form MCSA-1, Section B, question 22(d). This revision is in response to comments from MoDOT about disparities in data reported by motor carriers during UCR Agreement and FMCSA registrations with regard to fleet size and suggestions for improving the ability to reconcile these inconsistencies. FMCSA believes this change will improve the ability to determine fees for the UCR Agreement pursuant to 49 U.S.C. 14504a(f)(3). This new entry will not increase the information collection burden on applicants because they are able to estimate with reasonable accuracy the number of vehicles operating in interstate and intrastate commerce, respectively.

With respect to the mileage issue, the Agency is modifying its systems to accept a value of “0” (zero) in the mileage field and to require motor carriers to report vehicle miles traveled (VMT) data for the previous 12 months rather than for the previous calendar year. The MCSA-1 Instructions (question 21) have been modified accordingly. These changes are being implemented outside of this rulemaking process.

I. Transfers of Operating Authority and Concerns About Reincarnated Carriers

In the SNPRM, the Agency proposed to eliminate 49 CFR part 365, subpart D, governing transfers of operating authority.⁵⁷ FMCSA reasoned that ICCTA removed the Agency’s statutory authority to approve transfers of authority and did not prohibit such transfers.

TIA expressed support for the proposed elimination of 49 CFR part 365, subpart D. However, TIA cautioned against simplifying the application and registration process to the point it would increase reincarnated carriers. TIA commented that FMCSA must be careful to establish the application and

registration process in a way that will address certain abuses that have arisen under the current system, and that retains adequate protections for the shipping public. TIA requested that the Agency continue to allow MC Numbers to reflect a broker’s business history. To prevent churning of operating authorities by unscrupulous or fraudulent operators, TIA encouraged FMCSA to take steps to conduct a thorough review of repeat applications by carriers or brokers filed within the same year to create an active database of companies. This commenter suggested that the Agency link the URS or other registration requirement with operating authority. Finally, to further prevent churning and confusion in the marketplace, TIA suggested that FMCSA prohibit the sale of authority numbers outside the sale of the company.

FMCSA Response. The ICCTA repealed 49 U.S.C. 10926, which gave the Interstate Commerce Commission (ICC) specific authority to review and approve transfers of operating authority which historically was assigned to non-exempt and for-hire motor carriers, brokers, and freight forwarders. However, FMCSA has never allowed and will continue to disallow transfers of USDOT numbers which have been issued for safety-related registration and now will become the unique identifier for FMCSA-regulated entities. The commenter, however, brought up legitimate concerns about potential carrier safety record-related impacts of the URS combining commercial operating authority and safety registration under the same USDOT Number.

Although ICCTA removed the Agency’s authority under former 49 U.S.C. 10926 to approve transfers of authority, it did not prohibit FMCSA from requiring notice of transfers. The Agency’s statutory authority permits it to obtain information from carriers and brokers, and from the employees of such entities, that FMCSA decides is necessary to carry out its regulatory responsibilities.⁵⁸

This rule will result in the development of a registration system that combines information associated with the Agency’s safety and commercial registration systems in a way that does not exist today. FMCSA believes that combining these separate Agency information systems into the URS will improve the Agency’s ability to detect and prevent unscrupulous motor carriers that reinvent themselves to avoid compliance with regulations and enforcement actions. The Agency

believes it can identify these reincarnated carriers despite discontinuing issuance of the MC Numbers because a motor carrier’s safety history is associated with its USDOT Number, not its MC Number. All for-hire motor carriers that have MC Numbers and are subject to the Agency’s safety jurisdiction also have USDOT Numbers.

Today, the Agency uses several screening algorithms to identify potential reincarnated carriers, which will continue under the URS. For example, the Agency already has implemented a New Applicant Screening (NAS) Process. The Agency currently uses the NAS to provide additional scrutiny to all applications involving passenger carrier and household goods (HHG) authority. However, without a transfer notification requirement, this and other protections discussed in the SNPRM may be insufficient to quickly identify reincarnated carriers. Absent a notification requirement, a carrier’s operating authority could change hands through the sale of a company, and the safety history of the transferor company could be lost if the transferee company already has its own USDOT Number that it will continue to use with its newly acquired operating authority. This would result in a loophole that would allow a carrier to avoid a bad safety history by obtaining a new USDOT Number and shedding its old USDOT Number and poor safety history.

In response to the concerns expressed by TIA, therefore, the Agency has decided to require, in new § 390.201(d)(5), that a person who obtains operating authority through a transfer, as defined in part 365, subpart D, notify FMCSA of the transfer within 30 days of consummation of the transaction by filing either an updated Form MCSA-1 or a new Form MCSA-1, if the transferee did not have an existing USDOT Number at the time of transfer. Section 390.201(d)(5) also requires the transferor to file an updated Form MCSA-1 to notify FMCSA of the transfer, which will allow the Agency to maintain accurate records of entities’ operating authorities. When providing the transfer of operating authority information on an updated Form MCSA-1, a transferee or transferor would check “Notification of Transfer of Operating Authority (Both Transferor and Transferee)” as the reason for filing, and the information that the online Form MCSA-1 will require is the name, address, phone number, and USDOT Numbers of the transferor and transferee. They will also need to scan

⁵⁶ *Id.*

⁵⁷ See 76 FR 66506, 66519.

⁵⁸ 49 U.S.C. 13301(b).

and provide an electronic copy of the operating authority being transferred.

The information provided with a notification of transfer of authority will ensure that the Agency's IT systems are up to date and that the safety history associated with a carrier's operating authority and its associated USDOT Number remains connected with that operating authority, regardless of any changes in the entities that own that operating authority. FMCSA is also revising part 365, subpart D, to specify the procedures for motor carriers, property brokers, and freight forwarders to report to FMCSA transactions that result in the transfer of operating authority. Section 365.403(a) defines transfer as "any transaction in which an operating authority issued to one person is taken over by another person or persons who assume legal responsibility for the operations. Such transactions include a purchase of all or some of the assets of a company, a merger of two or more companies, or acquisition of controlling interest in a company through a purchase of company stock." Section 365.403(c) defines person as an "individual, partnership, corporation, company, association, or other form of business, or a trustee, receiver, assignee, or personal representative of any of these entities." Finally, § 365.405 references § 390.201(d)(5) and specifies that both the transferor and the transferee must supply the full name, address, and USDOT Numbers of the transferor and transferee (if the transferee has a USDOT Number), as well as a copy of the operating authority being transferred.

The Form MCSA-1 and Instructions have been revised to accommodate a filing for purposes of notification of transfer of operating authority (see section O). In particular, the Agency has added an additional reason for filing: "Notification of Transfer of Operating Authority (Transferor or Transferee)," which will have no associated fee. If a person filing the Form MCSA-1 checks this reason, the user will be directed to Section O (Notification of Transfer of Operating Authority). The applicant will first be asked whether it is a transferor or a transferee. If the applicant is a transferee, the applicant will be prompted to confirm whether or not it has a USDOT Number. If the transferee does not yet have a USDOT Number, the applicant will be re-directed to Section A, and the applicant will be required to fill out all applicable sections of the Form MCSA-1 as a new applicant.

If the transferee has an existing USDOT Number, and in all cases for the transferor filing the MCSA-1 for

purposes of notification of transfer of operating authority, Section O will prompt the applicant to enter the name, address, contact information, and USDOT Number for both the transferor and the transferee. As it does with all new applicants for a USDOT Number, the Agency will determine whether the transferee is willing and able to comply with applicable regulatory requirements, and will ensure that the transferee has satisfied all applicable administrative filing requirements, before activating the transferee's USDOT Number. The Form MCSA-1 Instructions have been revised to explain the new reason for filing and to direct transferors and transferees on how to enter data in Section O.

J. Reinstatement of Operating Authority

Related to issues of churning operating authority by reincarnated carriers, TIA also urged FMCSA to prohibit the practice of reinstating authority numbers that have been inactive for more than 12 months. This commenter cited data from Internet Truckstop that 22 percent of reinstated MC Numbers were not reinstated by the original owner (i.e., that they had been purchased by a different company). TIA stated that any change in ownership usually flags a change in the company's methods of operation and business practices, quoting an Internet Truckstop report. For these reasons, TIA recommended that entities should be prohibited from purchasing and reinstating a retired MC Number, unless someone purchases the entire company. TIA urged FMCSA to completely retire MC Numbers and USDOT Numbers that have been out of service for more than 12 months.

FMCSA Response. As was stated in the SNPRM, FMCSA no longer has authority under former 49 U.S.C. 10926 to approve transfers of operating authority. However, the final rule requires motor carriers and other regulated entities to notify FMCSA of any transactions that may directly or indirectly result in the transfer of operating authority (see section V.I). This notification requirement will help FMCSA keep track of possible churning of operating authority registrations by unsafe carriers. Operating authority or a USDOT Number may become inactive for legitimate business reasons. For example, a small carrier may decide to lease its vehicles and drivers to another authorized carrier for a period of time rather than operate under its own MC or USDOT Number because it may be economically beneficial to do so. Or, a carrier that may have decided to operate solely in intrastate commerce may

subsequently resume operations as an interstate carrier. FMCSA believes that adopting TIA's proposal to permanently "retire" MC and USDOT Numbers that have been inactive for more than 12 months, thus requiring carriers to apply for new numbers and re-enter the new entrant program, would be unduly burdensome for carriers that have legitimate reasons for temporary deactivation.

K. Unauthorized Re-Brokering of Freight

The SNPRM proposed that URS apply to property brokers because section 4302 of SAFETEA-LU requires the Federal on-line replacement system to "serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic carriers, motor private carriers, brokers, freight forwarders, and others required to register with the Department of Transportation . . ." ⁵⁹ TIA asked FMCSA to issue separate operating authority numbers to entities operating as both motor carriers and property brokers so that the Agency could prevent unauthorized re-brokering of freight, and to enable shippers to know which type of entity they are dealing with at the time of arranging for the transportation of cargo. This commenter asserted that many motor carriers currently operate under the misperception that registering as a motor carrier entitles them to broker freight to other motor carriers when they cannot handle it themselves.

TIA commented that the unauthorized re-brokering of freight has led to many commercial problems for its member brokers. Further, TIA stated that when undisclosed re-brokering of freight occurs, carriers with poor safety histories—often those that would have never been chosen by the shipper or broker—can remain in business and circumvent the safeguards intended to discourage the use of unsafe carriers. Thus, TIA reasoned that unauthorized re-brokering of freight by motor carriers also frustrates the efforts of government and the industry to promote the use of safe carriers.

TIA commented that the proposed URS and Form MCSA-1 would perpetuate the confusion caused by the current FMCSA registration system (inherited from the ICC) by permitting an entity to use a single registration process to apply for authority as both a carrier and broker, and by using a single USDOT Number to cover them both. This commenter asserted that this characteristic of the registration system makes it impossible for the party

⁵⁹ 49 U.S.C. 13908(b); see 76 FR 66506, 66512.

tendering the cargo to be sure which operating authority the carrier is choosing to exercise. Therefore, TIA urged FMCSA to require separate applications for motor carrier, broker, and freight forwarder authority, and to assign different USDOT Numbers for motor carrier and broker authority, even when they are held by the same entity.

FMCSA Response. A “broker” is a party who, for compensation, arranges, or offers to arrange the transportation of property by an authorized motor carrier.⁶⁰ When shipments are transported by motor carriers, both the carrier and the shipper may use brokers as agents in connection with the movement of goods. Currently, entities may hold authority to operate as both a motor carrier and a broker, either under their own name or through affiliated companies.

Prior to enactment of MAP-21, separate broker authority was not necessarily required for motor carriers to lawfully tender freight to other motor carriers for transportation, provided the motor carrier arranged for the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.⁶¹ Section 32915 of MAP-21 amended 49 U.S.C. 13902 to prohibit a motor carrier from providing broker services unless it first registers as a broker under 49 U.S.C. 13904.

Section 32914 of MAP-21 also amended 49 U.S.C. 13901 to require distinctive USDOT Numbers for each type of authority issued. For example, an entity applying for both broker and motor carrier authority would receive a different USDOT Number for each type of authority. This MAP-21 provision also requires that the USDOT Number include an “indicator” of the type of authority issued. FMCSA will address these MAP-21 requirements in a separate rulemaking, at a later date.

L. Americans With Disabilities Act (ADA) Compliance

Greyhound stated that FMCSA continues to refuse to make compliance with the ADA an issue to be considered before registering motor carriers of passengers. Greyhound commented that enactment of the Over-the-Road Bus Transportation Accessibility Act of 2007 (OTRB Act), Public Law 110-291, requires FMCSA to assess an applicant’s willingness and ability to comply with DOT’s ADA regulations at 49 CFR part 37, subpart H in the same way the Agency considers the applicant’s ability to comply with other applicable

regulations, such as those pertaining to safety and financial responsibility. Greyhound commented that FMCSA must gather sufficient information to make the basic ADA fitness determination.

Greyhound also requested that FMCSA modify the equipment list requirements on page 6 of the proposed Form MCSA-1 to ensure that all fixed-route operators comply with requirements regarding lift-equipped vehicles or provision of equivalent service, as applicable. Greyhound also urged that New Entrant Safety Audits be expanded to include questions regarding compliance with lift-equipped vehicle requirements for both demand responsive and fixed-route passenger carriers.

FMCSA Response. Although the OTRB Act required FMCSA to consider an applicant’s willingness and ability to comply with DOT’s ADA regulations in determining whether to grant its application for operating authority, it did not mandate a particular means of doing so. Section G of Form MCSA-1 requires passenger carrier applicants to certify that they are “fit, willing, and able to comply with all pertinent statutory and regulatory requirements, including the U.S. Department of Transportation’s Americans with Disabilities Act regulations for over-the-road bus companies located at 49 CFR part 37, subpart H, if applicable.” After explaining differences in terminology between the part 37 regulations and FMCSA regulations, the Form directs the applicant to the Agency’s Web site for a general overview of the Department’s ADA regulations. This certification is more specific than the certification in Section M of Form MCSA-1, in which all applicants must certify that they are willing and able 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, and designation of process agent requirements.” Thus, at the application stage, the Agency will assess an applicant’s willingness and ability to comply with ADA requirements through self-certification. If a member of the public or a potential competitor has evidence that an applicant is not willing and able to comply with DOT’s ADA regulations, they may raise this issue in a protest to the application filed in accordance with 49 CFR part 365, subpart B.

Regarding the modification of the equipment list requirements, FMCSA

believes that the certification in Section G of Form MCSA-1 complies with the OTRB Act and that it is unnecessary to require applicants to include detailed ADA compliance information on the application form. FMCSA indicated in the SNPRM that it would verify ADA compliance during the New Entrant Safety Audit stage. New Entrant Safety Audits are generally conducted within 9 months after a new entrant for-hire passenger carrier is issued operating authority registration and in the future will be conducted within 120 days as required by MAP-21. At this time, the Agency will probe into the carrier’s ADA compliance. Although it is beyond the scope of this rulemaking, the Agency will consider augmenting the New Entrant Safety Audit to include verifying compliance by both fixed-route and demand responsive passenger carriers with the fleet standards and/or equivalent service standard contained in 49 CFR 37.183 and 185.

If noncompliance with DOT’s ADA regulations is discovered in the course of the safety audit or a Compliance Review, FMCSA will, in accordance with a Memorandum of Understanding with the U.S. Department of Justice (DOJ), either forward the information to DOJ for appropriate action or conduct its own investigation and attempt to resolve the violations. We believe that these procedures are sufficient to meet the Agency’s obligations under the OTRB Act.

M. Other Suggested Revisions to MCSA-1 Form and Instructions

OIDA, ATA, NTTC and MoDOT proposed extensive corrections, revisions and enhancements to the proposed form and instructions. In this section, the Agency discusses comments on the MCSA-1 Form and Instructions not otherwise addressed above. FMCSA has made corrections to the typographical errors that commenters pointed out.

General

Applicants Accustomed to MCS-150 Terms and Instructions

ATA commented that where an existing form, such as the MCS-150, has been in use for years, and those filing it have become accustomed to the form and its instructions, it may be advisable, whenever possible, to continue to use the same language as the existing form, and the same instructions.

FMCSA Response. The Agency acknowledges that some of the terms used in Form MCSA-1 are new and unfamiliar to entities that do not require operating authority. However, these

⁶⁰ 49 U.S.C. 13102(2).

⁶¹ 49 CFR 371.2(a).

entities will need to provide only information pertinent to their specific operations. FMCSA will strive to make the online system and instructions as clear as possible when designing and implementing the new system, and will provide examples to clarify registration processes whenever feasible.

Use of the Word “Applicant”

ATA commented that although the MCSA-1 Form is a multi-purpose form, throughout the form and instructions the filer is referred to as the “applicant,” although only a minority, perhaps a small minority, of filers would be applicants for operating authority registration. ATA commented that the result would be confusion for those other than applicants, as such entities would be uncertain as to what parts of Form MCSA-1 apply to them. This commenter recommended that the Form MCSA-1 and Instructions use a more general, neutral term, such as “filer.”

FMCSA Response. The Agency disagrees and is retaining the use of the word applicant in Form MCSA-1 and the Instructions. Under the URS, every entity under FMCSA jurisdiction is considered an applicant for registration, not just those requesting operating authority. We recognize, however, that some existing entities will also file changes to their name, address, form of business, and/or updates to their registration information on the Form MCSA-1, but they too will be considered as “applicants” requesting a change or update in their registration data. Because the Agency wants to ensure that the information entered on Form MCSA-1 pertains to the entity seeking registration or other appropriate actions and not a third-party filing company, FMCSA believes the use of a more general term (such as “filer”) would be inappropriate. All entities must indicate their “Reasons to File” the Form MCSA-1. Because the Form MCSA-1 is electronic, entities will be directed to the appropriate sections that need to be completed once they indicate their reason for filing. This aspect of the URS will eliminate any uncertainty as to what parts of Form MCSA-1 apply to entities filing the form. Accordingly, the Agency will use the term “applicant,” rather than filer, throughout the URS rule, the Form MCSA-1, and the Instructions. In addition, sec. 32105 of MAP-21, which adds new section 31134 to Title 49, U.S. Code, requires persons subject to the Agency’s safety jurisdiction to submit an “application” to receive a USDOT Number. The universe of “applicants” is therefore not limited to persons seeking operating authority registration.

References to Federal Statutes or Regulations

ATA pointed out that on the first page of the proposed Instructions for Form MCSA-1, in the line immediately above the bullet points, a reference is made to “interstate commerce as defined in 49 CFR 390.5.” The commenter asserted that this sort of technical reference would not be encouraging to unsophisticated applicants as they begin to engage with this already intimidating form. Further, ATA commented that if applicants do read the referenced regulation, they may be misled again, to believe that interstate commerce only includes movements by vehicles that cross state lines. This commenter stated that, in general, references to Federal statutes or regulations will rarely be helpful.

FMCSA Response. Generally, the Agency cites Federal regulations and statutes in the Form MCSA-1 and Instructions because cross referencing these sources is more efficient than spelling out definitions and requirements throughout these documents and the statutes and regulations provide the basis for applicable registration requirements. Inserting language from the statutes or regulations would require changes to the MCSA-1 Form and/or Instructions whenever modifications were made to the statutory or regulatory language. However, in the interest of making the instructions easier to understand, the Agency has included additional clarifications wherever feasible.

NTSB Recommendation H-11-1: Collecting Additional Cargo Tank Information

As noted in the SNPRM, in 2009 the National Transportation Safety Board (NTSB), as part of its accident report concerning a 2009 crash involving a cargo tank vehicle, recommended that FMCSA revise the MCS-150 Form to require HM carriers to report the number of types of USDOT specification cargo tanks (i.e., cargo tank vehicles designed and self-certified by the vehicle manufacturer as meeting the applicable PHMSA standards for use in transporting HM) owned or leased by the carriers and provide other pertinent data displayed on the specification plates of such tanks (Recommendation H-11-1).⁶² NTSB recommended that FMCSA require this information to be updated annually. In the SNPRM, the Agency sought comments on this NTSB

recommendation.⁶³ NTSB quoted this NTSB recommendation, noting that NTSB recommended that data be collected from all intrastate and interstate carriers. No other commenter addressed NTSB Recommendation H-11-1.

FMCSA Response. The FMCSA acknowledges the intent of the NTSB recommendation but the Agency has opted not to include a requirement in the URS final rule for the collection of the cargo tank vehicle information recommended by the NTSB. Based on FMCSA’s experience working with PHMSA and the cargo tank industry to address safety issues, and our understanding of the role of crash investigations or inquiries in identifying likely causes or contributing factors of crashes and HM incidents, the Agency does not need the cargo tank vehicle data in question.

First, the fact that a specification cargo tank vehicle was involved in a recordable crash would not in and of itself trigger a need for industry-wide tank vehicle data. In the absence of a crash or incident involving the unintended release of HM, and a subsequent investigation of the cause of the release of the material, the industry-wide data would serve only as a census of cargo tank vehicles used to transport HM. This census would not cover tank vehicles used to transport other materials even though such vehicles would be susceptible to crashes. FMCSA would know the total number of specification tank vehicles in use but there would be little if any analytical value concerning the risks of future crashes. FMCSA notes that through its existing motor carrier reporting requirements, which are continued through this rulemaking, the Agency has access to information on the identity of interstate motor carriers transporting HM in quantities requiring placards, which includes the interstate carriers operating specification cargo tank vehicles that are the subject of the NTSB’s interest.

Second, if there is a crash or incident involving the unintentional release of HM and the investigation or inquiry suggests that a design, fabrication, or maintenance issue may have contributed to the release of the HM, FMCSA and PHMSA already have the tools needed to effectively address the issue(s) without imposing a new information collection burden on the transportation industry. If there is a concern that a cargo tank vehicle from a specific manufacturer may not comply with PHMSA’s standards, the

⁶² See <http://www.nts.gov/investigations/summary/HAR1101.html> (last accessed July 30, 2012).

⁶³ See 76 FR 66506, 66522.

subsequent investigation would determine whether the problem is with the fabrication and/or maintenance of the specific tank vehicle involved in the crash or incident; involves multiple cargo tank vehicles produced by the same manufacturer; involves multiple cargo tanks serviced by the same repair facility; involves multiple cargo tanks operated by the same carrier; or, involves multiple manufacturers' cargo tanks in the specification series. The Department does not need the information collection for these scenarios to address the issue because FMCSA and PHMSA would work with the cargo tank manufacturers and repair facilities to take appropriate actions to resolve the safety concerns. FMCSA and PHMSA would work with the manufacturers and repair facilities involved to gather up-to-date information on how many specification tank vehicles had been sold or serviced and which customers were operating those vehicles.

In the event the investigation suggests flaws with one or more manufacturers' specification tank vehicle series, the agencies would work together to inform the cargo tank industry (manufacturers, registered repair facilities, and carriers) and the enforcement community of the problem and what actions should be taken to address the problem. For example, FMCSA could issue a safety bulletin or alert, or publish a **Federal Register** notice announcing the discovery of the non-compliant tanks. The Agency has taken a similar action in the past to alert carriers to safety problems and to direct them to immediately discontinue use of the unsafe cargo tanks until repairs and recertification were completed.

And, if necessary, the agencies would work together to determine what regulatory actions may need to be considered to provide a long-term solution. As with the previous scenarios, the NTSB's recommended information collection burden would not have provided any practical information useful in addressing the problem.

If there is a problem with the actual regulatory standard for a specification series, i.e., the manufacturers' tank designs conform to the PHMSA standards in effect on the date of manufacture but the standards for that series need to be upgraded, the collection of data does not help FMCSA and PHMSA because the agencies do not have a practical means with which to address such problems short of conducting a rulemaking to require or prohibit certain actions by manufacturers, repair facilities, and

carriers. At the point the agencies consider a rulemaking, FMCSA and PHMSA could query the vehicle manufacturers to obtain cargo tank vehicle data needed to support the preparation of rulemaking documents. The information collection burden recommended by the NTSB would therefore be unnecessary.

For the reasons given above, the Agency excludes from the final rule the collection of cargo tank data from motor carriers. The Agency will formally notify the NTSB in writing to request closure of the recommendation. NTTC's specific comment relating to URS applicability to intrastate HM carriers was addressed in section V.D.2.

Other Comments About the MCSA-1 Form

Section A, MC, MX, and FF Number(s)

MoDOT recommended that proposed question 10, in Section A of Form MCSA-1 should be deleted if all entities registered under the URS are to be identified solely by the USDOT Number. Proposed question 10 required the applicant to list MC, MX, and FF Number(s) (if updating).

FMCSA Response. The Agency agrees with MoDOT and has removed question 10 from Form MCSA-1 because regulated entities will be identified solely by USDOT Number. However, applicants must disclose MC, MX and FF Numbers concerning business relationships and affiliations with other entities registered with FMCSA (or its predecessor agencies) in response to question 43 of Form MCSA-1 because the Agency will use the information to deter reincarnated carriers as discussed in this section under "Section K, Disclosure of Relationships with other FMCSA-regulated Entities."

Section A, Form of Business

Proposed question 13 (Form of Business) in Section A asked an applicant to indicate its form of business by checking all of the following that apply: Sole Proprietor, Partnership, Limited Liability Company, Corporation, or Unit of State or Local Government. MoDOT recommended that FMCSA change the instruction for a Sole Proprietor. MoDOT commented that under the IRS definition, "[a] sole proprietor is someone who runs an unincorporated business by himself or herself." The proposed instructions read "Sole Proprietor—Individuals who operate a business in their own name." MoDOT stated that this gives the impression that more than one individual could be included as a sole proprietor. Therefore, this commenter

recommended that the instruction be changed to read: "Sole Proprietor—An individual who operates a business in his or her own legal name."

MoDOT further recommended that question 13 include "Limited Liability Partnerships and Trusts" as an option to check for form of business. ATA questioned why question 13 (Form of Business) instructs the applicant to "select all that apply." This commenter asked how more than one could apply.

FMCSA Response. In response to MoDOT's request, the Agency added the requested business forms, "Limited Liability Partnerships" and "Trusts," as well as a data field marked "Other" for question 12 (formerly question 13). The instructions to question 12 include definitions for "Limited Liability Partnership" and "Trust" and instruct the applicant to use the data field marked "Other" to indicate any business forms not listed on the application. The term "*Limited Liability Partnership (LLP)*" is defined as a "partnership in which some or all partners (depending on the jurisdiction) have limited liability. In an LLP, no partner is responsible or liable (directly or indirectly) for an obligation of the partnership due to another partner's misconduct or negligence, thus shielding innocent members of these partnerships from liability."

The term "*Trust*" is defined as a "relationship whereby property (real or personal, tangible or intangible) is transferred by one party (settlor) to be held by another party (trustee) for the benefit of a third party or parties (beneficiary(ies)). In effect, a trust is a legal device designed to provide financial assistance or something of value to someone without giving the person total control over the trust assets. It may be revocable or irrevocable, express or implied. The trustee owes a fiduciary duty to the beneficiaries (the beneficial owners of the trust property) and is obligated to administer the trust in accordance with both the terms of the trust and the governing law."

Additionally, the Agency has revised the definition of "*sole proprietor*" in the Form MCSA-1 Instructions to read: "An individual who owns and operates a business normally in his or her legal name and in which there is no legal distinction between the owner and the business. In some jurisdictions the proprietor can use a trade name or business name other than his or her legal name, but the individual is also required to file a 'doing business as (dba)' statement with local authorities. Every asset of the business is owned by the proprietor and all debts of the business are his or hers as well."

Regarding the direction that applicants “select all that apply,” we agree with ATA that only one form of business or company structure should apply here. Because the form of business or company structure may vary, each legal entity should have its own USDOT Number identifier. Accordingly, we have replaced the phrase “select all that apply” on question 12 of the MCSA–1 Form with “select the one business form that applies.”

Section A, Gross Annual Revenue

ATA commented that on page 8 of the proposed MCSA–1 Instructions, and on page 3 of the proposed MCSA–1 Form, the applicant is to enter its “gross annual revenue” (proposed Form MCSA–1 question 16). This commenter stated that this is a new requirement not proposed in the NPRM. ATA questioned what purpose such a requirement could serve. ATA stated that private motor carriers are, by definition, engaged primarily in businesses other than transportation, and many motor carriers operate ancillary businesses as well. Further, ATA commented that many businesses rightly regard gross revenue data as proprietary. ATA asserted that a requirement to provide gross annual revenue is unwarranted without a full explanation of a valid regulatory purpose, which FMCSA has not provided. This commenter recommended that the MCSA–1 Form remove the requirement to enter this information.

FMCSA Response. The Agency has revised the Form MCSA–1 and Instructions to no longer require information about an applicant’s “gross annual revenue.” FMCSA, however, may revisit this issue in the future.

Section B, Mileage

MoDOT requested that FMCSA clarify the instruction for proposed question 23 (Mileage) to make clear who reports the mileage of vehicles owned by the applicant but leased by the applicant to another carrier, versus vehicles leased by the applicant from others to use in the applicant’s business. The proposed instruction read: “Estimate the miles traveled by applicant’s [CMVs] during the last calendar year. It makes no difference if the CMVs were leased by the applicant or owned by the applicant. . . .” MoDOT commented that this proposed instruction appears to cover all the vehicles owned by the applicant, whether or not used by the applicant.

FMCSA Response. The Agency agrees with MoDOT that the proposed question 23 instruction (question 21 instruction in the final rule) should be clarified to

require reporting the mileage of all CMVs used in the applicant’s operations. The question 21 instruction has been revised to read:

Enter the total mileage of all [CMVs] to the nearest 10,000 miles operated by the applicant for the previous 12 months (whether leased or owned). If the applicant has been in operation for less than 12 months, enter mileage operated to date. If the applicant has not operated within the last 12 months, enter the number “0.”

The Agency has also similarly modified question 21 on the MCSA–1 Form. FMCSA has also eliminated the “Calendar Year” entry field from the MCSA–1 Form because the Agency has decided to request carrier mileage operated in the previous 12 months.

Section B, Number of Vehicles

MoDOT requested that FMCSA add further information to the Form MCSA–1 Instructions for question 24(a), which requires applicants to list the number of vehicles with weights greater than or equal to 10,001 pounds that it will operate in the United States. This commenter requested that the Agency make the instruction absolutely clear what vehicles are to be counted and included in this section. For a motor carrier that owns and leases some of its vehicles to other motor carriers, MoDOT asked whether the owner or the lessee is responsible for reporting those vehicles. MoDOT commented that without clarification, vehicle counts may be reported twice, once by the owner and once by the lessee.

MoDOT also commented that while question 24(c) requires applicants to list the number of vehicles with weights greater than or equal to 10,001 pounds that it will operate in interstate commerce, nothing in the question 24(a) instructions indicates that vehicles listed under 24(a) include operations in intrastate and interstate commerce. This commenter recommended that similar language be used within an item in order to be consistent and to easily understand the difference between questions 24(a) and 24(c). MoDOT commented that the proposed question 24 instructions were not clear and gave the impression that question 24(c) was requiring the total number of vehicles shown in (a), which it may not be.

FMCSA Response. The Agency agrees with MoDOT that the proposed question 24 instructions may be confusing. For this reason, and for other reasons explained below, the Agency is revising proposed question 24 (renumbered question 22 in the final rule) on both the Form MCSA–1 and on the Form MCSA–1 Instructions. As explained above in section V.D.5, beginning on or about

September 1, 2012, FMCSA discontinued issuing USDOT Numbers to non-motor carrier leasing companies and such companies would not fill out Form MCSA–1.

When responding to renumbered question 22, applicants should provide the number of each type of CMV that the company uses in its U.S. operations broken out by the method used to acquire the vehicle (owned, term-leased or trip-leased). Owned means the company holds title to the CMV, term leased means the vehicle is leased for a specific time period or term of contract, and trip leased means the CMV is leased on a trip-by-trip basis as needed. If the company owns or leases a school bus, mini-bus, passenger van, or limousine, then it would indicate the number of each type of passenger-carrying CMV (by its passenger-carrying capacity) that is owned, term leased or trip leased. For passenger-carrying vehicles, it would count the driver as a passenger when determining a vehicle’s passenger-carrying capacity.

The Agency amends renumbered question 22 on the Form MCSA–1 and Instructions by adding a section (d) to require applicants to provide the number of vehicles that are operated or will be operated solely in intrastate commerce, while section (c) continues to require applicants to provide the number of vehicles that operate interstate. The instructions to question 22(a) (proposed question 24(a)) have been clarified to explain that a CMV is “operated” for purposes of this question “if the vehicle is registered under Federal or State law, or both, in the name of the carrier, or is controlled by the carrier under a trip lease or long-term lease agreement (more than 30 days) during any given year. If a freight forwarder operates CMVs, it is also required to enter its fleet size on the MCSA–1 Form. Both a motor carrier and a freight forwarder (if operating CMVs) must include the number of CMVs operated under a trip lease or long-term lease agreement in their fleet size determinations.”

Section K, Administrative Filings Information

MoDOT recommended that FMCSA delete within Section K any information concerning the insurance company and the filing of financial responsibility; the name of the insurance company; policy number, date issued, etc. (proposed question 44). MoDOT also recommended that FMCSA delete the requirement to document within the MCSA–1 Form whether the Designation of Agents for Service of Process Form (BOC–3) is on file or will be filed

(proposed question 46). With respect to both of these recommendations, MoDOT commented that the information on file with the Agency should be sufficient proof and documentation to determine if the applicant is in compliance with the financial responsibility and process agent filing requirements. This commenter reasoned that if the responses to questions 44 and 46 were inconsistent with the filings received, someone would be required to intervene and question the validity of the application.

FMCSA Response. FMCSA is retaining proposed question 44 relating to financial responsibility on the MCSA-1 Form (renumbered as question 42 in the final rule) because the information provided is useful in identifying, at the application stage, unsafe carriers that attempt to “reincarnate” as new carriers. However, URS will not prevent an applicant that does not yet have this information from completing an application. FMCSA has removed proposed question 46 from the MCSA-1 Form because providing a simple confirmation that an applicant has submitted the BOC-3 Form to the Agency does not provide any useful information that the Agency does not already have.

Section K, Disclosure of Relationships With Other FMCSA-Regulated Entities

MoDOT also recommended that FMCSA remove column 2, in Section K, proposed question 45. Proposed question 45 would require an applicant to disclose all relationships that it has had (currently or in the past three years) with other FMCSA-regulated entities. The blank table requires an applicant to list the following information about such relationships: USDOT Number, MC/MX/FF number, company’s name, and company’s latest USDOT safety rating (as columns 1, 2, 3, and 5, respectively). MoDOT noted that the MC/MX/FF numbers will be superseded by the USDOT Number.

ATA commented that the instructions for question 45 regarding the reporting of affiliations were unclear. ATA requested clarification of what “affiliation” means in this context: “Is it the narrow, highly technical signification of the federal tax regulations, or some other meaning? At its broadest, the word can mean any business, familial, or personal connection whatever.”

FMCSA Response. The Agency is retaining column 2 in proposed question 45 (renumbered as question 43) on the MCSA-1 Form, as proposed. The MC/MX/FF number information is necessary for FMCSA to preserve within

the URS registration record for an entity all historical information relating to the MC/MX/FF number. For example, if a motor carrier transfers its operating authority to another person, the transferor’s historical information associated with the MC number would be recorded in the URS registration record for the transferee. This erects another barrier to reincarnated carriers.

As for the instructions to this question and the term “affiliation,” FMCSA is incorporating the language of sec. 32105 of MAP-21 in defining “affiliation.” Under this section, an applicant for a USDOT Number must disclose any past or current relationship, through common ownership, common management, common control, or common familial relationship to any other person or applicant for registration who was determined to be unfit, unwilling, or unable to comply with applicable regulatory requirements during the 3-year period before the date of the filing of the application. The MCSA-1 Instructions for question 43 have been modified to reflect the MAP-21 requirement.

Comments About MCSA-1 Instructions Instructions for Reasons To File

ATA commented that on page 4 of the proposed instructions, under the information provided about the “New Entrant Reapplication” reason for filing, the last two sentences are confusing and perhaps contradictory. On the proposed Form MCSA-1 Instructions, these sentences read: “If the motor carrier failed to schedule a New Entrant Safety Audit, did not appear for a safety audit, or failed a safety audit and did not submit corrective actions, the motor carrier must start the process from the beginning. If the motor carrier failed the safety audit, it must also demonstrate that it has corrected the deficiencies that resulted in revocation of its registration.” (emphasis in proposed language).

FMCSA Response. The Agency has renumbered the “Reasons to File” listed in the Instructions to the MCSA-1 to be consistent with how they are listed on the Form MCSA-1. In both documents, “New Entrant Reapplication” is the second option under “Reasons to File.” There is a \$300.00 fee for this transaction.

The language is not contradictory in that a new entrant whose USDOT registration has been revoked and whose operations have been placed out of service by FMCSA may re-apply for USDOT registration but must wait until 30 days after the date of revocation to do so. If revocation resulted from the

new entrant’s failure to schedule or submit to a safety audit, the new entrant must file an updated Form MCSA-1, pay the \$300.00 filing fee, pass a safety audit and re-start the 18-month safety monitoring program commencing from the date the application is approved. But if revocation resulted from the fact that the new entrant failed the safety audit, the new entrant must do all of the following: File an updated Form MCSA-1; pay the \$300.00 filing fee; provide evidence of corrective action; and re-start the 18-month safety monitoring program commencing from the date the application is approved. If the new entrant is a for-hire motor carrier subject to chapter 139 and also has its operating authority revoked, it must re-apply for operating authority as set forth in part 365. If revocation was based on the new entrant’s failure to file the minimum amounts of financial responsibility or designate agents for service of process, it must also complete administrative filings as well in the reapplication process. The instructions for the new entrant reapplication “Reason to File” have been expanded to include this additional explanation.

Biennial Update Instructions

ATA suggested that the Form MCSA-1 should state plainly, and as often as may be helpful, that while an applicant is required to update its data every 24 months, it may do so as often as it likes. This commenter stated that the PRISM Program effectively requires annual updates, a discrepancy that continues to confuse many carriers.

FMCSA Response. In response to ATA’s suggestion, the Agency has added the statement “An entity may also update its record with FMCSA at any time within this 24-month period” to the Form MCSA-1 Instructions’ explanation of the Biennial Update reason for filing.

Instructions for Agency Notification in the Event of Change in Ownership, Management, or Control

ATA commented that on page 5 of the proposed Form MCSA-1 Instructions, at the top, there is a remnant of the 2005 NPRM’s proposed requirement that a carrier must notify FMCSA within 20 days of any change in ownership, management or control. ATA recommended that this language be deleted from the Instructions.

FMCSA Response. The Form MCSA-1 Instructions have been modified to remove the requirement that a carrier must notify FMCSA within 20 days of any change in ownership, management or control. However, the Agency is requiring, in 49 CFR 365.405 and

390.201(d)(5), that the parties involved in any transaction that results in the transfer of an entity's operating authority must report the transfer to FMCSA on Form MCSA-1 within 30 days of consummation of the transaction. A new "reason for filing" category has been added to the Form MCSA-1 for this purpose titled "Notification of Transfers of Operating Authority." Both the transferor and transferee will be required to submit the MCSA-1 Form to ensure that a transfer of operating authority actually occurred. FMCSA needs this information to help it identify potential churning of operating authority by entities who seek to avoid an unfavorable regulatory compliance history by purchasing another company or its operating authority.

Section A Instructions, Addresses

ATA commented that on pages 5 and 6 of the instructions, some of the requirements with respect to the applicant's name and address seem arbitrary. This commenter recommended that the Instructions not state so definitely that a "terminal address" is not acceptable. ATA stated that many trucking companies' headquarters offices may, in effect, be terminals, and asked which address these companies are to use if the use of a terminal address is prohibited.

This commenter further questioned why the Instructions indicate that a post office box is prohibited for a mailing address, if a company provides a physical location for the principal place of business. ATA commented that many of the smallest trucking companies operate almost wholly out of a vehicle, and that the use of any physical address to receive mail may involve a lack of security for such companies, not to mention inconvenience. This commenter noted that the current Form MCS-150 does not prohibit P.O. boxes.

FMCSA Response. The Agency has revised the MCSA-1 Instructions in line with these recommendations, and has clarified the FMCSA's use of each address. In particular, FMCSA has removed the prohibition against providing post office boxes as a mailing address because the Agency will only conduct on-site visits (when necessary) at the principal place of business address, which may not be a post office box. The instructions also will no longer prohibit the use of a terminal address for principal place of business as long as the address meets the definition of a principal place of business.

Section B Instructions, Driveaway-Towaway Operations

MoDOT requested that FMCSA provide a specific definition and instructions concerning driveaway-towaway operations. This commenter stated that the current MCS-150 Form requires an entry for the number of vehicles owned by the motor carrier even though the company may not own any motor vehicles when all the power units driven are considered cargo. MoDOT asked how companies that perform this service complete Form MCSA-1, which sections apply to them, and how they must report or not report the number of vehicles.

FMCSA Response. A new applicant filing to conduct driveaway-towaway operations is a motor carrier and must complete section A, B, K, N, and P of Form MCSA-1. Under section B, question 20 (formerly question 22), that motor carrier would select "driveaway-towaway" as Cargo Type and report mileage in question 21 (formerly question 23). Under question 22(a) (formerly 24(a)), the number of vehicles used in the towaway operation must be reported. Because driveaway operations involve operation of an unladen or empty vehicle that is not owned or leased by the motor carrier, question 22(a) would not apply. So a motor carrier that engages exclusively in driveaway operations would not be required to enter vehicle information in question 22(a).

The instructions for section B, question 22(a) now include a statement that "the number of vehicles does not need to be reported for driveaway operations," which reflects the definition for "driveaway-towaway" found in § 390.5.

This definition was added to the MCSA-1 Instructions under question 15 (Operation Classification). Form MCSA-1, section B, question 22(a) (formerly question 24(a)) includes "towaway" in the breakout of vehicle types since the number of vehicles will need to be reported for these operations.

VI. Section-by-Section Analysis

This rule amends 49 CFR part 360 in reference to fees; part 365 procedures governing applications for operating authority and transfers of operating authority; part 366 procedures for designations of process agents; part 368 procedures governing applications to operate in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities; part 385 safety fitness procedures; part 387 levels of financial

responsibility; part 390 general applicability of the FMCSRs and part 392 regarding the driving of commercial motor vehicles.

A. Part 360, Fees for Motor Carrier Registration and Insurance

The Agency revises part 360 as proposed in the SNPRM. Section 360.1 sets out fees for registration-related services, such as records searches, copying, and certification. It also specifies that no service fees under this section will be charged to a Federal agency; a State or local government; or any representative of a motor carrier, motor private carrier, leasing company, broker, or freight forwarder accessing information related to the entity for the individual use of such entity.

Section 360.3 sets out the filing fees. This section also addresses the appropriate manner of payment, and the conditions under which an entity may receive or request a waiver or reduction of filing fees. As in current § 360.3, this section also indicates that separate filing fees are required for each type of authority sought in each transportation mode, such as broker authority for motor property carriers. A separate filing fee is also required for the filing of applications for 120-day temporary operating authority when there is a national emergency or natural disaster, regardless of whether such application is related to an application for corresponding permanent operating authority. FMCSA is retaining the existing fees for self-insurance pending consideration of changes in these fees in a separate rulemaking.

Section 360.5 specifies the procedure FMCSA will follow if the Agency determines it is necessary to update the URS user fees.

B. Part 365, Rules Governing Applications for Operating Authority

FMCSA revises § 365.101(a) and 365.101(h) to remove references to "common" and "contract" carriers because section 4303(c) of SAFETEA-LU required the Agency to discontinue designating operating authority as "common" or "contract" carriage.⁶⁴ FMCSA removes and reserves § 365.103 relating to a modified procedure.

The Agency amends § 365.105, *Starting the application process: Form MCSA-1, FMCSA Registration/Update (USDOT Number—Operating Authority Application)*, to replace references to obsolete OP series forms with "Form MCSA-1" and to reduce the number of operational categories from six to three

⁶⁴ 49 U.S.C. 13902(f), as amended by SAFETEA-LU, section 4303(c).

so it is clear that the fee for operating authority applies only to the general categories of motor carrier, broker, and freight forwarder, and not to each individual subgroup of these categories listed in Section A, questions 15a, 15b, 15c, and 15d of Form MCSA-1.

Revised § 365.107, *Types of applications*, replaces references to OP series forms with “Form MCSA-1.” FMCSA has also removed obsolete references to common and contract carriage in § 365.107, as required by SAFETEA-LU. Under § 365.107(e), the Agency will grant temporary operating authority only in cases of national emergency or natural disaster, and following an emergency declaration under 49 CFR 390.23, *Relief from regulations*. Entities granted temporary operating authority will need to file evidence of financial responsibility with FMCSA.

The Agency revises § 365.109, *Review of the application*, to require new filings of both evidence of financial responsibility and designation of agents for service of process to be completed within 90 days of the date that the notice of application is published in the FMCSA Register. As explained in the SNPRM, the 90-day time period combines the existing 20-day initial deadline and 60-day extension period and adds 10 more days for Agency processing. FMCSA has also removed the phrase in current § 365.109(b) that indicates that the FMCSA Register publication of a summary of an application is considered “a preliminary grant of authority.” Instead, § 365.109(b) now indicates that a summary of the application will be published in the FMCSA Register to give notice to the public in case anyone wishes to oppose the application.

FMCSA adds new § 365.110, *Need to complete New Entrant Safety Assurance Program*, which specifies that operating authority does not become permanent until the applicant satisfactorily completes the New Entrant Safety Assurance Program in 49 CFR part 385, subpart D. The Agency revises § 365.111, *Appeals to rejections of the application*, to provide the address and appropriate FMCSA office to which an applicant should address an appeal when its application is rejected. The Agency revises § 365.119, *Opposed applications*, to specify that parties opposing an application are required to send a copy of their protests to both the applicant and FMCSA, that all protests must include statements made under oath, and that there are no personal appearances or formal hearings where there are protests to applications.

The Agency revises § 365.201, *Definitions*, to remove the reference to “permanent authority.” Section 365.201 now reads: “A person wishing to oppose a request for operating authority files a *protest*. A person filing a valid protest is known as a *protestant*.” The Agency revises § 365.203, *Time for filing*, to provide the address and appropriate FMCSA office to which a person should address a protest. FMCSA removes and reserves § 365.301, *Applicable rules*, in 49 CFR part 365, subpart C, *General Rules Governing the Application Process*, because applications for operating authority are not subject to the Agency’s Rules of Practice in 49 CFR part 386.

As explained above in section V.I, the Agency revises subpart D of part 365 of title 49 CFR, *Transfers of Operating Authority*. Although FMCSA proposed to remove most of this subpart in the SNPRM, the Agency has since determined that the public interest necessitates requiring non-exempt for-hire motor carriers, brokers and freight forwarders to notify FMCSA of transactions that may directly or indirectly result in the transfer or lease of their operating authority. The Agency will no longer accept or review requests for transfers of operating authority. However, FMCSA believes that it is necessary to carry forward the reporting aspects of the regulations governing these transactions. See section V.I above for a discussion of these changes.

In 49 CFR part 365, subpart E, *Special Rules for Certain Mexico-domiciled Carriers*, the Agency amends § 365.507, *FMCSA action on the application*, to no longer permit an applicant to submit a hard copy of Form BOC-3 (Designation of Agents—Motor Carriers, Brokers and Freight Forwarders); an applicant or its process agent company must electronically file Form BOC-3. As discussed in section V.G.1 above, FMCSA revises § 365.509, *Requirement to notify FMCSA of change in applicant information*, to require an applicant to notify FMCSA within 30 days of any change or correction to the information in parts I, IA or II of Form OP-1(MX) or in Form BOC-3 during the application process or after having been granted provisional operating authority. The regulations previously contained a 45-day notification requirement, but this has been changed to 30 days in order to be consistent with similar notification requirements applicable to entities subject to the URS.

C. Part 366, Designation of Process Agent

The Agency amends § 366.1, *Applicability*, to include private and

exempt for-hire motor carriers and freight forwarders among those entities that are required to acquire the services of process agents and file proof of designations with FMCSA. Effective April 25, 2016, § 366.2, *Form of designation*, is amended to specify a 180-day grace period (from the final rule compliance date) for all existing private and exempt for-hire motor carriers to file process agent designations. FMCSA makes minor revisions to § 366.3, *Eligible persons*, to make the reference to State officials gender neutral. The Agency revises § 366.4, *Required States*, to specify that every motor carrier must designate process agents for all 48 contiguous States and the District of Columbia, unless its operating authority registration is limited to fewer than 48 States and DC, in which case it must designate process agents for each State in which it is authorized to operate and for each State traversed during such operations. Although this exception was not proposed in the SNPRM, the Agency has determined that it is necessary because while property carriers are given nationwide authority, passenger carriers operating over regular routes (particularly governmental entities) may have geographically-limited operating authority. FMCSA also adds a paragraph 366.4(c), which indicates that every freight forwarder must make a designation for each State in which its offices are located or in which contracts will be written.

The Agency revises § 366.5, *Blanket designations*, to specify that brokers and freight forwarders (in addition to motor carriers) may make the required designation of process agents by specifying the name of an association or corporation that has filed a list of process agents for each State with FMCSA. As discussed in sections III.B.7 and V.G.4 above, the Agency revises § 366.6, *Cancellation or change*, to clarify that the process agent or blanket agent, in addition to the motor carrier, broker, or freight forwarder, may cancel or change a process agent designation by filing a new designation with FMCSA (366.6(a)). To help ensure that such designations are up-to-date, § 366.6(b) requires that changes to designations be reported to FMCSA within 30 days of the change. In response to public comments, the Agency has added, in § 366.6(c), a new requirement that a motor carrier, broker or freight forwarder report changes in name, address, or contact information to its process agents and/or the company making a blanket designation on its behalf within 30 days of the change. Finally, the Agency adds § 366.6(d) to

require process agents and blanket agents who file process agent designations on behalf of motor carriers, brokers, and freight forwarders to report to FMCSA terminations of their contracts with regulated entities within 30 days of the termination. If process agents and/or blanket agents do not keep their information up to date, FMCSA may withdraw their authority to make process agent designations.

D. 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

FMCSA revises § 368.3, *Applying for a certificate of registration*, to replace obsolete references to the OP-2 and MCS-150 forms with references to "Form MCSA-1." The Agency revises § 368.4, *Requirement to notify FMCSA of change in applicant information*, to require applicants to notify the Agency within 30 days of any changes or corrections to the information in Section A of Form MCSA-1. The revisions to this section also replace obsolete form references with references to "Form MCSA-1." FMCSA revises § 368.8, *Appeals*, to change the Agency office to which applicants should address an appeal to a denial of an application.

E. Part 385, Safety Fitness Procedures

In 49 CFR part 385, subpart D, *New Entrant Safety Assurance Program*, the Agency revises § 385.301, *What is a motor carrier required to do before beginning interstate operations?*, to specify that all for-hire motor carriers must obtain operating authority in addition to registering and obtaining a USDOT Number, unless they are exclusively providing transportation that is exempt from the commercial registration requirement in 49 U.S.C. chapter 139. FMCSA also revises this section to reference the new registration procedures in 49 CFR part 390 in addition to the instructions for obtaining operating authority located in 49 CFR part 365. This revised section also clarifies that, although the New Entrant Safety Assurance Program regulations of subpart D do not apply to Mexico-domiciled motor carriers, such carriers must register with FMCSA by following the procedures described in 49 CFR parts 365, 368, and 390.

The Agency revises § 385.303, *How does a motor carrier register with the FMCSA?*, to reference the new Form MCSA-1. The Agency revises § 385.305, *What happens after the FMCSA receives a request for new entrant registration?*, to specify in paragraph (c) that upon

completion of the application form, the new entrant will be issued an inactive USDOT Number, and that an applicant may not begin operations nor mark a CMV with the USDOT Number until after the date of the Agency's written notice that the USDOT Number has been activated. The Agency also revises this section to specify that violators of this section may be subject to penalties under § 392.9b(b), and to replace a reference to the obsolete Form MCS-150 with the new Form MCSA-1. Finally, paragraph (d) of this section is being revised to reference new § 390.201(b) and add a new paragraph heading to improve the reader's understanding of the section.

FMCSA revises § 385.329, *May a new entrant that has had its USDOT new entrant registration revoked and its operations placed out of service reapply?*, to replace references to obsolete Form MCS-150 with references to Form MCSA-1. The Agency also revises this section to specify that if the new entrant is a for-hire motor carrier subject to the registration provisions of 49 U.S.C. chapter 139 and also had its operating authority revoked, it must re-apply for operating authority as set forth in § 390.201(b) and 49 CFR part 365.

In 49 CFR part 385, subpart E, *Hazardous Materials Safety Permits*, the Agency revises § 385.405, *How does a motor carrier apply for a safety permit?*, to replace references to obsolete forms with references to Form MCSA-1. FMCSA also revises this section to specify that a motor carrier holding an HMSN must report to the Agency any change in the information on Form MCSA-1 within 30 days of the change. FMCSA revises §§ 385.409, 385.419, and 385.421 to replace references to obsolete forms with references to Form MCSA-1.

In 49 CFR part 385, subpart H, *Special Rules for New Entrant Non-North America-Domiciled Carriers*, the Agency revises § 385.603, *Application*, to replace references to obsolete forms with references to Form MCSA-1. The Agency revises § 385.607, *FMCSA action on the application*, to indicate that the Form BOC-3 (Designation of Agents—Motor Carriers, Brokers and Freight Forwarders) may only be submitted electronically. FMCSA revises § 385.609, *Requirement to notify FMCSA of change in applicant information*, to indicate that motor carriers subject to this subpart must notify the Agency of any changes or corrections to the information in Section A of Form MCSA-1 that occur in the application process or after the motor carrier has been granted new entrant

registration within 30 days of the change.

In 49 CFR part 385, subpart I, *Safety Monitoring System for Non-North American Carriers*, the Agency revises § 385.713, *Reapplying for new entrant registration*, to replace references to obsolete Form MCS-150 with references to Form MCSA-1. This revised section will also clarify that if the new entrant is a for-hire carrier subject to the registration provisions under 49 U.S.C. 13901 and also has had its operating authority revoked, it must reapply for operating authority as set forth in 49 CFR part 365 and in new § 390.201(b).

F. Part 387, Minimum Levels of Financial Responsibility for Motor Carriers

In 49 CFR part 387, subpart A, *Motor Carriers of Property*, the Agency adds § 387.19 to specify that insurers of exempt for-hire and private motor carriers that transport HM in interstate commerce must file certificates of insurance, surety bonds, and other securities and agreements with FMCSA electronically in accordance with the requirements and procedures set forth in § 387.323, *Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations*.

In 49 CFR part 387, subpart B, *Motor Carriers of Passengers*, FMCSA revises § 387.33, *Financial responsibility, minimum levels*, by adding a paragraph (b) to clarify the specific URS registration and financial responsibility obligations for FTA grantees who receive grants under 49 U.S.C. 5307, 5310, or 5311. In particular, this section specifies that the minimum level of financial responsibility for a motor vehicle used by such a carrier to provide transportation services within a transit service area located in more than one State must be the highest level required for any of the States in which it operates. This section clarifies that this requirement also applies to transit service providers who operate in only one State but interline with other passenger carriers that provide interstate transportation within or outside the transit service area. This section specifies that these transit service providers must register as for-hire passenger carriers under 49 CFR parts 365 and 390, identify the State(s) in which they operate under the applicable grants, and certify on their registration that they have in effect financial responsibility levels in an amount equal to or greater than the highest level required by any of the States in which they are operating under a qualifying grant.

FMCSA adds § 387.43, *Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations*, to specify that insurers of for-hire motor carriers of passengers must file certificates of insurance, surety bonds, and other securities and agreements electronically in accordance with the requirements and procedures set forth in § 387.323, *Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations*. Section 387.43 also specifies that this section does not apply to Mexico-domiciled passenger motor carriers, which are excepted from the § 387.31(b) requirement that policies of insurance, surety bonds, and endorsements to satisfy the financial responsibility minimum requirements must remain in effect continuously.

In 49 CFR part 387, subpart C, *Surety Bonds and Policies of Insurance for Motor Carriers and Property Brokers*, the Agency revises § 387.301, *Surety bond, certificates of insurance, or other securities*, to remove obsolete references to common and contract carriers, as required by SAFETEA-LU. Regarding § 387.303, *Security for the protection of the public: Minimum limits*, as explained in section V.G.2 above, FMCSA adds a new subparagraph 387.303(b)(1)(iii) to clarify that the minimum level of financial responsibility for a motor vehicle used by an FTA grantee motor carrier to provide transportation services within a transit service area located in more than one State must be the highest level required for any of the States in which it operates. This new subparagraph also reiterates the other financial responsibility clarifications described above in the discussion of § 387.33. Although FMCSA proposed in the SNPRM to revise § 387.303 to restore a previously removed provision and to remove obsolete references to effective dates in § 387.303(b)(2), a recently issued FMCSA technical amendment made these changes. These changes restored a provision that established minimum public liability limits of \$300,000 for fleets that consist only of vehicles with Gross Vehicle Weight Ratings (GVWRs) of under 10,000 pounds, except that 10,000 pounds was changed to 10,001 pounds to be consistent with the statutory definition of CMV. Because these changes were made in a recently issued technical amendment, the Agency is not making those changes in this final rule.

The Agency also revises §§ 387.313, *Forms and procedures*; 387.323, *Electronic filing of surety bonds, trust fund agreements, certificates of*

insurance and cancellation; 387.413, *Forms and procedures*; and 387.419, *Electronic filing of surety bonds, certificates of insurance and cancellations*, to clarify that electronic filing is mandatory and not optional. In 49 CFR part 387, subpart D, *Surety Bonds and Policies of Insurance for Freight Forwarders*, FMCSA revises § 387.403, *General requirements*, to expand freight forwarder BI&PD insurance requirements to all freight forwarders performing transfer, collection, or delivery service. As explained in the SNPRM, under the current regulations, only HHG freight forwarders performing transfer, collection, or delivery service are subject to a BI&PD insurance requirement. These regulations were transferred without changes from the Interstate Commerce Commission following enactment of the ICCTA. However, although the ICCTA expanded the Agency's jurisdiction over freight forwarders, which had been previously limited to HHG freight forwarders, to all freight forwarders, the regulations were not amended to reflect the Agency's broadened jurisdiction. FMCSA believes there is no basis for limiting the BI&PD insurance requirement to HHG freight forwarders.⁶⁵

G. Part 390, Federal Motor Carrier Safety Regulations; General

The Agency revises § 390.3, *General applicability*, to remove references to § 390.19. In paragraph 390.3(g)(4), a reference to § 390.19(a)(1) has been replaced with a reference to § 390.201. Paragraph 390.3(h), *Intermodal equipment providers*, is revised to remove reference to a December 2009 compliance date. The Agency adds paragraphs 390.3(i) and 390.3(j) to reference the safety regulations that are applicable to brokers and freight forwarders required to register with FMCSA pursuant to 49 U.S.C. chapter 139. The Agency adds paragraph 390.3(k) to specify that the rules in 49 CFR part 390, subpart E, *Unified Registration System*, apply to each cargo tank and cargo tank motor vehicle manufacturer, assembler, repairer, inspector, tester, and design certifying engineer that is subject to registration requirements under 49 CFR 107.502 and 49 U.S.C. 5108.

The Agency revises the definition of "exempt motor carrier" in § 390.5, *Definitions*, to mean "a person engaged in transportation exempt from economic

regulation by the [FMCSA] under 49 U.S.C. chapter 135," rather than under 49 U.S.C. 13506, as specified in the current regulation because not all the statutory exemptions in chapter 135 are contained within section 13506.

FMCSA makes changes to § 390.19 in two phases. First, effective November 1, 2013, the Agency amends § 390.19 by adding a new paragraph (b)(4), which states that anyone failing to comply with the biennial update requirement is subject to civil penalties. As explained above, FMCSA determined that enforcement of the biennial update requirement through the imposition of civil penalties is so important that the date for this provision will occur as soon as possible.

In the second phase of § 390.19 changes, which are effective on the main compliance date for the rule, October 23, 2015, FMCSA revises § 390.19, *Motor carrier identification reports for certain Mexico-domiciled motor carriers*, to specify that only Mexico-domiciled long-haul carriers must file Form MCS-150 with FMCSA.⁶⁶ These carriers must file Form MCS-150 before they begin operations and an update every 24 months. This provision continues to allow the MCS-150 to be submitted to the agency via hard copy. Paragraph 390.19(e) instructs these carriers to submit the Form MCS-150 along with their application for operating authority (OP-1(MX)). Paragraph 390.19(h)(2) specifies that a Mexico-domiciled long-haul carrier must pass the pre-authorization safety audit under § 365.507, and that the Agency will not issue a USDOT Number until expiration of the protest period provided in § 365.115 and—if a protest is received—after FMCSA denies or rejects the protest.

FMCSA amends § 390.21, which addresses the marking of CMVs and intermodal equipment, by revising subparagraph (b)(1) to reference new Form MCSA-1 in addition to Form MCS-150 when specifying the name of the carrier that must appear in a vehicle marking because Mexico-domiciled long-haul carriers are not included in the URS and will continue to use the Form MCS-150 when this rule is implemented. Specifically, the Agency revises § 390.21(b)(1) to state that the marking information must display the "legal name or a single trade name of the motor carrier operating the self-

⁶⁵ A technical amendment has also been made to insert the phrase "transfer, collection, or delivery service" in place of "transfer, collection, and delivery service" to conform with the statutory language at 49 U.S.C. 13906(c)(1).

⁶⁶ Effective on the main compliance date for this final rule, the biennial update requirement and accompanying civil penalties provision are applicable to the new Form MCSA-1 in addition to the MCS-150. Effective October 23, 2015, the biennial update requirement for the Form MCSA-1 is located at § 390.201, as discussed below.

propelled CMV, as listed on the Form MCSA-1 or the motor carrier identification report (Form MCS-150) and submitted in accordance with § 390.201 or § 390.19, as appropriate.” The Agency revises § 390.40, *What responsibilities do intermodal equipment providers have under the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399)?*, to replace a reference to obsolete Form MCS-150C with a reference to Form MCSA-1.

FMCSA adds a new subpart E, *Unified Registration System*, which includes §§ 390.201 through 390.209. Section 390.201, *USDOT Registration*, establishes the general requirement for all regulated entities, except Mexico-domiciled long-haul carriers, to obtain USDOT registration by electronically filing Form MCSA-1 and to provide FMCSA biennial updates to the registration information.

Paragraph 390.201(c)(1) states that persons who fail to file Form MCSA-1 before beginning operations, or who fail to file timely biennial updates, are subject to civil penalties under 49 U.S.C. 521(b)(2)(B) or 49 U.S.C. 14901(a), as appropriate. Persons are also subject to civil penalties if they furnish misleading information or make false statements on Form MCSA-1.

Paragraph 390.201(c)(2) provides for the issuance of an inactive USDOT Number upon receipt and processing of Form MCSA-1, which will be activated after completion of all applicable administrative filings. It further states that an applicant may not begin operations until after its USDOT Number has been activated.

Paragraph 390.201(c)(3) requires that a carrier must display a valid USDOT Number on each CMV. Motor carriers will not be required to remove the obsolete numbers (e.g., MC) from their vehicles and those numbers may be used for other purposes such as advertising or marketing. However, FMCSA encourages carriers to omit these obsolete numbers from new or repainted vehicles.

Paragraphs 390.201(d)(2) and (d)(3) require biennial updates to be filed on the last day of a specific month, which is determined based on the last digit of the entity's USDOT Number. Paragraph 390.201(d)(4) specifies that a registered entity must notify the Agency of a change in legal name, form of business, or address within 30 days of the change by filing an updated Form MCSA-1. Paragraph 390.201(d)(5) requires a person who obtains operating authority through a transfer, as defined in part 365, subpart D, to notify FMCSA of the transfer within 30 days of

consummation of the transfer by filing an updated Form MCSA-1, if the transferee had an existing USDOT number at the time of the transfer, or a new Form MCSA-1 if the transferee did not have an existing USDOT Number at the time of transfer. Paragraph 390.201(d)(5) also requires the transferor to file a Form MCSA-1 indicating that it has transferred its operating authority to the transferee. Both the transferee and the transferor are also required to scan and submit a copy of the operating authority that is being transferred. See section V.I above for a discussion of these requirements. The filing of updated information under either paragraph 390.201(d)(4) or 390.201(d)(5) does not relieve a registered entity from the requirement to file an updated Form MCSA-1 every 24 months in accordance with paragraph 390.201(d)(3).

Section 390.203, *PRISM State registration/biennial updates*, specifies that a motor carrier that registers its vehicles in a PRISM Program State can satisfy the USDOT registration and biennial update requirements in § 390.201 by electronically filing the required information with the State, provided the State has integrated the USDOT registration/update capability into its vehicle registration program. Section 390.205, *Special requirements for registration*, requires all for-hire motor carriers, private motor carriers that transport HM in interstate commerce, brokers, and freight forwarders to file evidence of financial responsibility to receive USDOT registration. This section also specifies that all motor carriers (both private and for-hire), brokers, and freight forwarders required to register under the URS must designate an agent for service of process pursuant to 49 CFR part 366.

Section 390.207, *Other governing regulations*, lists and provides cross-references to other governing regulations that are applicable to those requesting USDOT registration. Section 390.209, *Pre-authorization safety audit*, directs a non-North America-domiciled motor carrier that requests authority to conduct interstate commerce within the United States to § 385.607(c) for detailed information about the requirement to complete a pre-authorization safety audit as a pre-condition for receiving USDOT registration.

H. Part 392, Driving of Commercial Motor Vehicles

Effective November 1, 2013, the Agency adds a new § 392.9b, *Prohibited transportation*, to prohibit a motor carrier with an inactive DOT Number from operating a CMV and to notify carriers violating this provision that

they are subject to civil penalties in accordance with 49 U.S.C. 521.

VII. Regulatory Evaluation of the URS Final Rule: Summary of the Calculation of Benefits and Costs⁶⁷

A summary of the benefits and costs of the URS final rule, including total net benefits, can be found in section III.C above. This section summarizes the calculation of the costs and benefits for each URS provision. FMCSA refers readers to the final Regulatory Evaluation, which can be found in the docket, for the Agency's full discussion of the analysis of benefits and costs of the URS.

All costs and benefits were calculated over a 10-year period in nominal dollars, restated in real 2010 dollars, and discounted to present value using a rate of seven percent per Office of Management and Budget (OMB) guidelines. A full discussion of the data used, assumptions made, and calculations performed is in the Regulatory Evaluation, which can be found in the public docket for the URS final rule.

A. New Registration Fees Under the URS

Currently, only non-exempt for-hire motor carriers, property brokers, and freight forwarders must pay a one-time registration fee to FMCSA of \$300. However, under the URS, FMCSA will require exempt for-hire, private motor carriers and other entities to pay a registration fee as well. Section 4304 of SAFETEA-LU provided that the fee for new URS applicants shall as nearly as possible cover the costs of processing the registration but shall not exceed \$300. The \$300 limit was removed by section 32106 of MAP-21. FMCSA determined that it would charge all new applicants the maximum fee of \$300 authorized by SAFETEA-LU, even though the amount needed to cover the 10-year Agency costs associated with processing the registration filings based on projections of annual new applicants and Agency processing costs exceeded \$300 per filing. Although MAP-21 eliminated the \$300 limit, the final rule retains the \$300 fee proposed in the SNPRM because the Agency has not developed preliminary estimates on appropriate fees to cover the full costs of operating its URS program, or issued for public comment a proposal concerning such fees. The Agency has opted to initiate, at a later date, a separate rulemaking proceeding to solicit public comment on this issue,

⁶⁷ Calculations presented in this section may be subject to rounding errors.

rather than delay issuance of this final rule.

FMCSA forecasted \$360,122,795 in upgrading and operating costs of the registration system over the 10-year period from 2014 through 2023. This total includes the costs to operate the new motor carrier licensing and insurance system. The total also includes the cost for FMCSA to vet all new applicant for-hire carriers.⁶⁸

A portion of these licensing, insurance, and vetting costs will be defrayed by fee revenues other than new

applicant registration fees. The FMCSA estimated fees collected for various insurance filings to be \$6,943,479 over the 10-year period, and subtracted the 10-year present value of other fee revenues (\$6,943,479) from the licensing, insurance, and vetting cost estimate to arrive at \$353,179,316 in present value costs that the Agency must recover through the registration fee. FMCSA divided this cost estimate by its projection of dollars collected per dollar of fee (\$486,678)⁶⁹ to arrive at a fee of \$725. For the reasons stated

above, FMCSA will charge \$300 per new applicant. Though a portion of the fees will cover some of the costs of FMCSA's review of applications, the \$300 fee will not be sufficient to cover all of these review costs.

The cost to industry associated with the change will be \$63,583,722 in discounted dollars over the 10-year period (shown in Table 6). This cost to industry will be offset by an equal benefit to the Agency resulting from the revenues generated through the new registration fees.

TABLE 6—PROPOSED CHANGE IN FMCSA REGISTRATION FEE TO NEW APPLICANTS BY OPERATION AND CLASSIFICATION

| Operation classification | Number (2014–2023) | Fee change | Total (2010 \$) | Total (present value) |
|---|--------------------|------------|-----------------|-----------------------|
| Exempt For-Hire Carriers | 44,449 | 300 | \$13,334,700 | \$10,083,170 |
| Private Carriers and other entities * | 235,945 | 300 | 70,753,500 | 53,500,522 |
| Total | 280,294 | | 84,088,200 | 63,583,722 |

* Cargo tank facilities and IEPs.

B. Designation of Process Agents

FMCSA amends 49 CFR part 366 to require private and exempt for-hire carriers to file process agent designation information with the Agency. FMCSA believes that requiring exempt for-hire carriers to file process agent designations would enhance safety and it is not cost prohibitive. FMCSA's data show that exempt carriers appear to be comparable to the general carrier population when it comes to crash rate and unfit determinations. Therefore, it is equally important that FMCSA be able to quickly identify the appropriate individual(s) on whom to serve notices of enforcement actions. In 2011 and 2012, exempt for-hire carriers constituted about 10 percent of unfit determinations made by FMCSA resulting from compliance reviews. An analysis conducted by the Agency to examine the safety profile of exempt for-hire carriers indicated that these carriers had much higher post-identification crash rates than private carriers, but lower post-identification crash rates

than non-exempt for-hire carriers.⁷⁰ Additional information supporting the Agency's decision to require exempt for-hire motor carriers to file process agent designations with the Agency is found in section 3.8 of the regulatory evaluation for this final rule.

Although under SAFETEA-LU carriers will not be assessed a fee when filing this information, there is still a cost to industry associated with engaging a process agent. The FMCSA estimated, based on price quotes available from process agents, that the cost to engage a process agent is currently about \$35 per carrier. This cost was assumed to cover the minimal filing cost to the process agent.⁷¹ No processing cost was assumed for FMCSA for this electronic filing.

The Agency calculated \$7,199,122 in discounted costs to industry associated with new-applicant private and exempt for-hire carrier process agent filings for 2014 through 2023.

FMCSA assumed that no private and exempt for-hire motor carriers with recent activity have designated process

agents. The Agency calculated one-time compliance costs for affected carriers with recent activity of \$10,546,445 based on its estimate of 301,327 private and exempt for-hire carriers with recent activity in 2014.

Finally, FMCSA, based on discussions with the FMCSA Commercial Enforcement Division, estimated that 10 percent of private and exempt for-hire motor carriers with recent activity will change their process agents each year. The Agency calculated discounted costs to industry of \$7,321,445 associated with re-filing activities over the 10-year analysis period. FMCSA also calculated the Agency resource cost to process the carrier process agent changes.

Non-exempt for-hire motor carriers, brokers and freight forwarders currently must file designations of process agents via a "BOC-3" filing. Under the URS final rule, FMCSA is requiring both private and exempt for-hire carriers to make the same filings.

This requirement will improve the ability of FMCSA safety investigators to locate small and medium-sized private

⁶⁸The FMCSA has authority to vet all for-hire carriers, but is currently vetting only for-hire household goods and passenger carriers. During the vetting process, FMCSA reviews the application for completeness and compares the applicant's data with existing carrier data in order to identify noncompliant carriers seeking authority under a different name. If an application is incomplete, FMCSA will contact the applicant to obtain missing information. If FMCSA determines that an applicant is an unsafe carrier or the application remains materially incomplete after contacting the applicant, FMCSA will reject the application. The applicant is provided an opportunity to appeal the rejection and submit additional evidence to support its position that the application should be approved.

⁶⁹This number was calculated by multiplying the number of new registrants in each year by \$1, discounting to find the present value, and summing over the 10-year period of the analysis.

⁷⁰The analysis was run using the 2009 Safety Management System (SMS) Effectiveness Test to look at the post identification crash rates of: (1) Carriers with recent activity that meet screening criteria that ensure they are operational during the evaluation period; and (2) carriers with 1 or more Behavior Analysis and Safety Improvement Categories (BASICs) above FMCSA's SMS intervention thresholds. This analysis essentially identifies who the Agency would have identified had it ran SMS in January 2010 and then what those carriers post-identification crash rates were between

January 2010 and June 2011. The analysis showed that exempt for-hire and exempt for-hire plus another classification experienced higher crash rates (4.0 percent and 3.3 percent, respectively) than private carriers (1.7 percent). The difference in crash rates is even larger when examining those carriers with one or more BASICs above the intervention threshold, with exempt for-hire carriers having a crash rate of 5.8 percent, as compared to private carriers having a crash rate of 2.2 percent.

⁷¹The \$35.00 process agent filing cost is based on an internet search of process agents conducted May 7th, 2013 found on the FMCSA Web site (<http://www.fmcsa.dot.gov/registration-licensing/licensing/agents.htm>).

and exempt for-hire motor carriers for enforcement action and compliance-related activities because investigators would be able to work with the newly-designated process agents to locate hard-to-find motor carriers. If the time saved is used by safety investigators to conduct more safety interventions, the Agency believes this will lead to increased safety benefits. However, to present a conservative estimate of the benefits of the URS final rule, we only estimate the benefit of time saved by the Agency due to more efficient interventions.

The FMCSA investigators sometimes spend 20 hours or more attempting to locate motor carriers, and in some cases are unable to track down the subject carrier altogether. The FMCSA estimated that the availability of process agent information would save field staff an average of 15 hours in cases involving hard-to-locate carriers.

In 2002, States conducted 216 carrier searches per year on average. In 2003, FMCSA Division Offices reported between 10 and 100 cases per State in which field staff had significant trouble locating a motor carrier on whom they wished to conduct compliance reviews, with most Division Offices reporting fewer than 25 such instances.

FMCSA estimated that 15 enforcement cases per State per year (or roughly two thirds of the “difficult” cases) will benefit from dramatically reduced search costs because of the requirement for private and exempt for-hire carriers to designate process agents.

The estimates of 15 saved hours per difficult case and 15 difficult cases per year per division result in 225 (15 × 15) annual staff hours saved per State, or 11,475 (225 × (50 States + District of Columbia)) annual staff hours saved in total. Assuming the Agency would allocate all of the annual saved staff hours to reducing labor costs, FMCSA estimated the value of this annual benefit by multiplying the total annual hours saved (11,475) by the Agency wage rate presented in section 2 of the Regulatory Evaluation for the Unified Registration System Final Rule, which is in the docket for this rulemaking. For example, in 2014, the saved staff hours would benefit the Agency by reducing labor costs by \$424,917 (11,475 × \$37.03).

FMCSA projected this annual benefit over the 10-year analysis period to arrive at a total benefit of \$4.2 million in 2010 dollars. FMCSA discounted this benefit to present value applying a seven percent discount rate consistent with the other portions of this analysis. The Agency arrived at a total benefit due to reduced labor cost (i.e., increased

efficiency) of \$3.2 million over the 10-year analysis period.

In total, the regulatory changes requiring exempt for-hire and private carriers to file process agent designations are estimated to result in a cost of \$25,067,012 to industry and a benefit to the Agency of \$3,130,736, and thus a societal net benefit of –\$21,936,276.⁷² The Agency sought, but did not receive, comments on how the process agent filing process can be made less costly.

In addition to the Agency time savings realized through the process agent designation requirement, FMCSA believes it provides unquantifiable benefits to both FMCSA and the public. FMCSA believes that the unquantifiable benefits, which are discussed further in subsequent paragraphs, outweigh the costs.

When FMCSA needs to serve notices, such as out-of-service orders on entities the Agency has deemed an imminent hazard or unsafe/unfit, it attempts to provide the notification through three means—hand delivery, U.S. mail, and/or by using a process agent to accomplish service. The purpose of the designation of process provisions is to ensure a carrier has been notified of the Agency order or notice, and if it continues to operate in violation of the properly served order or notice, the carrier could not claim it was unaware of the service. Thus, the process agents are an important component of the registration process as they eliminate the possibility for a carrier/regulated entity to claim that it was not served with effective notification of Agency action because of relocation or other circumstances.

Beyond FMCSA’s usage, the designation of a process agent enhances the public’s ability to serve legal process on responsible entities when seeking compensation for property loss/damage or personal injury resulting from a crash involving a commercial motor vehicle operated by any motor carrier,

⁷² Current regulations (49 CFR part 366) require only motor carriers and brokers that are subject to the 49 U.S.C. chapter 139 commercial registration requirements to designate a process agent. Exempt for-hire motor carriers and private carriers are currently not required to file process agent designations. The URS rule requires all for-hire and private motor carriers, brokers, and freight forwarders to designate process agents via electronic submission as a precondition for receiving USDOT registration and/or operating authority registration, when applicable. Of the roughly \$25 million in total resource costs to the industry for the designation of process agents, only \$4 million is incurred by exempt for-hire carriers. The majority of the resource costs resulting from this provision (\$21 million) are incurred by private carriers, who are required by statute to designate process agents.

regardless of where the incident took place. Similarly, the designated process agent can receive service of process concerning any court proceeding involving commercial transactions between a carrier and an aggrieved party. With a regulated entity’s USDOT number or name, a member of the public can currently access process agent information through the FMCSA Web site at <http://safer.fmcsa.dot.gov/CompanySnapshot.aspx> and, thus, can complete service of legal process even if service cannot be effected directly on the carrier, broker, or freight forwarder.

C. Financial Responsibility

Under the URS final rule, the insurance representatives of all new applicant exempt for-hire and private HM carriers will need to file evidence of financial responsibility with FMCSA, and the carriers will be assessed a \$10 filing fee.⁷³ FMCSA calculated 10-year fee costs of \$460,331 to industry using its estimate of new applicant exempt for-hire and private HM carriers. This \$460,331 cost to industry is offset by an equal benefit to the Agency resulting from revenues from the new fees.

The \$10 fee is a transfer from the industry to the Agency, but the industry will incur resource costs associated with filing. The FMCSA assumed it would take insurance companies a minimal amount of time to file the required proof of insurance for each carrier they insure. Because these filings are handled electronically, FMCSA assigned a cost of only \$4 per filing, assuming 10 minutes of time for a clerk. The Agency calculated the resource cost to new applicant exempt for-hire and private HM carriers by multiplying its projection of filing costs by its estimate of new applicants over the 10-year period to arrive at a total discounted resource cost to industry of \$184,132.

FMCSA is requiring existing exempt for-hire and private HM carriers to file proof of insurance. Using the Agency’s 2008 MCMIS data, FMCSA estimated that in 2014 there will be 48,308 exempt for-hire carriers with recent activity and 25,019 private HM carriers with recent activity. The Agency calculated a discounted cost to industry of \$693,890 associated with the fees. This cost to industry is offset by an equal benefit to the Agency due to the revenues from the fees.

FMCSA calculated the resource cost to carriers with recent activity by multiplying its \$4 filing cost estimate by

⁷³ Section 4304 of SAFETEA-LU caps financial responsibility filing fees at \$10. The filing fee is paid to FMCSA by the insurance company making the filing on behalf of the carrier and is passed on to the carrier by the insurance company.

the total exempt for-hire and private HM carriers with recent activity to arrive at a discounted resource cost of \$733,270.

Currently, all for-hire motor carriers, property brokers, and freight forwarders performing transfer, collection and delivery service must maintain current proof of financial responsibility on file with FMCSA to remain in "active" status. If an insurance company or financial institution notifies FMCSA of cancellation of coverage, carriers, property brokers, and freight forwarders must file evidence of replacement coverage before the policy, bond, or trust fund termination date. Under this final rule, exempt for-hire and private HM carriers will be subject to the same URS requirements. There is a \$10 fee associated with filing proof of replacement financial responsibility. These provisions ensure the continuity of insurance coverage by exempt-for-hire, private HM carriers and all freight forwarders. This security will pay any final judgment recovered against any entity for bodily injuries to or the death of any person resulting from the negligent operation, maintenance or use of CMVs in transportation, or for loss of or damage to property of others in connection with their transportation service. FMCSA may at any time refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, or other security or agreement that does not comply with 49 CFR part 387 or fails to provide adequate public protection.

Based on 2008 MCMIS data, roughly 8.56 percent of non-exempt for-hire carriers with recent activity filed proof of replacement liability insurance coverage with the Agency. The FMCSA assumed the same portion of the exempt for-hire and private HM carriers will file proof of replacement insurance following a policy cancellation. The Agency thus calculated the fees associated with evidence of financial responsibility replacement filings resulting from this proposed change by multiplying the \$10 filing fee by 8.56 percent of the exempt for-hire and private HM carriers with recent activity each year. This calculation resulted in a discounted cost to industry over the 10-year analysis period of \$498,207. This cost to industry will be offset by an equal benefit to the Agency in the form of new fees received.

FMCSA calculated the resource cost to carriers with recent activity by multiplying its replacement filing cost estimate by 8.56 percent of the population of exempt for-hire and private HM carriers with recent activity. This resulted in a total discounted resource cost to operating carriers over

the 10-year analysis period of \$199,283. Again, no costs were attributed to the Agency for these filings.

Changes in requirements for financial responsibility filings resulted in a total 10-year cost to industry of \$1,691,808. This cost to industry due to changes in requirements, however, is offset by an equal benefit to FMCSA for revenues from fees associated with the increased number of filings. Therefore, the societal costs due to changes in fees are zero. These changes are estimated to result in total 10-year resource costs to industry of \$676,723.

D. Cancellation and Reinstatement of USDOT Numbers/Operating Authority

As discussed in the previous section, non-exempt for-hire motor carriers, property brokers, and freight forwarders must maintain current proof of financial responsibility (liability insurance, bond, or trust fund information) with FMCSA to retain their operating authority. If an insurance company or financial institution notifies FMCSA of cancellation of coverage, carriers, property brokers, and freight forwarders must file evidence of replacement coverage before the policy, bond, or trust fund termination date. The operating authorities of entities that do not file the required updates are revoked and these entities must apply for reinstatement of their operating authority by making the necessary filings. This final rule requires exempt for-hire, private HM carriers, and all freight forwarders providing transfer, collection, and delivery service to file and maintain proof of liability insurance as a condition for obtaining and retaining an active USDOT Number. FMCSA will deactivate the USDOT Number of noncompliant entities, who would be required to reactivate their USDOT registrations in order to resume operations subject to FMCSA jurisdiction.

Under the current system, carriers requesting reinstatement of operating authority must file a written request for reinstatement, pay an \$80 fee (on-line by credit card, by phone with a credit card, or by mail with a check) and make the applicable financial responsibility filing. Once the payment is received and applicable filings are made, the FMCSA information system matches up the payment with the filings and automatically issues a reinstatement letter at 5 a.m. on the next business day. Under the URS established in today's final rule, carriers requesting reinstatement will make the request electronically using Form MCSA-1, pay a \$10 fee, and complete applicable filings showing that their insurance is

back in effect. The Agency aspect of the reinstatement process will remain the same under the URS.

FMCSA discusses these changes below in the following categories:

(a) Reinstatement for non-exempt for-hire carriers, brokers, and freight forwarders; and

(b) Reinstatement for exempt for-hire and private HM carriers.

Reinstatement for Non-Exempt For-Hire Carriers, Brokers and Freight Forwarders

Under the current system, non-exempt for-hire carriers, brokers and freight forwarders pay an \$80 fee and file a written request for reinstatement. Under the URS established in today's final rule, these carriers will request reinstatement using Form MCSA-1, pay a \$10 fee and make the applicable insurance filing. The Agency assumed that the cost of this requirement is minimal, and is approximately equal to that of filing proof of insurance (\$4). The Agency determined that it incurs slightly less than \$10 per request to process reinstatement requests. The \$10 reinstatement fee will be sufficient to defray Agency processing costs. FMCSA calculated savings by non-exempt for-hire carriers, brokers and freight forwarders applying for reinstatement by multiplying the \$70 reduction in fees for these carriers by the number of affected carriers to arrive at a 10-year discounted saving of \$4,958,302. This industry benefit will be offset by an equal cost to the Agency due to the loss of revenues from the fees.

Reinstatement for Exempt For-Hire and Private HM Carriers

Under the current system, exempt for-hire and private HM carriers do not file insurance-related reinstatements. Under the URS established in today's final rule, these carriers will pay a \$10 fee and file updated information. Using 2008 MCMIS data, FMCSA calculated that 2.58 percent of exempt for-hire and private HM carriers would let their insurance coverage lapse and later file reinstatement requests. The Agency determined that it incurs slightly less than \$10 per request to process reinstatement requests. The \$10 reinstatement fee will be sufficient to defray Agency processing costs. FMCSA calculated fees associated with this activity by multiplying the \$10 fee by the number of affected carriers to arrive at a 10-year discounted cost of \$150,176. This industry cost will be offset by an equal benefit to the Agency due to the gain in revenues from the fees.

There is a resource cost to industry associated with making these

reinstatement requests. As noted above, FMCSA assumed that the costs associated with completing the applicable filings would equal the costs associated with filing proof of insurance and process agent designations (\$4). FMCSA calculated discounted costs to industry of \$60,070 associated with filing activities over the 10-year analysis period.

FMCSA calculated discounted costs to the Agency of \$135,158 associated with processing exempt for-hire and private HM carrier reinstatements over the 10-year analysis period.

Cumulative Reinstatement Costs and Benefits

Changes in fees for reinstatement of USDOT Numbers and/or commercial operating authority resulted in a total 10-year saving to industry of \$4,808,126. This saving to industry, however, is offset by an equal cost to FMCSA in lost revenues from fees associated with reinstatements. The changes are estimated to result in total 10-year resource costs of \$60,070 to industry and \$135,158 to FMCSA for a total resource cost to society of \$195,229. There are also qualitative benefits to the Agency and the public from these requirements. The extension of the financial responsibility filing and reinstatement of authority requirements to exempt for-hire and private hazmat carriers ensures that the Agency the proper and updated proof and documentation of financial responsibility of those regulated entities. These requirements also ensure that motor carriers will have the incentive to maintain and operate their vehicles in a safe manner and that they will maintain, and provide evidenced of, an appropriate level of financial responsibility for motor vehicles operated on public highways.

E. Transfers and Name Changes

Under the URS, the Agency will no longer require ownership, management, and control certification when processing applicant requests for name, address, or form of business changes. Motor carriers will be required to report changes in management when completing their Form MCSA-1 biennial updates, and will retain their existing USDOT Number. No new or replacement USDOT Numbers will be issued. The Agency estimates that approximately 494 requests for transfers of operating authority will be filed with FMCSA in 2014, based on 2012 data projected to 2014. Each of the carriers who requested a transfer of operating authority paid a \$300 filing fee to FMCSA for this activity. Under the URS,

FMCSA will not review or approve transfer requests. As indicated above, our statutory authority to approve transfers under former 49 U.S.C. 10926 was eliminated by the ICCTA. The Agency will, however, institute a process under which it will not approve transfers, but will require entities involved in these transfers to notify FMCSA of the transaction by submitting an online Form MCSA-1.

Based on the 2012 data projected to 2014, FMCSA estimated discounted industry benefits of \$1,176,535 over 10 years from the elimination of the transfer application fee. This benefit to industry will be offset by an equal cost to the Agency resulting from the loss of revenues from the transfer application fee. Because FMCSA will still require notification of the transfer by both the transferor and the transferee, FMCSA calculated the resource cost for filing the notification of transfers over the 10-year period to arrive at a total cost of \$38,236 over 10 years.

FMCSA is eliminating the \$14 filing fee currently assessed to non-exempt for-hire motor carriers and others that change their business names. This action will result in a cost savings to industry and a matching cost to the Agency. In 2008, the Agency processed 11,141 name change requests. Based on the 2008 data, projected to 2014, FMCSA estimated 10-year discounted benefits to industry of \$1,345,722 over the 10-year period. This \$1,345,722 benefit to industry will be offset by an equal cost to the Agency resulting from the loss of name change filing fee revenues.

Elimination of transfer and name change filing fees resulted in a total 10-year cost savings to industry of \$2,522,258. The cost savings to industry due to changes in filing fees, however, will be offset by an equal cost to the Agency resulting from reduced revenues from these filing fees. Therefore, the projected societal costs due to elimination of the fees are zero. These changes will result in resource costs of \$38,236 to industry. The total reduction in fees for transfers and name changes is the sum of \$1,176,535 and \$1,345,722, or \$2,522,258; this sum is a gain to industry and an equal loss to FMCSA.

F. The New Application Form—MCSA-1

The new Form MCSA-1 will replace existing FMCSA registration forms. There will be a time cost savings for those who presently file multiple application forms. New applicant non-exempt for-hire motor carriers currently file an OP-1 series form and the MCS-

150 Form with FMCSA. Property brokers and freight forwarders file an OP-1 series form only. All other entities file forms in the MCS-150 series.

FMCSA estimated an average completion time of just over 20 minutes each⁷⁴ for the MCS-150 series forms and 2 hours for the OP-1 forms. FMCSA determined that 56.45 percent of new applicants file OP-1 series forms, and 92.45 percent of new applicants file MCS-150 forms. Based on these percentages, FMCSA calculated the current average new applicant filing completion time as just under 1 hour and 26 minutes.

The Agency is requiring all new applicants except Mexico-domiciled motor carriers requesting to conduct long-haul operations within the United States to file only Form MCSA-1. Based on field testing, FMCSA estimated that it would take those new applicants who would have used the OP-1 Form 2 hours and 10 minutes to complete the new form. The FMCSA assumes that the time required for entities who would have used only the MCS-150 or 150B would not change if they used the MCSA-1 Form instead. Multiplying 2 hours and 10 minutes by 56.45 percent (the percent of new applicants that file OP-1 series forms), and adding just over 20 minutes times the difference between 92.45 percent (the percent of new applicants that file MCS-150 forms) and 56.45 percent yields just over 1 hour and 20 minutes. Thus, FMCSA estimated a weighted average time savings of almost 6 minutes for each new applicant (that is, just under 1 hour and 26 minutes minus just over 1 hour and 20 minutes).

Using its adjusted average hourly wage estimate for drivers⁷⁵ and its projection of new applicants, FMCSA estimated a 10-year discounted resource cost savings to industry of \$1,354,631 attributable to completing the new MCSA-1 Form instead of the forms it will replace.

FMCSA also calculated Agency time saved associated with processing the new MCSA-1 Form. Based on the Agency's estimate that, due to reductions in data entry, it would save 20 minutes of processing time from not using the OP-1 series form, and its

⁷⁴ The MCS-150 Form has been estimated to require 20 minutes, and the MCS-150B Form a slightly longer 26 minutes. Because only about 2 percent of carriers file the MCS-150B, the average is very close to 20 minutes. There is also an MCS-150C Form, but it is much less frequently used.

⁷⁵ **Note:** This activity may be performed by someone other than a driver. However, FMCSA assumed the person performing the activity would earn a wage similar to that of a driver and used the driver wage rate as the best indicator of cost for this activity.

determination that 56.45 percent of new applicants file the form, FMCSA estimated an 11-minute time savings per applicant. The Agency multiplied the adjusted average hourly wage estimate for the Agency by the time saved processing the new MCSA-1 Form and the number of annual new applicants to obtain a 10-year discounted resource cost savings of \$3,391,089.

These changes are estimated to result in total 10-year resource cost savings to industry of \$1,354,621 and resource cost savings to FMCSA of \$3,391,089. The sum of the resource cost savings to industry and FMCSA equals \$4,745,720, which is the total benefit to society.

G. Mandatory Electronic Filing of the MCSA-1

By requiring electronic submissions, FMCSA expects to reduce processing costs. Electronic submissions have the additional benefit of reducing erroneous data through automated data quality checks and increasing the transparency of the data included in the URS. The Agency believes that the cost savings resulting from reduced labor time and paperwork, and the benefits associated with reducing erroneous data and improving data transparency, would be difficult to achieve without mandating electronic filing. This change, however, could impose a burden on entities that do not have the means to file electronically or that do not wish to file electronically.

To assess this potential burden, and to determine what alternatives to electronic filing would be available to small entities, FMCSA conducted a detailed cost-benefit analysis, "Report on Benefits and Costs of Mandatory Electronic Filing for FMCSA's Unified Registration System," which is included as Appendix A to the regulatory evaluation. The Agency calculated costs and benefits associated with electronic filing by using estimates of the amount of time required to file the form and the number of expected applicants. The present value of the benefits resulting from mandatory electronic filing is \$20,922,981 in benefits to FMCSA. The industry experiences a resource cost from mandatory electronic filing of \$538,894. Thus, the net present value of the benefits associated with requiring mandatory electronic filing less the costs results in a total net benefit to society of \$20,384,087 over a 10-year period.

VIII. Rulemaking Analyses and Notices

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

FMCSA has determined that this rule is a significant regulatory action within the meaning of Executive Order 12866, as supplemented by E.O. 13563, and is significant within the meaning of Department of Transportation regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) because it is expected to generate significant public interest. However, the estimated economic costs do not exceed the \$100 million annual threshold for economic significance. The OMB has reviewed this rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act [Pub. L. 96-354, 5 U.S.C. 601-612] requires Federal agencies to take small businesses' concerns into account when developing, writing, publicizing, promulgating, and enforcing regulations. To achieve this, the Act requires that agencies detail how they have met these concerns through a Regulatory Flexibility Analysis (RFA). The Agency listed six elements that were addressed during FMCSA's final rulemaking stage.

(1) A description of the reasons why the Agency is taking this action.

FMCSA takes this action in response to section 103 of the ICCTA, as amended by section 4304 of SAFETEA-LU, which, among other things, requires the Secretary to develop regulations to replace four current identification and registration systems with a single, online, Federal system. The purpose of this rule is to consolidate and simplify current Federal registration processes and to increase public accessibility to data about interstate motor carriers, property brokers, freight forwarders, and other entities. Pursuant to the statutory mandate, FMCSA will charge registration and administrative fees that will enable FMCSA to recoup the costs associated with processing registration applications and administrative filings and maintaining this system.

(2) A succinct statement of the objectives of, and legal basis for, the rule. The ICCTA created a new 49 U.S.C. 13908 directing "[t]he Secretary, in cooperation with the States, and after notice and opportunity for public comment," . . . to "issue regulations to replace the current Department of Transportation identification number system, the single State registration system under section 14504, the

registration system contained in this chapter, and the financial responsibility information system under section 13906 with a single, on-line, Federal system."

Section 13908(d) of title 49, United States Code (U.S.C.), authorizes the Secretary to establish, under 31 U.S.C. 9701, a fee system for the Unified Carrier Registration System according to certain guidelines providing for fee limits for registration, filing evidence of financial responsibility and filing information regarding agents for service of process.

These directives specifically require FMCSA to undertake some of the actions in this rule. The remaining related changes facilitate the smooth operation of a unified Federal on-line registration system.

(3) A description and, where feasible, an estimate of the number of small entities to which the rule will apply. FMCSA will subject all regulated entities to the rule requirement.⁷⁶ Carriers are not required to report revenue to the Agency, but are required to provide the Agency with the number of power units (PU) they operate, when they register with the Agency, and to update this figure biennially. Because FMCSA does not have direct revenue figures for all motor carriers, PUs serve as a proxy to determine the carrier size that would qualify as a small business given the Small Business Administration (SBA) revenue threshold. In order to produce this estimate, it is necessary to determine the average revenue generated by a PU.

With regard to truck PUs, the Agency determined in the Electronic On-Board Recorders and Hours-of-Service Supporting Documents Rulemaking RIA⁷⁷ that a PU produces about \$174,000 in revenue annually (adjusted for inflation to 2010 dollars).⁷⁸ According to the SBA, motor carriers with annual revenue of \$25.5 million are considered small businesses.⁷⁹ This equates to 147 PUs ($146.55 = \$25,500,000 / \$174,000$). Thus, FMCSA

⁷⁶ Due to data availability issues, FMCSA discusses the determination of a small entity based on revenue for carriers. The burden calculations, however, consider the impacts on all entities engaging in interstate commerce.

⁷⁷ FMCSA Regulatory Analysis, "Electronic On-Board Recorders and Hours of Service Supporting Documents," NPRM. FR: 76: 41 (February 1, 2011) p. 5537. (68 FR 22456, April 23, 2003).

⁷⁸ GDP Deflator. Available from the Bureau of Economic Analysis online at <http://www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=13&Freq=Qtr&FirstYear=2006&LastYear=2008>.

⁷⁹ U.S. Small Business Administration Table of Small Business Size Standards matched to North American Industry Classification (NAIC) System codes, effective August 22, 2008. See NAIC subsector 484, Truck Transportation.

considers motor carriers of property with 147 PUs or fewer to be small businesses for purposes of this analysis. The Agency then looked at the number and percentage of property carriers with recent activity that would fall under that definition (of having 147 PUs or fewer). The results show that at least 99 percent of all interstate property carriers with recent activity have 147 PUs or fewer.⁸⁰ This amounts to 515,000 carriers (99 percent of 520,000 active motor carriers = 514,800, rounded to the nearest thousand). Therefore, an overwhelming majority of interstate carriers of property would be considered small entities.

With regards to bus power units, the Agency conducted a preliminary analysis to estimate the average number of power units (PUs) for a small entity earning \$7 million annually,⁸¹ based on an assumption that a passenger carrying CMV generates annual revenues of \$150,000. This estimate compares reasonably to the estimated average annual revenue per power unit for the trucking industry (\$172,000). A lower estimate was used because buses generally do not accumulate as many VMT per power unit as trucks,⁸² and it is assumed therefore that they would generate less revenue on average. The analysis concluded that passenger carriers with 47 PUs or fewer (\$7,000,000 divided by \$150,000/PU = 46.7 PU) would be considered small entities. The Agency then looked at the number and percentage of passenger carriers registered with FMCSA that would fall under that definition (of having 47 PUs or less). The results show that 28,838⁸³ (or 99 percent) of all active registered passenger carriers have 47 PUs or less. Therefore, the overwhelming majority of passenger carriers would be considered small entities.

This 147 PU figure for trucks would be applicable to private carriers as well: because the sizes of the fleets they are able to sustain are indicative of the overall size of their operations, large CMV fleets can generally only be managed by large firms. There is a risk,

however, of overstating the number of small businesses because the operations of some large non-truck or bus firms may require only a small number of CMVs.

This rule will affect roughly 600,000 small carriers with recent activity annually on an ongoing basis.⁸⁴ The Agency expects a larger number of affected entities in the first year of the analysis period when exempt for-hire carriers with recent activity and private carriers with recent activity make administrative filings for the first time. The first-year costs of the URS rule on new entrants will be equal to 0.249 percent of average revenue for a trucking motor carrier and 0.286 percent of average revenue for a passenger motor carrier. The first-year costs of the URS rule on carriers with recent activity will be equal to 0.064 percent of average revenue for a trucking motor carrier and 0.073 percent of average revenue for a passenger motor carrier.

(4) *A description of the reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.* This rule primarily concerns submission of information to FMCSA in support of registration. While this includes recordkeeping and reporting for non-exempt for-hire carriers, there will only be the replacement of one type of reporting with another. Therefore, there is no increase in reporting or recordkeeping requirements for non-exempt for-hire carriers. Non-exempt for-hire carriers are already required to pay a \$300 registration fee, so there will be no change in financial burden for these entities as a result of the Agency's implementation of the rule. Private and exempt for-hire carriers will have the same replacement reporting and recordkeeping requirements as non-exempt for-hire carriers regarding general registration but will also have to designate a process agent for the first time under the rule. Exempt for-hire and private HM carriers will have to file proof of insurance for the first time. These requirements are new but will not impose significant reporting or recordkeeping requirements on the affected entities, as the filings will be made by insurance companies on the carriers' behalf. New entrant exempt for-hire carriers, private carriers, and other entities are not currently required to pay

a registration fee but will be required to pay a \$300 registration fee under the rule. For nearly all affected entities, this fee will represent a small fraction (well below one percent, even for very small firms that do little more than operate a single truck) of their annual revenues; on an annualized basis the cost will be even smaller. The FMCSA will require property brokers and freight forwarders to register with FMCSA and obtain USDOT Numbers under the rule, which is a new requirement. However, these entities already register with FMCSA and the USDOT Number will simply be a replacement for the MC Numbers or FF Numbers currently issued to brokers and freight forwarders, respectively. The new reporting or recordkeeping requirements will not impose any significant burden. Like non-exempt for-hire carriers, new entrant brokers and freight forwarders are currently required to pay a \$300 registration fee, so there will be no change in financial burden on these entities.

The FMCSA does not expect that any special skills for new applicants will be necessary beyond the ability to access the Internet and respond to questions with information about their organization and operations.

(5) *An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with this rule.* The FMCSA is aware of Federal rules that may duplicate this rule to some extent for hazardous materials motor carriers required to register. Although some basic identification information may be filed with both FMCSA and PHMSA, another USDOT modal administration, there is no conflict. PHMSA requires shippers and transporters of certain types and quantities of hazardous materials to register in its Hazardous Materials Registration System. Transportation modes required to register with PHMSA include motor carriers, airlines, ship lines, and railroads. The PHMSA Hazardous Materials Registration System cannot be combined with URS because entities other than those under FMCSA jurisdiction must register in PHMSA's system.

(6) *A description of any significant alternatives to the rule which minimize any significant impacts on small entities.* The Agency has not identified any significant alternatives to the rule that could lessen the burden on small entities without compromising its goals or statutory mandate. Because small businesses are such a large part of the demographic the Agency regulates, providing alternatives to small business to permit noncompliance with FMCSA

⁸⁰ MCMIS, as of June 17, 2010.

⁸¹ The SBA increased the annual revenue small business threshold for passenger carriers from \$7 million to \$14 million in a final rule titled, "Small Business Standards: Transportation and Warehousing." (77 FR 10943, published February 24, 2012) The preparation of this Regulatory Flexibility Act Analysis preceded the publication of that final rule and the publication of FMCSA's upcoming new motor carrier counts. Both changes are not expected to impact the general conclusions of this Regulatory Flexibility Act Analysis.

⁸² FMCSA Large Truck and Bus Crash Facts 2008, Tables 1 and 20; <http://www.fmcsa.dot.gov/facts-research/LTBCF2008/Index-2008LargeTruckandBusCrashFacts.aspx>.

⁸³ FMCSA MCMIS snapshot on 2/19/2010.

⁸⁴ This population estimate originates from tables 1 and 2, above. FMCSA used the median year estimate to account for the net growth in new entrants and the carriers with recent activity.

regulations is not feasible and not consistent with sound public policy.

C. Unfunded Mandates Reform Act of 1995

The final rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$143.1 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2010 levels) or more in any 1 year.

D. National Environmental Policy Act

The Agency analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action is categorically excluded (CE) under Appendix 2, paragraphs 6(e), 6(h) and 6(y)(2) of the Order from further environmental documentation. The CE under Appendix 2, paragraph 6(e) relates to establishing regulations and actions taken pursuant to the requirements concerning applications for operating authority and certificates of registration. The CE under Appendix 2, paragraph 6(h) relates to establishing regulations and actions taken pursuant to the requirements implementing procedures to collect fees that will be charged for motor carrier registrations and insurance for the following activities: (1) Application filings; (2) records searches; and (3) reviewing, copying, certifying, and related services. The CE under Appendix 2, paragraph 6(y)(2) addresses regulations implementing motor carrier identification and registration reports. In addition, the Agency believes that this rule includes no extraordinary circumstances that will have any effect on the quality of the human environment. Thus, the rule does not require an environmental assessment or an environmental impact statement.

FMCSA also has analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement because it involves policy development and rulemaking activities regarding registration of regulated entities with FMCSA for commercial, safety and financial responsibility purposes. *See* 40 CFR 93.153(c)(2)(vi). The changes would not result in any emissions increases nor will they have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the actions will not increase total CMV mileage or change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. This rule was mandated under section 103 of the ICCTA. It will consolidate and simplify the Federal registration processes and increase public accessibility to data about interstate and foreign motor carriers, property brokers, freight forwarders, and other entities.

*E. Paperwork Reduction Act*⁸⁵

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal Agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. The FMCSA analyzed this rule and determined that its implementation will streamline the information collection burden on motor carriers and other regulated entities, relative to the baseline, or current paperwork collection processes. This includes streamlining the FMCSA registration, insurance, and designation of process agent filing processes and implementing mandatory electronic online filing of these applications, as well as eliminating some outdated filing requirements. Because FMCSA plans to implement new filing requirements upon certain groups of entities during

the first year, the initial filing population and corresponding burden is higher than in subsequent years when carriers only need to update the information. This is primarily due to the assumption that all existing private and exempt for-hire carriers will file proof of process agent designation in the first year and the existing private motor carriers transporting hazardous materials interstate and exempt-for-hire carriers will file evidence of insurance, as a result of the new requirements set forth in this rule. However, once the initial process agent and insurance filing requirements for existing carriers are met, the overall net result will be a more streamlined process in future years for FMCSA registration of motor carriers, brokers, freight-forwarders, and other entities the Agency regulates.

This rule will create a new information collection to cover the requirements set forth in FMCSA Form MCSA–1. There are also five approved information collections that will be affected by this rule as follows: (1) OMB Control No. 2126–0013, titled “Motor Carrier Identification Report;” (2) OMB Control No. 2126–0015, titled “Designation of Agents, Motor Carriers, Brokers and Freight Forwarders;” (3) OMB Control No. 2126–0016, titled “Licensing Application for Motor Carrier Operating Authority;” (4) OMB Control No. 2126–0017, titled “Financial Responsibility, Trucking, and Freight Forwarding;” and (5) OMB Control No. 2126–0019, titled “Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.” The new MCSA–1 Form will replace the forms covered by 2126–0013, 0016, and 0019. The rule will also increase the number of entities that will be required to file information on process agents (2126–0015) and insurance coverage (2126–0017).

The total burden for the five approved information collections noted above is 225,739 hours. The table below captures the burden hours associated with the five approved information collections.

INFORMATION COLLECTION BURDENS

| OMB Approval No. | Burden hours currently approved | Burden hours proposed ¹ | Change |
|------------------|---------------------------------|------------------------------------|-----------|
| 2126–NEW | 0 | 205,412 | 205,412 |
| 2126–0013 | 109,005 | 0 | (109,005) |
| 2126–0015 | 5,833 | 60,371 | 54,538 |
| 2126–0016 | 55,143 | 0 | (55,143) |
| 2126–0017 | 54,158 | 68,391 | 14,233 |

⁸⁵ The calculations presented in this section may be subject to rounding errors.

INFORMATION COLLECTION BURDENS—Continued

| OMB Approval No. | Burden hours currently approved | Burden hours proposed ¹ | Change |
|------------------|---------------------------------|------------------------------------|---------|
| 2126-0019 | 1,600 | 0 | (1,600) |
| Total | 225,739 | 334,174 | 108,435 |

¹ The figures in this column reflect first year information collection burdens. Many of these information collections will significantly decrease in later years.

Note: Numbers may not add due to rounding.

An explanation of how each of the six information collections shown above is affected by this rule is provided below.

OMB Control No. 2126-NEW, titled “Unified Registration System, Form MCSA-1.” The new form replaces the forms covered by three existing information collections—OMB Control Numbers 2126-0013, 2126-0016, and 2126-0019. The estimated time to complete the form for purposes of new applicant registration, biennial updates, notification of changes, notification of transfers in operating authority, and reinstatements is 205,412 burden hours [147,038 hours for new applicants (61,280 new motor carriers, brokers, freight forwarders, and other entities × 1.34 hours per form + 48,450 intrastate non-hazmat carriers × 1.34 hours per form) + 55,877 hours for biennial updates (292,000 motor carriers, brokers, freight forwarders, and other entities + 43,265 intrastate non-hazmat applicants required to file in year one × 10 minutes/hr) + 2,017 hours for name/address change requests (12,103 requests × 0.167 hours) + 165 hours for notification of transfer (987 × 0.167 hours) + 315 reinstatements (1,891 × 0.167 hours)].

OMB Control No. 2126-0013, titled “Motor Carrier Identification Report, Applications for USDOT Number.” All of the requirements under this information collection covering the MCS-150, MCS-150B, and MCS-150C forms are folded into OMB Control No. 2126-NEW (see above) and the forms replaced by the MCSA-1 Form. Forms MCS-150 and OP-1(MX) will be retained for the small number of Mexico-domiciled carriers that seek authority to operate beyond the United States municipalities on the United States-Mexico border and their commercial zones because they are not included within the scope of the URS rule.

OMB Control No. 2126-0015, titled “Designation of Agents, Motor Carriers, Brokers, and Freight Forwarders.” This information collection, which requires motor carriers and others to designate process agents that can be served with

legal papers, was approved at 5,833 burden hours. This information collection increased to 60,371 burden hours [327,226 new applicants × 10 minutes per filing/60 minutes/hr + 35,000 currently file the BOC-3 × 10 minutes per filing/60 minutes/hr]. This increase was due to FMCSA’s proposal to extend the designation of process agent filing requirement to include private motor carriers and exempt for-hire motor carriers. The FMCSA assumed that no existing private or exempt for-hire motor carriers had process agents on file and that all designated agents with FMCSA as a result of the proposed requirements set forth in this rule.

OMB Control No. 2126-0016, titled “Licensing Applications for Motor Carrier Operating Authority.” This information collection, which covers for-hire carriers, freight forwarders, and property brokers, was approved at 55,143 burden hours. Under this action, all requirements included in this information collection are folded into OMB Control No. 2126-NEW (see above) and the forms replaced by the MCSA-1. Basic identification information that applicants complete on these forms and MCS-150 forms will only need to be completed once under this rule.

OMB Control No. 2126-0017, titled “Financial Responsibility—Motor Carriers, Freight Forwarders and Brokers.” This information collection, which in almost all cases requires insurers to file a certification of coverage for certain entities, was approved at 54,158 burden hours. Changes were required to this information collection due to FMCSA’s requirement for exempt for-hire motor carriers and private interstate motor carriers of hazardous materials to file proof of liability insurance with FMCSA. As all but a few of these filings are electronic (self-insurance filings will still be done on paper), the time required is adjusted downward to reflect the efficiencies gained. The revised burden is 68,391 hours [409,149 filings × 10 minutes/60 plus 5 self-insurance filings × 40 hrs].

OMB Control No. 2126-0019, titled “Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.” Under this proposal, the requirements included in this approved information collection for the OP-2 Form, which covers operating authority for Mexico-domiciled carriers that operate solely in the commercial zones on the border, are folded into OMB Control No. 2126-NEW (see above), resulting in a net decrease of 1,600 burden hours.

The actions contained in this rule, affecting five approved information collections and one new information collection, result in a net increase of 108,435 burden hours in the Agency’s information collection budget for the first year.

F. Executive Order 12630 (Taking of Private Property)

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

G. Executive Order 12988 (Civil Justice Reform)

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

H. Executive Order 13045 (Protection of Children)

Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (April 23, 1997, 62 FR 19885), requires that agencies issuing economically significant rules, which also concern an environmental health or safety risk that an Agency has reason to believe may disproportionately affect children, must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an Agency to submit for a covered regulatory action an evaluation of its environmental health or safety effects

on children. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

I. Executive Order 13132 (Federalism)

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

J. Executive Order 12372 (Intergovernmental Review)

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

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

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

L. Privacy Impact Analysis

The FMCSA conducted a privacy impact assessment of this rule as required by section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108-447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the final rule on the privacy of information in an identifiable form and related matters. FMCSA has determined that this rule will impact the handling of personally identifiable information (PII). FMCSA has also determined the risks and effects the rulemaking might have on collecting, storing, and sharing PII and has examined and evaluated protections and alternative information handling processes in order to mitigate potential privacy risks. The PIA for this

rule is available for review in the docket.

List of Subjects

49 CFR Part 360

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

49 CFR Part 365

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

49 CFR Part 366

Brokers, Motor carriers, Freight forwarders, Process agents.

49 CFR Part 368

Administrative practice and procedure, Insurance, Motor carriers.

49 CFR Part 385

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

49 CFR Part 387

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

49 CFR Part 390

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

49 CFR Part 392

Highway safety, Motor carriers.

In consideration of the foregoing, FMCSA amends 49 CFR chapter III, parts 360, 365, 366, 368, 385, 387, 390, and 392 as set forth below:

- 1. Revise part 360 to read as follows:

PART 360—FEES FOR MOTOR CARRIER REGISTRATION AND INSURANCE

Sec.

- 360.1 Fees for registration-related services.
- 360.3 Filing fees.
- 360.5 Updating user fees.

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

§ 360.1 Fees for registration-related services.

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

- (a) Certificate of the Director, Office of Management and Information Services, as to the authenticity of documents, \$12;
- (b) Service involved in locating records to be certified and determining their authenticity, including clerical and administrative work, at the rate of \$21 per hour;
- (c) Copies of the public documents, at the rate of \$.80 per letter size or legal size exposure. A minimum charge of \$5 will be made for this service; and
- (d) Search and copying services requiring information technology (IT), as follows:

(1) A fee of \$50 per hour for professional staff time will be charged when it is required to fulfill a request for electronic data.

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

(3) Printing will be charged at the rate of \$.10 per page of computer-generated output with a minimum charge of \$1. There will also be a charge for the media provided (e.g., CD ROMs) based on the Agency's costs for such media.

(e) *Exception.* No fee shall be charged under this section to the following entities:

(1) Any Agency of the Federal Government or a State government or any political subdivision of any such government for access to or retrieval of information and data from the Unified Carrier Registration System for its own use; or

(2) Any representative of a motor carrier, motor private carrier, broker, or freight forwarder (as each is defined in 49 U.S.C. 13102) for the access to or retrieval of the information related to such entity from the Unified Carrier Registration System for the individual use of such entity.

§ 360.3 Filing fees.

(a) *Manner of payment.* (1) Except for the insurance fees described in the next sentence, all filing fees must be paid at the time the application, petition, or other document is electronically filed. The service fee for insurance, surety or self-insurer accepted certificate of insurance, surety bond or other instrument submitted in lieu of a broker

surety bond must be charged to an insurance service account established by FMCSA in accordance with paragraph (a)(2) of this section.

(2) *Billing account procedure.* A request must be submitted to the Office of Registration and Safety Information (MC-RS) at <http://www.fmcsa.dot.gov> to establish an insurance service fee account.

(i) Each account will have a specific billing date within each month and a billing cycle. The billing date is the date that the bill is prepared and printed. The billing cycle is the period between the billing date in one month and the billing date in the next month. A bill for each account that has activity or an unpaid balance during the billing cycle will be sent on the billing date each month. Payment will be due 20 days from the billing date. Payments received before the next billing date are applied to the account. Interest will accrue in accordance with 31 CFR 901.9.

(ii) The Federal Claims Collection Standards, including disclosure to consumer reporting agencies and the use of collection agencies, as set forth in 31 CFR part 901, will be utilized to encourage payment where appropriate.

(iii) An account holder who files a petition for bankruptcy or who is the subject of a bankruptcy proceeding must provide the following information to the Office of Registration and Safety Information (MC-RS) at <http://www.fmcsa.dot.gov>:

- (A) The filing date of the bankruptcy petition;
- (B) The court in which the bankruptcy petition was filed;
- (C) The type of bankruptcy proceeding;

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

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

(3) Fees will be payable through the U.S. Department of Treasury secure payment system, *Pay.gov*, and are made directly from the payor's bank account or by credit/debit card.

(b) Any filing that is not accompanied by the appropriate filing fee will be rejected.

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

(d) *Multiple authorities.* (1) A separate filing fee is required for each type of authority sought, for example broker authority requested by an entity that already holds motor property carrier authority or multiple types of authority requested in the same application.

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

(e) *Waiver or reduction of filing fees.* It is the general policy of the Federal Motor Carrier Safety Administration not

to waive or reduce filing fees except as follows:

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

(2) Filing fees are waived for a motor carrier of passengers that receives a grant from the Federal Transit Administration either directly or through a third-party contract to provide passenger transportation under an agreement with a State or local government pursuant to 49 U.S.C. 5307, 5310, 5311, 5316, or 5317.

(3) The FMCSA will consider other requests for waivers or fee reductions only in extraordinary situations and in accordance with the following procedure:

(i) *When to request.* At the time that a filing is submitted to FMCSA, the applicant may request a waiver or reduction of the fee prescribed in this part. Such request should be addressed to the Director, Office of Registration and Safety Information.

(ii) *Basis.* The applicant must show that the waiver or reduction of the fee is in the best interest of the public, or that payment of the fee would impose an undue hardship upon the requester.

(iii) *FMCSA action.* The Director, Office of Registration and Safety Information, will notify the applicant of the decision to grant or deny the request for waiver or reduction.

(f) *Schedule of filing fees:*

| Type of proceeding | | Fee |
|-----------------------------|---|---|
| Part I: Registration | | |
| (1) | An application for USDOT Registration pursuant to 49 CFR part 390, subpart E. | \$300. |
| (2) | An application for motor carrier temporary authority to provide emergency relief in response to a national emergency or natural disaster following an emergency declaration under §390.23 of this subchapter. | \$100. |
| (3) | Biennial update of registration | \$0. |
| (4) | Request for change of name, address, or form of business | \$0. |
| (5) | Request for cancellation of registration | \$0. |
| (6) | Request for registration reinstatement | \$10. |
| (7) | Designation of process agent | \$0. |
| (8) | Notification of Transfer of Operating Authority | \$0. |
| Part II: Insurance | | |
| (9) | A service fee for insurer, surety, or self-insurer accepted certificate of insurance, surety bond, and other instrument submitted in lieu of a broker surety bond. | \$10 per accepted certificate, surety bond or other instrument submitted in lieu of a broker surety bond. |
| (10) | (i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD). (ii) An application for original qualification as self-insurer for cargo insurance. | \$4,200. \$420. |

§ 360.5 Updating user fees.

(a) *Update.* Each fee established in this subpart may be updated, as deemed necessary by FMCSA.

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

(c) *Payment of fees.* Any person submitting a filing for which a filing fee is established must pay the fee applicable on the date of the filing or request for services.

(d) *Method of updating fees.* Each fee shall be updated by updating the cost components comprising the fee. However, fees shall not exceed the maximum amounts established by law. Cost components shall be updated as follows:

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

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

(3)(i) Office general and administrative costs shall be developed on the basis of current levels costs, i.e., dividing actual office general and administrative costs for the current fiscal year by total office costs for the office directly associated with user fee activity. Actual updating of office general and administrative costs shall be accomplished by applying the current percentage factor to updated direct labor, including current governmental overhead and current operations overhead costs.

(ii) The FMCSA general and administrative costs shall be developed on the basis of current level costs; i.e., dividing actual FMCSA general and administrative costs for the current fiscal year by total Agency expenses for the current fiscal year. Actual updating of FMCSA general and administrative costs shall be accomplished by applying the current percentage factor to updated direct labor, including current

governmental overhead, operations overhead and office general and administrative costs.

(4) Publication costs shall be adjusted on the basis of known changes in the costs applicable to publication of material in the **Federal Register** or FMCSA Register.

(e) *Rounding of updated fees.*

Updated fees shall be rounded as follows. (This rounding procedure excludes copying, printing and search fees.)

(1) Fees between \$1 and \$30 shall be rounded to the nearest \$1;

(2) Fees between \$30 and \$100 shall be rounded to the nearest \$10;

(3) Fees between \$100 and \$999 shall be rounded to the nearest \$50; and

(4) Fees above \$1,000 shall be rounded to the nearest \$100.

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

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

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

■ 3. Amend § 365.101 by revising paragraphs (a) and (h) to read as follows:

§ 365.101 Applications governed by these rules.

* * * * *

(a) Applications for certificates of motor carrier registration to operate as a motor carrier of property or passengers.

* * * * *

(h) Applications for Mexico-domiciled motor carriers to operate in foreign commerce as for-hire or private motor carriers of property (including exempt items) between Mexico and all points in the United States. Under NAFTA Annex 1, page I–U–20, a Mexico-domiciled motor carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

* * * * *

§ 365.103 [Removed and Reserved]

■ 4. Remove and reserve § 365.103.

■ 5. Revise § 365.105 to read as follows:

§ 365.105 Starting the application process: Form MCSA–1, FMCSA Registration/Update (USDOT Number—Operating Authority Application).

(a) Each applicant must apply for operating authority by electronically filing Form MCSA–1, FMCSA Registration/Update (USDOT Number—Operating Authority Application), to

request authority pursuant to 49 U.S.C. 13902, 13903 or 13904 to operate as a:

(1) Motor carrier of property or passengers,

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

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

(b) A separate filing fee in the amount set forth at 49 CFR 360.3(f) is required for each type of authority sought in § 365.105(a).

(c) Form MCSA–1 is an electronic application and is available, including complete instructions, from the FMCSA Web site at <http://www.fmcsa.dot.gov> (Keyword “MCSA–1”).

■ 6. Revise § 365.107 to read as follows:

§ 365.107 Types of applications.

(a) *Fitness applications.* Motor property applications and certain types of motor passenger applications require the finding that the applicant is fit, willing and able to perform the involved operations and to comply with all applicable statutory and regulatory provisions. These applications can be opposed only on the grounds that applicant is not fit [e.g., is not in compliance with applicable financial responsibility and safety fitness requirements]. These applications are:

(1) Motor carrier of property (except household goods).

(2) Broker of general commodities or household goods.

(3) Certain types of motor carrier of passenger applications as described in Form MCSA–1.

(b) Motor carrier of passenger “public interest” applications as described in Form MCSA–1.

(c) Intrastate motor passenger applications under 49 U.S.C. 13902(b)(3) as described in Form MCSA–1.

(d) Motor carrier of household goods applications, including Mexico- or non-North America-domiciled carrier applicants. In addition to meeting the fitness standard under paragraph (a) of this section, an applicant seeking authority to operate as a motor carrier of household goods must:

(1) Provide evidence of participation in an arbitration program and provide a copy of the notice of the arbitration program as required by 49 U.S.C. 14708(b)(2);

(2) Identify its tariff and provide a copy of the notice of the availability of that tariff for inspection as required by 49 U.S.C. 13702(c);

(3) Provide evidence that it has access to, has read, is familiar with, and will observe all applicable Federal laws relating to consumer protection, estimating, consumers’ rights and

responsibilities, and options for limitations of liability for loss and damage; and

(4) Disclose any relationship involving common stock, common ownership, common management, or common familial relationships between the applicant and any other motor carrier, freight forwarder, or broker of household goods within 3 years of the proposed date of registration.

(e) Temporary authority (TA) for motor carriers. These applications require a finding that there is or soon will be an immediate transportation need that cannot be met by existing carrier service.

(1) Applications for TA will be entertained only when an emergency declaration has been made pursuant to § 390.23 of this subchapter.

(2) Temporary authority must be requested by filing Form MCSA-1.

(3) Applications for temporary authority are not subject to protest.

(4) Motor carriers granted temporary authority must comply with financial responsibility requirements under part 387 of this subchapter.

(5) Only a U.S.-domiciled motor carrier is eligible to receive temporary authority.

■ 7. Amend § 365.109 by revising paragraphs (a)(5) and (6) and (b) to read as follows:

§ 365.109 FMCSA review of the application.

(a) * * *

(5) All applicants must file the appropriate evidence of financial responsibility pursuant to 49 CFR part 387 within 90 days from the date notice of the application is published in the FMCSA Register:

(i) *Form BMC-91 or 91X or BMC 82 surety bond*—Bodily injury and property damage (motor property and passenger carriers; and freight forwarders that provide pickup or delivery service directly or by using a local delivery service under their control).

(ii) *Form BMC-84*—Surety bond or *Form BMC-85*—trust fund agreement (property brokers of general commodities and household goods).

(iii) *Form BMC-34 or BMC 83 surety bond*—Cargo liability (household goods motor carriers and household goods freight forwarders).

(6) Applicants also must submit Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders—within 90 days from the date notice of the application is published in the FMCSA Register.

* * * * *

(b) A summary of the application will be published in the FMCSA Register to give notice to the public in case anyone wishes to oppose the application.

■ 8. Add § 365.110 to read as follows:

§ 365.110 Need to complete New Entrant Safety Assurance Program.

For motor carriers operating commercial motor vehicles as defined in 49 U.S.C. 31132, operating authority obtained under procedures in this part does not become permanent until the applicant satisfactorily completes the New Entrant Safety Assurance Program in part 385 of this subchapter.

■ 9. Amend § 365.111 by revising paragraph (a) to read as follows:

§ 365.111 Appeals to rejections of the application.

(a) An applicant has the right to appeal rejection of the application. The appeal must be filed at the FMCSA, Office of Registration and Safety Information, 1200 New Jersey Ave. SE., Washington, DC 20590, within 10 days of the date of the letter of rejection.

* * * * *

■ 10. Revise § 365.119 to read as follows:

§ 365.119 Opposed applications.

If the application is opposed, opposing parties are required to send a copy of their protest to the applicant and to FMCSA. All protests must include statements made under oath (verified statements). There are no personal appearances or formal hearings.

■ 11. Revise § 365.201 to read as follows:

§ 365.201 Definitions.

A person wishing to oppose a request for operating authority files a *protest*. A person filing a valid protest is known as a *protestant*.

■ 12. Revise § 365.203 to read as follows:

§ 365.203 Time for filing.

A protest shall be filed (received at the FMCSA, Office of the Associate Administrator for Research and Information Technology, 1200 New Jersey Ave. SE., Washington, DC 20590) within 10 days after notice of the application appears in the FMCSA Register. A copy of the protest shall be sent to applicant's representative at the same time. Failure timely to file a protest waives further participation in the proceeding.

§ 365.301 [Removed and Reserved]

■ 13. Remove and reserve § 365.301.

■ 14. Revise Subpart D to read as follows:

Subpart D—Transfers of Operating Authority

Sec.

365.401 Scope of rules.

365.403 Definitions.

365.405 Reporting requirement.

Subpart D—Transfers of Operating Authority

§ 365.401 Scope of rules.

The rules in this subpart define the procedures for motor carriers, property brokers, and freight forwarders to report to FMCSA transactions that result in the transfer of operating authority and are not subject to approval by the U.S. Surface Transportation Board under 49 U.S.C. 14303.

§ 365.403 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Transfer*. A transfer means any transaction in which an operating authority issued to one person is taken over by another person or persons who assume legal responsibility for the operations. Such transactions include a purchase of all or some of the assets of a company, a merger of two or more companies, or acquisition of controlling interest in a company through a purchase of company stock.

(b) *Operating authority*. Operating authority means a registration required by 49 U.S.C. 13902 issued to motor carriers; 49 U.S.C. 13903 issued to freight forwarders; and 49 U.S.C. 13904 issued to brokers.

(c) *Person*. An individual, partnership, corporation, company, association, or other form of business, or a trustee, receiver, assignee, or personal representative of any of these entities.

§ 365.405 Reporting requirement.

(a) Every transfer of operating authority from one person to another person must be reported by both the transferee and transferor on Form MCSA-1, in accordance with § 390.201(d)(5) of this subchapter.

(b) The following information must be furnished:

(1) Full name, address and USDOT Numbers of the transferee and transferor.

(2) A copy of the operating authority being transferred.

■ 15. Amend § 365.507 by revising paragraph (e)(2) to read as follows:

§ 365.507 FMCSA action on the application.

* * * * *

(e) * * *

(2) Electronically file, or have its process agent(s) electronically file, Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, as required by part 366 of this subchapter; and

* * * * *

■ 16. Amend § 365.509 by revising paragraph (a) to read as follows:

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

(a) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information in parts I, IA, or II of Form OP-1(MX), or in Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, during the application process or after having been granted provisional operating authority. The carrier must notify FMCSA in writing within 30 days of the change or correction.

* * * * *

PART 366—DESIGNATION OF PROCESS AGENT

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

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

■ 18. Revise § 366.1 to read as follows:

§ 366.1 Applicability.

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

■ 19. Effective April 25, 2016, revise § 366.2 to read as follows:

§ 366.2 Form of designation.

(a) Designations shall be made on Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders. Only one completed current form may be on file. It must include all States for which agent designations are required. One copy must be retained by the carrier, broker or freight forwarder at its principal place of business.

(b) Private motor carriers and for-hire motor carriers engaged in transportation exempt from economic regulation by FMCSA under 49 U.S.C. chapter 135 that are registered with FMCSA as of October 22, 2013 must file a Form BOC-3 designation by no later than April 25, 2016. Failure to file a designation in accordance with this paragraph will result in deactivation of the carrier's USDOT Number.

■ 20. Revise § 366.3 to read as follows:

§ 366.3 Eligible persons.

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

■ 21. Revise § 366.4 to read as follows:

§ 366.4 Required States.

(a) *Motor carriers.* Every motor carrier must designate process agents for all 48 contiguous States and the District of Columbia, unless its operating authority registration is limited to fewer than 48 States and DC. When a motor carrier's operating authority registration is limited to fewer than 48 States and DC, it must designate process agents for each State in which it is authorized to operate and for each State traversed during such operations. Every motor carrier operating in the United States in the course of transportation between points in a foreign country shall file a designation for each State traversed.

(b) *Brokers.* Every broker shall make a designation for each State, including DC, in which its offices are located or in which contracts will be written.

(c) *Freight forwarders.* Every freight forwarder shall make a designation for each State, including DC, in which its offices are located or in which contracts will be written.

■ 22. Revise § 366.5 to read as follows:

§ 366.5 Blanket designations.

Where an association or corporation has filed with the FMCSA a list of process agents for each State and DC (blanket agent), motor carriers, brokers and freight forwarders may make the required designations by using the following statement:

I designate those persons named in the list of process agents on file with the Federal Motor Carrier Safety Administration

by _____

(name of association or corporation) and any subsequently filed revisions thereof, for the States in which this carrier is or may be authorized to operate (or arrange) as an entity of motor vehicle transportation, including States traversed during such operations, except those States for which individual designations are named.

■ 23. Revise § 366.6 to read as follows:

§ 366.6 Cancellation or change.

(a) A designation may be canceled or changed only by a new designation made by the motor carrier, broker, or freight forwarder, or by the process agent or company filing a blanket

designation in accordance with § 366.5. However, where a motor carrier, broker or freight forwarder's USDOT Number is inactive for at least 1 year, designation is no longer required and may be canceled without making another designation.

(b) A change to a designation, such as name, address, or contact information, must be reported to FMCSA within 30 days of the change.

(c) Whenever a motor carrier, broker or freight forwarder changes its name, address, or contact information, it must report the change to its process agents and/or the company making a blanket designation on its behalf in accordance with § 366.5 within 30 days of the change.

(d) Whenever a process agent and/or company making a blanket designation on behalf of a motor carrier, broker, or freight forwarder terminates its contract or relationship with the entity, it should report the termination to FMCSA within 30 days of the termination. If process agents and/or blanket agents do not keep their information up to date, FMCSA may withdraw its approval of their authority to make process agent designations with the Agency.

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.

■ 24. The authority citation for part 368 is revised to read as follows:

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

■ 25. Amend § 368.3 by revising paragraphs (a), (b), and (f) and removing and reserving paragraph (e) to read as follows:

§ 368.3 Applying for a certificate of registration.

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

(1) Form MCSA-1—FMCSA Registration/Update (USDOT Number—(Operating Authority Application)).

(2) Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders or indicate on the application 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 Form MCSA-1 and Form BOC-3.
- (3) The application must include all the required supporting documents and applicable certifications set forth in the instructions to Form MCSA-1 and Form BOC-3.

* * * * *

(e) [Reserved]

(f) Form MCSA-1 is an electronic application and is available, including complete instructions, from the FMCSA Web site at <http://www.fmcsa.dot.gov> (Keyword "MCSA-1").

- 26. Amend § 368.4 by revising paragraph (a) to read as follows:

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

(a) You must notify FMCSA of any changes or corrections to the information in Section A of Form MCSA-1—FMCSA Registration/Update (USDOT Number—Operating Authority Application), 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 FMCSA in writing within 30 days of the change or correction.

* * * * *

- 27. Revise § 368.8 to read as follows:

§ 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 FMCSA, Office of Registration and Safety Information within 20 days of the date of the letter denying the application. The decision of the Director will be the final Agency order.

PART 385—SAFETY FITNESS PROCEDURES

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

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

- 29. Revise § 385.301 to read as follows:

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

(a) Before a motor carrier of property or passengers begins interstate

operations, it must register with FMCSA and receive a USDOT Number. In addition, for-hire motor carriers must obtain operating authority from FMCSA, unless exclusively providing transportation exempt from the commercial registration requirements in 49 U.S.C. chapter 139. Both the USDOT Number and operating authority are obtained by following registration procedures described in 49 CFR part 390, subpart E. Part 365 of this chapter provides detailed instructions for obtaining operating authority.

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

(c) The regulations in this subpart do not apply to a Mexico-domiciled motor carrier. A Mexico-domiciled motor carrier of property or passengers must register with FMCSA by following the registration procedures described in 49 CFR parts 365, 368 and 390. Parts 365 (for long-haul carriers) and 368 (for commercial zone carriers) of this chapter provide detailed information about how a Mexico-domiciled motor carrier may obtain operating authority.

- 30. Revise § 385.303 to read as follows:

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

A motor carrier registers with FMCSA by completing Form MCSA-1, which is an electronic application that must be completed on-line at the FMCSA Web site at <http://www.fmcsa.dot.gov> (Keyword "MCSA-1"). Complete instructions for the Form MCSA-1 also are available at the same location.

- 31. Revise § 385.305 to read as follows:

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

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

(b) The application package will include the following:

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

(2) Form MCSA-1—FMCSA Registration/Update (USDOT Number—Operating Authority Application). This form is used to obtain both a USDOT Number and operating authority.

(c) Upon completion of the application form, the new entrant will be issued an inactive USDOT Number. An applicant may not begin operations

nor mark a commercial motor vehicle with the USDOT Number until after the date of the Agency's written notice that the USDOT Number has been activated. Violations of this section may be subject to the penalties under § 392.9b(b) of this chapter.

(d) *Additional requirements for certain for-hire motor carriers.* For-hire motor carriers, unless providing transportation exempt from the commercial registration requirements in 49 U.S.C. chapter 139, must obtain operating authority as prescribed under § 390.201(b) and part 365 of this chapter before operating in interstate commerce.

- 32. Amend § 385.329 by revising paragraphs (b) introductory text, (b)(1), (c)(1) and (d) to read as follows:

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

* * * * *

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

- (1) Submit an updated Form MCSA-1.

* * * * *

(c) * * *

- (1) Submit an updated Form MCSA-1.

* * * * *

(d) If the new entrant is a for-hire motor carrier subject to the registration provisions of 49 U.S.C. chapter 139 and also has had its operating authority revoked, it must re-apply for operating authority as set forth in § 390.201(b) and part 365 of this chapter.

- 33. Revise § 385.405 to read as follows:

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

(a) *Application form.* (1) To apply for a new safety permit or renewal of the safety permit, a motor carrier must complete and submit Form MCSA-1—FMCSA Registration/Update (USDOT Number—Operating Authority Application) and meet the requirements under 49 CFR part 390, subpart E.

(2) The Form MCSA-1 also will also satisfy the requirements for obtaining and renewing a USDOT Number.

(b) *Where to get forms and instructions.* Form MCSA-1 is an electronic application and is available, including complete instructions, from the FMCSA Web site at <http://www.fmcsa.dot.gov> (Keyword "MCSA-1").

(c) *Signature and certification.* An official of the motor carrier must sign and certify that the information is

correct on each form the motor carrier submits.

(d) *Updating information.* A motor carrier holding a safety permit must report to FMCSA any change in the information on its Form MCSA-1 within 30 days of the change. The motor carrier must use Form MCSA-1 to report the new information.

■ 34. Amend § 385.409 by revising paragraph (a) to read as follows:

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

(a) *Temporary safety permit.* If a motor carrier does not meet the criteria of § 385.407(a), FMCSA may issue it a temporary safety permit. To obtain a temporary safety permit, a motor carrier must certify on Form MCSA-1 that it is operating in full compliance with the HMRs, with the FMCSRs, and/or comparable State regulations, whichever is applicable; and with the minimum financial responsibility requirements in part 387 of this subchapter or in State regulations, whichever is applicable.

* * * * *
■ 35. Revise § 385.419 to read as follows:

§ 385.419 How long is a safety permit effective?

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

(a) A safety permit will be subject to revocation if a motor carrier fails to submit a renewal application (Form MCSA-1) in accordance with the schedule set forth for filing Form MCSA-1 in part 390, subpart E, of this subchapter; and

(b) An existing safety permit will remain in effect pending FMCSA's processing of an application for renewal if a motor carrier submits the required application (Form MCSA-1) in accordance with the schedule set forth in part 390, subpart E, of this subchapter.

■ 36. Amend § 385.421 by revising paragraphs (a)(1) and (a)(2) to read as follows:

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

(a) * * *
(1) A motor carrier fails to submit a renewal application (Form MCSA-1) in accordance with the schedule set forth in part 390, subpart E, of this subchapter.

(2) A motor carrier provides any false or misleading information on its application form (Form MCSA-1) or as part of updated information it is

providing on Form MCSA-1 (see § 385.405(d)).

■ 37. Revise § 385.603 to read as follows:

§ 385.603 Application.

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

(1) Form MCSA-1, FMCSA Registration/Update (USDOT Number—Operating Authority Application); and

(2) 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 process an application only if it meets the following conditions:

(1) The application must be completed in English.

(2) The information supplied must be accurate, complete, and include all required supporting documents and applicable certifications in accordance with the instructions to Form MCSA-1 and Form BOC-3.

(3) The application must include the filing fee payable to the FMCSA in the amount set forth at 49 CFR 360.3(f)(1).

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

(c) An applicant must electronically file Form MCSA-1.

(d) Form MCSA-1 is an electronic application and is available, including complete instructions, from the FMCSA Web site at <http://www.fmcsa.dot.gov> (Keyword "MCSA-1").

■ 38. Amend § 385.607 by revising paragraph (e)(2) to read as follows:

§ 385.607 FMCSA action on the application.

* * * * *
(e) * * *

(2) File or have its process agent(s) electronically submit, Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, as required by part 366 of this subchapter.

* * * * *
■ 39. Amend § 385.609 by revising paragraph (a)(2) and removing paragraph (a)(3) to read as follows:

385.609 Requirement to notify FMCSA of change in applicant information.

(a) * * *
(2) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information in Section A of Form MCSA-1 that occur during the

application process or after the motor carrier has been granted new entrant registration. The motor carrier must report the changes or corrections within 30 days of the change. The motor carrier must use Form MCSA-1 to report the new information.

* * * * *

■ 40. Amend § 385.713 by revising paragraphs (b) introductory text, (b)(1), (c) introductory text, (c)(1), and (d) to read as follows:

§ 385.713 Reapplying for new entrant registration.

* * * * *

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

(1) Submit an updated Form MCSA-1, FMCSA Registration/Update (USDOT Number—Operating Authority Application);

* * * * *

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

(1) Submit an updated Form MCSA-1, FMCSA Registration/Update (USDOT Number—Operating Authority Application);

* * * * *

(d) If the new entrant is a for-hire carrier subject to the registration provisions under 49 U.S.C. 13901 and also has had its operating authority revoked, it must reapply for operating authority as set forth in § 390.201(b) and part 365 of this subchapter.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

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

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

■ 42. Add § 387.19 to subpart A to read as follows:

§ 387.19 Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.

(a) Insurers of exempt for-hire motor carriers, as defined in § 390.5 of this subchapter, and private motor carriers that transport hazardous materials in interstate commerce must file certificates of insurance, surety bonds, and other securities and agreements with FMCSA electronically in

accordance with the requirements and procedures set forth at § 387.323.

(b) The requirements of this section do not apply to motor carriers excepted under § 387.7(b)(3).

■ 43. Revise § 387.33 to read as follows:

§ 387.33 Financial responsibility, minimum levels.

(a) *General limits.* The minimum levels of financial responsibility referred to in § 387.31 are prescribed as follows:

SCHEDULE OF LIMITS

Public Liability

FOR-HIRE MOTOR CARRIERS OF PASSENGERS OPERATING IN INTERSTATE OR FOREIGN COMMERCE

| Vehicle seating capacity | Minimum limits |
|---|----------------|
| (1) Any vehicle with a seating capacity of 16 passengers or more, including the driver ¹ | \$5,000,000 |
| (2) Any vehicle with a seating capacity of 15 passengers or less, including the driver ² | 1,500,000 |

^{1 2} Except as provided in § 387.27(b).

(b) *Limits applicable to transit service providers.* Notwithstanding the provisions of paragraph (a) of this section, the minimum level of financial responsibility for a motor vehicle used to provide transportation services within a transit service area located in more than one State under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under 49 U.S.C. 5307, 5310 or 5311, including transportation designed and carried out to meet the special needs of elderly individuals and individuals with disabilities, will be the highest level required for any of the States in which it operates. This paragraph applies to transit service providers that operate in more than one State, as well as transit service providers that operate in only one State but interline with other motor carriers that provide interstate transportation within or outside the transit service area. Transit service providers conducting such operations must register as for-hire passenger carriers under part 365, subpart A and part 390, subpart E, of this subchapter, identify the State(s) in which they operate under the applicable grants, and certify on their registration documents that they have in effect financial responsibility levels in an amount equal to or greater than the highest level required by any of the States in which they are operating under a qualifying grant.

■ 44. Add § 387.43 to subpart B to read as follows:

§ 387.43 Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.

(a) Insurers of for-hire motor carriers of passengers must file certificates of insurance, surety bonds, and other securities and agreements electronically in accordance with the requirements and procedures set forth at § 387.323.

(b) This section does not apply to motor carriers excepted under § 387.31(b)(3).

■ 45. Amend § 387.301 by revising paragraph (a)(1) to read as follows:

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

(a) *Public liability.* (1) No for-hire motor carrier or foreign (Mexican) motor private carrier or foreign motor carrier transporting exempt commodities subject to Subtitle IV, part B, chapter 135 of title 49, United States Code, shall engage in interstate or foreign commerce, and no certificate shall be issued to such a carrier or remain in force unless and until there shall have been filed with and accepted by the FMCSA surety bonds, certificates of insurance, proof of qualifications as self-insurer, or other securities or agreements, in the amounts prescribed in § 387.303, conditioned to pay any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance or use of motor vehicles in transportation subject to Subtitle IV, part B, chapter 135 of title 49, U.S.C., or for loss of or damage to property of others, or, in the case of motor carriers of property operating freight vehicles described in § 387.303(b)(2), for environmental restoration.

* * * * *

■ 46. Amend § 387.303 by adding paragraph (b)(1)(iii) to read as follows:

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

* * * * *

(b) * * *

(1) * * *

(iii) *Limits applicable to transit service providers.* Notwithstanding the provisions of paragraph (b)(1)(ii) of this section, the minimum level of financial responsibility for a motor vehicle used to provide transportation services within a transit service area under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under 49 U.S.C. 5307, 5310 or 5311, including transportation designed and carried out to meet the

special needs of elderly individuals and individuals with disabilities, will be the highest level required for any of the States in which it operates. This paragraph applies to transit service providers who operate in a transit service area located in more than one State, as well as transit service providers who operate in only one State but interline with other motor carriers that provide interstate transportation within or outside the transit service area. Transit service providers conducting such operations must register as for-hire passenger carriers under part 365, subpart A and part 390, subpart E of this subchapter, identify the State(s) in which they operate under the applicable grants, and certify on their registration documents that they have in effect financial responsibility levels in an amount equal to or greater than the highest level required by any of the States in which they are operating under a qualifying grant.

* * * * *

■ 47. Amend § 387.313 by revising paragraphs (b) and (d) to read as follows:

§ 387.313 Forms and procedures.

* * * * *

(b) *Filing and copies.* Certificates of insurance, surety bonds, and notices of cancellation must be filed with the FMCSA at <http://www.fmcsa.dot.gov>.

* * * * *

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

* * * * *

■ 48. Revise § 387.323 to read as follows:

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

(a) Insurers must electronically file forms BMC 34, BMC 35, BMC 36, BMC 82, BMC 83, BMC 84, BMC 85, BMC 91, and BMC 91X in accordance with the

requirements and procedures set forth in paragraphs (b) through (d) of this section.

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

(c) Filings must be transmitted online via the Internet at *http://www.fmcsa.dot.gov*.

(d) All registered insurers agree to furnish upon request to the FMCSA a copy of any policy (or policies) and all certificates of insurance, endorsements, surety bonds, trust fund agreements, proof of qualification to self-insure or other insurance filings.

■ 49. Revise § 387.403 to read as follows:

§ 387.403 General requirements.

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

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

■ 50. Amend § 387.413 by revising paragraph (b) to read as follows:

§ 387.413 Forms and procedures.

* * * * *

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

* * * * *

■ 51. Revise § 387.419 to read as follows:

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

Insurers must electronically file certificates of insurance, surety bonds, and other securities and agreements and notices of cancellation in accordance

with the requirements and procedures set forth at § 387.323.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

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

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

■ 53. Revise § 390.3 to read as follows:

§ 390.3 General applicability.

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

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

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

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

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

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

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

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

(1) All school bus operations as defined in § 390.5 except for the provisions of §§ 391.15(e) and 392.80;

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact

between States that has been approved by the Congress of the United States;

(3) The occasional transportation of personal property by individuals not for compensation and not in the furtherance of a commercial enterprise;

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

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

(6) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, except for the texting provisions of §§ 391.15(e) and 392.80, and except that motor carriers operating such vehicles are required to comply with §§ 390.15, 390.21(a) and (b)(2), 390.201 and 390.205.

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

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

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

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

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

(4) Subpart E of this part, Unified Registration System, and § 390.21, Marking of CMVs, for carriers subject to the requirements of § 385.403 of this subchapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from § 390.201.

(h) *Intermodal equipment providers*. The rules in the following provisions of this subchapter apply to intermodal equipment providers:

(1) Subpart F, Intermodal Equipment Providers, of Part 385, Safety Fitness Procedures.

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

(3) Part 390, Federal Motor Carrier Safety Regulations; General, except § 390.15(b) concerning accident registers.

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

(5) Part 396, Inspection, Repair, and Maintenance.

(i) *Brokers*. The rules in the following provisions of this subchapter apply to brokers that are required to register with the Agency pursuant to 49 U.S.C. chapter 139.

(1) Part 371, Brokers of Property.

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

(3) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in subpart C of that part.

(4) Subpart E of this part, Unified Registration System.

(j) *Freight forwarders*. The rules in the following provisions of this subchapter apply to freight forwarders that are required to register with the Agency pursuant to 49 U.S.C. chapter 139.

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

(2) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in subpart D of that part.

(3) Subpart E of this part, Unified Registration System.

(k) *Cargo tank facilities*. The rules in subpart C of this part, Unified Registration System, apply to each cargo tank and cargo tank motor vehicle manufacturer, assembler, repairer, inspector, tester, and design certifying engineer that is subject to registration requirements under 49 CFR 107.502 and 49 U.S.C. 5108.

■ 54. Amend § 390.5 by revising the definition of “Exempt motor carrier” to read as follows:

§ 390.5 Definitions.

* * * * *

Exempt motor carrier means a person engaged in transportation exempt from economic regulation by the Federal Motor Carrier Safety Administration (FMCSA) under 49 U.S.C. chapter 135 but subject to the safety regulations set forth in this subchapter.

* * * * *

■ 55. Effective November 1, 2013, amend § 390.19 by adding paragraph (b)(4) to read as follows:

§ 390.19 Motor carrier, hazardous material shipper, and intermodal equipment provider identification reports.

* * * * *

(b) * * *

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

* * * * *

■ 56. Effective October 23, 2015, revise § 390.19 to read as follows:

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

(a) *Applicability*. A Mexico-domiciled motor carrier requesting authority to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border must file Form MCS-150 with FMCSA as follows:

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

(1) Before it begins operations; and

(2) Every 24 months, according to the following schedule:

| USDOT Number ending in | Must file by last day |
|------------------------|-----------------------|
| 1 | January. |
| 2 | February. |
| 3 | March. |
| 4 | April. |
| 5 | May. |
| 6 | June. |
| 7 | July. |
| 8 | August. |
| 9 | September. |
| 0 | October. |

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

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

(c) *Availability of forms*. The Form MCS-150 and complete instructions are available from the FMCSA Web site at <http://www.fmcsa.dot.gov> (Keyword “MCS-150”); from all FMCSA Service

Centers and Division offices nationwide; or by calling 1-800-832-5660.

(d) *Where to file*. The Form MCS-150 must be filed with the FMCSA Office of Registration and Safety Information. The form may be filed electronically according to the instructions at the Agency’s Web site, or it may be sent to Federal Motor Carrier Safety Administration, Office of Registration and Safety Information, MC-RS 1200 New Jersey Avenue SE., Washington, DC 20590.

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

(f) Only the legal name or a single trade name of the motor carrier may be used on the Form MCS-150.

(g)(1) A motor carrier that fails to file the Form MCS-150 or furnishes misleading information or makes false statements upon the form, is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B).

(2) A motor carrier that fails to update the Form MCS-150 as required in paragraph (b) will have its USDOT Number deactivated and will be prohibited from conducting transportation.

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

(2) A Mexico-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border must pass the pre-authorization safety audit under § 365.507 of this subchapter. The Agency will not issue a USDOT Number until expiration of the protest period provided in § 365.115 of this chapter or—if a protest is received—after FMCSA denies or rejects the protest.

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

■ 57. Amend § 390.21 by revising paragraph (b)(1) to read as follows:

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

* * * * *

(b) * * *

(1) The legal name or a single trade name of the motor carrier operating the self-propelled CMV, as listed on the Form MCSA-1 or the motor carrier identification report (Form MCS-150) and submitted in accordance with § 390.201 or § 390.19, as appropriate.

* * * * *

■ 58. Amend § 390.40 by revising paragraph (a) to read as follows:

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

* * * * *

(a) Identify its operations to the FMCSA by filing the Form MCSA-1 required by § 390.201.

* * * * *

■ 59. Add a new subpart E, consisting of §§ 390.201 through 390.209, to part 390 to read as follows:

Subpart E—Unified Registration System

- Sec.
- 390.201 USDOT Registration.
- 390.203 PRISM State registration/biennial updates.
- 390.205 Special requirements for registration.
- 390.207 Other governing regulations.
- 390.209 Pre-authorization safety audit.

Subpart E—Unified Registration System

§ 390.201 USDOT Registration.

(a) *Purpose.* This section establishes who must register with FMCSA under the Unified Registration System, the filing schedule, and general information pertaining to persons subject to the Unified Registration System registration requirements.

(b) *Applicability.* (1) Except as provided in paragraph (g) of this section, each motor carrier (including a private motor carrier, an exempt for-hire motor carrier, a non-exempt for-hire motor carrier, and a motor carrier of passengers that participates in a through ticketing arrangement with one or more interstate for-hire motor carriers of passengers), intermodal equipment provider, broker and freight forwarder subject to the requirements of this subchapter must file Form MCSA-1 with FMCSA to:

(i) Identify its operations with the Federal Motor Carrier Safety Administration for safety oversight, as authorized under 49 U.S.C. 31144, as applicable;

(ii) Obtain operating authority required under 49 U.S.C. chapter 139, as applicable; and

(iii) Obtain a hazardous materials safety permit as required under 49 U.S.C. 5109, as applicable.

(2) A cargo tank and cargo tank motor vehicle manufacturer, assembler, repairer, inspector, tester, and design certifying engineer that is subject to registration requirements under 49 CFR 107.502 and 49 U.S.C. 5108 must satisfy those requirements by electronically filing Form MCSA-1 with FMCSA.

(c) *General* (1)(i) A person that fails to file Form MCSA-1 pursuant to paragraph (d)(1) of this section is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B) or 49 U.S.C. 14901(a), as appropriate.

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

(iii) A person that furnishes misleading information or makes false statements upon Form MCSA-1 is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B), 49 U.S.C. 14901(a) or 49 U.S.C. 14907, as appropriate.

(2) Upon receipt and processing of Form MCSA-1, FMCSA will issue the applicant an inactive identification number (USDOT Number). FMCSA will activate the USDOT Number after completion of applicable administrative filings pursuant to § 390.205(a), unless the applicant is subject to § 390.205(b). An applicant may not begin operations nor mark a commercial motor vehicle with the USDOT Number until after the date of the Agency's written notice that the USDOT Number has been activated.

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

(d) *Filing schedule.* Each person listed under § 390.201(b) must electronically file Form MCSA-1 at the following times:

- (1) Before it begins operations; and
- (2) Every 24 months as prescribed in paragraph (d)(3) of this section.

(3) (i) Persons assigned a USDOT Number must file an updated Form MCSA-1 every 24 months, according to the following schedule:

| USDOT Number ending in | Must file by last day of |
|------------------------|--------------------------|
| 1 | January. |
| 2 | February. |
| 3 | March. |
| 4 | April. |
| 5 | May. |
| 6 | June. |
| 7 | July. |

| USDOT Number ending in | Must file by last day of |
|------------------------|--------------------------|
| 8 | August. |
| 9 | September. |
| 0 | October. |

(ii) If the next-to-last digit of its USDOT Number is odd, the person must file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT Number is even, the person must file its update in every even-numbered calendar year.

(4) *When there is a change in legal name, form of business, or address.* A registered entity must notify the Agency of a change in legal name, form of business, or address within 30 days of the change by filing an updated Form MCSA-1 reflecting the revised information. Notification of a change in legal name, form of business, or address does not relieve a registered entity from the requirement to file an updated Form MCSA-1 every 24 months in accordance with paragraph (d)(3) of this section.

(5) *When there is a transfer of operating authority.* (i) Both a person who obtains operating authority through a transfer, as defined in part 365, subpart D of this subchapter (transferee), and the person transferring its operating authority (transferor), must each notify the Agency of the transfer within 30 days of consummation of the transfer by filing:

- (A) An updated Form MCSA-1, for the transferor, and for the transferee, if the transferee had an existing USDOT Number at the time of the transfer; or
- (B) A new Form MCSA-1, if the transferee did not have an existing USDOT Number at the time of the transfer.

(C) A copy of the operating authority that is being transferred.

(ii) Notification of a transfer of operating authority does not relieve a registered entity from the requirement to file an updated Form MCSA-1 every 24 months in accordance with paragraph (d)(3) of this section.

(e) *Availability of form.* Form MCSA-1 is an electronic application and is available, including complete instructions, from the FMCSA Web site at <http://www.fmcsa.dot.gov> (Keyword "MCSA-1").

(f) *Where to file.* Persons subject to the registration requirements under this subpart must electronically file Form MCSA-1 on the FMCSA Web site at <http://www.fmcsa.dot.gov>.

(g) *Exception.* The rules in this subpart do not govern the application by a Mexico-domiciled motor carrier to provide transportation of property or passengers in interstate commerce

between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border. The applicable procedures governing transportation by Mexico-domiciled motor carriers are provided in § 390.19.

§ 390.203 PRISM State registration/ biennial updates.

(a) A motor carrier that registers its vehicles in a State that participates in the Performance and Registration Information Systems Management (PRISM) program (authorized under section 4004 of the Transportation Equity Act for the 21st Century [Pub. L. 105–178, 112 Stat. 107]) alternatively may satisfy the requirements set forth in § 390.201 by electronically filing all the required USDOT registration and biennial update information with the State according to its policies and procedures, provided the State has integrated the USDOT registration/ update capability into its vehicle registration program.

(b) If the State procedures do not allow a motor carrier to file the Form MCSA–1 or to submit updates within the period specified in § 390.201(d)(2), a motor carrier must complete such filings directly with FMCSA.

(c) A for-hire motor carrier, unless providing transportation exempt from the commercial registration requirements of 49 U.S.C. chapter 139, must obtain operating authority as prescribed under § 390.201(b) and part 365 of this subchapter before operating in interstate commerce.

§ 390.205 Special requirements for registration.

(a)(1) *General.* A person applying to operate as a motor carrier, broker, or freight forwarder under this subpart must make the additional filings described in paragraphs (a)(2) and (a)(3) of this section as a condition for registration under this subpart within 90 days of the date on which the application is filed:

(2) *Evidence of financial responsibility.* (i) A person that registers to conduct operations in interstate commerce as a for-hire motor carrier, a broker, or a freight forwarder must file evidence of financial responsibility as required under part 387, subparts C and D of this subchapter.

(ii) A person that registers to transport hazardous materials as defined in 49

CFR 171.8 (or any quantity of a material listed as a select agent or toxin in 42 CFR part 73) in interstate commerce must file evidence of financial responsibility as required under part 387, subpart C of this subchapter.

(3) *Designation of agent for service of process.* All motor carriers (both private and for-hire), brokers and freight forwarders required to register under this subpart must designate an agent for service of process (a person upon whom court or Agency process may be served) following the rules in part 366 of this subchapter:

(b) If an application is subject to a protest period, the Agency will not activate a USDOT Number until expiration of the protest period provided in § 365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest, as applicable.

§ 390.207 Other governing regulations.

(a) *Motor carriers.* (1) A motor carrier granted registration under this part must successfully complete the applicable New Entrant Safety Assurance Program as described in paragraphs (a)(1)(i) through (a)(1)(iii) of this section as a condition for permanent registration:

(i) A U.S.- or Canada-domiciled motor carrier is subject to the new entrant safety assurance program under part 385, subpart D, of this subchapter.

(ii) A Mexico-domiciled motor carrier is subject to the safety monitoring program under part 385, subpart B of this subchapter.

(iii) A Non-North America-domiciled motor carrier is subject to the safety monitoring program under part 385, subpart I of this subchapter.

(2) Only the legal name or a single trade name of the motor carrier may be used on the Form MCSA–1.

(b) *Brokers, freight forwarders and non-exempt for-hire motor carriers.* (1) A broker or freight forwarder must obtain operating authority pursuant to part 365 of this chapter as a condition for obtaining USDOT Registration.

(2) A motor carrier registering to engage in transportation that is not exempt from economic regulation by FMCSA must obtain operating authority pursuant to part 365 of this subchapter as a condition for obtaining USDOT Registration.

(c) *Intermodal equipment providers.* An intermodal equipment provider is

subject to the requirements of subpart D of this part.

(1) Only the legal name or a single trade name of the intermodal equipment provider may be used on the Form MCSA–1.

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

(d) *Hazardous materials safety permit applicants.* A person who applies for a hazardous materials safety permit is subject to the requirements of part 385, subpart E, of this subchapter.

(e) *Cargo tank facilities.* A cargo tank facility is subject to the requirements of 49 CFR part 107, subpart F, 49 CFR part 172, subpart H, and 49 CFR part 180.

§ 390.209 Pre-authorization safety audit.

A non-North America-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce within the United States must pass the pre-authorization safety audit under § 385.607(c) of this subchapter as a condition for receiving registration under this part.

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

■ 60. The authority citation for part 392 is revised to read as follows:

Authority: 49 U.S.C. 521, 13902, 13908, 31136, 31151, 31502; and 49 CFR 1.87.

■ 61. Effective November 1, 2013, add § 392.9b to read as follows:

§ 392.9b Prohibited transportation.

(a) *USDOT Registration required.* A commercial motor vehicle providing transportation in interstate commerce must not be operated without a USDOT Registration and an active USDOT Number.

(b) *Penalties.* If it is determined that the motor carrier responsible for the operation of such a vehicle is operating in violation of paragraph (a) of this section, it may be subject to penalties in accordance with 49 U.S.C. 521.

Issued under authority delegated under 49 CFR 1.87 on: August 15, 2013.

Anne S. Ferro,
Administrator.

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