

Fleet Management Pro



Your A to Z Guide to Managing a Fleet Operation




J. J. Keller
& Associates, Inc.[®]
Since 1953

22-M (12367)



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Introduction

In a world that measures your success in terms of capacities, mileages, utilization percentages, rates, revenue realizations and losses, costs per mile, profits and losses, and return on investments, it is difficult to be aware of everything involved in the business of trucking. This is the world you live in. Your goal in this world is to try to bring order out of chaos and operate a safe and profitable operation.

This manual is intended to be a tool to assist you with that goal. It is an aid to assist a Fleet Manager in handling the business of trucking. The emphasis is on the *business* of trucking.

Many Fleet Managers are very familiar with the issues facing the company, but may not be familiar with other aspects of the business. Whether you are a new Fleet Manager, or an old hand at fleet operations, this manual is designed to provide you with information on all aspects of operating a profitable carrier.

To sum it up, this manual is intended to expose you to all aspects of the business of trucking, making you a well-rounded Fleet Manager.

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COSTS

Cost Determination and Control

Costs

Cost is the greatest single issue that can cripple a motor carrier. Excessive costs, or lack of an effective cost control program, can cause any carrier to become unprofitable.

That said, a fleet management professional must understand that not all costs are bad. Some costs are an investment, reducing costs in another area. Spending some money on line A of the company budget can result in significant savings on line B. Many times carriers are so concerned about cost control that they “save nickels and end up losing dollars.”

An example of this is equipment purchases. Newer equipment can create a significant cost, both figured monthly and per mile. However, newer equipment requires less maintenance, operates more efficiently (fuel mileage, oil use, etc.), operates with less downtime, and has a positive effect on driver retention.

Looked at independently, new vehicle purchases may appear to be an unnecessary expense, but when other factors are taken under consideration the cost situation changes.

Some costs are simple and direct. An example of this is fuel. For every six to seven miles the truck rolls it will burn one gallon of fuel. This cost is easy to quantify, and therefore easy to take controlling action over. As fuel prices continue to rise, the cost of operating vehicles becomes more and more, a primary concern. One way this can be dealt with is through the use of auxiliary power units (APUs). At the average fuel use rate of one gallon per hour, idling of diesel engines has become a major concern as fuel prices increase.

In addition, the environmental impact of idling engines has become an issue across the country. Even though the purchase of an APU could be seen as a major investment, the return on that investment can be realized in a very short time due to the savings created by not idling. This savings takes place not only in less fuel consumption, but in reduced maintenance costs as well.

Other costs are not as easy to quantify, and many times the justification for the costs are the other costs that are being reduced. An example of this would be retention efforts. Carriers can only estimate what the cost of driver retention efforts are. Some retention costs can be tracked, such as the cost of longevity, safety bonuses, and awards.

Others cannot, such as the effect of out-of-route miles used to get drivers home for a specific event and allowing drivers extra days off for personal reasons. It is even more difficult to determine what the cost of a driver

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leaving can be. The vehicle going unused and the cost of hiring a replacement driver are just the beginning costs! This is because both of these costs cannot be represented as a “line” on the company budget.

Determining your costs

The service that a transportation company provides can be described very simply: the movement of goods from one point to another. For this service, the transportation company charges a fee. This fee provides revenue to the company that it uses to sustain its own existence. The company’s objective is to receive as much revenue as possible, to not only exist, but to grow and continue to collect the needed revenue.

Every time the transportation company moves goods from one point to another, it begins to lose some of this revenue in the form of costs. The costs associated with this service, and the manner in which they are managed, are the determining factors of whether or not the transportation company will continue to exist. These costs must be identified and evaluated for their impact on the bottom line. Their impact will determine the profitability of the transportation company and ultimately, its length of existence.

Costs to the transportation company come in many and varied forms. They are categorized differently from one trucking company to another, related to other costs not necessarily associated with the service the company provides, and continue to exist even when the company decides to take a day off! No matter the size of the trucking company, these costs are real and must be managed with great care.

What are the most common costs among trucking companies? Again, these may vary somewhat, but as a whole, they are:

- The driver
- Fuel
- Tires
- Administration
- Depreciation

The order in which they appear here is not necessarily the largest to the least amount of cost a carrier must manage. However, these five categories will certainly rank near the top in any trucking company.

What’s odd about this list is, the driver is the only cost factor that has direct contact with the revenue needed to keep the company alive! Some may argue that dispatchers, supervisors, and customer service people also help to create revenue, which may be a valid point. But more often than not, these positions are better classified in the Administration category of costs. The revenue does not begin to flow into the company until the driver gets the freight on his/her trailer and signs the bill of lading.

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Rolling and variable costs

These are costs that the operation incurs when the vehicles are operating. Another way to think of rolling and variable costs are they are the costs that would not be incurred if the vehicles were left parked.

The more miles each vehicle covers, the greater these expenses become. Normally, this is not a problem provided the vehicles are generating enough revenue to cover the costs they generate. This is because miles not only represent cost, they also represent revenue if the company is operating correctly.

Rolling and variable costs can be calculated either in terms of time or per mile. Daily, weekly, or monthly would be examples of time. These can be projected based on past performance, or tracked after the cost has been incurred. Rolling and variable costs include:

- Driver pay.
- Fuel.
- Tires.
- Accelerated reduction in value.
- Road tax.
- Tolls.
- Vehicle depreciation acceleration.
- Loading and unloading (“lumper” or “dock”) fees.
- Scaling fees.
- Fines.
- Accidents and claims.

Let’s take a detailed look at these costs.

Driver pay is an unavoidable rolling cost. Whether the driver is paid by the hour, by the mile, or on a productivity basis driver pay is the number one rolling expense at a carrier.

Fuel cost, and the reduction of fuel costs, will be discussed in great detail in the next section of this manual. Simply stated, the more fuel a carrier uses per mile and the higher the cost of fuel, the higher the rolling costs will be for the fleet.

Tires. There is a tire cost to every mile the vehicle covers. The costs will vary depending on the tires used (cost and wear rate), the driver’s and maintenance department’s care and inspection of the tires, and the driver’s driving techniques.

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there are times where it may be more beneficial to pay fees to get loaded or unloaded faster. This will add cost to the operation.

Scaling fees. It may be necessary to pay to scale the vehicle and adjust weight distribution to guarantee compliance with the size and weight regulations. This is a cost that can have a positive effect on other cost lines, specifically vehicle maintenance from carrying overweight loads, and fines.

Fines. Ideally, this is a rolling cost that a carrier would want to avoid. Driver training, prevention policies, and sound supervision practices should reduce or eliminate these costs.

Accidents and freight claims. Much like fines, this is a cost that carriers want to avoid. The majority of the cost associated with accidents and freight claims may be covered by the carrier's insurance, but the carrier is still going to incur additional costs. Administrative time, deductible requirements, lost productivity and utilization, and out-of-pocket expenses are all examples of accident and freight claim costs that may not be covered by insurance.

Fixed costs

Fixed costs are the type of costs that can be easily placed into a budget. They are known costs that are fixed over time and do not change based on the performance of the fleet. Whether the fleet does a lot of miles, or no miles, these costs remain the same.

Fixed costs are reduced relative to the miles a carrier's vehicles travel. Example: the office and shop mortgage and utilities are \$10,000 per month. The more revenue miles the vehicles cover, the lower the cost of the office and shop will be per mile. If the vehicles did 40,000 miles for the month the cost of the office and shop would be 25 cents per mile. If the fleet did 100,000 miles, the cost per mile drops to 10 cents per mile.

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- Non-payroll-based employee benefits.
- Office facility rent or mortgage.
- Maintenance facility rent or mortgage.
- Standard depreciation of equipment.
- Property and general business taxes.
- Professional services (legal, accounting, etc.).
- Dues and subscriptions.

Support costs

Support costs bear special attention by the Fleet Manager. Support costs are costs that the carrier incurs to support the operation. Many people refer to these costs as overhead. While these costs may be necessary, the question is, “are they appropriate for the operation?”

Carriers with lower support costs typically use a considerable amount of technology to automate many of their support operations. Common methods to reduce support costs through technology include the use of on-board communications, load prioritization systems that can automatically assign loads to drivers, electronic data interface systems with customers, and computerized payroll and taxation systems.

Another method of reducing support costs is outsourcing of non-driving functions. Outsourcing is defined as obtaining goods or services from an outside supplier, or to contract work out. Outsourcing is a particularly attractive option if a carrier does not have enough work in a specialized area to justify the addition of specialized employees. In such cases it may be advantageous to out-source the work to a company that specializes in the area.

Other situations that could warrant the use of outsourcing are if the carrier does not want to expend man-hours on a function that is well outside of the scope of the operation, or if the carrier needs to perform short-term projects.

Functions that can be, and are, outsourced by carriers include:

Maintenance

Contracting with an outside shop can be done to lower the support-to-unit cost ratio. This is a particularly attractive option for carriers who do not have enough vehicles in one location to keep a staff of mechanics working full time.

Carriers can also consider a combination of in-house and outsourced maintenance to lower the cost ratio. If a carrier is in a position where the maintenance workload is such that maintenance personnel are being tied up by long-term projects, the Fleet Manager could consider a policy

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and create the DQ file and to properly administer all DOT drug and alcohol testing requirements.

The DOT drug and alcohol testing program is also the responsibility of the motor carrier, including pre-employment, random, and post-accident testing. Safety Performance History for a new driver must be in compliance with §40.25 and §391.23. It is entirely possible for a multiple-employer driver to be part of many drug and alcohol testing programs, especially if this type of employment occurred over a 3-year period. That being the case, the carrier is responsible for contacting all DOT-regulated former employers who used the temp driver during those past three years.

Most temp agencies and staffing services are not regulated by the DOT and therefore are not subject to the regulations of the transportation industry. They supply a service to motor carriers. It is up to the motor carrier to determine how to utilize their services as the responsibility for regulatory compliance always remains with the motor carrier.

Training

Hiring a training facility, or a training consultant, to conduct the carrier's orientation, required training such as entry-level driver training and hazardous materials training, and driver safety meetings, is another possibility to lower support costs. A carrier can choose to do this for several reasons, the main one being it can eliminate the need to have an instructor on staff full time, while maintaining expertise in this area.



Motor Carrier Best Practice

One misconception that carriers have in this area is that by using an outside training facility they will have someone to share liability with if the driver is involved in a crash. ***This is not true.*** The carrier is responsible for making sure the driver is qualified to operate the assigned vehicle based on training or experience. All training the driver received will be called into question, but the carrier will ultimately be held responsible, and liable, for the driver's training and actions. Before placing any driver on the road, verify that the training the driver has received, whether from your company or someone else, is adequate.

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with all receipts and billings. The accounting company then does the books, including tax functions, depending on the agreement.

Some carriers hire an outside accounting company to provide oversight to fight fraud. The company maintains one set of books, while an outside accounting firm is hired to review the books. This is different from outsourcing an accounting firm to perform the carrier's accounting function.

| Property management

Carriers can reduce their personnel numbers by outsourcing the care of their property. Mowing lawn, snow plowing, lot care, cleaning of the offices, and various other property care matters can be outsourced.

There is also a more extreme option for property management. It involves the carrier leasing facilities and the support personnel at a terminal location. In this case the carrier leases space and personnel at another carrier's facility and simply pays for the use of the space and the services provided.

| Drivers

Outsourcing the driving function at a carrier is not a far-fetched idea. A carrier can out-source driving by using owner-operators, brokering freight to other carriers, hiring lease drivers, or using intermodal movements.

Leasing owner-operators as independent contractors transfers much of the capital and operating costs away from the carrier. The carrier will still have some of the operational costs, but there is a significant reduction. This is advantageous if the carrier needs to increase capability but does not have the ability to quickly add trucks and drivers.

| Problems with outsourcing

While outsourcing may be able to significantly reduce a carrier's support ratio and support costs, it can create problems for a carrier, both real and perceived. Managers and employees may not be comfortable working in an out-source environment. This could be due to a lack of trust in the basic concept of outsourcing; letting someone else do the important work. Often there is an unsubstantiated fear that all positions may eventually be outsourced.

Outsourcing does require a considerable amount of trust between the carrier, their employees, and the company providing the outsourced service. This is because the carrier is ultimately responsible if the outsourced company makes an error.

One major concern is that outsourcing can lead to an error or omission by someone not under the carrier's day-to-day supervision that could lead to a large litigation settlement or legal penalty. Because of this, some Fleet Managers and employees may never become comfortable with outsourcing.

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Motor Carrier Best Practice

Warning. Using an outside company does not mean you do not need to understand the regulations! The carrier is ultimately responsible for anything done *in their name*, as well as directly by them.

Some companies have gone so far as to outsource the entire driving function! They have done this through the use of a brokerage to provide additional units for customers at little cost to the carrier. If the carrier is operating an additional 10 units with no additional personnel through the use of a brokerage, this can have a significant effect on the profitability of the company.

A combination of outsourcing and technology is the most commonly used method to reduce the support ratio and cost.

A Fleet Manager needs to review the additional cost of technology and outsourcing, versus the cost of in-house operations. It does not do a carrier any good to reduce the number of support personnel if the technology and outsourcing costs that replaced them, are more than performing the same tasks with low-tech solutions and in-house personnel. A simple activity-based cost study and/or overall cost comparison can provide the Fleet Manager with the information necessary to make a sound monetary decision.

Studying the non-monetary effects of the technology and outsourcing may be more difficult. It is difficult to determine the level of comfort the Fleet Manager and other employees will have with technology systems or outsourced companies. These issues can many times be overcome with assurances and education. If employees can be shown that they are not going to be replaced by a machine or an outsourced company, and that their jobs will become easier, the addition of technology and outsourcing should go smoothly.

Surveys, studies, unofficial questioning, and/or hiring a consultant can all help the Fleet Manager assess the value of technology and outsourcing, and the effects it will have on their employees and customers.

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Simple Cost Analysis

VEHICLE COST ANALYSIS

	month	cpm	year	cpm
ACTUAL MILES	_____	_____	_____	_____
FIXED COSTS				
Capital investment	_____	_____	_____	_____
Interest	_____	_____	_____	_____
Depreciation	_____	_____	_____	_____
Return on investment	_____	_____	_____	_____
Licenses, permits, fees	_____	_____	_____	_____
Taxes (fuel, road, property)	_____	_____	_____	_____
Insurance (all premiums — equipment, public liability, collision, cargo, buildings, bobtail, property damage, etc.)	_____	_____	_____	_____
Supervisory personnel (wages)	_____	_____	_____	_____
Clerical/Accounting/Legal	_____	_____	_____	_____
Office supplies/telephone	_____	_____	_____	_____
TOTAL FIXED COSTS	_____	_____	_____	_____
VARIABLE COSTS				
Fuel	_____	_____	_____	_____
Oil/lube/filters	_____	_____	_____	_____
Routine maintenance, tune-up	_____	_____	_____	_____
Repairs (road service, accident, emergency)	_____	_____	_____	_____
Tires, tubes	_____	_____	_____	_____
Washing, painting	_____	_____	_____	_____
Equipment replacement parts	_____	_____	_____	_____
Tools	_____	_____	_____	_____
Equipment rental (to fill in for breakdowns, seasonal demand)	_____	_____	_____	_____
Driver wages and fringes	_____	_____	_____	_____
Helper wages	_____	_____	_____	_____
Personal road expenses	_____	_____	_____	_____
Parking/tolls	_____	_____	_____	_____
TOTAL VARIABLE COSTS	_____	_____	_____	_____
TOTAL ALL COSTS	_____	_____	_____	_____

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- Total cost for deflectors and installation = \$2,800, or 2.8 cents per mile (divide this by the number of years the vehicle has left in service to get a good annual comparison).

Total cost reduction figured annually would be \$200 if the vehicle only has one year of service left. If the vehicle has three years of service left the total cost reduction over the three years would be \$2,067 per year. This is because the cost of the air deflector and installation can be divided across the three years, lowering it to only \$933.33 per year, rather than \$2,800 per year. When figured by the mile, the reduction in cost would be .2 cents per mile over one year, and roughly 2.1 cents per mile if the vehicle is kept in service for three years.

To sum this one up, the Fleet Manager would not have to work out the cost and savings per year. The program would save \$200 per unit within one year of installing the deflectors. If the Fleet Manager did want to determine the cost savings for vehicles that had more time remaining in service, the cost of the deflectors and the installation costs would have to be divided over the number of years the vehicle has left in service.

The next issue would be to determine if the deflectors could be ordered as original equipment, thereby further reducing the overall cost.

Next example: Examining tolls. When examining costs the Fleet Manager believes he can reduce toll costs by \$35.00 by not using a toll road through a specific area.

While studying the option of not using the toll road it is determined that this will lead to an increase of ten percent in mileage based on the routes used by the fleet. It is also determined that the routing changes will add 30 percent to the time required to complete the trip. This is because what had taken 5 hours to complete will now take 7 because of the extra miles, lower speed limits, stop lights and signs, and traffic congestion. There will also be a corresponding reduction in fuel mileage of five percent. This of course means the fuel cost will be increased an equal amount. If the fuel cost is presently 40 cents per mile, the fuel cost will increase to 42 cents per mile. Here is a breakdown of an impact study on not using the 250 miles of toll road.

Cost comparison

Presently using toll road

- 250 miles (operating cost of \$1.00 = \$250.00).
- 4 hours to complete.
- Fuel cost of 40 cents per mile, or \$100.00.
- Toll cost of \$35.00.

Cost of using the toll road = \$385.00.

Proposal to not use toll road

- 275 miles (operating cost of \$1.00 per mile = \$275.00).

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The concept of human capital is a fairly new concept in the transportation industry. It is a companion to the theory of human resources. Some carriers are now considering expenses aimed at employee improvement or retention as capital, rather than operational cost. This is because they view the training and retaining of employees as an investment, much the same as purchasing a vehicle is an investment for the company.

However a carrier decides to divide up the costs, the key is to keep operational costs as low as possible. This is because a carrier that wishes to remain in business needs to invest in capital, specifically vehicles. To sum it up, a carrier can reduce the capital expenditures by not purchasing vehicles, but without the investment in vehicles the carrier will slowly grind to a stop as the vehicles become unreliable and unusable, driving up the operational costs.

Separating costs as a private carrier

Private carriers need to be cautious when determining their costs of operation. Many times the support and physical facility costs are mixed in with the company operations. An example would be the company handling the driver hiring qualifications through the company human resources office rather than as an internal function of the carrier operations.

The other example of mixing the costs is assigning all transportation department costs to the private fleet. If the traffic department solicits and works with outside carriers, the full cost of the traffic department cannot be assigned entirely to the private fleet. In some cases, the warehousing and freight storage costs are charged against the private fleet.

The Fleet Manager needs to separate the budget, and related costs, into functions. Using line-item budgeting and an ABC model the Fleet Manager can separate out the non-carrier costs that may be appearing in the budget.

ABC allows the Fleet Manager to separate the private fleet's costs from the company's costs in areas where the costs are intertwined. In the example used earlier, the company is handling the driver hiring and qualifications for the fleet. To separate the costs of this arrangement, the Fleet Manager would need to determine the activities the human resources department has to undertake for the fleet. Once this is determined, a time requirement for each activity can be assigned. Next, simply multiply this by the full hourly rate of the human resources department. In short, the private fleet should only be billed for the time that the human resources department spends working for the fleet, no more, no less.

Being able to correctly separate costs is critical for a private carrier. If the company management is not viewing the true cost of fleet operations, they may make detrimental decisions as to the future of the fleet!

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Methods of cost reduction

Drivers, fuel, tires, and maintenance drive expenses.

Unless the motor carrier employs its own technicians to perform the maintenance for its fleet, all of the expenses mentioned are incurred while providing a service away from the carrier's principal place of business.

Unlike industries such as manufacturing, retail, and IT where the product is made, sold and/or developed under one roof, and where profit margins seem to tower over many transportation companies' balance sheets, motor carriers often find themselves trying to limit their expenditures on workforce, fuel cost, and equipment needs as a pathway to profit.

Cost management is essential in any form of business. In the motor carrier industry, this outside activity demands that these costs be monitored closely. However, the larger danger exists in failing to recognize where true profit actually lies. Like the industries mentioned earlier, along with many other types of industries, profit is made inside the organization.

Surprising to some may be that the systems and methods that have been in place for a long time may be the direct link to the cause of waste that limits profit. These wastes can be difficult to see as employees' eyes are trained to see only what they are expected to see. Therein lies the opportunity to improve profit.

Profit through inside efficiencies

Waste is the catalyst for loss of profit. Waste is an activity that does not add value to a product, or a service. Wasted motion, wasted time, wasted inventory, etc. Even in the best managed organizations, waste is present. In the transportation industry, waste obviously exists by the nature of the activity outside of the organization. As much as dispatchers and operations managers painstakingly plan to prevent the occurrence of a loss relating to their drivers out on the road, there are many costly and wasteful activities going on inside the confines of the carrier's place of business that can be detected.

Learning to recognize things that cause waste begins with the understanding of a process. All processes comprise a series of steps. Some of these steps are wasteful activities and occur anywhere in the office, in the maintenance shop, within the operation, and even in the process to recruit and hire drivers.

The objective is to identify problems within the process that impedes improvement and company performance in areas such as work flow, meeting customer requirements, or simply how the work is done. Once identified, questions beginning with "Why" are asked until the root of the problem is exposed. At that point, a gap between the way things are now and the way they are supposed to be, or how the company envisions them to be in the future, becomes evident.

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Training then narrows the knowledge gap and leads to organization. When an employee has the knowledge and develops the skills as a result of his/her training, organization in the workplace follows. The key is to make sure the training keeps up with the times and is not simply a one-time offering.

Improving efficiency is achieved by empowering employees to use their knowledge along with creative and critical thinking to solve problems. Those who know the work are in the best position to impact positive change.

Drivers, fuel, tires and maintenance drive expenses while organization and efficiencies drive profits.



Motor Carrier Best Practice

Benchmarking

Benchmarking is the practice of reviewing a company's operations and comparing it to either the industry, or the company's history. It is a process of measuring and comparing, used to instigate changes and/or develop policies and best practices within a company.

Managing equipment costs

Managing equipment costs is crucial for cost reduction. First, the Fleet Manager will want to study the cost of operating the present equipment, taking all factors into consideration including repairs, downtime, payments, etc. Then compare that to the cost of replacing the equipment, including all replacement cost factors (trade value of existing equipment, financing charges, warranty coverage of repair costs, etc.). If replacing equipment will lower the equipment costs, it may be viewed as an investment rather than a cost!

Second, the Fleet Manager should review the equipment being purchased. Does it match the work required, or are the vehicles over spec'ed for some reason? If the reason cannot be explained, consider lowering the purchase price of the vehicles by better matching the vehicle to the intended task. As with any other change, the Fleet Manager would want to do an impact study, taking into consideration all factors involved in the change.

| Improving efficiency

Improving the efficiency of the fleet is another cost control method. Deadhead, or empty mileage, is a cost. In some cases it is one of the “costs of doing business,” but in some cases it is a cost that can be addressed by reviewing the customer base, and making adjustments. Trying to avoid loads to areas where the carrier cannot reload the vehicle, or locating customers in the area of unloading, are two strategies that can help to reduce deadhead. Another alternative is to negotiate with the customer to establish a shipping rate that addresses the excessive deadhead in such cases.

Efficiency can also be improved through proper use of assets. Making sure vehicles are preplanned, routed correctly, and loaded and unloaded in a timely manner, are all good ways to become more efficient.



Motor Carrier Best Practice

Benchmark

While the operational situation varies from fleet to fleet, the target deadhead percentage (the number of empty miles divided by total miles x 100) most fleets attempt to achieve is under 10 percent.

| Improving fleet utilization

Fleet utilization is the percentage of equipment operating when compared to the total equipment inventory. When determining utilization, ALL vehicles are to be considered. In the case of tractor-trailer operations, the Fleet Manager must separate the tractors and trailers when considering utilization. The following would be a typical daily utilization report:

- The company owns 110 tractors.
- 100 tractors are assigned to drivers.
- 87 tractors are in operation.
- 13 tractors are assigned to drivers that are off duty for the day.

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- 5 tractors are not assigned to a driver due to being down for major maintenance.
- 5 tractors are unlicensed.

Based on the above report, 79 percent of the fleet's tractors are being utilized, 90 percent of the tractors are assigned to a driver, and 100 percent of the available tractors are assigned to a driver. A total of 4.5 percent of the fleet is unavailable due to maintenance or repair work, and 4.5 percent of the fleet is unavailable due to being unlicensed. To improve utilization the Fleet Manager would need to license additional tractors, work with the maintenance personnel to make some of the tractors that are down for major maintenance or repair available, or make use of the tractors that are assigned to drivers that are off duty.



Motor Carrier Best Practice

Benchmark

Traditionally, fleets try to maintain an average availability of tractors of 95 percent or more (vehicles available for use by a driver), and an average daily utilization of over 70 percent (based on assigning drivers to vehicles, and drivers being allowed 2 days off per week). As with any benchmark this will vary depending on the operation. The key is to determine your availability and utilization, and through benchmarking against the industry, decide if improvements can be made.

Trailers must be viewed differently. The availability of trailers can allow a carrier to expand their capacity by allowing customers to preload shipments and allowing the carrier to store shipments for customers. This can increase the number of shipments in movement to the point that the carrier can have more shipments than tractors. This situation can allow drivers to always have their next load waiting for them, rather than the reverse. It can also assist the carrier and driver in complying with the hours-of-service regulations.

Trailers are typically benchmarked in two ways. One way is to look at the ratio of tractors to trailers. Most carriers attempt to maintain a ratio of 1 tractor per 2 trailers (usually expressed as a 1:2 ratio). As with any benchmark, this will depend on your operation. It is not unusual to see successful carriers operating at a tractor to trailer ratio of 1:3, or even 1:4.

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Lower costs through preventive maintenance

One of the most expensive, yet common costs a motor carrier must endure is the cost of maintenance to the fleet. The manner in which this cost is managed can actually lead to a larger profit for the carrier when the basics are put in place. In this case, the basic is in the form of a preventive maintenance program. And while it may also seem as common knowledge to some, often a great deal of preventive maintenance is delayed due to operational demands, put off due to financial demands, and even ignored for reasons beyond imagination.

Whatever reason becomes the excuse for this example of poor management and higher costs, we must start with why a preventive maintenance program is necessary.

First of all, regulations require that every motor carrier shall systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to its control (49 CFR Section 396.3). There are guidelines that accompany this regulation which tells the carrier all that needs to be inspected, repaired, and maintained but does not tell the carrier how and when to perform these tasks. It is up to the carrier to decide the scheduling of this duty and therefore causes a built-in cost that the carrier is responsible for.

Some carriers are better than others when it comes to accepting responsibilities. Some are still operating under the premise “we’ll fix it when it breaks” or “when we have to!”

This is evident by the 2005-06 inspection results from the FMCSA, which reports that the national average for out-of-service equipment is slightly above 22%! That equates to a little more than 1 in 5 trucks operating on the highway with defective equipment, making them unsafe and non-compliant with the rules and regulations established by the government!

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Secondly, drivers should be performing several inspections throughout their day. This begins with the driver doing a pretrip inspection before operating the vehicle for the work day. The Department of Transportation (DOT) regulations state that the driver must be satisfied with the condition of the vehicle before operating. The driver should also be doing “walkaround” or “enroute” inspections during the day to make sure the vehicle continues to remain in good condition. Finally, a post-trip inspection should be done at the end of the driver’s work day. This includes the completion of the Driver Vehicle Inspection Report (DVIR) form, which the driver uses to formally report the condition of the vehicle.



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When the driver submits the DVIR, a determination must be made immediately whether the defective item(s) listed is in violation of the regulations and must be repaired immediately to ensure safe operation, or can be held off until the scheduled PM date. This decision is noted on each DVIR by a mechanic’s or supervisor’s signature and becomes a permanent record, which is also required by the DOT in the event of an audit.

In most all circumstances, it is usually preferable to do all repairs at home where the costs can be managed effectively and the qualities of the repairs are better controlled. However, depending on the size of the operation and the area of service offered by the trucking company, it may also prove to be a large cost-saving method to have service and pricing agreements set up with vendors throughout the carrier’s system. A relationship with a vendor who can perform the PM Service for you and complete any minor repairs that keeps your vehicle rolling while ensuring the safety and compliance required, is money well spent. Often times, it will be cheaper in the long run rather than routing a driver home empty merely to stay on schedule.

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Most operations would not purposely route a driver over excessive empty miles for reason of scheduled PM in the first place. Rather, they would extend the PM and get it to their home shop as soon as the opportunity presents itself. This is where close monitoring of repair costs become crucial to a carrier. In order to determine if the extended PM schedules are creating problems, you would have to track your repair orders (ROs) and on-road repairs to see if this practice is causing an increase in unscheduled and on-road repairs. If this is a factor that can be managed better, it may be the perfect reason to set up a network of vendors to assist you in this matter.

Finally, regular meetings with your mechanics will disclose those drivers who consistently show excessive wear on items such as tires, brakes, clutches, etc. This unusual wear leads to higher costs as the replacement of these items, long before their expected lifetime, is an indication that behavioral changes in driving habits are warranted. It would also prove to be an effective cost saving method to require all new hires to have a road test with a mechanic as well as with a driver trainer. This is where the culture begins to change and an effective PM program begins to display it value.

Prepare the fleet for all conditions

One of the goals of an effective preventive maintenance (PM) program is to prepare the fleet for all types of conditions a carrier may encounter, regardless of the season in the year. This proactive maintenance program focuses on the safe operation of the vehicle on a schedule that inspects and repairs any items that are at or approaching the cut-off for being in compliance. Part of this schedule also involves a seasonal inspection and maintenance activity to get the fleet ready for winter.

Winterizing the vehicle must be carried out with special consideration for the harshness that accompanies the winter season. It's not simply a matter of adding antifreeze and changing the oil. The heating system and all related heater cables and controls along with block heaters and oil pan heaters must be tested to ensure they are up for winter's task. As critical as the heating system is, the same is true for the cooling system. All belts, hoses, and clamps must also be inspected for wear, and any item that prevents the cooling system to be effective at -45°F must be replaced.

More items are on the checklist for a complete PM winterization program, such as batteries, tires, brakes, fuel systems, and any other high-wear and safety related components. However, as critical as all these items are for the safe operation of commercial motor vehicles, especially in winter weather, additional factors greatly influence the value of a well managed PM program.

Roadside inspections and CSA enforcement now add another dimension to the value of a preventive maintenance program. The results of a poor maintenance program will be reflected in the carrier's Vehicle Maintenance BASIC score and could cause a string of interventions from the

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Tracking your cost by work performed on each unit allows management to identify vehicle systems or components that show a higher than normal failure rate. This data becomes very useful when analyzing maintenance costs and the effect these costs have on the bottom line. The data can be especially beneficial when searching for the root cause of re-occurring cost. Looking for trends as a comparison with other vehicles or drivers becomes the added benefit of tracking these costs.

Overall cost per mile is another source of data that can alert management of improvements needed to a maintenance process thought to be efficient. If the overall cost per mile exceeds the budgeted cost per mile, then again, the question “Where lies the root cause of this problem?” can be asked.

How can this apply to the facts that all commercial motor vehicles must have scheduled maintenance, will certainly encounter preventive maintenance needs, and even experience the occasional breakdown? There is no argument to the inevitability of these facts. However, when the motor carrier tracks the cost of repair and maintenance in each of these events, it will assist in identifying the root cause of a problem before it can potentially challenge the budget, or the bottom line.

Environmental costs

The build up of anti-idling regulations along with other legislation seeking to limit or reduce emissions and greenhouse gases makes it a sure bet that this topic will get careful examination over the next few years. The transportation industry is in basic agreement that these issues are real and could have devastating effects on our environment. Where the

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So environmental issues become another cost structure by which to make budget. And if it isn't already in the current plan, it certainly will and must be in future plans.

Cost calculations

There are several cost calculation formulas a Fleet Manager can use to evaluate costs. As discussed earlier, when reviewing these formulas and results, outside benchmarks can be useful but many times the results are unique to the carrier. Benchmarking against past performance can be useful for all carriers. This is especially true if the carrier has implemented changes that were intended to reduce costs. Here are several formulas that a Fleet Manager may find helpful when assessing costs:

Cost per mile. To determine this divide all costs of operation by all miles traveled.

There are several variations on this formula. One variation is to use only the billable miles when doing the calculation. Another is to only use the sum of customer-caused loaded and deadhead mileages. Some carriers refer to these as authorized or company miles. In each case the Fleet Manager is attempting to benchmark against either an industry benchmark or an internal benchmark.

Other variations include only using fixed costs, rolling and variable costs, operational costs, and capital costs. The Fleet Manager should be using several of these formulas to determine if there are trends in the costs and the efficiency of the operation.

Ratio of "book" to actual miles. This ratio can tell the Fleet Manager if the drivers are using routes that create excessive out-of-route miles. There is a normal variation of 5 to 10 percent between book and actual miles. A Fleet Manager needs to watch for variations above the norm. Out-of-route miles are a pure cost. Simply divide the book miles generated by the fleet and divide them by the number of total miles the fleet traveled. The closer to 1 the number is, the better the drivers are doing at using appropriate routes. If the number is below .95, the Fleet Manager may want to investigate the routes the drivers are using or use a different method to get more accurate mileages to cover the cost of the extra miles.

Ratio of billed book miles to actual loaded miles. This is another comparison designed to determine if the book reflects what the vehicles are doing, and locating the additional cost of extra miles. Determine the billed book miles generated by the fleet and divide them by the number of actual loaded miles the fleet traveled. The closer the number is to 1, the better. If there is a wide variation (.95 or more) determine if it is a driver routing issue or a book issue.

Percentage of deadhead mileage. Using both billed book and actual mileages, determine what percentage of the fleet's mileage is empty, or deadhead, by dividing the loaded miles by the empty miles, then multiply by 100. Empty miles are both cost and lost revenue, so the lower this number, the better.

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Another way to express these same costs, which would be especially helpful when measuring downtime at a customer's dock, is by stating the costs as an average cost per hour. Once the carrier knows the total operational cost of each unit, including the driver wages and benefits, the carrier is then able to determine the hourly costs by dividing the total operational cost of each unit by the hours per day management expects the unit to be in use. This would provide the carrier its average cost per hour.

Comparing this hourly cost to the amount of time waiting at a customer's dock would aid in assessing the cost of a carrier-friendly customer's effect on the motor carrier's balance sheet.

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COST

Fuel Management

Fuel network structures

Fuel networks are agreements with fuel stops, fuel chains, or fuel suppliers. Fuel networks allow the carrier to negotiate the best possible price for fuel at all times. Many fuel networks involve the carrier paying cost for the fuel, as established by contract, plus a fee (cost-plus programs). Another way these programs are structured is based on a “discount” off the pump price. Both programs can be straightforward, based on a specified fee or discount in cents per gallon or percentage, or they can be more complex, adjusting the fuel pricing to the number of gallons purchased. There are several ways fuel networks can be established.

Exclusive network agreement. Under this arrangement the carrier attempts to leverage the maximum negotiating power available to them by negotiating to purchase all fuel from one supplier. The supplier, in exchange for the guaranteed business, will provide the carrier with a reduced price on the fuel through either a cost-plus program or a discount. Many fuel companies offer nationwide fuel networks, which includes the use of their fuel credit card.

Company network. A company network is built by studying the movements of the fleet, locating fueling locations that would best serve the fleet, and then negotiating directly with fuel stops in those locations. To be most successful at this the carrier will need to project the fuel purchases (in gallons and frequency) the carrier will be making at each fuel stop.

Off-network fueling. The Fleet Manager will need to consider having a tracking mechanism in place to identify problems with the network. Problems can include not having a fuel stop in a needed location and drivers not using the existing stops.

Fuel stops that are too far apart will lead to drivers not using the fuel network to its best capacity. If the driver needs to fuel off-network because stops are too far apart, the driver will generally fill up, rather than get just enough fuel to make it to a network fuel stop. This is because drivers do not like to stop for fuel any more often than is necessary. Fuel stops cost time, and in most circumstances the driver must log on-duty time for the fueling. To avoid this, provide fuel stops that are within range of each other based on the fuel capacity and fuel mileage of the company vehicles.

The opposite can also be true. If fuel stops are located too close together, the fleet’s purchasing power will be diluted. This can lead to the loss of the discounts the network was intended to realize. If the distributor or retailer feels the network is not helping their fuel stops, they may reduce the discount or drop the discount program completely.

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While most drivers will be compliant with the company fuel network, some drivers will not. These drivers simply will not comply with the company fuel network and fuel at fuel stops of their choosing. This is due to drivers having “favorite” truckstops, not “liking” the facilities at the company fuel stops, and/or trying to avoid fueling to be able to “manipulate” their hours of service. Non-compliance should be considered a driver performance issue and treated as a serious matter. Non-compliance drives up fuel costs, and if not corrected can lead to other drivers becoming non-compliant.

Drivers who are manipulating their hours of service can be the most difficult to bring into compliance with the company network. Drivers know the accuracy of their logs is verified using supporting documents, and that fuel receipts and fuel billing statements are the most common support documents used in auditing (everybody has to buy fuel!).

The log manipulation technique these drivers use is to fuel “wherever the day legally ends.” By doing this, the driver can continue to drive after using all available hours without leaving a “paper trail.” This allows the driver to get home, or make it to a customer, when their available hours have been used. If they had fueled at the company fuel stop, the driver would have had to have accounted for a fueling when he/she should have been taking a required break hours earlier. The problem is, if the driver is caught, there are serious consequences (fines against the driver and an out-of-service violation on the carrier’s record, which can lead to the attention of auditors). If the driver is involved in an accident while operating over hours, the ensuing litigation can ruin the driver and carrier.

Fuel hedging

Fuel hedging is advance purchases of fuel via bulk buying or entering into contracts for fuel at a fixed price for future delivery. This is done to protect against the shock of anticipated increases in price. While extremely popular at one time, the use of hedging has decreased.

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improve our own bottom line. If this seems like a poor attempt to put another spin on the reality of the trucking industry, consider the following as a means to control the cost of rising fuel prices.

There are only so many ways you can purchase fuel. You can use a fuel card, which saves you so many cents per gallon at each fueling stop. You can set a program up with nationwide truck stops to purchase their fuel at a lower price. You can simply pay retail and keep on going without spending the time to look for the best price on the road. You can purchase your fuel in bulk if you have an underground storage tank at your terminal(s). Or, you can have a mobile fuel vendor fuel your fleet when your trucks are idle. Too costly is your first reaction? Maybe not, if you can negotiate the right price.

A driver will spend a minimum of 20 minutes each time they stop for fuel. If they fuel five times per week, that accounts for at least 1 hour and 40 minutes per week that both the driver and the truck are unproductive. Multiply the driver's time to fuel by the hourly wage and then add in the cost of your truck for the same time it was unproductive, and suddenly, the pennies you think you are saving per gallon turn into the dollars you are losing each time you fuel! Now, multiply this by the number of drivers you have fueling each day!

A fuel vendor, who will come to your facility and fuel each night (or whenever your trucks are not in use), could actually lower your costs even if the price of fuel increases — providing you negotiate a fair price based on the vendor's daily cost. This will require a strict recordkeeping system and a daily watch on the true price of fuel so that your costs can be managed wisely.

Fuel surcharging

Surcharges are extra fees added onto the original fee for a product or service. Fuel surcharges are agreed upon increases (extra fees) in the shipping rate brought about by increases in fuel costs. Typically, the carrier and the shipper will agree on a "standard" rate based on an agreed-upon fuel price, to be adjusted through a fuel surcharge based on increases or decreases in the national average price of fuel as reported by the Department of Energy (DOE).

Surcharges are established in either the carrier's tariff rate sheet or customer contracts. There are no legal requirements stating that a customer must agree to pay a carrier's fuel surcharges. Basically, fuel surcharging is a negotiated issue between participants in an agreement or contract, not a legal issue. If a carrier chooses to implement a non-agreed upon or declared fuel surcharge, and the customer refuses to pay it, the carrier has no recourse.

The typical arrangement for fuel surcharging is the establishment of a "base price" for fuel. This base price is what most carriers base their declared rates and contracts on during negotiations. The fuel price used for the purpose of determining the base price and fuel surcharging is normally the DOE Energy Information Administration's (EIA) weekly

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Below is a chart that will help you determine what fuel surcharge rate to charge based on the price paid for fuel:

Fuel Surcharge Rate Chart

RATE PAID PER GALLON OF FUEL (Read across to end column to determine appropriate fuel surcharge)					SUR-CHARGE PER MILE
3.51	3.52	3.53	3.54	3.55	0.48
3.56	3.57	3.58	3.59	3.60	0.49
3.61	3.62	3.63	3.64	3.65	0.50
3.66	3.67	3.68	3.69	3.70	0.51
3.71	3.72	3.73	3.74	3.75	0.52
3.76	3.77	3.78	3.79	3.80	0.53
3.81	3.82	3.83	3.84	3.85	0.54
3.86	3.87	3.88	3.89	3.90	0.55
3.91	3.92	3.93	3.94	3.95	0.56
3.96	3.97	3.98	3.99	4.00	0.57
4.01	4.02	4.03	4.04	4.05	0.58
4.06	4.07	4.08	4.09	4.10	0.59
4.11	4.12	4.13	4.14	4.15	0.60
4.16	4.17	4.18	4.19	4.20	0.61
4.21	4.22	4.23	4.24	4.25	0.62
4.26	4.27	4.28	4.29	4.30	0.63
4.31	4.32	4.33	4.34	4.35	0.64
4.36	4.37	4.38	4.39	4.40	0.65
4.41	4.42	4.43	4.44	4.45	0.66
4.46	4.47	4.48	4.49	4.50	0.67
4.51	4.52	4.53	4.54	4.55	0.68
4.56	4.57	4.58	4.59	4.60	0.69
4.61	4.62	4.63	4.64	4.65	0.70
4.66	4.67	4.68	4.69	4.70	0.71
4.71	4.72	4.73	4.74	4.75	0.72
4.76	4.77	4.78	4.79	4.80	0.73
4.81	4.82	4.83	4.84	4.85	0.74
4.86	4.87	4.88	4.89	4.90	0.75
4.91	4.92	4.93	4.94	4.95	0.76
4.96	4.97	4.98	4.99	5.00	0.77
5.01	5.02	5.03	5.04	5.05	0.78
5.06	5.07	5.08	5.09	5.10	0.79
5.11	5.12	5.13	5.14	5.15	0.80
5.16	5.17	5.18	5.19	5.20	0.81
5.21	5.22	5.23	5.24	5.25	0.82
5.26	5.27	5.28	5.29	5.30	0.83
5.31	5.32	5.33	5.34	5.35	0.84
5.36	5.37	5.38	5.39	5.40	0.85

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Reserved

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incorrectly set, then the carrier can actually lose money due to the program.

If the carrier is already seeing low idle percentages, then the program cannot financially support itself.

The next idle reduction method would be the addition of idle reduction hardware such as an auxiliary power unit (APU) to heat and/or cool the cab without running the vehicle's main engine. The diesel powered APUs that are presently available can heat or cool the vehicle for a complete driver rest cycle using less than one half of a gallon of fuel (as compared to 3/4 to 1 gallon of fuel per hour of idling in heavy duty vehicles).

Idle reduction hardware that can be installed on the vehicles includes:

- Phase charging systems that can cool the vehicle for up to eight hours without running the vehicle engine,
- "Shore line" systems that use 120 volt power from an outside source to heat and/or cool the cab while the vehicle is parked,
- Generators (gensets) that provide 120 volt or 12 volt power to the cab to operate heating and cooling systems,
- Heating and cooling "tubes" provided at truck stops that connect to the cab to provide heat and cooling to the cab,
- 12 volt heating and/or cooling systems that use extra battery packs, and
- Diesel cab heaters.

Several of these hardware systems use no fuel. Of course, there is the initial cost of the idle reduction equipment, but this can be offset by the fuel savings, federal tax breaks, and other program involvement. One such program is the Environmental Protection Agency's (EPA) "Smartway Transportation Partnership" program. This program provides low interest loans and grants to carriers who are willing to reduce emissions through the reduction of fuel usage. As with any other cost reduction plan, the Fleet Manager will need to study the costs and benefits of installing the idle reduction hardware.

Installation of idle reduction software is another high-tech solution to idling. The fuel management computer on most modern medium and heavy duty vehicles can be programmed to shut down the main engine after a predetermined number of minutes of idling.

There are software systems (some requiring hardware upgrades) that will automatically shutdown and startup the main engine to warm or cool the cab of a sleeper truck based on the driver's desired cab temperature. This allows for fuel savings by not running the engine if the driver does not need heat or air conditioning.

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With a heavy vehicle, every five miles per hour the driver averages over 55 miles per hour will reduce fuel mileage at least one tenth of a mile per gallon. In certain situations every one mile per hour the driver averages over 55 can reduce fuel mileage as much as one tenth of a mile per gallon.

However, drivers may not accept this as an option. If the Fleet Manager is going to consider this, an increase in pay or other compensation (fuel bonus, etc.) should also be considered. Drivers are going to see a drop in performance and pay due to this, along with longer times to complete their trips. If the carrier does not compensate them, there may be a significant increase in turnover.

As well as limiting speed, the power of the engine can also be adjusted in many cases. Be aware, reducing the power the engine can generate may have the same effect on driver performance as reducing the vehicle speed.

Aerodynamic improvements to the equipment should be explored. Air resistance is the number two resistance factor reducing fuel mileage (behind rolling resistance of the driveline). Any optional equipment that can increase fuel mileage should be examined.

Equipment specification is a key area in improving fuel mileage. There are questions the Fleet Manager should bring to the vehicle manufacturers when spec'ing equipment. Here is a list of considerations in vehicle specification:

- Are the engines properly sized and set for the workload on them?
- Is the transmission and axle gearing keeping the engine in the "sweet spot" for fuel mileage?
- Are the tires reducing or increasing rolling resistance?
- Is there a cost effective tire monitoring system available to keep tires at the proper inflation?
- Is there a better bearing arrangement available to help reduce rolling resistance?
- Are there more effective aerodynamic vehicles or option packages available?
- Is there a vehicle package that can significantly reduce the vehicle weight?

Inspection and Maintenance. One key area to focus on when looking to improve fuel mileage is inspection and maintenance. Specific inspection and maintenance items on the vehicles that can have a direct effect on fuel mileage are:

- Tire inflation and condition,
- Bearing condition,
- Brake operation,

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training, or the truck may need repairs. In either case, if mileage is not being tracked a problem may be going unnoticed.

Fuel cost per mile calculator

The chart below can be used to drive home the point of the cost of fuel during meetings. It shows the cost per mile for fuel at various fuel costs and miles per gallon. Determine the present fuel cost per mile and then multiply it by the number of miles the fleet did last year. Redo the math increasing the fuel mileage by .1 and .5 miles per gallon. This will show what small and large improvements in fuel mileage can do.

Cost Per Gallon	Miles Per Gallon												
	5.8	5.9	6	6.1	6.2	6.3	6.4	6.5	6.6	6.7	6.8	6.9	7
2.00	0.34	0.34	0.33	0.33	0.32	0.32	0.31	0.31	0.30	0.30	0.29	0.29	0.29
2.05	0.35	0.35	0.34	0.34	0.33	0.33	0.32	0.32	0.31	0.31	0.30	0.30	0.29
2.10	0.36	0.36	0.35	0.34	0.34	0.33	0.33	0.32	0.32	0.31	0.31	0.30	0.30
2.15	0.37	0.36	0.36	0.35	0.35	0.34	0.34	0.33	0.33	0.32	0.32	0.31	0.31
2.20	0.38	0.37	0.37	0.36	0.35	0.35	0.34	0.34	0.33	0.33	0.32	0.32	0.31
2.25	0.39	0.38	0.38	0.37	0.36	0.36	0.35	0.35	0.34	0.34	0.33	0.33	0.32
2.30	0.40	0.39	0.38	0.38	0.37	0.37	0.36	0.35	0.35	0.34	0.34	0.33	0.33
2.35	0.41	0.40	0.39	0.39	0.38	0.37	0.37	0.36	0.36	0.35	0.35	0.34	0.34
2.40	0.41	0.41	0.40	0.39	0.39	0.38	0.38	0.37	0.36	0.36	0.35	0.35	0.34
2.45	0.42	0.42	0.41	0.40	0.40	0.39	0.38	0.38	0.37	0.37	0.36	0.36	0.35
2.50	0.43	0.42	0.42	0.41	0.40	0.40	0.39	0.38	0.38	0.37	0.37	0.36	0.36
2.55	0.44	0.43	0.43	0.42	0.41	0.40	0.40	0.39	0.39	0.38	0.38	0.37	0.36
2.60	0.45	0.44	0.43	0.43	0.42	0.41	0.41	0.40	0.39	0.39	0.38	0.38	0.37
2.65	0.46	0.45	0.44	0.43	0.43	0.42	0.41	0.41	0.40	0.40	0.39	0.38	0.38
2.70	0.47	0.46	0.45	0.44	0.44	0.43	0.42	0.42	0.41	0.40	0.40	0.39	0.39
2.75	0.47	0.47	0.46	0.45	0.44	0.44	0.43	0.42	0.42	0.41	0.40	0.40	0.39
2.80	0.48	0.47	0.47	0.46	0.45	0.44	0.44	0.43	0.42	0.42	0.41	0.41	0.40
2.85	0.49	0.48	0.48	0.47	0.46	0.45	0.45	0.44	0.43	0.43	0.42	0.41	0.41
2.90	0.50	0.49	0.48	0.48	0.47	0.46	0.45	0.45	0.44	0.43	0.43	0.42	0.41
2.95	0.51	0.50	0.49	0.48	0.48	0.47	0.46	0.45	0.45	0.44	0.43	0.43	0.42
3.00	0.52	0.51	0.50	0.49	0.48	0.48	0.47	0.46	0.45	0.45	0.44	0.43	0.43
3.05	0.53	0.52	0.51	0.50	0.49	0.48	0.48	0.47	0.46	0.46	0.45	0.44	0.44
3.10	0.53	0.53	0.52	0.51	0.50	0.49	0.48	0.48	0.47	0.46	0.46	0.45	0.44
3.15	0.54	0.53	0.52	0.52	0.51	0.50	0.49	0.48	0.48	0.47	0.46	0.46	0.45
3.20	0.55	0.54	0.53	0.52	0.52	0.51	0.50	0.49	0.48	0.48	0.47	0.46	0.46
3.25	0.56	0.55	0.54	0.53	0.52	0.52	0.51	0.50	0.49	0.49	0.48	0.47	0.46
3.30	0.57	0.56	0.55	0.54	0.53	0.52	0.52	0.51	0.50	0.49	0.49	0.48	0.47
3.35	0.58	0.57	0.56	0.55	0.54	0.53	0.52	0.52	0.51	0.50	0.49	0.49	0.48
3.40	0.59	0.58	0.57	0.56	0.55	0.54	0.53	0.52	0.52	0.51	0.50	0.49	0.49
3.45	0.59	0.58	0.57	0.57	0.56	0.55	0.54	0.53	0.52	0.51	0.51	0.50	0.49
3.50	0.60	0.59	0.58	0.57	0.56	0.56	0.55	0.54	0.53	0.52	0.51	0.51	0.50

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Cost Per Gallon	Miles Per Gallon												
3.55	0.61	0.60	0.59	0.58	0.57	0.56	0.55	0.55	0.54	0.53	0.52	0.51	0.51
3.60	0.62	0.61	0.60	0.59	0.58	0.57	0.56	0.55	0.55	0.54	0.53	0.52	0.51
3.65	0.63	0.62	0.61	0.60	0.59	0.58	0.57	0.56	0.55	0.54	0.54	0.53	0.52
3.70	0.64	0.63	0.62	0.61	0.60	0.59	0.58	0.57	0.56	0.55	0.54	0.54	0.53
3.75	0.65	0.64	0.62	0.61	0.60	0.60	0.59	0.58	0.57	0.56	0.55	0.54	0.54
3.80	0.66	0.64	0.63	0.62	0.61	0.60	0.59	0.58	0.58	0.57	0.56	0.55	0.54
3.85	0.66	0.65	0.64	0.63	0.62	0.61	0.60	0.59	0.58	0.57	0.57	0.56	0.55
3.90	0.67	0.66	0.65	0.64	0.63	0.62	0.61	0.60	0.59	0.58	0.57	0.57	0.56
3.95	0.68	0.67	0.66	0.65	0.64	0.63	0.62	0.61	0.60	0.59	0.58	0.57	0.56
4.00	0.69	0.68	0.67	0.66	0.65	0.63	0.62	0.62	0.61	0.60	0.59	0.58	0.57
4.05	0.70	0.69	0.67	0.66	0.65	0.64	0.63	0.62	0.61	0.60	0.60	0.59	0.58
4.10	0.71	0.69	0.68	0.67	0.66	0.65	0.64	0.63	0.62	0.61	0.60	0.59	0.59
4.15	0.72	0.70	0.69	0.68	0.67	0.66	0.65	0.64	0.63	0.62	0.61	0.60	0.59
4.20	0.72	0.71	0.70	0.69	0.68	0.67	0.66	0.65	0.64	0.63	0.62	0.61	0.60
4.25	0.73	0.72	0.71	0.70	0.69	0.67	0.66	0.65	0.64	0.63	0.62	0.62	0.61
4.30	0.74	0.73	0.72	0.70	0.69	0.68	0.67	0.66	0.65	0.64	0.63	0.62	0.61
4.35	0.75	0.74	0.72	0.71	0.70	0.69	0.68	0.67	0.66	0.65	0.64	0.63	0.62
4.40	0.76	0.75	0.73	0.72	0.71	0.70	0.69	0.68	0.67	0.66	0.65	0.64	0.63
4.45	0.77	0.75	0.74	0.73	0.72	0.71	0.70	0.68	0.67	0.66	0.65	0.64	0.64
4.50	0.78	0.76	0.75	0.74	0.73	0.71	0.70	0.69	0.68	0.67	0.66	0.65	0.64
4.55	0.78	0.77	0.76	0.75	0.73	0.72	0.71	0.70	0.69	0.68	0.67	0.66	0.65
4.60	0.79	0.78	0.77	0.75	0.74	0.73	0.72	0.71	0.70	0.69	0.68	0.67	0.66
4.65	0.80	0.79	0.77	0.76	0.75	0.74	0.73	0.72	0.70	0.69	0.68	0.67	0.66
4.70	0.81	0.80	0.78	0.77	0.76	0.75	0.73	0.72	0.71	0.70	0.69	0.68	0.67
4.75	0.82	0.81	0.79	0.78	0.77	0.75	0.74	0.73	0.72	0.71	0.70	0.69	0.68
4.80	0.83	0.81	0.80	0.79	0.77	0.76	0.75	0.74	0.73	0.72	0.71	0.70	0.69
4.85	0.84	0.82	0.81	0.80	0.78	0.77	0.76	0.75	0.73	0.72	0.71	0.70	0.69
4.90	0.84	0.83	0.82	0.80	0.79	0.78	0.77	0.75	0.74	0.73	0.72	0.71	0.70
4.95	0.85	0.84	0.82	0.81	0.80	0.79	0.77	0.76	0.75	0.74	0.73	0.72	0.71
5.00	0.86	0.85	0.83	0.82	0.81	0.79	0.78	0.77	0.76	0.75	0.74	0.72	0.71

Notes

Protecting your margin of profit

Margins of profit in the trucking industry must maintain a minimum of 2% in order to support the operation. When the margins fall below this figure, drastic cuts usually are enacted to adjust for the lack of stability and to “right-size” the company. We have seen the effects of this adjustment many times over in the recent past, yet, these adjustments continue to prevail in the effort to sufficiently manage our companies.

The quick fix to this problem is thought to be ... more freight! Anytime we can increase our business, we automatically increase our profits! Additional freight to our system is certainly desired if for nothing else but to eliminate the capacity the industry now experiences. But along

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with that increase in freight, an increase in costs follows. Obviously, the trick is to secure more business than what it costs to handle this influx of freight. This is where prudent management comes into focus.

A basic understanding of economics supports that thought. It is when the costs begin to increase above their expected levels that the margins begin to diminish which, in turn, reduces our chances for profitability. A major contributor to this potential drain on profits is fuel costs. This volatile market can make or break the motor carrier and therefore, must be monitored daily in order to manage it sufficiently.

Forecasting the future

Any plan for expansion (customer base, equipment, number of drivers, operating authority, etc.) must also consider the rise in fuel consumption and the uncertainty of fuel costs in order to consider that expansion a success. This applies to all motor carriers from owner-operators to mega fleet managers. Here's why:

If your current operating ratio is 95, you are 3% ahead of the minimum (2%) required to sustain your company. With this 5%, you have funds to "play" with in terms of expansion, investments, purchases, etc. Say you invest up to 2.5% of this money which still allows you 2.5% to operate with. Your decision to invest this money was based on many factors, all thought to be wise. Along with this decision was the fact that business levels started to increase, parked equipment was being utilized again, and drivers were hired to handle the extra business.

All these good things were caused by the economy beginning to show signs of growing in positive trends. Manufacturing, wholesale, and retail all showed increases in their business models. The number of shipments throughout the industry also started to improve to a level that confirmed the long awaited growth had finally arrived. Along with these upward trends is the cost of fuel, however, now your fleet has grown along with your business thereby consuming more fuel. If fuel prices were to take a drastic increase, you could find yourself falling too close to the 2% range and have to make cuts to compensate for this increase in business. Keep in mind, the fuel industry also wants to make up for lost revenues and usually have the means in which to do so.

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COSTS

Insurance and Risk Management

Minimum levels of financial responsibility

One requirement that may be overlooked by motor carriers from a business cost and planning viewpoint is the amount of insurance coverage, or financial responsibility that must be maintained by the motor carrier. This form of risk management is required of all companies who operate commercial motor vehicles (CMVs) both under and over 10,001 pounds. In this case, public liability is the focus and not cargo, worker's comp, health, or any other form of insurance. Public liability is designed to protect the public from a loss, not the carrier.

Section 387.9 provides a table showing the differing requirements:

Minimum Public Liability Requirements

Type of carrier	Products carried	Minimum insurance
(1) For-hire (In interstate or foreign commerce, with a gross vehicle weight rating of 10,001 or more pounds).	Property (nonhazardous)	\$ 750,000
(2) For-hire and Private (In interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,001 or more pounds).	Hazardous substances, as defined in 49 CFR 171.8 transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2, and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403	\$5,000,000
(3) For-hire and Private (In interstate or foreign commerce: in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,001 or more pounds).	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below	\$1,000,000
(4) For-hire and Private (In interstate or foreign commerce, with a gross vehicle weight rating of less than 10,000 pounds).	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403	\$5,000,000

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For-hire motor carriers, in interstate or foreign commerce, with a gross vehicle weight rating (GVWR) of 10,001 pounds or more, who transport property that is nonhazardous, must carry a **minimum** of \$750,000 of financial responsibility.

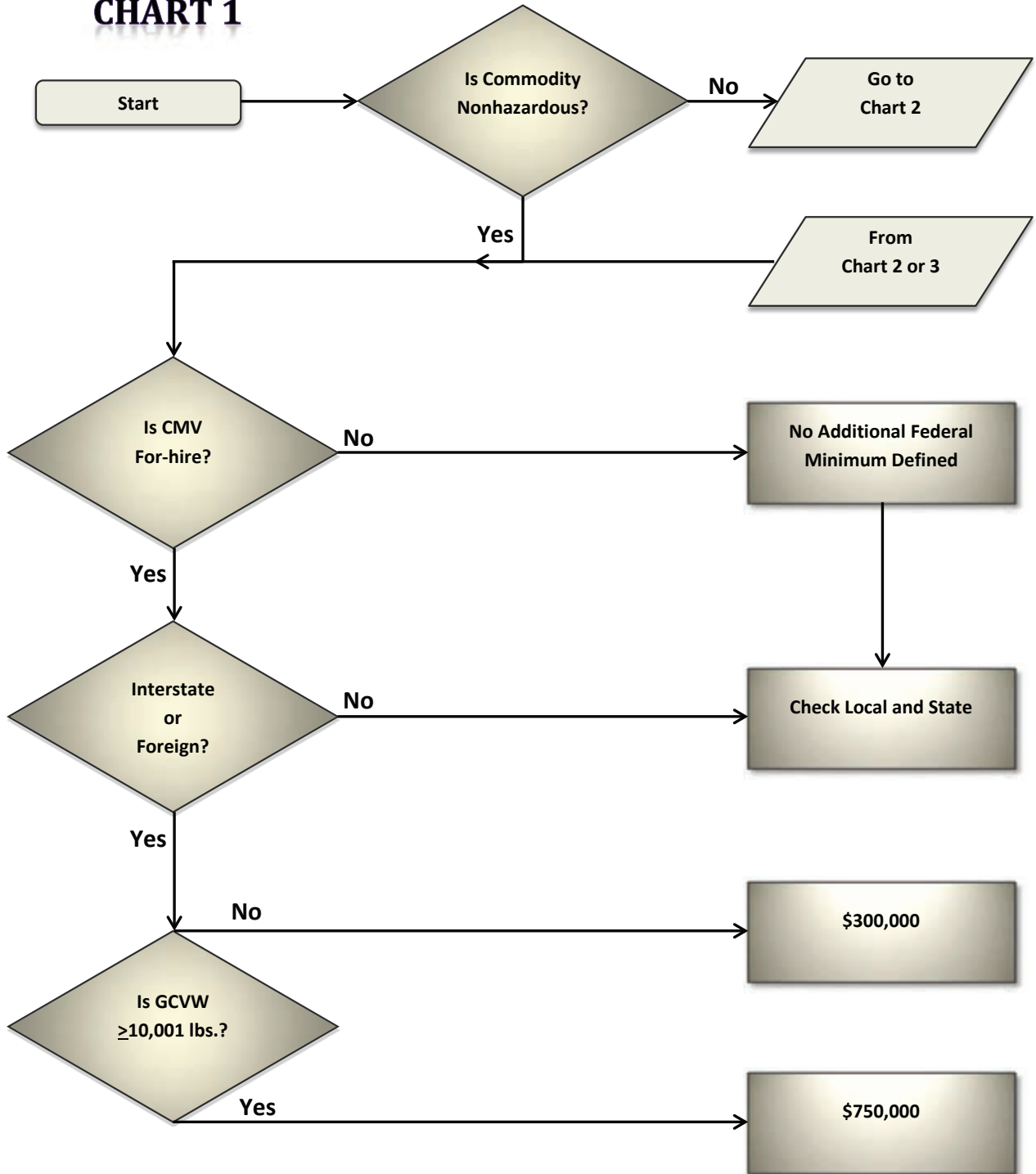
It is very important to note that carriers who transport different types of hazardous materials must maintain different levels of insurance coverage. These **minimum** levels of coverage can be either \$1,000,000 or \$5,000,000, depending on the commodity being transported and the type of vehicle used.

The regulation applies to private and for-hire carriers, intrastate or interstate commerce including foreign commerce, and can also affect vehicles transporting materials of trade. While materials of trade may be smaller in quantity than a flammable shipment being transported in a portable tank, they are nonetheless still a hazardous material. The same applies to any material transported under exceptions, including limited quantities, found in the Hazardous Material Regulations.

Use the following flow charts to assist you in determining your company's required level of financial responsibility:

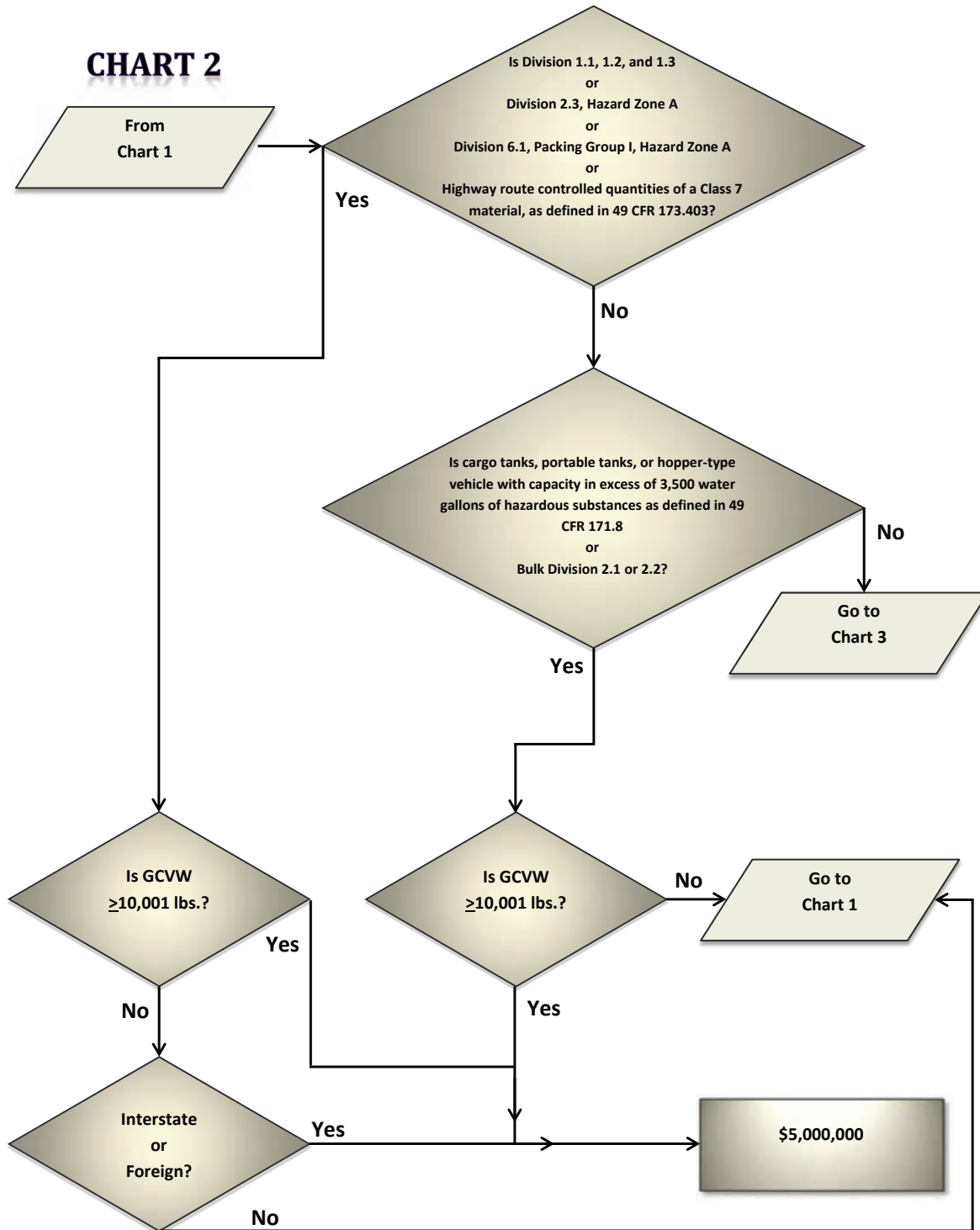
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CHART 1

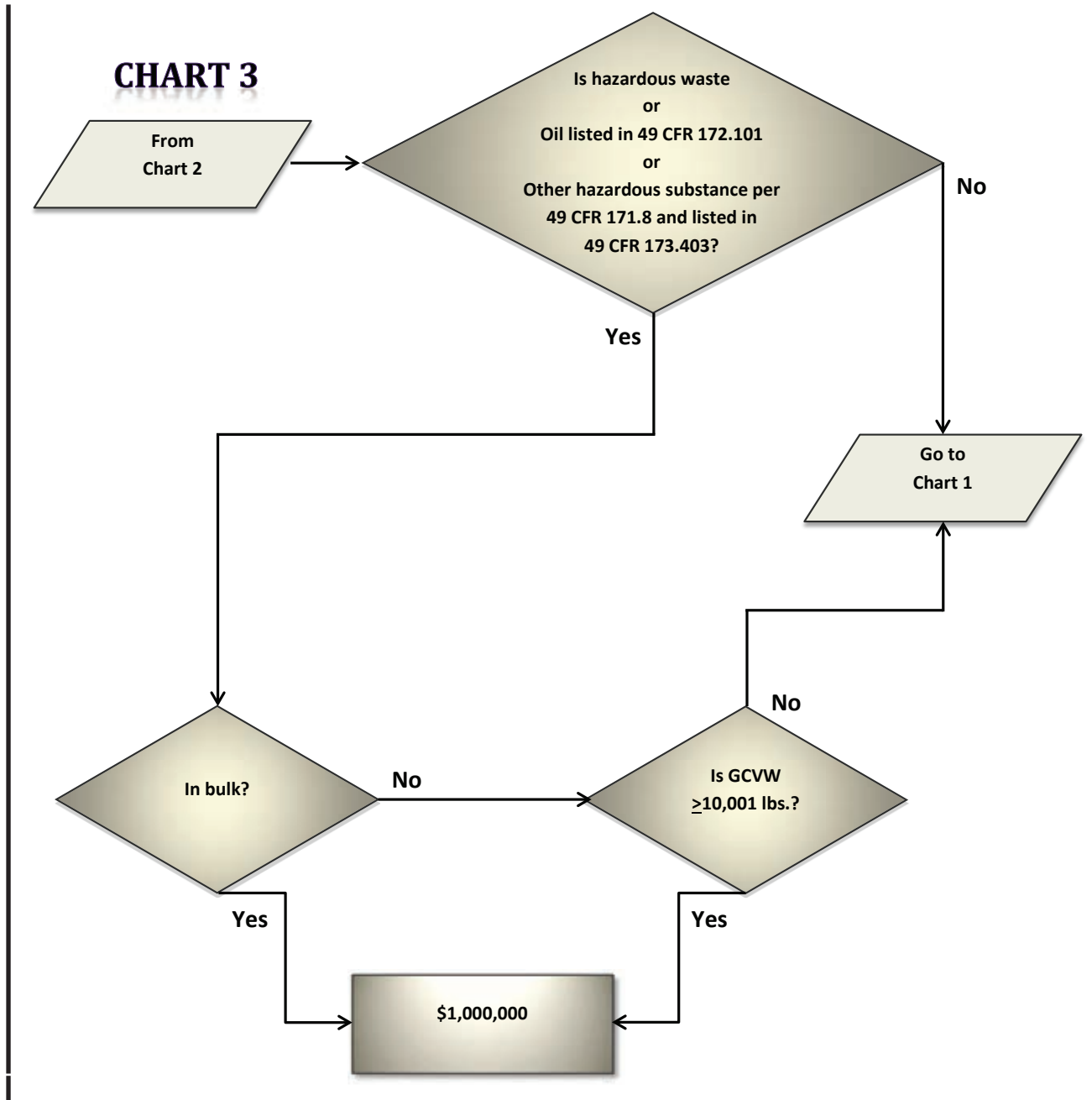


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CHART 2



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Notes

All motor carriers should review their insurance coverage along with the commodities they transport to make sure they are in compliance with this regulation. Failure to meet these minimum levels of financial responsibility can result in a fine of up to \$16,000 from the FMCSA.

For motor carriers who want to expand their business and offer more services to their customers, this needs to be a matter of great consideration, just as it is for carriers currently competing in this market and for carriers who occasionally transport hazardous materials.



Compliance Issue

As of March 21, 2011, only household goods (HHG) carriers and HHG freight forwarders must have evidence of cargo insurance on file with the Federal Motor Carrier Safety Administration (FMCSA). A final rule amending Parts 365 and 387 was issued by the FMCSA on June 22, 2010, eliminating the requirement for most for-hire motor common carriers of property and freight forwarders to maintain cargo insurance in the prescribed minimum amounts of \$5,000 per vehicle and \$10,000 per occurrence.

Carriers and freight forwarders of household goods are still required to file cargo insurance information during authority registration (§365.109) and must maintain cargo insurance as a condition of active operating authority as specified in §§387.301(b), 383.303(c), and 387.403(a).

A final word of caution, do not confuse this ruling with a motor carrier's financial responsibility of obtaining and maintaining minimum levels of **public liability insurance** as described in 387.9! Only **cargo insurance** for **non-HHG carriers** and **non-HHG freight forwarders** is no longer being required by the FMCSA!

Proof of insurance

The proof of insurance is issued to the carrier by the insurance company in the Form MCS-90. The MCS-90 is an endorsement to show proof that the carrier has in effect the minimum levels of financial responsibility required by the FMCSA. The FMCSA determines the form and content of the MCS-90 endorsement and provides a sample in Section 387.15.

Carriers meeting the public liability requirements with a surety bond must have an MCS-82 issued by a surety as evidence of compliance. The MCS-82 (sample is shown in Sec. 387.15) serves as proof of a surety bond the same as an MCS-90 provides evidence of insurance.

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Risk avoidance

Risk avoidance is a practice of structuring the operation to eliminate, or avoid, a risk. However, not all risks can be avoided or eliminated.

Some cannot be avoided because they are intangible risks, not necessarily tied to controllable events. An example of this would be damage to a carrier's reputation.

Other risks cannot be avoided because they are inherent to the activity. An example of this would be the risk that comes with every newly hired driver. It is a known fact that newly hired drivers have a higher incidence of accidents in fleet operations. Carriers try to reduce this risk by establishing hiring standards, but the risk cannot be avoided or eliminated.

Risk acceptance

Risk acceptance is the deliberate acceptance of risk based on a determination that the company can (legally and financially) accept the risk. An extreme example of this would be a company in Wisconsin deciding to accept any risks associated with hurricanes that may damage the home terminal.

In the transportation industry a certain amount of risk acceptance is unavoidable. Take the earlier example of hiring drivers. The carrier can do everything possible to reduce the risks associated with hiring drivers, but there must be a level of risk acceptance. This is because the carrier cannot eliminate all risks associated with hiring. The questions become, what steps is the carrier willing to use to reduce the risk, and how much risk is the carrier willing to accept. The more risk you accept, the higher your incidence of loss may become.

Another form of risk acceptance that is more dangerous is the accidental or unintentional acceptance of risk. This occurs when a company is not aware that it is taking a risk, or does not have the correct protections in place against loss, but believes it does.



Motor Carrier Best Practice

When it comes to fleet operations, the Fleet Manager needs to think in terms of risk reduction and risk avoidance first. Risk transfer and allocation should be undertaken to protect the carrier, not as the primary risk management tools. A culture of risk acceptance should be unacceptable. It is easy to tell if risk acceptance has become part of the company culture. Remarks such as “accidents happen” and “sometimes we have to bend the rules” are indications that risk acceptance has become a cultural problem.

| Self retention of risk

Self retention of risk can mean two different things. First, as discussed earlier, it can be an accidental or deliberate acceptance of risk by not having insurance coverage to protect the carrier from a specific type of risk. This can be referred to as being “self-insured.” The decision to not purchase insurance for a specific risk should be based on a risk assessment and a risk/benefit assessment.

As discussed earlier, a risk assessment is done by taking the expected number of occurrences, and multiplying that by the anticipated loss per occurrence to determine the level of risk. When this is being done it is important to use factually correct numbers, not optimistic projections. The next step is to compare the cost of insurance to the possible loss as determined in the risk assessment. At this point the company can make an informed, reasonable, decision.

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Motor Carrier Best Practice

When considering any type of self retention, a carrier should never gamble with more than they can afford to lose. Many carriers have been ruined by the “it’ll never happen to me” mindset. If the carrier does not have the existing liquidity (cash) on hand or available to cover the potential losses the risk assessment identified, then “making payments” (paying insurance premiums) toward the projected loss is the way to go! Remember to constantly reassess the level of risk retention. If the carrier’s financial situation changes, consider making changes to the risks that are being retained.

A company that has the financial reserves may even provide self-insurance to comply with mandatory insurance requirements. As far as motor carrier and cargo insurance, there are processes provided in the regulations for a carrier to secure authorization to operate as a self-insured motor carrier (see Part 387 in the Reference Tab). In this case, the carrier is retaining 100 percent of the risk.

Carriers that operate as self-insured carriers will many times secure insurance against catastrophic losses (i.e. in excess of \$1,000,000). This is similar to the insurance industry practice of reinsuring discussed earlier.

The second strategy is the self retention of a portion of a risk normally covered by insurance. An easy explanation of this type of risk retention is to equate it to the deductible on a standard insurance policy. If the carrier is willing to accept responsibility for the first \$50,000 of any loss, then the carrier can negotiate a lower insurance premium. Much like the deductible on a standard auto insurance policy, the more of the risk the carrier is willing to accept, the lower the premiums become.

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Compliance Issue

When making self retention and self-insurance decisions, the carrier will need to work with their insurance company or the government agency overseeing the mandatory insurance regulations to make sure they are in compliance with legal requirements.

Cause, effect, and risk

Whenever an individual can determine the cause of a hazmat incident, the opportunity exists to drastically reduce or eliminate the effect and thereby lower the risk. The physical act of transporting hazardous materials accounts for a significant portion of causes of hazmat incidents and will always be considered as a risk factor. Drivers who exceed speed limits on curved or banked roads, equipment with an unfamiliar center of gravity for an inexperienced driver, and adverse weather conditions for all drivers are causes that management can address with an effect of increasing awareness through driving skills training.

However, the *unloading* of hazardous materials causes more incidents than the loading and the transporting of hazardous materials combined. According to statistics provided by PHMSA, incidents of hazardous materials transported by highway modes in 2010 showed that unloading incidents accounted for 6,967 occurrences and more than \$3 million in damages to the shipments. This does not take into consideration the costs to clean up a hazardous material spill or to repair a facility harmed by the spill.

The top three causes of these recorded incidents were:

- Forklift safety – spearing the shipment during the loading or unloading procedure and not using the proper tool to safely perform this task.
- Inadequate blocking and bracing – failure to prepare the shipment properly to prevent any shifting or movement while in transit.

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- Impact with sharp or protruding object (e.g. nails) – failure to sweep out the trailer before loading and inspect the floor and the walls of the trailer for nails and other sharp objects.

Human error is the biggest factor in all these causes. This factor by itself is all the more reason to intensify the focus on reducing the risk. The continuation of training programs coupled with the enforcement of company policy on the handling of hazardous materials will greatly assist in lowering the risk.

However, just by the nature of handling and transporting hazardous materials, some degree of risk will always exist. It's not only how well management prepares the company for risks they take to transport hazardous materials, but more so how they prepare their employees to limit the degree of risk. In either case, risk reduction can only be accomplished through employees' awareness and involvement in managing the situation

Preventive programs that control risk (risk reduction)

This is a list of policies and programs that are viewed as significantly lowering risk at a carrier.

- **Written safety plan** developed and signed by upper management.
- **Recruiting practices** that seek out only quality applicants.
- **Screening** systems that locate poor driving or employment records during the applicant stage.
- **Hiring standards** that prevent the hiring of an unscreened or unqualified driver or supervisor.
- **Review** of all potential hires by a neutral party separate from the recruiting staff.
- **Mandatory orientation and training** for all new employees, regardless of the level of previous experience.
- **Review** of all new employees' performance after 90 days of employment.
- **Annual or semiannual performance reviews** of all employees verifying acceptable past performance and qualifications.
- **Scheduled on-going training.**
- **Safe driver incentive** programs.
- **Supervisory training** programs.
- **Corrective and disciplinary programs** for all employees (not just drivers), including a remedial training program that has a mechanism to measure results. The program must include potential action up to and including discharge of the employee for repeated or serious violations of company safety policies.

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Reserved

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- **On-board performance tracking hardware** designed to notify the company if the driver is operating unsafely (excessive hard braking incidents, excessive average speed, etc.).
- Use of **electronic safety systems** such as collision warning systems, roll stability control systems, tire inflation monitoring systems, blind spot cameras, and intelligent cruise control systems.
- **Threat and problem sharing** systems that keep all employees aware of, and involved in the prevention of, hazards facing the company. Open communications and the use of safety committees can accomplish this.
- **Compliance** with all state and federal regulations.

Notes

Risk assessment worksheet

Best practices are intended to minimize risk. Best practices are used in addition to being compliant with the FMCSA regulations. If a carrier is not compliant with the regulations, this worksheet will not be accurate. To determine compliance with the FMCSA regulations, a carrier should conduct a self-audit.

Use this worksheet to compare yourself to the best practices in selected areas and determine how much risk the company may be exposed to. The way this assessment works is each category has a maximum of ten points available. Assign 1 point for each item you have or do. If you have or do 3 out of 10 in a category, your score is 3 in that category. Your level of risk in that category is 7.

Anything below 10 points in an area shows a “gap” between the company practices and the best practices. Any gap indicates an area of risk the company is exposing itself to and an opportunity for risk reduction. The risk that the carrier is exposed to may or may not be acceptable to the carrier. The level of acceptable risk is something that will be unique to each company. What one carrier may find as an acceptable risk, another carrier may not.

There are a total of 12 categories, so the maximum theoretical score for the entire assessment is 120.

Fleet Safety Policies and Procedures

- The company has policies that are designated as “safety policies.”
- The safety policies are signed and enforced by the upper management of the company.
- The policies are written and circulated, and all supervisory personnel (including dispatchers) have been trained on and know the safety policies.
- The safety policies are reviewed and updated on a scheduled basis.

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- The safety policies cover all aspects of the operation: Drivers, dispatchers, customer service, maintenance, and upper management.
- The safety policies cover critical areas such as defensive driving, hours-of-service compliance, maintenance and safety inspections, and driver qualification.
- There are disciplinary measures, including termination, in case of noncompliance with the safety policies.
- The company tracks noncompliance with regulations and company policies, and uses the information for internal improvement.
- The company conducts regular meetings that include training on the regulations, training on company policies and procedures, and information on compliance with regulations and policies and procedures.
- One person is designated to download and verify all data in the FMCSA systems pertaining to the company on a monthly basis.

___ Total for "Fleet Safety Policies and Procedures"

Recruiting and Hiring

- There are written standards for applicant screening.
- The hiring standard requires no accidents in the last five years.
- The hiring standard requires no citations in the last five years.
- The hiring standard includes a minimum of two years experience.
- The hiring standard requires the applicant to list 10 years of past employment and provide addresses and phone numbers of past employers, as well as the reasons for leaving each.
- All gaps in an applicant's employment are documented by an authoritative third party.
- All applicants meeting the standards receive a standard interview.
- A complete employment background check is performed verifying the previous five years (minimum) for all accepted applicants.
- At least two individuals are involved in the hiring process.
- No driver-applicant is accepted into orientation until the screening process is complete.

___ Total for "Recruiting and Hiring"

Orientation and Training

- No driver is allowed to operate company equipment until the completion of orientation and "certification" as a company driver.

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- There is a scheduled update mechanism to keep the manual current.
- The handbook includes guidance on common cargo securement issues that drivers at the company must deal with.
- The handbook includes directions to company facilities and high-risk customer locations, and commonly used routes and hazards along primary traffic lanes.

____ Total for "Driver Policies and Handbook"

Operational Policies and Procedures

- The company has a firm "no hours = no dispatch" policy.
- The company has a method of tracking current hours-of-service information on all drivers, and the information is checked prior to each dispatch.
- Route plans are compared to actual performance to verify compliance.
- The company has a firm "vehicle defect = no dispatch" policy.
- Operations personnel are trained on hours of service, driver qualification, drug and alcohol supervision, and vehicle requirements.
- Each driver has a single point of contact assigned.
- Mechanisms are in place to track supervisor performance in the areas of assigned driver turnover, assigned driver compliance with regulations and policies, and assigned driver production.
- The company has a disciplinary system for supervisors (including dispatchers) who do not follow company and safety policies.
- There is a complaint system in place for safety and supervisory treatment concerns.
- The company has a clearly stated open door policy and chain of command.

____ Total for "Operational Policies and Procedures"

Driver Retention and Recognition

- Drivers are recognized for each year of employment.
- Major seniority dates (i.e., 1 year, 5 years, 10 years, etc.) are publically recognized.
- Drivers are recognized for each year of safe driving.
- The company has a "Hall of Fame" for long-term safe drivers.

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- Drivers are recognized for “perfect performance” (no driving violations, no accidents, no out-of-service orders, no late deliveries, etc.).
- Drivers are provided with a feedback mechanism (for example: a suggestion box).
- The company completes exit interviews on all drivers that leave.
- Exit interview information is compiled, tracked, and acted on.
- The company tracks turnover monthly.
- Operations personnel have completed retention training.

___ Total for “Driver Retention and Recognition”

Accident and Injury Investigation and Follow-up

- All accidents and injuries are investigated and a root cause and other causal factors are established.
- A unique incident file is created for each accident or injury. The file contains all documents and correspondence pertaining to the accident or injury.
- A committee reviews all accidents and injuries, and rules on the preventability of all accidents and injuries.
- The company safety committee reviews all accidents and injuries, and advises management on future prevention strategies.
- All drivers involved in an accident or injury are reviewed.
- All drivers involved in preventable accidents and injuries are retrained (if retained).
- A database of all accidents and injuries is maintained and the data is used to stop trends.
- There are disciplinary measures in place for the non-reporting of accidents and injuries (up to and including termination).
- There are disciplinary measures in place for repeated preventable accidents and injuries (up to and including termination).
- There are disciplinary measures in place to deal with accidents and injuries that can be attributed to driver negligence or a knowing violation of a company safety policy (up to and including termination).

___ Total for “Accident and Injury Investigation and Follow-up”

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Hours-of-Service Policies and Procedures

- The company has company policies pertaining to hours-of-service compliance and has an individual designated as responsible for hours-of-service compliance. Score zero for the entire category if the company does not have hours-of-service policies or an individual assigned this responsibility.
- The company has a designated log auditor (or auditors). Score zero for the entire category if the company does not have an individual assigned this responsibility.
- The company has an individual assigned the responsibility of counseling, retraining, and disciplining drivers for noncompliance with hours-of-service regulations and policies. Score zero for the entire category if the company does not have an individual assigned this responsibility.
- Supervisors are held accountable for their assigned drivers' hours-of-service compliance.
- The auditor(s) perform an in-depth audit on over 10 percent of the logs and supporting documents generated by the fleet to locate false logs. The supporting documents used include documents the driver did not submit.
- The auditor(s) check all logs submitted for falsification by using supporting documents submitted with the logs and for form and manner violations.
- Compliance with the 13-day rule is verified.
- All logs submitted are audited for over-hours violations.
- The audit system is able to locate violations and counsel and discipline (if necessary) the driver within 15 days of an error or violation.
- The company had no drivers placed out of service for hours-of-service violations during roadside inspections in the last 30 months.

___ Total for "Hours-of-Service Policies and Procedures"

Roadside Inspections

- Drivers are trained on roadside inspection procedures.
- Drivers are trained on vehicle inspection.
- Driver out-of-service rate is less than 3 percent.
- Vehicle out-of-service rate is below 10 percent.
- Drivers report (via live call-in) roadside inspections and other traffic violations to a designated carrier official immediately.

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Electronic Safety Systems

- On-board computers routinely download and driver performance is reviewed through a comparison with documented standards (including standards on hard braking, average speed, and average RPM).
- Drivers found to be operating outside of the documented standard are counseled, retrained, or terminated.
- Electronic on-board recording devices (EOBRs) are used to verify hours-of-service compliance. If not equipped with EOBRs, electronic supporting documents (such as GPS position reports) are used to verify the accuracy of drivers' logs.
- All vehicles are equipped with lane departure warning systems.
- All vehicles are equipped with collision warning systems.
- All vehicles are equipped with roll stability systems.
- All vehicles (power units and trailing units) are equipped with ABS.
- The company has a policy prohibiting the use of non-integrated electronic systems (such as cell phones, communication system key-boards, GPS systems, etc.) while the vehicle is in motion. The policy includes discharge for severe or repeated violations.
- Repair of non-functioning electronic safety systems is considered a priority repair.
- All safety systems report if they have malfunctioned or have been tampered with.

____ Total for "Electronic Safety Systems"

Disciplinary Policies

- The company has written, detailed, and progressive disciplinary policies that include actions up to termination of employment covering accidents and accident reporting.
- The company has written, detailed, and progressive disciplinary policies that include actions up to termination of employment covering citations.
- The company has written, detailed, and progressive disciplinary policies that include actions up to termination of employment covering violations of the hours-of-service regulations and company policies on hours of service.
- The company has written, detailed, and progressive disciplinary policies that include actions up to termination of employment covering violations of other safety regulations or company safety policies.

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CSA and its impact on insurance rates

We know that the FMCSA developed the CSA program to track, monitor, evaluate, and intervene with motor carriers and drivers. We also know that the CSA program will have a major impact on motor carriers and their employees. What we have yet to learn is, “How will the insurance industry impact the transportation industry due to the data being produced by the CSA initiative?”

While the CSA program will rank carriers based on their safety performance, it is fair to assume that the insurance industry will also be utilizing this same data as a barometer for high risk. It is also fair to assume that attorneys, too, will begin using this data as evidence of fault in crashes involving commercial motor vehicles.

But much work is yet to be done on fine-tuning the CSA program. It is imperfect as it stands now and the FMCSA will agree that more “bugs” need to be worked out. Regardless of the industry’s growing pains, many insurance underwriters will gather as much information as is available in order to decide whether to insure a risk, and at what price.

Even as the CSA program continues to evolve and all the “bugs” get worked out, the motor carrier must continue to fine-tune their own safety program, push for clean inspections, and act on problems *before* the problem becomes a matter of record.

More importantly, motor carriers must communicate with their insurance companies and discuss the future in the transportation industry. And while there may be limited data available today for all interested parties, the carrier must assume that, in time, all information produced by the CSA program will be accessed and utilized and certainly have an impact on the transportation industry.

Here are a few suggestions to assist in your communicating with your insurance provider:

- Make sure you understand the CSA program and all the aspects of its nature. This will go a long way with any underwriter in proving your company’s commitment to operating safely.
- Ask your insurance company what they are doing about CSA data and how they plan to use it.
- Show the underwriter your strengths and weaknesses by performing a Risk Management Assessment of your operation. Tell them your plans for making adjustments to your safety program and showing your progress.
- Have a firm policy on hiring qualifications and use the Pre-employment Screening Program to improve your driver workforce.

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Reserved

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COSTS

Tax Structuring and Strategies

Purchase, finance, and leasing

This section is not intended to make a Fleet Manager into a “tax expert.” It is intended to provide a basis for decisions that can assist the carrier’s tax experts and make the Fleet Manager aware of tax breaks that are legally available to a carrier. There are several terms that a carrier must understand in preparation for any discussion on taxes. Here is a brief glossary of terms:

- **Business and tax structuring.** There are different tax benefits and liabilities a carrier can realize based on their size and type of business structure. If the carrier is a privately held small business (as defined by the Internal Revenue Service or IRS, and Small Business Administration), then there are tax advantages that can be realized as a sole proprietor business. If a carrier is larger and either has, or is trying to acquire, investors or partners, there are different tax advantages that can be realized through the creation of a Limited Liability Company (LLC) or incorporating as a business. If the carrier is a publicly held entity, there are also tax advantages that can be realized. The key is to work with a tax professional and make correct decisions on business structuring. There may be tax advantages to incorporating even a small business to avoid double taxation (once as a business, and again as a shareholder within the corporation). This business structure is referred to as an S-Corporation.
- **Deductions.** Deductions are expenditures the Internal Revenue Service (IRS) will allow a carrier to directly “deduct” from their gross income when determining the taxable income for the carrier. The list of allowable deductions is continually changing. A tax expert with knowledge of the transportation industry can keep a carrier abreast of the latest allowable deductions and any documentation requirements.
- **Depreciation.** Depreciation is a practice of taking the lost value of an asset (truck, building, computer, etc.) and deducting it from the taxable income of the carrier. In the Internal Revenue code assets are assigned a depreciation schedule. As this changes from time to time, it is another area a carrier needs to work with a tax expert to determine what the best available depreciation schedule is, and what documentation is necessary.
- **Exemptions.** Tax exemptions are usually in place to provide a reduction in taxes to a specific population or industry. They function much like a deduction, but are aimed at specific taxes (such as state business or property taxes) and only apply to a narrow population. Possibly the most common exemption many people

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are familiar with is the “homestead” exemption on property and income taxes in various states. Again, there are many state, local, and federal exemption programs available to businesses, and a tax expert should be familiar with them.

- **Purchasing/financing.** Purchasing involves buying an asset outright. This can also be referred to as a “cash” purchase. Purchasing high-value assets normally requires the use of financing. There are several ways to finance purchases. Taking in partners, seeking investors, and financing the purchase through a loan (most common), are all methods of raising capital to make a large purchase. When directly purchasing or financing large purchases through borrowing, you are gaining an asset. Gaining the asset, the depreciation of the asset, and the financing of the purchase of the asset establishes a fairly complex tax situation. This is another case where the use of a tax expert will help. There are situations where a tax expert will recommend financing, even if the company has the funds to directly purchase, due to tax implications.



- **Quarterly estimated tax.** One mistake made by start-up businesses, including trucking companies, is not acquiring a tax ID number and not paying estimated quarterly taxes. This leads to two problems. First is a potentially huge tax bill at the end of the year. Second, the company may be forced to pay a substantial penalty for underpaying the quarterly estimated taxes and operating without a tax ID number (if the company had any employees).

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The carrier leases a new vehicle valued at \$120,000. The expected value of the vehicle at end of the lease is \$40,000. The carrier's lease payments will be based on \$80,000, the length of the lease, the cost of maintaining the vehicle (if the leasing company is to provide), and interest, plus a profit for the leasing company. At the end of the lease, the lease company will either sell the vehicle or lease it out again based on the remaining \$40,000 value.

To sum it up, the choice of whether to purchase or lease is a decision that must be made based on the needs of the company, the type of carrier, and the advice of a tax expert.

Per diem pay structures

Per diem

Drivers are allowed to claim a very significant tax deduction for meal and incidental expenses while on the road. To claim this deduction a driver must either save all meal and incidental receipts or use the daily standard allowance.

The daily standard allowance is set annually by the IRS. The standard allowance is a percentage of the allowed per diem amount published annually by the IRS. The per diem amount for 2010 is \$59 per day that the driver was away from home. Of the \$59 per day, the driver is allowed to deduct 85 percent off his/her income. Proof of time away from home (driver's logbook is acceptable) is all that is required.

A driver cannot switch from one method to the other during the year. If the driver is claiming the per diem allowance for part of the year, he/she must use that method for determining meal and incidental expenses for the entire year.

Expenses other than meals and incidentals encountered by the driver are not considered in the per diem. These expenses are deductible under a different rule. Job specific equipment and safety equipment are examples of expenses that a driver may also be able to deduct.

However, any expense the employer reimburses the driver for cannot be claimed as a deduction. If the employer reimburses the driver for meals and incidentals, the driver cannot claim the deduction at the end of the year.

Working per diem into wages

Some employers pay their drivers a "per diem allowance." This is done by designating a specific amount of the driver's wage as intended to pay for meals and incidentals. This allowance is treated as a reimbursement, not income. Reimbursements are not considered taxable income, and therefore not taxed.

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An example would be an employer that is paying 25 cents per mile with an accompanying 5 cent per mile per diem allowance. The driver's income, for tax and accounting purposes, would be 25 cents per mile. The 5 cents per mile would be paid as an "expense reimbursement," not as income. No taxes would be taken out of the 5 cents per mile.

The major advantage to the per diem allowance system is that it lowers the driver's taxable income. The benefit to the driver is it will lower the driver's income tax withholding, putting more money directly into the driver's pocket on pay day. The benefit to the employer is the lower the driver's taxable wages, the lower the employer's cost in areas that are directly or indirectly tied to taxable payroll.

The disadvantages to paying a per diem allowance are:

- The employer must make sure it is not reimbursing the driver an amount that is more than the daily standard allowance. If the employer is overpaying the per diem the employer is subject to fines and penalties from the IRS for hiding income.
- The driver's income appears lower than it actually is. This can be an issue when the driver is applying for a loan or filing any paperwork that is wage based.
- The drivers lose the ability to claim the meal and incidental tax deduction. Many drivers use this deduction as a "savings account," knowing that the deduction will generate a refund every year.
- Drivers may become upset when they receive their Social Security Wage Statement and realize their Social Security will be based on wages and taxes, not including the per diem allowance.

Per diem legal implications

An employer that wishes to pay a per diem allowance needs to consult a tax attorney or accountant that specializes in transportation laws and taxes. Determining the correct threshold for the allowance will be the biggest hurdle. Remember, if you set the threshold too high and the drivers are getting too much money "tax free," you will be viewed by the IRS as "hiding wages for the purpose of avoiding paying the correct taxes."

Employers that are presently paying a per diem also need to consult with a tax attorney or accountant that specializes in transportation laws and taxes to make sure they have their level set correctly.

As a general rule the IRS will compare your per diem allowance to what the drivers can claim on their taxes. If the IRS has determined that the standard daily per diem is 70 percent of \$41, or \$30.75, per day the driver is away from home, the company must not be giving a per diem allowance that works out to be higher than that. If an employer is paying a per diem of 10 cents per mile to a driver that drives 600 miles per day, this could easily be viewed as hiding taxable income.

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Finally, drivers must understand that part of their wage is being given to them as a reimbursement for meals and incidentals, and they cannot deduct these expenses from their taxes. If a driver is found to be deducting meals and incidentals at the same time as the employer is paying a per diem allowance, all parties involved may need to explain their actions to the IRS. If the driver can claim he/she was not informed of the full implications of the per diem allowance, the employer can again be seen as attempting to hide taxable income.

Road and fuel tax structures, IFTA and IRP

International Fuel Tax Agreement (IFTA)

State fuel use taxes are an unavoidable rolling, or variable, cost for motor carriers. For every mile your vehicles travel in a state, you owe the fuel tax for the fuel used to travel those miles.

To ensure receiving their share of fuel tax revenues, the states and provinces have formed a base-state compact, or agreement, called the International Fuel Tax Agreement (IFTA). All of the states (except Hawaii and Alaska) and the 10 Canadian Provinces are members.

IFTA qualified vehicles. Carriers operating “IFTA qualified vehicles” are required to obtain IFTA fuel tax credentials. An IFTA qualified vehicle is a motor vehicle operated in two or more IFTA member jurisdictions that is used, designed, or maintained for the transportation of persons or property and:

- Has two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 lbs. or 11,797 kg,
- Has three or more axles regardless of weight, or
- Is used in combination, when the weight of such combination exceeds 26,000 lbs. or 11,797 kg gross vehicle or registered gross vehicle weight.

IFTA registration. Before IFTA, carriers registered for fuel use tax credentials directly with each jurisdiction in which they operated. IFTA has simplified the registration process by requiring the carrier to register with their base jurisdiction only. Your IFTA base jurisdiction is the member jurisdiction where you base qualified motor vehicles for registration purposes and:

- Where the operational control and operational records of your IFTA qualified motor vehicles are maintained or can be made available, and
- Where some travel is accrued by qualified motor vehicles within your fleet.

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If you have several fleets based in different jurisdictions, the affected jurisdictions may allow consolidation of these fleets for IFTA registration in a single jurisdiction.

IFTA credentials. When you register for IFTA, you will receive an IFTA license and a set of two IFTA decals to be displayed on each of your vehicles. This registration allows your vehicles to travel in all of the IFTA member jurisdictions without any additional fuel tax registration.

Tax reporting. As an IFTA registrant, your company will be responsible for submitting quarterly fuel tax reports to your base jurisdiction. Rather than filing a tax report with each individual jurisdiction, the IFTA tax report serves as the report for fuel use in all jurisdictions. The base jurisdiction disperses to other IFTA jurisdictions any fuel tax revenues due them. The quarterly fuel tax reports must show the total distance traveled for all vehicles and the total fuel used in all jurisdictions. The reports must also show the in-jurisdiction miles, amount of fuel used, and amount of fuel purchased within each jurisdiction.

Purchasing fuel only in low-tax jurisdictions won't reduce the overall fuel tax costs, because the vehicles are subject to the tax due each jurisdiction based on the miles driven. If not enough fuel was purchased (and tax paid) in each jurisdiction for the number of miles traveled, any balance due will be due with the tax report. Tax reports that are not filed on time can result in the assessment of penalties or late filing fees, and in some cases revocation of the IFTA license.

Recordkeeping. Recordkeeping for IFTA begins with the daily "Individual Vehicle Mileage Report (IVMR)" prepared by the driver. The IVMR is the original record generated in the course of actual vehicle operation and is used as a source document to verify the registrant's fuel report for accuracy. The IVMR includes such information as the date of the trip (beginning and ending), the trip origin and destination, routes of travel and/or beginning and ending odometer reading, total miles, miles by jurisdiction, and the unit or VIN number of the vehicle. IVMRs should be accurately and legibly prepared. Computer summaries are not acceptable at face value and must always be supported by IVMRs during an audit. Monthly, quarterly, and yearly recaps or reports are prepared from the IVMR information.

IFTA licensees must keep detailed distance records showing operations on an individual-vehicle basis. When recording the mileage of an IFTA qualified vehicle all movement, interstate and intrastate, must be included, as well as loaded, empty, dead-head and/or bobtail miles or kilometers. Distance must also be recorded when IFTA qualified units are operated with trip permits. The operational records should also show taxable and non-taxable fuel use (i.e. fuel for refrigerated trailers).

IFTA licensees must also maintain complete records of all motor fuel purchased, received, and used while conducting their business. The fuel records should include the date of each receipt of fuel, amount of fuel purchased, the type of fuel, where and from whom it was purchased, and the vehicle into which the fuel was placed. Separate totals must be

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compiled for each motor fuel type. Also, retail fuel purchases and bulk fuel purchases must be accounted for separately.

These records will be examined during an audit. Carriers that fail to comply with the recordkeeping procedures required by IFTA, or fail to make these records available to the auditor can have their IFTA license revoked.

Audits. Periodically, the base jurisdiction will conduct audits of the motor carrier's fuel tax reports. During the audit, the jurisdiction will examine all the documents (or a representative sample of documents) used by the carrier to prepare the quarterly tax reports. The audit will determine whether or not there are material differences between the carrier's actual operations and reported operations for each jurisdiction. Failure to make the necessary records available to an auditor can result in revocation of the IFTA license. If the records are not available, the auditor will determine what fuel taxes are due based on whatever information is available.



The auditor will also evaluate, and if necessary make recommendations for changes to the carrier's system for tracking and recording vehicle operations and fuel purchases. Timely and accurate fuel tax reports and a successful audit depend upon good recordkeeping and reliable source documents to verify the tax report information.

Record retention. IFTA requires the records used for the quarterly tax return to be retained for four years from the return due date or filing date, whichever is later, plus any time period included as a result of waivers or jeopardy assessments. If a licensee fails to provide the required records for audit, the four year retention requirement is extended until the required records are provided.

Controlling fuel use tax costs. It is impossible to avoid fuel tax liability. The more miles your vehicles travel, the more fuel use tax liability you will have. Well-maintained vehicles that maximize miles per gallon certainly have some impact on the cost of fuel and the amount of tax paid.

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designed, used or maintained primarily for the transportation of property and:

- Is a power unit having two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds or 11,793.401 kilograms,
- Is a power unit having three or more axles, regardless of weight, or
- Is used in combination, when the weight of such combination exceeds 26,000 pounds or 11,793.401 kilograms gross vehicle weight.

The IRP specifically exempts certain vehicles from registering under IRP: recreational vehicles, vehicles displaying restricted plates, city pick-up delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles are all exempt. IRP apportioned registration fees for the gross combination weight of a tractor-trailer unit are assessed on the power unit only. Trailers are issued state registration plates, usually for a flat fee, from the jurisdiction of registration.

Base jurisdiction. Under IRP, “Base Jurisdiction” means the jurisdiction where the registrant has an established place of business, where mileage is accrued by the fleet and where operational records of the fleet are maintained or can be made available.

An “established place of business” means a physical structure owned or leased by the fleet registrant. The physical structure must be designated by a street number or road location (a post office box is not sufficient), be open during normal business hours and be staffed by an employee or employees of the registrant on a full-time basis. Employees in the permanent employment of the registrant, not contractual labor, must be performing the trucking-related duties that constitute more than just credentialing, distance and fuel reporting, and/or answering a telephone. The operational records of the fleet must be maintained at the location, or be made available there, for an audit. A jurisdiction may require whatever information the jurisdiction deems pertinent to show that the registrant has an established place of business within the jurisdiction and that all proper fees and taxes are paid.

Registering with IRP. “Apportioned” registration fees are fees computed in proportion to the distance traveled in each jurisdiction. The carrier registers in a single base jurisdiction, declaring all member jurisdictions in which he/she will operate, plus the actual or estimated mileage of operations in each declared jurisdiction. The jurisdiction will compute the fees for each jurisdiction based upon the miles traveled and declared weight of the vehicle. The registration fee for each vehicle is the total of the fees due to each jurisdiction of travel. The base jurisdiction collects the fee, sends each jurisdiction its share, and issues a single IRP cab card and apportioned vehicle registration plate that allows travel in each jurisdiction listed on the IRP cab card.

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Form 2290 — Heavy Vehicle Use Tax

Attention:

Electronic filing required if reporting 25 or more vehicles.

To e-file, go to

<http://www.irs.gov/efile/lists/0,,id=172865,00.html> for a list of IRS approved providers.

or visit

www.2290Online.com

No Installment Payments:

The balance due shown on the form must be paid in full. The American Jobs Creation Act of 2004 eliminated the election to pay the tax due in installments.

No reduced tax for Canadian or Mexican Vehicles:

The reduced rates shown on the Tax Computation worksheet apply only to logging vehicles.

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Form 2290
(Rev. July 2014)
Department of the Treasury
Internal Revenue Service (99)

Heavy Highway Vehicle Use Tax Return

For the period July 1, 2014, through June 30, 2015

▶ **Attach both copies of Schedule 1 to this return.**
▶ **Information about Form 2290 and its separate instructions is at www.irs.gov/form2290.**

Keep a copy of this return for your records.
OMB No. 1545-0143

Type or Print	Name	Employer identification number
	<input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	
	Address (number, street, and room or suite no.)	
City or town, state or province, country, and ZIP or foreign postal code		

- Check if applicable:
- | | |
|---|--|
| <input type="checkbox"/> Address change

<input type="checkbox"/> Amended Return
Check this box if reporting (a) additional tax from an increase in taxable gross vehicle weight or (b) suspended vehicles exceeding the mileage use limit. Do not check this box for any other reason. | <input type="checkbox"/> VIN Correction
Check this box if you are correcting a vehicle identification number (VIN) listed on a previously filed Schedule 1 (Form 2290). Do not check this box for any other reason.

<input type="checkbox"/> Final Return
Check this box if you no longer have taxable vehicles to report. |
|---|--|

Part I Figuring the Tax

		Y	Y	Y	Y	M	M
1 Was the vehicle(s) reported on this return used on public highways during July 2014 ? If YES, enter 201407 in the boxes to the right. If NO, see the table on page 3 of the instructions . ▶	1						
2 Tax. Enter the Total from Form 2290, page 2, column (4) ▶	2						
3 Additional tax from increase in taxable gross weight (see instructions) ▶	3						
4 Total tax. Add lines 2 and 3 ▶	4						
5 Credits (see instructions) ▶	5						
6 Balance due. Subtract line 5 from line 4. This is the amount you owe. If payment through EFTPS, check here <input type="checkbox"/> ▶	6						

Part II Statement in Support of Suspension (Complete the statements that apply. Attach additional sheets if needed.)

- 7** I declare that the vehicles reported on Schedule 1 as suspended (category W) are expected to be used on public highways (check the boxes that apply): 5,000 miles or less 7,500 miles or less for agricultural vehicles during the period July 1, 2014, through June 30, 2015, and are suspended from the tax. Complete and attach Schedule 1.
- 8a** I declare that the vehicles listed as suspended on the Form 2290 filed for the period July 1, 2013, through June 30, 2014, were not subject to the tax for that period except for any vehicles listed on line 8b. **Check this box if applicable.** ▶
- b** Vehicle identification numbers
- 9** I declare that vehicle identification numbers were listed as suspended on the Form 2290 filed for the period July 1, 2013, through June 30, 2014. These vehicles were sold or transferred to on At the time of the transfer, the vehicles were still eligible for the suspension of the tax. Attach a separate list if needed.

Third Party Designee Do you want to allow another person to discuss this return with the IRS (see instructions)? **Yes.** Complete the following. **No**

Designee's name ▶	Phone no. ▶	Personal identification number (PIN) ▶
<input type="text"/>		

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature	Date
Type or print name below signature.	Telephone number

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
Firm's name ▶	Firm's EIN ▶		Phone no.	
Firm's address ▶				

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Tax Computation

Category	Taxable gross weight (in pounds)	(1) Annual tax (vehicles used during July)		(2) Partial-period tax (vehicles first used after July) See the tables at the end of the separate instructions.		(3) Number of vehicles		(4) Amount of tax (col. (1) or (2) multiplied by col. (3))	Category
		(a) Vehicles except logging*	(b) Logging vehicles*	(a) Vehicles except logging*	(b) Logging vehicles*	(a) Vehicles except logging*	(b) Logging vehicles*		
A	55,000	\$ 100.00	\$ 75.00	\$	\$			\$	A
B	55,001 - 56,000	122.00	91.50						B
C	56,001 - 57,000	144.00	108.00						C
D	57,001 - 58,000	166.00	124.50						D
E	58,001 - 59,000	188.00	141.00						E
F	59,001 - 60,000	210.00	157.50						F
G	60,001 - 61,000	232.00	174.00						G
H	61,001 - 62,000	254.00	190.50						H
I	62,001 - 63,000	276.00	207.00						I
J	63,001 - 64,000	298.00	223.50						J
K	64,001 - 65,000	320.00	240.00						K
L	65,001 - 66,000	342.00	256.50						L
M	66,001 - 67,000	364.00	273.00						M
N	67,001 - 68,000	386.00	289.50						N
O	68,001 - 69,000	408.00	306.00						O
P	69,001 - 70,000	430.00	322.50						P
Q	70,001 - 71,000	452.00	339.00						Q
R	71,001 - 72,000	474.00	355.50						R
S	72,001 - 73,000	496.00	372.00						S
T	73,001 - 74,000	518.00	388.50						T
U	74,001 - 75,000	540.00	405.00						U
V	over 75,000	550.00	412.50						V
Totals. Add the number of vehicles in columns (3a) and (3b). Enter the total here (this should be the same total of taxable vehicles shown on Schedule 1, Part II, line c). Add the amounts in column (4). Enter the total here and on Form 2290, line 2 . . . ▶								\$	
W	Tax-Suspended Vehicles (See Part II on page 6 of the instructions.)								
Complete both copies of Schedule 1 (Form 2290) and attach them to Form 2290.									

* See page 2 of the instructions for information on logging vehicles.

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**SCHEDULE 1
(Form 2290)**

(Rev. July 2014)
Department of the Treasury
Internal Revenue Service

Schedule of Heavy Highway Vehicles

For the period July 1, 2014, through June 30, 2015

▶ **Complete and file both copies of Schedule 1. One copy will be stamped and returned to you for use as proof of payment when registering vehicle(s) with a state.**

OMB No. 1545-0143

Type or Print	Name	Employer identification number <input type="text"/> - <input type="text"/>
	Address (number, street, and room or suite no.)	
	City or town, state or province, country, and ZIP or foreign postal code	

Part I	Vehicles You Are Reporting (enter VIN and category)	Category A through W (category W for suspended vehicles)
1	<input type="text"/>	
2	<input type="text"/>	
3	<input type="text"/>	
4	<input type="text"/>	
5	<input type="text"/>	
6	<input type="text"/>	
7	<input type="text"/>	
8	<input type="text"/>	
9	<input type="text"/>	
10	<input type="text"/>	
11	<input type="text"/>	
12	<input type="text"/>	
13	<input type="text"/>	
14	<input type="text"/>	
15	<input type="text"/>	
16	<input type="text"/>	
17	<input type="text"/>	
18	<input type="text"/>	
19	<input type="text"/>	
20	<input type="text"/>	
21	<input type="text"/>	
22	<input type="text"/>	
23	<input type="text"/>	
24	<input type="text"/>	

Part II	Summary of Reported Vehicles	
a	Total number of reported vehicles	a
b	Enter the total number of taxable vehicles on which the tax is suspended (category W)	b
c	Total number of taxable vehicles. Subtract line b from line a	c

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 112500 **Schedule 1 (Form 2290)** (Rev. 7-2014)

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Schedule 1 (Form 2290) (Rev. 7-2014)

Consent to Disclosure of Tax Information

For the period July 1, 2014, through June 30, 2015

By signing, dating, and entering my employer identification number below, I hereby consent to the Internal Revenue Service (IRS) disclosing information about my payment of the heavy highway vehicle use tax (HVUT) for the tax period listed above to the federal Department of Transportation (DOT), U.S. Customs and Border Protection (CBP), and to state Departments of Motor Vehicles (DMV). The information disclosed to the DOT, CBP, and state DMVs will be my vehicle identification number (VIN) and verification that I have paid the HVUT. The IRS may disclose the information to the DOT, CBP, and to the DMVs of the 50 states and the District of Columbia who have other taxing, registration, or information collecting authority. I agree that the American Association of Motor Vehicle Administrators (AAMVA), a third-party nonprofit organization, may be used as an intermediary to transmit my VIN and payment information from the IRS to the state DMVs.

I understand that the information to be disclosed is generally confidential under the laws applicable to the IRS and that the agency receiving the HVUT information is not bound by these laws and may use the information for any purpose as permitted by other federal laws and/or state law. To be effective, this consent must be received by the IRS within 120 days of the date below.

If signed by a corporate officer or party other than the taxpayer, I certify that I have the authority to execute this consent to disclosure of tax information.

Sign Here	▶ _____ Signature	▶ _____ Date
	Type or print name below signature.	▶ _____ Employer identification number

Schedule 1 (Form 2290) (Rev. 7-2014)

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Form 2290-V, Payment Voucher

Purpose of Form

Complete Form 2290-V if you are making a payment by check or money order with Form 2290, Heavy Highway Vehicle Use Tax Return. We will use Form 2290-V to credit your payment more promptly and accurately, and to improve our service to you.

If you have your return prepared by a third party and a payment is required, provide Form 2290-V to the return preparer.

Do not file Form 2290-V if you are paying the balance due on Form 2290, line 6, using the Electronic Federal Tax Payment System (EFTPS) or electronic funds withdrawal (direct debit). See *How to Pay the Tax* in the Instructions for Form 2290.

Specific Instructions

Box 1. If you do not have an EIN, you may apply for one online. Go to the IRS website at www.irs.gov/businesses/small and click on the "Employer ID Numbers (EINs)" link. You may also apply for an EIN by calling 1-800-829-4933, or you can fax or mail Form SS-4, Application for Employer Identification Number, to the IRS.

Box 2. Enter the amount paid from Form 2290, line 6.

Box 3. Enter the date as shown on Form 2290, line 1.

Box 4. Enter your name and address as shown on Form 2290.

- Enclose your check or money order made payable to "United States Treasury." Be sure to enter your EIN, "Form 2290," and the tax period on your check or money order. Do not send cash. Do not staple Form 2290-V or your payment to Form 2290 (or to each other).

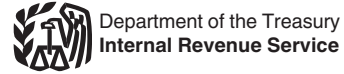
- Detach Form 2290-V and send it with your payment and Form 2290 to the address shown in the bottom left corner of Form 2290-V.

▲ Detach here ▲

Form 2290-V (Rev. July 2014) Department of the Treasury Internal Revenue Service	Payment Voucher For the period July 1, 2014, through June 30, 2015 ▶ See <i>How To Pay the Tax</i> in the Instructions for Form 2290. ▶ Do not staple or attach this voucher or your payment to your return.	OMB No. 1545-0143						
1 Employer identification number _____ -	2 Enter the amount of your payment. Make your check or money order payable to "United States Treasury" <table style="width: 100%; border: none;"> <tr> <td style="width: 70%;"></td> <td style="width: 15%; text-align: center;">Dollars</td> <td style="width: 15%; text-align: center;">Cents</td> </tr> </table>		Dollars	Cents				
	Dollars	Cents						
3 Enter date as shown on line 1 of Form 2290. <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;">Y</td> <td style="text-align: center;">Y</td> <td style="text-align: center;">Y</td> <td style="text-align: center;">Y</td> <td style="text-align: center;">M</td> <td style="text-align: center;">M</td> </tr> </table> Send Form 2290, this voucher, and payment to: Internal Revenue Service P.O. Box 804525 Cincinnati, OH 45280-4525	Y	Y	Y	Y	M	M	4 Name _____ Address (number, street, and room or suite no.) _____ City or town, state or province, country, and ZIP or foreign postal code	
Y	Y	Y	Y	M	M			

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Instructions for Form 2290 (Rev. July 2014)



Heavy Highway Vehicle Use Tax Return

Section references are to the Internal Revenue Code unless otherwise noted.

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Future developments

For the latest information about developments related to Form 2290 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/form2290.

Reminders

U.S. Customs requires proof of payment for entering a Canadian or Mexican vehicle into the United States. See *Proof of payment for state registration and entry into the United States*, later.

IRS telephone hours of operation. IRS phone lines are now available 7:00 a.m. to 7:00 p.m. local time Monday through Friday, unless otherwise noted. Alaska & Hawaii taxpayers will follow Pacific Time, Puerto Rico taxpayers will receive service from 8:00 a.m. to 8:00 p.m. local time. See *How To Get Tax Help*, later.

Expanded Schedule 1. You should complete and file both copies of Schedule 1. The second copy will be stamped and returned to you for use as proof of payment.

Electronic filing. Electronic filing is required for each return reporting 25 or more vehicles that you file during the tax period. However, you are encouraged to file electronically

regardless of the number of vehicles being reported. File Form 2290 electronically through a provider participating in the IRS e-file program for excise taxes. Once your return is accepted by the IRS, your stamped Schedule 1 can be available within minutes. For more information on e-file, visit www.irs.gov and search "2290 e-file" or visit www.irs.gov/trucker.

General Instructions

Purpose of Form

Use Form 2290 for the following actions.

- Figure and pay the tax due on highway motor vehicles used during the period with a taxable gross weight of 55,000 pounds or more.
- Figure and pay the tax due on a vehicle for which you completed the suspension statement on another Form 2290 if that vehicle later exceeded the mileage use limit during the period. See *Suspended vehicles exceeding the mileage use limit*, later.
- Figure and pay the tax due if, during the period, the taxable gross weight of a vehicle increases and the vehicle falls into a new category. See *Line 3*, later.
- Claim suspension from the tax when a vehicle is expected to be used 5,000 miles or less (7,500 miles or less for agricultural vehicles) during the period.
- Claim a credit for tax paid on vehicles that were destroyed, stolen, sold, or used 5,000 miles or less (7,500 miles or less for agricultural vehicles).
- Report acquisition of a used taxable vehicle for which the tax has been suspended.
- Figure and pay the tax due on a used taxable vehicle acquired and used during the period. See *Used vehicle*, later.

Use Schedule 1 for the following actions.

- To report all vehicles for which you are reporting tax (including an increase in taxable gross weight) and those that you are reporting suspension of the tax by category and vehicle identification number (VIN).
- As proof of payment to register your vehicle(s) (unless specifically exempted) in any state. Use the copy of Schedule 1 stamped and returned to you by the IRS for this purpose.

Use Form 2290-V, Payment Voucher, to accompany your check or money order. Form 2290-V is used to credit your heavy highway vehicle use tax payment to your account. If filing electronically, see *How To Make Your Payment*, later.

Who Must File

You must file Form 2290 and Schedule 1 for the tax period beginning on July 1, 2014, and ending on June 30, 2015, if a taxable highway motor vehicle (defined below) is registered, or required to be registered, in your name under state, District of Columbia, Canadian, or Mexican law at the time of its first use during the period and the vehicle has a taxable gross weight of 55,000 pounds or more. See the examples under *When To File*, later.

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You may be an individual, limited liability company (LLC), corporation, partnership, or any other type of organization (including nonprofit, charitable, educational, etc.).

Disregarded entities and qualified subchapter S subsidiaries. Qualified subchapter S subsidiaries (QSubs) and eligible single-owner disregarded entities are treated as separate entities for most excise tax and reporting purposes. QSubs and eligible single-owner disregarded entities must pay and report excise taxes, register for excise tax activities, and claim any refunds, credits, and payments under the entity's employer identification number (EIN). These actions cannot take place under the owner's taxpayer identification number (TIN). Some QSubs and disregarded entities may already have an EIN. However, if you are unsure, please call the IRS Business and Specialty Tax line at 1-800-829-4933. For more information on applying for an EIN, see *Employer Identification Number (EIN)*, later.

Generally, QSubs and eligible single-owner disregarded entities will continue to be treated as disregarded entities for other federal tax purposes (other than employment taxes). For more information, see Regulations section 301.7701-2(c)(2)(v).

Dual registration. If a taxable vehicle is registered in the name of both the owner and another person, the owner is liable for the tax. This rule also applies to dual registration of a leased vehicle.

Dealers. Any vehicle operated under a dealer's tag, license, or permit is considered registered in the name of the dealer.

Used vehicle. If you acquire and register or are required to register a used taxable vehicle in your name during the tax period, you must keep as part of your records proof showing whether there was a use of the vehicle or a suspension of the tax during the period before the vehicle was registered in your name. The evidence may be a written statement signed and dated by the person (or dealer) from whom you purchased the vehicle.



If you acquire a vehicle and use it on the public highways in any month other than July, you are liable for the tax for the prorated tax period. You must file Form 2290 and pay the tax by the last day of the month after the month you first use the vehicle.

If there is an unpaid tax liability for the months before you acquire and use the vehicle during the tax period, you are liable for the total tax for the entire period, to the extent not paid. In that case, you must file Form 2290 and pay the tax by the last day of the month after the month notification is received from the IRS that the tax has not been paid in full.

Logging vehicles. A vehicle qualifies as a logging vehicle if:

1. It is used exclusively for the transportation of products harvested from the forested site, or it exclusively transports the products harvested from the forested site to and from locations on a forested site (public highways may be used between the forested site locations), and

2. It is registered (under the laws of the state or states in which the vehicle is required to be registered) as a highway motor vehicle used exclusively in the transportation of harvested forest products. A vehicle will be considered to be registered under the laws of a state as a highway motor vehicle used exclusively in the transportation of harvested forest products if the vehicle is so registered under a state statute or legally valid regulations. In addition, no special tag

or license plate identifying a vehicle as being used in the transportation of harvested forest products is required.

Products harvested from the forested site may include timber that has been processed for commercial use by sawing into lumber, chipping or other milling operations if the processing occurs before transportation from the forested site.



Logging vehicles are taxed at reduced rates. See Table II, later.

Taxable Vehicles

Highway motor vehicles that have a taxable gross weight of 55,000 pounds or more are taxable.

A **highway motor vehicle** includes any self-propelled vehicle designed to carry a load over public highways, whether or not also designed to perform other functions. Examples of vehicles that are designed to carry a load over public highways include trucks, truck tractors, and buses. Generally, vans, pickup trucks, panel trucks, and similar trucks are not subject to this tax because they have a taxable gross weight less than 55,000 pounds.

A **vehicle** consists of a chassis, or a chassis and body, but does not include the load. It does not matter if the vehicle is designed to perform a highway transportation function for only a particular type of load, such as passengers, furnishings, and personal effects (as in a house, office, or utility trailer), or a special kind of cargo, goods, supplies, or materials. It does not matter if machinery or equipment is specially designed (and permanently mounted) to perform some off-highway task unrelated to highway transportation except to the extent discussed later under *Vehicles not considered highway motor vehicles*.

Use means the use of a vehicle with power from its own motor on any public highway in the United States.

A **public highway** is any road in the United States that is not a private roadway. This includes federal, state, county, and city roads.

Exemptions. To be exempt from the tax, a highway motor vehicle must be used and actually operated by:

- The Federal Government,
- The District of Columbia,
- A state or local government,
- The American National Red Cross,
- A nonprofit volunteer fire department, ambulance association, or rescue squad,
- An Indian tribal government but only if the vehicle's use involves the exercise of an essential tribal government function, or
- A mass transportation authority if it is created under a statute that gives it certain powers normally exercised by the state.

Also exempt from the tax (not required to file Form 2290) are:

- Qualified blood collector vehicles (see below) used by qualified blood collector organizations, and
- Mobile machinery that meets the specifications for a chassis as described under *Specially designed mobile machinery for nontransportation functions*, later.

Qualified blood collector vehicle. A qualified blood collector vehicle is a vehicle at least 80% of the use of which during the prior tax period was by a qualified blood collector

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organization for the collection, storage, or transportation of blood. A vehicle first placed in service in a tax period will be treated as a qualified blood collector vehicle for the tax period if the qualified blood collector organization certifies that the organization reasonably expects at least 80% of the use of the vehicle by the organization during the tax period will be in the collection, storage, or transportation of blood.

Vehicles not considered highway motor vehicles.

Generally, the following kinds of vehicles are not considered highway vehicles.

1. **Specially designed mobile machinery for nontransportation functions.** A self-propelled vehicle is not a highway vehicle if all the following apply.
 - a. The chassis has permanently mounted to it machinery or equipment used to perform certain operations (construction, manufacturing, drilling, mining, timbering, processing, farming, or similar operations) if the operation of the machinery or equipment is unrelated to transportation on or off the public highways.
 - b. The chassis has been specially designed to serve only as a mobile carriage and mount (and power source, if applicable) for the machinery or equipment, whether or not the machinery or equipment is in operation.
 - c. The chassis could not, because of its special design and without substantial structural modification, be used as part of a vehicle designed to carry any other load.

2. **Vehicles specially designed for off-highway transportation.** A vehicle is not treated as a highway vehicle if the vehicle is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design, the vehicle's capability to transport a load over a public highway is substantially limited or impaired.

To make this determination, you can take into account the vehicle's size, whether the vehicle is subject to licensing, safety, or other requirements, and whether the vehicle can transport a load at a sustained speed of at least 25 miles per hour. It does not matter that the vehicle can carry heavier loads off highway than it is allowed to carry over the highway.

3. **Nontransportation trailers and semi-trailers.** A trailer or semi-trailer will not be treated as a highway vehicle if it is specially designed to function as an enclosed stationary shelter for carrying on a nontransportation function at an off-highway site. For example, a trailer that is capable only of functioning as an office for an off-highway construction operation is not a highway vehicle.

When To File

Form 2290 must be filed for the month the taxable vehicle is first used on public highways during the current period. The current period begins July 1, 2014, and ends June 30, 2015. Form 2290 must be filed by the last day of the month following the month of first use (as shown in the chart below). **Note.** If any due date falls on a Saturday, Sunday, or legal holiday, file by the next business day.

If you first use multiple vehicles in more than one month, then a separate Form 2290 must be filed for each month, as shown in *Example 3* below.

The filing rules apply whether you are paying the tax or reporting suspension of the tax. The following examples demonstrate these rules.

Example 1. John uses a taxable vehicle on a public highway July 1, 2014. John must file Form 2290 by August

31, 2014, for the period beginning July 1, 2014, through June 30, 2015. Because August 31, 2014, falls on a Sunday, John doesn't have to file until the next business day, September 2, 2014 (September 1 is Labor Day, a holiday). To figure the tax, John would use the amounts on Form 2290, page 2, column (1).

Example 2. John purchases a new taxable vehicle on January 3, 2015. The vehicle is required to be registered in his name. The vehicle is first used on the public highway in January. John must file another Form 2290 reporting the new vehicle by February 28, 2015, for the period beginning July 1, 2014, through June 30, 2015. To figure the tax, John would use *Table 1*, later.

Example 3. All of Trucker A's vehicles are first used in the current period in July, 2014. Because August 31, 2014, falls on a Sunday, Trucker A doesn't have to file until the next business day, September 2, 2014. Trucker A must file one Form 2290 on or before August 31, 2014. Trucker B first uses vehicles on the public highway in July and August. Trucker B must report the vehicle first used in July on the return normally due on August 31, 2014 (actually, September 2, 2014), and the vehicle first used in August on a separate return filed by September 30, 2014.

IF, in this period, the vehicle is first used during ...	THEN, file Form 2290 and make your payment by ¹ ...	and enter this date on Form 2290, line 1
July, 2014	August 31, 2014	201407
August, 2014	September 30, 2014	201408
September, 2014	October 31, 2014	201409
October, 2014	November 30, 2014	201410
November, 2014	December 31, 2014	201411
December, 2014	January 31, 2015	201412
January, 2015	February 28, 2015	201501
February, 2015	March 31, 2015	201502
March, 2015	April 30, 2015	201503
April, 2015	May 31, 2015	201504
May, 2015	June 30, 2015	201505
June, 2015	July 31, 2015	201506

¹ File by this date regardless of when state registration for the vehicle is due. If any due date falls on a Saturday, Sunday, or legal holiday, file by the next business day.

Extension of time to file. Before the due date of the return, you may request an extension of time to file your return by writing to:

Department of the Treasury
Internal Revenue Service
Cincinnati, OH 45999-0031

In your letter, you must fully explain the cause of the delay. Except for taxpayers abroad, the extension may be for no more than 6 months. An extension of time to file does not extend the time to pay the tax. If you want an extension of time to pay, you must request that separately.

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How To File



Electronic filing is required for each return reporting 25 or more vehicles. However, all taxpayers are encouraged to file electronically. Electronic filing generally allows for quicker processing of your return. A stamped Schedule 1 can be available within minutes after filing and acceptance by the IRS.

Electronically. File Form 2290 electronically through any electronic return originator (ERO), transmitter, and/or intermediate service provider (ISP) participating in the IRS e-file program for excise taxes. For more information on e-file, visit the IRS website at www.irs.gov/efile or visit www.irs.gov/trucker.

Paper. Mail Form 2290 to the address shown under *Where To File*. If you did not pay the tax using the Electronic Federal Tax Payment System (EFTPS), mail Form 2290-V and your check or money order with Form 2290. For more information on payments, see *How To Pay The Tax*, later.

Where To File

If you are not filing electronically, mail Form 2290 to:

Form 2290 with full payment	Internal Revenue Service P.O. Box 804525 Cincinnati, OH 45280-4525
Form 2290 without payment due or using EFTPS for payment	Department of the Treasury Internal Revenue Service Cincinnati, OH 45999-0031

Private Delivery Services

You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. These private delivery services include only the following.

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.



Private delivery services cannot deliver items to P.O. boxes. You must use the U.S. Postal Service to mail any item to an IRS P.O. box address.

Form 2290 Call Site

You can get immediate help with your Form 2290 questions by calling the Form 2290 call site. The hours of operation are Monday – Friday, 8:00 a.m. to 6:00 p.m., eastern time.

IF you are calling from:	THEN use this number:
The United States	866-699-4096 (toll free)
Canada or Mexico	859-669-5733 (not toll free)

The assistor will have access to your Form 2290 account information. Spanish speaking assistors are available. Have

your Form 2290 and information about your filing available when you call. For help with other returns filed, taxes paid, etc., call 1-800-829-1040 for individual returns or 1-800-829-4933 for business returns.

Penalties and Interest

If you receive a penalty for filing your return late or paying your tax late and believe you have reasonable cause for doing so, send a letter to the IRS explaining why you believe you have reasonable cause for filing late or paying late. Do **not** attach an explanation when you file your return.

Specific Instructions

Getting Started

To complete Form 2290, have the following information available.

1. Your employer identification number (EIN). You must have an EIN to file Form 2290. You cannot use your social security number.
2. The vehicle identification number of each vehicle.
3. The taxable gross weight of each vehicle to determine its category.

Employer Identification Number (EIN)

Enter the correct EIN. If you do not have an EIN, apply for one online at www.irs.gov/businesses/small and click on the "Employer ID Numbers" (EINs) link. You may also apply for an EIN by calling 1-800-829-4933, or you can fax or mail Form SS-4, Application for Employer Identification Number, to the IRS.

Vehicle Identification Number (VIN)

The VIN of your vehicle can be obtained from the registration, title, or actual vehicle. Generally, the VIN is 17 characters made up of numbers and letters. Be sure to use the VIN for the vehicle and not from the trailer.

Taxable Gross Weight

The taxable gross weight of a vehicle (other than a bus) is the total of:

1. The actual unloaded weight of the vehicle fully equipped for service,
2. The actual unloaded weight of any trailers or semitrailers fully equipped for service customarily used in combination with the vehicle, and
3. The weight of the maximum load customarily carried on the vehicle and on any trailers or semitrailers customarily used in combination with the vehicle.

Actual unloaded weight of a vehicle is the empty (tare) weight of the vehicle.

A trailer or semitrailer is treated as customarily used in connection with a vehicle if the vehicle is equipped to tow the trailer or semitrailer.

Fully equipped for service includes the body (whether or not designed for transporting cargo, such as a concrete mixer); all accessories; all equipment attached to or carried on the vehicle for use in its operation or maintenance; and a full supply of fuel, oil, and water. The term does not include the driver; any equipment (not including the body) mounted on, or attached to, the vehicle, for use in handling, protecting,

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or preserving cargo; or any special equipment (such as an air compressor, crane, or specialized oilfield equipment).

Buses

The taxable gross weight of a bus is its actual unloaded weight fully equipped for service plus 150 pounds for each seat provided for passengers and driver.

Determining Taxable Gross Weight



The weight declared for registering a vehicle in a state may affect the taxable gross weight used to figure the tax.

State registration by specific gross weight. If the vehicle is registered in any state that requires a declaration of gross weight in a specific amount, including proportional or prorated registration or payment of any other fees or taxes, then the vehicle's taxable gross weight must be no less than the highest gross weight declared for the vehicle in any state. If the vehicle is a tractor-trailer or truck-trailer combination, the taxable gross weight must be no less than the highest combined gross weight declared.

State registration by gross weight category. If the vehicle is registered in any state that requires vehicles to be registered on the basis of gross weight, and the vehicle is not registered in any state that requires a declaration of specific gross weight, then the vehicle's taxable gross weight must fall within the highest gross weight category for which the vehicle is registered in that state.

State registration by actual unloaded weight. If the vehicle is registered only in a state or states that base registration on actual unloaded weight, then the taxable gross weight is the total of the three items listed under *Taxable Gross Weight*, earlier.

Special permits. In determining a vehicle's taxable gross weight, do not consider weights declared to obtain special temporary travel permits. These are permits that allow a vehicle to operate:

1. In a state in which it is not registered,
2. At more than a state's maximum weight limit, or
3. At more than the weight at which it is registered in the state.

However, special temporary travel permits do not include permits that are issued for your vehicle if the total amount of time covered by those permits is more than 60 days or (if issued on a monthly basis) more than 2 months during a taxable year.

Name and Address

Enter your name and address. Include the suite, room, or other unit number after the street address. If your address has changed, check the *Address change* box on Form 2290.

P.O. box. If the post office does not deliver mail to the street address and you have a P.O. box, show the box number instead of the street address.

Canadian or Mexican address. Follow the country's practice for entering the postal code. Do not abbreviate the country name.

Final return. If you no longer have vehicles to report on, file a final return. Check the *Final Return* box on Form 2290, sign the return, and mail it to the IRS.

Amended return. Check the *Amended Return* box only if reporting (a) additional tax from an increase in taxable gross vehicle weight or (b) suspended vehicles exceeding the mileage use limit. **Do not** check the box for any other reason. For more information, see *Line 3* below, or *Suspended vehicles exceeding the mileage use limit*, later.

VIN correction. Check the *VIN Correction* box if you are correcting a VIN listed on a previously filed Schedule 1. **Do not** check this box for any other reason.

Part I. Figuring the Tax

Line 2

To figure the tax on line 2, complete the *Tax Computation* on Form 2290, page 2. Do not use line 2 to report additional tax from an increase in taxable gross weight. Instead, report the additional tax on line 3.

Column 1—Annual tax. Use the tax amounts listed in column 1(a) for a vehicle used during July.

Logging vehicles. Use the tax amounts listed in column 1(b) for logging vehicles used in July. For more information on these vehicles, see *Logging vehicles* under *Who Must File*, earlier.

Column 2—Partial-period tax. If the vehicle is first used after July, the tax is based on the number of months remaining in the period. See *Table I*, later, for the partial-period tax table. Enter the tax in column 2(a) for the applicable category.



You must figure and pay the tax due on a used taxable vehicle acquired and used during the period. See Used vehicle, earlier.

Logging vehicles. For logging vehicles, see *Table II*, later, for the partial-period tax table. Enter the tax in column 2(b) for the applicable category.

Column 3—Number of vehicles. Enter the number of vehicles for categories A–V in the applicable column. Add the number of vehicles in columns (3a) and (3b), categories A–V, and enter the combined number on the total line in column 3. For category W, enter the number of suspended vehicles in the applicable column.

Column 4—Amount of tax. Multiply the applicable tax amount times the number of vehicles. Add all amounts in a category and enter the result in column 4. Then, add the tax amounts in column 4 for categories A–V, and enter the total tax amount.

Line 3

Complete line 3 only if the taxable gross weight of a vehicle increases during the period and the vehicle falls in a new category. For instance, an increase in maximum load customarily carried may change the taxable gross weight.

Report the additional tax for the remainder of the period on Form 2290, line 3. Do not report any tax on line 2 unless other taxable vehicles are being reported in addition to the vehicle(s) with the increased taxable gross weight. Check the *Amended Return* box and to the right of "Amended Return" write the month the taxable gross weight increased. File Form 2290 and Schedule 1 by the last day of the month following the month in which the taxable gross weight increased.

Figure the additional tax using the following worksheet. Attach a copy of the worksheet for each vehicle.

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1. Enter the month the taxable gross weight increased. Enter the month here and in the space next to the *Amended Return* box on Form 2290, page 1 _____
2. From Form 2290, page 2, determine the new taxable gross weight category. Next, go to the *Partial-Period Tax Tables*, later. Find the month entered on line 1 above. Read down the column to the new category; this is the new tax. Enter the amount here \$ _____
3. On the *Partial-Period Tax Tables*, later, find the tax under that month for the previous category reported. Enter the amount here \$ _____
4. **Additional tax.** Subtract line 3 from line 2. Enter the additional tax here and on Form 2290, line 3 \$ _____

1. For the vehicle that was destroyed, stolen, or sold, enter the tax previously reported on Form 2290, line 4 \$ _____
2. **Partial-period tax.** On the *Partial-Period Tax Tables*, later, find where the taxable gross weight category and months of use meet and enter the tax here \$ _____
3. **Credit.** Subtract line 2 from line 1. Enter here and on Form 2290, line 5 \$ _____

The credit for each vehicle must be calculated separately.

Vehicle used less than the mileage use limit. If the tax has been paid for a period on a vehicle that is used 5,000 miles or less (7,500 miles or less for agricultural vehicles), the person who paid the tax may make a claim for the credit.

When to make a claim. For a vehicle that was destroyed, stolen, or sold before June 1, a credit for tax paid can be claimed on the next Form 2290 filed or a refund of tax paid can be claimed on Form 8849.

For a vehicle that was used 5,000 miles or less (7,500 miles or less for agricultural vehicles) during the period, a credit for tax paid can be claimed on the first Form 2290 filed for the next period. Likewise, a refund for tax paid cannot be claimed on Form 8849 until the end of the Form 2290 tax period. For example, if the tax was paid for the period July 1, 2014, through June 30, 2015, for a vehicle used 5,000 miles or less during the period, a credit on Form 2290 (or refund on Form 8849) cannot be claimed until after June 30, 2015.

Part II. Statement in Support of Suspension

Line 7

Complete line 7 to suspend the tax on vehicles expected to be used less than the mileage use limit during a period.

You must also:

- List the vehicles on which the tax is suspended in Schedule 1. See *Schedule 1 (Form 2290)*, later, and
- You must also count the number of tax-suspended vehicles (designated by Category "W") listed in Schedule 1, Part I, and enter the number on Schedule 1, Part II, line b.

Line 8

If any of the vehicles listed as suspended in the prior period exceeded the mileage use limit, check the box on line 8a and list the vehicle identification numbers for those vehicles on line 8b. Attach a separate sheet if needed.

Line 9

If in the prior period, Form 2290, line 7, was completed and the tax-suspended vehicles were sold or otherwise transferred, complete line 9.

Sales. If you sell a vehicle while under suspension, a statement must be given to the buyer and must show the seller's name, address, and EIN; VIN; date of the sale; odometer reading at the beginning of the period; odometer reading at the time of sale; and the buyer's name, address, and EIN. The buyer must attach this statement to Form 2290 and file the return by the date shown in the table under *When to File*, earlier.

If, after the sale, the use of the vehicle exceeds the mileage use limit (including the highway mileage recorded on the vehicle by the former owner) for the period, and the



CAUTION If the increase in taxable gross weight occurs in July after you have filed your return, use the amounts on Form 2290, page 2, for the new category instead of the partial-period tax tables.

Line 5

Complete line 5 only if you are claiming a credit for tax paid on a vehicle that was either:

- Sold,
- Destroyed or stolen before June 1 and not used during the remainder of the period, or
- Used during the prior period 5,000 miles or less (7,500 miles or less for agricultural vehicles).

A credit, lower tax, exemption, or refund is not allowed for an occasional light or decreased load or a discontinued or changed use of the vehicle.

The amount claimed on line 5 cannot exceed the tax reported on line 4. Any excess credit must be claimed as a refund using Form 8849, Claim for Refund of Excise Taxes, and Schedule 6 (Form 8849), Other Claims. Also use Schedule 6 (Form 8849) to make a claim for an overpayment due to a mistake in tax liability previously reported on Form 2290. See *When to make a claim* below.

Information to be submitted. On a separate sheet of paper, provide an explanation detailing the facts for each credit.

For vehicles destroyed, stolen, or sold include: the VIN; taxable gross weight category; date of the accident, theft, or sale; and a copy of the worksheet under *Figuring the credit* below. A vehicle is destroyed when it is damaged by accident or other casualty to such an extent that it is not economical to rebuild.



CAUTION Your claim for credit may be disallowed if you do not provide all of the required information.

Figuring the credit. Figure the number of months of use and find the taxable gross weight category of the vehicle before you complete the worksheet below. To figure the number of months of use, start counting from the first day of the month in the period in which the vehicle was first used to the last day of the month in which it was destroyed, stolen, or sold. Find the number of months of use in the *Partial-Period Tax Tables*, later (the number of months is shown in parentheses at the top of the table next to each month).

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former owner has provided the required statement, the new owner is liable for the tax on the vehicle. If the former owner has not furnished the required statement to the new owner, the former owner is also liable for the tax for that period. See *Suspended vehicles exceeding the mileage use limit* below.

Suspended vehicles exceeding the mileage use limit. Once a suspended vehicle exceeds the mileage use limit, the tax becomes due. **Mileage use limit** means the use of a vehicle on public highways 5,000 miles or less (7,500 miles or less for agricultural vehicles). The mileage use limit applies to the total mileage a vehicle is used during a period, regardless of the number of owners.

Figure the tax on Form 2290, page 2, based on the month the vehicle was first used in the period. Report the tax on Form 2290, line 2. Check the *Amended Return* box on page 1 and to the right of "Amended Return" write the month in which the mileage use limit was exceeded. Do not complete Form 2290, Part II. File the amended Form 2290 and Schedule 1 by the last day of the month following the month in which the mileage use limit was exceeded.

Agricultural vehicles. An agricultural vehicle is any highway motor vehicle that is:

1. Used (or expected to be used) primarily for farming purposes, and
2. Registered (under state laws) as a highway motor vehicle used for farming purposes for the entire period. A special tag or license plate identifying the vehicle as used for farming is not required for it to be considered an agricultural vehicle.

A vehicle is used primarily for farming purposes if more than half of the vehicle's use (based on mileage) during the period is for farming purposes (defined below).

Do not take into account the number of miles the vehicle is used on the farm when determining if the 7,500-mile limit on the public highways has been exceeded. Keep accurate records of the miles that a vehicle is used on a farm.

Farming purposes means the transporting of any farm commodity to or from a farm, or the use directly in agricultural production.

Farm commodity means any agricultural or horticultural commodity, feed, seed, fertilizer, livestock, bees, poultry, fur-bearing animals, or wildlife. A farm commodity does not include a commodity that has been changed by a processing operation from its raw or natural state.

Example. Juice extracted from fruits or vegetables is not a farm commodity for purposes of the suspension of tax on agricultural vehicles.

A vehicle is considered **used for farming purposes** if it is used in an activity that contributes in any way to the conduct of a farm. Activities that qualify include clearing land, repairing fences and farm buildings, building terraces or irrigation ditches, cleaning tools or farm machinery, and painting. But a vehicle will not be considered used for farming purposes if used in connection with operations such as canning, freezing, packaging, or other processing operations.

How To Pay The Tax

There are three methods to pay the tax.

- Electronic funds withdrawal (direct debit) if filing electronically.
- Electronic Federal Tax Payment System (EFTPS).
- Check or money order using the payment voucher.

Instructions for Form 2290 (Rev. 07-2014)

You must pay the tax in full with your Form 2290.

Electronic funds withdrawal (direct debit). If you are filing Form 2290 electronically, you can authorize a direct debit to make your payment. For more information on *e-file*, visit the IRS website at www.irs.gov/efile.

EFTPS. Using EFTPS is voluntary, but you must enroll in EFTPS before you can use it. To get more information or to enroll in EFTPS, visit the EFTPS website at www.eftps.gov or call 1-800-555-4477 (24 hours a day, 7 days a week).

If you make your payment using EFTPS, do not include the payment voucher. If filing a paper Form 2290, mail Form 2290 to:

Department of the Treasury
Internal Revenue Service
Cincinnati, OH 45999-0031

Paying on time. For EFTPS payments to be on time, you must initiate the transaction at least 1 business day before the date the payment is due.

Check or money order. If you use this method, you must also complete the payment voucher. See *Payment voucher* below.

- Do not send cash. Make your check or money order payable to "United States Treasury." Write your name, address, EIN, "Form 2290," and the date (as entered in Box 3) on your payment.
- Detach the voucher and send it with the Form 2290, both copies of Schedule 1, and your payment. If you filed electronically, do not send Form 2290 and Schedule 1 with the payment voucher. See *Where To File*, earlier.
- Do not staple your payment to the voucher or Form 2290.

Payment voucher. Complete Form 2290-V, Payment Voucher. If you have your Form 2290 prepared by a third party, provide this payment voucher to the return preparer.

Box 1. Enter your EIN. If you do not have an EIN, see *Employer Identification Number (EIN)*, earlier.

Box 2. Enter the amount you are paying with Form 2290.

Box 3. Enter the same date that you entered on Form 2290, Part I, line 1.

Box 4. Enter your name and address exactly as shown on Form 2290. Print your name clearly.

Schedule 1 (Form 2290)

Complete and file both copies of Schedule 1. The second copy will be stamped and returned to you for use as proof of payment. Your return may be rejected if Schedule 1 is not attached to Form 2290.

E-file. If Form 2290 is filed electronically, a copy of Schedule 1 with an IRS watermark will be sent to the ERO, transmitter, and/or ISP electronically. Ask the ERO, transmitter, and/or ISP for the original electronic copy of Schedule 1.

Note. If you want a copy of a prior-period Schedule 1 returned, you must send a written request to:

Department of the Treasury
Internal Revenue Service
Cincinnati, OH 45999-0031

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Name and address. Enter your name and address on Schedule 1 exactly as shown on Form 2290. See *Name and Address*, earlier.

Part I. Enter by category the VIN of each vehicle for which you are reporting tax. Failure to include the full VIN may prevent you from registering your vehicle with the state.

Part II. Complete as follows:

- Enter on line **a** the total vehicles reported on Form 2290, page 2.
- Enter on line **b** the total number of taxable vehicles on which the tax is suspended, reported on Form 2290, page 2, column (3), category **W**.
- Enter on line **c** the total number of taxable vehicles (subtract line **b** from line **a**).

Proof of payment for state registration and entry into the United States. Generally, states will require verification of payment of the tax for any taxable vehicle before they will register the vehicle. Use the stamped copy of Schedule 1 as proof of payment when registering vehicles with the state.

U.S. Customs also requires this proof of payment for entering a Canadian or Mexican vehicle into the United States.

If you do not have the stamped copy, you may use a photocopy of Schedule 1 and both sides of your canceled check as proof of payment.

Note. If the state receives your application for registration of your highway motor vehicle during the months of July, August or September, you may provide the immediately previous taxable period's approved Schedule 1 that was returned to you by the IRS, as proof of payment. Remember to file Form 2290 for the current period by the due date of the return. See Regulation section 41.6001-2(b)(4).

No proof of payment is required for a newly purchased vehicle, if you present to the state a copy of the bill of sale showing that the vehicle was purchased within the last 60 days. However, you must file a return and pay any tax due. See *When to File*, earlier.

A limited number of states have agreed to participate in an alternate proof of payment program with the IRS. In those states, the Department of Motor Vehicles (DMV) may forward your return to the IRS if certain requirements are met. If you give your Form 2290 (with voucher and payment) to your DMV to be forwarded to the IRS, no further proof of payment is needed to register your vehicle. Contact your local DMV to see if your state participates in this program.

If you give the DMV your Form 2290 to forward, your return is not considered filed until the IRS receives it. You are responsible for any penalties or interest if the return is filed late or lost by the DMV.

Schedule 1 (Form 2290), Consent to Disclosure of Tax Information

The IRS will share information reported on Form 2290 and Schedule 1. The information shared includes the VINs for all vehicles reported on Schedule 1 and verification that you paid the tax reported on Form 2290, line 6. This information will be shared with the Department of Transportation, U.S. Customs and Border Protection, and state Departments of Motor Vehicles. The IRS needs your consent to release this information. If you agree to have the information released, please sign and date the consent.

Third Party Designee

If you want to allow an employee of your business, a return preparer, or other third party to discuss your Form 2290 with the IRS, check the "Yes" box in the *Third Party Designee* section of Form 2290. Also, enter the designee's name, phone number, and any five digits that person chooses as his or her personal identification number (PIN). The authorization applies only to the tax return on which it appears.

By checking the "Yes" box, you are authorizing the IRS to speak with the designee to answer any questions relating to the information reported on Form 2290. You are also authorizing the designee to:

- Exchange information concerning Form 2290 with the IRS, and
- Request and receive written tax return information relating to Form 2290, including copies of notices, correspondence, and account transcripts.

You are not authorizing the designee to bind you to anything (including additional tax liability) or otherwise represent you before the IRS. If you want to expand the designee's authority, see Pub. 947, *Practice Before the IRS and Power of Attorney*.

The authorization will automatically expire 1 year from the due date (without regard to extensions) for filing your Form 2290. If you or your designee wants to revoke this authorization, send a written statement of revocation to:

Department of the Treasury
Internal Revenue Service
Cincinnati, OH 45999

See Pub. 947 for more information.

Signature

Sign the return. Returns filed without a signature will be sent back to you for signing. An unsigned return is not considered filed.

Paid Preparer Use Only

A paid preparer must sign Form 2290 and provide the information in the Paid Preparer Use Only section at the end of the form if the preparer was paid to prepare the form and is not an employee of the filing entity. The preparer must give you a copy of the form in addition to the copy to be filed with the IRS. If you are a paid preparer, enter your Preparer Tax Identification Number (PTIN) in the space provided. Include your complete address. If you work for a firm, you also must enter the firm's name and the EIN of the firm. However, you cannot use the PTIN of the tax preparation firm in place of your PTIN. You can apply for a PTIN online or by filing Form W-12, IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal. For more information about applying for a PTIN online, visit the IRS website at www.irs.gov/ptin.

Recordkeeping

Keep records for all taxable highway vehicles registered in your name for at least 3 years after the date the tax is due or paid, whichever is later. They must be available at all times for inspection by the IRS. Also keep copies of all returns and schedules you have filed. Keep your records even if a vehicle is registered in your name for only a portion of a period. If the tax is suspended on a highway motor vehicle for a period because its use on public highways during the period did not

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exceed 5,000 miles (7,500 miles for agricultural vehicles), the registrant must keep the records at least 3 years after the end of the period to which the suspension applies.

Records for each vehicle should show all of the following information.

1. A detailed description of the vehicle, including the VIN.
2. The weight of loads carried by the vehicle in the same form as required by any state in which the vehicle is registered or required to be registered.
3. The date you acquired the vehicle and the name and address of the person from whom you acquired it.
4. The first month of each period in which a taxable use occurred and any prior month in which the vehicle was used in the period while registered in your name, with proof that the prior use was not a taxable use.
5. The date the vehicle was sold or transferred and the name and address of the purchaser or transferee. If it was not sold, the records must show how and when you disposed of it.
6. If the tax is suspended for a vehicle, keep a record of actual highway mileage. For an agricultural vehicle, keep accurate records of the number of miles it is driven on a farm. See *Part II. Statement in Support of Suspension*, earlier.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS in several ways. By selecting the method that is best, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate. The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should. Here are seven things every taxpayer should know about TAS:

- TAS is your voice at the IRS.
- Our service is free, confidential, and tailored to meet your needs.
- You may be eligible for TAS help if you have tried to resolve your tax problem through normal IRS channels and have gotten nowhere, or you believe an IRS procedure just isn't working as it should.
- TAS helps taxpayers whose problems are causing financial difficulty or significant cost, including the cost of professional representation. This includes businesses as well as individuals.
- TAS employees know the IRS and how to navigate it. We will listen to your problem, help you understand what needs to be done to resolve it, and stay with you every step of the way until your problem is resolved.
- TAS has at least one local taxpayer advocate in every state, the District of Columbia, and Puerto Rico. You can call your local advocate, whose number is in your phone book, in Pub. 1546, Taxpayer Advocate Service—Your Voice at the IRS, and on our website at www.irs.gov/advocate. You can also call our toll-free line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.
- You can learn about your rights and responsibilities as a taxpayer by visiting www.taxtoolkit.irs.gov.

Low Income Taxpayer Clinics (LITCs). LITCs are independent organizations that provide low income taxpayers with representation in federal tax controversies with the IRS for free or for a nominal charge. The clinics also provide tax education and outreach for taxpayers who speak English as a second language. Publication 4134, Low Income Taxpayer Clinic List, provides information on clinics in your area. It is available at www.irs.gov/advocate, click on "Low Income Taxpayer Clinics," or at your local IRS office.

Free tax services. To find out what services are available, get Pub. 910, IRS Guide to Free Tax Services. It contains lists of free tax information sources, including publications, services, and free tax education and assistance programs. It also has an index of over 100 TeleTax topics (recorded tax information) you can listen to on your telephone.

Accessible versions of IRS published products are available on request in a variety of alternative formats for people with disabilities.

Free help with your return. Free help in preparing your return is available nationwide from IRS-trained volunteers. The Volunteer Income Tax Assistance (VITA) program is designed to help low-income taxpayers and the Tax Counseling for the Elderly (TCE) program is designed to assist taxpayers age 60 and older with their tax returns. Many VITA sites offer free electronic filing and all volunteers will let you know about credits and deductions you may be entitled to claim. To find the nearest VITA or TCE site, call 1-800-829-1040.

As part of the TCE program, AARP offers the Tax-Aide counseling program. To find the nearest AARP Tax-Aide site, call 1-888-227-7669 or visit AARP's website at www.aarp.org/money/taxaide.

For more information, go to www.irs.gov and enter keyword "VITA" in the searchbox.



Internet. Access the IRS website at www.irs.gov 24 hours a day, 7 days a week to:

- *E-file* your return. Find out about commercial tax preparation and *e-file* services available free to eligible taxpayers.
- Download forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Figure your withholding allowances using the withholding calculator online at www.irs.gov/individuals.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.



Phone. Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call 1-800-829-3676, to order current-year forms, instructions, and publications, and prior-year forms and instructions. You should receive your order within 10 days.
- *Solving problems.* You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers (TACs). An employee can explain IRS letters, request adjustments to your account, or help you set up a

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payment plan. Call your local TAC for an appointment. Go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.

- **TTY/TDD equipment.** If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.
- **TeleTax topics.** Call 1-800-829-4477 (available 24 hours a day, 7 days a week) to listen to pre-recorded messages covering various tax topics.

Evaluating the quality of our telephone services. To ensure IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to listen in on or record random telephone calls. Another is to ask some callers to complete a short survey at the end of the call.



Walk-in. Many products and services are available on a walk-in basis.

- **Services.** You can walk in to your local TAC for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you are more comfortable talking with someone in person, visit your local TAC where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary—just walk in. If you prefer, you can call your local TAC and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. If you have an ongoing, complex tax account problem or a special need, such as a disability, an appointment can be requested. All other issues will be handled without an appointment. To call your TAC, go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.



Mail. You can send your order for forms, instructions, and publications to the address below. You should receive a response within 10 days after your request is received.

Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal

Revenue laws of the United States. Section 4481 requires that the use of certain types of highway motor vehicles be taxed. Form 2290 is used to determine the amount of tax you owe. Sections 6011 and 6109 require you to provide the requested information, including your identifying number. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities, states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. Failure to provide this information in a timely manner, or providing false information, may subject you to penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file Form 2290 and Schedule 1 will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 41 hr., 22 min.; **Learning about the law or the form**, 24 min.; **Preparing, copying, assembling, and sending the form to the IRS**, 1 hr., 5 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can send your comments from www.irs.gov/formspubs/. Click on "More Information" and then on "Give us feedback." You can also write to:

Internal Revenue Service
Tax Forms and Publications
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

Do not send Form 2290 to this address. Instead, see *Where To File*, earlier.

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

Although we cannot respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax products.

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Partial-Period Tax Tables (for vehicles first used after July of the period)

- Find the category line for the vehicle in **Table I** or **Table II**. The categories are listed in the **Tax Computation** table on Form 2290, page 2.
- Find the month the vehicle was first used on public highways.
- Read down the column. The amount where the category line and the month column meet is the tax due.
- Enter the amount on Form 2290, page 2, column 2.

Table I Vehicles Except Logging (enter in column 2(a))											
CATEGORY	AUG (11)	SEP (10)	OCT (9)	NOV (8)	DEC (7)	JAN (6)	FEB (5)	MAR (4)	APR (3)	MAY (2)	JUNE (1)
A	\$ 91.67	\$ 83.33	\$ 75.00	\$ 66.67	\$ 58.33	\$ 50.00	\$ 41.67	\$ 33.33	\$ 25.00	\$ 16.67	\$ 8.33
B	111.83	101.67	91.50	81.33	71.17	61.00	50.83	40.67	30.50	20.33	10.17
C	132.00	120.00	108.00	96.00	84.00	72.00	60.00	48.00	36.00	24.00	12.00
D	152.17	138.33	124.50	110.67	96.83	83.00	69.17	55.33	41.50	27.67	13.83
E	172.33	156.67	141.00	125.33	109.67	94.00	78.33	62.67	47.00	31.33	15.67
F	192.50	175.00	157.50	140.00	122.50	105.00	87.50	70.00	52.50	35.00	17.50
G	212.67	193.33	174.00	154.67	135.33	116.00	96.67	77.33	58.00	38.67	19.33
H	232.83	211.67	190.50	169.33	148.17	127.00	105.83	84.67	63.50	42.33	21.17
I	253.00	230.00	207.00	184.00	161.00	138.00	115.00	92.00	69.00	46.00	23.00
J	273.17	248.33	223.50	198.67	173.83	149.00	124.17	99.33	74.50	49.67	24.83
K	293.33	266.67	240.00	213.33	186.67	160.00	133.33	106.67	80.00	53.33	26.67
L	313.50	285.00	256.50	228.00	199.50	171.00	142.50	114.00	85.50	57.00	28.50
M	333.67	303.33	273.00	242.67	212.33	182.00	151.67	121.33	91.00	60.67	30.33
N	353.83	321.67	289.50	257.33	225.17	193.00	160.83	128.67	96.50	64.33	32.17
O	374.00	340.00	306.00	272.00	238.00	204.00	170.00	136.00	102.00	68.00	34.00
P	394.17	358.33	322.50	286.67	250.83	215.00	179.17	143.33	107.50	71.67	35.83
Q	414.33	376.67	339.00	301.33	263.67	226.00	188.33	150.67	113.00	75.33	37.67
R	434.50	395.00	355.50	316.00	276.50	237.00	197.50	158.00	118.50	79.00	39.50
S	454.67	413.33	372.00	330.67	289.33	248.00	206.67	165.33	124.00	82.67	41.33
T	474.83	431.67	388.50	345.33	302.17	259.00	215.83	172.67	129.50	86.33	43.17
U	495.00	450.00	405.00	360.00	315.00	270.00	225.00	180.00	135.00	90.00	45.00
V	504.17	458.33	412.50	366.67	320.83	275.00	229.17	183.33	137.50	91.67	45.83

Table II Logging Vehicles (enter in column 2(b))											
CATEGORY	AUG (11)	SEP (10)	OCT (9)	NOV (8)	DEC (7)	JAN (6)	FEB (5)	MAR (4)	APR (3)	MAY (2)	JUNE (1)
A	\$ 68.75	\$ 62.49	\$ 56.25	\$ 50.00	\$ 43.74	\$ 37.50	\$ 31.25	\$ 24.99	\$ 18.75	\$ 12.50	\$ 6.24
B	83.87	76.25	68.62	60.99	53.37	45.75	38.12	30.50	22.87	15.24	7.62
C	99.00	90.00	81.00	72.00	63.00	54.00	45.00	36.00	27.00	18.00	9.00
D	114.12	103.74	93.37	83.00	72.62	62.25	51.87	41.49	31.12	20.75	10.37
E	129.24	117.50	105.75	93.99	82.25	70.50	58.74	47.00	35.25	23.49	11.75
F	144.37	131.25	118.12	105.00	91.87	78.75	65.62	52.50	39.37	26.25	13.12
G	159.50	144.99	130.50	116.00	101.49	87.00	72.50	57.99	43.50	29.00	14.49
H	174.62	158.75	142.87	126.99	111.12	95.25	79.37	63.50	47.62	31.74	15.87
I	189.75	172.50	155.25	138.00	120.75	103.50	86.25	69.00	51.75	34.50	17.25
J	204.87	186.24	167.62	149.00	130.37	111.75	93.12	74.49	55.87	37.25	18.62
K	219.99	200.00	180.00	159.99	140.00	120.00	99.99	80.00	60.00	39.99	20.00
L	235.12	213.75	192.37	171.00	149.62	128.25	106.87	85.50	64.12	42.75	21.37
M	250.25	227.49	204.75	182.00	159.24	136.50	113.75	90.99	68.25	45.50	22.74
N	265.37	241.25	217.12	192.99	168.87	144.75	120.62	96.50	72.37	48.24	24.12
O	280.50	255.00	229.50	204.00	178.50	153.00	127.50	102.00	76.50	51.00	25.50
P	295.62	268.74	241.87	215.00	188.12	161.25	134.37	107.49	80.62	53.75	26.87
Q	310.74	282.50	254.25	225.99	197.75	169.50	141.24	113.00	84.75	56.49	28.25
R	325.87	296.25	266.62	237.00	207.37	177.75	148.12	118.50	88.87	59.25	29.62
S	341.00	309.99	279.00	248.00	216.99	186.00	155.00	123.99	93.00	62.00	30.99
T	356.12	323.75	291.37	258.99	226.62	194.25	161.87	129.50	97.12	64.74	32.37
U	371.25	337.50	303.75	270.00	236.25	202.50	168.75	135.00	101.25	67.50	33.75
V	378.12	343.74	309.37	275.00	240.62	206.25	171.87	137.49	103.12	68.75	34.37

IRP Credentials. All vehicles properly registered under the IRP receive one “apportioned” license plate from their base jurisdiction, and a cab card. The cab card lists all the member IRP jurisdictions for which the vehicle has paid fees to operate, along with the registered weight for each jurisdiction. Vehicles cannot operate at a weight higher than the registered weight listed on the cab card. The cab cards are vehicle-specific, and the original cab card must be carried in

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the vehicle at all times. Vehicles registered under the IRP are authorized to travel either interstate or intrastate in the jurisdictions listed on their cab card. No additional vehicle registration is required for intrastate travel.

A temporary trip permit is necessary to travel in any member jurisdiction for which fees have not been paid.

Non-IRP qualified vehicles. Trucks and truck tractors and combinations having a gross vehicle weight of 26,000 pounds or less and buses used in transportation of chartered parties may be proportionally registered with the IRP at the option of the registrant. When these vehicles are not apportioned, they are subject to individual jurisdiction registration laws. Jurisdictions vary in their requirements for such vehicles; in some cases, reciprocity may be granted. Other jurisdictions may require a temporary trip permit, or in some cases full registration.

Carriers should verify the requirements in the jurisdiction of travel before entering the jurisdiction. Many (but not all) jurisdictions allow these vehicles to operate interstate, but require trip permits before performing intrastate operation.

Temporary registration (trip) permits. Commercial vehicles must always be legally licensed in the jurisdiction of travel. Under certain circumstances, a temporary registration permit may be used to comply with vehicle licensing rules.



If a “qualified vehicle” wishes to travel in a jurisdiction not listed on the IRP cab card, a trip, or temporary, permit may be used. Temporary trip permits are appropriate for infrequent trips. If the vehicle will be traveling in the jurisdiction regularly, it is more cost-effective to add the jurisdiction to the cab card and pay the apportioned registration fee. In some cases, a jurisdiction limits the number of trip permits it will issue to a vehicle during a calendar year.

Commercial vehicles that are not considered qualified vehicles and required to apportion under the IRP (chartered buses, trucks and combinations 26,000 lbs. or less) may need a temporary trip permit to

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operate in certain jurisdictions. In some cases, it may be more cost-effective to simply apportion these vehicles and avoid having to obtain temporary trip permits.

Restricted plates may not be accepted as valid registration by other jurisdictions. When this is the case, a temporary permit is required for each jurisdiction of travel that does not grant reciprocity for the restricted plate.

Temporary trip permits should be obtained before entering the jurisdiction. Depending upon the jurisdiction, trip permits are valid for a defined period of time (such as 72 hours) or for a single trip. The fee is determined by the state. Wire services charge an additional fee.

Recordkeeping. IRP registration fees depend upon vehicle miles traveled in individual jurisdictions, therefore, tracking the miles by jurisdiction is necessary. IRP carriers must maintain records verifying the miles accrued by a vehicle in each jurisdiction. The operational source documents are known as Individual Vehicle Mileage Records (IVMRs), which are also the source document for filing the quarterly IFTA reports.

Audits. Audits are usually conducted by the base jurisdiction; IRP and IFTA audits are often combined. The carrier's operational records must be available to the auditor. Failing to provide the necessary records may result in an assessment based on the base jurisdiction's estimate of the carrier's actual liability. When records are incomplete, the carrier may be subject to additional registration assessments.

Record retention. IRP requires the licensee to preserve the records for the current application year, plus the three preceding mileage years.

Controlling vehicle registration costs. Vehicle licensing costs are an annual reality. Ensuring that every vehicle on the road is properly and legally registered will avoid the added cost of citations and fines assessed by enforcement for improper registration. If your company has locations meeting the definition of an established place of business, in more than one jurisdiction, care should be taken when deciding where to license your vehicles. Factors such as whether the vehicle must be titled in the jurisdiction to be registered there should be considered, along with titling costs, fees to register, and sales tax issues. In addition, you will want to know what other taxes or corporate responsibilities may result from registering in a jurisdiction, such as property taxes.

Recordkeeping forms

Individual Vehicle Mileage Record (IVMR)

Every IFTA/IRP licensee liable for filing and reporting fuel use and mileage taxes and apportioned vehicle registration must maintain records to substantiate the information reported on the quarterly tax returns. An acceptable mileage accounting system is an essential ingredient in compiling the data necessary to complete a tax return. The licensee's system must include mileage data on each individual vehicle for each trip and be recapitulated in monthly summaries. The first and most important part of this recordkeeping system is the "Individual Vehicle Mileage Record" (IVMR).

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Drivers must fill out an IVMR for each trip taken. The mileage and fuel information listed on the IVMR is used to file quarterly IFTA returns and annual IRP registration. Supporting information on the IVMR should include the following documentation:

- Date of trip (starting and ending);
- Mileage by jurisdiction;
- Route of travel;
- Beginning and ending odometer or hubodometer reading of the trip;
- Total trip miles;
- Trip origin and destination;
- Registrant's name;
- Unit number or vehicle identification number; and
- Vehicle Fleet number.

Additional information also may be required at the discretion of the base jurisdiction, such as listing the trailer number, driver's name and signature, and/or attaching fuel and toll road receipts to the trip sheet.

IRP and IFTA licensees should be alert to potential problems arising from failure of drivers to complete proper IVMRs. Auditors check to make sure drivers have listed all miles operated per trip and that there are sufficient miles reported to cover the actual trip. Depending on the routes listed, auditors can easily determine if sufficient miles were reported. If any discrepancies are found by the auditor, it is up to the IFTA/IRP licensee to verify that the records are accurate. Failure to do so may subject the licensee to penalties and/or interest. In addition to the mileage figures listed by the driver, auditors also closely check the fuel purchase receipts to make sure that all fuel credit taken on the tax reports is backed up by properly completed fuel receipts. Therefore, it is important that licensees retain proper fuel purchase receipts to confirm all purchases.

Drivers must report all operations of their vehicle on their IVMRs. Operations must be reported if the vehicle is loaded, unloaded, or driven for personal use by the driver. Vehicles operated under a temporary decal permit must also be reported.

Sample IVMR

The following copy of J. J. Keller & Associates, Inc.'s® "Individual Vehicle Mileage Report (IVMR)" form satisfies all the information requirements needed on an IVMR for audit purposes and registration.

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DRIVER INSTRUCTIONS

STATE LAWS REQUIRE THE OPERATOR TO KEEP A RECORD OF DISTANCE DRIVEN AND THE FUEL PURCHASED BY JURISDICTION. YOU ARE THE **ONLY PERSON** WHO CAN PROVIDE THIS INFORMATION.

EACH TRIP REPORT (IVMR) MUST COVER ALL DISTANCES TRAVELED INCLUDING DEADHEAD/BOBTAIL MILES/KILOMETERS.

ATTACH ALL ORIGINAL RECEIPTS FUEL AND TOLL ATTACH ALL ORIGINAL TRIP PERMITS

PROPERLY COMPLETED TRIP REPORTS WILL AVOID FINES AND ASSESSMENTS AGAINST YOUR COMPANY.

IF YOUR VEHICLE BREAKS DOWN AND YOU GET A SUBSTITUTE VEHICLE, PREPARE A SEPARATE TRIP REPORT TO COVER THE DISTANCE TRAVELED AND FUEL PURCHASED BY THE SUBSTITUTE VEHICLE.

FOR IFTA/IRP COMPLIANCE, THE CARRIER MUST RETAIN THIS FORM FOR 4 YEARS.

PREPARE A SEPARATE TRIP REPORT FOR EACH VEHICLE USED.

- ALL FUEL RECEIPTS MUST IDENTIFY:
- (1) PURCHASER'S/COMPANY NAME
 - (2) SELLER NAME/ADDRESS
 - (3) UNIT #
 - (4) GALLONS/LITERS PURCHASED
 - (5) PRICE PER GALLON/LITER OR TOTAL PRICE
 - (6) FUEL TYPE
 - (7) DRIVER/OPERATOR SIGNATURE
 - (8) DATE OF PURCHASE
 - (9) STATES MAY REQUIRE ADDITIONAL INFORMATION

SPECIAL ATTENTION SHOULD BE GIVEN TO THE FOLLOWING STATES:

MASSACHUSETTS TURNPIKE MILES **ARE NOT** SUBJECT TO IFTA FUEL TAXES; RETAIN TOLL RECEIPTS AND FUEL INVOICES. ANNUAL USE TAX MUST BE FILED WITH MASSACHUSETTS ON THE COST OF FUEL FOR WHICH THE EXEMPTION WAS TAKEN.

IN NEW YORK, MILES ON PUBLIC HIGHWAYS, **INCLUDING** THE NEW YORK THRUWAY, ARE SUBJECT TO IFTA FUEL TAXES. HOWEVER, TOLL-PAID MILES ON THE NEW YORK THRUWAY ARE **NOT** SUBJECT TO NEW YORK'S HIGHWAY USE TAX (HUT).

- 1.) Company Name, Address City & State/Province
- 2.) Vehicle #
- 3.) Truck/Trailer Identification
- 4.) Fleet #/Location
- 5.) Fuel Type
- 6.) Driver Name
- 7.) Origin
- 8.) Destination(s)
- 9.) Dates of Trip
- 10.) State(s) or Province(s)
- 11.) Highways Used
- 12.) Odometer Readings
- 13.) Miles/Kilometers

VEHICLE NO. TRIP NO.

INDIVIDUAL VEHICLE MILEAGE REPORT (IVMR)

LAST 6 OF VIN (3) (COMPANY NAME) (1)

TRAILER NO. (4) (ADDRESS)

FLEET NO.

LOCATION (5)

DIESEL GAS L.P.G. (6)

DRIVER/CONTRACTOR (7)

ORIGIN (8)

DESTINATION (9)

BL # PRO # TRIP LEASE #

SPECIAL INSTRUCTIONS

STAPLE ALL ORIGINAL FUEL & TOLL RECEIPTS HERE

TRIP REPORT
(REFER TO COMPANY IFTA OR ITRP SEE INSTRUCTIONS & SAMPLE ON BACK)

DATE	STATE PROVINCE	HIGHWAYS USED	ODOMETER READING		MILES/KILOMETERS		FUEL PURCHASES	
			START	END	MILES	KILOMETERS	GAL./LITERS	VENDOR
2/4/13	PA	I-70, 81, I-78	110,500	110,912	80	222	60	Bulk
2/4/13	NJ	I-78, 95, Hwy 17	110,912	111,046	80	10	59	76 Tr. Center
2/5/13	NY	I-87	111,046	111,592	80	10	80	T&G T/S
2/5/13	NJ	Hwy 17, 95, I-78	111,592	111,592	80	222		
2/5/13	PA	I-78, 81, I-70						
9	10	11	12	13	14			

15) *Chris Decker* 2/5/13

16) *Chris Decker* 2/5/13

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- 14.) Fuel Purchased – Gallons/Liters & Vendor (when fuel is purchased, enter each purchase separately and show the number of gallons/liters on the same line as the jurisdiction in which the purchase was made in the column marked "Gal./Liters"). When bulk fuel is used, indicate "BULK" in the vendor column under fuel purchases. Attach all receipts.
- 15.) Total Miles/Kilometers
- 16.) Your Full Legal Signature & Date

FLEET MANAGEMENT PRO

INSTRUCTIONS

P540.200: Requires a Report for Individual Vehicles Monthly, quarterly, and annual summaries of vehicle trips by vehicle number showing miles or kilometers by jurisdiction. Prepare a Monthly Fleet summary for each month of activity by unit number; **Maintain Schedule and Fuel Receipts for four years.**

Carrier Information Enter the Name, Address, City, State, Zip Code, Unit#, Fleet#, Month, Year, and Remarks for the carrier.

Monthly Odometers and Fuel

Beginning Monthly Odometer, Ending Monthly Odometer, Total Miles, Total Fuel Purchase, and Miles per Gallon (MPG)

To Calculate Miles Per Gallon: Divide the Total Miles Traveled by the Total Gallons.

Jurisdictions Information

Enter the different jurisdictions traveled, Date, Mileage, and Fuel purchased for each trip.

Totals

Enter the date, mileage, fuel purchases for each jurisdiction and total them down into the total line. See Example below.

Example:

MONTHLY MILEAGE AND FUEL												
BEGINNING MONTHLY ODOMETER			ENDING MONTHLY ODOMETER			TOTAL MILES			TOTAL FUEL PURCHASE			MPG
190,855			194,834			3,979			723			5.50
JURISDICTIONS												
Date	Jurisdiction (KS)		Jurisdiction (MO)		Jurisdiction (NE)		Jurisdiction (IA)		Jurisdiction ()		Jurisdiction ()	
	Mileage	Fuel	Mileage	Fuel	Mileage	Fuel	Mileage	Fuel	Mileage	Fuel	Mileage	Fuel
03/01/09	125		123	155	308							
03/05/09	200		406	135								
03/12/09	175	109			367							
03/15/09	125		505	100								
03/20/09	250				381	121						
03/25/09	125		121	0	207		30					
03/31/09	356	103			175	0						
Total	1,356	212	1,155	390	1,438	121	30	0				

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weight distance tax, or be subject to the trip tax each time they enter or exit the state. Weight categories are based on total loaded gross weight, (the total loaded weight of the vehicle or vehicle combination, including the heaviest load that will be transported at any time during the registration year). The state issues a vehicle specific Tax ID Card at an administrative fee of \$2 per ID Card.

Tax reports are due quarterly; annual payments are allowed (with permission from the state) for carriers with tax liabilities less than \$500 annually. Carriers must retain the records upon which the tax reports are based for four years following the period for which a payment is made.

New York. New York's Highway Use Tax (HUT) imposes a truck mileage tax on motor carriers operating certain motor vehicles on public highways (New York State Thruway miles are not subject to the tax). The state issues a HUT permit. The tax is based on mileage traveled on public highways at a rate determined by the weight of the motor vehicle. Carriers may calculate the tax using the "loaded weight" method (18,000 lbs. or more gross weight) or the "unloaded weight" method (trucks, 8,000 lbs. or more; tractors, 4,000 lbs. or more). Quarterly reports are required. Records must be maintained for each self-propelled motor vehicle subject to the tax whether or not the motor vehicle has tax due for a particular period. All required records, and any other records used to calculate the New York State tax liability should be retained for at least four years.

Oregon. Oregon assesses a mileage (weight-distance) tax on all carriers, private and for-hire, operating intrastate and interstate, with vehicles having a combined weight over 26,000 pounds. The state issues an Oregon Weight Receipt and Tax Identifier for each vehicle. The tax is based on the declared weight of the vehicle, the number of miles traveled in Oregon, and the type of fuel used. The declared weight is the weight of the vehicle and the load that represents the heaviest weight the vehicle will actually carry in a given configuration for the reporting period. Daily records of vehicles used during each reporting period must be kept, and records must be maintained for a minimum of three (3) years (or longer if also used for IRP or IFTA purposes).

Controlling road tax costs. Travel in any of the jurisdictions imposing a road tax will incur tax liability. Citations for non-compliance can be avoided by being aware of these particular taxes, and obtaining the proper registration before entering the jurisdiction. Accurate recordkeeping and timely reporting are also critical to avoid additional penalties and assessments during an audit.

Recordkeeping for regulatory and tax purposes

The records you keep are the secret to a painless and penalty-free audit, whether it is a DOT safety audit or a state IRP/IFTA tax audit. A process that ensures complete and accurate records are kept for both safety regulatory requirements and for tax purposes can be invaluable, but it's important to know what records you actually need for each type of audit. Some records are not required in supporting both obligations. Vehicle

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maintenance records are a good example of this. While some motor carriers believe that these maintenance records hold value for tax reporting and miles traveled purposes, in reality they do little more than clutter a motor carrier's filing cabinets, once their retention periods have expired.

Section 396.3(c) of the FMCSRs states that vehicle maintenance records must be retained where the vehicle is housed or maintained for a period of one year. Once the vehicle leaves the control of the motor carrier, the carrier is still required to keep maintenance records for an additional six months. After that, the carrier may dispose of these maintenance records.

A maintenance record that shows a vehicle was serviced outside the home jurisdiction or state is not required as a source, nor is it needed as a potential backup document when reporting distance records for IFTA/IRP purposes. Individual Vehicle Mileage Records (IVMRs), along with fuel receipts for IFTA, are used to collect all of the required information for both IRP and IFTA reporting and therefore must be retained for specific periods of time. Maintenance records, Driver Vehicle Inspection Reports (DVIRs), drivers' log books, and other safety compliance records are unrelated to fuel tax filing and vehicle registration documents. IVMRs and fuel receipts are original records generated in the course of actual vehicle operation and are required for vehicle registration and tax reporting purposes.

IRP requires the licensee to preserve the records that their apportioned registration application is based upon for the current application year, plus the three preceding mileage years.

IFTA requires the records used for the quarterly tax return to be retained for four years from the return due date or filing date, whichever is later, plus any time period included as a result of waivers or jeopardy assessments. If a licensee fails to provide the required records for audit, the four year retention requirement is extended until the required records are provided.

Toll strategies — cost, benefit, and ROI

Tolls are nothing other than a user fee. If you wish to use a toll road, you must "pay as you go." The only way to avoid paying the user fee is to avoid using the toll road. The questions a carrier must answer when deciding whether to use a toll road are:

- Are there legal alternatives to the toll road?
- How many extra miles will be involved in not using the toll road?
- What will be the cost of the extra miles?
- How much extra time will it take to avoid the toll road?
- What will be the cost of the lost time (productivity and driver's hours)?
- Can an upcharge be put in place with the customer to pay the tolls?
- What are the tax implications/benefits of using the toll road?

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- What is driver acceptance of not using the toll road?
- Will there be a reduction in fuel mileage?
- Will there be an increase in maintenance cost if not using the toll road?
- Will there be an increased accident risk off the toll road?
- Will there be an increase in freight damage if not using the toll road?

The Fleet Manager will need to study the costs and benefits of using, and not using, the toll road. All potential changes in costs must be studied as well as the direct savings of not using the toll road.

Tolls need to be viewed through the same return on investment system as any other cost. If spending money on tolls will lower the overall cost of operation, then tolls need to be viewed as a justified expense.

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COSTS

“Lean trucking” concepts

Introducing “Lean” to the transportation industry

Over the last 25 years or more, the trucking industry has been a poor performer in terms of ROI (return on investment) when compared to other capital-intensive industries. Owners of trucking companies are delighted in claiming a “profitable year” when the books are closed and a profit margin of 2 percent or better is realized. At 5 percent profit, they are looked upon by their peers as a gifted leader with an innate capability of making money! Compare this to what you may know about other industries and the margins of profit those owners expect from their companies!

The owners of trucking companies must navigate their way around many obstacles that have significant influences on their profit margins. Fuel costs, taxes and fees, government regulations, and union issues along with a slow growing economy all chip away at their profit and can immediately lead to the demise of their company if any of them suddenly increases to a large extent. However, these same challenges have been present all the while.

It becomes necessary then for owners to take stock in the direction their company is trending. They must lead their managers into a new environment that is able to withstand the slow growth forecasted in the economic future. This, undoubtedly, could be the biggest challenge a leader will ever face. If successful, this new challenge will involve a change of culture within the company. Just as a “lean” manufacturing concept worked its way into acceptance by industrial management, so should a “lean” trucking concept be implemented throughout the transportation industry.

What is a “lean” concept?

To many motor carriers, the term “lean” has a totally different meaning when discussing methods of management. To them, “lean” is defined as “doing more with fewer people.”

It is not uncommon to hear a trucking executive state “We have been running lean for years” or “Keep the operation lean,” instructing the manager to operate without any added or unnecessary expense. The manager is “kept on his/her toes” and can become guilty of micro-managing others in their effort to stay “lean.”

A “lean” concept in management is one where waste is removed by continual improvement in a process which, in turn, creates a better product or service. It is a method that produces a higher quality of product while

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lowering costs through the elimination of wasteful practices. Lowering costs is a sure path to survival and is at the top of the list of “things to do today” for any transportation company owner.

Our economy determines the broadness of the transportation industry and all other industries related. The market has restricted the number of carriers who continue to struggle with the forecasts of future business opportunities. Motor carriers who become proactive in “lean” management have the best chance for survival. These carriers must rely on their own people to provide them the information technology they require to make well informed decisions and change old practices that are proven to be costly.



How does the “lean” concept apply to the transportation industry?

When a problem or a crisis presents itself, many managers take the responsibility to manage without input from others. Their instinct to take over the situation and “put out the fire before the fire spreads” overtakes their true responsibility as a manager which is to lead and develop their people.

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Asking questions is the first move in solving problems and engaging employees. Before a problem can be solved, the question must first be asked, “What is a problem?” A problem, simply stated is;

- an obstacle that prevents a company from achieving its goals and is related to the way in which work is done, or
- a pain felt by the organization or a gap between the way things are and the way the company wants them to be.

Understanding any problem is the first step to solving the problem. As it was once stated by Charles “Boss” Kettering, “A problem well stated is a problem half-solved.”

Motor carriers in the transportation industry who take advantage of the Lean process will find themselves far ahead of the curve when compared to other carriers struggling to find drivers, trying to lower maintenance expenses, improving operational practices, or eliminating waste and duplicity within office procedures. The lean carrier has already identified problems in these areas and has taken steps, along with the expertise provided by their employees, to solving these problems. This lean carrier is now *Leaning Toward Progress!*

Why should a “lean” concept be a part of the transportation industry?

Adding costs without adding value becomes a wasteful exercise practiced by poor management. A successful business remains competitive by retaining valued employees and recognizing their achievements. Management must find ways to communicate to their drivers that they are valued members of their team. All companies, regardless of their size, must come to grips with this ongoing waste of resources.

Would a “lean” concept have a positive effect in this effort? That question can only be answered by management’s attitude and desire to effect a cultural change.

A culture of continuous improvement

Is the organizational culture in your transportation company an “accelerator” or a “barrier” to process improvement? Does the “Lean” concept conjure up immediate comparisons to “diet fads” or “flavor of the month” remarks from those both above and below your pay grade? If so, take heart in knowing that this is typical for many within the transportation industry. Lately, though, many motor carriers have come to realize the value in a culture that continuously looks for ways to eliminate costly waste. This is accomplished by tapping into their employees’ shared understanding, awareness, and experience to improve their company’s product.

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Industries such as manufacturing, healthcare, communications, and electronic technologies all have benefited by a cultural shift in management to engage their employees to make needed improvements through a factual investigative process that detects faults in a system.

The employees who make up the “Lean Team” within these companies expose work processes and make them transparent so defects within the process can be identified. They are not interested in playing the “blame game” and “who screwed up,” but instead are only interested in what process failed and why!

Cultural change does not come easy

One of the many misconceptions of a “Lean” process is that it is another method by which the work force can be reduced and the same result can be achieved with fewer workers. Nothing can be further from the truth. A reduction in the workforce is simply not a “Lean” event!

A “Lean” event improves a process without spending capital as the major source of change. In other words, a lean event:

- identifies the waste in a process,
- analyzes the costs of this waste,
- improves the process by eliminating the waste, and
- implements the plan to improve the process.

Many people find change to be a very difficult period in their lives. Their routines have been altered. Their personal space has been invaded. That which they have counted on for a period of time barely exists anymore. On top of these emotions comes their own response to change. “That’s the way I was trained. We’ve always done it this way. We have to do it that way — there are rules!”

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The Real World

Imagine Betty and Al, the owners and founders of a motor carrier who built the business from scratch. Throughout the years, they prided themselves on their work ethic, decision-making and problem solving skills. They were always able to resolve problems that threatened their company's well-being by applying effective solutions. Now, their reluctance to allow others to make changes may be the pivotal reason why their business has stopped growing. Effective change is hard.

The owners, in this case, have an opportunity to make the best decision in their working career. By engaging their employees to find and eliminate the wasteful practices that can drive up the company's costs, they are able to utilize their employees pride, energy, and commitment to their job, their families, and themselves! Employee involvement along with a sense of making a difference every day is the motivating factor in this culture.

Transform your working environment

Most employees come to work every day wanting to feel a sense of belonging. They want to feel that their hard work will contribute to the company in making headway on obstacles that have held them back in the past. This sense of worth is evidenced through the support the employees receive from management by allowing them to make a difference.

In order to transform their work environment, management must know their people and understand what is important to them. The allegiance that employees give back to management is the fair trade in this transaction. The value that is added to this transaction is the message being sent from the top that this is not a "fad" but rather a means of ensuring the future for all employees.

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Lean becomes a part of the culture when leadership is passionate about excellence and is willing to change. Leaders must focus on encouraging the entire organization to be willing to consider the idea of change so that continuous improvement will be accepted. Once this door is opened, then the focus should be to sustain the change.

Resources and reactions

The facilitators of a lean group can be considered as a resource and made available to all employees. The facilitator serves as a visible leader who can demonstrate technical and analytical skills to ensure a process flows. Enthusiasm and the ability to not only think independently but also to contribute and communicate are valuable traits of an effective facilitator.

The capability to draw active participation from fellow employees enhances this resource and allows the team members to become co-advocates of the lean culture. Their inclusion to effecting a change in a process gives them ownership along with a sense of pride in knowing that their experience and desire to improve a process is valued by management.

The plan to grow a lean culture can be made simple by drawing attention to recent successes. Begin by communicating to all employees via company newsletter, bulletin board postings, emails, etc., the lean team's (or lean teams) project selection, its current progress, and its accomplishments to date. The members of the lean team soon begin to spread the benefits of their efforts to other employees, whose interest in becoming a problem solver and a difference maker is envisioned.

Offer opportunities for more employees to participate in lean projects and for current team members to be trained as facilitators. Include members of management, both mid level and upper level, to this system of progression in the lean culture.

Continuous improvement is pursuing perfection. And while perfection may never be fully attained, a lean culture with engaged employees realizes that a lean culture delivers value to the customer and self-satisfaction for the employee who added to that value.

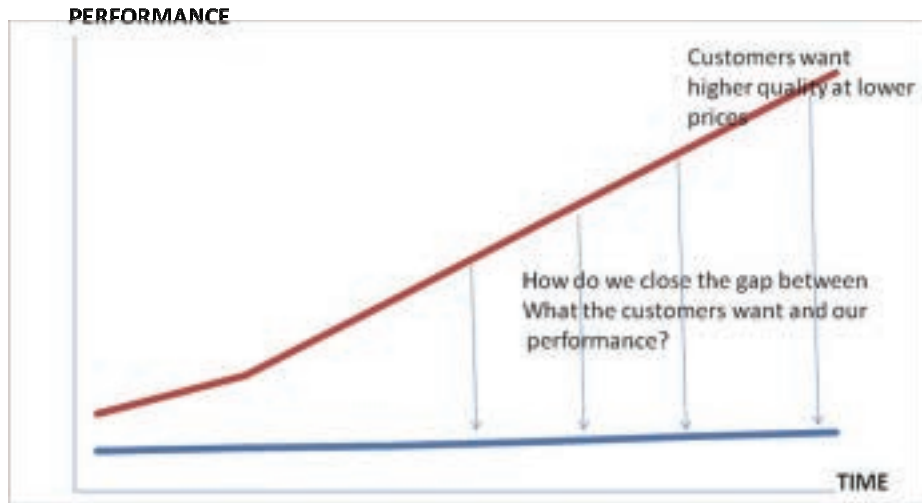
Lean is a continuous journey; embrace it!

Managing lean growth

The transportation industry is motivated by the needs of their customers. It has been this way for many years and will likely continue to go on in this manner for many years from now. Economic trends will have an effect on both parties, but in the end, the customer will set the pace for the industry. It will be up to the carrier to be in physical and financial shape to answer the call of the customer and respond in ways that will prove their credibility and consistency.

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The hope is that the carrier soon realizes that this gap is widening and can make adjustments to their operation that will be of value to their customer. This can be accomplished by a lean transformation of management and methods that can:

- Analyze the core value creating process
- Address customer current needs
- Determine how to create more value, and
- Maintain current utilization of resources.

Only the customer can define value. This is generally the quality of the product or service delivered and not the methodology with which it is generated.

Adding costs without adding value becomes a wasteful exercise practiced by poor management. A successful business becomes competitive by lowering their costs through a reduction of wasteful practices which in turn, improves quality thereby offering a greater value to their customers.

Identifying waste in your transportation operation

In a “lean” environment, waste is defined as activity that does not add value to a product or service. Some of these “non-valued” activities in a transportation operation can include:

- Waiting
- Staging
- Checking
- Recording

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- **Defects.** Activities that were not completed properly the first time and must be handled again. Examples are billing errors, improper handling and signing of bills of lading, incomplete training, and equipment problems. Is the work you receive free of defects when it comes to you?
- **Unused Human Talent.** Position employees where their efforts have the greatest effect on the operation. Are there employees who handle a lot of unnecessary paperwork? Are there employees who may be skilled in tasks that they don't perform regularly?
- **Waiting Time.** Do you wait for someone to finish their job before you can start your job? How much time is spent waiting at a customer's dock? How much of this wasted time is caused by the customer? Can we discuss this with the customer and make other arrangements? Is our operation reacting by dispatching too soon causing an overproduction waste?
- **Inventory.** Do we have too many loads waiting for loading or unloading at customer docks or on our own premises? Is there too much paperwork piling up in the office that is waiting to be worked? Unbalanced workload, unlevelled scheduling, poor market forecast, equipment and materials that haven't been used in 30, 90, or 180 days?
- **Transportation.** Do we unnecessarily move freight from one location to another to finish a task? How often is freight handled that never needs to be? Do we have small or inefficient work areas that cause waste?
- **Processing waste.** Do we have to do tasks that don't add value to tasks we are purposed to do? Examples are: fueling twice a day, handling and re-handling freight, generating information that is of little or no value.

These are self-assessment questions that must be asked and answered among the "lean team." They are not meant to be inclusive of all transport operations, however, they should direct your efforts to items and situations that are direct causes of costly waste.

Selecting a lean project

As a Fleet Manager, you likely have a good grip on where a process could be improved. It can be anywhere in the office, in the maintenance shop, within the operation, and even the process to recruit and hire drivers. To help you decide whether a particular process is a good candidate as a Lean project, determine if it meets the following criteria:

- It consumes too many resources or fails to meet the company's objective
- Its improvement is important to leadership

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carrier's assets. Total elimination of the waste may be the ultimate goal, but even a noteworthy reduction in waste can be considered a victory for the Lean Team.

Take a waste walk of your selected project. Record the duplications in the process, the wasted motion, the unused inventory, and all other procedures that fail to add value and cause a waste of resources.



Value stream mapping

Here is where the “Lean Team” can showcase their expertise in identifying waste. Value stream mapping can uncover as much as 99% of waste in a process. It is for that reason that this exercise is utilized by most all Lean Teams to uncover the defects in a process.

Value stream mapping is a visual aid that shows a step-by-step procedure of how a process operates in its current state. It must have distinctive beginning and ending points and link a flow of inputs and outputs throughout the exercise. Through this flow of information, each step can be categorized as “Value-added, Cost-added, or Waste.” It can also be beneficial to measure the costs in each step as the goal of eliminating waste can easily be recognized by a cost figure.

Anytime the process is interrupted by an event, common or uncommon to the process, those steps must also be charted and be made a part of the entire process.

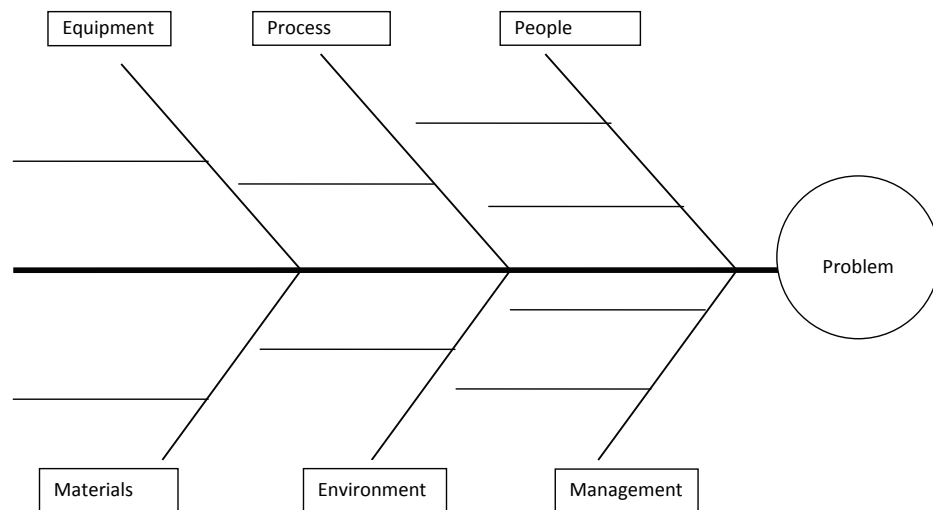
Through this exercise, brainstorming and ideas begin to highlight problems and defects until the entire process is mapped out. What may have been at one time an accepted practice may now be exposed as a costly

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To gain a better understanding of who, what, how, when, and why we didn't attain our goal, we use a visual aid called the Ishikawa diagram, more commonly known as the fishbone diagram. The fishbone diagram is often used in brainstorming meetings by a group of employees charged with the task of implementing "lean principles" to improve and add value to a product or a service offered to customers.

The fishbone diagram is a "cause and effect" exercise that begins by stating a specific problem or defect. A list of causes that lead to this defect is created so that a clear plan can be formed to eliminate the cause(s) of the defect and thereby improve the final result. First, let's look at the basics of a fishbone diagram.

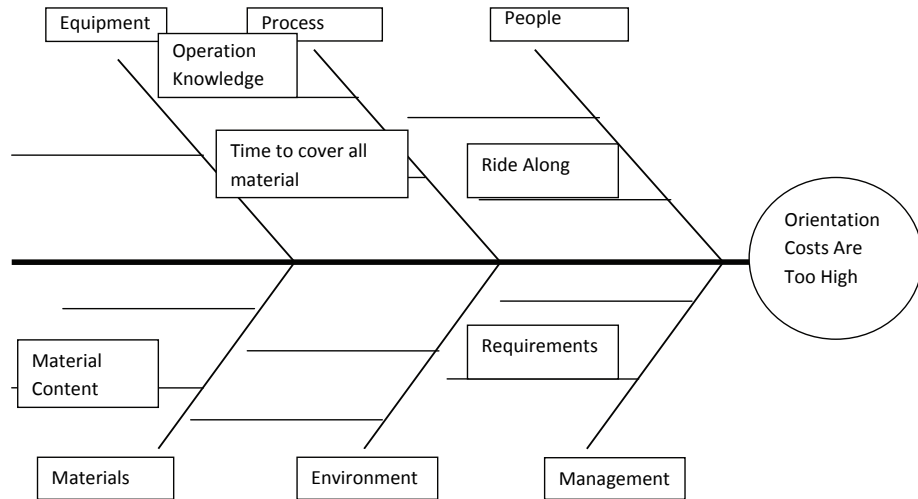


The categories "Equipment, Process, People, Materials, Environment, and Management" are generic categories used by many companies, mainly in the manufacturing sector. However, they are very effective in the transportation industry as well and provide the lean team with a list of possible causes to the problem. Some companies in the service industry may use categories such as "Product, Price, Place/Plant, Promotion, People (e.g., cashier), Process, Physical Evidence, and Productivity & Quality." The titles of these categories are best labeled when they relate to a specific type of business. There is no limit on the number of categories to be listed.

Once the problem is stated, the next step is for the facilitator to ask the question, "Why does this happen?" Each response given by the lean team is placed into one or more of the related categories. Some responses may become sub-reasons branching off an earlier response and should be listed in that manner. Continue to draw out as many "bones" as needed to list all the reasons offered by the team. The facilitator should also continue to ask the "why" question after each reason is given to "drill" down to the root of the problem until the group is satisfied that all reasons have been identified.

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In time, the fishbone diagram begins to list all the causes, by specific categories, which lead to the high cost of orientation. It may appear that further investigations in each category may be necessary; however, it now becomes a priority for the lean team to reach a consensus on the root cause of this high cost so that an action plan can be formulated to rectify the problem. It may be difficult to arrive at one root cause as there may be more than one. That being the case, an action plan must be drawn up on each of the possible causes.

As mentioned above, the fishbone diagram is a brainstorming exercise to uncover the root of a problem. And as we also know, problems or defects in a system usually have a cost, which adds to the waste within the system. A lean process eliminates wasteful practices, lowers the costs, and adds value to the end product.

Charting your course

The transportation industry, like all other industries, faces their fair share of defects due to processes in need of a makeover. These processes are easier identified when the 80/20 rule is analyzed and applied to most any given situation. For example:

- 80% of total revenue is generated by 20% of our customers
- 80% of equipment breakdown comes from 20% of the total fleet
- 80% of schedule delays arise from 20% of possible causes
- 80% of customer complaints arise from 20% of the services we offer

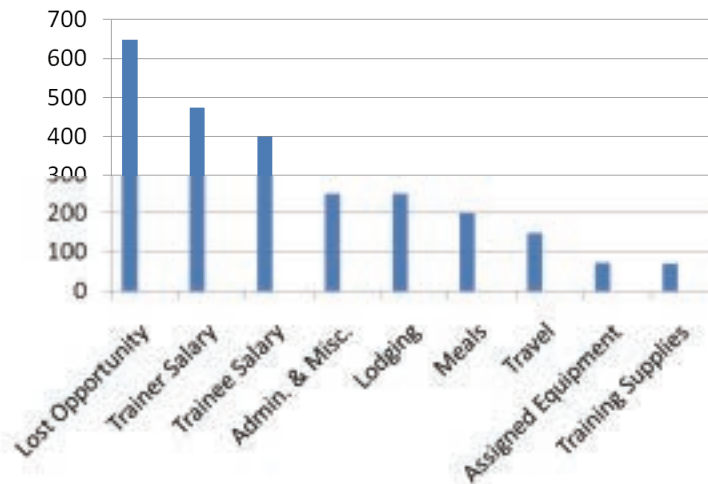
We know how costs can limit the amount of success we attempt to achieve. But rather than simply blaming our lack of success on costs itself, we must study the process that creates the cost and then begin to understand what the reasons are for the current state of this process.

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Satisfied that all known costs had been identified, the Lean Team next converted these figures to a Pareto chart where they could establish their priorities and then begin to focus on the most critical issue that's causing the problem. This is how their Pareto chart looked:

Cost of 3 Day Orientation & Training per Driver



Analyze the results

The “Lost Opportunity” category clearly showed a higher cost when compared to all the other costs associated with the orientation and training process. In fact, most all the remaining costs were “fixed” costs or costs which could only offer small adjustments mainly through negotiations with hotel and restaurant vendors. However, “Lost Opportunity” offered itself as the main topic of discussion for the Lean Team.

Defining “Lost Opportunity” and how the cost figure was determined caused more than a few “why” questions. The questions steered the group into a deeper and more analytical understanding of the problem, as shown below.

- What does “Lost Opportunity” mean?
- Are you talking about the business never handled while the new employee is being trained?
- Does this refer to the driver who left us creating the opening and the business we could have secured?
- How can we lose something we never had?
- Does “Lost Opportunity” belong as a cost associated with this process?

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- **Utilize your metrics to measure your results.** You must be able to compare new results against old standards.
- **Establish a goal.** Decide what level of improvement you want to attain.

Once these criteria have been established, the lean team can go about creating the Future State Value Stream Map. Again, it is important to start at the same point as the current map established. Illustrate this image and map it out the same way you created the current process with value stream mapping. Only now, you will be creating a future state with waste removed and a process created. From that point, the team can design a new process by making use of the tools and the information gathered so far. Take the process step by step all the way to the same ending point, making note of the time or dollars (or both) saved through the purging of the wasteful practices.

Finally, estimate the results of your project. Decide what level of improvement you expect to achieve in terms of dollars saved, percent increased/decreased, first pass yield, etc. You will also have to determine what changes in resource requirements will be needed to achieve these results, such as training costs or equipment costs.

Communicate success through metrics

As a lean project begins to unfold, a story is developing about a process that has been identified as a costly waste of assets which adds little or no value for the customer. This process is assuredly the culprit which currently denies the company of greater profits and is one that is in need of a makeover. The “Lean Team” proved the process’s weakness and wasteful attributes when they created a “Current State” visual map. This map detailed each step within the process along with all the variables that contribute to this wasteful practice.

When the “Current State” map was completed, another map was created outlining the steps that could be saved by improving the process. This was termed the “Future State” map and was agreed upon by all team members as a fresh, new process that is without wasteful practices and duplicity. This map tells the story of how the process could be performing and will become the blueprint from which the new process will be implemented.

Before the new process is implemented, the “Lean Team” must measure the effects of the current process against the predictive effects of the future process. They will do this by communicating through metrics.

Metrics are used in the lean environment as a method to keep score. It is a language team members use to clearly describe the current process through numbers, which will also be used to represent progress in the future process as they look forward. What makes it even better; they can continue to update the scoreboard as they produce the new process. Upon completion of the “Future State” map, the metrics are totaled and compared to the “Current State” numbers for confirmation of true analysis.

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Keeping score

Lean metrics is a recording of time (or in some instances, dollars) to complete each step of a process from the very beginning to the absolute end. This time is dissected in various forms to accurately depict the type or categories of time used. Most common categories are:

- Cycle Time/Process Time
- Lead Time
- Touch Time
- Wait Time
- First Pass Yield (FPY) or Percent Complete & Accurate (%CA)

Often times, it is necessary to record more than one category of time used in order to analyze the entire process. As an example, step #1 in a process (current or future state) is identified and posted on the value stream map. Before step #2 is identified, the team must record the amount of time used to complete step #1. This step may involve time spent waiting and the total touch time (the physical handling of the item in the process). Both times should be recorded separately and posted to the right of step#1. Once the team is satisfied that step #1 is complete with all times accurately recorded, a determination of FPY or %CA must also be recorded. This information tells the team exactly how much of the step in this process is completed, or close to being completed, before moving on to the next step. This figure may or may not be 100% as outside circumstances may have an influence on the process. Nonetheless, this % figure should also be posted below the step on the value stream map as the team will be reviewing these times and percentages when all steps are completed.

It is important to record all times in the same form; i.e., all times are in minutes or all times are in hours, possibly even all times are in days. Whatever form of time is chosen, keep that same time constant throughout the entire process. If in minutes, record 1 hour and 10 minutes as “70” minutes. Recording time uniformly will be of great benefit when totaling these numbers at the end of the exercise!

When all the steps of the process have been assigned a time and a percent of completion, it becomes the team’s task to total all categories of time and post these times to the right of the final step in the process. For instance, your totals may show:

- 248 minutes of wait time, and
- 136 minutes of touch time.

To total the FPY or %CA, convert the percent figure to decimals and then multiply each decimal by the next decimal in each step to get the final percent figure. An example would be:

- $1.00\% \times 1.00\% \times 1.00\% \times .85\% \times .90\% = .765\%$.

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At this point, the team now has a total time and total percent complete for the entire process. These numbers could also be converted to a dollar investment in the process to obtain a total cost figure.

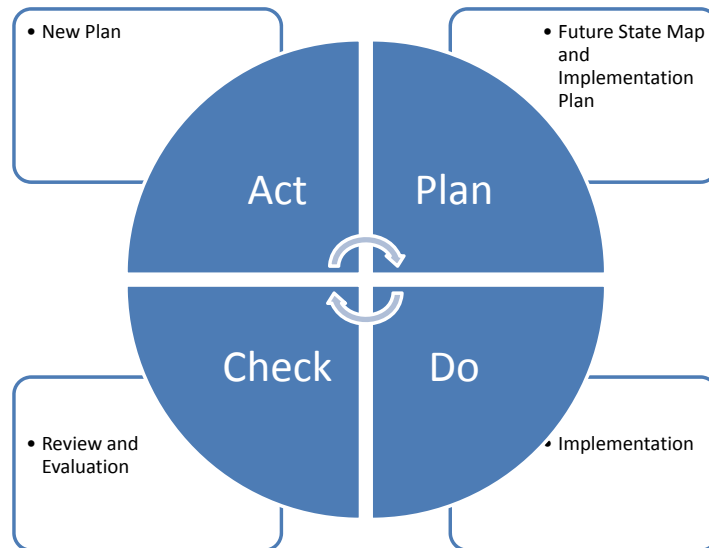
When these metrics are extended through a “current state” process and then compared to the predictive metrics that a “future state” process would produce, the cost saving can be used to justify a change in the process.

The message that lean metrics communicates to management is now completely understandable by all parties within the company and can clearly demonstrate the success of the “Lean Team!”

Manage the Plan

The team has already started to manage the process by grasping the current situation with the Current State Value Stream Map. The Future State Map begins the implementation process using the PDCA Cycle, described below, as your guide:

- **Plan** - Future State Value Stream Map and implementation plan
- **Do** - Take the action steps to put the plan in motion
- **Check** - Review the new process and begin to record new data on successes and failures
- **Act** - Make decisions and modify the plan where needed



It is important to record the results of the new process and make adjustments where necessary. It is through this process that the lean team learns how to manage the plan and is able to communicate the benefits by proving that the waste has been taken out of the old process and value has been added to the product with the new process.

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Every trucking and bus operation has opportunities to apply the lean process and eliminate costly waste from their processes. Whether it is the manner in which your company handles hazardous materials, completes your billing process, manages your claims, or even recruiting and hiring drivers, all these activities present opportunities for the lean process.

Notes

Leading Lean Events

Leading a lean event involves more than one person directing the efforts of a select group. Usually, a lean event involves a number of leaders within the company who have a desire to achieve excellence and are willing to change. These leaders focus on encouraging the whole organization to be willing to embrace the idea of change so that continuous improvement will be the culture within the organization.

The size of the company will define the roles each leader plays in creating the support structure of a lean organization. In the broad-spectrum, the roles and their responsibilities are listed as follows:

Roles

- Executive Leadership
- Steering Team
- Sponsor/Champion
- Team Leaders/Facilitators
- Project Team Members

Responsibilities

- General Implementation
- Specific Implementation
- General Execution of Projects
- Specific Execution of Projects
- Specific Execution of Projects

While Executive Leadership provides the support for lean achievements, and the Steering Team leads the organizational change effort, it is the Team Leaders/Facilitators and Project Team Members who work with the lean tools to improve a process and communicate with their Sponsor/Champion on their project's current status and eventual accomplishments.

The Team Leader, or Facilitator, plays a major role in the lean process. The primary purposes of the Facilitator are to serve as a visible leader, ensure a process focus for team members, and produce a detailed project plan that will lead the team to its goals. The Facilitator also encourages the team members to make informed analyses that are based on data collection rather than "gut feelings."

One of the initial steps in the lean process occurs before the actual process begins. That is the selection of the team members. On most occasions, the Sponsor, or Champion, will contact the Facilitator and discuss the need for a lean event. This need stems from the leadership's dissatisfaction with a result. The team that will be charged with analyzing the current process must be made up of those who work with the current process and can contribute factual input.

Even after the team has been established and the process is underway, the Facilitator must be aware of the possible need to add informed employees to the team to ensure the entire project is well represented by those

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who contribute to the process. This need to expand the team will be made obvious as the project evolves.

Formulating the Project Plan

A lean event usually encompasses more than just one or two meetings. On many occasions, the event will last four to five meetings and may fill as many days. As this may seem as a huge investment in time and lost productivity for the team members involved, it is necessary for the Facilitator to have a well planned agenda that includes meeting objectives and guidelines. This will also serves as a roadmap for the Facilitator to communicate with the Champion and any other leader who may inquire on the current status and progress of the event.

The following outline can serve as a plan to lead a lean event and to chart the team's progress:

Meeting #1

- Begin with a kickoff meeting — overview of the project.
- Team Leader reviews the event's aims, boundaries, and metrics.
- Review the meeting's agenda with the team.
- Create ground rules with the team.
- Review data/metrics with the team.
- Lead the team in the use of tools to identify waste.
 - Conduct a “waste walk” and obtain relevant timings.
 - Create a “current state” map.
- Develop list for accomplishments and lessons learned.
- Meet with Champion to review the progress of Meeting # 1 and the plan for Meeting #2.

Meeting #2

- Review comments and reflections from team members on Meeting #1.
- Review the Meeting #2 agenda.
- Create a “future state” map.
 - Use lean tools to develop and evaluate future state
 - Use root cause analysis to identify problems.
 - Use data analysis to identify issues
- Develop action plan(s) to perform “future state” trials.

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carriers have for drivers, as opportunities now exist to grow their business and recover recent losses.

The process by which drivers are recruited, their driving history and background investigated, the drug and road testing requirements that must be accurately completed, and ultimately become hired and trained, can often be measured in terms of weeks and may even exceed a month. While the effort to complete the hiring task can be extensive, and also costly in many circumstances, the quality of the end product has not been improved. In other words, some of the requirements are overlooked or incomplete when reviewing the contents of a driver qualification file.

Simply stated, the entire recruiting-to-hiring process takes too long. Once a good candidate is identified, the pressure is on to get the applicant processed and hired before another carrier intercepts and lures the candidate away. Another factor in this problem is that a motor carrier will spend too many of its resources on applicants who turn out to be the wrong candidate for the driving job. In their haste to get a driver behind the wheel, the carrier will settle on an applicant whose driving record is suspect, or even incomplete. Yet, the position must be filled.

The root of the problem lies in the carrier's hiring policies and in the process. In fact, when analyzed, it is likely to become clearly apparent that the carrier's hiring process is full of gaps that cause waste in terms of time waiting, duplication of work, defects, inventory, transportation, and over-production! How can over-production be a part of this problem when we all agree that there are not enough drivers to fill the needs of the industry? Our breakdown of this process will prove that this waste is real, as are the others.

Symptoms of a bigger problem

When no standardization of a process exists, everything and everyone becomes eligible. The motor carrier will find themselves wading through countless applications searching for something that doesn't exist. Why doesn't it exist? Because they have no guidelines or standards that tell them what they are to look for! They are only turning pages of paper hoping something will jump out at them and spur them on to thinking they may have found a candidate.

When a driver qualification policy is established, the parameters are then set in defining the minimum level of criteria a transportation company requires to perform this driving task. Hiring a candidate falling short of these standards can put the motor carrier at a higher risk of not meeting their needs. A driver qualification policy can ensure a consistent level of quality that either meets or exceeds the minimum driver requirements established by the Federal Motor Carrier Safety Regulations.

Once this policy is established, the screening process of driver applicants can be accomplished with greater efficiency and measured not only by the touch time it consumes to screen each application, but also by the percent accurate and complete (a/c) in this part of the process.

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If this criteria for identifying the best candidate for the job is adhered to by those who are screening the applicants, there should be no need for others (Safety Managers, Operation Managers, etc.) to review the same information. That reviewing process causes waste in the form of waiting (for approval), duplication of work, and over-production! The time spent by others in performing these wasteful practices adds to the cost of hiring without adding value to the process.

Embedded in the problem

Now that the driver applicant is proven to be fully qualified for employment, one of two choices must immediately be set in motion:

- The applicant enters the hiring process; or
- The applicant is put into inventory awaiting an opportunity to enter the hiring process (this can lead to waste unless it is managed closely by the carrier, or personal reasons owned by the applicant delays the hiring process).

In either case, a standardized work flow must be established to minimize the waste in the hiring process. More often than not, this is where the Value Stream Mapping exercise will expose the defects in the current process and assist in creating a standardized work flow, or improving the work flow currently in place. A key element of a Value Stream Mapping exercise is to identify the starting point of the process. Does the hiring process begin when the application is first received by the motor carrier, or does it begin once the applicant has been qualified as a viable candidate for employment? This question must be answered by the individual carrier as each company is different in this aspect.

Once the starting point of the hiring process is determined and the steps within the process unfold, it soon becomes evident where the opportunities lie to improve the process. A step-by-step display of the current hiring process can uncover as much as 99% of waste within the hiring process and will identify exactly why the current hiring process consumes as much time and resources as it does. Examples of waste in the process will be:

- How much time is wasted between each step
- How much of the process is duplicated
- How much of the process is over-produced
- How much time and what is the cost of the process from starting point to finish

The next step is to develop a future state where the desired steps in the new process are of value (MVR results, drug test results, pre-employment screening process results, etc.) and can be accomplished with first pass results. Measuring the time saved between the two processes along with the percent “accurate and complete” supports the need for a standardized work flow.

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| **Plan, do, check, act**

The solution approach to this problem is for the carrier to identify exactly what has to be done to get from where the hiring process is today, to where the carrier wants the process to be. Some of the challenges in this solution can be accomplished by simply changing steps within the process immediately by means of a “just do it!” methodology. Other steps will take a certain amount of re-adjusting, or re-focusing on matters of greater importance. These matters may involve assigning tasks to confirm findings that will support the change. Once these tasks are complete, the new process can be put in motion and then monitored for the desired results.

Many results typically reveal a 50% reduction in waste and steps when the new process is activated. In some instances, the reductions may be less. However, the goal is to improve the current hiring process so that the process itself can react in a timely fashion to the motor carrier’s needs, and at the same time, drastically reduce or eliminate costly waste within the process. This will include all the steps required for the carrier to be compliant with the FMCSA’s hiring regulations along with producing a complete driver qualification file on the first pass through.

The problem may be considered solved when the metrics showing the new process time versus the old process time confirms that the new hiring process has significantly reduced the costly wastes that fail to add any value to the final product. Future adjustments to this process may be necessary to further improve the hiring process and the quality of the product.

| **Spotting trailers and detention time**

Unfortunately, many of us in the transportation industry have long accepted traditional processes that waste time, making the possibility of achieving the desired result even more challenging. Not only is time being wasted in these outdated practices, so also is the productive use of assets and the opportunity to earn further revenue. This is where the use of lean principles can identify the true wastes within a process. Waste exists in most all processes causing costs to escalate while adding no value to the end product.

Wasting company profits and adding to operational expenses makes no sense whatsoever. Today’s trucking companies must evaluate ineffective company policies and unnecessary practices and focus on opportunities that improve the company’s bottom line. Many will argue that this has always been the objective, and that it is management’s job to see that the bottom line is protected. That is why there are goals pertaining to load averages, costs per mile, and many other methods of measurement.

While some of these metrics may still be of value in assessing operational competence, it may be of greater importance to measure how much potential profit was spent to complete a task and how it relates to the company’s bottom line.

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Wasting time

Probably the leading waste in any motor carrier's operation is the time at the customer's location waiting to be loaded or unloaded. While much of this can be attributed to the customer's expectations of the carrier's service along with the possibility of inadequate manpower at their own facility, the carrier is at the mercy of the customer until the load is secured.

Even though the customer may have a shared interest in the motor carrier's capacity concerns, driver shortage, and hours-of-service issues, it is safe to say that they have no interest whatsoever in the carrier's inefficiencies and wasteful practices. They have their own costs to manage along with a need for reliable transportation services. They too are concerned about time, but theirs is one that affects production costs, market trends, and future sales opportunities.

The carrier, in most circumstances, has the "detention" charge option to add to the freight charges if the loading/unloading process is delayed beyond a specified amount of time. While this may put a strain on the relationship between the carrier and the customer, it may become a necessity even though it doesn't solve the waste of time problem nor does it raise production figures. A detention charge offsets the carrier's costs to some degree but it doesn't always make up time for losing an opportunity to handle other freight that may not be as cost prohibitive.

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Saving time or wasting assets?

Dropping the trailer at the customer's facility is a widely used option providing that the customer has the space, the equipment to move the trailer in and out of the dock, and can be reliable in the sense that they will not tie up the trailer longer than necessary. However, the carrier has now created another wasteful practice by means of over processing. An asset, in this case the carrier's trailer, is tied up for a period of time until the carrier can get a driver back to the customer's facility and return the equipment to a state of effectiveness. The waste caused by over processing increases substantially if the carrier has a pool of trailers spotted at the customer's facility or at a number of different customers' facilities awaiting availability.

Drivers and dispatchers love drop and hook situations which, in the past, have proven to increase the utilization of drivers and equipment. However, the company pays thousands of dollars to have their assets tied up for this option, and often for the convenience of the operation or the customer.

Imagine the revenue that asset could have earned the company had it not been dropped at the customer's facility but kept in circulation. Imagine the cost to dispatch the driver to a facility where another trailer was made available so the driver could be on his or her way with another load. Imagine the escalated maintenance costs to the carrier when it is discovered that the trailer dropped at the customer's facility has a flat tire, or the lights are not operating, or the doors do not open and close properly. The carrier would bear an expense to repair these defects even if they were discovered at the carrier's own facility. However, now either the cost to travel to make these repairs or the cost to hire someone to make the repairs must be added on and could very well lead to a further waste of company profits.

The cost of doing business?

This is an example of what has been an acceptable practice throughout the transportation industry for quite some time. It is also an example of operational inefficiency either demanded by the customer as part of a negotiated package, or as a request by the carrier in their attempt to lower their costs. Many would write this off as the cost of doing business. They would say that it is cheaper to drop trailers at the customer facility rather than tie up drivers and equipment for long periods of time. How do they know this to be a fact? When was the last time these cost factors were measured? Most importantly, what is the root cause of the delay at the customer's facility?

Change has to happen. Doing things just because "This is the way we have always done it. We have to do it this way!" is a blaring indicator that a waste of profits exists. Eliminating waste begins with educating the customer and getting them involved in a partnership that will benefit both parties. The risk may be a downturn in the total revenue the carrier does with the customer. But the overall result will be a stronger profit margin for the carrier and possibly a savings for the customer as

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well. Imagine the customer's surprise upon learning that the best rate they can get is through helping the carrier eliminate waste.

Challenging traditional processes renders the real cost of doing business and exposes the wastes that are prevalent throughout any process. Applying lean principles to what has been accepted in the past as the way to do business will take the lean managed carrier to profitable levels never before thought to be possible!

Evidenced based decision making

When something is identified as an obstacle to the carrier's capabilities, facts must be gathered as evidence that the root of the problem has been found. Decisions can best be made only when facts are presented. The error made by many managers is that they fail to recognize what is fact and what isn't.

Managers often assume that what has worked in the past, and what others are doing today, is the norm for the industry. Instead of gathering evidence that produces facts, they choose to make decisions on matters that are based on assumptions, advice, and their own experiences. This approach to decision making can cause more harm than good. There is nothing wrong with getting advice from others who may have faced similar circumstances. However, before acting on "gut feelings" and "this is how we've always done it," managers need to sort out how much is fact, and how much has no relevance to the current situation.

Gathering facts can be a bigger experience than simply making a decision. If done right, having the facts will make the decision making process very easy. The temptation for managers is to accept data that does not support fact. This can make the task even more challenging, as many times managers must create their own research and design the gathering process to produce data that will inform them — not give them only what they want see.

Of course, another result could come from a fact-finding exercise. That would be when the facts being presented are disregarded or denied by a higher level of management. While this may be unsettling for some members of the "pecking order," it certainly is not an unusual event. This makes it all the more important to get the facts right before marching on with preconceived ideas.

Assumptions are the biggest habit to break. Take the following statement as an example:

"Can the business sustain itself on the path it is currently following?"

A quick response from many managers would be "Yes, of course it can. It has for quite some time now." If long range planning was the basis for posing this question, would the response to this question seem credible? How does this manager know for sure that the business can continue in its same format for an undetermined length of time? The manager assumes that the status quo is a successful model and that it will continue to support them in the long term.

This may be the truth, but how does anyone know this to be a fact without the company measuring its strengths and weakness against its own goals and capabilities? Just because a strategy has worked in the

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past, is not a certainty that the same strategy will continue to thrive well into the future. Too many variables can alter the composition of the environment

Gathering data for evidence-based decision making

Gathering the data, and then interpreting this data for facts, not half-truths and assumptions, is necessary for evidence-based decision making. It begins with an operational definition that is clear, easy to understand, and detailed so that the problem, issue, or measurement can ensure consistency in standard work flows.

- How many customers do we serve?
- How many defects or failures occur?
- How do our costs compare to last year's costs?

This begins to form the business case that will identify the gap between performance and expectations. The next step is to plan on how to gather data in a manner that will be consistent and accurate. Measuring devices that will be used, the frequency of measurement, and the time involved between each step of the process will all form the data upon which further decisions can be made. At this point, it becomes possible to compare this data to what is reasonable based on customer needs. How big is the gap?

This data can further be analyzed to determine the root cause of the problem by asking "why" or using a "Cause-and-Effect (Fishbone) Diagram" to list a matrix that can be used to rank tasks based on characteristics known.

The point to all this is, for managers to be effective in their position and lead the company to financial progress and stability, they must base their decisions on knowledge and facts, not on old and tired ideologies. The journey of continuous improvement is being able to recognize facts and then use them in the evidenced based decision making process.

Applying lean principles to driver vehicle inspection report

Is it possible that "lean principles" practiced widely in modern manufacturing can be applied to the task of driver vehicle inspections? And if so, what could management of transportation companies expect in terms of efficiency, cost reduction, and avoiding unexpected delays?

Unlike manufacturing, driving a commercial motor vehicle (CMV) is not as repetitive as some may think. The driver of a CMV has specific tasks to complete that go beyond the basic task of driving. The task of efficiently inspecting a CMV for example, relies on the knowledge the driver has of how the vehicle performed today and how that performance compares to yesterday. The driver communicates this knowledge through the vehicle inspection process, which speaks directly to the lean concept of "providing a path to the elimination of waste."

By making waste visible through the identification of defects on the DVIR (driver vehicle inspection report), lean production principles are activated and come alive with processes and systems. This process can

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REVENUE

Growing Revenue

Traditional revenue streams

Today's business climate has certainly made it even more difficult than before for sales to get their message out to the shipping public. Customers have made it clear; they do not have the time to listen to sales pitches and reasons why they should ship their product with a carrier they do not know...let alone trust! The relationship a carrier develops with a customer nowadays is likely the main reason why the carrier has their business at all! And if the carrier values this business, maintaining this relationship should be a priority even to the extent of upper management (CEO included) personally thanking the customer for their business.

Many customers select their carriers based on their relationships and past performances with their preferred group of carriers. This makes it even more difficult for a carrier not on this "list" to get a chance to prove themselves. However, sometimes just making the "list" doesn't guarantee the carrier a portion of the customer's business. In either case, the carrier's success in growing their revenue depends on growing their relationship with the customer.

To begin to accomplish this task, management must develop a strategy that clearly defines the expectations of the sales team. To grow revenue, they must start with the basics:

Does Sales have full knowledge of the operation? Not having more than just a basic understanding of what goes on at the home office impedes the expected results. "Hands on" operational experience is a valuable tool that the salesperson can use when communicating with the customer. This experience can become impressive to the customer when evaluating the competence of the company and the salesperson. Relationships are built on confidence.

How will Operations keep Sales updated on needs and changes? Once Operations discovers a need which will help balance or improve their service to their customers, Sales must be informed so that they may research the options available to them and begin to form further strategies through their relationships with their customers. The same is true for any changes that could adversely affect the customer

When a customer agrees to do business with a carrier, the customer also agrees to pay a fee for these services. If the customer realizes an unexpected benefit for this same fee, a "value-added service" becomes an asset for the customer and ultimately benefits the carrier as well. If the customer receives less than the agreed-upon level of service due to changes in the operation that was either unannounced or unperceived in some fashion, the customer is likely to have second thoughts about their decision in rewarding this business to the carrier.

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This is why Operations and Sales must work hand-in-hand and communicate to maximize the potential for revenue growth.

What information should our Sales force gather on our customers? In our effort to grow revenue by growing our relationships with customers, the sales reps must have tools that will enable them to gather and store data and information on current customers and prospective clients. This would include not only the current level of business but also the potential level that the carrier could realistically handle. These tools should also contain any objections and obstacles that prevent the carrier from engaging in this business. Knowing these things are the only way a carrier can make any adjustments that are necessary to remain competitive in the market.

It should be understood that the most important factor in growing revenue for the carrier is the support management can give to its sales team. If the sales reps know their expectations, have the knowledge, communicate regularly with operations, and possess the tools that enable them to make good business decisions, management should have the confidence in them to negotiate what is right for the company in order to grow revenue. This doesn't mean that the pricing department needs to be eliminated; rather, this means if the customer feels that they can deal directly with the sales rep to get their desired results, even if they have to give up something to gain another, the customer will also sense a relationship that usually raises the level of revenue.

Creating competitive advantages by growing relationships will lead to growing your revenue.

Accessorial Charges

Accessorial charges are charges related to the customer's use of the vehicle and the driver for non-transport related work. Examples include:

- Load and unloading charges.
- Detention charges.
- Driver assistance charges.
- Reconsignment charges.
- Trailer storage or trailer pooling charges.
- Trailer spotting charges.

The key with accessorial charges is they must be agreed to in writing, and in advance. This may be done as part of the bidding or contract agreement, or part of your standard tariff or rate sheet provided to non-contracted customers in advance of services.

There are times when sacrificing accessorial revenue can actually improve long term revenue. An example would be allowing drivers to spot trailers at a customer for no charge to provide faster trailer turn times at the

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customer. A word of caution; a company needs to look at the costs involved with this type of action to help determine if it is feasible to do this without charging the customer. Related costs would include fuel and vehicle use as well as driver time and pay.



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Non-traditional revenue streams

Generating non-traditional revenue streams involves using the carrier's assets to generate revenue in ways other than transporting cargo or passengers for customers. An in-depth utilization analysis can help determine if all assets are being used to full capacity or if there might be opportunities for additional revenue.

Billing service. Using your billing department to bill for other carriers. If the carrier has billing over capacity, the carrier could recruit smaller carriers that do not need full time billing personnel, but have someone who does their billing once or twice a week. The smaller company would send the completed bills of lading or manifests to the other carrier and the larger carrier would send out the billing with the other carrier's payment information. This could be done on a monthly fee basis or on a per-piece basis.

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For-hire shop. Using excess capacity in the maintenance shop is another non-traditional revenue source for carriers. This can also eliminate the problem of providing enough maintenance personnel to cover surge periods, and then not having enough work for the technicians during other times.



One trick when developing a for-hire shop is to keep the outside work structured so it does not conflict with the carrier's maintenance needs. Carriers should not leave their vehicles unserviced due to demand by outside customers. If the carrier surge period is on Friday, any outside customers should be told that the shop will not be doing any outside work on Fridays.

Safety services. Allowing the fleet safety department to hire out their services to other carriers that do not have their own safety support staff. Establishing and maintaining driver files, maintenance of an accident register and the accompanying accident files, mock auditing, hours-of-service auditing, and establishing and maintaining maintenance files are all examples of safety support functions that a carrier could provide to other carriers.

Driver training. Using the fleet's training capacity to train drivers on a cash basis, rather than only training drivers for the fleet is another possible revenue stream. Providing your training personnel to another carrier for special projects (driver meetings, trainer reviews, etc.) is another possibility.

Brokerage and Third Party Logistics (3PL) services. Later in this manual we will discuss creating a brokerage as a method of increasing capacity. A brokerage is also a method of increasing revenue.

This is a very attractive path for carriers that have a large customer who is just too big for the carrier's capacity. Creating a brokerage can allow the carrier to increase the volume out of the customer, and therefore the revenue, without needing to add capacity.

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seen as a sound business investment in many areas, depending on the availability and square foot price in an area. Providing warehousing to customers can also provide a carrier with a competitive advantage. “We’ll get it off your dock for now, we’ll warehouse it for you, and you can tell us later where you want it delivered” can be a good service combination.

Transferring loads (to the other carrier’s or your vehicle) and reloading loads are related services a carrier that operates a warehouse can offer to other carriers.

How to do it? In some cases, it is best to separate the service operation from the carrier, and allow it to function independently. This creates a situation where the service is independent, with the carrier as the single largest customer of the service. This can simplify management of the service operation. It can also provide a better picture of the profitability of the service operation.

Another approach would be to operate the service as a division of the main company, and maintain full management control over it. This can be advantageous if the service company will need to be responsive to the carrier first, and other customers second, or the operation of the service is integral to the carrier’s operations.

The carrier may be liable in either case if the service operation is not correctly credentialed or commits errors or omissions when conducting business with other customers. This is a risk that any company, including the carrier, takes every day in business. The key is to make sure the service operation, whether operated as a division or an independent company, is fully credentialed, has the proper insurance, and has the required expertise.



Compliance Issue

If operating a department as a separate service, be sure it complies with all business and zoning regulations. The carrier may be in compliance with the state and local regulations as a carrier, but the separate service may not be in compliance without additional credentialing.

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Workplace Action

Once Operations discovers a need which will help balance or improve their service to their customers, Sales must be informed so that they may research the options available to them and begin to form further strategies through their relationships with their customers. The same is true for any changes that could adversely affect the customer.

Private carrier revenue determinations

In the case of a private carrier, it can be hard to see revenue. The company may view the fleet as only an expense. While this is true, the fleet is an expense of the company, so is outside transportation. The revenue that the private fleet generates when hauling for the company would be the same as the company is paying for other carriers to haul the same routes regularly. The big difference is the money is staying in-house and the parent company has complete control over the carrier.

Under this principle, the private fleet can determine their revenue by comparing what outside carriers are being paid for the same routes. However, due to the increased level of service and the additional services (spotting, traffic management, logistics management) the private fleet should be able to “bill” at the level as a “top flight” dedicated carrier.

For-hire hauling in a private fleet

One way many companies have improved their private fleet revenue is to “spin off” the private fleet and operate it as a for-hire fleet. In this scenario the fleet’s main customer is the parent company. When there is no company freight for the vehicle, the fleet can find other freight for the vehicle to haul. Return trips from an area where the company has no suppliers and slow periods in the company’s core business would be examples of situations where for-hire freight could be used to increase revenue.

The additional loading, unloading, and extra miles used going to extra customers may cause a situation where the fleet can no longer cover all the routes of the parent company. This could require the purchase or lease of additional equipment. This growth requirement should be

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Revenue calculations

Revenue per mile = Revenue/miles operated. As with calculating cost per mile there are many variations on this formula. It can be calculated for the entire fleet, or per unit. Some variations view only certain types of revenue (ordinary revenue or revenue collected), and other variations may exclude certain types of revenue (compensated deadhead miles or revenue billed, but not paid).

Other variations involve using book miles rather than actual miles, and then just as in the cost calculations, these two (revenue per book mile verses revenue per rolling mile) are compared.

Potential daily revenue = Revenue per hour x maximum number of hours the unit can operate on a typical day.

Potential weekly revenue = Potential daily revenue x the number of days equipment is typically in use at the fleet during a seven day week.

Percentage of actual to potential revenue = Actual revenue/potential revenue. Multiply by 100 to change to a percentage. The closer to 100 percent the better!

Rolling versus non-rolling revenue percentage = This is calculated by dividing revenue generated by non-rolling activities (loading and unloading fees and other accessories) by total revenue.

Average days of outstanding billing = Accounts receivable still to be billed or "balance due" at the end of the period (usually weekly or monthly)/average accounts receivable per day x number of days in the period. This tracks the percentage of accounts that are remaining unbilled and/or unpaid at the end of a specified period.

Accounts receivable turnaround = The average number of days it takes to bill and collect revenue.

Bad debt ratio = Accounts receivable that are in collection and considered uncollectible or are written off/total freight revenue. Multiply the results by 100 to get the percentage. Ideally, if a carrier is working with reliable customers this should remain below 0.25 percent. If it approaches 1/2 of a percent it is becoming a major problem.

Improving cash flow

Most all motor carriers are heavily focused on managing their costs. Managers are continually looking for ways to widen the gap between the amount of revenue they have earned and the amount they must pay out. They look at cost per mile, cost per gallon, costs per day, and a host of other reports to help them determine the financial fitness of their company. One of the latest reports on transportation costs comes from the American Transportation Research Institute (ATRI). This report states that fuel costs and driver's wages (excluding benefits) continue to be the largest cost centers for motor carriers. These two costs make up as much as 58 percent of average operating costs.

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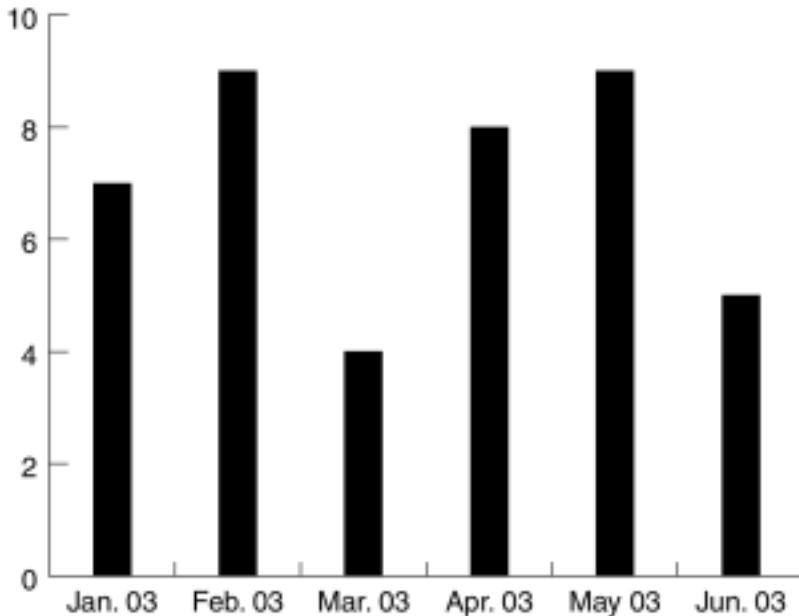
REVENUE Operating Ratio and Overall Performance

Determining operating ratio

One of the most commonly used terms for measuring a carrier's economic performance is its operating ratio, or "OR." While it does not fully describe the motor carrier's rate of profitability, and should not be confused with **profit margins**, the OR is a widely trusted barometer in measuring the cost effectiveness of a motor carrier's entire operation.

Simply stated, the OR is figured as a motor carrier's total operating expenses as a percentage of the carrier's total revenue. More specifically, total operating expenses are all costs incurred to run the company including administrative and overhead costs. Interest expense and income taxes are not a part of this formula. The total operating expense is then divided by the total revenue earned by the operation.

As an example, the motor carrier's total revenue for a year is \$1 million. Total expenses for the same year, minus tax and interest, are \$950,000.00. Divide the total expenses of \$950,000.00 into the \$1 million of revenue and the result is 95 percent, or an OR of 95.



Characteristically, carriers who have ORs at 95 or below are operating soundly. Those whose ORs are below 90 are exceptional and are contributing greatly to the overall profit of the company. Conversely, an OR near 100 is in danger of becoming overly costly to the company and indicates that changes are necessary in how their operation is functioning. An OR over 100 shows that the carrier's operation is costing the carrier more than the level of revenue it is taking in. Financial loss is present at this rate of spending.

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Our example proves an **operating profit margin** at 5 percent, which is very acceptable in today's market. Again, a lower OR will mean a larger operating profit margin and will greatly contribute to the company's overall profit margin

Profit margins are derived from the company's P&L, which take into account all earning and spending activities, including the value of assets, interest earned, and returns on equity. These are accounting procedures that hardly, if ever, come into the daily tasks for an operation or fleet manager.

The best advantage a manager, or even the owner of the carrier, can derive from knowing what these ratios actually mean is to know how they can be used as a goal to improve a carrier's operational efficiency.



The Real World

There are only three ways to improve an operating ratio: Cutting costs, increasing revenue, or improving operational performance. Do not look to just one as the solution to a low margin.

Improving operational performance

Unlike calculating a carrier's OR, improving operational performance has no set blueprint or method for success. Cutting costs in all areas of the operation may provide some short-term relief from overspending. However, fleet managers must be aware that acting on assumptions or "gut feelings" can often be as costly as the problem itself.

The nearest a manager can come to applying any type of formula for improving operational performance is through a process of standards where people working in the operation are able to spot an abnormality before it becomes costly to the operation.

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The abnormality needs to be identified as a gap between the way things are now and the way they are supposed to be, or how management wants them to be. Having standards or performance indicators in place can make it possible for operation managers to identify when this gap occurs and then can act immediately to make decisions based on fact.

Using current company reports, or metrics, to help identify the abnormality is the first part of finding the root of the problem. Load averages, empty miles traveled, transit times, and many other forms of operational reports are starting points in this search and act as an indicator of how the operation is performing. These are “lagging” indicators as they track activities that have already happened. A “leading” indicator would warn the operation that a costly event is about to happen unless correcting adjustments are made. This is similar to a yellow road sign that cautions drivers to slow down as a sharp turn is ahead.

A question management could ask themselves is, “How is our productivity in terms of customer demand?” Management can then begin to narrow down the scope of the problem by asking, “What is the productivity for the most profitable truck, or lane, or driver, or customer we have? How do we know this and what indicator tells us the difference between a profitable event and a costly event?” It is from that point that data can begin to be assembled and improvements can start to take place.

Measuring results from lagging indicators can assist management in identifying a waste within the operation so that leading indicators can be developed to warn management that a costly event is about to occur.

Management must then install standards within the process so that all employees involved in the process will clearly be able to see when an abnormality, or a costly event, is soon to impact the operation.

Measuring the gap

Measuring the gap between performance and expectations can tell you if your operation is/has wandered off route. It’s not that management hasn’t been paying attention or hasn’t done anything to raise the company’s performance levels. It may be that whatever management is currently doing may not be working. The purpose of measuring this is to uncover two distinct characteristics regarding the performance of the operation:

- What is needed to better satisfy your customers, and
- What is needed to prosper as an organization.

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Using lean principles in management helps to identify what is not working and where the opportunities for improvement lie. Customers are not interested in paying for a transportation carrier's inefficiencies and waste. So, it becomes very important for the carrier to look for the **SMART** aspects of the process under review and identify the gap with facts gained through evidence. You have to know what you're looking for before you begin to measure. Going about this the **SMART** way is:

- **S**pecific
- **M**easurable
- **A**chievable
- **R**elevant
- **T**imely

Specific — You have to determine what you are trying to accomplish. What are the issues and how will they be accomplished? Your replies to these questions must also be specific. Simply stating “to reduce costs” does not adequately describe how it relates to improving the operation.

Measurable — “What is managed can be measured” is an adage used to evaluate performance. This is the obvious means to identify the gap and can be most readily accessible through company-generated reports. These are valuable as long as the company reports accurately provide the data needed to assist you in finding the root cause to the problem. You must ask yourself, “If the problem was solved, would these reports show an undeniable improvement in the process, and was the gap eliminated or reduced significantly?” Look for facts and resist assumptions.

Achievable — Is this process within your grasp to influence a change? Can your goals be attained with a distinctive benefit to the organization? The ultimate goal always is to arrive at the final resolution to a problem. As the lean process is a culture of continuous improvement, it is more common that incremental steps will be achieved and that the goal will move as the process is improved.

Relevant — Is the process important enough to the company to invest time and assets on a problem solving exercise? This is where executive management must have buy-in to the lean process.

Timely — Can the process have a reasonable goal for completion whether it is one week, one month, or a longer specified amount of time?

Measuring the gap between performance and expectations isn't easy. You start out with the results you currently are getting and then search for the processes that produce these results. Ask specific questions and gather evidence-based facts that will point you to exactly where performance fails to meet expectations. Once found, you will begin to see how wide the gap is and where standards need to be established. When standards are in place, everyone in the organization can begin to see the need for continuous improvement.

Problems provide an opportunity to learn. And attempting to solve the problem is an opportunity to improve.

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If it is determined that each available vehicle should have a capacity of 2,500 miles per week, to determine the fleet capacity simply multiply this by the number of vehicles.

To determine the percentage of capacity utilization, simply divide the miles operated by the fleet by the capacity you have determined. The closer to 1.0, the better the utilization.

Again, there is some variation between carriers because of the definition of available vehicles. Some carriers use all owned vehicles (total capacity), while others use only assigned vehicles (normal capacity).

Be careful when acting on this data, a case study. Capacity and utilization data may present an interesting portrait of your company, but do not rush to make wholesale improvements. Sometimes lower utilization may actually be helping the operating ratio. Here is an example.

A carrier's personnel, after completing a seminar on fleet utilization, developed the belief that they didn't have to let the drivers hold them hostage with their demands. Drivers were told that "Things are going to change around here."

Dispatchers began forcing drivers to do what they wanted. Time-off requests were denied if there was freight that had to be picked up or delivered. The nearest driver was always assigned to the nearest load, no matter what. "Relaying" of loads ended as it wasted too many man-hours on the part of the operations group and did not improve utilization.

Utilization improved, deadhead dropped, loaded miles soared, and the management group was happy with the performance. The drivers were told that if the new efficiency program continued to be successful the drivers would get a raise.

What happened next was somewhat predictable. Drivers who were dispatched out with no time off simply left their trucks at the terminal and quit. Drivers got home with their trucks and then refused to leave on assigned loads. Many resigned their employment on the spot when told they had no choice but to accept the dispatch.

As well as a sudden spike in turnover the carrier also suffered a sudden spike in accidents and incidents. Next, on-time delivery started slipping. Luckily, the management team of the carrier saw what was happening. While utilization and efficiency had indeed climbed, the bottom line was dropping. They realized that the high turnover rate could not be sustained. Also, the poor safety and on-time performance of the fleet could not be allowed to continue.

What the company learned was an important lesson. If drivers feel they are not treated as respected employees, they have no control over their life, and/or they have no favorable relationship with anyone at the company, they will not stay. The improvement in utilization and efficiency was not worth the problems that were created. To sum it up, the loss of utilization was an acceptable investment, providing a return on investment (ROI) in improved retention and performance.

Remember, with the shortage of drivers, any of your drivers can be working somewhere else next week and it will cost you \$3,000 to \$8,000 to find a replacement..

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REVENUE

Determining Rates

Bidding process

The bidding process can be as easy as a handshake, as complicated as a several month request for proposal process.

No matter how simple or complicated the bid process will be, begin by determining what your cost per mile or hour is. Remember to consider all costs. Hidden costs must be located and considered when determining operating cost for the bidding purposes.

Cost information should be continually updated. This way, when a bid needs to be put together quickly, an accurate cost factor will be used in determining the rate.

From there determine what revenue will be required to cover the costs. There may be the need to convert cost numbers to match the revenue. If the cost factors have been established based on a mileage rate, but the bid is being requested on an hourly basis, the costs will need to be converted to an hourly cost.

Next, determine what margin you want to generate from this customer. There are several factors to consider when setting a margin for a customer. Here are a few:

- The higher the volume, the lower the margin. Customers that are willing to commit to a high volume and longer terms can be given a lower margin. The exception is if the customer is requesting guarantees that may reduce the ability to generate other revenue with the vehicles.
- Customers that are more reliable and can be relied on for freight when other customers cannot may deserve a lower margin than regular customers.
- Customers that pay quickly, rather than holding payment could be given a lower margin.
- Customers that are easy to haul for should be considered for a lower margin. Customers that provide quick loading and unloading, few misloads, quick trailer turn times, and few claims are the ones that should be considered the customers who are easy to haul for.

Of course, the opposite is true. The lower the volume, the less reliable, the slower paying, and the more difficult the customer is to haul for, the less willing a carrier should be to vary off the normal rates. These customers are normally given the full rates off the tariff sheets, with no contract adjustments or discounts.

DETERMINING RATES-1

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When making bids customers may require the carrier submit information in addition to the rate. These requests can include the following:

- A print out of the carrier's SafeStat or SaferSys information. Customers want to see this information to verify that they are doing business with a safe carrier.
- A print out of the carrier's credit status from a financial institution or credit agency to verify that the carrier is in sufficient financial condition to meet the terms of the contract. This is considered important if entering into long term contracts that involve a financial commitment by the customer.
- A copy of available equipment. The customer may want to verify that the carrier has the assets to handle the commitment that is being entered into.
- The lanes and routes the carrier would prefer to carry for the customer. If the carrier has no preference, the customer should be told this directly.
- Proof of insurance is a standard request when entering contracts. This is done by customers to prevent unnecessary risk on their part. Having an uninsured carrier transporting their freight is a risk very few customers are willing to take. Customers may ask for proof of auto liability, worker compensation, and cargo insurance before accepting a bid.
- A brief history of hauling done for the customer in the past, including damage claims and on-time percentages.
- References from other customers.

While not all customers will request such information, it is a good idea to be prepared for them. It can even be considered a good sales technique to include this information with all written bids.

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Covering deadhead

There are two primary methods to cover deadheading. The first is requesting the customer directly pay deadhead as part of the rate. This can be done by setting up a round robin rate, in which the customer is asked to pay a back haul rate to have the vehicle returned to them empty.

The other method of covering deadhead is to work the projected deadhead into the front haul rate. To do this, simply add the cost of the deadhead into the cost when determining the rate.

Choosing which method to use will depend on the customer. Customers that are most concerned with vehicle availability may be receptive to paying for deadhead miles, while customers that are most concerned with costs may not.

If adjusting rates to cover deadhead is not possible, then an adjustment in the front haul/back haul concept may apply. You may need to generate more revenue out of the back hauls when hauling for this customer.

The way to avoid having to cover deadhead costs is to attempt to minimize deadheading. Being selective with front haul lanes and routes, locating regular customers in normal destination areas, and using reliable brokers that have freight in the area your front hauls end are all methods that can reduce deadhead.



The Real World

How do you know a broker is reliable?

Here are a few of the considerations that should go into determining if a broker is reliable:

- Find out how long the broker has been in operation.
- Check on whether the broker has the proper FMCSA licensing.

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- Check on the broker's carrier selection process.
- Look carefully at the broker's carrier management process.
- Find out if the broker has adequate insurance coverage.
- Find out if the broker is active in a reputable trade association such as the Transportation Intermediaries Association (TIA).
- Run a credit check on the broker.
- Check on how the broker makes assignments.
- Find out if the broker is willing to give you everything in writing.
- Find out if the broker provides round the clock service.
- Ask the broker for references.

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Cost pass-through

Passing customer generated costs onto the customer can also be accomplished a couple of ways. As with covering deadhead, which one will work better may depend on your customer.

The first is to determine the additional costs and develop an accessorial fee schedule that covers the cost. Typical accessorial fees include various loading and unloading fees (depending on customer requests, i.e. hand unloading or full tarping), detention fees, zone delivery fees (for delivering to such places as New York City, NY or Chicago, IL), multiple stop fees, and reconsignment fees. The accessorial rates need to reflect the additional costs that the activities are generating.

Some customer may object to these costs being directly passed onto them. For these customers you will need to factor the costs into the mileage/hour bid. This is a simple matter of determining the cost of the customer requested activity and adding it to the mileage or hourly rate charged to the customer.

Private carrier rates — internal and external

This may sound backwards to those not involved in a private fleet, but private fleets should “charge” the parent company the prevailing front haul rate and discount outside hauling (back hauling).

This is because the parent company is the front haul customer for a private fleet, and outside customers are back haul customers being used to move the vehicles to their next haul for the parent company. This causes the situation where the Fleet Manager can view customers and the associated rates as internal and external.

In most cases, external customers (if the private carrier has for-hire authority) are being used strictly to reposition the vehicles. If this is not the case, and the private fleet is trying to be profitable as a carrier, this

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may put pressure on the carrier to secure a better rate from the external customers.

The goal of the private fleet must be remembered when determining internal and external rates. Is the carrier being operated with the intention of providing better service at a competitive rate to the internal customer (the parent company), or is it being operated as a profit center for the parent company?

To sum it up, the same front haul and back haul concepts in use at for-hire carriers may apply to some private fleets. If the front haul is not generating as much revenue as is needed, then the back haul rates will need to be improved.

Brokering and logistic services and rates

The concepts for determining the rates for brokering and/or logistics services are much the same as determining the rates for other services you may wish to offer.

First, determine the costs that are being generated. Then determine the market norm for the service. The next question is what is your goal with operating the service?

If you simply want to cover costs and provide service, then your rate should reflect this. Using a carrier run brokerage as an example you would need to consider what your goals are in operating the brokerage. If you want to guarantee that your brokerage arm will generate vehicles, you may consider a lower rate (higher rate to the brokered truck).

If you are trying to make the brokerage arm a profit center for the company, you will need to establish a different rate schedule.

The bottom line is do you want to generate vehicles and cover the costs, or do you want to generate a margin as well?

The same principle applies to any services the company decides to offer. If the shop or technology departments are going to begin taking on outside work, are you simply looking to cover the cost of the operation, or are you looking to make it into a profit center.

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CUSTOMERS

Customer Relations and Service

Motor carriers are in the service business. They do not build a sellable product. Their product is their service. With the competitive nature of the industry, rates are fairly comparable from carrier to carrier. If you do not provide the service you have promised at a reasonable price, your customers will find another carrier. Customers are free to leave a carrier at any time. This is one key that a Fleet Manager must always remember. It even applies to private carriers. If the private carrier cannot deliver on its promises, or is too expensive, its customer (the parent company) is likely to find a different carrier!



Experience Speaking

Not having more than just a basic understanding of what goes on at the home office impedes the expected results. "Hands on" operational experience is a valuable tool that the salesperson can use when communicating with the customer. This experience can become impressive to the customer when evaluating the competence of the company and the salesperson. Relationships are built on confidence.

Rate competition is normally not an option for most carriers. If you have established your costs and structured your rates to match those costs, there is not much more that can be done. Providing "discounts" is usually not an option. The truck is either making money, or it is not. For many reasons a carrier should avoid charging "less than cost" for their services. However, it may be advantageous at times to haul at below cost to reposition a vehicle for a good customer paying front haul rates.

One of the most effective sales strategies (other than lowering rates) is the basic premise that people like to do business with people they know and trust. This strategy leads to the sales tactic of making sure to recruit customers, and maintain contact with customers, in person.

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Customers can be lost by carriers not because the customers are unhappy with either the service or the rate, but simply because the carrier has lost contact with the customer. This is very easy to do due to the increase in non-personal communications (e-mail, voicemail, electronic data interface systems, etc.).

Personal communications, both on the phone and in person, keep the customers engaged, and engaged customers tend to stay with their existing carriers.

The next sales strategy is to convince customers of two key points. First, that you are there to help them grow their business and profits, and second, that you will be there to work with them when they *need* you to be, in whatever role they need you to perform for them.

When you tell a customer that you are there to help them, the customer needs to believe you mean more than “we’ll answer the phone when you call.” Many customers have begun referring to their regular carriers as their “carrier partners” or their core carriers. These customers are aware of the importance of their regular carriers and consider them part of the operation. This is the type of relationship you want to try to “sell” the customer on.

Being there to help your customers involves selling them on the concept that you are concerned for their well being and you are going to try to help them be successful, both in profitability and in service to their customers. Ideally, you want to sell customers on the concept that your truck is their truck when it is loaded with their freight.

Many carriers are now taking this theory one step further. They are offering services to the shippers that had been part of their shipping department functions. “Simply fax us all your loads for today and we will take care of them. If we cannot cover them with our trucks we will find trucks to cover the loads for you.” Using this approach the carrier is operating as a broker (and needs to be established as such). A carrier can even grow this arrangement into a “third party logistics” or 3PL arrangement, where the carrier also takes care of procuring or providing warehousing for the customer. Most carriers that take this approach with customers have very good customer retention.

Some carriers use the “front haul” and “back haul” approach to customers and sales. Carriers that are deeply involved in customer support for some of their customers rely on this concept heavily. Under this concept front haul customers are charged a higher rate, but provided better service, and back haul customers are used to provide minimal revenue (enough to cover the cost of the movement) while repositioning the vehicles for the front haul customers.

Because the back haul customers are viewed as only a means of generating some revenue while moving the vehicle into position, the same level of customer support is not provided. However, a greater sales effort may need to go into locating and securing back haul customers because the freight volume out of the area may be lower.

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this preparation should be done before the company ever agrees to drop a trailer for loading.

Know your customer. The more information a company can gather about the shipper and the product being offered for transit, the more the company will protect itself from undue losses and claims. Some of the basic, yet most often overlooked, questions the carrier needs to ask the shipper are these:

- How will the freight be loaded?
- Will the freight be packaged and loaded properly to withstand the rigors of transit?
- Once loaded, will the freight be evenly distributed throughout the trailer to prevent an overweight fine if scaled?
- If hazardous materials are loaded, will all requirements be met to insure safety while in transit?
- Will the shipper seal the trailer and allow the carrier to sign the bill of lading “shipper load and count” or “SL&C”?

Educate your drivers. Driver errors and actions can be the difference between profit and loss for a motor carrier. For example, when the driver signs the bill of lading, the carrier assumes all responsibility for the safe transit of the cargo. If the shipper has counted, loaded the freight, and sealed the trailer, the driver has not witnessed the accuracy of the load. If the driver fails to note “shippers load and count” or “SL&C” on the bill of lading, the carrier is assuming the acceptance of the cargo in the amounts and condition as described on the bill of lading. When the shipment is delivered to the consignee, and a shortage or damage is realized at that time, the carrier becomes liable in the event of a claim. The carrier would have a very difficult time proving that the shipper was to blame for this shortage or damage while loading the trailer.

If the driver does sign the bill of lading “SL&C” and a loss or damage is evident at the time of delivery, it is up to the shipper to prove that the carrier has liability. As long as the driver notes SL&C on the bill of lading and can prove that the original seal was intact throughout transit and up to the moment of delivery, the carrier has increased its odds against a claim. It is also a wise practice to make note of the seal number on the bill of lading and compare it to the seal on the trailer itself to insure accuracy. If no seal is present, the driver should affix his/her own seal to the trailer and note the seal number on the bill of lading. If possible, this should be done in front of an employee of the shipper and witnessed by their initials or signature.

Know the Law. *49 U.S.C. 80113 (c) Liability for Improper Loading.* A common carrier issuing a bill of lading is not liable for damages caused by improper loading if:

1. The shipper loads the goods; and

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2. The bill contains the words “shipper’s weight, load, and count,” or similar words indicating the shipper loaded the goods.

It is always wise to confer with your attorney on matters such as this; however, it is also wise to familiarize yourself with your legal rights and the Carmack Ammendment when agreeing to transport freight under any circumstances. The Carmack Ammendment is the starting point for cargo claims and addresses liability when goods are placed in transit.

In order to enjoy a long-term relationship with a shipper who will load your trailers and help you reduce your costs, it would be good business on the motor carrier’s part to know all they can about the shipper, educate their drivers on the importance of signing a bill of lading accurately, and familiarize themselves with the legalities of transport law.

Cargo Claim Prevention

Cargo claims can have a devastating effect on a motor carrier. While it is agreed that cargo claims are a part of our business and will always remain a “cost of doing business,” it is the manner in which we manage this cost and preserve, if not improve, our company’s image as “a carrier that takes care of its customers freight.” Any claim has a negative effect on customer service and could ultimately mean a permanent loss of business and reputation if not addressed properly.

Generally, the reasons that claims exist today is due to negligence and a lack of awareness on the part of all employees, not just the driver. The Fleet Manager can achieve much for the company by recognizing this and then taking the necessary steps to correct this potential loss of revenue and diminishing profits.

Hiring. Cargo claim prevention starts with the driver application and screening process. This is where you can get a feel for the driver’s integrity and honesty. There are people that believe miscounted or incorrectly manifested freight are “spoils” to be kept. People that have this belief may have a criminal record indicating their disrespect for other people’s property.

When screening driver applicants, be aware of any driver applicant who cannot account for extended periods of unemployment, or lists employers that cannot provide proof of employment. In general, gaps in employment, or the inability to verify employment, should always cause concern. The question that needs to be answered is, “Is the applicant trying to hide something?” If the applicant cannot provide a valid reason and solid proof for the unemployment period, or you are unable to verify previous employment, you may want to conduct a criminal background check or pass over the applicant.

Another indication of a potential problem is the individual who “job hops” for no apparent reason. It could be a sign that the individual does not feel any loyalty to his/her employer, or does not have his/her employer’s interest at heart. Worse, it could be a sign that the individual is trying to stay one step ahead of something. In either case, you may not

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want to hire the individual. In short, the first step in cargo claim prevention is using your application and screening process to hire drivers you can trust.

Lack of Training. In most professions, employers who expect quality performance in their employees often see the positive results of their efforts through a strong and effective training program. The transportation industry is not exempt from this line of thinking. To simply send a driver out on the road with little or no instruction on how to prevent freight loss or damage and then expect that driver to accomplish claim free transportation service is, for the most part, unlikely.

Carriers should include a Claim Prevention training program along with other training and orientation programs for all new hires, as well as all veteran drivers, in order to bring awareness to this drain on revenue. Operations staff, Customer Service, and Sales would also benefit from this training, giving those individuals background on the importance of claim prevention and what it means to the carrier's bottom line. Allow the employees to take ownership of this program to ensure company-wide effort. Select a steering committee that involves at least one representative from each department, including drivers.

Often, a current driver acting as a trainer is very effective in this role. Their message and real world teaching techniques convey credibility to employees while supporting management's objectives. Select a driver who "buys in" to this message and is willing to be a part of a team with positive input. The experience this driver has working with customers, warehouse personnel, different types of freight, and "real world" circumstances are invaluable to a solid claim prevention program. The driver/trainer should include proper methods and practices in loading a trailer to prevent damage that could lead to a claim.

The driver/trainer should also demonstrate different methods of loading freight using blocking and bracing techniques. This would involve the use of load bars and sheets of plywood, cardboard liners, different straps to help secure the load, dunnage to fill in the gaps between the freight, and any other means your company has that is relevant to your operation and your customers' shipments.

You should also familiarize yourself with Part 393, Subpart I, to be in compliance with the cargo securement rules.

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The Real World

We created different types of freight using empty boxes loaded on 4 to 6 pallets, empty 55 gallon drums, empty pails, loose cartons, and even empty boxes that had “hazardous materials” labels drawn with colored markers on the side of each box. This “freight” was spread out on our dock just outside an empty trailer. To instruct the driver/students on properly planning and loading the freight into the trailer, the driver/trainer began by asking them how would they load the freight and secondly, how and where would they use different blocking and bracing tools to secure the load. The driver students would then begin to load this freight using tools including shrink wrap around the loose cartons securing them to the pallets, nailing 2x4’s to the trailer floor blocking in the 55 gallon drums, sheets of plywood behind the pallets of cartons braced with load bars to hold them in place, dunnage in between other pieces of freight to prevent them from moving and possibly damaging other pieces of freight. The driver/trainer coached and offered advice on what practices and tools could have been used to prevent possible damage to this freight. He would also encourage input from all the driver/students, utilizing their experience and promoting ownership in the exercise.

This training was very effective and reduced our claims markedly. It was also encouraging to hear driver conversations, even months after their training, describing the circumstances they faced at customer locations and how they corrected the loading of the shipment. It instilled a sense of pride in their efforts to control claims. We soon realized the value of our efforts and really appreciated the bonus checks we received each year!

Lack of Urgency. Often times, management gets bogged down with the operations of a transportation company and they just don’t see or feel the urgency of a claim prevention program. It may even be perceived as a “loss that we will write off come tax time!” The danger in this is that your customers will leave you also, and that is an item that you can not write

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off! Remember, as a manager, leader, or even owner; the personality of the business takes on the personality of those who lead it!

Negligence. This is more of a personnel problem which, if not corrected, can cause claims and loss of revenue for the carrier. An honest mistake that causes a claim or an effort to prevent a claim that backfires on the employee is a learning experience that we all can live with, as long as it is corrected with additional training. However, pure negligence indicates a lack of respect for the company and its policies, fellow employees, and the negligent employee himself. If negligence is the main reason your claim ratio is too high, you likely have a personnel problem as well!

Effect claims have on P/L

Annual Revenue	Claims Paid	Industry Goal 1%	Profit/Loss
100 Million	1.5 Million	1 Million	-500,000.00
60 Million	750,000.00	600,000.00	-150,000.00
2 Million	10,000.00	20,000.00	+ 10,000.00

The effect claims have on carriers P&L. The effect claims have on a P&L statement really tells the story on just how effective a claim prevention program can be.

The industry goal of 1% of annual revenue to be paid out in claims is still fairly accurate in today's business climate. This goal may be different from one company to another, however, a carrier must still budget this expense. What this means is, if your company is paying out more than 1% of your total annual revenue on claims, immediate attention is needed to get this cost in line. If, however, your company is paying out less than 1% of your total annual revenue, claims is not a huge drain on your operational costs. Still, more savings can be realized by reducing the amount of claims.

In the table above, a carrier that has annual revenue of \$100 million and paid out \$1.5 million in claims has over spent their budget by \$500,000.00! A carrier with \$60 million in total annual revenue and \$750,000.00 in paid claims is \$150,000.00 over budget. These are dollars that could have been used to cover other expenses, or possibly, shared with all employees in the form of profit sharing!

A carrier with \$2 million in total annual revenue and \$10,000.00 paid out in claims is also \$10,000.00 under budget in this category and is managing their costs well!

Steps to avoid claims. There is much a carrier can do to reduce the amount of claims and possibly prevent claims from ever occurring in the first place. The following steps can help to reduce the payout of hard earned revenue in the form of claims

- Sweep out the trailer and remove all nails in the floor and sidewalls before your driver arrives at the customer's dock.

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Responsibility for issuing a bill of lading belongs to the carrier under the law, 49 USC 14706 (a)(1). While it is the statutory responsibility of the carrier, in reality the shipper often issues the bill of lading. Regardless of who issues the bill of lading, both parties should be aware of what the contract provisions are before signing.

Shipper's Load & Count. Another claim related issue is correctly signing the bill of lading when a driver is picking up a pre-loaded or "spotted" trailer. Drivers often have to sign a bill of lading contract when they have been unable to witness the freight being loaded. In this situation, the driver assumes the trailer contains the freight exactly as shown on the bill of lading, including the amount and condition of the freight. The driver also assumes that the freight is properly and securely loaded for transportation.

If, at this point, the driver signs the bill of lading and leaves with the load, the carrier is now liable for any damaged or missing freight upon delivery. This is a risk for the carrier since the driver has no way of knowing what was loaded on the trailer or the condition of the freight. If the shipper loaded damaged goods or fewer pieces than the bill of lading shows, it will be up to the carrier to prove the damage or loss happened during the loading of the shipment and, therefore, is the fault of the shipper.

However, if the driver would have noted "shipper's load and count" or SL&C on the bill of lading, and loss or damage is found at the time of delivery, the shipper would have to prove it occurred during transit and not during the loading of the shipment.



Compliance Issue

49 U.S.C. 80113 (c) Liability for Improper Loading. A common carrier issuing a bill of lading is not liable for damages caused by improper loading if:

1. The shipper loads the goods; and
2. The bill contains the words "shipper's weight, load, and count," or similar words indicating the shipper loaded the goods.

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In some situations, the driver is able to look inside a shipper-loaded trailer and see that the goods are not loaded properly and could be damaged while in transit. Because the defective loading was clearly visible to the driver, using the SL&C notation will not make a difference because the driver could have prevented the damage by having the shipment re-loaded to prevent damage while in transit or simply refusing to sign for the load.

On the other hand, if the driver was unable to see inside the trailer due to the trailer doors being locked or sealed, the SL&C notation should be noted on the bill of lading. When improper loading is not visible, the carrier cannot be held liable for resulting damage.

Keep in mind, just because SL&C has been noted on a bill of lading, the carrier is still liable for the goods in transit. However, the shipper now has the task of proving the carrier was at fault and should be held liable.

Clearly, correctly signing for a shipper loaded trailer can mean real dollar savings, while improperly signing the bill of lading can mean real dollar losses for the carrier.

Carmack Amendment. The beginning point for any discussion regarding claims in the United States is the Carmack Amendment to the Interstate Commerce Act, which is stated at Title 49 of United States Code, Section 14706.

This amendment states that a carrier is liable for loss or damage to a shipment upon proof by a claimant of:

1. delivery to the carrier in good condition
2. arrival at destination in damaged condition
3. the amount of damages

The carrier's defense to this is very difficult. The carrier would first have to prove freedom from negligence, and then that the loss or damage was caused by one or more of the following specific exceptions

- An act of God
- An inherent nature or vice of the goods
- An act of the shipper
- An act of the public enemy
- The authority of law

The claimant will win any litigation of this nature unless the carrier is able to prove freedom from negligence **and** any one of these exceptions to liability. The claimant is not required to prove that the carrier is negligent. As long as the claimant is able to prove that the shipment was tendered to the carrier in good condition, the shipment arrived in damaged condition, and the amount of damages, the burden shifts to the

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carrier to prove itself free from negligence and one of the above mentioned exceptions.

The Carmack Ammendment allows a carrier to limit liability if that limit would be reasonable under circumstances surrounding the transportation. This limited liability is called a “released rate.”

A released rate value of the goods is an artificial, declared value unrelated to the actual value of the goods. For a released rate to be legal there must be a written agreement, which is usually a notation executed by the shipper on the bill of lading. It must also provide the shipper with some benefit in exchange for the released rate valuation, usually a lower transportation rate. A released rate agreement has no effect on a carrier’s liability. However, it does limit the dollar amount of the carrier’s liability by fixing a maximum claim value.

Processing the claim. When a claim is received, the carrier must acknowledge the claim in writing or electronically within 30 days. If additional evidence or information is required, the carrier must include the request in the acknowledgement.

The carrier must pay, decline, or offer a compromise settlement in writing or electronically within 120 days of receiving the claim. If the claim cannot be settled within 120 days, the carrier must communicate the status of the claim every 60 days to the claimant along with the reason for delay in settling the claim.

The carrier must create a separate file for each claim and assign a claim file number. The file must contain all documents, records, and correspondence related to the claim including acknowledgement letters to the claimant.

Customer demands vs. cost of demands

Whenever a customer places an additional demand on you, you will need to review the demand in terms of cost, liability, and compliance.

If the demand places liability on the company, or places the company in a position where fines for noncompliance are possible, you may need to negotiate with the customer, adjust your liability protection, or change your operational methods to become compliant (use of teams, buying lighter equipment, returning units empty to save drivers’ hours, etc.).

As with any other change in operations, the Fleet Manager should perform a cost analysis before agreeing to demands (see Cost information earlier in this manual).

If you cannot meet the customer’s demands and remain profitable, or are going to put the company in a situation where it will be bearing unnecessary risk, and the customer refuses to negotiate, you may be forced to give up the customer.

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analysis are based on cost per mile (point of origin to point of destination) or by cost per hour. Both are adequate in supplying a general, overall accounting of your customer's contribution to your profit. However, it doesn't quite tell the whole story. There are many costs that vary from one customer to another, all depending on the nature and demands imposed by the customer. Aptly named, these are termed "variable costs" and often represent work performed by the carrier (in addition to the transportation of goods) which does not add additional revenue for their efforts. They include downtime waiting to get loaded/unloaded, empty miles driven to reach the customer, appointment times that cause additional downtime, etc. All of these are real costs to the motor carrier and cannot simply be regarded as "the cost of doing business"!

These are cost that are, at times, initiated by the customer and are boldly stated as requirements to obtain their business. It is the motor carrier's responsibility to manage these costs and work out a way that they can be managed without causing great peril to the bottom line. Many carriers have long thought that they can effectively absorb these costs based on the volume of business the customer offers. They are now finding out that this line of thinking has aided in the destruction of their operating ratios even without the economy's help!

Your margin of profit will not automatically increase just because you have added revenue and are better at controlling costs. Each customer must be analyzed to evaluate its cost to the operation and its contribution to profitability. But, before you begin to evaluate your customer's worth to your operation, you must ask yourself the following:

- How much do you expect your truck to earn per hour?
- What can you do when the truck is not earning the expected amount per hour?
- How is the customer adding to this loss of revenue?
- What are the obstacles that prevent the truck from earning its keep?

Answering these questions will assist you in eliminating the variable costs that accompany an unprofitable customer. Removing those customers from your business will not make life better. In fact, their business may be worth keeping if you can negotiate rate increases, accessorial charges, detention times or any costly activity to improve your revenue for the work you do. Above all, you must improve your customer's contribution to your margin of profit.

This is the key. It is the work you have to do, over and above the transportation of goods, that diminish your profits. If your rate structures are competitive and have proven that the amount you charge the customer for the transportation of their goods will sustain your business, any other activity should also carry a charge that not only pays for itself, but also offers you a margin that supports your efforts.

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| Making the connection

The factor that makes this partnership work so well is not the discovery of the “ultimate” customer for the motor carrier, but the knowledge the motor carrier must have of their own company and how their needs interlock with their targeted customer’s needs.

The carrier must know its own costs. It must be aware of changing situations or customer demands that can turn the movement of a customer’s freight into a loss. For example: A region of a carrier’s service area, that at one time was profitable, has recently experienced economic changes that now make it difficult for the carrier to operate in. A higher rate to offset the expense, or a complete rejection of traffic to that region, may be the carrier’s only choices! A motor carrier must review existing contracts and agreements with their clients, certainly while the current agreement is active, as business conditions can change from one period of time to the next.

When the carrier knows what their costs truly are, they can go to their customer and discuss alternatives to a problem, which may result into more than just two choices. The customer may be willing to pay more for service to this region, but in turn, may want to negotiate a lower rate in a different region. This is where the motor carrier must know its own costs and be able to negotiate a deal that is acceptable to both parties.

As basic as this may seem, it is a concept not often practiced; or at least, not utilized for its full purpose. All too often, the carrier will abandon what they know to be right and join in on the rate beating thinking they can make their money back on the next bid!

Compensation is an important consideration

As the knowledgeable shipper looks for the financially strong carrier, so should the carrier examine the financial strength of the targeted client(s). Much of the financial information on any company can be accessed by the carrier’s accountant or a public accounting firm. A wise practice is to have this information on file regardless of the size of the customer. Large nationwide firms are just as susceptible to economic disaster as the small family-owned companies are.

Terms of payment must be a significant part of the bid package. The ideal client will process payments for freight services within 30 days of shipping. While 45-60 days may be more common, the motor carrier must examine the effect this length of payment will have on its own cash flow. Payments for freight charges longer than this period of time may be one indication of a shipper’s own financial strength. It may also be an indicator of how the shipper regards their partnership with a carrier. Again, this goes back to the frequency of bid offerings and re-bidding exercises.

The carrier is, in effect, offering an unsecured, interest free, short term loan to the shipper for the transportation of their goods. Along with this service, the carrier will offer support in terms of information as to the

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over the close proximity to a threshold, the CSA-savvy shipper recognizes the value of a partner in distribution. Not only could the driver shortage and the hours-of-service rules affect the limits of the carrier, so could they affect the availability of the carrier to the shipper. A delay in product delivery can mean disaster to a shipper in a recovering economy.

Shippers want the assurance that their product will travel through the supply chain on safe vehicles, in prompt transit times, and are driven by responsible drivers. Because of this, many will only tender their shipments to carriers who show satisfactory scores in CSA's Safety Management System (SMS). Their concern is that they may be held liable for damages if they are linked to a motor carrier who has not fared well in the SMS and causes an accident. Promoting the use of an unsafe carrier by continuing to do business with it is not the image many shippers want.

Carriers, on the other hand, want to get in and out of their customer's dock so that additional revenue can be earned with the lowest amount of cost to the carrier. Carriers make money by moving. Waiting only costs them money, even if they are being subsidized for their waiting through detention charges or other higher rates which is sure to test the relationship between the two parties.

Consequently, there may be a strategy based on shipper needs that could benefit carriers who are considered "safe" by their scores in the SMS. The strategy would have to benefit both parties to the point of supplying valued and dependable transit service along with the shipper offering quality dock service that keeps the carrier on the road. A steady flow of business at a fair negotiated rate is the basis for a partnership. The overall result will be a stronger profit margin for the carrier and possibly a savings for the customer as well.

Imagine the customer's surprise upon learning that the best rate they can get is through helping the carrier improve its CSA score!

Taking the message to the customer

The most meaningful action a customer can offer a motor carrier is to forge an alliance or an agreement with them to assist in their efforts to keep their CSA scores low. This partnership can help to ensure that the continuity of freight flow between the two entities is not interrupted or becomes detrimental to the motor carrier. The customer does not have to become an expert with the CSA program in order to support the motor carrier. However, a fundamental understanding of the BASICS, particularly the "Driver Fatigue BASIC" and the "Cargo Related BASIC" is of great value when discussing the impact of the CSA program.

On countless occasions, many carriers have visited their customers' facilities and discussed what more the carrier could do for the customer in an effort to gain more of the customer's business. The customer, in most cases, only had concern for its own costs and bottom line and wouldn't bother itself with the carrier's efforts to do the same. This was hardly a partnership between a customer and a carrier.

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CUSTOMERS

Use of Third Party Trucks — Short Term And/Or Long Term

| Leasing

Owner-operators, either operating as “leased operators” or as truly independent operators carrying freight using their own authority as a motor carrier under a brokerage agreement, can allow a carrier to rapidly expand (and contract) their capacity.

In any transportation by truck, it is important to understand that there must be an “authorized motor carrier.” The authorized motor carrier has complete possession, control, use, and responsibility for the operation of the equipment and is responsible for compliance with all state and federal regulations.

| When doing business with owner-operators, there are two potential situations that can be encountered. There are leased owner-operators and fully independent owner-operators accepting freight as a “separate motor carrier” with you acting as the shipper. The identity of the authorized motor carrier and compliance responsibility is different in each situation. Confusion about this can easily result in compliance oversight or failure.

| If you are a for-hire carrier (transporting goods belonging to others for compensation), and you wish to use owner operators, you may lease owner operators to transport the goods you contract to carry. A written lease agreement is required and the owner operators operate under your USDOT number, operating authority and insurance. The leased owner operators are your drivers/vehicles and you are the motor carrier.



In this case, you need a written lease agreement between you and the owner operator containing the provisions required in §376.12. You should also review the General Leasing Requirements in §376.11. Under a lease

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agreement, the owner operator operates under your MC Number, your USDOT number, and your PL/PD insurance. Your company is the carrier and has responsibility for compliance with all safety and permitting requirements.

When leasing an owner-operator, the carrier/lessee is the “motor carrier” and has responsibility for all compliance. The only way an owner-operator may legally operate under his own authority, insurance, and US DOT number is if he is actually the “motor carrier” transporting freight for his shipping customer.

The lease agreement

A lease agreement is a contractual relationship in which the use of equipment is granted for compensation by the owner/lessor to an authorized carrier/lessee for use in regulated transportation of property for a specified period of time.

In a lease, the lessee, usually the carrier, is the party acquiring the use of the equipment, with or without a driver, from another. The lessor is the party granting the use of equipment, with or without a driver, to another.

Understanding leasing regulations

A lease agreement, such as the Master Lease Agreement and the Standard Trip Lease, must identify the equipment to be leased and the parties involved. It must be signed by the Lessor - the party granting the use of the equipment, with or without the driver, and the Lessee - the party acquiring the use of the equipment, with or without the driver.

The Federal Motor Carrier Safety Regulations require someone to be responsible for the safe operation of the vehicle at all times. The regulations say that when a vehicle is operated under a lease, it is the authorized carrier, or lessee, that has responsibility for the safe operation of the vehicle. The lessee/authorized carrier must furnish a written receipt recording the date and time it takes possession of the equipment from the lessor. The agreement must also designate when the lease begins and when the lease will end.

The lease must specify the authorized carrier’s (lessee’s) obligation to maintain insurance coverage for the protection of the public. The written lease should clearly explain the method of compensation.

Operational costs must also be addressed. This includes items such as permit costs, base plates, licenses, fuel costs, fuel tax reporting, empty mileage, tolls, detention, accessorial services, and any unused value of licenses and permits. These operational costs may be negotiated and assigned to the lessor or the lessee. Responsibility for maintaining and repairing the equipment should also be designated. Regardless of who bears responsibility for these items, the responsible party should be clearly shown in the lease agreement.

The regulations require the signed lease agreement to be carried in the vehicle for the term of the lease. The vehicle must display the legal name and US DOT number of the entity responsible for the safe operation of the vehicle.

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When the lease is over, the lessee's name and US DOT number must be removed, and the authorized carrier must provide an "equipment receipt" stating the date when the lease agreement ends and possession and control is transferred back to the owner of the equipment.

The contractual relationship between the lessee and the lessor is governed by 49 CFR 376, Lease and Interchange of Vehicles, and enforced by the FMCSA. These "truth in leasing" regulations require that a lease between a motor carrier (lessee) and an owner-operator (lessor) be in writing. A copy of the lease must be carried in the vehicle during the term of the lease.

They also require that a lease agreement must:

- Be in writing, clearly identify the parties involved, and signed by the equipment owner and the authorized carrier.
- Identify all equipment involved in the lease, including vehicle identification numbers.
- State that the carrier has exclusive possession and control of the leased vehicle, and assumes responsibility for the operation of the equipment during the term of the lease.
- Specify the carrier's legal obligation to have and maintain cargo insurance and public liability insurance pursuant to current state and federal regulations.
- Specify the method of compensation and rate of payment to the lessor. The regulations do not prescribe the method of compensation, but require that the method be clearly stated in the lease.
- Describe terms under which loading and unloading will be performed.
- Contain terms and conditions under which operations will be performed, such as permit costs, base plates, licenses, fuel costs, fuel tax reporting, empty mileage, tolls, detention, accessorial services, and any unused value of licenses and permits.
- State that the contractor/lessor must operate the vehicle lawfully, and has responsibility for fines and penalties incurred due to violation of laws.
- Define who is responsible for repairing, inspecting, and maintaining the equipment.
- Explain any expenses or insurance costs charged back to the lessor.
- Prohibit any requirement for the lessor to purchase or rent equipment or services from the lessee as a condition of the agreement.
- Indicate the lessor (owner) is an independent contractor and not an employee and meet the basic legal standards for independent contractor status.

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Compliance Issue

If the FMCSA determines that you have *any* control over the owner operator or relationship with him/her, you become responsible for the owner operator's safety compliance, regardless of what authority he/she is operating under. This is because of this agency's definition of "employee" and "driver." If the owner-operator continuously brokers loads from you and operates under your dispatch control and requirements, you become responsible for compliance. This was done to keep motor carriers from circumventing the safety regulations by employing independent contractors and owner-operators, rather than hiring their own drivers.

The parties may negotiate certain items: who will bear the expenses of fuel, fuel taxes, empty mileage, other operating costs, and who is responsible for deductions. This information must be clearly explained in the lease.

Some requirements of the leasing rules are not open to negotiation. The requirement of a 15-day settlement period is not negotiable. Nor is the owner-operator's right to a copy of the rated freight bill when compensation is based on a percentage of the revenue. And, the lease must specify the authorized carrier's (lessee's) obligation to maintain insurance coverage for the protection of the public.

Choose the right lease agreement

A lease arrangement may last for a single trip, or for an entire year or more. The kind of lease agreement you need depends upon the nature of the leasing you intend to conduct. All agreements must comply with the leasing regulations found in Part 376.

- **Standard Trip Lease Agreement.** A standard trip lease agreement is used for a single trip or a lease of short duration. This agreement is a preprinted form on which the required information is entered. It also has provisions for designating the exact time the lessee took possession of the equipment, and the exact

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Some companies that offer commercial motor vehicles (CMVs) under a rental agreement are very specific in their terms as to whose USDOT number will appear on the CMV being rented. The reasoning behind this is what some rental agencies consider as compliance with the marking requirements stated in §390.21 of the Federal Motor Carrier Safety Regulations. It may also be that the rental agency does not want to be charged with high CSA BASIC scores for violations they had nothing to do with, especially on short-term rentals.

If the CMV is being rented for less than 30 days, the lessee (the renting carrier) has an option to display its own legal trade name and USDOT number or display the name and USDOT number of the lessor (the owner or party granting the use of the vehicle). If the lessor of the vehicle being rented chooses not to have its USDOT number on the vehicle, or states in the rental agreement that the lessee must display its own USDOT number regardless of the length of time the vehicle is being rented, then the lessee must mark the vehicle with its own legal trade name and USDOT number. Whatever the outcome, the lessee must carry inside the vehicle the rental agreement between the lessee and the lessor/owner.

A motor carrier who is renting the CMV for a period of 30 days or longer must display its own legal name and USDOT number by a removable device or sign on both sides of the rented CMV. Also, a copy of the rental agreement must be carried on the rented CMV during the full term of the rental agreement. The carrier is also responsible for the maintenance recordkeeping related to the vehicle.

Section 390.21(e) is a straightforward explanation of the motor carrier's responsibilities in the short-term leasing of CMVs. The core of this regulation is that all commercial motor vehicles operated by a motor carrier must be legally marked with two pieces of information: either the motor carrier's (lessee) name as listed on its MCS-150 and its USDOT number,

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The Real World

What is he or she?

When looking at leased owner-operators, it is important to understand the different terms that are used by the different agencies that are involved.

Independent contractor is a term used by the IRS to describe a small, independent business entity that you are doing business with.

The FMCSA has no such designation. If the owner-operator is under your operational control, he is your employee and you are responsible for his compliance with the FMCSA safety regulations.

The trick with leased owner-operators is to allow them to be independent enough to qualify as independent contractors under the IRS rules, and still maintain enough control over them to guarantee their compliance with the safety regulations.

The company, in order to make certain that their customers' shipments would be handled on a timely basis, entered into a contract with the independent contractor for a specific amount of time (usually one year) that not only guaranteed this service would be provided, but also, as in other cases, required the contractor to adhere to certain standards and qualifications set forth by the company for their own specific purposes.

The contract was binding on both parties and neither side was forced into the agreement without full understanding of the contents. However, this is also where the lines started to blur and soon found individuals asking both federal and state levels to determine if the manner in which the company conducts this type of business made the contractor independent or an employee?

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The keys are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.

Since then, the IRS continued to define this concept and developed the “Twenty Factor Test.” This proved to be very helpful in many circumstances; yet, there still were discrepancies in issues concerning the trucking industry. However, the IRS implies and takes into account that a worker is an independent contractor who:

- Owns or leases his/her own equipment and is responsible for the maintenance of the equipment;
- Is responsible for all operating costs including fuel, supplies, insurance, etc.;
- Is compensated for his/her services based on miles driven, the weight of the shipment, number of deliveries, or any combination of these; and
- Has the right to hire his/her own employees.

Other issues such as workers’ compensation and unemployment benefits also show a lack of consistency among the states, clouding the issue of independent contractor or employee even further. Some states may rule in favor of an independent contractor filing an unemployment claim when the lease is terminated as the contractor may be viewed the same as any worker, regardless of a contract ever existing. Thus, the independent contractor becomes eligible for unemployment benefits.

Workers’ compensation claims also vary from state to state and can have significant penalties for the unprepared motor carrier despite the existence of a contractual agreement. This lack of uniformity, both with the system and with the states, can put both the motor carrier’s and the independent contractor’s dreams in great peril.

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| Safe harbor when classifying independent contractors?

Section 530 from the Revenue Act of 1978 is the “safe harbor” provision that trucking companies have used as protection without tax consequences of misclassification when contracting the services of an owner-operator or independent contractor. In short, the requirements for this safe harbor are:

- The motor carrier filed federal tax returns (including information returns) treating the individuals as independent contractors and not as employees;
- The motor carrier must have treated all persons holding similar positions as independent contractors; and
- The motor carrier must have had a reasonable basis for treating these individuals as independent contractors such as a past precedent, past IRS audit, or a long standing industry practice.

While legal counsel is best to determine where your company stands in relation to proper classification of independent contractors, it may be wise to do a self-examination of your business practices to eliminate or correct those practices that could be harmful in this respect.

Some obvious items for examination:

- Do you ever refer, on any company documentation, to independent contractors as employees?
- Do you require independent contractors to attend safety or training meetings?
- Do you tell independent contractors exactly how to run their business?
- Do the independent contractors own their own equipment or lease it under a bona fide agreement?
- Are the independent contractors solely responsible for their own maintenance, operating costs, fuel, insurance, and personal expenses in the operation of their equipment?

Employers who misclassify workers as independent contractors can end up with substantial tax bills and can face penalties for failing to pay employment taxes and filing required returns.

Both employers and workers can ask the IRS to determine whether or not an individual is an employee or an independent contractor by filing a Form SS-8 — Determination of Worker Status for Purpose of Federal Employment Taxes and Income Tax Withholding — with the IRS.

If independent contractors are going to run under your DOT number, you will want to request proof of their compliance with all matters of regulation including safety, training, maintenance, hours of service, etc., before you commit to any business venture. If the independent contractor cannot meet these standards, they will need to make their own arrangements to do so before an independent contractor relationship can be recognized. You should not direct or assist them in supplying the needed documentation.

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Under common-law rules:

- If anyone is performing a service for you and you are directing and controlling the work to be done, and how it is to be done, your workers are likely employees.
- If anyone is performing a service for you and you can direct and control the result of the work done, but not the means or methods of accomplishing the result, then your workers are likely independent contractors.

The main point is this: Make sure you treat independent contractors differently from the way you treat your employees.

Brokering freight

Brokering freight is another method carriers can use to rapidly add capacity.

Anyone brokering a load must be registered as a broker, which by definition may only arrange -- not perform -- transportation unless the person is also separately registered as a motor carrier. A motor carrier that is performing part of the transportation as an interline operation, however, typically performs that service under its own motor carrier operating authority registration or the operating authority of the originating motor carrier. As a result, the motor carrier arranging the interline service in order to perform the transportation service requested by the shipper would not be brokering the load and would not require broker registration. As a broker, you would not pick up the freight. You would agree to find a carrier for the shipper, and the carrier (owner operator) would pick up the load directly from the shipper. A broker does not take custody of the freight.

Do you need broker authority?

MAP-21 - Commercial Motor Vehicle Safety Enhancement Act of 2012 was signed into law on July 6, 2012, with an effective date (for most provisions) of October 1, 2012. One of the provisions in MAP 21 addresses the requirement for a broker license from the FMCSA for motor carriers who are also acting as brokers. The provision amends 49 United States Code 13902 by adding "*Separate Registration Required- A motor carrier may not broker transportation services unless the motor carrier has registered as a broker under this chapter.*"

A for-hire motor carrier may accept freight from customers and transport that freight under the carrier's own USDOT number and MC Number/ For-Hire Authority. In this case, the motor carrier does not need a broker license because the carrier accepting the freight is also transporting the freight.

A company that also has a private carrier fleet (transporting their own goods in their own vehicles in furtherance of a primary business that is not trucking) may contract with a for-hire carrier to transport their goods. A broker license is not required because the company owns the goods and is simply hiring the carrier to transport their goods. However,

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private carriers will be required to do so under the final ruling of the Unified Registration System as of October 23, 2015. This final rule applies to every entity under FMCSA's commercial and/or safety jurisdiction.

If a for-hire motor carrier accepts a load to transport and then gives the load to another authorized carrier, the first carrier is acting as a broker and must have a broker license. The first carrier is "arranging" the transportation of the freight rather than acting as a carrier and actually transporting the load.

Basically, a broker arranges, for compensation, the truck transportation of cargo belonging to others, utilizing authorized for-hire carriers to provide the actual truck transportation. For an entity to function as a broker, FMCSA broker authority is required, and a designation of process agents (BOC-3) and bond must be on file.

New bond requirement

Another provision in MAP 21 requires brokers to have \$75,000 bond, an increase from the current \$10,000 (\$25,000 household goods carrier brokers). The FMCSA intends to enforce this provision October 1, 2013.



Applying for broker authority

The rules governing applications for operating authority are stated in regulations, 49 CFR §§365 and 366. The process to obtain operating authority as a broker begins with FMCSA's application for Motor Property Carrier and Broker Authority Form (OP-1). The OP-1 form can be downloaded as a Portable Document Format (PDF) file from FMCSA's Web site at <http://www.fmcsa.dot.gov/forms/print/r-1-forms.htm>.

You also have the option to file your OP-1 application online. You can apply online at <http://www.fmcsa.dot.gov/online-registration>. This method is highly recommended. You can follow step-by-step instructions to assist you in completing the online OP-1 form for the appropriate broker authorities.

Once downloaded, the OP-1 form allows you to input the required information directly on the form from your computer and then print it out. If you prefer, you can print out a blank form and input the information

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manually. If access to FMCSA Web site is not available to you, then you can request an OP-1 form packet be sent to you by U.S. Mail by contacting the FMCSA at 800-832-5660. Once completed, you may submit the form via U.S. Mail. The OP-1 form comes with instructions to assist you completing and submitting the form.

There is an initial application fee of \$300.00 for each authority request. The fee is non-refundable. If you file by First Class U.S. Mail, then you may submit a check or money order, in U.S. dollars, payable to FMCSA to FMCSA P.O. Box 530226, Atlanta, GA 30353-0226. If you choose to send it by Express U.S. Mail, then the address is Bank of America, Lockbox Number 530226, 1075 Loop Road, Atlanta, GA 30337. If you file online, then you submit payment using a credit or debit card.

A very important part of your application is proof of Financial Responsibility. Financial Responsibility is protection of your business against liability. All are required to have either a Surety Bond or a Trust Fund as Financial Responsibility. Proof of financial responsibility is a condition to obtaining and maintaining operating authority. Without it you will not be granted authority as a broker. As a broker, you submit a Property Brokers Surety Bond (Form BMC-84) as proof of a surety bond covering your business or a Property Brokers Trust Fund Agreement (Form BMC-85) as proof of a trust fund.

Another important part of your application for broker authority is the Form BOC-3, Designation of Agent for Service of Process (often referred to as a process agent). A process agent is an individual who will accept legal process on your behalf and forward it to you for response. Brokers are required to designate a process agent for each State where they have offices or write contracts, as stated in 49 CFR §366.4(b). For example, if your brokerage resides in Pennsylvania and you have offices in Maryland and Delaware, you must designate process agents in all three states to be in compliance with the regulation. Furthermore, if you have written agreements or contracts with motor carriers in Virginia and New York, then you must designate a process agent in those two states, as well.

You are ready to apply for broker authority when you have completed the OP-1 Form, BMC-84 or 85 Form, and BOC-3 Form. Be sure to check the forms for accuracy before you submit them. Errors and omissions can delay the processing of your application, ultimately delaying the granting of your authority.

Broker recordkeeping

Authorized property brokers have a number of ongoing regulatory responsibilities under Part 371. A record of each transaction must be maintained, showing:

- The name and address of the consignor;
- The name, address, and registration number of the originating motor carrier;
- The bill of lading or freight bill number;
- The amount of compensation received by the broker for the brokerage service performed and the name of the payer;

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- A description of any non-brokerage service performed in connection with each shipment or other activity, the amount of compensation received for the service, and
- The amount of any freight charges collected by the broker and the date of payment to the carrier.

Each party to a brokered transaction has the right to review the record of the transaction, which must be retained for a period of three years.

A broker who also engages in any other business must maintain accounts so that the revenues and expenses relating to the brokerage portion of its business are segregated from its other activities. Expenses that are common should be allocated on an equitable basis, however, the broker must be prepared to explain the basis for the allocation.

A broker is not a motor carrier, and cannot, directly or indirectly, represent its operations to be that of a carrier, nor can it legally act like a motor carrier. The broker simply holds itself out to arrange transportation by motor carrier for compensation. Care should be taken not to exercise “control” over the motor carriers performing the transportation, such as executing an exclusive continuing contract with a carrier that prevents assigning the load to another carrier. The FMCSA may view a broker in such an exclusive contract as functioning as a motor carrier, and may hold the broker responsible for carrier compliance with the FMCSR’s and other regulatory matters.

Freight Forwarder

What is a Freight Forwarder?

The term “freight forwarder” means a person or entity that holds itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business:

- assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;
- assumes responsibility for the transportation from the place of receipt to the place of destination; and
- uses for any part of the transportation a carrier subject to jurisdiction of either FMCSA or the Surface Transportation Board.

Freight forwarders are required to have a USDOT number and register for freight forwarder operating authority with FMCSA. Freight forwarders that perform both freight forwarder services and motor carrier services must obtain both freight forwarder and motor carrier authority. This requirement is similar to motor carriers who broker loads, even occasionally. They also must have both motor carrier and broker authority.

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The difference between a freight forwarder and a broker

The main distinction between a broker and a freight forwarder is a broker does not transport property and does not assume responsibility for the property.

The freight forwarder offers this service and thereby has an obligation to issue a through bill of lading to the shipper for each shipment the freight forwarder handles. The freight forwarder assumes responsibility for the shipment(s) from the time it is in receipt of the goods to be transported and up to the point of destination. This includes any loss, damage, and filing of claims with other carriers involved in the transportation of the goods. Regulations governing freight forwarder bills of lading are found in §373.201.

Obtaining Authority to Operate as a Freight Forwarder

There are two types of freight forwarder authority - Freight Forwarder of Property (except household goods) and Freight Forwarder of Household Goods. Both are required to file Form OP-1(FF) to be granted authority. Companies with existing motor carrier authority should include their current USDOT number on the OP-1(FF) form but leave the MC number field blank. FMCSA will issue a separate MC Number for the freight forwarder authority.

In addition, freight forwarders are required to have on file with the FMCSA a surety bond, trust fund agreement, or public liability insurance. Freight forwarders that operate vehicles and perform transfer, collection, and delivery services are required to carry the minimum amounts of cargo and public liability security identical to those prescribed for motor carriers in §387.303. These minimum amounts will vary, depending on gross vehicle weight rating (GVWR) and the commodity being transported (hazardous or non-hazardous). Minimum limits of security will range from \$300,000 up to \$5,000,000.

Household goods motor carriers are required to carry cargo insurance to compensate individual shippers for loss or damage to property in connection with their transportation service:

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

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Freight forwarders that operate with no vehicles are required to have on file with the FMCSA a surety bond or trust fund agreement in the minimum amount of \$75,000. Applicants must seek a waiver of bodily injury and public liability (BI & PD) insurance coverage and certify in its forwarding operations that:

- It will not own or operate any motor vehicles upon highways in the transportation of property;
- It will not perform transfer, collection, or delivery services; and
- It will not have vehicles operated under its direction and control in the performance of transfer, collection, or delivery services.

For a company having both broker and freight forwarder authority, one \$75,000 bond and trust fund is sufficient as long as the legal entity holding the authorities is the same. This company would need to file separate BMC-84/BMC-85 forms for the broker and freight forwarder operations. However, the underlying bond or trust fund can be the same for both operations. If the broker and freight forwarder operations are conducted under separate but affiliated companies, each entity must have a separate bond or trust fund.

Another important part of the application is the Form BOC-3, Designation of Agent for Service of Process (often referred to as a process agent). A process agent is an individual who will accept legal process on your behalf and forward it to you for response. For example, if you are a freight forwarder in Illinois and you have offices in Wisconsin, Indiana, and Iowa, you must designate process agents in all three states to be in compliance with the regulation. Also, if a freight forwarder has written agreements or contracts with motor carriers in other states, the freight forwarder must also designate process agents in those states as well. The freight forwarder may use a company listed on the FMCSA website to arrange their process agents. Go to <http://www.fmcsa.dot.gov/registration-licensing/licensing/agents.htm> .

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What is a BOC-3?

In the motor carrier industry, many participants are required to obtain permission from the FMCSA in order to operate their business. For-hire motor carriers are defined in §390.5 as “a person engaged in the transportation of goods or passengers for compensation.” This includes common and contract carriers, brokers, and freight forwarders, all of whom must apply for authority and file specific documents.

The for-hire motor carrier must submit a registration application (Form OP-1, OP-1(FF), OP-1(P)) to the FMCSA with a \$300 fee per application, file proof of required insurance (described in Part 387), submit a Designation of Process Agents (BOC-3), and file an MCS-150 or MCS-150B. New carriers must file these documents before beginning operation and comply with all DOT new entrant requirements.

While many accept the fact that paperwork and forms must be filed, questions quickly arise about “What are Process Agents and what is a BOC-3?”

A BOC-3 is a form required by the FMCSA that grants authorization to the applicant to operate as a for-hire carrier, freight forwarder, or broker. The BOC-3 requires the applicant to file with the DOT a “Designation of Agent for Service of Process” for each state in which operations will be conducted.

A Process Agent provides a service by receiving legal documents in any proceeding brought against a motor carrier, broker, or freight forwarder. Every motor carrier or forwarder registered with the Federal Motor Carrier Safety Administration must file a Form BOC-3 listing the name and address of an agent for each state. Brokers are required to list process agents in each state in which they have an office and in which they write contracts.

Currently, private carriers are not required to secure Processing Agents in the states they operate in. However, they will be required to do so under the Unified Registration System as of October 23, 2015. This new requirement applies to every entity under FMCSA’s commercial and/or safety jurisdiction.

A designation is required for each state in which you are authorized to operate and for each state in which your vehicles travel. See §366.4 - *Required States* (Effective October 23, 2015).

Interline agreements

Interline agreements allow carriers to extend their service into locations they normally do not, or cannot, serve.

There are also times when a motor carrier has freight to deliver to a destination from which there is little chance of a return load. To avoid returning empty and under utilizing their equipment, carriers may arrange to “interline” the load with another for-hire carrier for part, or all, of the trip.

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Bill of lading. Loads transported in an interline service must move on a through bill of lading issued by the originating carrier. Because the freight is tendered to the originating carrier, the bill of lading is a contract between the originating carrier and the shipper. The rates charged and revenues collected from the shipper must be based on the originating carriers published or agreed rates and charges. In other words, the rates charged to the shipper must be the same as if there had been no interline. Likewise, any rules or accessorial charges assessed against the shipper must be those of the originating carrier, regardless of any rules or charges the interlining carrier maintains. The originating carrier will be responsible, under the bill of lading, for any freight loss or damage claims submitted by the shipper.

Written contract. Under an interline arrangement, the carrier parties must have an interline contract, lease agreement, or other contractual arrangement in writing. The agreement for the interlining service must describe the specific equipment involved, the points or locations of interchange, and how the equipment will be used. The contract should state whether or not there will be charges or fees for use of the equipment or delivery of the load and what these agreed upon rates are. Any charges between the carriers for the use of the interchanged equipment must be kept separate from the revenues paid by the shipper for transporting the freight. Other matters to clarify include who will be responsible for damage to the equipment during use in an interline movement, and how cargo loss or damage claims will be resolved. While the originating carrier is liable to the shipper for the claim, the interlining carrier bears responsibility for the goods while they are in its custody. The written interline agreement should outline how the carriers will resolve loss and damage claim issues.

Regulatory requirements. The carrier partners in the interline movement must have the necessary authority and permits to perform the transportation between the interline point and the destination. If the interline transaction involves a power unit, the “authorized” carrier receiving the load and equipment must display their US DOT number as required by 49 CFR §390.21. Before giving up possession of the equipment, the carrier must remove all identification showing it as the operating carrier. In regulatory terms this is referred to as “interchange of equipment.”

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Documentation with vehicle. A copy of the interline agreement or a statement certifying the authorized interlining carrier's operation of the equipment must be carried in the vehicle during the interline service. The statement must identify the equipment by company or state registration number, indicate the specific points of interchange, the date and time the carrier assumed responsibility for the equipment, how the equipment will be used, and be signed by the parties to the agreement. If only trailers or semitrailers are involved in the interline service, a copy of the agreement or statement is not required to be carried with the vehicle.

Spotting services

Hiring spotting services (or local delivery services in some cases) to free up a carrier's vehicles is also a method of using third party trucks to the carrier's advantage.



To determine if there is a return on investment for the use of a spotting service, determine how much time is being lost, what the total value of that time is (in both direct costs through an ABC study and the lost revenue), then compare this to the fees the spotting service or local delivery company is quoting.

There are intangibles that must also be considered. Dispatch operations, dissatisfaction among drivers, and customer service requirements also need to factor into the decision.

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Capital Investments, Costs, Benefits, and Strategies

Equipment purchasing process

There is little doubt that equipment purchases represent a significant investment for any size carrier. Therefore, the process of selecting the best possible equipment at the best possible price is critical. A Fleet Manager must take a “process approach” to the purchase of new equipment.

Among the most important aspects of the purchase process is making sure you purchase equipment that is designed for the job and the company. This can be both a pleasant and challenging task assigned to any Fleet Manager. But whatever equipment is selected, the Fleet Manager must know that he/she is going to have to live with the vehicle and its components for years to come.

Several areas must be considered when purchasing the organization’s vehicles, including:

- **Productivity** — Depending on your type of operation, productivity could mean maximizing payload or available trailer space within the legal limits for the vehicle’s size and weight. In order to maximize productivity, the equipment must have sufficient power (while delivering acceptable fuel economy), and components and accessories capable of carrying the load, to safely accomplish the work it is intended for.
- **Life-cycle** — As stated previously, equipment purchases represent significant investments. One way for companies to ensure a decent return on these investments is to extend the productive life of the equipment. Carriers can accomplish this by establishing a proactive and aggressive preventive maintenance program. On the other hand, many carriers operate under a definite equipment trade-in schedule. But even in these situations, maximizing return on equipment investment needs to be a top priority.
- **Driver-friendliness** — With driver turnover a major challenge facing the trucking industry, purchasing equipment that is driver-friendly has become vital. Fortunately, with advancements and improvements in vehicle ergonomics, there are more options available than ever before.
- **Matching the equipment to the job** — Buying too much vehicle means that you’re spending more money than is necessary to do the job. Buy too little and the vehicle will not be able to perform as the vehicle engineers intended. Buying too little vehicles can also lead to overloading or overworking, which inevitably will

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cause premature wear and tear on the vehicle and its components, increasing maintenance costs for the vehicle.

- Cost — Purchase, operational, and maintenance costs must be considered. New equipment may be expensive to purchase, but may be able to show a better Return On Investment (ROI) based on lower operational and maintenance costs. This is because newer equipment tends to be more efficient to operate and will be less prone to expensive maintenance and overhauls. Also, warranty coverage provided by the manufacturer can help absorb some of the carrier's maintenance costs.

The up-to-date manager must also be aware of proposed state or federal regulations that might affect the vehicle's size, weight, and emissions control in the future. Many new vehicle configurations evolve from these limits. As emission controls become tougher, new fuel controls and exhaust systems must be developed to meet the requirements while still maintaining or improving efficiency. In addition, new or revised regulations might impact the specifications of safety accessories and components. Staying up to speed on the federal and state regulations that deal with equipment is a critical responsibility of the Fleet Manager of any transportation organization.

Another thing to take into consideration is the evolving and/or changing scope of the organization's service. The operation itself must be reviewed. Have changes occurred that require a different kind of equipment? Will the vehicles be traveling to a new geographical area? Are new marketing strategies being planned that will require the vehicles to perform a variety of tasks? Can one new vehicle replace two old vehicles because of operational changes or vehicle improvements?

Whether purchasing with the intent of using a life cycle, or making decisions based on present performance of the vehicles, the Fleet Manager must be working with the other managers (maintenance, safety, and finance) and making a conscious decision on vehicle replacement.

As equipment is the largest investment at a carrier, we will want to spend a considerable amount of time discussing the process of specifying, or spec'ing vehicles. Whether leasing or purchasing, the first step is to determine the requirements for the new vehicles. It is best to have this determined before calling the first dealer for information.

Once you have your specs, the next step is to approach dealers for their input and pricing. If you do not have your specs in place, the dealers will try to sell you what they believe may be best suited to your application (and possibly most expensive).

One area that carriers need to be familiar with is "economy of scale." The more identical units the vehicle manufacturer can build in a "run," the more willing the dealer and manufacturer will be to provide a discount. If a carrier purchases one vehicle per quarter, rather than four on the same order, the carrier will see a higher cost per unit due to the dealer and manufacturer being unwilling to provide a discount.

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conditions, the opposite can now be argued with great enthusiasm and sanctions from the same fleet managers! Rising fuel costs, increasing shortages of drivers and technicians, and excess capacity with for-hire carriers create increasing risks for fleet managers. Truck leasing can often reduce these business risks. When considering a truck lease versus buy decision, consider the following questions:

- What is the cost of your time for managing fleet maintenance operations?
- Does your company have the buying power to purchase necessary parts and supplies for truck upkeep?
- What is the real cost of tying up your working capital in equipment and maintenance?
- Would off-balance sheet accounting through full-service truck leasing help your financial picture?
- Are you in a position to risk the resale value of trucks in a volatile market, or would it help your business to have the guaranteed residual value that fleet leasing offers?
- Can you afford to train and maintain an adequate repair and maintenance facility, have your work done as needed on the road at a greatly increased cost, or is it more beneficial to have a pre-established system for vehicle upkeep in place?
- Would having premium equipment at a reduced cash outlay have a positive effect on driver turnover?

Full service leasing programs, especially for smaller fleets, can become a workable option. This thought is shared by many fleet managers, regardless of their size, as the technology and demands for cleaner running trucks dictate the industry's priorities. The 2010 engines are an example of this. The new technology of these engines requires maintenance technicians to be re-trained again in the art of their craft. This will make managing the maintenance overhead even more difficult for small to mid-size carriers and quite possibly, determine the viability of their own shop!

Technicians are also on the list of shortages in the industry, to no one's surprise. In fact, one study shows this number to be just under 50,000 by 2010! Through a solid leasing program, you are, in effect, outsourcing your maintenance worries thereby reducing operating costs, limiting the uncertainty of investing in new technology through ownership of these vehicles, and managing your risks in knowing that the leased vehicles are maintained by a state-of-the-art facility with properly trained technicians. Your costs for all these services may be totally deductible at tax time. Check with your accountant for accuracy before making your decision.

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company that treats their drivers well enough to care for their own safety.

Maybe financing is the best option. Financing the purchase will be a carrier by carrier decision. In some cases the carrier may get the best package directly from the manufacturer. In other cases the best financing option may be a financing company that specializes in financing carrier equipment. Finally, the carrier may receive the best financing package from the bank or financial company that is already financing other portions of the company.

Financing can be handled much like the equipment process. First, decide what you want, and then get dealer proposals. In the case of financing this will require you to settle on a cost per unit. Once this is settled on, approach the various financial institutions for their proposals. Remember to consider all costs when reviewing financing packages. Interest, interest over time, payment fees, loan charges, and other fees all need to be considered.

Equipment specification

While the Fleet Manger may not personally develop or select new vehicle specifications, he or she should be familiar with the principles involved. At the very least, the Fleet Manager needs to be involved in the process to provide input as to how the new equipment specifications will impact operations, driver satisfaction, meeting customer requirements, and reliability, among other issues. Tomorrow's headaches can be avoided if you consider these items during the selection process.

It's a good idea to review any past equipment specifications with future operational needs and maintenance in mind. In order to do this, the organization should involve the personnel closest to the issue. This would normally be the Fleet Manager and the Maintenance Manager.

Undoubtedly the first questions to be considered early in the process will concern the product that is being hauled or the payload. The questions should go something like this:

- What is the product?
- How is it shipped?
- What does it weigh per case, gallon, pallet, etc.?
- How much is shipped per trip?
- What does the total payload weigh?
- What are the dimensions (cubic feet, gallons, etc.) of the payload?
- How is the product loaded? Unloaded?
- Are there any special handling procedures for the payload?

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Answering these questions will begin the process of deciding what driveline, tires, and vehicle configuration will be required.

Much like the product information, the operating environment the vehicles are operating in should be reviewed with every vehicle purchased and any time there is a change in the customer base. Vehicles that were purchased to operate in a local application may not be well suited to operation in an over-the-road environment. The Fleet Manager needs to be constantly aware of the products the vehicles are carrying and operational environment in which they are being operated.



Motor Carrier Best Practice

“We have always bought model X with engine Y and kept them eight years” is not a sound method for deciding on new equipment. Changes in products or the operational environment may lead to accelerating vehicle purchases to replace vehicles that no longer match the fleet’s needs.

After drawing your own conclusions about the requirements for the new vehicle, it can be helpful to get input from the drivers and mechanics. Suggest a meeting, a brainstorming session on what went wrong on the old vehicles and what participants would like to see on the new ones.

Talk to the mechanics about the old vehicles. Were there any features that made repair difficult? Were any components hard to get at? Were any special tools required (that they didn’t have!)? Were some parts always on back order? In other words, was there anything about the vehicle that required special pains to repair and irritated mechanics in the process? They won’t appreciate having the same hassles in a new vehicle. Ask them to point out the “model” vehicles in the fleet and describe specifically what makes them easier to maintain. Take advantage of the input they can provide.

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Equipment specification guide

The above information has got you to the point where you now have a general idea of what you are looking for in a vehicle. The next step is to take the information gathered so far and work with the Maintenance Manager and dealers to spec the equipment. Here is a guide to follow that may help you to not overlook any key considerations when reviewing components.

- Product carried.
- Operational requirements.
- Cab configuration.
- Driveline (engine, transmission, drive axle(s)).
- Frame.
- Non-drive axle(s).
- Brakes.
- Electrical system.

Cab configuration. You know all the pro and con arguments about the cab-over (COE) versus the conventional cab. Each has its advantages and the final choice may depend on where the vehicle will operate or whether the drivers have a strong preference for one or the other.

Drivers like the conventional for its easy entry and exit and the extra room in the cab. Conventionals also gives the driver a smoother and quieter ride. Here are some of the other benefits to conventional vehicles:

- The conventional costs less to purchase (when a sleeper is not required).
- It has better aerodynamics. Air flows easily around the nose of the conventional for better fuel economy.
- The optional lighter front can mean better maneuverability in certain applications.
- The longer length means the gross vehicle weight (GVW) can be spread over more truck, hence heavier legal loads can be hauled.
- Inspection is easier because the engine and steer axle components are easily accessible.

Conventional trucks are available in a variety of cab designs. One variation may offer the maximum in aerodynamics, while another may offer improved durability and less susceptibility to minor damage. One variation that is popular in certain applications is the “short nosed” conventional, properly known as the cab forward conventional. These trucks typically have a smaller hood area, and therefore a shorter wheelbase,

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which is accomplished by “tucking” the rear of the engine into the firewall. Combining a cab forward design with a setback steer axle has allowed for very maneuverable conventional trucks.

The greatest advantage to the COE vehicles is the short overall length and small turning radius. This means maximum maneuverability, especially good for city driving. The COE has become more popular in the light and medium duty markets, specifically in the “city” and “vocational” applications (garbage trucks, local delivery straight trucks, etc.). It is very seldom used by heavy duty fleets anymore. The cab forward, setback steer axle conventional trucks have taken the place of the COE in the heavy duty market. The COE does have some advantages:

- The short length also means that more payload volume can be accommodated in the body.
- Forward visibility is better.
- The short wheel base allows for easy handling.
- Overall better visibility and better maneuverability in confined areas.
- Once exposed (by tilting the cab) the engine and driveline are easily accessible. However, driver inspection is more difficult since the cab covers the engine entirely.

Engine. If you are in the heavy truck market, the only question in the engine is balancing horsepower and torque to the expected working loads and environment the truck will be operating in.

Engine performance is judged by two elements, torque and horsepower. Torque gets a load moving; horsepower keeps it going at a particular speed. Engine torque can be measured by a dynamometer; horsepower can't be measured, but it can be calculated from the torque measurement and the rpm. (Torque = Horsepower \times 5,252 (a constant developed by engineers \div rpm.)

Torque can be multiplied by mechanical means (i.e. a gearing system), but since horsepower is work done by the engine within a given time period, it cannot be increased or decreased by mechanical means. Accessory equipment such as alternators or fans, can drain away horsepower, however. So engines frequently carry two ratings for torque and horsepower — gross and net. The gross rating refers to its performance on a testing stand; the net rating is based on the performance of a fully-equipped vehicle.

Having said that, what engine is right for your equipment and operation? Perhaps the biggest thing to consider when selecting an engine package is to appreciate what the truck is going to do. What kinds of weights will it be pulling? What's the nature of the work? Is the company more concerned with fuel economy or maintaining highway speed and having power left in reserve? “Roadability” (ability to get to and operate at road speeds on the roads the vehicle normally operates on) and

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“gradability” (the ability to pull the normal grades the vehicle will be exposed to both effectively and efficiently) are two engine concerns that are directly related to the torque and horsepower of the engine. The selection of the right engine must be based on these issues. If the vehicle is overpowered, there will be a loss in efficiency, but if it is underpowered roadability and gradability will be affected. Also, underpowered vehicles tend to suffer from more mechanical problems.

The first question you will have to address if you are purchasing in the light or medium duty classes is the old gas vs. diesel question. You have probably been through this routine before, but let’s review some of the advantages and disadvantages of each.

Gasoline engines

Advantages:

- Cost less to buy.
- Are a good choice for light duty trucks (under 19,000 pounds) that operate less than 40,000 miles a year.
- Are lighter weight than similar size diesel engines.
- Can be serviced by a wider range of mechanics.
- Generally are cheaper to repair.
- Start better in cold weather.

Disadvantages:

- Need scheduled maintenance more often.
- Consume more fuel.
- Lower power to size ratio.
- Less longevity and durability.

Diesel engines

Advantages:

- Lower overall cost of operation.
- More fuel efficient.
- Need less maintenance.
- Generally require less repairs.
- Simpler design-less to fail.
- Have longer overhaul intervals.
- High power to size ratio.

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Nearly all engines manufactured today are electronically controlled to one degree or another. Some of the smaller engines have only a small fuel/air management system, while most of the heavy duty engines are fully computerized. In the heavy duty engines, when the driver operates the throttle the Engine Control Module (ECM) adjusts the fuel and air flow to most efficiently achieve the performance the driver has requested.

Along with controlling the management of the fuel system, the electronic engines all have a memory. The memory is intended to shorten the diagnostic cycle in case of engine problems. How large, what the memory “remembers,” and ease of access to memory, are factors to be considered when choosing an engine. Some manufacturer’s ECMs will remember everything from a misfiring injector to hard braking done by the vehicle.

Fully electronic engines offer several advantages. First, they are considerably more fuel efficient than the older technology engines. This is accomplished by the computer and software constantly tracking engine performance and demands, then determining the most efficient way of operating. This decision is made several times a second.

Second, the engine electronics on some vehicles can be programmed to shut down the engine to protect it from damage. Should the oil pressure or level go too low, or the coolant level go too low or temperature too high, the engine will warn the driver and then turn off.

Third, the “memory” can be set to display “trouble codes” to the driver if a “check engine” or “shut down” warning light has come on. By activating the system the driver can get the trouble codes displayed on the dash.

Fourth, the engine can be electronically “limited.” Part of the programming allows supervisory personnel to set the vehicle to go no faster, or generate no more power, than a pre-set limit. Once the speed, RPM, or power limit is reached, the computer will limit the amount of fuel to only what is required to maintain the desired speed, RPM, or power.

Finally, the engine’s memory can become useful in case of a performance problem or an accident. This feature can also be used as a method of tracking driver performance or discovering driver abuses such as over-speed, over RPM, excessive hard braking, and excessive idling.

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The Real World

The newer high torque engines do not generally require the complicated 13, 15, or 18 speed (or more) manual transmissions any more, except in special applications.

Most automatic transmissions available for trucks are in the 4 to 5 speed range. Most automatically shifted and manual transmissions are in the 7 to 10 speed range. Fewer gears generally equals better fuel economy. The trick is to make sure the transmission performance and gearing matches the engine performance, with the fewest number of gears.

Automatic transmissions are now available in both hydraulic and gear drive configurations, both of which are electronically controlled. The hydro-drive transmissions use sensors and controls to shift the transmission at optimum shift points based on load, demand, and engine speed. Automatically shifted gear drive transmissions use electronic sensors and controls to shift the gears at specific RPMs. This transmission offers the best of both worlds. It maximizes efficiency and fuel mileage by not losing power to the hydro-drive system and does not require the driver to have a high level of skill to shift the transmission.

Rear axles just keep lumbering along, carrying the load, transferring the torque, supporting the suspension, handling braking shocks, and generally acting as the workhorse component of the vehicle. Selection of type, capacity, and gearing is keyed directly to the vehicle's job and operating environment. For example, some waste-haulers consistently spec heavier rear axles, it's cheaper to over-specify than to repair original equipment, they say.

New faster axle ratios have been developed to handle the slower speed engines and low-profile tires, designed for fuel economy. Brakes are based on the carrying capacity of the axle, so correct spec'ing here can prevent over-braking conditions as well. In heavy duty applications be sure to check into filtration systems that can keep the axle lube oil clean.

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Engine and the total gear ratio, that is, the combination of transmission and rear axle ratios, make up “geared road speed” which is the maximum speed at which the truck will run with the transmission in top gear and the engine operating at its top governed rpm. Geared road speed is the engineered speed, governed by the mechanical factors of the engine and powertrain.

If you want a higher geared road speed, you’ll have to make other mechanical changes. Faster transmission or axle ratio for example. Many rear axle ratios are offered to accommodate engine speeds that run from the low-rpm diesel to the high-rpm gas.

For gas engines (where high engine speed usually isn’t a problem), direct drive is the cruise gear for fully loaded vehicles and overdrive is used for the return-empty trip. Less power is needed then and overdrive reduces rpm and saves fuel.

The real test for a vehicle’s power is not necessarily shown by the engine power curve, but rather in its gradeability, or measure of the slope on which it can travel without loss of speed.

Gear-fast/Run-slow! As an engine becomes increasingly powerful (as with today’s 500+ horsepower engines), the increased power is coming from high-torque/low-rpm settings as opposed to the more traditional low-torque/high-rpm approach.

Under gear-fast/run-slow, geared speed is higher than the cruise speed, allowing the engine to cruise at a modest 1400 to 1600 rpm. However, even at these low revolutions, the axle must be able to run fast at highway speed.

Frame. Now that you have settled some of the basic information, the next step is to select a frame that can support the projected GVW, type of operation, and driveline.

The backbone of the frame is the side rails and crossmembers. In an effort to lighten the vehicle, an aluminum or aluminum alloy frame may be suggested. Whether a steel or aluminum frame is used, the strength rating of the frame must match the components and intended loads.

Heavy-duty applications may require a frame analysis, but generally if you are staying within the GVW that the truck was designed for, the standard recommended frame should be sufficient. The exception may be if you added any extra equipment or additional load to your vehicles. This might call for frame reinforcement.

When spec’ing the frame, also consider the suspension. Spring complaints may not be enough reason to bring a vehicle into the shop, but they can affect driver performance. Know ahead of time the weight that the truck must haul so that the springs can be spec’ed at the proper size. If the vehicle runs out loaded and returns empty most of the time, a solution may be more complex.

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Air spring suspensions cost more than steel, but users insist that they require less maintenance, last longer, and increase truck value at trade-in time. They also have the ability to adjust the ride to changing weights, something spring suspensions cannot do. Also, air-cab suspension might ease driver backache — and make the cab last longer.

Non-drive axle(s). Weight rating of axles and tires are the main concerns when spec'ing axles. If the axles are correctly spec'ed, the brakes and other components will match the rest of the vehicle. The other concern is the location of the axles. In some applications the only other axle on the vehicle will be the steering axle.

One type of steering axle configuration that has been developed to help in weight distribution, as well as maneuverability and ride, is the "set-back steer axle." In this configuration the steering axle is "set back" from the front of the truck, rather than in its traditional location directly behind the bumper. By placing the axle further back on the frame it is in a better position to assume more of the cargo weight, thereby lightening the weight carried on the drive axle(s). This position also allows for a shorter wheel base, leading to a reduced turning radius, which means a more maneuverable unit. Also, the setback axle allows for the use of longer springs which creates more spring flex, improving the ride of the unit.

Whether the vehicle is spec'ed with a standard or setback axle, the weight rating of the axle must match the projected load. This is critical with the steer axle, or the vehicle may suffer from steering difficulties.

Other axles can be either "dummies," designed to stay on the ground and carry weight, or "lift" axles which can be lifted off the ground when not needed for load bearing. Dummies are a much simpler axle, costing less to install, while lift axles are more expensive to purchase but have reduced operating costs. As with steer axles, the key consideration is making sure the axle matches the weight that will be placed on it.

Brakes. Air-brake buyers have a choice of three types:

- S-Cam brakes, the oldest and heaviest choice, are the least expensive, simplest in design, and mostly trouble free. This is especially true since the introduction of the automatic slack adjuster and the non-asbestos lining materials.
- Wedge brakes, much lighter in weight and self-adjusting, can fade at high temperatures and require more air pressure to activate (nearly 10% of the brakes sold are wedge).
- Air disc brakes also require more air pressure, but they produce more torque, hence a more stable stop; they are self-adjusting and don't fade, but they generally have a shorter overall life and the pads have to be replaced fairly often. They aren't difficult to replace, however, and are becoming a more popular choice.

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Capable of performing just as well as the air-braking systems (or better in some applications), a hydraulic system doesn't have the contamination problems that air-brake systems can suffer from and it weighs and costs less. There are fewer maintenance demands; timing problems are negligible and the system works well with automatic adjusters. When combined with electric or surge brakes on a trailer, these brakes work well in the light to medium class vehicles.

Electrical system(s). When spec'ing the electrical system, the output of the charging system must be matched to the total maximum demand of the electrical system. If you "underbuy" in the electrical system, the vehicle will be prone to draining its own batteries and requiring jump starting. This is one area where overbuying is a good idea.

One other consideration in the electrical system is the use of "shore power" to run accessories. This can be accomplished in two ways. The first is to have all accessories powered by 12 volts, and provide the vehicle with a system that converts 120 volts to 12 volts to operate the accessories. The other option is to have a system that converts 12 volts to 120 volts to operate the accessories when the vehicle is not connected to 120 volt shore power. Either of these can be combined with a "gen-set" mounted on the vehicle to provide 120 volt power to the shore system if the vehicle cannot connect to a shore line for some reason.

Available accessory equipment

Air dryers reduce water, oil, and carbon contamination - the curse of any air-braking system. They operate on the principles of condensation, use of a drying agent (desiccant), or centrifugal force to clean and dry the compressed air before it is delivered to the system. If you think an air dryer might help reduce brake problems, check out its maintenance manual before you buy.

Engine braking has become important because the fuel-efficient truck models roll more easily and the new fuel-efficient engines have reduced natural engine-braking ability. Retarders fill the need for additional engine-braking; they spare the braking system, while allowing the driver to control the retarding power. They fall into four categories:

- Exhaust retarders have a control which closes the exhaust pipe, thereby creating back pressure in the exhaust system to slow the engine.
- Engine retarders and engine brakes change the valve timing or injector functions in the engine, thereby limiting the number of cylinders working (the venerable Jake brake is of this type).
- Hydraulic retarders cause the engine to work against a fluid system contained in a closed housing that is part of the transmission.
- Electric retarders consist of electromagnetic coils which produce a drag force on the truck's driveline or trailer axle.

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Maintenance-free batteries:

- Require less frequent checks for water levels,
- Reduce actual water loss from the cells, and
- Minimize corrosion. Whatever the choice for batteries, don't allow price to be the only consideration. Vibration test information can be an important key to how long a battery will last, yet one manufacturer reports that fleets seldom request this information when considering a brand. A new container material, structural foam polypropylene, is available instead of the usual hard rubber and thin-wall polypropylene. This newer material weighs less and seems to offer better resistance to vibration.

Fuel heaters can keep the flow going smoothly. Choose a mechanically simple model that heats the fuel before it goes into the first fuel filter and also prevents overheating of the fuel. Since the primary fuel filter and its supply line are the most common component affected by cold weather, it may be helpful to choose a model located in the engine compartment; avoid those mounted outside the frame rails where they are exposed to wind.

Water separators can be used in combination with a primary fuel filter or separately to keep water and other contaminants in fuel from reaching the engine. Since they must be drained regularly to prevent freezing, be sure they're conveniently located.

Aerodynamic accessories can significantly increase fuel mileage. Air resistance is a truck's second greatest impediment to movement, and therefore optimum fuel economy. Only weight impacts miles per gallon more. Efficient aerodynamics smooth the flow of air over, under, and around the vehicle. It is not uncommon for some aerodynamic truck/tractor designs to save carriers as much as 4–5 cents per mile in fuel savings. When spec'ing accessories for fuel economy, start with the full-cab roof fairing. Make sure it matches the height of your trailers. A proper roof fairing can improve Miles Per Gallon (MPG) performance up to 15 percent when compared to operating without one.

Other aerodynamic accessories include:

- Cab extenders, which are designed to bridge the gap between the truck cab and the trailer. The goal of these extenders is to attempt to reduce the gap to less than 18 inches.
- Side skirts, which cover the fuel tanks and battery box, and smooth out the overall profile of the truck.
- Air-dam front bumpers and aerodynamic hoods which are designed to ease air flow around the front of the vehicle.
- Other aerodynamic accessories (or aerodynamic location of accessories), such as mirrors, air intakes, air horns, and grab handles.

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- Trailer air deflectors including nose and rear “bubbles,” side skirts, and axle air deflectors. Any of these options can increase fuel economy by 1–3 percent.

Tire size does matter since a truck’s overall gearing changes with the diameter and circumference of its tires. Tread type also impacts fuel economy because a tire’s tread helps determine rolling resistance. For example, a lug-type drive-axle tire in winter will improve traction, but will also lower fuel economy by 2–4 percent. Tire technology has improved dramatically recently. With improvements in tread designs, casting designs, rubber compounds, and friction reduction, definite and significant savings can be realized by specifying the right tires for your equipment.

Available safety equipment

Let’s face it, this can be a dangerous industry. In a time when even small accidents cost companies an average of \$25,000, safety is critically important. Nothing you or your drivers do is worth getting anyone hurt (or worse) over.

What the driver can’t see can hurt him/her (or others). Visibility means being able to see beyond the view available through the windshield. When purchasing equipment, try to choose windshield and window configurations that open up the driver’s view.

Next, consider ventilation options. Without proper ventilation, the windshield and side windows can easily fog up. For this reason, many carriers opt for add-on defroster fans.

Peeper windows, cut into passenger side doors or sleeper sides, can also greatly enhance driver visibility. Consider this option when ordering your vehicles.

Visibility doesn’t end with what your driver can and cannot see. It also involves helping the general public see your vehicle. As a safe and responsible organization, it is your job to ensure your vehicles are as conspicuous as possible. Things to consider include:

- Vehicle color — Bright colors reflect light while dark colors tend to absorb light. This is an important consideration, especially during night operations.
- Conspicuity systems — Even though federal regulations state specific reflectivity, pattern, and size requirements for conspicuity treatments for tractors and trailers, a carrier can certainly choose to go above and beyond the regs. The easier your equipment is to see, the safer it becomes.
- Lighting — While LED turn signals, stop lamps, and marker lights are more expensive, they can last up to 10 times longer than more conventional bulbs. But in addition, LED lights will also light 2 / 10 of a second faster than their incandescent counterparts. Although this might not seem like a lot, at speeds of up

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to 75 mph, that amount of time accounts for 15–18 feet of stopping distance.

Much focus has been given to interior cab ergonomics. Studies continue to support the idea that comfortable drivers are less fatigued and therefore safer. But good ergonomic design goes beyond driver comfort. It also means being able to see and read gauges and reach controls while in a comfortable position, and not over-reaching.

Ease and safety of entering and exiting the vehicle should also be considered. This is especially true for operations which require the driver to mount and dismount the vehicle repeatedly during the day.

There are presently several electronic safety systems available. Here is a list of what is available, along with a short description of each. One key point to these systems is the vehicle needs to have the ability to support them. These systems will increase the demand on both the electrical system and the electronic systems communications network on the vehicle.

- Collision Warning Systems (CWS) use radar, sonar, infrared, or laser technology to warn the driver when the vehicle is getting “too close” to another vehicle or an object.
- Roll Stability Systems (RSS) use yaw and roll sensors to sense if the vehicle is approaching the edge of its stability envelope. If the vehicle becomes unstable the system communicates with the engine, telling it to reduce power to avoid a rollover. In some vehicles the system will even make “intelligent” braking decisions to stabilize the vehicle.
- Intelligent Cruise Control Systems (ICCS) communicate with the engine computer to slow the vehicle by “defueling” the engine if there is a hazard too close to the front of the vehicle or the vehicle becomes unstable. ICCS usually works with other systems (CWS and RSS). Experimental versions under development would even apply the brakes to prevent or minimize the effects of a collision.
- Lane Departure Warning Systems (LDWS) use video technology to alert the driver if the vehicle is departing its lane without the turn signal active. The system is designed to help the driver avoid “wandering” into other traffic lanes or leaving the roadway.
- Electronic On-Board Recorders and Automatic On-Board Recording Devices (EOBR and AOBRD) are devices intended to record a driver’s duty status. These systems take the place of the driver’s “paper log.” They presently rely on the vehicle for information and power to function legally and correctly. While presently not mandated by regulation, these devices are beginning to gain in popularity.
- Event data recorders are intended to track the driver’s and vehicle’s activities, and provide a means to improve the performance of both. They are also known as “black boxes.” These recorders can track vehicle speed (minute-by-minute and average), brake

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applications (times when the brakes were applied, number of times the brakes were applied, and brake force applied for each braking), engine RPMs (minute-by-minute and average), the driver's engine demands and the engine's performance, along with many other parameters. These systems can be part of the existing electronics on the vehicle that only needs to be accessed and activated, or they can be a separate system installed to track the driver and vehicle performance.

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Maintenance costs

Maintenance costs can vary from carrier to carrier. What one carrier defines as acceptable, another carrier may find excessive. The reason for the wide variation in what is acceptable has to do primarily with:

- Age of the fleet. Older fleets will generally require more, and more expensive maintenance. The trade off is the lowering of costs associated with the purchase of equipment.
- The percentage of repair costs that can be handed back to the manufacturer through vehicle warranty programs.
- The skill and behavior of your drivers. Drivers that abuse equipment, either deliberately or accidentally, will increase maintenance costs. Shifting without using the clutch, not performing inspections, and harsh shifting are all examples of deliberate vehicle abuse.
- The maintenance arrangement on leased equipment. Maintenance costs can vary widely on leased equipment, depending on the lease. In some cases the vehicle owner absorbs all maintenance costs, presenting an artificially low maintenance cost. The cost is there, it is just hidden in the lease payments.
- The size and complexity of the maintenance operation. If the maintenance shop only performs routine maintenance, and major repairs are outsourced, the carrier will see a low in-house cost, but a higher cost for the outside repairs. The exact separation of what is done in-house verse outside will change the maintenance costs.
- Carriers that completely outsource their maintenance will see a higher cost per hour, but may see an overall lower maintenance cost because of not having to maintain a maintenance facility and staff when compared to other operations.

The key with maintenance costs is to track, and try to improve them, as a whole. When determining maintenance costs, remember to factor in all maintenance associated costs. The cost of the maintenance facility, payroll and benefits for the staff, the cost of heating the facility, the overhead costs of operating and maintaining the facility, and the lost revenue of the vehicles in for maintenance must all be taken into consideration when determining the burden rate of an in-house shop.

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When reviewing costs associated with outsourced maintenance facilities, it may appear to be easier. However, the Fleet Manager must review all costs. If it is taking an extra day to get the vehicle through maintenance when the work is outsourced, this must be considered. If the drivers and vehicles are being held overnight to wait for the outsource shop to open, this must also be considered.

Finally, “rework” is a cost that must be considered. Rework is work that must be repeated due to incorrect repairs or maintenance.

Replacement scheduling

New versus old, when to trade? One argument that is ongoing in the industry involves when to retire and replace vehicles. Some carriers believe that vehicles should be kept in service as long as possible, while others believe a vehicle should never be kept longer than the warranty.

Still other carriers base their decision on “how much money they have into the vehicle” in terms of purchase cost, depreciation, and major overhauls. This process can involve a fairly lengthy evaluation of all vehicle costs over time.

To sum it up, this is a decision that each carrier must make based on several variables, and their acceptance of cost/benefit and risk (both of equipment failure and excessive maintenance costs due to component failure). Here is a list of issues to consider:

- Cost of maintaining and overhauling equipment once the warranty expires. With engine overhauls running in the thousands, many carriers have determined that trading before the vehicle is off warranty and requires an engine overhaul is beneficial. The flat rate cost of an “in-frame” overhaul (provided the overhaul turns up no additional problems) is typically 30 to 50 percent of the cost of a new engine. If the engine must be removed from the vehicle for a “complete” or “out-of-frame” overhaul the cost will generally be 50 to 70 percent of the cost of a new engine. In-frame or out-of-frame overhauls cost the same as one to several vehicle payments, but the money is being spent on a vehicle that is on the second half of its useful service life, where payments are being spent on a vehicle that is on the first half of its service life.
- Percentage of “unscheduled repairs” and “downtime.” Unscheduled repairs, also known as breakdowns, can be very costly to carriers. The cost of on-the-road repairs, the cost of missed customer deliveries, the cost of additional downtime for maintenance and repairs, and the cost of either reimbursing the driver for their lost time or potentially losing the driver, needs to be considered when deciding on when to replace vehicles.
- Cost of payments. Vehicle payments are a significant, but necessary fixed cost at any carrier. Some carriers view any time a vehicle can operate without payments as the “highly profitable”

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period in the vehicle's life cycle in the fleet. Other carriers consider interest on payments as "money lost" as it is not increasing the value of the fleet in the way the principle portion of the payments are. Because of this some carriers attempt to get as much life out of the vehicle as possible, and accept major component overhauls as a cost of doing business. Carriers that are successful at keeping vehicles for extended periods will generally have a rather extensive maintenance program.

- Depreciation costs/tax breaks. Once a vehicle is fully depreciated there are no longer any tax benefits that can be generated. The loss of this tax benefit is used by some carriers as a component in their decision making on replacement of vehicles. While this is typically not a primary factor to be considered when making replacement decisions, it is a consideration.
- Driver acceptance. With driver retention still a concern in the transportation industry, driver acceptance of vehicle replacement must be considered. In general drivers believe that newer vehicles are more reliable, more comfortable, and easier to operate. However, the opposite can also be true. Drivers may not be accepting of new equipment that is "too different" from the equipment they are presently operating.
- Fleet image. This is one of the intangibles. As a general rule well painted, clean, and reliable equipment will present the image a carrier is trying to project. New equipment automatically presents this image. Older equipment can be kept in a condition that presents this image, but it will be more costly.
- "Turnaround" point (maintenance and downtime losses and costs become as expensive as payments). One comment made by some fleet managers is "we can't afford new vehicles." Keep in mind there comes a point where a fleet can't afford to keep the existing vehicle operating. When the cost of maintenance (both mechanical and appearance), downtime and unscheduled repairs, the loss of depreciation, and the loss driver acceptance of the vehicles reaches a critical point, the fleet cannot afford to keep the older vehicles.
- Intended or planned life cycle at time of purchase. One way to prevent many of the problems with the decision making is to purchase vehicles with the intention of replacing them on a "schedule," and budgeting accordingly. Studying the above factors on existing or past vehicles can provide a Fleet Manager with a general idea of when the vehicles are "turning the corner" and need replaced.

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“Greening” Your Fleet

As anyone who operates a fleet knows, trucking isn't a single industry, but actually a widely varied collection of businesses that happen to use trucks. The trucks that work best in those businesses are just as varied,

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so it should come as no surprise that one size doesn't fit all when it comes to finding the right "green" truck for each specific application.

Although it's still relatively early in the evolution of green truck technology, business owners are already facing a mountain of choices when it comes to choosing the best for their fleet. Add in all the industry's proven approaches to saving fuel and reusing resources and finding just the right combination for any particular application might begin to seem like an impossible task.

Building the perfect green truck for the longhaul trucking segment is particularly challenging since there is little consistency in terms of terrain and fuel stops. At the same time, most trucks in this segment feature sleeper berths for the driver and those require a lot of energy to power amenities such as heating and cooling systems.

The first step is to spec a vehicle as aerodynamic and light as possible. Aerodynamically shaped cabs, bumpers and fuel tank skirts can improve fuel efficiency by as much as 1 to 2% at highway speeds. Chrome is not aerodynamic. The "large cars" decked out with hundreds of lights, chrome on every exposed area possible, big square noses and huge engines are quickly becoming a thing of the past. Even something as simple as wide-base tires on a tractor's drive axles and trailer can save 1,000 lbs., boosting fuel economy by as much as 0.2 mpg.

Next are changes to the truck's power signature. Yesterday's 550 horsepower engine is today's 475 horsepower engine which helps reduce fuel consumption and improves emissions. An automated mechanical transmission (AMT) shifts at precisely the right moment at the right engine rpm for the best fuel economy every time, improving fuel economy by a minimum of 0.1 mpg. Even though the sticker price may be higher for this technology, the increased cost can be recouped in as little as 18 months through better fuel savings.

Reducing the top speed of on-highway trucks via engine governing (also known as speed limiting) not only adds to fuel savings, but substantially reduces emissions as well. One company reduced the top speed of its fleet of 2,700 trucks in 2008 from 70 mph to 65 mph. This one change is expected to save them 2.8 million gallons of fuel per year and reduce their annual carbon emissions by 62 million pounds. Using a B20 biodiesel blended fuel can also reduce a truck's carbon footprint, though a fleet will pay for it with 1 to 2% lower fuel economy and a slightly higher price per gallon. It could be said in some cases that there is an associated cost for reducing carbon output but the alternative has a substantially greater cost to everyone.

Two provinces in Canada, Ontario and Quebec, have passed laws making speed limiters mandatory on all commercial motor vehicles operating in their provinces (no matter where the vehicle is registered). These regulations were passed to reduce fuel consumption and reduce greenhouse gasses and other pollutants associated with commercial motor vehicles. The regulations require that the vehicle be electronically limited to 105 kilometers per hour while operating in Ontario and Quebec. Warnings

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(-260 deg. F). The advantage, however, is that LNG can offer nearly diesel-equivalent range for a distribution-type vehicle.

Also, a range of tax credits and grants are available to commercial truck operators at both the federal and state level. For example, fleets can get a tax credit worth up to \$30,000 for refueling infrastructure and a 50¢ per gal. tax rebate as well as excise tax credits for buying natural gas-powered vehicles.

If the cost for switching to LNG proves too high for distribution fleets, a simpler change to B20 blended biodiesel can reduce emissions. Though biodiesel can cost more per equivalent gallon compared to petroleum-based diesel and results in a 1 to 2% fuel economy loss, no extra technology is required for use in model year 1998 trucks and up. Trucks older than 1998 may need their fuel hose lines changed as the biodiesel can degrade them over time.



Although there is substantial work still to be done in the area of diesel engines and trucking's impact on our environment, this is not something that is going to go away over time. The future of the trucking industry has been closely aligned with new eco-friendly technology and all businesses that expect to remain in business will need to plan ahead to see where their fleet will fit into the new "green" side of transportation.

Facilities decisions

Maintenance facilities are possibly the easiest to make a decision on. The number of vehicles, the frequency with which they will require maintenance and repairs, and the amount of time spent on maintenance and repairs, will provide the justification for the size and cost of a maintenance facility.

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Making facilities decisions for other segments of the company may not be as easy. How much privacy do you wish to provide for employees? If you want full privacy for all employees your facility will become quite large over time. Each employee will need a desk and space for storing job-related materials. The more employees you have, the more space will be required. How many employees you have, how much space you intend to provide each employee with, and how many employees you intend to provide with private space, will determine you facility requirements.

More important than the facilities decisions are the support staffing decisions. This is because staffing decisions drive the facilities decisions.

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BUSINESS

Business Plans for Business Growth

Introduction

Whether you are just starting a business or have been in operation for 20 years, you need a sound business plan. If you are writing one to start your business it can serve as a development tool for the company's founders. Whether you are writing one to start your business or are writing one after the fact, it can serve as a planning and evaluation tool for managers and other key people, a mission statement for customers, and a sales tool for raising capital.

A business plan provides a road map for guiding your operation. Business plans communicate company goals and values, outline sales and marketing strategies, and determine financial needs. A good business plan gives you your destination, which is tremendously important not just for you but for everyone involved, from employees to investors.

While enthusiasm alone may convince your friends and family members that your business is destined for greatness, investors, bankers, and potential clients want the facts. They want objective, in-depth analysis of the business opportunity with all the attendant risks and obstacles laid out in your business plan.

It is important to understand that business plans are not just for big businesses. Even a one-truck owner-operator needs a solid business plan to assure success. All the trucking knowledge in the world will not make you successful as a business person if you do not approach this as a business and plan accordingly.

Creating a vision statement

A vision statement is actually part one of a two-part description of the overall business intent. Part two is the mission statement. Vision statements describe the future: where you are going as a business or where you want to go. Mission statements describe today: why you exist as a business and what you are doing to pursue your vision of the future. Together they provide direction for the business by focusing your attention on doing things day-to-day to accomplish your mission, while taking steps to pursue your vision of the future which is your long-term business intent.

Your company's vision statement should include three main parts: your central purpose, your core values as a business, and your goals for the future. These should be understood and shared by all employees within your organization.

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The **central purpose** is the company's fundamental reason for being. Your central purpose should last for years and years. It does not change due to new technology, consolidations, or changes in staff. It's important to note here that some companies incorporate their mission statement into their central purpose and do not have a mission statement as a separate document.

Your **core values** are your company's essential and enduring tenets that guide every employee in their actions and decisions. These should be the inner beliefs held by everyone. They are the beliefs that do not change. Your core values are what you bring to work each day, not the things you are trying to become.

Your **goals for the future** are the third part of the vision statement. These are your ideas for the future. Some companies look at this as, "Where will we be in 10 or 15 years?" In expressing your goals for the future, you should look past the current capabilities of the company and the current trends of the market place. Your goals for the future should be visionary and allow your employees, your investors, and your customers to see what your company will look like in the future. This is a snapshot of what your company will be, not what people see today.

Too often, organizations create a vision statement that takes up a page or more. Some get bogged down in numbers and statistics that are not part of a good vision statement. A good vision statement is about possibilities and the future. It tells those who read it, what's different about your company from all the others in your industry. An effective vision statement tells how you are going to conduct your business. The best ones are concise, memorable, and doable.

So how do you create a vision statement? Sit down and start thinking. Think about all the reasons why you wanted to create your business, what you have to offer to the public, and what you see in your future. Then...start writing.

Overall business plan

A business plan is a written description of your business's future. It quite simply is a document that describes what you plan to do and how you plan to do it.

Business plans can help perform a number of tasks for those who write and read them. They are used by investment-seeking entrepreneurs to convey their vision to potential investors. They may also be used to attract key employees, prospect for new business, deal with suppliers, or simply to understand how to manage a business better.

So what's included in a business plan, and how do you put it together? Simply stated, a business plan conveys your business goals, the strategies you'll use to meet them, and potential problems that may confront your business along with solutions to those problems. It also lists the organizational structure of your business (including titles and responsibilities), and finally, the amount of capital required to finance your venture and keep it going until it breaks even.

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Preparing Action plans

Operational objectives have been clearly established as the focal point of any operational plan. They define the results desired in specific, measurable terms. In planning a trip, the first thing to determine is the destination and the date or time of desired arrival. However, several other key decisions must be made if that trip is to be successful. These include routes to be followed, necessary fuel and rest stops, vehicle size, weight, and configuration, permits, weather, construction, etc.

While these come almost as second nature to the seasoned driver, failure to give serious attention to even one of the key factors could result in an unsatisfactory or even disastrous trip. Drawing on this analogy, objectives are defined as the destination, while action plans describe how to get there..

Action plans are the specific means by which objectives are accomplished. While hundreds of books and articles have been written on the subject, each with its own terminology, action plans basically incorporate these five factors:

1. The specific steps or actions required.
2. Who will be held accountable for seeing that each step or action is completed.
3. When these steps or actions are to be carried out.
4. What resources need to be allocated in order to carry them out.
5. What feedback mechanisms are needed to monitor progress within each step.

Most action plans, regardless of how simple or complex the objective is, contain five to ten major action steps. Fewer than five indicates that insufficient consideration may have been given to the amount of effort required. More than ten suggests that more detail may have been included than is appropriate.

What is the purpose?

The first, and most important, purpose of an action plan is to clearly identify what has to occur if the objective is to be accomplished. While this is obvious, the importance of this consideration becomes dramatically apparent when something is overlooked. Ironically, it is rarely the unusual occurrence that causes significant problems in the accomplishment of an objective. More frequently, such failure occurs because someone neglected to do something that is normally expected. For example, think of the number of times an important load may have been delayed or even cancelled because someone failed to make an important phone call, send a document, provide necessary information, or someone who is usually reliable failed to keep a commitment. Thus an additional value of an action plan, whether at the company or individual level, is to make certain that the obvious is not overlooked.

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A second purpose for an action plan is to test and validate the objective itself. Objectives are often established based on the results desired, with no real assurance that they are truly achievable. Once a draft objective is established, breaking it down into smaller pieces, the action pieces, provides an opportunity for a reality test. The action plan creates a more rational basis for determining whether:

- The objective can be reasonably accomplished within the time period projected.
- The knowledge, skill, and equipment necessary to carry out the plan are present in the organization
- All necessary information is known.
- There are other alternatives that need to be considered.

The establishment of a detailed action plan may lead to the conclusion that the objective is unrealistic. This could result in a decision to modify the objective, modify the action plan, or postpone or even abandon the objective. If your objective is to have twenty trucks in operation by the end of the year and you currently have one, with limited financial resources to expand, maybe the objective needs to be revisited. The decision not to pursue an objective at this point is just as valid as a go-ahead, and it is considerably less expensive and traumatic to make such a decision before significant effort and resources have been expended.

A third purpose for an action plan is to serve as a communications vehicle for others within the organization who need to contribute to, or will be affected by, what takes place. This is especially important when there are several different parts of the organization that have a distinct role to play in the achievement of the objective. Going back to the example of adding twenty trucks by year-end, who else needs to know? How about the head of vehicle maintenance? What about the recruiting department? Through the identification of all relevant parties, and the fixing of accountability on each of the action steps, there is less likelihood of delays or voids in the pursuit of the objective. Furthermore, the communications process that is involved in developing or interpreting the action plan can have a positive impact on the motivation and ownership of those who significantly influence the outcome of the objective.

What is the process?

An action plan can be developed through one or more of the following:

- *Specific activities or events*, not necessarily interrelated, which will lead to the accomplishment of the objective. For example, an objective related to the addition of a new type of freight or trailer (van, flatbed, heavy-haul) might include separate activities related to advertising, special promotions to new customers, establishment of routes, securing financing, and any other activities that may have an impact on the effective introduction of this new shipping method. Presumably, the successful carrying out of each

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of the activities, either independently or in combination with others, will lead to the successful accomplishment of the objective.

- *An analytical or problem-solving approach*, incorporating a series of interconnected events. Through this process, the problems to be overcome or the circumstances to be changed are first clearly identified; these are then analyzed to determine appropriate courses of action, which are implemented sequentially, leading to the eventual accomplishment of the objective. For example, an objective of adding more equipment could start with an identification of principal competitors and the equipment they use. Then specific, detailed plans can be initiated to either exceed the service of the competitor or expand on what is offered to the customer, leading eventually to the accomplishment of the objective; adding more equipment.
- *A series of smaller or shorter-term objectives* that break the larger objective down into smaller pieces that can be more reasonably accomplished. A common type of this plan is the quarterly or monthly revenue figures required to achieve an annual revenue objective. These could also be broken down by region, truck, freight type, or a variety of other indicators that might be worth tracking.

What is the format?

An action plan format is designed to identify the key factors that need to be included in the plan. It should therefore be flexible enough so that it can be modified to meet the information needs of the manager or department using it. The purpose of preparing an action plan using a set format is to provide the visibility needed to get the job done in the most effective and efficient manner. Therefore, don't create a piece of paper that inhibits this process. The following is a list of headings that should be included in this format, and an explanation of each:

- *Objective*. The specific operational objective for which the action plan is being prepared.
- *Action Steps*. The five to ten major actions or events required to achieve the objective.
- *Accountability*. The specific individuals (or departments) who will be held accountable for seeing that the action step is carried out. This should be listed as *Primary* which represents the one who has ultimate accountability for completion of the step and *Others* which represents anyone else with a key role to play in that particular step.
- *Schedule*. This shows the total time frame within which the action step is to be carried out. This should be further identified with a *start-date* and a *complete-date*.

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Strategy

Strategy, in general, refers to how a given objective will be achieved. Consequently, corporate strategy is a definition of how a corporation will achieve its stated goals and objectives. Corporate strategy defines the markets and businesses in which a company will operate. In the context of trucking, this could be defined as long-haul or regional, flatbed or dry van, dedicated or general. A corporate strategy is typically decided within the context of defining a company's mission and vision.

Questions to ask when developing your corporate strategy include; what are your growth, size and profitability goals, which markets will you compete in, and in which geographic areas? Again in the context of a trucking business, these could be worded as how many trucks will you operate, what types of freight will you haul, and what freight lanes will you operate in?

Core values

A company's core values are the beliefs that the company lives by. Core values are the inner beliefs that are held by everyone within a company and should guide all employees in their actions and decisions. These values do not change over time, and are what you collectively bring to work each day; not what you, as a company, are trying to become.

Corporate policies and procedures

Effective corporate policies and procedures convey a consistent understanding of the organization's purpose, philosophies, policies, and good business practices to everyone involved. An effective policy and procedure manual will provide employees with guidelines pertaining to their authority, responsibilities, and expectations. Policy and procedure manuals also promote consistency, improve efficiency, and increase overall profitability.

Many business owners, particularly small business owners, understand what it takes to run their business profitably, but often forget to convey to their employees and associates what is expected of them to assist in this process. A good policy and procedure manual will spell out the expectations, responsibilities, and opportunities that apply to the employees and the company.

A policy and procedure manual could be seen as a playbook for your business. A playbook for a football team for example, tells every player what their responsibilities are for every play. If followed correctly, each player on the field knows where they should be, what they should be doing, and how their actions relate to and affect the total team's success or failure. If everyone does their job, they make a touchdown. A company's policy and procedure manual (playbook) should do the same thing. It defines each employee's role, where they should be, what they should be doing, and how their actions apply to the continued success or failure of the company.

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As your company grows, your policy and procedure manual may go from a one-page document to a notebook full of specific directives and expectations, divided up into sections of the company such as Administration, Sales, Employment, Finance, Management, and Safety. The size of your policies and procedures manual is not as important as the content.

It's important to remember that your policies and procedures need to be clear, consistent, and current. A good playbook doesn't say, "Just go down the field and I'll throw you the ball." A good policy and procedure manual doesn't say, "Just show up at work and we'll figure it out as we go." With some careful thought and attention to detail, your policy and procedure manual will result in a "touchdown" for your business in employee satisfaction and continued profitability.

Policy making or rule making?

Company policy is often related to a strategic plan that defines the nature or the intent of the company's purpose. A rough example of this is the difference between a truckload carrier and an LTL (less-than-truckload) carrier. A truckload carrier's policy may be to transport shipments from origin to destination without any excessive handling and/or consolidation of that shipment with other shipments. An LTL carrier's policy is just the opposite. They utilize a network of terminals that routinely load and unload shipments through a relay operation that mixes multiple shipments all destined to a similar regional area. Generally, neither one is competitively equipped to handle the other's type of business. This is largely due to their functional policies, which strategically define and separate the two.

Another form of policy is one that is used as a guideline for establishing boundaries and limits and by which decisions are made. A "Manager of Maintenance" may be authorized through company policy to purchase parts, accessories, or a tool necessary to keep the fleet running. However, a higher position in the organization will make the decision to purchase vehicles and other assets. This authority is set as company policy. This is not to say that the Manager of Maintenance will not be allowed to have input into this type of purchase. A degree of discretion within the policy will allow the Manager of Maintenance to participate.

The vast majority of policies are written and enforced through an operational need to set standards. These policies are often confused with rules. Rules are explicit orders that inform employees what is acceptable and what is not: A ten minute break only after your 2nd hour on duty; No smoking on or in company property; Personal vehicles must be parked behind the fence — these are examples of work rules.

Some policies in the workplace are created due to the consensus among management that the current state does not reflect the desired state. An example is, "All driver applicants must meet or exceed the minimal standards established in the Driver Qualification Policy to be considered for employment." More commonly, policies are applied to maintain a certain standard of quality in the workforce, also desired by management. Cargo handling policies, rider/passenger policies, and weapons in

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a company vehicle policy are examples of this type of policy. The important issue here is the enforcement of the policy.

Management may have a difficult time enforcing a policy if training, including an awareness of the characteristics of the situation that caused the policy, is not provided when the policy is implemented. In cases such as these, it may be necessary to obtain a signed statement from the employee acknowledging receipt of the training and/or awareness of the company policy. Legal consultation is advised if any uncertainty exists with the administration of discipline due to a violation of company policy.



Planned growth vs. planned non-growth

Planned Growth

Growth in a company is not something that should just happen; it should be a planned, measurable expectation. Planned growth can be in the area of equipment, revenue, physical location(s), personnel, or any other part of your company that flexes as it matures.

An incorrect assumption often made by new businesses is this: “We as a company, want all the business we can get regardless of the associated costs.” This train of thought coincides with the adage, “any business is better than no business.” Pursuing this path of unplanned growth can be disastrous if it does not coincide with your original mission and vision for your company.

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Every business as it is created has a “life cycle” Coming to the end of this life cycle may be another reason to have planned non-growth. For example, as we discussed in the section on succession planning, the valuation of a business needs to be determined when presented with ownership changes due to death, disability, or retirement. This would be an ideal time to have a specific plan for non-growth to allow for a stabilizing of all pertinent business matters associated with your company. This would then allow for a clear picture of the business’s overall structure, and provide a solid footing to make informed decisions, pertaining to the future ownership of the company.

Another approach to non-growth planning in a company may be in one area of the company as it pertains to the company’s progress as a whole. For example, if you were planning a major shift in your business location or the type of freight you are hauling, you may plan for a period of non-growth in equipment acquisition to support the other major changes mentioned.

It’s important to remember that planned non-growth does not mean stagnation of your business, loss of revenue, or “down-sizing.” Planned non-growth is as much a positive business decision as planned growth is.

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Planned growth and planned non-growth should both be an intricate part of your overall long-term plan for success.

Overall and specific support structuring

Most business owners hope their business will grow in size and structure. Others want to remain a one person, one-truck business. Growth can be good but it can also generate a whole new set of problems that some business owners don't want to deal with. Even if you are a one-truck business and want to remain that way, you may need to develop a support structure to help you succeed in your business venture.

With growth comes more responsibility. Every business owner will come to a point in their life where they may not be able to do everything themselves any more. The decision to add departments, supervisors, and employees or to outsource various aspects of your business is an important one. It's important to remember through this process that this is still your business. You need to decide what you need to keep under your direct control, what you can hand over to others within your business, and what you can allow outside entities to do for you.

In the trucking industry there are various areas of your business that you may want to consider outsourcing. As a one-truck business you may not have the time and resources to deal with every aspect of the transportation industry. This is where developing your support structure through outsourcing may be a viable choice.

Common areas that a small trucking business may use outside businesses in creating their support structure are licensing, permits, and accounting. These three areas are heavily regulated, can involve tremendous amounts of time, and can directly affect the continued success and life of your business. You can certainly do these things on your own or hire an employee to deal with them, but there are excellent companies out there that can take the worries of "are you doing this right" out of your hands and allow you to concentrate on customer service, revenue building, sales, or driving the truck; whatever you do best.

As you grow, you will also need to make decisions in the areas of equipment repair and maintenance. Again, ask yourself, "What can I do myself, what should I do, what can others do for me?" Many truck drivers perform basic maintenance on their vehicles every day. Some do major repairs as well. Unless you are in the business of being a mechanic, you need to look to others for help in this area. You may hire a part-time person to do minor repairs and maintenance, while using a major repair facility for the big jobs. Eventually it may be feasible to have your own repair facility and do all the work in-house. The size of your fleet and the current profitability of your company will help dictate what direction to go in this area.

Another area of concern is in office staffing. You could handle everything on your own to begin with, but now phone calls are being missed, customers are being ignored, and the reputation of your business is starting

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to falter. You've worked hard to build your business to this point; don't let your business suffer due to an "I can do it myself" attitude.

Whether you hire office personnel directly, or use a temporary staffing service, it's important that you continue to present a professional attitude to your customers and the industry. If no one can get through on the phone, or all they get when they call is a recording saying, "we appreciate your business, please hold..." they will quickly go somewhere else. If you are a one-truck business conducting business from your driver's seat, a land-line or "800" number at a message center may be an option.

As you continue to grow, areas that you originally outsourced can be brought in-house with the development of specific departments and the hiring of competent management and personnel in those areas. When considering this step, look to people for their expertise in the specific area or department which you are creating. A good driver doesn't always make a good dispatcher. Just because someone has a good safety record doesn't mean they'd be a great safety director. Do your homework and hire the best. You will sleep better knowing that your employees and staff are competent in what they do and that they share your vision for continued success.

A good businessperson knows when it's time to hire others and delegate duties for the betterment of the organization. Don't worry, you're still in charge. You haven't given away the keys to the company (or the truck); you've expanded your thinking to include the help of others toward your continued success as a business owner.

Locating a "niche market"

The trucking industry in its entirety is too broad in scope for any but the largest companies to tackle successfully. The best strategy for a smaller business is to look at the industry as manageable market niches. This is easily done in trucking as niches can relate directly to types of freight and methods or modes of delivery.

Your niche in the trucking marketplace should be what you are familiar with, or have been successful in at some level. For example, if you used to be a company driver and hauled mainly flatbed freight, as a new company owner your niche quite possibly should also be flatbed freight. If you are a farmer or rancher and are new to trucking, your niche may be livestock hauling. This is where your knowledge base is and where you can probably promote your best business practices as well as develop a solid customer base.

Even though you may consider it exciting to start hauling exotic cars, hazardous chemicals, or refrigerated goods, these ideas would be better served as future ideas for expansion once you have established a solid business presence in the transportation industry.

Equally important to keep in mind when determining your market niche is what type of business you want to be, relative to where your trucks go and the freight unique to your niche. For example, are you going to be a nationwide hauler, or concentrate on local or regional opportunities? Are

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Update your MCS-150 to keep your DOT number active

Your USDOT number is the unique identifier for your company and is used by the DOT to monitor your safety compliance. The form filed to obtain a USDOT number is the MCS-150, Motor Carrier Identification Report. The MCS-150 provides the Federal Motor Carrier Safety Administration (FMCSA) with the details of your operation. Beginning in 2000, the regulations required MCS-150 information to be updated every two years (biennially), based on the schedule in Section 390.19. This rule was never strictly enforced, and there were no consequences for failure to submit an MCS-150 update.

On August 23, 2013, the FMCSA published a final rule, Unified Registration System, which includes real consequences for failure to file your biennial MCS-150 update. Effective November 1, 2013, you must update your MCS-150 information with the FMCSA every two years according to the schedule in Section 390.19 or risk deactivation of your USDOT number and civil penalties of up to \$1,000 per day, to a maximum of \$10,000.

The biennial update filing schedule is determined by your specific USDOT number:

USDOT Number ending in:	Must file by last day of:
1	January
2	February
3	March
4	April
5	May
6	June
7	July
8	August
9	September
0	October

If the next-to-last digit of your USDOT Number is odd, you must file an update in every odd-numbered calendar year. If the next-to-last digit of your USDOT Number is even, you file the update in every even-numbered calendar year.

The FMCSA is sending warning letters and carrier PINs to entities with USDOT numbers prior to the date the biennial update is due. For example, if you are due to update in April 2014, you may receive a warning letter in February with update instructions. Entities due to update in May should receive a letter in March. Keep in mind that if the address on your MCS-150 is outdated, the letter may not reach you.

The update is required even if your company information has not changed. It is also required if your company has ceased interstate operations since the last update, or is no longer in business and you did not notify FMCSA.

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address), the carrier's operation (mileage, intrastate or interstate, for-hire, private, etc.), cargo classification (general freight, specialized, etc.), types of hazardous materials carried, and soon to be ever more important, the number and types of trucks and drivers.

Updating your MCS-150 can make a significant difference when CSA safety scores are evaluated. A company's BASIC (Behavior Analysis and Safety Improvement Categories) scores will determine its percentile ranking when compared with similar carriers' scores, and could mean the difference between a desirable low ranking and a not-so-desirable higher ranking. It could also trigger an intervention from the FMCSA when one may not have otherwise been warranted.

Interstate operating authority

To obtain operating authority, a carrier must submit an application, provide proof of the required level of financial responsibility according to §387.9, submit a list of process agents (Form BOC-3), and pay a \$300 fee. When applying, carriers must indicate whether they will be transporting household goods, general freight, passengers, or hazardous materials. The regulations for insurance, tariffs, etc. vary for different carrier types.

Your insurance carrier will provide you with a Form MCS-90 to be maintained in your office and presented during a DOT audit. The MCS-90 is not an actual insurance policy, serving only as proof the carrier is in compliance with the FMCSA's requirements that coverage be maintained for protection of the public for injury or property damage resulting from the operation of the vehicle.

When all fees and documents have been received and found to be in order by the FMCSA, authority to operate is granted and you will receive a Motor Carrier (MC) Number. A US DOT number must also be displayed on the vehicle before beginning operations.

Intrastate operating authority

Carriers that operate solely within a single state and do not further interstate commerce are not subject to the FMCSA operating authority requirements. These carriers are subject to the authority registration requirements in the state of operation. It is important to keep in mind that trucks operating point to point within a single state may still be engaged in interstate commerce if the transportation is part of an interstate movement of the freight.

The requirements for intrastate registration vary depending upon each jurisdiction's rules for for-hire, private, or exempt carrier authority registration.

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Compliance Issue

Be absolutely sure that you are operating with the correct authority for what you are doing. The fines and consequences for operating without the correct authority are severe!

Operating without authority

It can be costly to operate without the necessary operating authority. The regulations allow carriers operating without authority, or beyond the scope of their authority, to be placed out of service. When a vehicle is not on the road and engaged in transporting freight, it is not generating revenue. When freight is delivered late, or not at all, customers aren't happy.

Broker authority

A broker arranges, for compensation, the truck transportation of cargo belonging to others, utilizing authorized for-hire carriers to provide the actual truck transportation. A broker does not assume responsibility for the cargo and usually does not take possession of the cargo.

Brokers of general freight and household goods must register with FMCSA, submit a \$300 fee, and provide a Form BOC-3 designating a legal process agent in each state in which they have an office and in which they write contracts. Currently, before broker authority will be granted, a \$10,000 surety bond must be in effect. Beginning October 1, 2013, the FMCSA will require brokers to have a \$75,000 surety bond (\$25,000 for household carriers) and intends to actively enforce this provision.

Authorized property brokers have a number of ongoing regulatory responsibilities under Part 371 in areas including recordkeeping, accounting, and compensation. Brokers may not act or function as motor carriers; a company may have motor carrier authority (common and/or contract) and broker authority.

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Private carrier

Some carriers engage solely in transporting their own goods in their own vehicles to further a business other than trucking. An example of a private carrier is a construction company that operates commercial motor vehicles to transport equipment and materials needed in their primary construction business. These carriers are not allowed to transport goods for others for compensation. They are subject to all US DOT safety requirements, vehicle registration, fuel tax, size and weight requirements, etc. They are just not required to have operating authority from the FMCSA. There are, however, certain jurisdictions that require intrastate private carriers to register with them before conducting operations.

Exempt carrier

Certain interstate for-hire carriers that transport specified “exempt” commodities are not required to have operating authority from the FMCSA. These carriers generally transport ordinary livestock, fish, and unmanufactured agricultural commodities which are designated as exempt from FMCSA regulation in 49 USC 13506 and Administrative Ruling number 107. A list of commodities that are not exempt by law is found in 49 CFR §372.115.



Compliance Issue

Being an exempt carrier exempts the carrier from the for-hire authority requirements. However, it does not exempt the carrier from the FMCSA safety regulations.

Exempt carriers should note that commodities considered “exempt” from federal economic regulation may not be considered exempt in intrastate transportation. Some states have authority registration requirements for operation by intrastate exempt carriers.

Also, “exempt” applies only to federal operating authority. All carriers of exempt commodities are fully subject to US DOT safety regulations, size and weight limits, vehicle licensing and fuel tax requirements.

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Unified Carrier Registration Agreement (UCRA)

Who is subject to UCR registration?

Private property carriers, for-hire passenger, property, and exempt commodity carriers, freight forwarders, leasing companies, and brokers engaged in interstate commerce are subject to annual UCRA registration.

Entities based in and/or operating in non-participating states are required to register with UCR; the UCR application form provides guidelines for selecting a base state.

Entities domiciled in Canada or Mexico operating in the United States are also subject to UCR registration.

Who is not subject to UCR registration?

Two types of entities are not subject to UCR fees:

1. Purely intrastate carriers, that is, those that do not handle interstate freight or make interstate movements, (unless the State has elected to apply the provisions of the UCR Agreement to such intrastate carriers); and
2. Motor private carriers transporting passengers in interstate commerce (e.g. church buses) are not required to register under UCR.

Registration with the UCRA

Each registrant entity must submit an annual filing and be registered before operating in interstate commerce. Private carriers and other entities subject to UCRA registration that have not been subject to the SSRS should contact their base state for information about UCRA registration.

Registration, information, and forms are available for all carriers at the UCR website www.ucr.in.gov.

Determining the base state

There are guidelines for determining the base state.

1. When the principal place of business is located in a participating state, that state will serve as the entity's base state.
2. When the principal place of business is not located in a participating state, any participating state in which the entity maintains an office or operating facility may serve as its base state.
3. When an entity does not have a principal place of business, office or operating facility in any participating state, the participating state that is nearest to the location of the entity's principal place of business may be the base state, or the entity may select any participating state within their FMCSA region.

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UCRA fees effective for 2007, 2008, 2009 registration years*

Bracket	Number of commercial motor vehicles owned or operated by exempt or nonexempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0-2	\$39	\$39
B2	3-5	\$116	
B3	6-20	\$231	
B4	21-100	\$806	
B5	101-1,000	\$3,840	
B6	1,001 and above	\$37,500	

**Number of CMVs includes both power units and trailing units.*

UCRA fees effective for 2010, 2011, 2012, 2013, 2014 registration years*

Bracket	Number of commercial motor vehicles owned or operated by exempt or nonexempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0-2	\$76	\$76
B2	3-5	\$227	
B3	6-20	\$452	
B4	21-100	\$1,576	
B5	101-1,000	\$7,511	
B6	1,001 and above	\$73,346	

**Number of CMVs includes power units only.*

Freight forwarders operating a fleet of vehicles are considered motor carriers and are subject to fees depending upon the number of vehicles they operate.

Brokers, leasing companies, and freight forwarders (who do not operate any commercial motor vehicles) are subject to the lowest fee tier. However, if these entities are also motor carriers, they are subject to the fee according to the number of vehicles they operate.

Motor carriers not required to have a USDOT number pay the lowest fee tier because the vehicles are not defined as commercial motor vehicles.

UCRA credential

The UCRA does not issue a paper credential to be carried in the vehicle. Proof of registration under the UCRA is available to roadside enforcement via FMCSA electronic information systems.

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The UCR provides two recordkeeping documents for carriers that should be retained by the carrier and provided to the base state upon request:

UCR-1 Form: If you subtracted vehicles used exclusively for intrastate transportation when you registered for UCR, you must maintain a list of the vehicles you subtracted. You must also provide this information to your base state on this form upon request.

In order to subtract a commercial motor vehicle under this option, during the UCR registration year:

1. the vehicle did not or will not travel outside the state;
2. the vehicle did not or will not carry property, waste, or recyclable material that originated outside the state or is destined for a location outside the state; AND
3. the vehicle was not or will not be registered under the International Registration Plan (IRP) (vehicle must not have an apportioned plate).

UCR-2 Form: If you obtained the vehicle count from the number of vehicles you owned and operated for the 12-month period ending June 30 of the previous year (Option B), and your fleet count using this method places you in a bracket with a lower fee than if you had selected Option A on the UCR Registration Form, you must maintain a list of vehicles covered by your UCR registration and provide this information on Form UCR-2 to your base state upon request.

Both forms with instructions are available at www.ucr.in.gov.

Enforcement

At the request of the Secretary of Transportation, the Attorney general may bring civil action in a U.S. district court to enforce an order issued to require compliance with the UCR agreement. The court may issue a temporary restraining order or a preliminary or permanent injunction requiring compliance.

States may also issue citations and impose fines and penalties for failure to submit accurate documentation, pay fees, or for operating as in interstate motor carrier without UCR registration. Some states withhold IRP and/or IFTA renewals until UCR registration is complete and fees are paid.

UCR Enforcement penalties by state

AL	\$100 first offense, \$500 subsequent offense. No Out-of-Service.
AR	\$100-500 first offense, \$100-1000 subsequent offenses.
CA	State base fine of \$300-\$1,000, plus specific fees that vary by county.
CO	\$1,100 first offense, \$2,200 second offense, \$3,300 subsequent. No Out-of-Service.
CT	\$170 fine.
GA	None presently.

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VA	Class IV misdemeanor, \$250 fine.
WA	\$124.
WV	\$100-1000.
WI	\$750.

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Disaster and emergency planning

No business should risk operating without a disaster or emergency plan. As reported by the Small Business Administration in 2006, up to 25 percent of small businesses do not reopen after a major disaster like a flood, tornado or earthquake. These shuttered businesses were unprepared for a disaster; they had no plan or backup systems.

When you start to develop your disaster plan, consider three subjects: human resources, physical resources and business continuity. Think about how a disaster could affect your employees, customers and workplace. Think about how you could continue doing business if the area around your facility is closed, streets are impassable, or your equipment is not accessible. Think about what you would need to serve your customers if your facility is closed or your equipment is gone or destroyed.

Here are some suggestions you may want to consider:

- Keep phone lists of your key employees and customers with you, and provide copies to key staff members.
- If you have a voice mail system at your office, designate one remote number on which you can record messages for employees. Provide the number to all employees.
- Arrange for programmable call forwarding for your main business line(s). Then, if you can't get to the office, you can call in and reprogram the phones to ring elsewhere.
- If you may not be able to get to your office quickly after an emergency, leave keys and alarm code(s) with a trusted employee or friend who is closer.
- Install emergency lights that turn on when the power goes out. They are inexpensive and widely available at building supply retailers.
- Back up computer data frequently throughout the business day. Keep a backup tape off site.
- Use surge protectors and battery backup systems. They will add protection for sensitive equipment and help prevent a computer crash if the power goes out.
- Purchase a NOAA Weather Radio with a tone alert feature. Keep it on and when the signal sounds, listen for information about severe weather and protective actions to take.
- Consult with your insurance agent about precautions to take for disasters that may directly impact your business. Remember, most policies do not cover earthquake and flood damage. Protect valuable property and equipment with special riders. Discuss business continuity insurance with your agent as well.

As a small business owner in the transportation industry, there are additional considerations to assure your business and personal safety. If your office is your truck, consistent communication to your customers, your business associates, and your loved ones is your lifeline.

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minimizing interruption to the business's ability to provide service, which in a trucking company's case could mean renting equipment or contracting another hauler to move your customer's freight. Additionally, a business continuity plan should minimize financial loss, and provide for the resumption of critical operations within a specified time after a disaster or major incident.

The goal of a business continuity plan is to preserve and protect the essential elements of any company and maintain an acceptable level of operations throughout a crisis and afterward, as the company recovers.

It's always easier to minimize risk than to recover from a setback. Those who prepare financial statements know that failure to identify risks correctly can have financial consequences severe enough to put a company out of business. It is only a small stretch, mostly common sense, to identify and minimize risks that could destroy your business regardless of the source. That is the underlying purpose of a business continuity plan.

Succession planning

Basically, a succession plan is a documented road map for partners, heirs, and successors to follow in the event of your death, disability, or retirement. This plan can include a program for distribution of business stock and other assets, debt retirement schedules, life insurance policies, buy-sell agreements between partners, division of responsibilities among successors, and any other elements that affect your business assets. The plan may also establish the value of your business, which is extremely important in estate tax planning.

So where do you start? In the succession planning process, you must first clearly establish your goals and objectives, as well as your company's current financial resources. If you are retiring, how much control of the business do you want to retain? Is there someone capable of running the business or should you realistically be planning on a total sale of the business? Basically, who's going to drive the truck?

Another area to consider when doing succession planning is estate taxes. There are varying tax and legal issues associated with giving a business to your heirs, selling it to the public, or dissolving it at the time of your death. An estate tax attorney as well as an accountant should be consulted on these matters to assure the most financially beneficial transition possible.

It's also important to know that a succession plan must be flexible. Business, family and health situations are dynamic, and your plan must be easy to modify and amend. Equally important is that you need to make your wishes known to your family and others in leadership positions within your company. A plan for the company when you're gone, that's all in your head, is not really a plan at all. You may have spent years and years growing your business. When you leave, either by retirement or death, is not when you want your family, employees, and colleagues to regret what you worked so hard to create.

Keep in mind that your love for trucking may not be equally shared by those around you. Giving your business to a relative, spouse, or child is not always the best thing to do. Make sure your successor is clearly seen

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Add in the monthly payment to the bank on the loan to purchase this truck, the wages to the mechanic to keep it rolling, fees and permits for each vehicle, the cost of fuel (itself a cost worth managing closer than in the past), and the overhead of the shop facility, the small trucking company must have revenue resources strong enough to support the business's effort for survival. A large trucking company will find these costs equally as challenging and will also make prudent changes to keep their odds for survival in their favor.

The carrier that has a plan to address these expenses, and can implement their plan better than their competitors, has a chance to outrun this potentially devastating storm. This is where the cultural change may prove of benefit. Enacting a plan that steers the company away from the "business as usual" approach to "What can we do to improve our current situation?" is positioning itself for survival and also sees this as an opportunity to solidify and expand on its own base.

Therefore, each carrier, large or small, will have to review its own business plan and likely make some hard choices to achieve the goal of positive cash flow.

The temptation to throw a quick fix to this situation is to announce that more freight or a rate increase will stop the ship from taking on more water. That's the addictive thought process in the "business as usual" era that carriers have relied on far too long. Rather, a change in culture would spawn a thinking process that would ask the question "Is the freight in our system supplying us with the revenue needed to not only sustain our existence, but to also position us for future growth?" In other words, "Are we adding to our positive cash flow goal, and if not, what is preventing us from achieving it?"

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What are the industry's trends and how do they affect our business plan?

The recent economic recession has also changed the “direction of flow” for many carriers. Some carriers have shortened the length of haul in order to better manage their costs and still maintain their customer base. Others have opted out of trying to be “all things to all people” and are instead focusing hard on what they do best.

If for nothing else, fleet managers now are even more inclined to take a cautious approach on all matters relating to their niche in the industry. Shippers are making this same move by consolidating their traffic and shipping heavier loads rather than lighter, multiple shipments.

Supply chains are trending toward changes brought on by energy costs, labor rates, and other economic factors. Some think this supply chain will shorten, which could become a huge gain for short haul carriers who can position their operation for this event.

Environmental issues are also having an impact on the motor carrier industry and are certain to cause more time for thought and action in the not too distant future. Again, energy costs, the reduction of our carbon footprint throughout the industry, and the fast growing use of hybrid vehicles, all warrant a close watch as these trends could greatly affect the carrier not paying proper attention.

Intent vs. capability

A common thread that runs through all types of businesses — large or small, sole proprietorship or corporate, domestic or international — is that all have a business plan or a definition of who they are and what they do. All companies have formed their niche in the market they compete in and know, or assume they know, what the market demands of them.

The transportation industry is no different. While the structure of this industry is similar to most any other, one factor currently stands out that clearly separates it from the rest. That factor is the current business opportunities that await businesses in this industry.

Coming off the worst economic recession that the country has ever experienced, participants in the transportation industry now are setting their eyes on the reality of an increased availability of freight. In a short time, this availability will grow larger and larger as manufacturers increase their output while competition within the transportation industry begins to diminish. Trucking and transportation companies will see many opportunities to increase their revenue as eager customers become willing to pay higher rates for services so that they too can compete within their own markets.

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This is when management of the individual transportation and trucking companies must be at their best. Their business plans will take on great importance as they evaluate the changes in their marketplace. They will mull over their thoughts on whether or not to expand into new markets and offer more than one type of transportation service. Maybe they should deepen their niche by offering the same type of service but in more locations. Both moves will be supported by a demand for these services and in both cases, a broadening of their customer base will certainly be realized. Their only worry may be that if they don't capitalize on these opportunities, someone else will!

History tells us stories of entrepreneurs who have made fortunes by taking risks. However, many of these risks were not risks at all. They were carefully planned moves that positioned their company to be in the proper spot at the proper time. Their success was made not by forecasting the future based on the current stability of the market, but rather by forecasting the future based on the volatility of the market!

Take for example, the impending driver shortage that is certain to limit many carriers' earnings, if not force some of them to consider leaving the industry. Even with revenue on the table! How can the owners of these companies pay for the trucks when they have no drivers to drive them?

Circumstances in today's marketplace should compel managers at all levels within the transportation industry to ask, "What is our intent, and what are our capabilities?" What is our company's intent in handling the inevitable driver shortage crisis and what are our capabilities to attract drivers to our company? What is our company's intent with regard to coping with the changing trends in the transportation industry and what are our capabilities to change with them?

Prime the pump

Many business owners, including owners of trucking companies, look for indicators in the economy that can assist them in making business decisions. Forecasting the future is always a risk, especially when the lack of preparedness hampers the chances for growth. This is all the more reason for management to have the discussion, "What is our intent, and

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what are our capabilities?” If the company is not fully prepared to take on the risk, then they would be foolish to undertake a plan that has the potential for disaster. The reverse of that statement is, “When a company is prepared to take on the risk, their chances for failure are significantly reduced.”

While it may be irrational to state that the economy is booming, it is safe to state that the economy is showing signs of growth. Every day, demands for transportation services take place, providing an opportunity for trucking companies to solidify and increase their revenue base.

So, as shippers are prepared to increase their transportation costs, the carriers now find themselves in greater demand with increased revenue potential. And even though costs must still be managed closely, now may not be the time for austerity, especially for carriers wanting to grow their business. If this is a carrier’s intent, then it must be also capable of improving its infrastructure.

For example, the carrier must:

- prepare for training of existing and new employees.
- evaluate and improve its safety program, if necessary.
- be knowledgeable and manage above the federal safety regulations and CSA as this can be another means of increasing earnings.

Customers will want to “partner” with carriers who operate in a compliant manner and therefore can keep their supply chain moving.

This will also mean: 1) an increase in spending to recruit and hire more drivers and support staff, 2) more equipment to purchase and maintain, and 3) possibly a larger or additional facility to operate out of. The upside of this spending is the ROI the carrier can realize with the strong demand.

Cutting back on the depth of the operation, even in non-driving positions, is counter-productive for fundamental and long-term growth. The time is right for motor carriers to create the jobs that will attract quality drivers, which, in turn, create the opportunity to increase revenue and profits.

How is your organization thinking?

Are the results you are getting from your operation acceptable? Are you satisfied with your company’s productivity in regard to customer demand? Are decisions being made without having all the facts?

Fleet Managers of all modes of transportation may want to ask themselves these types of questions if for no other reason than to make sure that they are leading the company in the right direction. In a sense, it is a self-audit of a managerial style. Not of a personal style, but of a company cultural style. A style that is sure to be of benefit now, and for the future.

With all the distractions brought on through the nature of daily business, it becomes easy for managers at all levels to lose sight of their main purpose, their job responsibilities, and the company’s need for them to

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lead. They rush from one crisis to another, or to what they perceive to be another crisis. As a result, managers can find themselves in a reactionary form of management rather than advancing the organization's definitive purpose for being in business.

A "Lean" form of management allows us to continually ask "why" when drilling down to find the root of a problem or when results are other than what we want. Asking "why" to questions such as those stated above would supply management with a greater idea of the direction they are heading. But before asking "why," managers will likely find it useful to gauge how the organization (or company) is thinking.

Start with these questions:

What is the company's intent... is the company's intent to offer transportation services with a high quality of service to their customers, in a safe and regulation-compliant manner, at a low cost creating a profit margin for all employees to share in?

... and what are the company's capabilities? Is the company capable of leading its employees to where the company wants to be? Does the company have a vision of what it will take to get them to where they want to be?

Who are the people that will lead? You have costs, but you also have people. People who will lower your costs if they are empowered to do so. People who will feel valued when they are able to invest their talents in the company's intent and are allowed to lead.

What barriers will we encounter along the way? If we establish standards, then we will be able to recognize when the environment is not right. We will not have to guess or assume that it will change on its own without making adjustments. We will know that we must close the gap between what we know to be our standard and what is preventing us from meeting that standard.

Let's take this thought from theory to reality. Organizational thinking follows fact-based thinking.

Shippers will have to work closely with carriers to hold down costs. The same is true in reverse. Both have a need to heavily rely on the other if their intent is to do business for a profit. The carrier knows that it is capable of competing in this marketplace, but the carrier also knows that it must make all the right moves to stay in the game.

Regulatory pressure is being felt across the transportation industry for an obvious reason. The FMCSA wants motor carriers to be actively monitoring their data and making improvements to their company before the agency forces them to. They want to know how the carriers are modifying their safety program to improve their BASIC scores, which ultimately makes the highways safer for all.

Labor costs are set to see strong increases. HOS regulations — when effective — could have an influence on this issue. Equipment costs will also challenge the profitability of the carrier. Fuel costs are anyone's guess. The best a carrier can hope for here is to manage fuel costs efficiently in areas they can control: empty miles, idling time, and timely bulk purchases.

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As stated earlier, the company's intent is to offer the highest quality transportation services at the lowest cost. To accomplish this, the company will have to successfully manage a compliant safety program, invest in talent and technology through training and modernization, and empower employees to pull together to recognize and repair any gaps against established standards. This affords the carrier the capability to meet the customer on shared concerns regarding the success of each other's business venture. And while these steps may require more company resources, the carrier stands to reach its definitive purpose by remaining focused on its intent.

The actions that the leaders in the company take will support the thinking of the organization. The trick is to filter through the daily distractions and have the discipline to search for the facts amidst these distractions — not what we assume are the facts, rather what we know to be fact based on the company's definitive purpose.

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BUSINESS CSA Management

Trucking: A new industry with a new focus!

Since its introduction to the transportation industry in 2010, the CSA program has touched the awareness element in most all motor carriers. While some carriers have delved deep into BASIC Measures and the methodology of the scoring system, other carriers have managed to get by with limited realization of the full impact of the CSA environment. The purpose of the program is to measure motor carrier safety performance, identify potentially unsafe carriers, and enforce interventions on carriers to get them in line with industry standards.

However, is the **business purpose** of this program properly defined? How are carriers to manage their companies in a manner only recently declared as a priority throughout the industry? How does management successfully go about transforming safety components into operational demands? What actions are needed to create compliance and implement sustainable countermeasures?

The CSA initiative has two aspects: what a motor carrier must do better to satisfy their customers (both internal and external), and what motor carriers must do better to survive and prosper as a player in the transportation industry. Oddly enough, the FMCSA — in delivering the CSA program to the industry — also gave managers of motor carriers an antidote, or a tool, to assist them in addressing these two aspects. It is the Safety Management Cycle.

The Safety Management Cycle is a tool for meeting industry standards. An instrument or blueprint for uncovering weaknesses within a company is only a partial description of this managerial asset. It leads management to identifying and improving processes within their company by encouraging the following questions:

- What are the leading issues causing high BASIC scores?
- Who are the contributors to these issues?
- How capable, available, and adequate are the processes the company has in place to prevent these scores from rising even higher?
- How capable, available, and adequate are the training and support administered by the company for all employees?

The Safety Management Cycle then takes management through a self-audit of company policies and procedures, roles and responsibilities of employees, qualification and hiring practices, training and communication, monitoring and tracking performances, and finally, the meaningful action taken by management to recognize/reward employees for improvements made in specific areas.

The FMCSA has set the standard that managers of motor carriers must meet. If the carrier's performance falls short of these standards, the Safety Management Cycle will not only recognize how wide the gap may

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be, but will also make the connection between meeting the business needs of the motor carrier and the proper steps to take to be compliant with industry standards.

Recordkeeping as a CSA performance indicator

One of the signs of a well-managed motor carrier is found in its recordkeeping processes. The effort management expends to use and improve these processes will most assuredly pay off in eliminated wastes and improved profits. Managing costs, filing taxes, scheduling maintenance, and possibly the most important of all, preparing for an audit, are some of the reasons why accurate recordkeeping can be as valuable as your best customer...and maybe more so.

Records are kept, in many instances, as proof that something has taken place. They can provide evidence of compliance with Federal Motor Carrier Safety Regulations, an essential characteristic of the transportation industry. A great deal of knowledge and effort must go into acquiring records for this purpose alone. Driver qualification files, drug & alcohol testing, driver training, accident reports, and inspections and maintenance of vehicles are examples of records required to be a part of the transportation industry. Because of this, records can be more accurately termed as a “lagging indicator” as they are often used to track something historical in nature.

But records can also be used as a “leading indicator” when they are put into a process that alerts us of what is about to happen. Expiration dates on driver’s medical cards, scheduling vehicles in a preventive maintenance program, due dates for annual inspections, and renewing registration for IFTA and IRP could be set up as leading indicators. Possibly one of the best examples of a leading indicator that tells management where they are heading is roadside inspection data. When roadside inspection data is entered into a process, management is immediately made aware of problem areas that show trends toward high BASIC scores. Because of this effective use of records, this leading indicator can now direct management away from more costly events that could lead to more violations, potential fines, and the likelihood of interventions.

A well-managed recordkeeping process makes it possible for management to operate efficiently and to prevent unnecessary waste and costs from dragging down profits. It is a key indicator of how well a motor carrier performs in an industry that demands accountability for the steps they have taken in the past, and of the direction the company should take for the future.

CDLs, CMVs, and confusion over CSA

The drivers scores generated by the CSA program apply to both CDL (commercial driver’s license) and non-CDL drivers operating commercial motor vehicles (CMV) as defined in Section 390.5 (a gross vehicle weight or gross combination weight of 10,001 pounds or more) in interstate commerce. It does not matter if the carrier is for-hire or a private carrier,

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Scores produced through the CSA program are violations of the Federal Motor Carrier Safety Regulations (FMCSRs) recorded by the CSA program to produce a safety score or rating of the drivers' safe operation of a CMV. On some occasions, a driver may be issued a citation for a traffic event which then produces a roadside inspection and possible violations relating to CSA. It is equally possible that violations recorded on a roadside inspection report may not result in the driver receiving any citation(s). In this case, the violations will appear on the CSA information and not show anything whatsoever on the individual's driver's license or MVR!

CSA and the motor carrier

The FMCSA's Compliance, Safety, and Accountability, or CSA, is a program that changes the way a motor carrier and driver performance is measured. CSA replaces SafeStat with the Safety Measurement System, SMS in the CSA program. What is the purpose of the CSA program? The CSA program is a major FMCSA initiative intended to improve the effectiveness of the agency's compliance and enforcement programs. Its goal is to achieve a reduction in large truck and bus crashes, and the associated injuries and fatalities, while making the most efficient use of FMCSA resources.

There are four major elements to the CSA initiative — measurement, safety evaluation, intervention, and information technology.

Much like the now defunct SafeStat system, the SMS portion of CSA would group safety performance data collected on motor carriers and their drivers. But rather than use four broad categories (accidents, drivers, vehicles, and safety management), CSA would group data into seven categories, called BASICS (Behavior Analysis Safety Improvement Categories). The seven BASICS are:

- Unsafe Driving
- Hours of Service Compliance (HOS)
- Driver Fitness
- Drugs/Alcohol
- Vehicle Maintenance
- Hazardous Materials Compliance (HM)
- Crash Experience

The data would be weighed based on its relationship to crash causation and time. Once weighted and scored, carriers would be compared to each other to generate BASIC scores. The scores would then lead to a "Safety Fitness Determination" (SFD) of "Continue to Operate," "Marginal," or "Unfit." Each carrier's SFD would be updated every 30 days.

To implement this portion of the CSA program (replacing carrier's rating with the SFD), the FMCSA will need to go through the normal rulemaking procedures.

The FMCSA would then intervene with a motor carrier based on a carrier's SFD. If all BASICS are good, the CSA system will assign a SFD of "Continue to Operate" and normally would not contact the carrier.

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As part of CSA, the FMCSA will improve and integrate the technology systems in use at the FMCSA and increase the use of technology. The BASICs and reporting systems (referred to as the CSI system, or “Comprehensive Safety Information” system) would all be part of these new systems. Much like SafeStat, carriers and law enforcement will have access to all data that the FMCSA has on the company, while the public will have limited access to the carriers’ information.

Whether triggered by the Safety Measurement System or triggered by an intervention in the CSA program, a comprehensive review (formally referred to as a “compliance review”) will remain the most in-depth review of a carrier’s compliance efforts.

How are the BASIC Scores in the CSA program determined?

Safety-related events that enter the SMS through the FMCSA data collections system (MCMIS) are placed into one of seven BASICs (Behavior Analysis and Safety Improvement Categories). These BASICs are compliance areas, and are based on the FMCSA regulations (with the exception of the Crash BASIC, which simply tracks a carrier’s crashes). The BASICs (and related regulatory Parts) are:

Unsafe Driving (Parts 392 and 397)

Hours of Service Compliance (Parts 392 and 395)

Driver Fitness (Parts 383 and 391)

Controlled Substances and Alcohol (Parts 382 and 392)

Vehicle Maintenance (Parts 392, 393, and 396)

Hazardous Materials Compliance (Parts 392 and 393)

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relates to a driver (a roadside inspection, a violation that the FMCSA believes the driver committed or should have avoided, or a crash), the data is also placed into the driver's data. Next, the event is assigned to the correct BASIC (based on the regulation involved in case of a violation).

Once in the correct BASIC, a "value" is assigned to each safety-related event. The value for each safety-related violation will be determined by its association with crash causation. Severity weights are 1 to 10. If the violation was in the HOS, Driver Fitness, Vehicle Maintenance, or HM BASIC and resulted in the driver or vehicle being placed out of service, the severity weight is increased by 2. Event severity weights are then time weighted to place more emphasis on what has happened recently (anything that took place in the last 6 months is time-weighted at 3, 6 to 12 months ago 2, and more than 12 months ago 1). To determine the full value of a violation in the SMS, simply multiply the severity weight by the time weight.

All inspections will be placed into the appropriate BASICs and the system will time weight the inspection using the same time weighting (an inspection that occurred in the most recent 6 months is valued at 3, 6 to 12 months ago 2, and more than 12 months ago 1). These are used later when calculating Measures and Scores in the BASICs.

Crashes are weighted based on severity. Fatality and injury are given the highest severity at 2. Crashes that only involved a vehicle being towed are given a severity of 1. In all cases, 1 point is added if the incident involved releasing a hazardous material. Once severity weighted, crashes are also time weighted using the same process as violations (crashes that took place in the last 6 months are time-weighted at 3, 6 to 12 months ago 2, and more than 12 months ago 1). To determine the full value of a crash in the SMS, simply multiply the severity weight by the time weight.

Here is an example of how this works: A driver undergoes a Level 1 roadside inspection (complete driver and vehicle inspection). In the course of the inspection the officer discovers that the vehicle has a cracked windshield, and the driver has falsified his log.

The roadside inspection is placed in the BASICs that use the number of time-weighted inspections in the calculation of the BASIC's Score with a time-weighted value of 3. These BASICs are the HOS, Driver Fitness, Controlled Substance and Alcohol, Vehicle Maintenance, and HM BASICs.

In the Vehicle BASIC, the windshield violation will be given a value of 3 (windshield condition has a severity weight of 1 and since no out-of-service order was issued, no additional severity points are assigned, and since the inspection is in the last six months, the time weighting is 3).

The false log violation will be given a value of 27 (severity weighted at 9 due to a severity weight of 7, plus 2 for being an out of service violation, multiplied by a time weighting of 3).

The severity weight for all safety-related violations (in our example the 1 for the cracked windshield and 7 for the false log) are available in other publications available through J. J. Keller & Associates, Inc.®

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There are limits

When an inspection is entered into the system, “stacked” violations (the same violation repeating over and over on the report) are only counted once.

Also, the FMCSA has placed a limit on how many “severity points” one inspection can put into a BASIC at 30 points.

What about No Violation inspections?

If a driver undergoes an inspection and no violations are found, the inspection is entered into the system, and will be counted in the appropriate BASICs (driver inspections are counted in the HOS, Driver Fitness, and Controlled Substance and Alcohol BASICs and vehicle inspections are counted in the Vehicle Maintenance and HM BASICs), but no violation values will be entered to any of the BASICs.

Who gets credit for the violations?

The values for all inspections, safety-related violations, and crashes will be assigned to the carrier based on their DOT number. The data will be kept in the carrier information and used for 2 years. The driver inspections and violations (violations where the driver is considered as being a responsible party by committing or not preventing) will be assigned against the driver as well and will stay in the driver’s data for 3 years. In our example above, both of the violations are considered violations the driver could have prevented, so the violations will show up in both the carrier’s and driver’s data.

BASIC Measures

BASIC “Measures” are determined by dividing the total of all safety-related event scores (the time-weighted violation values in all but the Crash BASIC, which uses the severity and time weighted crash values) by a normalizing factor. This process makes all carriers “look the same” by arriving at a common number (such as time-weighted violation value per power unit with utilization considered or per inspection).

In the case of the Crash and Unsafe Driving BASICs, the normalizing factor is the number of carrier power units (as reported on the carrier’s recent MCS-150s) multiplied by a “utilization factor” which considers the number of miles the carrier has operated (as shown on their most recent MCS-150). Combination vehicle fleets (a fleet made up of more than 70 percent combination vehicles) that have an average miles per unit of over 80,000 and straight vehicle fleets (a fleet made up of more than 30 percent straight vehicles) that have an average mileage per unit of over 20,000 miles will have their average number of power unit multiplied by a utilization factor. For combination fleets the utilization factor will be up to 1.6, and for straight vehicle fleets the factor will be up to 3.

If the carrier has not reported mileage; the mileage is less than 80,000 miles per unit for a combination vehicle fleet or less than 20,000 miles for a straight vehicle fleet; or the mileage per vehicle is over 200,000, the utilization factor is 1.

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In the HOS Compliance, Controlled Substance and Alcohol, and Driver Fitness BASICs, the normalizing factor is the total number of time-weighted driver inspections. The Vehicle Maintenance and HM BASICs use time-weighted vehicle inspections to normalize the data.

In the HM BASIC, the total of all time- and severity-weighted HM violations are divided by the total number of time-weighted HM inspections. An HM inspection in the CSA program is one in which the vehicle required placarding at the time of the roadside inspection.

BASIC Scores

Once a carrier's BASIC Measures have been determined, the carrier is then compared to other carriers in its "Safety Event Group" (formerly known as Peer Groups). The Safety Event Groups are based on the total number inspections with a violation in the BASIC (crashes in the Crash BASIC), or the number of driver or vehicle inspections the carrier has undergone (depending on BASIC). Here is an example: Carriers with 5 to 10 driver inspections are compared to all other carriers with 5 to 10 inspections when calculating a carrier's score in the Driver Fitness BASIC. Here are the Safety Event Group tables:

Safety Event Groups for the Unsafe Driving BASIC:

Group	Combination Vehicle Fleet: Inspections with an Unsafe Driving violation	Straight Vehicle Fleet: Inspections with an Unsafe Driving violation
1	3-8	3-4
2	9-21	5-8
3	22-57	9-18
4	58-149	19-49
5	150 or more	50 or more

Safety Event Groups for the HOS Compliance, Driver Fitness, and Vehicle Maintenance BASICs:

Group	Number of Relevant Inspections*
1	3-10 (HOS); 5-10 (all others)
2	11-20
3	21-100
4	101-500
5	501 or more

*Relevant inspections for the HOS Compliance and Driver Fitness BASICs are driver inspections, and vehicle inspections in the Vehicle Maintenance BASIC.

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grouping in the carrier SMS (drivers are simply percentile ranked based on their BASIC Measures to generate a BASIC Score in these BASICs). The BASICs that do use driver peer groups (HOS Compliance, Driver Fitness, Vehicle Maintenance, and HM Compliance) use the following Safety Event Groups:

Group	Number of Relevant Inspections *
1	3
2	4-6
3	7 or more

*Relevant inspections for the HOS Compliance and Driver Fitness BASICs are driver inspections, and vehicle inspections in the Vehicle Maintenance BASIC. Relevant inspections in the HM BASIC are HM inspections.

In both the carrier and driver systems, carriers and drivers must have enough inspections and enough violations in the BASIC to trigger the system into assigning a BASIC Score. Carriers must also have had a violation in the last 12 months to trigger a BASIC Score (this process is called “data sufficiency”). If a carrier does not have enough data to generate a BASIC Score, rather than the BASIC Score being displayed a short explanation is provided stating why there is no score. This is neither good nor bad. The key point to understand is this: If the carrier should receive another inspection or a violation in the BASIC in the next month (in other words, the carriers data becomes sufficient), the next SMS calculations would then calculate a BASIC Score using all relevant inspections and violations from the last 2 years. How good or bad the score is will depend on the data that is in the system.

Evaluation

If a carrier’s BASIC Score is above a predetermined threshold, an intervention will be triggered. Interventions range from a warning letter to a full Compliance Review. The basic principle is the worse the carrier’s score, the more severe the intervention. The CSA system uses a three-tiered evaluation system that is based on the carrier type. To completely pass the evaluation, a carrier needs to be below the intervention threshold in all BASICs. Here are the intervention thresholds that are presently in use:

BASICs	Passenger Carrying	HazMat Carrying	Property Only Carriers
Unsafe Driving, HOS, and Crash	50	60	65
Driver Fitness, Controlled Substances and Alcohol, and Vehicle Maintenance	65	75	80
HM Compliance	80	80	80

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How do they decide what type of carrier a carrier is? That decision is based on the carrier's MCS-150 and the carrier's history.

The decision on whether or not a carrier is a passenger carrier is based on the carrier's MCS-150. If the carrier indicated on the most recent MCS-150 that they are a passenger carrier, and the carrier's vehicle count on the MCS-150 shows that more than 2 percent of the fleet's vehicles are passenger carrying vehicles, the carrier will be evaluated accordingly.

To be considered a hazardous materials carrier by the CSA program, a carrier would need to:

- Have had two roadside inspections in the last 24 months where placardable amounts of hazardous materials were on a vehicle, one of which was within the last 12 months. Also, HM inspections have to make up a minimum of 5 percent of the carrier's total inspections.
- Be an FMCSA Hazardous Materials Safety Permit (HMSP) holder.

The HMSP is a permit that carriers that handle certain high-risk hazardous materials must get. It is different than the Pipeline and Hazardous Materials Safety Administration Registration that is required of all carriers that transport placardable amounts of hazardous materials. A carrier must have an HMSP if the carrier transports (this is found in the regulations at §385.403):

- Route controlled radioactive materials.
- More than 55 pounds of 1.1, 1.2, 1.3 explosives (these are "high explosives").
- Placardable amounts of 1.5 explosives.
- Shipments of "material poisonous by inhalation" that meet the criteria for "hazard zone A," in container with a capacity of more than one quart.
- Shipments of "material poisonous by inhalation" that meet the criteria for "hazard zone B," in "bulk packaging" (container with a capacity of more than 119 gallons).
- Shipments of "material poisonous by inhalation" that meet the criteria for "hazard zone C or D," in container with a capacity of more than 3,500 gallons.
- Shipments of compressed or refrigerated liquefied methane or liquefied natural gas (or other liquefied gases with a content of over 85 percent methane).

If the carrier has not marked on the MCS-150 that they are a passenger carrier, has not had a roadside inspection of a vehicle carrying placardable hazardous materials in the last two years, has not had an investigator determine that the carrier is transporting placadable amounts of hazardous materials in the last two years, and the carrier does not have a FMCSA HMSP, then the carrier will be considered a regular property carrier.

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Interventions

If a carrier's BASIC Score is over an intervention threshold, the carrier is said to have an "alert" status in that BASIC, and the FMCSA intervenes with the carrier. The interventions are designed to motivate the carrier to improve unsafe behavior. The interventions include:

- A warning letter putting the carrier on notice that performance in one or more of the BASICS has fallen to an unacceptable level, and the carrier needs to make corrections.
- Targeted roadside inspections. This involves an update to the Inspection Selection System (ISS). The CSA system "flags" carriers with poor performance in a BASIC, leading to more roadside inspections.
- Focused off-site investigations will be conducted to check a carrier's compliance with the regulations and verify performance.
- Focused on-site investigation would be the next step in the progressive system. The focused investigations will involve a "narrow" audit of a carrier based on areas of poor performance. As an example, if the carrier has a poor BASIC score in the Vehicle BASIC, the focused on-site investigation would concentrate on vehicle issues.
- Cooperative safety plan. Following an intervention or in other cases, the FMCSA may request that the carrier develop a plan to address shortcomings.
- Comprehensive review. This is the equivalent of the present compliance review (audit) done by the FMCSA (see the Compliance Review Process tab for details on this intervention). It would only be used when other interventions have failed or if there are grounds for it (accident follow up, valid complaint, earlier investigation has found larger problems, very poor carrier performance in a BASIC, etc.).
- Notice of Violation. The Notice of Violation serves as a formal mechanism to inform carriers that the carrier must address compliance deficiencies (a very formal warning letter).
- Notice of Claim, penalty, and settlement agreements are the FMCSA's processes for fining a carrier and can be initiated after any of the investigative interventions.

If a carrier's performance has reached an unacceptable level, referred to in the CSA system as "unfit," the FMCSA will "suspend" the carrier's operation (this portion of CSA still has to go through the rulemaking process, for the time being these carriers are subjected to the most severe intervention, the Compliance Review).

The FMCSA sends warning letters to most carriers that are over the intervention threshold in any BASIC. However, not all carriers get a warning letter first. The exceptions are carriers that have already been

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Red flag violations:

BASIC	Part	Violation
HOS	395.13(d)	Violating Part 395 Out-of-Service (OOS) Order
Controlled Substances/ Alcohol	392.4(a)	Possessing, using or being under the influence of a controlled substance
Controlled Substances/ Alcohol	392.5(a)	Possessing, being under the influence of, or using alcohol within 4 hours of going on duty
Driver Fitness	383.21	Operating a commercial motor vehicle (CMV) with more than one CDL
Driver Fitness	383.23(a)	Operating without a valid CDL
Driver Fitness	383.37(b)	Driver operating with more than one Commercial Driver's License (CDL)
Driver Fitness	383.51(a)	Driving while disqualified for safety-related or unknown reason
Driver Fitness	383.91(a)	Operating a CMV with improper CDL group
Driver Fitness	391.11	Unqualified driver
Driver Fitness	391.11(b)(5)	Driver lacking valid license for type of vehicle being operated
Driver Fitness	391.11(b)(7)	Driver disqualified from operating CMV
Driver Fitness	391.15(a)	Driving while disqualified for safety-related or unknown reason
Driver Fitness	391.45	Falsified entry on medical examiner's certificate
Vehicle Maintenance	396.9(c)	Operating an OOS vehicle before making repairs

Making the system work for you

Due to the nature of the severity weighting and time weighting used in the system, the fastest way to impact the system is to get "good" roadside inspections into the system (no violation inspections) and eliminate the preventable crashes.

The bottom line is to get a good record of compliance and safety established, as all the CSA program is doing is tracking carrier compliance and determining which carriers should be intervened with based on their compliance record. This is accomplished by running an effective safety program that involves:

- effective and enforced policies and procedures built on knowledge,

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and will attempt to locate where the company has a system failure that is allowing the violations to occur.



The Safety Management Cycle is a tool for continuous improvement that carriers can use to self-audit their safety program for compliance with FMCSA regulations and to aid in improving their BASIC score(s). It is also intended for use when developing a Cooperative Safety Plan, which is a collaborated effort between the carrier and the FMCSA to identify and address the underlying problems behind a carrier's substandard safety performance.

The Safety Management Cycle consists of six steps:

- Policies and Procedures
- Roles and Responsibilities
- Qualification and Hiring
- Training and Communication
- Monitoring and Tracking
- Meaningful Action

Each step of the Safety Management Cycle both overlaps the previous step and leads to the next step so that continuity within the management of the safety program can exist. If any of the elements in steps 1 through 5 is lacking, carriers are prompted by step 6 to take corrective action, and then would start the process over by reviewing steps 1 through 5.

Multiple departments within a carrier organization should be involved in the implementation of this model, since it does more than simply correct the Safety Manager's efforts. Most all departments — Operations, Human Resources, Maintenance, Administration — are affected by

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Do your own motor carrier safety audit

Many motor carriers have been preparing for the CSA program by learning as much as they can about this initiative. Carriers have been making adjustments to their own safety program based on their understanding of CSA, and have also been working with their drivers on the value of a “clean” roadside inspection. These are all good steps to take in the effort to avoid violations that would subject carriers to any form of investigation from the FMCSA .

This safety audit criteria and process is an examination of a motor carrier’s operation and safety management controls and cover such things as driver’s hours of service, vehicle maintenance, driver qualification, commercial driver’s license requirements, hazardous material handling and procedures, and accident recording.

An annual audit conducted by the motor carrier (or by a 3rd party) on its own safety program is a wise investment of resources regardless of the carrier’s depth of knowledge of the CSA program. Conducting a self-audit to ensure full compliance with the FMCSRs will greatly assist the carrier in any type of investigation from the FMCSA and may, in some instances, prevent any investigation at all!

Audits and investigations

In 2011, the FMCSA announced that an independent study showed the number of motor carriers contacted under the CSA program was almost three times the number of motor carriers contacted using the previous enforcement method (compliance reviews). It also showed that almost 20

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percent fewer motor carriers showed safety problems 12 months after an onsite focused intervention versus after a compliance review.

It is fair to say, in view of this study, that the odds for contact by the FMCSA have increased substantially and will likely increase further in the months to come. Then again, that is one of the main objectives of the CSA program — to contact more motor carriers to correct safety problems and ensure compliance with safety regulations in order to reduce crashes, injuries, and fatalities.

Off-site focused investigations, onsite focused investigations, and comprehensive reviews are live interventions conducted by an auditor, whose official title is “safety investigator.” The safety investigator will request documentation to determine if the processes the carrier has in place comply with federal motor carrier regulations and lower the chances for the carrier to be involved in a crash.

Contact from a safety investigator typically begins with the investigator sending a letter or calling to inform the carrier of his/her intentions a week or more before the actual visit. Many times, they will request that certain documentation from the carrier’s recordkeeping files be made available. However, they could also arrive at the motor carrier’s front door one day to conduct an audit with no advance notice. This is generally due to a crash or a complaint investigation.

If the safety investigator arrives at the carrier’s facility with the intention of a full audit or a comprehensive review, he/she will conduct the audit based on six regulatory factors:

- financial responsibility and general requirements,
- driver qualification and drug and alcohol regulations,
- operational practices and hours of service,
- vehicle regulations,
- hazardous materials regulations, and
- a calculation of the carrier’s DOT accident rate per million miles.

A focused intervention will audit only some of these six factors, depending on the area of concern. However, if the investigator sees or suspects something that points to the carrier having problems in more than one area, the investigator has the authority to conduct a full audit.

Whatever the reason for an audit or investigation, the fact is that motor carriers have the potential to be involved in them more now than ever before. If for no other reason, this fact alone should cause motor carriers to anticipate this event and prepare for the occasion when they are notified that an investigation is soon to occur.

Use CSA to your advantage

One aspect of the CSA program many companies tend to overlook is the safety management procedures they have in place that **are compliant** with the regulations. In other words, the things they have done “right” rather than just the things they have done “wrong”! Something you have been doing right may serve as a model for an area that needs improving.

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It is important to keep in mind that the CSA program is not a new set of rules and regulations. These are the same rules that the vast majority of motor carriers have abided by for quite some time. The difference is that the FMCSA will enforce these same rules and regulations at a much more rapid pace and will step in when a safety problem is identified, before that problem can result in a crash, injury, or fatality. Carriers will be given a chance to make adjustments to their safety performance or will risk being ordered out of the motor carrier business.

A roadside inspection will inform a motor carrier of exactly where the adjustments to their safety program must begin. If a motor carrier has been “playing by the rules” all along, these adjustments may not be as dire as some might envision. However, the adjustments must be made nonetheless. It is how the motor carrier prepares themselves for the adjustment that can ease their worry of a fiasco.

A major step that a motor carrier can take in the way of preparation is to record and track their roadside inspections. There are several reasons for doing this. First, the tracking will provide a mechanism to make sure that any violations noted in the inspection have been corrected. Second, the tracking will allow the carrier to see developing trends in violations.

For example, if a carrier is seeing log violations turn up in more than a few roadside inspections, it alerts the carrier that this area needs to be addressed with the drivers. The solution could be as simple as education or training, or structuring a correction program for any driver that receives a log violation. It would be prudent for any motor carrier to make this adjustment and correct this trend before the FMCSA officially records this as a reason for an intervention.

Also, tracking your roadside inspection reports provides a database that can be compared to the data the FMCSA has on file. It is critical that carriers compare what they know about their roadside inspections to what the FMCSA has on file for them.

Motor carriers can use the CSA program to confirm and document what their safety management program has been doing well. By using roadside tracking tools as an early warning system, they can correct what may go wrong before the FMCSA addresses it!

Combine knowledge with experience for proper load securement

One of the more common assumptions in the transportation industry is that a product or shipment can be transported between two points with relative ease, providing the driver has the necessary skills to keep the vehicle on the road and observes all traffic laws. Even if this was always the case, the weight of this responsibility assumed by the driver could often times outweigh the size of the shipment being transported.

It is a law of nature that in order to transport any product safely down the highway, proper distribution of the cargo weight and secure tiedowns or bracing of the shipment must be in place to accomplish this task. What’s more, the promise of successfully completing this task is further complicated by the motion caused by nature itself. It is for this reason alone that it would be prudent for any motor carrier to continue to train

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But the truth is that everyone has a role to play in keeping CSA scores low and avoiding interventions by the FMCSA . Many of these job functions involve key information with which a violation can be detected before it is ever recorded at a roadside inspection.

A good example of this is an employee auditing driver's logbooks. If the person discovers that the distance traveled doesn't match up with the hours reported, the driver could be in violation of the hours-of-service rules, or falsifying his/her logbook. Or the driver may just be confused about properly recording the hours in the logbook. At any rate, the auditor is in a unique position to recognize this discrepancy and call attention to this issue before the driver's errors are found by enforcement officials.

Another example is an office employee noticing a truck leaving the yard with a defective headlight. A quick mention to the appropriate personnel can alert the driver to return and report this problem to the maintenance staff. Or, maybe the recordkeeping process isn't quite up to standards and could pose a problem if FMCSA investigators suddenly arrive for an on-site intervention.

Point to be made here is, CSA's main focus is clearly on the drivers and the carriers whom they drive for. And while the administrative staff may not have a direct role in fostering compliance, there is a good chance that they support the efforts of those who do. Through training on the elements of CSA and the importance of keeping a motor carrier's BASIC scores low, the administrative staff can contribute to the compliance effort through their detection of a violation long before it actually becomes one!

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Classifying motor carriers

Ongoing refinements to the CSA program will lead to some motor carriers being classified differently than their MCS-150 record shows.

In the past, the CSA program classified motor carriers as either passenger carriers, hazardous material carriers, or regular property carriers based solely on the information reported by the carrier on their MCS-150. If the carrier marked their MCS-150 as regular property carrier, then that's who they were. The same is true for passenger carriers who checked "passenger" on their MCS-150, and for hazmat carriers who checked "hazmat."

In an effort to make certain that carriers transporting hazardous materials requiring placards are held to a higher standard due to the nature of potential harm to others and the environment, the CSA program changed their methods for classifying carriers. The FMCSA (Federal Motor Carrier Safety Administration) has not changed the official definition of a hazmat carrier. This change is only intended for the CSA initiative.

The CSA program will consider a motor carrier to be a hazardous material carrier if the carrier has:

- had a roadside inspection in the past 24 months where placardable amounts of hazardous materials were found on the vehicle;
- had an investigator during an intervention, or audit, determine that the company had transported placardable amounts of hazardous material in the last 24 months;
- an FMCSA Hazardous Material Safety Permit (HMSP) allowing the carrier to transport high-risk hazardous materials such as explosives or radioactive material, just to name a few.

If the carrier has not marked that they are a passenger carrier on their MCS-150, has not had a roadside inspection in the last 24 months where a placardable amount of hazmat was found on board, has never been determined by an investigator during an audit or intervention in the last 24 months to have transported hazardous materials, and does not have a HMSP, then the carrier will be considered a regular property carrier.

The motor carrier can discover exactly how the CSA program views their status simply by checking their company scores in the SMS (Safety Management System) at fmcsa.dot.gov/sms, and locating the box entitled "Carrier Registration Information as of ***". If a "yes" is displayed next to "Transports Placardable QTY of Hazardous Material," then an identification has been made over the last 24 months that the carrier fits the classification of hazmat carrier.

Remember, this classification is only for CSA purposes and establishes a different intervention threshold for hazmat carriers when compared to passenger and regular property carriers.

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Challenging DataQs

Since 2004, the DataQs system has been available to motor carriers, drivers, and others, to correct any information that is maintained and publicized by the FMCSA. And, as can be expected, due to the probability of occasional human error along with other various factors, the quality of the information maintained by the FMCSA can only be as accurate as the information that is provided to their database.

The safeguard that DataQs provides the consumers of this information is allowing this data to be challenged if the carrier or driver feels it is in error, while giving state agencies discretion in resolving the challenge. With the increased enforcement of the CSA initiative, the outcome of many of these challenges can make a difference between a well-managed safety program and one that is under scrutiny through an intervention process. For this reason, the challenge (officially called request for data review (RDR)) must be supported with documents, including official records that substantiate the motor carrier's or driver's request as proof of the error.

One frequent RDR stems from a motor carrier believing that the results of a roadside inspection had been assigned to them in error. Transposed digits in a USDOT number can cause such an error and can easily be corrected once the carrier filing the RDR proves its innocence through an adequate match of carrier name and USDOT identification number.

However, this identification matter can become quite complicated when the results of a roadside inspection are assigned to a carrier who is leasing the vehicle, driver, or both, and identification of the responsible motor carrier is the challenge. A carrier who complies with the regulations should be able to produce adequate information to prove the identification of the responsible carrier. Starting with the inspection report and going deeper with documents such as lease or rental agreements, shipping documents, repair tickets, driver's log, and vehicle registration, these documents should all be retained at the carrier's place of business and be submitted, if required, to substantiate the proper assignment of roadside inspection data.

When submitting challenges through the DataQs system, the carrier will be most successful if it has the knowledge of regulatory requirements to spot an error and the strength of accurate recordkeeping processes to support its challenge.

Good CSA scores make for good business partners

The benefits of good CSA scores become evident in the appearance of any motor carrier searching for good business partners. More and more shippers want to tender their freight to carriers who are publicly known through their CSA scores to be a reliable carrier they can count on. These shippers want to be assured that their freight will be transported through their supply chain by a business partner in a timely and professional manner. Repeated business of transportation services forges the business partnership that both the shipper and the carrier are looking for.

Drivers are also searching for a business partner. They, too, wish to be associated with a carrier who visibly demonstrates a commitment to safety and professionalism. They will also research a carrier's CSA scores

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to verify the carrier's commitment to this important characteristic. Drivers do not want to have their personal safety limited by a carrier's CSA issues. Operating old equipment and undergoing frequent roadside inspections speaks loudly to the carrier's compliance with safety regulations. Drivers quickly understand that for them to reach their earning potentials through safe and consistent employment, they need a partner who equally commits to this business agreement.

Driver recruiting and retention challenges are similarly tied in to this partnership. The carrier's CSA scores drastically affect both of these programs. The aging driver population leading to the driver shortage mandates that management explore new ways to update their culture in order to attract good drivers, along with new entrants, and keep current drivers on the payroll. It's not only a strong focus on new technology that assists in this effort, it is also establishing a culture that recognizes the driver as a business partner and one that a long-term relationship is necessary in order for both to be successful.

The standard that helps to define exactly what a "good carrier" is for both the shipper and a driver seeking partnerships is the CSA program.

Management now finds itself connected to at least two entities that have a direct influence on the success of their company — the shipper who wants to partner with a good carrier, and the driver, also looking for the same relationship. The motor carrier may find it difficult to compete without a solid relationship with at least one of these partners. And if the carrier has one partner, the other is soon to follow.

Managing CSA

Without much doubt, the CSA program has certainly added to the cost of doing business for many motor carriers. For an industry that operates on profit margins generally in the lower to middle single digits, identifying and then rigorously managing costs is essential for all motor carriers in their efforts to achieve financial success. Still, they have seen their costs rise in areas of training, maintenance, and recruiting and retention programs largely due to the implementation of this safety enforcement program.

And let's not forget the administrative costs. If the carrier is not spending more time to do the little things, like closely auditing their own drivers' logs, they are spending more money to have a log auditing service do the task for them.

Nonetheless, these added costs are what it takes today for a carrier to be compliant with the regulations of the industry, even though the regulations are largely the same as they were before CSA was implemented. But management must also consider the costs their company would endure if not for the heightened enforcement of the CSA initiative.

Consider the cost of an accident. According to the FMCSA, a carrier paying the cost of a \$25,000 accident would have to generate an additional \$1,250,000 in revenue (assuming a 2% profit margin) to cover this loss. This additional revenue is needed to pay for all direct and indirect

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costs relative to the accident itself, such as vehicle damage, injuries, medical costs, cargo damage, insurance and worker's comp, lost sales/clients, etc.

The safest carriers on the highways today consistently apply a driver qualification policy as a screening standard for all applicants. These carriers realize the potential cost saving benefits of having safe drivers on their payroll. Safe drivers have fewer accidents, fewer violations, and more on-time deliveries, thereby creating a larger customer base for the carrier and bigger profits. Still, initial and comprehensive training is administered throughout the driver's employment creating the safety culture that the CSA program has as their goal, along with the financial profit as the carrier's goal.

Investing capital to instill a greater safety culture through training and awareness strengthens the carrier's financial position. Because the company spent their time and assets to train their drivers on the safety standards of today's transportation industry, they have sequentially made themselves more profitable — a cost many carriers are willing to undertake.

Managing CSA data in 'real time'

With all the data available nowadays, it becomes essential to know how to manage the flood of information effectively. Decisions must be made on where the attention must be focused and what has priority in terms of running a smooth operation. Access to "real time" information and detailed data can make this process easier to obtain the best results possible.

Tracking roadside inspection information can give a proactive motor carrier the valuable data so critical to a well-managed motor carrier. It can also provide as much as a 30-day lead on CSA's Safety Measurement System (SMS) which may prove to be all the time a carrier needs to react to negative data.

The FMCSA takes incoming CSA data at face value — they do not confirm that reported violations or accidents actually belong to the carrier the data was assigned to. They may make bold and systematic efforts to get the facts straight the first time, however, mistakes can be made. That's why it is imperative for motor carriers to review their own inspection and crash data and make sure it matches up with the official data. If the data is not accurate, the carrier can challenge it.

But what is of even greater value to the carrier who tracks roadside inspection and crash data is translating the captured data to point out trends. This data can expose whether behaviors among drivers, technicians, and for the most part, all employees are either improving or getting worse and where a process may be in need of an update.

If a carrier's data shows trends of nearing, or even exceeding thresholds in any BASIC, the carrier should take action based on the data before the FMCSA is made aware of it. And with as much as a 30 day lag in the SMS scoring, the carrier can turn a negative trend into a positive as proof to an investigator that the problem has been identified and is now corrected.

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The score is not as important as the ranking

Each month, when the FMCSA publishes motor carrier rankings in BASICs viewable by the public, a gap is identified showing what you are doing with your safety program and how it measures up to similar carriers in your group. Obviously, being on the positive end of this gap is the desired position in these rankings.

Occasionally — especially when a motor carrier senses that the previous month's activity was acceptable with no citations issued to drivers, no accident involvement, and roadside inspections produced only minimal violations that were easily corrected — the carrier finds that they were overtaken in the rankings by other carriers in the group.

Time weighting is a factor having much to do with CSA's ranking of motor carriers. As older violations reduce their effect on the outcome of a carrier's ranking, the bigger challenge is not to replace those older violations with new and higher severity weighting violations.

Each of your roadside violations in each of the BASICs is weighted so that more recent data are more heavily weighted than older data. The CSA scoring system is weighted against carriers with recent high risk violations.

Whenever a violation is charged against a carrier, the carrier gets assigned a severity weight between 1 and 10. If the violation resulted in an out-of-service order, 2 more points are added, such that a 10 would become a 12. Then the score is added up and multiplied by 3 if the violation occurred in the last 6 months, 2 if the violation occurred in the last 7 to 12 months, and 1 if it was over 12 months ago.

CSA scores **are not** based only on what a particular carrier does, but also on **what the other carriers** in the safety event group do and **how the carrier compares** within that group. Based on percentiles, carriers whose older violations "come off the books" and manage to continually improve their safety rankings could, in time, pass by carriers who have few but more recent violations.

So how is a carrier overtaken in the rankings when the carrier had a somewhat acceptable month of low violations and no accidents? It's possible the other carriers in the group had a better month.

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PERSONNEL

Selection and Training of Low and Mid-Level Managers and Supervisors

Seven Qualities to Look for in Selecting Your Next Manager or Supervisor

The selection and training of managers and supervisors is possibly one of the most important responsibilities a Fleet Manager has. Because the Fleet Manager cannot be every where, these individuals will be the representative the employees and customers will be dealing with on a day-to-day basis.

Whether you are promoting from within or hiring from the outside, your final selection of the individual to fill this role will be long remembered by existing employees as the answer to management's need for additional leadership. What will this individual need, beyond the job requirements already in their possession, to be an effective leader? Will this individual fit into the company's culture and plans for the future? What further qualities may have been overlooked in the interview processes that are important to us before making our selection?



When determining the standards for the position, it is best to start with an accurate job analysis and job description. If you are hiring a driver manager (dispatcher), the ability to lift 150 pounds is not a valid job requirement, but knowledge of a specific computer program may be.

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Often, and depending on the size of your operation, a good place to look for supervisors and managers is from within your company.

There are many advantages of hiring from within. A main benefit is that you have reliable information on the candidate because of his/her history with the company. Ask around to find out the work ethic and reliability of the person. Review the personnel file to see work performance history and other documentation. This information can provide insight as to whether or not the person would make a good supervisor or manager.

An ideal time to discuss open positions is during a performance evaluation of an employee that has the potential to become a supervisor or manager. Maybe the employee states that he or she enjoys working for the company, but wants more variety, responsibility, or money. Present your future openings as a viable career option for your current employee. Also during the review discuss the knowledge and educational requirements for various positions the employee might be interested in.

The danger of promoting from within, or hiring someone from outside into a supervisory position that has never held a supervisory position, is the problem of "promoting to the level of incompetence." The mechanic may have been a very good mechanic, but he/she may not have the ability to develop any further in their career. This phenomena can be avoided by remembering to screen all candidates against standards and *train the individuals*. Many times it is assumed that the individual should do well as a supervisor or manager simply because they were good at their previous position.



Workplace Action

Being competent is having the ability or capacity to function in a particular way. To achieve this status, the employee must be properly trained and be allowed to gain the expertise needed to be a valuable asset to the company. This is the goal for all training programs. When Joe switched from driving to dispatch, the company lost a valuable asset in its driving ranks. It is now up to the company to use its training methods to allow Joe to become an asset once again.

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terminal manager position as it is quite evident that they already have an experienced dispatcher!

Problem solving skills are enhanced by management through training, support for the decision made by the new manager, and a follow up discussion with the new manager to review what other options are available. The new manager will develop these skills further; even if this characteristic is already present prior to his/her new assignment.

People skills. Communication, in a manner that is beneficial to the employees, will also be beneficial to the new manager and thereby to the company. Listening skills are a part of this trait also. An insincere or smug attitude will be detected early by the employees and should be easily discernible throughout the interview process as well. In order to be effective, the manager must be able to get positive reaction and production out of the people he/she leads. This will be one of the biggest challenges for the newly appointed manager and will be tested early on by many of the employees. How the new manager handles this at the onset will set the pace for future leadership possibilities.

Leadership qualities. Successful leaders have a tendency to attract others who are happy to assist in their leader's success. In other words, people want to follow a leader and build trust in them knowing that their leader will provide a sense of security for their own well being. When compared to an individual from outside the company, this quality may be easier to spot in a current employee who is being considered for a promotion to a management position. The company has had a chance to observe this employee and the interaction with fellow employees. Is this employee attracting those who want to be led? Can this employee communicate with his/her peers from a management standpoint and realize positive results?

The candidate from the outside will have to exhibit their leadership skills almost immediately. Their resume and job application will be an indicator of this quality, but it is a sense that will be recognized by the interviewer early in the interview process in determining if this quality exists. Does the candidate show this quality that will mesh with management's culture? Is management willing to wait on an individual from the outside to prove his/her leadership skills, or for that matter, to see if any develop?

Listening and learning skills. It is often believed that listening is a skill. One who truly listens, benefits from this skill not only by learning something useful, but also by gaining the respect from the one who is speaking. This skill then becomes of value when it is used in dealing with a customer's needs, another employee's concerns, and even upper management's demands. To be able to gather meaningful information and incorporate the message as it was meant to be is a valuable commodity. Does the candidate seem to be attentive to what you are saying? Does he/she grasp with confidence the concept he/she has just heard?

Teaching abilities. One of the most important attributes of a leader is the ability to teach. It falls closely in line with having people skills, yet it becomes a greater asset when this skill is used to develop others and

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Organizing. The organizational function of a manager or supervisor involves finding the most effective and efficient method of using resources to complete a task.

Leading and motivating. Leading and motivating involves supervisors and managers sharing their passion and vision for the company and influencing other employees of the company. Good leadership leads to motivated employees. Sadly, the reverse is also true. Poor leadership leads to unmotivated employees. Here are ten basic tips on leadership:

- Be willing to arrive early and stay late, and be willing to answer questions when they arise. Question; are you willing to stay late to solve a problem and take calls at home at night? If you are not, do not expect any of the people under you to.

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it's a "manager's privilege" to wander off whenever you want is to invite accountability problems with your employees.

- Keep stress under control, both personal and group. One interesting point that many supervisors and managers miss is that if you are stressed, so is your group, and vice versa. Consider activities that help reduce stress. Taking the group to lunch, hosting a cookout during a long, difficult project, and making sure you and your people are getting adequate time away from the job are all ideas to reducing stress. Here is a simple thought; try to keep work fun for you and your employees.
- Adhere to mission statements and policies. Never take a shortcut that directly conflicts with either the company mission statement or policies. If the people you work with see that you are willing to "bend the rules" to meet your needs, they will expect to be able to do the same. Imagine the problems you will have when you have to discipline an employee or driver for violating a policy you yourself have bent. Saying "but it's different when I do it because I'm the boss" sounds a lot like "do as I say, not as I do."
- Speak respectfully about other supervisors and managers. Nothing is more destructive to company supervision than managers or supervisors running around saying "This is what my boss (or another supervisor) wants you to do, what an idiot. He needs to see what you people actually do." If your boss (or another supervisor) needs to understand what is going on, discuss it with him/her or show it to him/her. Do not get employees caught in the middle. This may set up a situation where employees will start to go to the supervisor who will "give them the answer they want" rather than the correct supervisor.

Remember, leadership is not easy, it is a long-term project; it takes time to see results. It must be done day in and day out, every day on the job.

Controlling and monitoring. This function involves measuring performance against goals. The first step is the establishment of goals. The second step is the comparison of performance against the goals.

When discussing, controlling, and monitoring, many carriers divide low and midlevel management into separate regimes, with an overall manager (the Fleet Manager) overseeing them. Common divisions for low and midlevel managers are:

- Operations (including dispatch, customer service, payroll, etc).
- Safety (including recruiting, human resources, training, compliance, and claims).
- Maintenance (including vehicle and facility).

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In this example miles and accidents are given the highest value.

Drivers, as the producing component of the company, are possibly the easiest to determine measures and scorecards for. Typical measures for drivers are miles, accidents, citations, on-time delivery, policy violations (everything from cooperation with dispatch and customers to timely submission of paperwork), and equipment care. Some carriers may include more measures in their driver scorecarding.

The basic measures for the drivers can be expanded to serve as the basic measures for supervisors and managers. Maintaining or improving these measures can then serve as the basis of the goals for supervisors.

Providing long-term goals and objectives for supervisors and managers

One issue that low and midlevel managers deal with is a lack of goals. They may understand their day-to-day responsibilities, and they may even understand the principles of goals and measures, but many times due to lack of management guidance they do not have short-term or long-term goals.

As discussed earlier when we were discussing monitoring, it is critical to determine measures and track performance for all employees, including supervisors and managers. Simply “stating goals” (such as we want to see turnover reduced) does not do any good. There must be a way for the supervisor or manager to measure performance.

As a Fleet Manager you will need to sit down and determine what measures you are going to use to determine if supervisors and managers are meeting their goals.

Once the measures have been determined, the next step is to determine a goal for each measure. It does no good to establish a measure and monitor the employee’s performance, unless there is a goal to be achieved.

Here is an example, sticking with our earlier example of turnover. If the turnover of a driver manager’s drivers is to be used as a measure, turnover for the driver manager needs to be measured and tracked. The driver manager and his or her manager must know what the turnover goal (objective) is to determine if the goal is being met.

If the driver manager is assigned the goal of keeping turnover below 20 percent, that is a more manageable goal than telling the driver manager he/she has to “reduce turnover.”

Managers need to be careful when setting goals. The goals must be kept achievable. Most measures are not yes/no type measures. In many cases there is not a zero level to be achieved. The problem with many measures is once a certain level is reached, no more improvement is possible.

Again, let’s go back to our example of the driver manager who was told he/she needs to lower turnover. What happens when the driver manager loses a driver who was terminated due to accidents? What happens when

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a driver quits due to family pressure beyond the driver manager's ability to intervene and assist?

The idea is to establish a goal that forces the supervisor to be active in the process and have an impact. If the supervisor believes a goal is not achievable, there will be little or no effort to meet the goal.

Finally, do not rapidly change measures or goals. Supervisors have to have clear goals that they can impact. If the goals (or objectives) are constantly changing, the supervisor's performance will suffer.

An example is a safety supervisor who is told that his/her main goal is to reduce accidents (inadequate goal, no objective or measurement to it). The following week the supervisor is told his/her main goal is now reducing violations (now the supervisor has two inadequate goals). The following week the supervisor is now told it is everyone's responsibility to increase the fleet's mileage. The supervisor cannot help but wonder which of the goals he/she will be judged on and what will determine adequate performance!

Here are some of the typical positions, and measures and goals in use at carriers. Some carriers use an elaborate system of scorecarding, while other carriers choose to use a simple system of goals and measures based on their most critical needs.

Driver managers. Typical measures for driver managers include:

- Driver turnover.
- Average mileage for assigned drivers.
- Revenue generated.
- Unplanned costs generated.
- Driver compliance.
- Driver complaints.
- Hours worked.
- "Unassigned driver" or "unpreplanned driver" incidence or percentage.
- Number of shipments dispatched.
- Percentage of time in direct contact with drivers.

Customer service representatives. Customer service representatives must have different measures. These measures would also be used for driver managers if the company's operational structure does not provide separate driver managers and customer service representatives.

- Customer complaints.
- Number of shipments booked.

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- Revenue generated.
- Unplanned cost generated.
- Shipment entry errors.
- Shipment assignment errors.
- Pick up and delivery reschedule.
- On-time delivery percentage.
- Percentage of time in direct contact with customers.

Safety/training managers and supervisors. The measures for these supervisors will depend on their specific functions. If the safety department is simply used as an auditing and enforcement arm, the measures will be different than if the department is directly involved in prevention activities.

- Accident rates.
- Injury rates.
- Out-of-service rates.
- Violation/citation rates and costs.
- Hours-of-service compliance.
- Driver turnover.
- Claims (accident and injury) costs.
- Administrative costs.
- Auditing volume vs. time.
- Meeting budget projections.

Maintenance supervisors and managers. Maintenance personnel, while operating in a specialized environment, must still be provided with measures. One consideration is these supervisors and managers are in a situation where they may not be able to control the workflow through their area. That may be determined by the operations personnel. If they do have the ability to control their own workflow, that of course would be measured as well (efficiency in scheduling). Common measures involve how efficiently the maintenance facility is operating. Typical measures for maintenance supervisors and managers are:

- Rework.
- Actual repair time compared to company or industry standards.
- Wait time before equipment can be brought into the shop.

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Possibly the simplest concept is the concept of X, Y, and Z people. People can be broken down into types. Dealing with them effectively can be based on their type.

X people will not work hard unless they are closely supervised and constantly corrected. X people also tend to be easily led astray by coworkers. When motivated, they perform well, but they do not stay motivated without attention. Some X people expect direct and intense supervision. Dealing with X people as a supervisor will require the supervisor to be very precise with instructions, provide constant supervision, and follow up.

Y people are the type that only need instruction once, and will complete the job with a minimum amount of guidance and supervision. Everyone would love to have a company full of Y people, as they are the easiest to deal with. Their main goal is to complete all assignments on-time and under budget. One problem with some Y people is they may be unwilling to ask for assistance. They view assistance as unnecessary. This can lead to stress and missed goals. These people require a different type of supervision, more of an oversight supervision than the over-the-shoulder supervision that the X people require.



Z people are people that can be swayed by their environment and can be either an X or Y depending on the situation. When working with an X person, or being treated as an X person, they will act like one. When working with or being treated as a Y person, they will act like a Y person.

Where the problems occur is when the supervisor views *all* employees as either an X, Y, or Z, and does not use any interpersonal skill. If a Y person is placed under the constant scrutiny that an extreme X person requires, he or she will become frustrated rather quickly. If an X person is not supervised closely enough, work performance will suffer.

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The Real World

Supervisors and managers do not need to be everyone's best friend, but they do need to have sound listening skills.

Management style is an interpersonal skill that supervisors and managers should be constantly developing. Think of various supervisors you have worked under and think of the qualities that you liked and disliked. There are several styles that a supervisor or manager may need to use in certain circumstances. Here are some common styles encountered in supervisors and managers.

I'm the boss. This management style is very autocratic. I am right and do not even try to bring up an opposing view. There are times when this style is necessary, but it can create problems with employees if it is used all the time.

I want to be your best friend. This type of management style is very democratic and calls on the manager to ask for, and get cooperation and buy in from the employees. As with any other management style, it has its good and bad aspects. In matters that cannot be democratically settled it can lead to the manager becoming involved in endless conversations that cannot change the situation.

The drill sergeant. This style involves kicking butt and taking names. Not only are you the boss, but you will make sure everyone within hearing distance knows it. This management style works well in the military, where the employees cannot leave and the goals are significantly different. If used too often in the transportation industry it leads to problems.

The judge. This management style is very technocratic. It requires the collection of all data before a decision can be made. Managers who use this style too much can be viewed as unable to make a decision. Managers who do not use this style at all can be seen as impulsive and not willing to establish facts before making decisions.

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Much like dealing with individuals rather than treating all employees the same, managers and supervisors need to be able to change styles when necessary. All managers will tend to use one style more than another. Managers need to know which style they tend to use more than the others.

What a manager needs to do is be able to use a style that matches the situation. When trying to talk a driver into volunteering to stay out an extra day, using the drill sergeant approach may not be the best!

| Management “team” concepts and philosophies

One of the biggest management mistakes made is when the management personnel (managers and supervisors) are not on the same “team.” There are many reasons this happens, but the most common are lack of communications and lack of agreement.

All personnel at each management level must be in agreement on what the common goals, policies, and procedures are. Each supervisor and manager may need to adapt the corporate goals and policies to their area, but the basic goals and policies should not change.

While many people consider meetings a waste of time, they are the only forum where common communications can take place. Even if there is nothing to discuss, meetings should still be conducted to maintain communications.

If a supervisor or manager will not attend a management meeting, how can he/she stay current with what is happening in the rest of the company? It is bad enough when you have an employee that is not communicating, what happens when an entire group or department stops communicating?

To avoid supervisors refusing to attend meetings, have meeting attendance factored into the supervisor’s performance goals as a measure.

The senior manager should set the agenda and pace of the meeting. The agenda should cover reports from participants, old business, new business, and open discussion.

One meeting tactic that has been found to be successful is to set a time limit to as many topics as possible. This will cause the participants to prioritize their materials for their portion of the meeting.

Meeting length should be dictated by the responsibilities of the group and the agenda to be covered. There will be department meetings that have little or nothing on the agenda and take 15 minutes, while upper management meetings may cover a wide variety of issues and take several hours.

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Meetings should not be adjourned until consensus is reached on all matters before the group. There are times when it is acceptable for the consensus to be “We won’t do anything for now, let’s study this and bring it up next time.”

This consensus is critical with upper management. If upper management cannot present solid and consistent goals and visions for the company, the subordinate managers and supervisors may not be able to function.

To maintain a consistent management team approach, management meetings must be scheduled regularly. This will keep the meetings short and the management personnel current.

Basically, you do not want to rely on one-on-one conversations to keep everyone in the management team informed and participating.

Expanding the teams. Another management approach that successful carriers use is to involve the employees in policy decisions by creating management teams that include, or are made up entirely of, nonmanagement employees. These teams are created to deal with management issues under the direction of upper or midlevel management.

If a problem is occurring often enough that management sees that a policy needs to be created, they will ask a group of employees to create a policy.

This will make the policies (and related procedures) more easily accepted by the employees, as well as bringing the employees into the functioning of the company. If compliance with a policy becomes a problem, consider forming a “task force” of employees to try to determine why. Many times the employees know the answer, but nobody in upper management thinks to ask them.

Finding the problem, and assisting the employees with compliance based on the findings, is a way to improve compliance and not upset the employees.

The key to successfully using the team management concept, and the committees and task forces, is to control the agenda and scope of these teams.

Task forces are created to deal with a specific problem. Once their task is completed, they are dissolved. When a task force is formed, give it a clear goal and keep the scope narrow. If the issue is improving work flow in operations, do not let the task force start addressing loading and unloading times.

Committees are formed to deal with on-going issues. Safety committees, operational process committees, team building committees, and special events committees are all examples of committees. These groups move from one project to another, all within the scope of their committee assignment.

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The make up of the task force or committee will depend on the goal. If you wish to get strictly employee views and suggestions, appoint only employees to the group. If you want the group to be management steered, appoint a manager to chair the group. If you know the committee will be dealing with contentious issues (such as accident review committees), appoint a mix of managers and employees.

Delegation of authority principles

Delegation is defined as authorizing subordinates to independently complete tasks or make decisions. When authority to make decisions is delegated, the rights and responsibilities that go along with the task or decision must also be delegated.

One concept that must accompany delegation is accountability. If a subordinate is delegated a task or decision, the subordinate must be held accountable for the outcome by the manager.

One of the dangers with delegation is giving the wrong personnel the wrong authority. An example would be delegating truck spec'ing to the drivers. The fleet would end up with big, comfortable, and powerful vehicles, but they would not meet fuel mileage requirements and could be too expensive. Getting input from the drivers through a task force or committee could be an excellent idea, but you would not want to delegate ordering vehicles to them!

Another danger of delegating is delegating only the accountability. If the decision or task is going to be delegated, the authority to change the factors and gather necessary support and materials must also be delegated. If the task is delegated, but the individual has to constantly come back for permission to proceed with the next step, you have not delegated. You just have someone else doing your legwork.

This leads to the next point in delegation. The opposite of delegation is micromanagement. Micromanagement involves the manager personally making all decisions and personally supervising the completion of tasks.

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If the project requires micromanagement, do not tell subordinates that it is their project to “run with.” Tell them right from the beginning that you will be involved from start to finish.

Where supervisors get frustrated is when they are told they need to “make their own decisions and be supervisors,” but are dealing with a manager who will question all decisions made, and even reverse some. An easy indicator that a task is being micromanaged is if every decision is being either questioned or made by the project supervisor’s manager.

Most managers and supervisors will become frustrated if they are held accountable for outcomes, but have not been delegated the authority to affect the outcomes. You, as the Fleet Manager must decide when you are delegating and when you are micromanaging. The two should not be combined. You cannot delegate, then micromanage.

There is a time when each is necessary. The trick is to know the difference and clearly communicate the situation to your subordinates.

Managers, Leaders, Supervisors — What’s the difference?

There is a difference between a leader and a manager. A leader guides, conducts, directs the workforce. The leader is the principle performer of the group that has commanding authority or influence. Leadership is the capacity to lead. A manager also conducts and guides the workforce but gets direction from the leader. The manager’s job is to supervise the workforce and maintain the status quo. He/she may have some authority to make adjustments but must stay in compliance with the leader’s direction.

The leaders in the transportation industry are today dealing with a business climate that is unlike any before. There has always been a focus on wasteful spending and running a “lean” operation but never have these been as crucial to the company’s existence as it is today. The decision making process is where the leader earns the respect from the employees. A quick assessment of the situation, a thoughtful plan that can be enacted without adding great costs, and precise timing to put the plan in motion is the art of the leader. We see this happen in the sports world many times over. The quarterback who changes the play at the line of scrimmage, the basketball team playing for the last shot at the basket, the manager who changes pitchers at a critical point of the baseball game all are examples of assessing, planning, and timing.

Supervisors are the ground-level connection between management and employees. They are the conduit through which all information, thoughts, needs, and desires flows between these two groups. Without supervisors, there is a disconnect between the thought processes of the company and the actual actions of the employees that are supposed to accomplish those processes. A good example of a supervisor is a dispatcher. Typically a driver will go to the dispatcher for most if not all instructions and guidance they need in completing their tasks. They would not normally go to the Operations Manager to ask how to pick up a load and most

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brilliant ideas may spin their wheels, frustrating coworkers and accomplishing little. But without the entrepreneurial culture that develops when a leader is at the helm of an organization, a business will stagnate, and rapidly lose competitive power.

Leadership is different from management, but not for the reasons most people think. Leadership isn't mystical and mysterious. It has nothing to do with having charisma or other exotic personality traits. It is not the path of a chosen few. Nor is leadership necessarily better than management or a replacement for it. Rather, leadership and management are two distinctive and complementary systems of action. Each has its own function and characteristic activities. Both are necessary for success in today's business environment.

When growing a company, it has to be determined whether you are creating supervisors, managers, or leaders. Each has a very specific yet important role throughout the company. If trained and molded correctly, these three entities can complement each other while pushing the company toward its goals of growth and prosperity. Leave any one of these out of the equation and you stand to lose valuable input and guidance as well as run the risk of creating a wall between the employees and the management as a whole.

Train leaders, not managers

First time managers, or supervisors, generally are recognized by upper management to be proficient in some type of skill that warrants a promotion. Their ability to accomplish more than their peers or produce results that catches the eye of the right person in the company is many times enough to propel them one step higher in the chain of command. And while they should be congratulated on their recent advancement, they are often placed in a position to fail. Through no fault of their own, their success in their recent job assignment may not be enough to sustain them for what they are about to encounter.

Many new managers are unprepared to lead. They have little more to draw from other than what they may perceive a manager, or a supervisor, to be. They will face challenges in their new position that many seasoned veterans of management have struggled with for years issues between co-workers, motivating team members, completing performance reviews, and dealing with resentment from those the new manager used to work with. Not many people can be prepared for these circumstances without some form of training or support. Yet, many are deprived of any training whatsoever for their newly assigned duties.

So, they become managers who are tyrants that do the thinking for everyone and allow no one to move without their approval. Or, they become everyone's friend and let critical matters slide to keep adversity from upsetting their new world. Or, they become diplomats who only do favors for those who will support their own agenda and not necessarily upper management's. Or, they can learn to become a leader!

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motor vehicle, handling hazardous materials, or supervisors administering a drug testing program, all must be able to at least meet the minimum requirements of the industry and be capable of proving their skills and knowledge by their actions.

The need to justify training costs is not unlike the need to justify other company expenses. This is a budgetary example of financial assets being wisely invested to improve and develop employee assets.



Reasonable suspicion training for supervisors is based on vehicle weight

Many motor carriers do not always know which drivers are subject to alcohol/drug tests. What's dangerous about this is if a driver found to be under the influence of a controlled substance or alcohol is involved in a crash and was not a part of the company's alcohol/drug testing program, then the company's liability increases drastically. Yet, there are drivers and companies who are not required to be a part of any such program.

The same can be said about the required training for supervisors regarding reasonable suspicion. Simply because the driver workforce may all have CDLs (commercial driver's license) does not require employees to be subject to the alcohol and drug testing requirements. It is the gross vehicle weight or gross combination weight that makes those individuals and the companies they work for come under the alcohol /drug testing regulations.

A CDL is not required until the gross weight rating of the vehicle, or the combination weight rating of the vehicles, reaches 26,001 pounds or more. At this point, a CDL is required (regulations are found in Part 383) along with all the alcohol/drug testing requirements listed in Part 382. In conjunction with this, supervisors must also receive training for reasonable suspicion as outlined in §382.603. Supervisors of CDL drivers are required to take 60 minutes of training on the symptoms of alcohol

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PERSONNEL

Driver recruitment and retention

Attracting and hiring quality, long term drivers

It's probably no surprise that the driver shortage is consistently cited as the number one issue facing the trucking industry today. The American Trucking Associations (ATA) has called it the worst labor shortage in trucking's history and predicted that the driver shortage will climb from 20,000 today to more than 110,000 in just 7 years. For some companies it's the biggest limiting factor in their ability to grow.

Over the last few years, our society has realized a continued integration of technology into our everyday way of conducting our business. In fact, the trucking industry is a good example of how technology has influenced the manner in which it now recruits its drivers. The new participants in this field are more than just the stereotypical "farm kid" who is used to hard work and long days! Even today's "trucks" are evolving to an extent that they will no longer be the dirty, greasy, smoke-bellowing machines that carry only basic instruments to propel itself down the highway. GPS, speed limiters, on-board data systems (black box), liquefied natural gas (LNG) and other "green" alternatives are today's features and tomorrow's building blocks to which trucking companies will heavily invest in.



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The same growth is true for the truck driver recruiter and the methods used to attract qualified drivers. The tools that have been relied on for many years past, such as newspapers, trade magazines, job fairs, etc., can still be of value to the recruiter. However, the internet is where the greatest impact can be felt. In fact, most carriers have already established themselves on the internet for the past few years and have come to rely on it as a very effective tool. The difference in today's use of the online methods compared to, say, five years ago, is remarkable when you look at the volume of response to a well designed website. Recruiters today have the same purpose that they had yesterday: generate as many contacts as possible to locate drivers and qualify them for hiring purposes. This process is accelerated via the internet!

Today's recruiter must set up a database of applications, which creates an extensive file of drivers that are available for hire. This database works the best within the company web site. It not only gives the potential driver information on the company, but also allows the applicant to ask questions on topics such as salary, equipment, home times, company policies and procedures, and other items that can be "deal breakers" between you and your competitor. The recruiter can set up this application themselves and, often, they determine what questions are the most important to ask on the application. They must also organize and manage the applications so that they can be processed thoroughly in the event that driving positions become available.

The truck driver searching for an employment opportunity has also "morphed" into a much more savvy applicant that a trucking company can only appreciate. For if this electronically resourceful applicant can secure a professional driving position through the use of their cognitive skills online, the chances are good that this same applicant would not be intimidated by the tools of the future; e.g., electronic log books, geofencing, etc., thus putting to rest the "typical truck driver" image.

The abundance of truck driver applicants in the open market may not be as easy to capture as it has been in the past. The transportation industry today must focus on going about their business in a safe and professional manner. This includes abiding by the rules and regulations enforced by government agencies for both the employer and the professional truck driver. Getting these elements to come together and hiring the driver that meets the company's expectations is the task for the driver recruiter.

One recruiting tool that must not be overlooked is the carrier's image and reputation. Drivers that make a good income, are compensated for their time and not just their productivity, and are generally treated well by their carrier, speak well of their carrier while out in public. These drivers tend to drive well maintained and clean equipment, appear and act professionally in public, and drive safely and courteously. The reputation that can be generated by these drivers can be a powerful recruiting tool.

Many times recruiting efforts are "scored" based on qualified hires, or application flow. Either one of these can be misleading. If all you want is application flow, you may end up doing a lot of extra screening work for nothing. On the other hand if you score sources based on qualified hires,

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- Non-driving activities
- Hours of work and time with family
- Reward and recognition at work

Again, more specific factors such as quality of equipment, wages, and incentives all fall into one of these categories.

Next, management must look at their own company's culture and identify the issues that could keep quality employees from wanting to join their company.

Ask yourself these questions:

- If I were a driver, would I want to work here? Why/why not?
- Why do drivers leave here?
- What do other companies have that we don't provide?
- What are our drivers telling us? Are we listening?

Transportation companies must increase their chances for success by creating an environment where their employees want to stay because management values their efforts and experience. This may involve a change in the company's culture and must start at the top of the organization.

Many surveys have shown that at least half of all employees are not happy with their jobs. They show little or no allegiance to their employer and will move on to other job opportunities when those jobs become available. In the trucking industry, this scenario is even more likely as drivers can change employers with little difficulty.

Some drivers have valid reasons to make that change. Others will change jobs simply because they can! Those who have made a change state some of their reasons as:

- Distrust for their employer
- Lack of respect from their employer
- Compensation for their experience and accomplishments

Many drivers feel that their service, their experience, and their expertise of the transportation industry has value to the right employer. These assets could be utilized by the employer to train new drivers, lead a safety program, or by placing the driver in a managerial role that contributes to the success of the company. In other words, they want a career path like any other employee!



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Motor Carrier Best Practice

Present need should not take priority over your standards and your principles. Always try to find an applicant that fits your standards, fits into your organization, and fits the position. By hiring the right driver in the first place, you will avoid the headache of having to replace the driver.

Most leading carriers have adopted a philosophy that states, “We would rather take the time and spend the money in order to hire one quality driver who we feel has a good chance of staying with us for the long-haul, than hiring ten poor to average drivers who may or may not be with us six months down the road.” Remember: It usually costs a lot less to just leave a position open rather than hire someone who leaves after the first run.

Once the driver starts working for you he/she will see what you are “good at.” New drivers will also be able to see what was “stretched” to get them to come to work at the company just as quickly. Recruit based on what you, as a company, are good at. Do not try to be everything to all potential hires.

Seek only the best

Economic and cultural changes have influenced the transportation industry, compelling them to alter the manner in which they conduct their business. The “old way” has gone down the highway and no longer can be a part of today’s and tomorrow’s route.

To understand why these changes are affecting the future of the motor carrier industry, it is important to realize what is driving these changes. Many will immediately respond that CSA initiative is the catalyst behind this change. While it may certainly be a factor helping to cause a portion of this change, there is more than just the CSA program that prompts these questions:

- What is it that requires us to “jump through so many hoops” just to hire someone to drive our trucks or buses?
- Why is it that a labor shortage exists in a profession so deeply rooted in necessity?

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- How can technology assist in finding safe drivers to employ?

The driver pool is shrinking

To start with, Baby Boomers hold the vast majority of truck driving jobs today. They are soon to be reaching a point in their lives where they can get off the road and hopefully retire to a better, or at least a reasonably acceptable way of life. The problem is, there is not a lot of depth in the worker pool for this occupation any more. Baby Boomers have encouraged their children to strive for a “better slice” of life. These children have also been influenced by society to get off the farm and out of the small communities and go where opportunities exist to further their own financial security.

There is nothing wrong with having these goals; in fact many believe it to be healthy for many reasons. For the transportation industry however, there seems to be little to attract newer generations to what used to be referred as a “gypsy” lifestyle. However, this notion of a “gypsy” lifestyle is also a thing of the past.

To be sure, there will likely always be the over-the-road driver who is home for short periods of time throughout the month and year. It becomes necessary now for **the transportation industry to offer drivers a safer and more secure way of earning a living and to recognize them as the professionals they truly are.** In the same light, **the driver must also regard this occupation as a licensed and certified expert in his/her craft that conforms to the standards of skill, competence, and character normally expected of a respected professional.**

Paraphrasing a commonly used statement within the trucking industry, “If you got it, it probably got here by truck,” reminds us of the importance of this profession. The craft of truck driving will always be a necessary component of our economy. Employing only the best will ensure the future of this statement and also the future of the company who employs only the best!

Driver standards are being raised

Secondly, the general public still holds on to the negative image of a “truck driver” and the unclean environment in which he or she exists. Why is it that electricians, plumbers, construction workers, and bricklayers, equally as hard working in their profession as truck drivers are, don’t seem to have this conflict with the public? Is it because the public is more likely to have a positive experience with any of these other professions compared to a truck driver?

When the public travels the highways with their families, what they notice are the dirty trailers being pulled at excessive speeds, weaving in and out of traffic, showing a general lack of regard for the rest of the travelers who are also hoping to get to their destination. Is it fair to judge all truck drivers in this manner? Of course it isn’t. Like a lot of cases in

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history, the acts of the few reflect on the many who attempt to do things the right way!

The blame for this common assessment of a truck driver falls solely on the shoulders of management. If management does not require a certain level of professionalism (that can only contribute to their own image which, in turn, leads to their overall profit) how else can society regard them? Management must set this expectation and again, seek out only the best.

The Federal Motor Carrier Safety Administration (FMCSA) is requiring that carriers, at a minimum, meet federal regulations on the quality of drivers and equipment their management directs to travel the highways. Penalties for not meeting these standards can result in harsh fines and may severely limit the earning capabilities of both the driver and the carrier.

The FMCSA's intention is to reach all motor carriers with an on-going review process, not to make it tougher for trucking companies and their drivers, but instead, to reduce the number of crashes on the highways. In order to accomplish this, substandard equipment must be taken off the road before it causes an accident. The same holds true for the drivers who violate driving rules and regulations. They also must be prevented from getting behind the wheel.

This is good news for all of us! Not only will the highways eventually be safer for the general public, truck drivers themselves will be able to go about their craft knowing that they are safe, their equipment meets all safety standards, and the other truck drivers on the road also have management's commitment to ensure that only the best are driving their trucks!

Maybe this will start to attract the professional driver?

Technology is forcing a higher standard

Finally, the technology of today permits the driver to assist in providing management with data that is crucial for both the motor carrier and the motor carrier's customers. The driver's activities contribute directly to the flow of commerce and the effect the supply chain has on the economy.

Environmental concerns also put demands on truck manufacturers to design vehicles and engines that reduce our "carbon footprint," provide a state-of-the-art means of transportation for the industry, and above all, keep the possibility of danger to our drivers and the public at a minimum.

Technology also improves the manner in which we communicate our desire to seek out only the best! It allows motor carriers to show who they are and why they are successful at what they do. The transportation industry is "morphing" into literally "a new era" that will make it impossible to distinguish itself as a part of the past!

These changes stipulate that only the best will be allowed to participate and requires those who seek the best to be leaders in this quest.

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Existing drivers

Most recruiting professionals would agree that the best driver candidates often come from word-of-mouth advertising of the organization's existing drivers.

Because of this, most carriers have experimented with some form of driver referral program to supplement their current driver recruiting efforts.



The Real World

Who are your best recruiters?

Hopefully, the answer to this question is “your drivers!”

Drivers that are happy with their company tend to speak well of it when talking with other drivers. These other drivers make note of the fact that the drivers are happy with their company. This creates interest. That interest may convert into future hires, making your drivers “accidental recruiters!”

A driver referral program is simply a method carriers use to encourage their drivers and non-driving employees to refer other drivers for open positions.

In most cases a cash incentive is offered to the referring employee per successful hire. The amount of the cash award can vary greatly — ranging anywhere from a few hundred dollars to as high as \$1,000; even higher at some carriers. This cash is usually paid over time, a year for example, and is tied to retention.

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Former drivers

Good drivers leave carriers every day for a variety of reasons, yet few trucking companies consider their former drivers as a potential recruiting resource. The “green grass” syndrome often falls short in reality.

Think of your past driver personnel files as an untapped potential labor pool. A good way to tap into this pool is through a continual direct mail campaign.



Generally speaking, there are two types of driver turnover:

1. **Acceptable** turnover results when a high-risk or poor performing driver quits or is let go. This type of driver turnover is usually considered a “good loss.”
2. **Unacceptable** turnover results when a quality driver leaves the organization for any reason.

Quality drivers are becoming increasingly hard to find and hold onto. But just because a driver decides to leave your organization, doesn’t mean the relationship needs to end. Keeping in touch with your former drivers demonstrates that, as an organization, you:

- **Care** for the driver as an individual first and foremost — wishing him or her the best for the future, even if that future is not with your company;
- **Are** genuinely concerned that the driver’s decision was the right one; and
- **Have** left the door open for the driver to come back if things don’t work out where he/she is going.

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spark an interest. The second or third letter may convince the former driver of your sincerity, and he or she may decide to give your organization that second chance.

If you decide to try a letter-recruiting campaign to former drivers, don't expect a flood of response. Typically, the success rate for this type of recruiting is very low — maybe one out of every 20 to 25 letters sent will generate a response.

But, if you only get one or two drivers back out of 50 letters sent, it's well worth the small investment in paper, envelopes, and postage. In addition, your safety results will tend to improve any time you can re-hire a driver you already have a relationship with.

Make it easy to come to work for you

Finally, no matter what type of drivers you are trying to recruit (referred, former, experienced, or inexperienced) and what recruiting mediums you are using (job fairs, internet recruiting, or classified advertising) make it easy for people to reach your company. After the initial discussion, make it easy for contacts to become applicants, and applicants to become drivers.



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A good driver can be working anywhere tomorrow!

Some carrier officials believe the “waiting time” involved in the traditional recruiting process proves that the contact “wants to come to work for you.” The problem is, if you follow the traditional recruiting model of mailing an application to the contact and waiting for the contact to complete and return it, you may never get to hire the driver! In the time it would have taken you to get the application back your competition may already have the contact driving their truck!

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an easy means of reaching you, beginning the screening process quickly, and making sound hiring decisions.

Creating a realistic job description

What are you looking for? It's a basic but very important question that should be answered before you accept the first application. Hiring the right person for the right job means having a detailed understanding of the open position and standards for the drivers you are willing to hire. Before you can decide what the right person looks like, the first step is to determine what the job will involve. This is an important step for any open position.

Basically, you need to know what you're looking for, and applicants need to know what to expect. This is where having an accurate job description comes in to play. The job description needs to describe all requirements of the job. It needs to be thoroughly understood by the people at the company that are trying to recruit drivers (or who talk to the applicants).

A job description is a management tool that defines the role, outlines results to be accomplished, and details tasks to be performed by an employee with a specific job title, in this case drivers.

In a job description, information is provided in a completely objective and factual manner. A thorough job description can help establish or align an applicant's job expectations with reality. This is a key to effective driver recruiting and driver retention.

A job description should contain specific information on the knowledge, training, education, and skills required for your driving position. This portion of the job description can be helpful when recruiting and interviewing candidates because it ensures you're hiring the right person with the right skills and experience.

A job description is used to:

- **Clarify roles and responsibilities** — It outlines who is responsible for what within the company to help eliminate surprises about job responsibilities. For example, a job description could describe hand load or unload expectations as a percentage of all loads assigned by the company, hazmat expectations, tarping requirements, and percentage of drop and hook loads.
- **Define relationships** — It shows the driver how the job relates to others in the organization such as the mechanics, dispatchers, and customer service representatives, and identifies how much interaction may be required or expected.
- **Screen job applicants** — The job description helps determine what you're looking for in an employee. Having this information available helps communicate the job and its requirements to your prospective drivers. Therefore, a detailed job description can be an effective screening tool.

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- **Physical requirements** — What are the sitting, standing, and walking requirements of the job? Is there a minimum lifting requirement?
- **Environmental factors** — Is the employee exposed to dust, fumes, noise, or extreme weather conditions? Is the employee exposed to chemicals or other potential health hazards?

This information can be gathered by:

- Interviewing current workers performing the job.
- Personal observation of the job being performed.
- Surveying each employee performing the job or the supervising manager.
- Reviewing what the competition lists in its job descriptions (also known as benchmarking).

The following are sample checklists to determine relevant skills, knowledge, abilities, working conditions, and other requirements for the positions indicated. Information derived from these checklists are used to develop a formal job description.

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Job Analysis Checklist

SPECIFIC JOB TITLE: CMV Driver, Truckload	
EMPLOYER:	DATE:

APPLICABLE REGULATIONS: (Check all that apply)

- a) DOT medical qualifications _____
- b) DOT drug testing _____
- c) Alcohol testing (if applicable) _____
- d) Hours of service _____
- e) Hazardous materials _____
- f) Minimum of ___ years prior experience _____

MEDICAL STANDARDS IMPOSED BY CARRIER POLICY: (Check all that apply)

- DOT medical examination or equivalent:
- a) Pre-employment _____
 - b) Periodic; is so, how often _____ per _____ _____
 - c) Return to work following injury or illness; if so, when is this type of examination required? _____

 - d) Additional drug testing (optional) _____

EDUCATIONAL/INTELLECTUAL REQUIREMENTS: (Check all that apply)

- a) High school diploma or GED _____
- b) Ability to accurately read and understand:
 - Maps and road signs _____
 - Shipping papers _____
 - Names, addresses, and other shipment information _____
 - Entries for hazardous materials shipments _____
 - Markings and labels on hazardous material packagings _____
 - Emergency instructions for hazardous materials _____

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- General information _____
- c) Ability to assist customers in preparation of shipping papers _____
- d) Ability to determine and affix correct placards to vehicle _____
- e) Ability to collect freight charges and maintain required records _____
- f) Ability to prepare Driver's Record of Duty Status (Driver's Log) _____
- g) Ability to prepare Vehicle Condition Report _____
- h) Ability to complete accident reports if necessary _____
- i) Ability to prepare other required records _____
- j) Ability to converse with customers and others _____
- k) Other _____

WORK REQUIREMENTS:

- a) Normal length of on-duty work period (driving plus all other on-duty activities) _____ hours
- b) Aggregate number of hours driving following last period of 8 hours or more off _____ hours
- c) Average miles driven per work period _____ miles
- d) Hours-of-service control is based on (check one) _____ 60 hours/7 days
_____ 70 hours/8 days
- e) Amount of time routinely afforded for meals/rest breaks in a period aggregating up to 10 hours of driving _____ hours
- f) Percentage of time spent on duty in each of the following time periods:

00:01 - 04:00 _____	12:01 - 16:00 _____
04:01 - 08:00 _____	16:01 - 20:00 _____
08:01 - 12:00 _____	20:01 - 24:00 _____
- g) Average time loading/unloading per work period _____ hours
- h) Number of times enter/exit cab per work period _____ times
- i) Number of times enter/exit cargo space per work period _____ times
- j) Availability for irregular work schedules _____ Yes _____ No
- k) Availability for "around-the-clock" trips _____ Yes _____ No

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l) Availability for extended trips away from home _____ Yes _____ No

PHYSICAL REQUIREMENTS:

a) In an average work period, the employee's job requires:

	Never	Occasionally (1-3 Hrs.)	Frequently (3-5 Hrs.)	Continuously (5-8+ Hrs.)
a. SITTING				
b. STANDING				
c. WALKING				
a. LIFTING				
Sedentary - up to 10 lbs.				
Light - 10 to 25 lbs.				
Medium - 25 to 50 lbs.				
Heavy - 50 to 100 lbs.				
Very Heavy - 100+ lbs.				
b. CARRYING				
Sedentary - up to 10 lbs.				
Light - 10 to 25 lbs.				
Medium - 25 to 50 lbs.				
Heavy - 50 to 100 lbs.				
Very Heavy - 100+ lbs.				
c. PUSHING				
d. PULLING				
e. TWISTING				
f. CLIMBING				
g. STOOPING/BENDING				
h. KNEELING				
i. CRAWLING				
j. REACHING (i.e. overhead)				
k. GRASPING				
l. REPETITIVE MOVEMENTS (i.e., hand, feet)				
m. DRIVING				

b) Ability to lift _____ lbs. per lift from the floor or ground without assistance:

(Check all applicable items and indicate weight if different than those mentioned above) (see a)

to waist height _____ lbs.

to shoulder height _____ lbs.

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- overhead _____ lbs.
- c) Average pounds of cargo handled per work period _____ lbs.
- d) Average distance walked per work period _____ feet
- e) Sufficient agility to enter and exit the following areas using normally available footholds and handholds:
- Driver's compartment Hgt. above ground _____ ft.
- Area behind cab Hgt. above ground _____ ft.
- Cargo space Hgt. above ground _____ ft.
- f) Ability to handle special equipment: (Check all that apply)
- Chains Weight per unit _____
- Webbing Weight per unit _____
- Straps Weight per unit _____
- g) Can tiedowns normally be secured from ground level? _____ Yes _____ No
- h) Approximately what percent of the time is the driver required to climb on, over, or across load to complete tiedown? _____ %
- i) Is driver required to handle tarps? _____ Yes _____ No
- Over load itself? _____ Yes _____ No
- On open top van? _____ Yes _____ No
- Size of tarpaulin: _____ Weight: _____
- j) Other special equipment driver must be able to handle including nature, use, and weight: _____
- _____
- _____

ENVIRONMENTAL FACTORS:

	Never	Occasionally (1-3 Hrs.)	Frequently (3-5 Hrs.)	Continuously (5-8+ Hrs.)
a. EXPOSURE (to dust, fumes, noise)				
b. EXPOSURE (to extreme heat/cold)				
c. UNEVEN TERRAIN				
d. HEIGHTS				
e. OTHER - Please specify				

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Job Analysis Checklist

SPECIFIC JOB TITLE: CMV Driver, LTL	
EMPLOYER:	DATE:

APPLICABLE REGULATIONS: (Check all that apply)

- a) DOT medical qualifications _____
- b) DOT drug testing _____
- c) Alcohol testing (if applicable) _____
- d) Hours of service _____
- e) Hazardous materials _____
- f) Minimum of ___ years prior experience _____

MEDICAL STANDARDS IMPOSED BY CARRIER POLICY: (Check all that apply)

- DOT medical examination or equivalent:
- a) Pre-employment _____
 - b) Periodic; is so, how often _____ per _____ _____
 - c) Return to work following injury or illness; if so, when is this type of examination required? _____

 - d) Additional drug testing (optional) _____

EDUCATIONAL/INTELLECTUAL REQUIREMENTS: (Check all that apply)

- a) High school diploma or GED _____
- b) Ability to accurately read and understand:
 - Maps and road signs _____
 - Shipping papers _____
 - Names, addresses, and other shipment information _____
 - Entries for hazardous materials shipments _____
 - Markings and labels on hazardous material packagings _____
 - Emergency instructions for hazardous materials _____

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• General information	_____
c) Ability to count and perform simple mathematical calculations	_____
d) Ability to assist customers in preparation of shipping papers	_____
e) Ability to take directions via two-way radio or by telephone	_____
f) Ability to effectively interact with customers	_____
g) Ability to determine and affix correct placards to vehicle	_____
h) Ability to collect freight charges and maintain required records	_____
i) Ability to prepare Driver's Record of Duty Status (Driver's Log)	_____
j) Ability to prepare Vehicle Condition Report	_____
k) Ability to complete accident reports if necessary	_____
l) Ability to prepare other required records	_____
m) Ability to converse with customers and others	_____
n) Other _____	_____
 WORK REQUIREMENTS:	
a) Normal length of on-duty work period (driving plus all other on-duty activities)	_____ hours
b) Aggregate number of hours driving following last period of 8 hours or more off	_____ hours
c) Average miles driven per work period	_____ miles
d) Hours of service control is based on (check one)	_____ 60 hours/7 days _____ 70 hours/8 days
e) Amount of time routinely afforded for meals/rest breaks in a period aggregating up to 10 hours of driving	_____ hours
f) Percentage of time spent on duty in each of the following time periods:	
00:01 - 04:00 _____	12:01 - 16:00 _____
04:01 - 08:00 _____	16:01 - 20:00 _____
08:01 - 12:00 _____	20:01 - 24:00 _____
g) Average time loading/unloading per work period	_____ hours
h) Number of times enter/exit cab per work period	_____ times

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- i) Number of times enter/exit cargo space per work period _____ times
- j) Availability for irregular work schedules _____ Yes _____ No
- k) Availability for “around-the-clock” trips _____ Yes _____ No
- l) Availability for extended trips away from home _____ Yes _____ No
- m) Availability for alternating work shifts _____ Yes _____ No

PHYSICAL REQUIREMENTS:

a) In an average work period, the employee’s job requires:

	Never	Occasionally (1-3 Hrs.)	Frequently (3-5 Hrs.)	Continuously (5-8+ Hrs.)
a. SITTING				
b. STANDING				
c. WALKING				
a. LIFTING				
Sedentary - up to 10 lbs.				
Light - 10 to 25 lbs.				
Medium - 25 to 50 lbs.				
Heavy - 50 to 100 lbs.				
Very Heavy - 100+ lbs.				
b. CARRYING				
Sedentary - up to 10 lbs.				
Light - 10 to 25 lbs.				
Medium - 25 to 50 lbs.				
Heavy - 50 to 100 lbs.				
Very Heavy - 100+ lbs.				
c. PUSHING				
d. PULLING				
e. TWISTING				
f. CLIMBING				
g. STOOPING/BENDING				
h. KNEELING				
i. CRAWLING				
j. REACHING (i.e. overhead)				
k. GRASPING				
l. REPETITIVE MOVEMENTS (i.e., hand, feet)				
m. DRIVING				

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b) Ability to lift _____ lbs. per lift from the floor or ground without assistance:

(Check all applicable items and indicate weight if different than those mentioned above) (see a)

to waist height _____ lbs.

to shoulder height _____ lbs.

overhead _____ lbs.

c) Number of shipments picked up and delivered each day _____ shipments

d) Average pounds of cargo handled per work period _____ lbs.

e) Average distance walked per work period _____ feet

f) Sufficient agility to enter and exit the following areas using normally available footholds and handholds:

Driver's compartment Hgt. above ground _____ ft.

Area behind cab Hgt. above ground _____ ft.

Cargo space Hgt. above ground _____ ft.

g) Ability to handle special equipment: (Check all that apply)

Chains Weight per unit _____

Webbing Weight per unit _____

Straps Weight per unit _____

h) Can tiedowns normally be secured from ground level? _____ Yes _____ No

i) Approximately what percent of the time is the driver required to climb on, over, or across load to complete tiedown? _____ %

j) Is driver required to handle tarps? _____ Yes _____ No

Over load itself? _____ Yes _____ No

On open top van? _____ Yes _____ No

Size of tarpaulin: _____ Weight: _____

k) Other special equipment driver must be able to handle including nature, use and weight: _____

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ENVIRONMENTAL FACTORS:

	Never	Occasionally (1-3 Hrs.)	Frequently (3-5 Hrs.)	Continuously (5-8+ Hrs.)
a. EXPOSURE (to dust, fumes, noise)				
b. EXPOSURE (to extreme heat/cold)				
c. UNEVEN TERRAIN				
d. HEIGHTS				
e. OTHER - Please specify				

SAMPLE

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Once the job analysis is complete, you are in a position to develop an accurate job description. This job description can then be used to guide the recruiting process.

Always be able to answer “Why should I work for you?”

When recruiting, this is a question that the recruiter needs to be able to answer. Knowing the pay package, benefits, and other facts is important. What is more important is the answer to the underlying question. “Why should I work for you?” You need something that makes you stand out from your competitors. Some drivers believe the only difference between companies is “five gallons of paint” (what color the truck is) and how much they pay.

To answer the question “Why should I work for you?” a Fleet Manager must look at the operation and see what is unique. Look at the pay and benefits. Ask yourself; Is the pay package structured to pay for activities that other carriers do not? Is the starting wage considerably higher than other carriers? Is the pay structure based on paying rolling or practical miles rather than “HHG book” miles? Is the benefit package more valuable than other companies?

If your pay and benefits do not make you stand out from the crowd, you need to make sure they are at least competitive.

The other aspect of the company that can be “sold” is the work environment. An interesting fact shown in many surveys is that drivers generally do not leave carriers over pay. They leave them because of the way they are treated. Consider this fact when looking for something unique about the company.

When looking to see what is unique ask these questions about the work environment provided for drivers. Is the equipment clean, well maintained, and in good condition? Do the dispatchers and supervisors treat drivers with respect? Is there an “open door” policy in place? Is there a support structure to assist drivers with problems? Is there a written and followed “home time” policy? What type of dispatch system is in use, “choice” or “forced?” Is there an earned time off policy or vacation policy that is unique? Are drivers home on a scheduled basis? Are drivers only kept out a day or two? Is there an established “relay system” to get drivers home regularly? Are drivers dedicated to specific customers or areas to try to give them a more scheduled life style?

There are “revolutionary” policies carriers can (and have) come up with to provide an answer to the “Why should I come to work for you” question. One carrier pays their drivers a bonus per day if dispatch fails to get the driver home in time, or the driver volunteers to stay out extra days. When they tell a prospective hire that “We will get you home on a schedule and when you request, or we will pay you extra to stay out,” that gets the driver’s attention. This is a classic example of coming up with something that “makes us unique” that is a powerful recruiting tool.

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- How many tickets are you going to find acceptable in what time spans? A typical approach is to set two standards, one for recent performance and another for “long term” performance. Here is an example: “No conviction for a moving violation in the last 12 months and no more than two convictions for moving violations in the last 36 months.”
- How many accidents, and what severity, are you going to find acceptable in what time span?
- Are you going to have “automatic disqualifiers?”

The higher you set the standards, the more you are reducing the risk of hiring a driver that may have a serious accident or will not last with your company.

“There is more to an applicant than a driving record.” As well as the driving requirements, do not forget to set hiring standards pertaining to previous employment. Here are some basic questions you will need to answer to begin determining your past employment standards:

- Are you going to do previous employment checks only because the regulations require them, or are you going to use them as a screening tool?
- How many jobs over the past three, five, or ten years are you going to find acceptable?
- What circumstances of leaving a previous employer will you find acceptable?
- Will you consider an incomplete application a false application?

Many drivers leave off incriminating information such as a reason for leaving a previous employer, an accident, and jobs that were left under unfavorable conditions. These are examples of an incomplete, but not outright false application. Here again, the less you accept, the lower your risks.

There are detailed areas you will need to address when establishing your hiring standards when it comes to previous employment. One of the key areas is gaps in employment. Gaps in employment can be a sign of not wanting to work, being in jail, or being unhirable after leaving a previous employer. They can also be a sign of an individual just taking a vacation between jobs.

In short, a gap can mean something, or nothing. It may be a flag requiring a closer review of previous employment. The questions that need to be addressed in your hiring standards when it comes to gaps in employment are:

- What are you going to find acceptable in terms of gaps in employment? 30 day, 60 days, 6 months?
- How many gaps are you willing to accept?

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Driver Qualification Policy

The Company believes that our drivers represent the future success of the company. Our safety, performance, and profitability results will be determined by the quality of all of our employees working together. The personnel selections of *The Company* are extremely important. This policy has been created to establish minimum driver qualification and hiring standards for the company.

The purpose of this policy is to ensure a consistent level of driver quality. *The Company* is committed to hiring only the best, safest, and most qualified drivers. To achieve the objectives of this policy, *The Company* has established the following driver qualification standards.

All company employees involved in the driver qualification and hiring process will be expected to conform to this policy and its procedures.

Minimum New Driver Qualifications

The Company's driver hiring qualification standards have been developed to achieve two basic objectives:

1. *The Company* will meet or exceed all applicable and required Federal Motor Carrier Safety Regulations (FMCSRs) concerning driver qualification compliance.
2. *The Company* will select only the best and safest available drivers as defined by our hiring standards.

1.0 Hiring standards and minimum qualifications

1.1 *The Company's* hiring standards require all driver applicants to be a minimum of ___ years of age, and have a minimum of ___ years verifiable commercial motor vehicle driving experience.

1.2 *The Company's* hiring standards require that only those driver applicants with ___ or fewer preventable motor vehicle accidents within the past ___ years will be considered for employment. Because of *The Company's* commitment to safety, driver applicants who do not meet this standard will not be considered for employment by *The Company*.

1.3 *The Company's* hiring standards require that only those driver applicants with ___ or fewer violations of motor vehicle laws (other than violations involving parking only) within the past ___ years will be considered for employment.

An applicant who has incurred more traffic violations than this standard has demonstrated a pattern of unsafe driving behavior which *The Company* finds unacceptable in any prospective driver associate.

1.4 *The Company* shall not consider for employment a driver applicant who has been convicted of any offense involving the operation of any motor vehicle while impaired by alcohol over the previous ___ years.

1.5 *The Company* shall not consider any driver applicant who has been convicted of a criminal offense involving a commercial motor vehicle, including operating while under the influence of a controlled substance, transporting a controlled substance, or a felony involving the use of a commercial motor vehicle.

1.6 *The Company* shall not consider for employment a driver applicant who has been convicted of any careless or reckless driving of a motor vehicle offense within the past ___ years.

Drivers convicted of operating a motor vehicle in a willful or wanton disregard for the safety of people or property are considered by *The Company* to be unsafe, and this type of behavior is inconsistent for our safety values and goals.

1.7 Our drivers will be expected to converse with other company employees, our customers, and the general public. Therefore, *The Company* requires all driver applicants to be able to read and speak the English language sufficiently in order to perform all duties and functions of the job (ref. FMCSRs, Sec. 391.11 (2)).

1.8 Driver applicants will be required, through reason of experience, training, or both, to be able to safely operate our company vehicles.

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- 5.3 *The Company's* Safety Department will review all former and current employer information to determine if the driver applicant meets company hiring standards regarding past and current employment, and to compare it against the application for employment for completeness and accuracy.
- 6.0 **Drug & alcohol test information from previous employers**
- 6.1 After obtaining written permission to do so, *The Company* shall make inquiries regarding the drug and alcohol testing history of driver applicants for the previous ___ years from all DOT- regulated employers.

Make the PSP a standard practice when qualifying applicants

The Federal Motor Carrier Safety Administration's (FMCSA) newest tool is the Pre-employment Screening Program (PSP). The PSP makes crash records for the last five years and roadside inspection data for the last three years available to motor carriers when conducting a background check for hiring purposes. These records will not show any conviction data. Instead, it will show a driver's involvement in all DOT recordable crashes and any violations a driver has been cited for following a roadside inspection during those spans of time, regardless of the driver's employers.

The purpose of this tool is to allow motor carriers to be better informed in their decision making regarding new hires, and to also increase safety on the highways by lessening the chances for historically unsafe drivers to operate commercial motor vehicles. There is no "score" or "value" attached to the driver for the number of crashes or violations in the PSP. It only reports the events. It is up to the carrier to decide if this driver candidate would make a good addition to its workforce.

The success of this new tool will be up to carrier management and how they incorporate it into their hiring practices. Keep in mind a couple of facts about the Pre-employment Screening Program:

- First of all, the PSP is a voluntary program. Motor carriers are not obligated to use this service. Those that choose to use the service will be charged a small fee for each driver applicant they wish to investigate, even if the wrong data (e.g., social security number) is entered into the system.
- Second, PSP has nothing to do with the CSA initiative. A carrier does not have to utilize this program to be compliant with safety standards. It is merely another tool to help carriers screen applicants.
- Third, the carrier does not inherit the data that is in the PSP. In other words, the driver's violations are not added to the carrier's data. Just be aware that you may be hiring a "high risk" applicant who may have shown in the past a poor record of passing a roadside inspection. Should the carrier hire a person with this

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type of history, the new data will certainly be added to the carrier's data at the next roadside inspection this new hire encounters.

- Finally, in order to use the PSP, the carrier must agree to all legal obligations and to consent in writing that they will only use the records for pre-employment screening purposes. The legal obligations include that you have obtained the written consent of the applicant to check his/her driving history and that you will abide by the regulations provided under the Fair Credit Reporting Act, among others.

How to use the PSP

The first step is to add PSP to the company's hiring standards. Each carrier's standards are different and there are no regulations to govern how a carrier must hire their drivers. The regulations only require that the carrier verify that the driver has a valid license of the correct class, a valid medical card, and is not disqualified under Subpart B of Part 382 for failing or refusing a drug and/or alcohol test (this is done through the Safety Performance History process).

There also is no industry standard to guide you through this process. Many carriers are relying on insurance companies, consulting services, attorneys, etc., or are developing their own standards. To develop its own, the carrier must determine what violations are automatic disqualifiers and what thresholds will be acceptable before a driver's record deems him/her unqualified for employment.

Another method to evaluate an applicant's PSP data is to assign a point system for scoring purposes that holds a higher value for more serious violations that the driver should have managed, and a lower score for minor violations that may be considered by the carrier to be minimal.

Whatever process is chosen, make sure that the standard is set so that drivers who may be prone to roadside inspection violations are viewed differently than those drivers who seem to have little or no violations at a roadside inspection. It is also a wise policy to state these standards on the company application form and also during the recruiting process on literature and possibly on the company website. This way, the driver applicant will understand why he/she was not hired. It may also alert the applicant that there may be a problem with the data the FMCSA has on file and that the applicant should make inquiries for correction purposes.

Finally, don't waste your time and money on using the PSP for your current drivers. Any data on current drivers can be accessed through the FMCSA carrier tracking system. However, the *standards* a company sets for new hires may also be used as the standards that current drivers are measured against. These standards, and how the current driver workforce fares with them, could also be used for bonus purposes, training alerts, and annual reviews.

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One more point to consider: Motor carriers may be required by their insurance companies to utilize the Pre-employment Screening Program in order to be considered insurable. As this program gains acceptance throughout the transportation industry, it may become financially wise for motor carriers to hire only those who have a proven safe driving record through the PSP data.

If a motor carrier is generating losses (or showing the potential to generate losses), the insurance provider may have no choice but to take harsh actions against the carrier.



Standards, policies, and methods

The majority of motor carriers have hiring policies, or standards, that require driver applicants to have two or more years of driving experience (along with other criteria) to be eligible for employment. But with circumstances being as they are predicted to be, will carriers be willing to modify their policies and offer full time driving positions to applicants with limited or no commercial driving experience other than their recent truck driving training?

Many carriers across the nation have long utilized this source as a means to supplement their driver workforce. These carriers have the infrastructure in place to bring the new driver employee along at a pace where they become “seasoned” in a more controlled environment before given the open road to handle on their own. These carriers know the risk they are

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Notes

The capability of a motor carrier to offer more than simply a driving job — a career — boldly displays the image of a carrier whose intent is to value its employees and who has the capability to hire and retain qualified drivers.

Retention programs

It seems like an easy decision for management to make.

A fleet of fifty commercial motor vehicles has five vehicles parked due to what is commonly blamed on the “driver shortage.” Ten percent of the fleet is not being used to create revenue for the company. This is obviously a waste of company assets, potential revenue, and growth. This is something that management must address. These seats must be filled and the sooner, the better!

In years past, this was a simple demand for management to make. Get more drivers! Today, filling that demand must be approached in a way that minimizes the risk companies must take, increases compliance with safety rules and regulations, and pays back to the company dividends on their investment. This is where asset management begins and is supported through a strong Driver Retention program.

There is little reason to look into the past since its history, in this context anyway, may have little to do with the future of the transportation industry. For the example stated above, the only historical research possibly needed would involve asking a few questions whose answers could have a large influence on the future. These are:

- What caused these five vehicles to be un-manned? Why?
- Are we missing five loads or more a day because these vehicles sit idle? Why?
- How do we determine that a full complement of drivers that matches the current size of the fleet will guarantee us profit?

In this case, managing assets involves more than simply making sure that a driver is seated in each vehicle. While it may be true that a vehicle can't earn you anything by sitting still, there is something to be said for the cost of lowering company standards.

Carriers should have safety management controls in place that direct the company toward compliance and safety. Given that, how do compliance and safety get a company closer to profit? Safe drivers have fewer accidents, fewer violations, and more on-time deliveries. Because the company has safety management controls built into their policies, they have specific recruiting and hiring standards followed up by meaningful orientation and training programs. They will also have a driver retention and recognition program in place that is active, a maintenance program that undeniably illustrates safety and quality and keeps it in the face of their drivers, and operational policies and procedures that qualify drivers and supervisors on transportation industry requirements.

Vehicles sitting idle because of a seemingly lack of drivers is one thing. Lowering standards by accepting less than qualified drivers to fill those seats is assuming a risk that is higher than any asset management can influence.

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Dispatching the driver shortage

Depending on the perspective, many motor carriers readily agree that a driver shortage is a problem, while many drivers state that the problem is a shortage of good companies to drive for. Somewhere in the middle, you may find the truth in both of these opinions. However, what is often found somewhere in the middle of these opposing views is the dispatcher trying to balance his/her world so that upper management, the driver, and the customer are without any problems at all. Not an easy task.

The driver shortage can be attributed to many things — an aging workforce and little to no interest from younger generations, long working hours and low pay, length of time away from home, and more. What adds to this problem is driver turnover. For years, the transportation industry has recycled their workforce as drivers were easy to come by; lose one driver and replace that driver with another, often in the same day. Today, the possibility of replenishing the workforce is becoming more and more difficult.

Drivers will leave their employer for many and varied reasons. The common thread between all the reasons drivers move on in their employment is the idea that the driver feels he/she is not treated properly. Whether it is the load assignment, the equipment assignment, extended layovers, or being turned down for a requested day off, the driver will consider making a change in their employment. Add in the dispatcher saying the wrong word, or displaying an attitude perceived as confrontational to the driver, and the carrier can add one more statistic to the driver turnover rate.

Reducing driver turnover is no quick fix. However, management can make sure that tools are available for both the dispatcher and the driver to do their jobs efficiently and professionally.

One of the tools is an employee handbook that clearly communicates company policy regarding topics such as dispatch operations, company speed limits, open door policy, and items prohibited in the vehicle. All employees want to know what is expected of them, what is acceptable and what is not, and what will either keep them employed or end their employment. This tool must be well understood by all employees whether they are drivers or not.

Another tool is training. Training can be viewed as a means of communication to get desired results. Effectively leading and motivating a workforce is a result and a responsibility for most all dispatchers. These results can best be accomplished when dispatchers can understand what the workforce is dealing with. Consequently, any training and testing that drivers are exposed to should also be shared with dispatchers.

Bonuses versus wages

One element of a pay package at many carriers is bonuses. If handled correctly a bonus can be an effective tool for improving the fleet's performance. However, if not handled correctly, it can actually end up costing a carrier more than it saves.

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If you presently have a bonus program or are considering one, here are some of the pros and cons about bonuses.

First is the traditional argument; Will the bonus save or cost you money? If your company history is such that a reduction in accidents or an increase in fuel mileage will generate enough revenue to pay for the bonus program, a Return On Investment (ROI) case can be made. If not, it is difficult to justify a bonus because of the cost it will generate. Bonuses need to be at least “revenue neutral.”

A bonus needs to be large enough to motivate the drivers to comply with the goals of the bonus program. It should be “life altering” if the driver does not get their bonus. The question is, can you afford a bonus large enough based on your ROI determination?

Some industry professionals feel that paying a bonus is paying for performance that should be expected. According to these individuals, rather than take a driver’s bonus away for poor performance, the carrier should decide if the driver is to continue his or her employment. Having drivers that state “I’d drive better if you pay me a bonus” is not something a carrier should encourage. It implies the opposite is true. “If you do not pay me a bonus I will not drive the way you want.” Whether you have a bonus program or not you must insist that drivers operate safely and efficiently at all times.

One hazard that comes with a bonus program is the temptation to attach a excessive requirements to the bonus. Here are some of the “other requirements” carriers have attached to their bonus:

- Hours-of-service compliance.
- Turning in paperwork on time.
- No driver or vehicle out-of-service violations.
- No citations.
- No over-speed or over-RPM.
- No preventable tire failures.
- No negative driving observations.
- Cooperation with dispatch, maintenance, and safety departments.
- No unexcused late deliveries.

Be aware, if you attach too many requirements to a bonus you may make it look as if you do not want drivers to get the bonus. A carrot held too far away does not motivate the horse to pull the cart. It motivates the horse to not care and give up, or to look somewhere else for a new carrot.

As far as being a recruiting tool, most experienced drivers are now savvy enough about bonuses to ask very pointed questions. Most smart and experienced drivers will want to know what your base pay is. Bonuses are nice but, “What am I guaranteed per mile” will be what most of them will want to know.

“What exactly is required to make the bonus?” will be another question from an experienced driver. If there are too many performance requirements attached to the bonus, the observant driver will automatically

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consider it unattainable and discount it. Having the base pay too low, and bonuses too high or too hard to achieve, may end up making recruiting harder, not easier.

Another problem with any bonus is that bonuses can become an expected component of the driver's pay. Taking it away, especially for what the driver considers a minor incident can result in hard feelings. It can even lead to the driver quitting. One of the common statements heard just before the driver quits is "are you going to take away my safety bonus over this?"

As well as the loss of drivers, you may need to accept an adversarial relationship between departments and the drivers. Drivers may view a department as "the ones trying to take my bonus away." Be prepared to have every decision made by the departments that may affect a driver's bonus questioned.

You may consider providing an appeal process that a driver can use to reduce the negative impact of taking a bonus away. This procedure can give a driver a "due process" to exercise before the bonus is taken. The problem is that a certain percentage of your drivers will not exercise this "due process." You begin the process to take their bonus away and they quit. Having a "committee" that makes all bonus decisions can help reduce some of these problems.

The typical procedure for such committees is that the department turns over their reason for taking the driver's bonus away to a neutral judge. Then the driver's side is advocated by a representative so the proceedings are anonymous, and a fair decision is reached. This can be done any time there is a potential for the loss of a bonus.

A typical arrangement for such committees is half supervisors and half drivers. The tie breaker in many cases will be the owner (or their representative) or a member of upper management such as the Fleet Manager, not the direct supervisor of the driver. The committee must be independent and be allowed to exercise latitude. If the committee feels there were mitigating circumstances, they should be able to withdraw part of the driver's bonus, rather than all of it.

Bonuses can be effective. The questions become; is it actually improving the situation (less accidents, better on-time rate, increased fuel mileage) and is the program improving driver retention and/or recruiting? Tracking programs will allow you to see the ROI of the program.

Developing a driver and employee friendly environment

This entire tab has been dedicated to attempting to recruit and retain drivers (and other employees). Overall, two words can sum up the chances of a retention program working. *Work environment*. If the driver or employee does not enjoy their work, their time with you is limited. If working for you is "painful," their time with you will be extremely limited.

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Study after study has determined that employees who enjoy their work, and enjoy who they work for and with (the environment), tend to not change jobs as quickly as those who do not. So how do you establish such an environment? Here are some simple ideas:

- Under no circumstance yell at an employee, or allow a supervisor to yell at an employee. Act professionally in all circumstances.
- Allow “fun” events such as employee lunches.
- Act on employees’ concerns.
- Provide support for company social events and community events.
- Keep everyone informed.
- Be happy and willing to arrive early and stay late to solve problems. Do not assume however, that your employees will always want to arrive early and stay late as well.
- Because managers “set the tone” greet everyone with a positive attitude, no matter what.
- Make sure you, and all other supervisors do not “bad-mouth” drivers or employees in public. *Praise in public, discuss problems in private.*
- Resolve conflicts quickly, do not allow them to grow and fester. This will just aggravate the parties involved.
- Do not put employees in a position where they feel they need to “pick sides” by presenting conflicting management or supervisory views.
- Have policies and procedures in place and known to all employees so everyone “knows the rules.”
- Train anyone who is being promoted or hired as a supervisor on company policies and procedures and interpersonal skills.
- Take steps to keep stress under control.
- Speak respectfully of supervisors and subordinates, and insist that all supervisors do the same.
- Correct negative or corrosive employees. Do not allow them to contaminate the work environment.
- Try to get your employees to “like to come to work.”

Management relationship to the drivers

Everyone has heard of the famous “open door policy,” but how open are your doors? Do drivers need to call ahead and get a reservation to speak to management? Are the drivers ever told that management is “too busy” and to “handle it with a supervisor?” Do managers (including the Fleet Manager) “pre-screen” who they are going to talk to? Do you have a “chain of command” that must be satisfied before the driver can talk to a manager?

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These are all questions you will need to answer if you are going to establish an open door policy. *Open door* means a driver (or other employee) can approach a management level employee and discuss concerns. If there are hurdles the employee must jump first, you do not have an open door policy.

Asking (but not requiring) employees to try to address issues with their direct supervisor first is a good standard practice, and may eliminate the need to “open the door,” but try to avoid chain of command procedures that make it difficult for employees to get access to management.

Too many drivers at medium to large carriers do not know the managers they are working for. In an earlier discussion we talked about “face time” with driver managers (dispatchers). The same is true of managers, including the Fleet Manager. It does no good to have an open door policy if the driver has no idea who the open door belongs to!

The Fleet Manager should make himself/herself known. Speak in orientation and driver meetings, wander through the yard talking to drivers, and visit with drivers that are in the office to see other people. Drivers like to work for people they know, so make sure they know you!

The key to substantial profit is a stable workforce

In an effort to identify the most viable means to recruiting, word-of-mouth referrals from current drivers is not only the most frequently used method in recruiting new drivers but also the most effective. Most companies will pay a bonus to a current driver who helps to recruit a new driver that is hired and stays with the company for at least six months. An incentive for sure, but don’t overlook the possibility that driver pride and satisfaction in their own employment may well be the first reason that produced the new-hire.

Professional truck drivers, like anyone else, have a satisfaction level that they need to achieve in order to remain your employee. This level of satisfaction is affected by four factors:

- Company support and respect
- Non-driving activities
- Hours of work and time with family
- Reward and recognition at work

These are basic needs of most all employees within the transportation industry and outside of it. These needs are not uncommon to expect from an employer and will pay greater dividends to the companies who focus on satisfying them. Let’s take a look at each of these four factors and see their importance in recruiting new drivers.

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Hours of work and time with family

An inexpensive way to retain current drivers and recruit new drivers is accomplished through respect and honesty. Recruiters should never overstate the facts in describing a truck driver's job. The recruiter should always be up front and honest about issues that are important to all of us — topics such as days away from home, driver pay, hours of service, and accurate log entries. These subjects are taken very personally by many people and not necessarily by truck drivers only.

Offering a flexible work schedule is one of many programs carriers are promoting to attract and retain their workforce. An overall sensitivity to the basic need regarding home time is a characteristic that benefits a trucking company. If an agreement is made between a driver and the dispatcher regarding home time, it is the obligation of the dispatcher to see that the agreement is honored without repercussions from last minute demands or changes in the work assignments.

Once again, the reputation of the company is at stake when the driver is made to feel less than important.

Reward and recognition at work

Drivers, like everyone else, have a need to feel that they are a member of the team. They want to feel that their efforts have value and that they are recognized as contributors to the success of the company. When drivers are recognized for their efforts, they become self-motivated to continue their endeavors so this feeling of worth remains. This holds true for most all employees. A manager can improve the quality of the workforce without restrictions or limitations on salary or benefits.

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Driver recognition through achievements in safe driving, customer satisfaction, on-time service, miles driven, and years of service is appreciated by those who earned the awards. Communication via a company website or newsletter can contain information about drivers who have earned good performance ratings so that their accomplishments can be shared with other drivers and employees.

Word-of-mouth referrals from current drivers are frequently used for recruiting because they are considered the most effective. Keep in mind that these referrals are generated through the company's attention to their drivers' basic needs. It also equates to less driver turnover and shortages.

In general, driver pride and satisfaction with their job, and ultimately their employer, are related directly to the company's profitability through its stability in the workforce.

A higher level of awareness

Managers and supervisors of motor carriers often do not find out about a problem until after it has been exposed. And usually by that time the problem has caused a situation where some form of loss is the end result.

Take an unexpected roadside inspection, for example. The driver opens the door of the vehicle and trash falls out at the feet of the inspector. If the inspector's original intention was a simple screening of the driver, conducting a closer examination including the driver's logs, shipping papers, load securement, and a full Level 1 inspection of the entire vehicle now crosses the mind of the inspector. After all, if the driver shows an obvious lack of care in his/her personal environment and the company equipment, what further issues may exist with the safety condition of the vehicle?

Companies establish policies and rules to inform employees of minimum standards that must be met. When management sees a gap between a given situation and the standard, they must assess the situation to determine if this problem is an individual's doing or is widespread throughout the company. Enforcement of company policies and rules is important as it lays down specific ground rules to all employees as to what is accepted, and what isn't. However, solving problems almost always requires a higher level of awareness than that which created the problem.

Communicating expectations to drivers of their responsibilities on matters such as the daily completion of vehicle inspection reports, log entries and hours of service rules, adhering to speed limits, and conduct at roadside inspections — which include keeping the vehicle presentable — will prevent many problems from causing even bigger problems after the fact.

An effective means to fend off problems from rooting themselves in a carrier's culture is the reward and recognition a carrier provides to drivers who comply not only with company policies, but also with the rules and regulations of the industry. Some reward ideas: a day off for a clean roadside inspection, a gift certificate for accurate and complete logs or

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DVIRs after a specified period of time, monetary rewards for being accident free or getting no moving violations after a period of time, and yes, a company hat for a clean vehicle.

These are but a few examples of how problems are prevented when expectations of standards are met by creating a higher level of awareness.

The ability to remain profitable

A motor carrier's ability to remain profitable often hinges on two factors, both of which relate directly to its drivers:

- The cost to replace drivers, and
- The cost linked with the aftereffects of unsafe drivers.

A carrier's safety success is closely related to driver turnover. Drivers who have a long tenure with a carrier generally prove to be of greater value to their employer because they have had fewer accidents, fewer violations, and consistently deliver their freight on time. It's for this reason that the carrier can realize a marked level of profitability.

The opposite of this is conspicuously clear. A carrier with a higher rate of turnover is likely to experience a higher frequency of accidents, roadside violations, and delays in on-time service, all leading to limitations of growth and diminishing profits.

As polarizing as these two types of carriers seem, there are two related characteristics that connects them: training and experience. The successful carrier has invested heavily in training and educational re-enforcement and has faithfully rewarded experience. The other carrier has not and now finds itself somewhere between the breakeven point and keeping the wolves away from the door.

But if training and experience are the keys to profitability, how can a carrier improve its workforce when the churn of driver employment prevents both elements from reaching their full effect?

While many carriers invest upwards of \$5,000 per driver in recruiting and hiring efforts, new employees have yet to invest much at all in their employer, making it easier for them to change jobs. The prevention of this waste of assets can be displayed by the manner in which the carrier openly exhibits a professional and resultant financial relationship that focuses on career advancement for their long-term drivers.

It's far more productive for carriers to develop a curriculum designed specifically to their own operational needs that instructs newly hired drivers along with their current roster of drivers on improving their skills and increasing their knowledge. Who better to teach these skills to the workforce than those who have used this skill set successfully for an extended period of time? These initial and subsequent refresher training courses build upon a level of talent that is achieved through a structured training program, beginning with an apprenticeship for newcomers to the company and leading to a master driver of the craft.

The motor carrier who can combine training with experience creates a fraternity among its drivers, and other employees, that can provide the way to greater profits through a stable workforce.

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However, before making changes or additions to company policies, consider the following to ensure management is communicating clearly to their employees:

- Will a change in policy conflict with state or federal laws? Legal counsel is the sure way to answer this question especially if the change in policy has anything to do with employee pay or personal freedoms.
- What is the reality for the change of existing policy or establishing new policy? Will employees have sufficient time to adjust to these changes or additions? Will signatures of all employees documenting their notification of the change in company policy be necessary in case of company liability?
- What will these changes or additions to company policy do for the morale of the employees? Many companies form committees, or task forces, that involve both management and employees to review current company policies and suggest needed changes. This collaborative feedback establishes management's recognition of their employees' value to the company.

Change can be a difficult concept for employees — and companies — to come to terms with. Yet, the fact remains that a level of standard must be in place, that it reflects company policy, and is clearly stated so that employees can understand it and live with it.

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PERSONNEL

Driver Health & Wellness

A driver health and wellness program

Driver health and wellness is becoming an increasingly more important issue to motor carriers — especially as the driver population ages, health care costs continue to escalate, and the driver shortage facing the industry becomes reality. Adding to these concerns are the drivers (along with non-driving employees) themselves, failing to gaze far enough into the future to realize the benefits of a healthy lifestyle.



Complicating this issue further, the lifestyle of a driver is one that strongly contributes to an unhealthy existence and is one of the major factors why health care costs are high and unaffordable for many small businesses. Consider these facts from recent studies on driver health and wellness:

- The Center for Disease Control and Prevention reports that the average life expectancy of a commercial driver is 61 years, 16 years shorter than the norm.
- More than half of the drivers are overweight or obese. This far exceeds the national estimation of 33% of Americans qualifying as obese, itself a startling statistic.
- 10% of drivers exercise daily. Sitting for hours behind the wheel and then getting out of the truck to crank dollies and load or unload freight does not count as exercise.

More statistics on this profession and its effect on health care costs are available; however, the numbers above typify the profile of a commercial driver and lead to the question: How effective are these individuals at their occupation and how safe are they on the roadway?

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While it is true that only an individual can modify his/her own behavior, management can have an impact on a driver's health that will not only improve the employee's lifestyle, but also improve the company's bottom line!

Wellness programs have become increasingly popular in recent years, probably due to the many economic benefits employers can reap from them. Among tangible benefits are reductions in absenteeism, health care coverage costs, on-the-job injuries, workers' compensation claims, and disability costs. Many organizations adopt wellness programs as a proactive approach to promoting employee health.

The Center for Disease Control and Prevention also reports that more than 75% of employers' health care costs and productivity losses are related to employee lifestyle choices. Successful wellness programs can educate employees about unhealthy lifestyle choices and help them to correct harmful behaviors. By improving employees' health, employers can keep health care costs under control.

Justifying the costs of a driver health and wellness program can seem too high an expense to absorb for many carriers, especially when much of the problem is felt by some to be "self-inflicted." However, the need to justify driver health and wellness costs is not unlike the need to justify other company expenses. It is the return on the investment and the time it takes for that investment to prove its value that concerns many companies, both large and small.

ROI is real

A health and wellness program, in most all cases, will not only improve health care costs but will also benefit many other facets of the company, such as operations, driver recruiting and retention programs, worker's comp claims, and crashes.

Many companies who have invested in an employee health and wellness program have realized substantial return on their investment in a matter of two to three years. The initial cost per employee will seem high at the onset of the program, however, when the employer leverages these resources to attain a high level of employee participation, the result will normally produce a significant ROI in terms of health care cost reduction and productivity improvements. Some companies have benefitted from a ROI of more than 4 to 1 after two years. This means that for every \$1 invested into the program, the employer saves \$4 in health costs. While this 4 to 1 ratio is on the high end of the cost savings spectrum, it is not unusual for companies to realize a 2.9 to 3.3 ROI per dollar invested after two or more years of an active health and wellness program.

The trucking industry consists of many small carriers with 10 drivers or less and may find it difficult to make a large investment in this type of program. However, when one considers that, for many carriers: 1) approximately half of their claims stem from less than 10% of their workforce, and 2) 70% of these claims are worker's comp related, it shows that a cultural change is needed.

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- **Health care.** More than in the past, clinics are beginning to surface near truck stops. However, they are few and far in between, especially when illness overtakes a driver. Downtown walk-in clinics may be an option providing there is sufficient parking available for the tractor/trailer.
- **Environment.** Managing the time to travel from shipper to receiver often times dictates to the driver that he/she must remain behind the wheel for hours on end. The vibration of the truck traveling the highways can eventually cause musculoskeletal discomfort, back pains, kidney complications, etc. When the trip is completed, many times the driver will assist in the unloading of the shipment without being properly prepared physically for this task.
- **Time away from home.** This is one of the biggest factors in causing stress, along with highway and traffic issues. Stress is caused when the brain realizes that something is out of control and the driver can do little to effect a change. Cardiovascular symptoms are on the horizon!

These are all challenges for the driver, and the employer, that shorten careers and lead to high driver turnover rates. Finding a solution to these risks is not a simple matter for either party. What the employer can do is create a culture of health through programs that can be sustainable over time.

Wellness program components

Wellness programs need not be fancy nor expensive. They can be made up of an infinitely varied combination of elements that suit the organization's needs. Some common elements of wellness plans include:

- Health risk assessments,
- On-site workout facilities or subsidized health club memberships,
- Smoking cessation programs,
- Healthy foods in the company cafeteria,
- Employee diet groups and nutrition counseling,
- Free vaccinations,
- Employee assistance programs,
- Wellness education,
- Health fairs,
- Disease management education, and
- On-call or on-site medical personnel.

One of the most difficult steps in a wellness program is getting one started. Often employees are suspicious of their employer getting too involved in their personal lives, and their health.



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Implementing a wellness program

Successful implementation of a wellness program is more complicated than just providing employees with the necessary tools to adopt a healthier lifestyle. Creating a wellness program that works starts from its very inception involves careful consideration of an organization's history, culture, and employees and careful planning based on those considerations.

Consider the organization and its employees

To work, a wellness program should be a consistent fit with the culture of an organization and must receive substantial support from the company president, CEO, or other top management personnel. Management's commitment must be more than lip service; it must be reflected in the budget. However, a company can start small and work in additional program features as the budget allows. The budget just needs to be substantial enough to allow the program to succeed as designed.

If the overall attitude in the workplace isn't one supporting health and wellness, employees aren't likely to buy into a program promoting health outside of work time either. A company's culture is made up of social norms that are shared between employees, and once established, the overall attitude is difficult to change. The way in which a wellness program is introduced can make or break the program. A company should be sure to portray the experience of a wellness program as a shared experience for all the members of the company.

An organization that is lacking continuity in this way may also find that its employees regard a wellness program as nothing but a way for the company to get ahead. This feeling could quickly lead to employees' resentment of the program, and an unsuccessful endeavor overall.

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Done well, a wellness program can smoothly integrate the company's values, and its dedication to the people that make up the company. In this case, employees are much more likely to regard a wellness program as a personal opportunity being offered to them. Such a program is relatively an inexpensive way to show employees that the employer cares about their well-being, fostering employee loyalty and driver retention.

Perhaps most important when outlining the framework for a wellness program is a consideration of what employees need, what they want, and what their attitudes are toward the workplace and toward a potential wellness program. Even if an organization cannot tailor a program to meet everyone's needs, a program that doesn't address *anyone's* needs will surely fail.

Implementing a wellness program without any idea of the desired end result can also be problematic. A company should consider what it hopes to achieve for the business and also for the employees themselves. The best programs are born from a company's specific needs and problem areas. To create a successful and valuable wellness program, a company should consider various historical records and information, including:

- Records of injuries and illnesses,
- Workers' compensation claims,
- Cost of health insurance premiums and claims,
- Driver turnover,
- Absenteeism,
- Disability compensation,
- Reasons for leave, and
- Employee morale (which can be gauged via employee surveys).

Studying this information allows a company to recognize areas that need improvement and design a wellness program that best addresses the organization's problem areas.

The information mined from these sources can help steer the program toward resolving the areas of greatest risk. If the data reveals that employees are struggling with factors that can lead to heart disease, actions can be focused on minimizing those risk factors.

Set the plan's goals

With a firm understanding of an organization's history, culture, employees, and particular needs, a plan can be developed. A plan is the foundation of a wellness program. It provides a timeline for establishing the program and ultimately measuring its success. Typically, the plan takes baseline information from sources already discussed and biometric measures such as employee health risk appraisals and personal wellness profiles. From there the information can be used to define objectives and goals for the program.

For example, if a health risk assessment reveals that 35 percent of the employee population smokes, the goal may be set at reducing that figure to 10% within three years.

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Encourage participation

Consider designing and distributing posters or flyers throughout the company to announce the beginning of a wellness program or special events. Make the posters eye-catching and unusual so they draw employees' attention.

Incentives encourage participation and reward success. Popular incentives include:

- Quarterly gift certificates;
- Raffle prizes to attract participants;
- Free or discounted health club memberships;
- Establish an account to track each employee's involvement for a payout of some type; and
- Small tangible gifts such as canvas or duffel bags, gift certificates to restaurants or movie theaters, or items that can be used in the workplace.

One company encouraged participation by allowing employees to collect credits for engaging in employer-sponsored wellness events. The employees could trade in their credits for various items, including days off.

Some employees may already be "health nuts" and some just won't care to participate, so employers should not be discouraged when they don't see 100% participation. If a program encourages healthy habits in at least half of a company's employees, the employer is likely to see results.

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The big three

The biggest threats facing the transportation industry today are obesity, tobacco use, and stress. Together, these lifestyle factors contribute to lost productivity and absenteeism among other problems, but a wellness program can work to combat all three. Since a wellness program cannot address every health issue, it makes sense to focus on those with the greatest impact.

The most difficult part of a wellness program that attempts to combat these kinds of issues is motivating people to make the changes and keeping them motivated. Employees must *want* to make changes in these behaviors if they are going to be successful in stopping them.

Obesity

As most people know, carrying around extra weight increases a person's risk of having many medical problems, including:

- Cancer,
- High blood pressure,
- Sleep apnea,
- Type II diabetes,
- Fertility problems, and
- Heart disease.

Wellness programs cannot force people to lose weight, but they can offer opportunity and motivation in the form of education or incentives. Prolonged exposure to motivating information or activities will eventually have an effect on some employees. Employees should be reminded of the ways that being overweight can affect both their work and their personal lives. A company's preliminary research regarding a wellness program should determine the most appropriate options to offer for employees' health.

Education about establishing and maintaining a healthy weight can start with a health risk appraisal. This can take the form of a questionnaire or a more formal medical screening. Medical screenings are usually more accurate and detailed, given the addition of technology, a medical professional, and the fact that the accuracy of the results does not rely on the employee's honesty. The results of medical screening can be used to direct employees to programs that will best benefit them and address their most serious health concerns. With this in mind, it's best to provide follow up meetings between the provider of the screening and the employees. That way, the results of the screening can be reviewed and personal goals established. Many companies choose to conduct these screenings annually; this way both the company and the employee can monitor health issues and progress over time.

Smoking

Since the release of the first Surgeon General's Report on smoking in 1964, knowledge about the health consequences of tobacco use has greatly increased, and so has the list of illnesses and conditions linked to

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smoking. The Surgeon General's report now reveals that smoking can cause disease in nearly every organ of the body, and kills almost half a million Americans each year. The economic toll exceeds 157 billion dollars each year in the U.S., 48 percent of which is in direct medical costs, and 52 percent of which is in lost productivity. In addition, the National Business Group on Health estimates that employees who smoke cost the average company an extra \$3,856 per year.

While wellness plans can't force employees to quit smoking, they can encourage it. Smoking cessation programs, if successful, can bring about an *immediate* improvement in the health of employees in the form of improved circulation, and a reduced risk of heart attack, certain types of cancer, and stroke. Wellness programs that incorporate smoking cessation might also offer incentives for those participants who go through the program to keep them motivated.

Stress

Stress is defined as the harmful physical or mental response to the pressures of an event or factors of living. Job stress can occur when the requirements of the job do not match the capabilities, resources, or needs of the worker. Job stress can quickly lead to poor health and injury, and prolonged stress can wear the body down over time, leaving the employee more susceptible to illness.

The National Institute for Occupational Safety and Health (NIOSH) reports that 40 percent of workers report that their job is very stressful, and 25 percent of workers consider their jobs the number one stressor in their lives. Some early warning signs of job stress include headaches, fatigue, low morale, and a short temper, all of which can immediately hinder an employees' performance on the job.

Wellness programs can implement stress management programs, which are often designed to help people learn how to relax or how to best manage their time. This is especially valuable because stress is often as much about a person's inability to cope with stressors than it is about the stressors themselves. Such programs can also offer information about conflict resolution to keep disagreements from turning into regular sources of undue stress. Mental health and stress-management programs can also result in less domestic aggression and a more positive environment for employees. Stress related elements like anxiety, coworker conflict, and conflict with a supervisor are the top reasons for employee absenteeism, and all can be combated with stress management programs.

A company might also consider practices that are specific to the organization which might be causing its employees undue stress. For example, employers might recognize that they require their associates to work an excessive amount of overtime or that a long chain of command is creating unnecessary steps for their employees. Reducing or eliminating company-specific stressors is a good way to contribute to a wellness program and show employees that they are valued.

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Why not wellness?

The principal reason that employers find wellness programs attractive is the cost savings. As mentioned, employers can save on health care, training costs, and the cost of employee absenteeism. Employers with established and successful wellness programs might even find that they attract more effective and productive candidates for driving positions. While all these potential outcomes can bring a company monetary success, the changes that take place in the health and happiness of employees can be an even more valuable outcome of a successfully-implemented wellness program.

Sleep apnea

Sleep Apnea is a condition that, when left untreated, can be life-threatening to any person behind the wheel of any type of vehicle. Sleep apnea is a condition that causes frequent pauses in breathing while sleeping and prevents an individual from getting the sufficient amount of sleep and rest needed to be fully alert throughout the day. Across the United States, more than 15 million people are afflicted with this condition, including an estimated 26 percent of drivers of commercial motor vehicles according to a study done by the FMCSA.

The pauses in breathing are termed as an apnea and can occur as many as 30 times per hour. These pauses or cessations in breathing can last for a matter of seconds, or up to a minute or more. A partial cessation, or low breathing event, is called a hypopnea and is equally as debilitating as the individual's sleep is still interrupted.

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In measuring the severity of sleep apnea, the Apnea-hypopnea index, or AHI, is used to assess the total number of events occurring each hour of sleep. Usually, these events must last for 10 seconds to be counted in this index.

Sleep apnea is most common in people who are overweight, use certain medicines or alcohol before bed, or sleep on their back. It also occurs if the individual has large tonsils or adenoids or a large uvula. A person suffering from this condition has little problem with these characteristics throughout the daytime hours as they are normally standing or in an upright position. However, when they lie down, the throat muscles and tongue can press down on the airway and limit the amount of air or oxygen a person needs to breathe, thus causing the apnea. This situation is referred to as Obstructive Sleep Apnea (OSA) and is the most common among the three types of apnea.

The manner in which sleep apnea is diagnosed is called a polysomnogram or “sleep study” and is typically administered at a Sleep Center, which is an overnight facility specializing in the symptoms of this condition. It can also be administered at home under specific guidance from a physician. At the Sleep Center, the polysomnogram (PSG) will monitor the patient’s sleep by measuring:

- Brain activity,
- Eye movement and other muscle activity,
- Breathing, heart rate, and blood pressure,
- How much air moves in and out of the lungs while sleeping, and
- The amount of oxygen in the patient’s blood.

Once diagnosed, various forms of treatment for sleep apnea are made available, including surgery. Often times, many different types of treatment are attempted before the patient can realize any form of benefit. Some of the most common types of treatment utilized to assist in the opening of the patient’s airway are:

- C-PAP (continuous positive airway pressure) — a machine that blows air into the nose via a mask, keeping the airway open and unobstructed.
- Bi-PAP (bi-level positive airway pressure) — blows air at two different pressures. When the patient inhales the pressure is higher. When exhaling, the pressure is lower.
- Oral appliances — a custom made mouthpiece that holds the jaw forward and opens the airway.

Sleep Apnea and the Regulations

As critical as it is for all individuals who operate a motor vehicle to be fully alert, there is no mention of sleep apnea anywhere in the FMCSRs (Federal Motor Carrier Safety Regulations). Yet, drivers diagnosed with this condition can become immediately disqualified from driving until the condition is properly treated.

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According to the FMCSR driver qualification regulations, §391.41(b)(5) states that a person is physically qualified to drive a commercial motor vehicle if that person "... has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his/her ability to control and drive a commercial motor vehicle safely."

What this means is, if the driver has a respiratory dysfunction (or potentially has a respiratory dysfunction) that will interfere with the driver's ability to safely operate the vehicle, the medical examiner is not to certify the driver.

Without mentioning "sleep apnea" specifically, the condition is implied within this regulation. This lack of mention does not suggest that the FMCSA has neglected to properly address this issue. More accurately, the FMCSA has long been aware of this condition that exists throughout the transportation industry and continues to keep this topic in the forefront on all discussions regarding the health and wellness of drivers of commercial motor vehicles.

While there are no hard and fast regulations speaking directly to sleep apnea, there are recognized guidelines that states safety standards for the industry to abide by. These guidelines are the result of the FMCSA, the Medical Review Board, and the Motor Carrier Safety Advisory Committee discussing options on how better to deal with this matter of great concern. While their discussion and guidelines continue to raise the level of awareness in the industry, regulatory action is not expected in the immediate future.

What are the guidelines?

The Medical Review Board is comprised of doctors who advise the FMCSA on issues affecting the medical qualifications of drivers. They have provided guidance on the symptoms of sleep apnea for Medical Examiners to be aware of before certifying an individual to operate a commercial motor vehicle. This research and guidance are usually processed by the FMCSA and are updated in the Medical Examiner's Guide and Driver Qualification FAQs.

The guidelines recommend that medical examiners do not certify a driver that reports sleepiness while driving, had a crash due to sleepiness, has a tested AHI score over a certain level, or has a BMI (body mass index) over 33. Another guideline recommends that medical examiners screen all drivers for sleep apnea who report or exhibit the following:

- Chronic snoring
- Witnessed sleep apnea
- Daytime sleepiness
- BMI over 33
- Small jaw
- Large neck (over 17" in males, over 15" in females)
- Small airway
- Hypertension

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- Type 2 diabetes
- Hypothyroidism

An important point to be aware of is that these recommendations are just that...recommendations. Once the medical examiner has considered these criteria, the examiner must make the decision on whether or not the driver is fit in relation to respiratory function or will need to be evaluated for possible treatment before certifying. This decision seems to rest solely on the medical opinion of the examiner.



What is the motor carrier's role in sleep apnea?

The motor carrier can be very influential in identifying and initiating the treatment of sleep apnea within their workforce. While the initial costs to put a program in place to assist drivers having sleep apnea may seem prohibitive, consider the costs of litigation and the final judgment levied against a motor carrier who is ruled liable for all damages due a fatal accident caused by their driver found to be suffering from sleep apnea. There are many cases regarding the legal responsibilities of the employer in this matter, most all of which are very costly in one form or another to the employer.

Probably the most significant step a motor carrier can take in identifying and dealing with sleep apnea is to open a strong line of communication with their company's Medical Examiner. It is important that the carrier knows how the Medical Examiner will determine a sleep apnea diagnosis. The Medical Examiner should also find it comforting to know that the motor carrier is taking an active role with this growing concern.

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Best Practices and Matching Sample Policies

Best practices

Below are several best practices divided by topic. Each is discussed and presented in an outline form. These best practices can easily be modified into company policies. Simply use the best practice as a guide.

Best practices are practices that are intended to go above and beyond what is required, to provide the best possible outcome. In the compliance areas it is best to exceed the regulations and operate at a best practice level. This will guarantee compliance with the regulations.

When developing your own best practices and policies remember that carriers are allowed to have policies that are stricter than the associated regulations, as long as the company policies do not conflict with the regulations. A classic example of this is a carrier requiring drivers to operate at a company speed limit even if the roadway is posted at a higher speed limit.

Dispatch/Load Planning best practice and outline

A dispatcher has a daunting task. A trucking company makes its revenue based on the movement of freight. It is the dispatcher's job to make sure this happens without delay and with minimal cost. Every day a dispatcher walks a fine line between what is legal, what is acceptable, and what is practical, pertaining to his or her drivers and the movement of freight, all the time trying to satisfy the expectations and requests of management and the company as a whole. The dispatcher is the quintessential "middle man" when it comes to freight movement, the drivers, and office politics.

In the transportation industry, dispatching (and load planning, which we will continue to refer to as dispatching) is considered to be one of, if not the most stressful positions that a person can have.

Dispatching

Specifically, a dispatcher's job involves moving freight with available equipment and drivers. This may sound simple, but the dispatcher makes critical decisions every day. He/She must think about location of available freight and which driver/equipment is a "best choice" to move that freight. Many factors play into that decision such as how much dead-head it involves, whether a driver has enough log hours available to move the freight in time, where the delivery is in relation to more available freight, and how quickly the driver can get to the pickup location.

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The dispatcher also must maintain a good rapport with his/her drivers, and work to keep them satisfied with their workloads. A content driver makes a dispatcher's job much easier, and therefore the dispatcher should also consider how the assigned load affects the driver.

It is the dispatcher's job to connect the appropriate driver with the freight, based on location, driver status, equipment utilization, etc. They then must track the movement of that freight from pickup to delivery while preplanning for the driver's next load.

A dispatcher must be a visionary. Dispatchers must mentally remove themselves from the office and visualize the weather, the road conditions, the attitudes and hardships of the drivers, the traffic, and the country as a whole, as it applies to the movement of freight.

When talking to a driver, a dispatcher must be able to "see" what the driver sees. He/She often times must make split-second decisions on behalf of the company, the shipper/receiver, and the driver, that may have consequences far beyond their desk or computer. By "seeing" what the driver sees, the dispatcher can develop and maintain the level of rapport that is necessary, with his/her drivers.

Good dispatchers will mentally "live" in the same world that their freight lives in. This is done through tremendous planning, organization, and forward thinking. Quite often, a dispatcher may be dealing with multiple drivers, problems, and concerns all at the same time, while carrying on a person-to-person conversation with their boss or colleague on a completely unrelated subject. Good dispatchers have a strong ability to multitask while keeping attuned to the ever-changing "big picture."

Dispatching in its simplest form is monitoring and reacting to the movement of freight and equipment. A dispatcher typically has drivers assigned to him/her and are given a load of available freight that must be moved in a pre-determined time frame. Dispatchers, at least good ones, do their job proactively rather than reactively.

Often dispatchers find themselves in a "crises-management" mode when dealing with drivers. Many times, this can be the result of a dispatcher failing to plan ahead, proactively avoiding the many issues that come up each day. Whether they like it or not, the dispatcher deals with the driver's business and/or personal problems every day. If the dispatcher does not act proactively, and address the problem immediately, the driver's problems quickly become the dispatcher's problems which then affect productivity and profitability.

Freight needs to be able to "move through the system" from quote, to available (pending order), to preplanned, to assigned, to loaded, to unloaded, to a stored record. Vehicles need to move through the system as available, unavailable, assigned, etc. The "art" is getting the two to meet at the right time and place! Everything else either supplies information for that function (more information allows for more efficient and effective decisions) or captures data for later reporting. The artist in this case, is the dispatcher.

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Local or city application

An LTL or city operation can find this process to be the only way to sufficiently plan multiple shipments for delivery and position their fleet to react to customer pick ups on a timely basis. The optimization program allows the operation to key in specific factors such as geographical coverage, shipment size including number of pieces and weight, customer requirements (appointment scheduling), and equipment needs. It then analyzes and computes total weight and cubic space required and assigns each shipment to a route, proper loading sequence of stops on each route, average time to complete assigned routes, and number of routes and drivers needed to complete the day's dispatch.

It can also create a delivery manifest for each route and notes any specific information the driver will need throughout the day. This can be especially helpful when transporting a hazardous material shipment that is loaded with other shipments that are not hazardous. A good example of this is when food or foodstuffs are already loaded on equipment prior to a hazmat shipment containing a poisonous substance designated for the same route. The optimization program will immediately send out a warning signal prohibiting the loading and require an alternative choice be made before the driver is dispatched.

Long haul or over-the-road usage

Truckload carriers will experience much of the same information gathering and organizing as the multiple-shipment carrier will. Obviously, the length of haul and the continuation of a driver's work period will be the main difference between the two. However, options can be given to the load planner, which may provide the opportunity for even a greater margin of profit.

For example, a truckload size shipment, whose origin is St. Paul, MN, and destination is Bangor, ME, is entered into the route optimizer. Assuming both the driver and the carrier have the proper authority and credentials, the optimizer may route this shipment across the Canadian side of the Great Lakes thereby avoiding excessive highway congestion which could consume more fuel, delay transit time, and possibly reduce the chances of an accident. Proving this to be a cost saving route with re-occurring opportunities for backhaul traffic could save the carrier great expense and turn this lane into a profitable venture.

Much the same would unfold for a two or more stop load. The route optimizer would offer a list of available, or soon to be available, drivers and equipment. It would then route the driver(s) in the most economical way and give the load planner options for variables not yet encountered. Breakdowns, traffic delays, and sometimes even weather conditions cannot always be accurately predicted.

The main point to take from this is that a route optimization program can provide the carrier with analytical and historical information that not only makes the decision making process easier for the load planner, but can positively influence the financial health of the company. Fuel,

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A dispatcher is given a daunting task each and every day. Through drive and determination they can personally control the success and/or failure of their drivers and their company. A typical dispatcher gauges their own level of success through the success of others they work with and for.

Dispatchers and load planners could be compared to teachers. The pay is not fantastic and is usually not a motivator for taking the position. As in teaching, seeing success of others through direct contact and guidance is what drives dispatchers and load planners to perform in an extremely fast-pace, high-stress position.

How do you dispatch – the “mechanics”

Throughout this “Best practice” we have discussed very little about the actual mechanics of dispatching. This is because dispatching and load planning are very company specific regarding how someone actually performs the end task. Where some companies may use computerized dispatch programs to do most of the load planning, others will use a very labor-intensive “pencil and paper” approach.

In addition, companies divide their freight lanes very differently across the industry. Because various companies look at freight from local, regional, sectionalized, and national perspectives, the “how to” of dispatching and load planning at one company may have little resemblance to that of another company.

With this in mind, it is more important to understand the background, mindset, responsibilities, and motivations that revolve around dispatching and load planning than it is to discuss the actual functions themselves.

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Conclusion

Dispatching and load planning are two tasks in the transportation industry that few desire to take on and many fail at every day. Controlling the livelihood of fellow employees and management requires strong commitment to the bottom line, tremendous planning and organization, and strong stress-management skills.

And yet, many people at all levels of the trucking industry are highly successful at this task and create an environment that is both positive and profitable for all parties involved, every day.

Without proper dispatching and load planning, a trucking business will fail very quickly. The freight will not move itself and the dispatcher and load planner are the engine behind the continued success of any trucking company today.

The following is an outline that can be used when developing a dispatch operations employee manual:

- No customer line rings more than four times.
- A customer is never on hold for more than one minute.
- A customer is given a quoted rate or a refusal in the same call as the inquiry, unless there are extenuating circumstances.
- The dispatch operations group knows the location and availability of all vehicles and drivers.
- All loads committed to must be immediately entered in the system.
- Drivers are never assigned a load that will force them to choose between violating regulations or delivering late.
- All driver movements are planned considering the driver's hours-of-service status, time-off requests, and preferred operational area.
- Driver movements are preplanned a minimum of one day in advance.
- The dispatch operations personnel can contact a driver immediately.
- If reschedules are necessary, they are done early enough that the customer can adjust delivery schedules.
- Any time there is a change in a shipment, all parties involved are immediately notified by a company representative.
- A customer's shipment can be located during a phone call.
- All appointments, original or rescheduled, are met.

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- Dispatch operations personnel contact customers on a regular basis to discuss carrier performance.

Hours-of-service best practice and outline

Few areas of regulation in the motor carrier industry are as confusing or as intimidating as hours of service and the record of duty status, commonly known as the log book or “log.” Year after year, the hours-of-service requirements in Part 395 of the Federal Motor Carrier Safety Regulations (FMCSRs) are consistently among the most violated regulations in the industry.

The biggest reasons for these violations are a lack of understanding of the rules and a negligence to comply with the rules. Whatever the cause, the FMCSA is determined to improve the safety performance of motor carriers and their drivers through the enforcement of the CSA program. The CSA initiative impacts the motor carrier industry in such a manner that motor carriers and commercial motor vehicle drivers must closely adhere to these rules and regulations or suffer the penalties, which can include being ordered out of the motor carrier business.

This best practice is designed to provide a better understanding of the hours-of-service regulations. This hours-of-service discussion, for property-carrying commercial motor vehicles, includes changes that must be complied with as of February 27, 2012, and changes that must be complied with beginning July 1, 2013. For passenger carrying commercial motor vehicles, even though the regulations are different, the dispatch concepts and methodologies may be similar.

Background

The FMCSA proposed a dramatic restructuring of the hours-of-service rules in December 2010 and met with widespread criticism from many motor carriers and others related to the industry. As a result, the agency trimmed its ambitious proposal and published a scaled-back rule on December 27, 2011.

Key points

The following summarizes some of the key provisions of the current hours-of-service rules and the changes that were issued recently:

11-hour driving rule — No changes have been made to the maximum driving time allowed after a restorative break. After 11 hours behind the wheel, the driver must obtain at least 10 hours off duty before driving again. He/she can continue to work but may not drive. Beginning July 1, 2013, driving will not be permitted if more than 8 consecutive hours have passed since the driver’s last break of at least 30 minutes. In other words, if the driver has not had at least a 30-minute break by the end of his/her eighth hour of work, the driver must take a 30-minute break before driving. A lunch break or resting in the sleeper berth will satisfy this in most cases.

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two periods of 1:00 a.m. to 5:00 a.m. and will only be allowed once per 7 days.

Split-sleeper option — As explained above, the driver of a property-carrying vehicle cannot drive for more than 11 hours following 10 consecutive hours off, and cannot drive beyond the 14th hour after coming on duty. A driver using the sleeper-berth option may accumulate the equivalent of those 10 consecutive hours off duty by taking 2 separate periods of rest, provided that one of the rest breaks consists of at least 8 (but less than 10) consecutive hours in a sleeper berth. This break will not count against the 14-hour limit; i.e., it will extend the day

The other break must be at least 2 (but less than 10) consecutive hours either in a sleeper berth, off duty, or any combination of the two. This break will count against the 14-hour limit, and can be taken either before or after the 8-hour sleeper berth period.

Effective February 27, 2012, drivers resting in a parked vehicle — whether a bus or a truck — will be allowed to log the time as “off duty.” Truck drivers will also be able to log off duty for up to 2 hours riding in a passenger seat on a moving vehicle immediately before or after spending at least 8 consecutive hours in a sleeper berth. This portion of the rule will mostly apply to companies and drivers who operate in a team driving situation.

Also effective February 27, 2012, motor carriers who allow their drivers to exceed the 11-hour driving rule by 3 or more hours could be considered to have committed an “egregious” violation and be fined up to \$11,000 per offense, while the drivers could face up to a \$2,750 fine per offense.

Provision	Current	After February 27, 2012
On-duty / In-vehicle time	Can never be “off duty.” All time at driving controls is “driving,” passenger seat is “on duty” and sleeper berth is “sleeper.”	Time resting in a parked CMV is “off duty.” In a moving CMV, up to 2 hours in a passenger seat immediately before or after 8 consecutive hours in a sleeper berth can be “off duty.”
Split-sleeper option	10-hour break can be split into 2 separate rest periods consisting of at least 8 consecutive hours in a sleeper berth and a second break of at least 2 hours off duty and/or in a sleeper.	8/2 split break requirements unchanged. 8-hour rest-break requirement applies. Also, up to 2 hours in (moving) passenger seat immediately before or after an 8-hour sleeper period can be logged “off duty” and be excluded from the 14-hour calculation.
Oilfield exception	To be excluded from the 14-hour limit, “waiting time” at a wellsite must be recorded (but no details provided on how to record such time)	To be excluded from the 14-hour limit, “waiting time” at a wellsite must be recorded as “off duty” and identified in the Remarks area or recorded on a 5 th grid line.

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Who must know the rules

The federal DOT places responsibility for compliance with the regulations on both the driver and carrier and expects all drivers AND company employees to know, understand, and adhere to the hours-of-service regulations.

Although many violations may be willful violations, many others are the result of a lack of knowledge and/or understanding of the rules. The latter are violations just as much as willful violations since the regulations clearly state both the carrier and driver have the responsibility to know the regulations.

Managing within the rules

Hours-of-service violations are consistently in the “Top 10” violations found during roadside inspections and compliance reviews and can greatly affect the Fatigue Driving BASIC score for both the carrier and the driver. The 10 most common fatigued driving violations are:

1. Log violation (general/form and manner)
2. Driver’s log not current
3. Driving after 14th hour after coming on duty
4. Driving more than 11 hours
5. False log
6. No log
7. Failing to retain previous 7 days’ logs
8. 60/70 hour rule violation (Property)
9. Operating a CMV while ill/fatigued
10. 60/70 hour rule violation (Passenger)

To help with this, some companies have developed computerized dispatch programs that track each driver’s availability based on what they have previously logged. The system alerts the dispatcher when there is a possible scheduling conflict or hours-of-service violation. Although this type of program is very helpful, those managing the operation of the carrier must still know the rules and must always “see the big picture.”

Automatic On-Board Recorders (AOBRDs) are rapidly becoming a frequently seen feature in many commercial motor vehicles. AOBRDs are electronic devices that are capable of automatically recording a driver’s hours of service. The devices are used to verify that commercial motor vehicle drivers are in compliance with the hours-of-service rules, and are used in place of paper records of duty status (logs). AOBRDs are currently regulated under 49 CFR §395.15.

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Regulations concerning EOBRs were first published on April 5, 2010, with an effective date of June 4, 2010, and a compliance date of June 4, 2012. However, these rules were vacated by a federal appeals court in mid-2011. The court sided with an independent drivers' group which argued that the EOBR rules did not adequately account for the issue of driver harassment. The agency is expected to issue new EOBR rules at some point, eventually leading to the phase-out of older devices regulated under §395.15.

Based on proposals from the FMCSA, future EOBR rules are expected to contain:

- A “mandate” that most interstate carriers install and use EOBRs;
- Incentives for the voluntary use of EOBRs, including the need to keep fewer supporting documents; and
- Performance standards for EOBRs, including EOBR specifications for manufacturers.

Developing hours-of-service policies and procedures

The following is an outline of key points that should be taken into consideration when developing hours-of-service policies and procedures:

- All drivers and driver supervisors are fully trained in the hours-of-service regulations.
- Drivers are required to maintain a current, true, and correct record of duty status (log) at all times.
- All driver movements are planned considering the driver's hours-of-service status.
- All trips are planned based on adequate off-duty time.
- All logs are audited for false entries (including comparing all supporting documents and mileages to the driver's log), operating over the hours-of-service limits, correctness, and form and manner. Any violation found in auditing is immediately brought to the attention of the driver's direct supervisor.
- Any driver found to be repeatedly violating the hours-of-service regulations will immediately be disciplined, up to and including discharge.
- Driver supervisors are held accountable for, and can be disciplined for, the hours-of-service compliance of their drivers.
- Drivers must submit logs and supporting documents at the completion of each trip.
- Logs and all supporting documents are retained for a minimum of six months.

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The Real World

A corporate culture that accepts hours-of-service violations must be stopped quickly. Too many carriers view hours-of-service violations as a safety, rather than an operational issue. It is actually an operational issue.

The operations group is who decides how hard the drivers will run, what their hours will be, and what pressure they will be under.

If a Fleet Manager allows drivers or operational personnel to disregard the hours-of-service regulations, there could be dire consequences.

During a compliance review hours-of-service violations carry a weighted value twice that of any other violation when determining the carrier's score.

During a roadside inspection, hours-of-service violations will lead to fines, a hefty rise in the Fatigue Driving BASIC score of the CSA program, and the loss of the vehicle and driver for 10 or more hours.

During litigation if it can be proven that the carrier routinely required or allowed drivers to operate over the hours-of-service limitations, serious punitive damages could be assigned.

When it comes to hours-of-service violations make a simple, clear statement. Do not allow them and do not allow a culture of acceptance. "It's just the way it is" is not a good reason to require or allow drivers to violate the hours-of-service regulations.

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Owner-Operator best practice and general driver qualification outline

Owner-Operators and Occasional Drivers

In the world of Transportation Management, it is not uncommon to utilize various outlets for expanding a company's driver fleet. This expansion can come from many different directions and should always be based on sound business decisions and evaluations to determine the best course of action. At any given time, and in addition to company drivers, a company's driver pool may expand to include:

1. Owner-operators;
2. Drivers from employment agencies or leasing services; and/or
3. Occasional, seasonal, and intermittent drivers.

It is important to remember that adding drivers, regardless of the method used, should be part of the business planning process within the Action Plan. This is not something that should be considered after-the-fact, without a well thought out plan of attack.

The following best practice will evaluate these different types of drivers and will address business and management concerns relative to each group.

Owner-operators

Owner-operators are probably the most commonly used addition to a company's driver fleet, second only to the drivers that are actually considered to be employees. These owner-operators can be a valuable resource if used correctly and applied to the current business model in a productive way.

A fundamental decision faced by carriers in their driver hiring policies is what the mix should be between owner-operators and company drivers. This decision is based on the motor carrier's philosophy about managing the workforce and the financial concerns relative to each group. There are significant advantages and disadvantages associated with hiring all owner-operators, all company drivers, or a mix of both.

One advantage to having all owner-operators is that they create a level of flexibility for managers, not realized with having all employee-drivers. This is mainly seen as demand for freight fluctuates throughout the year. Owner-operators are only paid for the work that they do, with no continuing commitment to salaries or benefits, therefore minimizing on-going operational costs.

However, this flexibility does come at a price. Owner-operators are in charge of their own schedules so availability at the manager's request is sometimes not feasible. Furthermore, the perception that owner-operators enjoy a certain level of independence, and that they can and do move freely between carriers, causes a certain level of uncertainty as to

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Even though these people would not be permanent or full-time drivers, they would still need to be fully qualified under DOT regulations, including all pre-employment screening and qualifying, each time they drove. In addition, these “sometime” driver-employees would need to stay in the random drug testing pool for your drivers, and would be subject to all pertinent rules and regulations relative to the driver population.

This approach to the driver fleet can be a fairly profitable one however; a company considering this must look at the associated costs of recurring qualification, training, and added maintenance/equipment issues, and how it relates to the revenue generated by the “sometime” driver.

Conclusion

As a business person, the physical operation of the fleet is a daily concern, as it relates to the financial security of the company and its continued success. Driver shortages are on the forefront of every discussion and planning session in trucking companies across the country, every day. This driver shortage is not projected to change any time soon.

How a company addresses this issue, can mean the difference between being a profitable, growing transportation company, and failure. The examples given in this best practice are but a few of the many ways that a company can fill its empty trucks while still generating the revenue necessary to succeed.

As in any business decision, the method that is used to fill driver shortages must be evaluated from financial, safety, training, and logistical standpoints. With proper planning and evaluation, a trucking company can realize positive results from any of these methods of increasing their driver fleet, while preserving the established driver staff as a base for operation.

The following is an outline of important items to consider when hiring company drivers, owner-operators, or occasional drivers:

- All applicants are prescreened when the application is submitted. Prescreening standards include standards on number of citations, number of accidents, previous employers, and experience in similar vehicles.
- If an application is incomplete, it is not accepted.
- Applicants who meet the prescreening requirements have their motor vehicle record and employment record reviewed.
- All potential drivers undergo an interview.
- All former employers from the previous five years are contacted.
- All former employers that the applicant claims involved a driving position are contacted.
- Any gap in employment of over 30 days is investigated. Only third-party verifications are accepted.

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- The company is signed up for automatic updates if a driver's driving record changes. This service is available only in certain states (California's "Pull Notice Program" is an example).
- Drivers not reporting accidents, citations, or physical problems that affect their ability to safely operate their assigned vehicles are disciplined, up to and including termination.

Maintenance guidelines

Vehicle maintenance is an important area of consideration in every transportation company. If the vehicles cannot be kept in operation, a carrier cannot make any money! The following is an outline of some of the critical areas to be considered when developing maintenance policies and procedures:

- All vehicles have a standard maintenance inspection and preventive maintenance schedule.
- Drivers and driver managers are equally responsible for seeing to it that the maintenance schedule is met.
- Under no circumstances is an unsafe vehicle operated on the roadway.
- All possible diagnostic methods (oil sampling, computer downloading, etc.) are used.
- Full and complete maintenance records (including vehicle details, maintenance schedule, and any inspection, maintenance, or repair) are maintained for each vehicle.
- Drivers are to perform pretrip, en route, and post trip inspections per company instructions. If a driver is found not performing required inspections the driver is disciplined.
- Any vehicle that has been reported as defective must be re-inspected and the driver must sign to acknowledge that the repairs have been performed.
- Periodic (annual) inspections are performed on all new vehicles. After the initial inspection, periodic inspections are scheduled for 11 months to guarantee that the periodic inspection is completed before the previous inspection expires.
- All technicians are certified through ASE or a similar organization.
- Technicians that perform brake repairs and periodic inspections are qualified based on the FMCSA requirements.
- If maintenance is performed by outside facilities the technicians at those facilities are qualified and the facility's operator has provided proof of the qualifications.

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In any of these events, the managers and supervisors should be assigned specific responsibilities and duties that lead the employees through the event and provides them with a sense of personal safety. Their list of priorities at a minimum should include:

- Safety of all employees through evacuation plans
- Notification of authorities (i.e., Police, Fire, Emergency Medical Teams, Hazardous Material Emergency Response Companies, Water, Gas, and Electrical Departments)
- Notification of “on-duty” employees who are off-site (corporate office, drivers)
- Notification of “off-duty” employees after plan is activated to update on current circumstances
- A common meeting place to review current status and future plans

Every manager/supervisor should be provided with a copy of the entire plan and have it available to them whether they are on or off the premises. This plan will contain a checklist of actions that must be followed from the moment the event takes place to its completion, whatever the outcome.

Daily yard checks

A good business practice is to develop a complete and accurate system for checking the premises before turning out the lights, setting the alarm, and locking the doors for the evening, weekend, or holiday. Even if you employ a security service to watch your facility during closed periods, a daily yard check is a great tool for improving the strength of the operation and can prevent future losses.

A yard check should be done by a supervisor at the beginning and end of his or her shift. The purpose is to not only account for the security of the building, but also to inventory all equipment in case of discrepancy of records or determining theft. It should be reasonably easy to print a list of all tractors, trailers, and any other pieces of equipment that are thought to be at your facility. A quick tour of the premises confirming the accuracy of this list will immediately create a history that can be very useful in a number of ways. Tailor this to your specific needs and planning to ensure optimum use of your equipment

The yard check should also include a daily reporting on the security status of the facility. At the very least, the checklist should include the following:

- Check the perimeter for gaps in the fence, and suspicious travel paths.
- Check the fuel pump to make sure it is locked and secure.

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company in a knowledgeable and professional manner. To accomplish this, and because the regulations require it, it is imperative that drivers be trained in all aspects of the hazmat functions they perform. Whether you decide to haul non-placarded loads, placarded loads, or both, training your drivers may be the single, most important thing you must do before the actual hauling begins.

Review insurance requirements. Regulations require carriers that transport certain types of hazardous materials to have higher levels of insurance coverage. This is based on the risk involved in the transportation of these hazardous materials and can range from \$750,000 to \$5,000,000, depending on the type of carrier and the products carried.

Obtain a Certificate of Hazardous Materials Registration from the Pipeline and Hazardous Materials Safety Administration (PHMSA). To obtain a Certificate of Hazardous Materials Registration, you must pay a fee and complete DOT Form F 5800.2 before June 30 each year (unless you register for multiple years). Each motor carrier subject to the registration requirements must carry a copy of its current Certificate of Registration, or another document bearing the registration number, onboard each truck and truck tractor (not including trailers and semi-trailers) used to transport hazmat. The Certificate of Registration or another document bearing the registration number must be made available to enforcement personnel upon request.

Refer to 49 CFR Part 107 Subpart G for more registration information.

A security plan may be required. The requirements to complete a security plan basically mirror the registration requirements. If you placard the hazardous materials you transport, chances are you will have to complete a security plan, too.

If the material is dangerous enough, you may also be required to apply for a hazmat safety permit from the FMCSA. Motor carriers are required to file an MCS-150B to transport certain Class 7 (radioactive) materials, certain explosives, certain quantities and types of poison inhalation materials or shipments of compressed or refrigerated liquefied methane or liquefied natural gas, or other liquefied gas with a methane content of at least 85 percent, in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons). Safety permit requirements are addressed in Section 385 Subpart E.

There are many factors to ponder in going down this road. If yours is the decision to enter into this market, make the commitment to handle this business in a professional and responsible manner. For the carrier who is determined to survive our economic conditions, taking short cuts or working at this on a “part-time” basis will find itself desperately short of its goals.

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Drivers are key to hazmat carrier's success

Motor carriers who transport hazardous materials drastically reduce the odds of an accident or incident when they instill appropriate policies and procedures that will avoid a catastrophe and lead to a successful delivery. The driver's role in this scenario is essential.

It begins with the driver receiving the dispatch to pick up a hazardous material shipment. After all the necessary and important information regarding the shipment is conveyed to the driver, the next step is for the driver to do a complete inspection of his/her vehicle to make sure that the vehicle is mechanically sound. This includes verifying that the vehicle has the required registration and permits for the hazmat that will be transported.

Next, the driver must make sure that the cargo area (or trailer) is clean and does not have any defects that could damage the hazmat, such as a broken floor or protruding wall panels.

When the driver arrives at the shipper's location and before the loading process begins, the driver should set the parking brake, chock the wheels, and verify that the shipping papers are complete and accurate. Anything that does not appear to be accurate with the information given to the driver by the dispatcher should immediately be questioned and resolved before the shipment is loaded. This also includes the driver matching the information on the shipping papers with the containers being shipped.

Most importantly, the driver should observe and, if possible, supervise the loading of the material to ensure the condition of the containers is suitable for transport and that no damage is created by improper loading techniques. Forklift damage is a common occurrence at this point. If there is damage, the driver should stop the loading process, refuse the shipment, and notify the dispatcher of the problem. This is why the driver must be involved with the loading process and take the responsibility to make certain that not only are rules and regulations followed, but that the safety of all concerned is recognized.

Once the loading is complete, the driver must block and/or brace the hazmat shipment in such a way that it cannot shift during transit. This will likely involve using load bars, straps, or extra dunnage effectively in order to protect the shipment.

Finally, the driver must place the correct placards on all four sides of the vehicle before leaving the shipper's dock. The shipper is expected to provide the placards, however, it is the carrier who must make sure the proper placards are affixed to the vehicle. Consequently the driver may have to carry a supply of placards as a backup to guarantee compliance.

While policies and procedures are initiated by management to guarantee successful transportation of the product, it is the driver who must implement these policies and procedures and therefore becomes the key to success.

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Operational procedures for handling hazmat

The responsibility of transporting hazardous materials begins with the employees working within the operation. These employees are usually customer service or dispatch personnel who have direct communication with the shipper of the hazardous material shipment. In order to reduce the risk of mishandling these shipments, specific procedures and policies need to be established and followed.

The first procedure is to ask every customer if the shipment they are offering contains hazardous materials. If the answer is yes, the next step is to ask for the proper shipping name, hazard class, ID number, and packing group. Providing the customer has all this information and that the information is correct, the dispatcher or customer service representative should have enough facts to decide if the carrier can handle the shipment.

If there are any questions regarding this shipment, the dispatcher or customer service representative must have the authority to ask the customer to fax a copy of the shipment paperwork for review before committing to this shipment. If operation personnel are not comfortable with the information provided by the shipper, they must have the right to refuse this shipment. Many times, carriers end up in bad situations because no one thought to say “no.”

The next step is to provide full and accurate information to the driver on exactly what is being shipped and any specific instructions he/she will need to perform the pick up. This information should include the loading, paperwork, driving, emergency and unloading procedures that must be followed based on the anticipated material.

A policy that many carriers follow is to have the hazardous material shipping papers faxed directly to the carrier for every shipment regardless of the circumstance. This allows the carrier to verify that the shipping papers are completed correctly and prevents any sudden surprises. These faxed shipping papers are kept in a log for the entire time the shipment is under carrier control. This practice allows quick access with all necessary information in the event of an accident, hazmat spill, or any other situation where an emergency responder is required to act.

Establishing operational procedures for handling hazardous material shipments simply makes good sense and provides the specific guidelines to avoid not only common mistakes, but also the unforeseen mishap that could cause disastrous results!

LTL and its role in transportation

Today’s economy and tomorrow’s projected level of business has many motor carriers searching for options that will improve their revenue, lower their costs, all the while limiting their investment throughout this entire process. They are looking for ways to reclaim the full utilization of their fleet and venture out into another niche that has made other carriers successful.

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taken out for delivery. Local terminals can be “spokes” for many different “hubs” and usually must be in order to provide next day service on shipments traveling 500 miles or less.

So what we see is the ongoing handling of freight which exposes the LTL carriers to potential loss, damage, and misloads to the wrong terminals. To protect itself from these dangers, an LTL carrier must have extensive planning, organizing, and follow up to provide competitive service that the customer expects. Their mix of freight usually is wide in range, size, and shape, and oftentimes includes hazardous materials. Today’s technology and how it is utilized by the LTL companies is the lifeblood of this niche carrier.

Beginning the moment the LTL carrier receives notification from the customer to pick up a shipment at their shipping dock, information is fed into a database which provides the carrier with a snapshot of the volume their outbound operation will be processing later that evening. Along with the essentials (customer name, address, the time that the shipment will be ready to ship, and normal shipping hours at the customer’s location), additional shipment characteristics are requested thereby feeding the planning process.

Typically, this information will include:

- Number of pieces (or pallets) being shipped
- Total weight of the shipment
- Destination zip code
- How much trailer space is required to transport
- Special characteristics of the shipment
- Is the shipment hazardous material; and if so, what critical information is required for proper handling and transport (hazard class, compatibility with other shipments, etc.)

In the case of the LTL carrier, the more information you can get from the shipper, the better informed the outbound operation will be in successfully processing and loading the shipment to the hub, and ultimately to destination. This information will be utilized in determining how many trailer loads the operation will require to move that day’s business, how much manpower will be required to unload and reload these same trailers, how many drivers will be needed to move these trailers to the hub that night, how many trailers will have to move to the hub with available capacity, and most importantly, what our costs will be in handling the day’s business.

The city dispatchers will work with this information long before the outbound operation requires it. The dispatcher will schedule a local driver to make the pick up, confirm the accuracy of the information regarding the shipment for planning purposes, and possibly send that same driver to pick up at other customer locations before dispatching the driver back to the terminal to initiate the outbound unloading and reloading operation.

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Depending on the size and location of the LTL terminal, this process will be repeated many times over with each form of communication from the customer. A smaller size terminal operation may handle 25-50 shipments in this manner while a larger operation would handle 250-500 shipments or possibly even more on a daily basis! This is why the information gathering system is crucial to this business.

Much, much more can be said about the role of the LTL carrier. As economic conditions continue to affect the capacity levels throughout the transportation industry, some motor carriers are finding themselves branching out and experimenting with LTL freight in attempts to fill backhaul lanes.

A simple checklist for post accident drug and alcohol testing

Anytime a motor carrier deals with a crash involving their own driver and vehicle, a series of events are set in motion to ensure that the proper facts are documented. Often there is a certain amount of confusion when assembling these facts, which can cause the motor carrier undue grief in their recording process.

One area of confusion is the post accident drug and alcohol testing. This is a separate requirement from the accident recording process, and it applies only to drivers operating vehicles that require a CDL to operate. There is a simple checklist carriers can follow when making the decision to send a driver for a required post accident test:

- Was the driver operating a vehicle that required a CDL to operate?
- Does the accident meet the Federal Motor Carrier Safety Administration's (FMCSA) definition of an accident? (See Section 390.5 for this definition)

If the answer to either of these two questions is no, then testing for drugs and alcohol is not required. If the answer to both is yes, then the next question is "Was there a fatality?" If that answer is yes, then testing is required.

If there was no fatality but the accident involved injury or towing, the next question is, "Was the driver cited for a moving violation as a result of the accident?" If that answer is yes, then testing is required. If the answer is no, then no testing is required.

If a drug and alcohol test is required, the testing must be conducted within the time limits prescribed by the FMCSA. Starting from the time of the accident, the **alcohol** test must be done within 2 hours. Knowing that this can be unrealistic depending on circumstances, the FMCSA has allowed for a 6-hour extension providing the motor carrier documents why the testing could not have taken place within the 2-hour window.

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The **drug** test, however, must be done within 32 hours of the accident, without any extension! The only exception would be if the driver was seriously injured or a citation was issued several days after the accident.

Keep in mind, once the windows have closed — 8 hours for the alcohol test, and 32 hours for the drug test — the driver is no longer subject to testing. Section 382.303 of the Federal Motor Carrier Safety Regulations is your regulation reference for post accident testing.



Road test, drug test must be completed before dispatch

Assuming you have qualified the driver-applicant as a candidate for hire and you are completing the required paperwork, one of the next steps in the hiring process is to administer a road test. It is at this point in the hiring process where knowing the regulations can prevent a commonly committed critical violation.

First of all, it should be pointed out that the regulations do not specify a title or particular training for the individuals who administer road tests. Section 391.31 states that an individual who conducts road tests must be competent in evaluating and determining whether the driver-applicant being tested is capable of operating the kind of commercial motor vehicle that he/she would be assigned. A carrier may use someone within the organization (veteran driver, supervisor, etc.) or someone from outside of the operation who is a “designated” person.

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Second, a good idea is to conduct the road test under similar conditions in which the driver-applicant will be working. For instance, the road test might be administered during the evening or late night hours, whichever is the normal working period for the particular job. Another example is giving the road test in heavy city traffic rather than a rural setting. The intent of the road test is to evaluate the driving and safety skills of the driver-applicant, therefore it should mirror actual driving circumstances.

The road test, which must be conducted using the type of vehicle the driver is to be assigned, must at a minimum include:

- A pretrip inspection;
- Coupling and uncoupling a combination, if the driver may drive such equipment;
- Placing the vehicle in operation;
- Using the vehicle's controls and emergency equipment;
- Driving in traffic and passing other vehicles;
- Turning;
- Braking and slowing by means other than braking; and
- Backing and parking.

The motor carrier is required to rate the driver's skill in each operation on a road test form, which then is to be signed by the person giving the test. The original of this form is to be retained in the driver's qualification file.

Finally, and most importantly, the road test can be given to a driver-applicant **without testing** the applicant for controlled substances. However — and here is where the commonly committed critical violation is made — until the driver-applicant is tested for controlled substances, the driver-applicant **cannot perform any safety-sensitive functions**, such as delivering or picking up a trailer containing freight at a customer's location. This would be considered a **dispatch**. A motor carrier must obtain a verified negative controlled substance test result prior to a driver's first dispatch.

Employee training and development

It's fair to say that more than 90 percent of today's trucking companies employ 12 or fewer drivers. And quite a few more employ less than 50 drivers! While these small carriers account for a large portion of the freight moving on our highways today, their budgets are usually tight and seldom include extras in the way of training and employee development.

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This is not to say that the small carrier is disadvantaged by its size when compared to the mega-fleets. While it may be true that the large carrier may have more “in-house” resources for training, personnel duties, and just sheer numbers in general to cover job assignments while others are in training, the large carrier also has budget constraints when it comes to training and employee development.

In fact, training is where the small carrier can be the most efficient. The small carrier can react faster, and with much greater efficiency in many matters, due to the size of their workforce. For example, staying in compliance with Federal Motor Carrier Safety Regulations (FMCSRs) is the first step in employee and driver training. A quick audit of driver qualification (DQ) files would determine if this should be a priority. Making sure your drivers have received the required training, including hazardous materials, entry-level driver, and longer combination vehicle training, if applicable, will not only satisfy these requirements, but will also help to hold down the carrier’s BASIC scores in the CSA program.

With a little research, the small carrier can work through this auditing process quickly and make the adjustments that are needed to stay in compliance with the regulations.

Next is employee development. This is essential for any size carrier and should be made a part of all budget planning. The small carrier must take the time for training their drivers and supervisors on all safety related matters from accident procedures to vehicle inspections. Other issues of importance, such as the CSA program, hours of service, and EOBRs (electronic on-board recorders), affects all motor carriers regardless of their size and should be a part of any employee development program and budget.

The common thread for carriers both large and small is that both must manage their costs effectively in order to get the most out of their assets. Neither one has the advantage over the other on training requirements.

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Transporting into Canada

To operate into Canada, you'll first need to contact Citizenship and Immigration for the proper clearances to enter Canada. Certain criminal convictions can make a person inadmissible to Canada, and it's best to know about this before your drivers arrive at the border. Go to <http://bitly.com/caneligibility> and <http://bitly.com/canfaq> for more info. It might be good to double-check even if you know your drivers meet the requirements.

Drivers will also require passports or passport cards to enter Canada and return to the United States. Go to <http://bitly.com/reqtraveldocs> for more information. Then, you'll have to ensure your vehicle/load is approved to enter Canada and that you have the proper paperwork/registrations to get through Canadian customs (Canada Border Services Agency (CBSA)). Go to <http://bitly.com/cancustoms> for more information. This website is also helpful <http://bitly.com/carrierrecords>. Many carriers work with brokers to handle the requirements to cross the border, especially if they'll be making regular trips to Canada. Working with a broker is not required, but it might make things easier. Canada has also implemented e-Manifest (similar to ACE). Go to <http://bitly.com/emanifestportal>.

Passenger carriers operating into Canada should reference <http://bitly.com/transobligations>. Contact the CBSA for guidance.

There are two provinces, Ontario and Quebec, that require U.S.-based companies to obtain their provincial safety registrations. If you're operating into **Ontario**, you would need to obtain Ontario's Commercial Vehicle Operator Registration (CVOR). Go to <http://bitly.com/ontariovehiclereg> for more information. Call the Ministry of Transportation Ontario at (416) 246-7166 for information on how to apply.

If you're operating into **Quebec**, you'd need to obtain a Registration Identification Number (RIN). Information on obtaining the RIN can be found at <http://bitly.com/ctquebec> and <http://bitly.com/ctqforms>.

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Ontario and Quebec also require certain vehicles to have their speed limiters set to 105 km/hour (65 mph). For more information, refer to <http://bitly.com/spdlimiters> and <http://bitly.com/truckspdlimiters>.

If you're operating into British Columbia, you'll need to file proof of insurance with the Insurance Corporation of British Columbia. Call (800) 661-1866 for information.

If your vehicles are already registered under IRP and IFTA - all that you would need for IFTA is your IFTA license/decals and to track the mileage and fuel while you are in Canada. For IRP, however, you would need to add the province(s) you want to enter on your IRP cab card through your base state OR obtain a trip permit to enter and travel in the province(s).

A U.S. carrier entering Canada is required to respect the Canadian HOS requirements, **including having the required information on the daily log**. Go to <http://bitly.com/mvtransportact> for more information.

U.S. drivers operating U.S.-plated vehicles into Canada have reciprocity regarding trip inspections. Canada will accept a U.S. driver's previous days' post-trip inspection report, but the driver must carry it with him/her in the vehicle while operating in Canada. The report must be no more than 24 hours old. Coming back to the U.S., you'll have to use the U.S. Automated Commercial Environment (ACE) program. ACE requires you to submit an e-manifest prior to arriving at the U.S. Customs and Border Protection port of entry. More information on ACE is available at <http://1.usa.gov/customsace>. Again, brokers can be used but you are not required to do so. You can also contact CBSA at the port of entry where you will be crossing the border into Canada, or a customs broker, for more information. CBSA's website has contact information <http://bitly.com/cancontact>

Recordkeeping best practices

Motor carriers are required to keep numerous records to document compliance with the Federal Motor Carrier Safety Regulations (FMCSRs). In the event of an investigation or audit, the investigator will be asking you to present your records to show compliance. Though the regulations specify which records have to be kept - such as drivers' logs, insurance documents, and medical certificates, they do not specify where or how they have to be kept. Unless a regulation specifies a different location, required records can be kept:

- At a company's principal place of business,
- At a regional office,
- At a driver work-reporting location, or
- At the offices of a third party.

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The important thing to remember is that records must be made available to an authorized FMCSA inspector within 48 hours after a request is made. The 48-hour timeframe does not include Saturdays, Sundays, or federal holidays.

If a third party is hired to maintain a motor carrier's documents, liability for the condition of those records will still fall to the motor carrier. In other words, the motor carrier is subject to the regulations, not the third party. If the third party loses a record or fails to deliver a record to an FMCSA auditor, the motor carrier will still be held responsible.

Motor carriers also have options when it comes to the organization of their FMCSA-required records. Though certain FMCSRs seem to suggest that the records must be kept in distinct files arranged by topic, this is not necessarily so. For example, 49 CFR Parts 382 and 391 contain requirements for:

- A driver qualification (DQ) file (§391.51),
- A driver investigation history file (§391.53),
- A longer-combination-vehicle driver-instructor qualification file (§391.55), and
- A drug and alcohol testing file (§382.401).



The above files, however, do not have to be stored in four separate folders or cabinets (although that is one option). All of these files, or any combination of them, along with a driver's personnel file, could be stored in a single file. If files are combined, follow the most stringent recordkeeping requirements. For example, the drug/alcohol and driver investigation history files must be stored in "a secure location with controlled access." If one of these files is combined with the DQ file, then the entire file must be secured, even though the DQ file is not subject to the same security requirements.

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The most frequently committed violation of recordkeeping regulations is not having sufficient or complete files. The other extreme in this situation, although not a violation of any regulation, is to have too much information in a file. “Better to have too much than too little” and “more is better” do not always apply. This is all the more reason why a process or system should be in place to assist with proof of compliance in the event of an audit.

Federal Motor Carrier Safety Regulations recordkeeping requirements

The following is a condensed list of FMCSR recordkeeping requirements. These records and documents must be retained at motor carrier facilities. Where applicable, the regulation number has been included to assist in getting more information.

- **Proof of insurance.** This is normally a form called a MCS-82 or MCS-90. It is a “motor carrier endorsement” that must be on file along with the policy and policy limits (§387.9 or §387.33).
- **MCS-150, OP-1,** and/or other federal and state filings related to being a motor carrier.
- **Accident register.** This is where the information on serious accidents, such as tow-away, injury, and fatality accidents is recorded by the company (§390.15).
- **DOT drug and alcohol testing program documents.** If operating vehicles requiring a CDL, copies of policy receipts signed when the driver was given the policy, and test results (§382.401).
- **A driver qualification file** for each driver that operates a vehicle under your DOT number. This applies no matter who owns the vehicle or who signs the driver’s paycheck. The DQ file must include:
 - **A driver’s application** for employment (see §391.21).
 - **Motor vehicle records (MVRs)** from states the driver had licenses in during the three years previous to hiring (§391.23).
 - **Road test form and certificate** (§391.31), or license or certificate accepted in lieu of road test (§391.33).
 - **Medical exam certificate,** original or a copy (§391.43).
 - **Records of notifications** provided by the driver related to traffic convictions and license suspensions (§383.31 and §383.33).
 - **Annual motor vehicle record** (§391.25).
 - **Annual list of violations** (§391.27).
 - **Annual review of driving record and performance,** and a supervisor’s note related to the annual review (§391.25).

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What paperwork is required to be in our vehicles?

In order to be compliant with industry regulations and to avoid unnecessary violations that could occur during a roadside inspection, a common question asked by carriers is, “What paperwork or documentation is required to be in our commercial motor vehicles?” While the list is not particularly extensive, there are enough items to create a “checklist” of required paperwork for management and drivers to periodically audit to ensure compliance with regulations.

Following is a list of required documents that must be carried in the vehicle for carriers of non-hazardous materials and an additional list of items for carriers of hazardous materials. Where applicable, the regulation number has been included to assist in getting more information.

For a non-hazardous material (non-HM) carrying vehicle:

- **Truck registration.** This is commonly referred to as “the registration,” “cab card” or “IRP card” (if the vehicle is operating in interstate operations).
- **Fuel tax permit** (“IFTA cab card”). This normally applies if the vehicle is operating in interstate operations.
- **Proof of insurance** in some states (policy card is adequate).
- **Shipment paperwork.** This normally involves documentation showing what is being transported, where it originated, where it’s going, and who it is being transported for.
- **Driver credentials** (license and medical card).
- **Driver hours-of-service records**, unless the driver is operating under one of the short-haul exceptions in §395.1(e).
- Copy of **Annual Inspection paperwork** if no decal is affixed to the vehicle.
- A copy of the **Lease Agreement** during the period the vehicle is being leased, proving ownership of the vehicle and the person/carrier responsible for the operation of the vehicle (§376.11(c)(2)).

If the vehicle is transporting hazardous materials, there are some additional requirements. These include:

- Shipment paperwork that details the hazardous materials on the vehicle and provides the required emergency response and emergency contact information.
- Pipeline and Hazardous Materials registration if transporting amounts of hazardous materials that require placarding.
- Federal Motor Carrier Safety Administration (FMCSA) Hazardous Materials Safety Permit (HMSP) if transporting any of the extremely dangerous hazardous materials (see §385.403 for details).

The actual PHMSA registration and HMSP do not need to be in the cab if it is listed on the shipment paperwork.

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Expanding the pretrip checklist

Many motor carriers have discovered the value of a pretrip inspection of the vehicle. Making sure all lights are operable, tire treads are within range, brakes are adjusted properly, and windshield wipers are functioning are only part of a list of safety features drivers should check before starting out on their daily trip. If for no other reason than their own safety and the safety of motorists they will share the highways with, this 15-minute inspection can go a long way to prevent any mishaps on the road.

Making this inspection even more important is the unscheduled roadside inspection the driver could come across at any point of his or her journey. Any safety defects found during this event could have an effect on CSA scores that could lead to some form of intervention from the FMCSA, including a full-blown audit if the carrier's BASIC scores are over established thresholds.

Knowing that pretrip inspections are significant to a well-managed safety program, the carrier should also consider more than just a pretrip inspection of the vehicle. Drivers should also ensure that they, themselves, are ready for the trip they are about to embark on. This includes that they:

- Have the necessary credentials in their possession (current license and medical card),
- Have their hours-of-service records (logs) up to date,
- Have their shipment paperwork with them and accessible (especially if hazardous material is being transported),
- Are adequately rested and healthy enough to drive,
- Are properly dressed for the day's work and the environment they will encounter,
- Have their route and instructions for the day,
- Have any business that requires texting or calling taken care of before they leave,

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Management must keep the original of each DVIR and the certification of repairs for 90 days. All older reports can be disposed of.

The mark of distinction

A motor carrier leasing a commercial motor vehicle (CMV) must comply with the marking requirements stated in §390.21 of the Federal Motor Carrier Safety Regulations. While this particular regulation may have little to do with safety or the safe operation of a CMV, it does have a significant purpose and is the responsibility of motor carriers operating the equipment regardless of who owns the equipment.

Is the carrier leasing the CMV required to display their own company name and DOT number on these vehicles? Most rented CMVs are already marked with the name and USDOT number of the rental company/owner. However, Companies who own and offer to rent commercial motor vehicles (CMVs) are not required to post their DOT number on the CMVs they own. In fact, they are not required to have a DOT number at all if they do not operate the CMV in interstate or intrastate commerce or on public highways. This could cause them to be in violation of §390.21 if their CMV was taken for a test run after maintenance. Nonetheless, they are not required to mark their CMVs with their DOT number if they choose not to.

What this means to carriers wishing to rent a CMV, even for less than 30 days, is that the carrier (lessee) must show its own DOT number on the CMV it is renting if the owner (lessor) of the CMV does not. Section 390.21(b)(1) states that the marking must display the information of the motor carrier operating the CMV. Whatever the outcome, the lessee must carry inside the vehicle the rental agreement between the lessee and the lessor/owner.

Section 390.21(e) is a straightforward explanation of the motor carrier's responsibilities in the short term leasing of CMVs. The core of this regulation is that all commercial motor vehicles operated by a motor carrier must be legally marked with two pieces of information: either the motor carrier's (lessee) name as listed on its MCS-150 and its USDOT number, or the owner's (lessor) name and USDOT number. This must be done **before** the vehicle is operated on public roads.

A motor carrier who is renting the CMV for a period of 30 days or longer **must** display its own legal name and USDOT number by a removable device or sign on both sides of the rented CMV. Also, a copy of the rental agreement must be carried on the rented CMV during the full term of the rental agreement. The carrier is also responsible for the maintenance recordkeeping related to the vehicle.

All motor carriers leasing a CMV must comply with the marking requirements stated in §390.21 of the Federal Motor Carrier Safety Regulations. This regulation has a significant purpose as it clearly defines the responsibility of motor carriers operating the CMV regardless of who owns the CMV.

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Reserved

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REFERENCE

Sample Contracts and Agreements

Sample contracts and agreements

STANDARD TRIP LEASE											
(49 C.F.R. PART 376)											
From (Date) _____		To (Date) _____									
This agreement is between (Name of Lessee) _____ MC# _____											
Address _____		City _____		State _____		Zip _____		Phone _____			
hereinafter called the LESSEE, carrier engaged in the business of transporting property by motor vehicle, AND											
(Owner-Lessor's Name) _____ Soc. Sec./Fed. ID# _____											
Address _____		City _____		State _____		Zip _____		Phone _____			
hereinafter called the LESSOR, being the owner of or Lessee with right of release to Lessee herein, the equipment identified below.											
EQUIPMENT IDENTIFICATION											
EQUIPMENT	MAKE	YEAR	MODEL	SERIAL NUMBER	UNIT NUMBER	LICENSE NO.	STATE	YEAR			
TRACTOR											
TRAILER											
TRAILER											
COMPENSATION AGREEMENT											
For and in consideration of the sum of \$ _____, or _____ % of gross revenue, or \$ _____ (cents/cwt; cents/loaded mile), it is hereby agreed that the Lessor shall lease the vehicles identified below to Lessee for use in loading and transporting such property as Lessee may require for the time period specified and under the terms and conditions set forth below and on the reverse side hereof which are made a part hereof the same as if written below. Payment of said compensation is due and payable to Lessor within 15 days after submission of necessary delivery documents, Lessee identification device, and other paperwork concerning trip in the service of Lessee. Such delivery documents and paperwork shall consist of log books required by the D.O.T. and those documents, listed as follows, necessary for the authorized carrier to secure payment from the shipper:											

The _____ shall be responsible for loading & unloading the property onto and from the motor vehicle. The compensation, if any, to be paid for this service is \$ _____.											
In addition, the Lessee agrees to pay Lessor _____ % of all detention and accessorial service charges.											
REPORT OF VEHICLE INSPECTION											
Indicate in the proper column the result of the inspection of each item listed:											
ITEM	NOT DEFECTIVE	DEFECTIVE	DESCRIPTION OF DEFECT	ITEM	NOT DEFECTIVE	DEFECTIVE	DESCRIPTION OF DEFECT	ITEM	NOT DEFECTIVE	DEFECTIVE	DESCRIPTION OF DEFECT
Body				Fuel System				Springs			
Brakes				Glass				Steering			
Cooling System				Horn				Tires			
Drive Line				Leaks				Wheels			
Emerg. Equip.				Lights (non-vehicle)				Windshield			
Engine				Reflectors				Wipers			
Exhaust				Speedometer							
Any other items requiring attention: _____											
I hereby certify that on the _____ day of _____ I carefully inspected the equipment described above and that this is a true and correct report of the result of such inspection. X _____ (Inspector's Signature)											
HOURS OF SERVICE CERTIFICATION (49 C.F.R. Sec. 395.8(j))											
Driver No. 1 _____						Driver No. 2 _____					
Address _____						Address _____					
Physical Date _____ Soc. Sec. No. _____						Physical Date _____ Soc. Sec. No. _____					
Commercial Motor Vehicle Operator's Lic. No. _____						Commercial Motor Vehicle Operator's Lic. No. _____					
This is to certify that my total on-duty hours for the preceding 7 days were _____ hours.						This is to certify that my total on-duty hours for the preceding 7 days were _____ hours.					
My last tour of duty terminated at: _____ A.M. _____ P.M. Date _____						My last tour of duty terminated at: _____ A.M. _____ P.M. Date _____					
X _____ (DRIVER-LESSOR SIGNATURE)						X _____ (DRIVER-LESSOR SIGNATURE)					
TRIP REPORT											
SHIPPER	ORIGIN	CONSIGNEE	DESTINATION	WEIGHT	PRO. NO.						
END-OF-TRIP REPORT _____ A.M. _____ P.M.			SETTLEMENT			RECEIPT FOR EQUIPMENT					
Date _____			Trip Revenue \$ _____			Carrier-lessee hereby accepts receipt of above equipment on _____ 20 _____ at _____ A.M. _____ P.M.					
DID YOU HAVE: An Accident? _____			Total Revenue \$ _____			by X _____ A.M. _____ P.M.					
A Road Failure? _____			Less Advance \$ _____			RELEASE OF EQUIPMENT					
Road Repairs? _____			Cargo Claims \$ _____			_____ 20 _____ at _____ A.M. _____ P.M.					
WAS ANY CARGO: Stolen? _____			Net Settlement \$ _____			Final Destination _____					
Damaged? _____ Short? _____						Signed X _____					
WERE YOU DELAYED: _____ If yes, how long _____ and for what reason? _____						Above signature will acknowledge a complete release of said equipment.					
IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT AT											
						Signature of Lessor X _____					
City _____ State _____ Date _____						Signature of Lessee X _____					

FLEET MANAGEMENT PRO

AGREEMENT TERMS AND CONDITIONS

WHEREAS, LESSEE is a Motor Carrier engaged in the transportation of property in interstate commerce and whereas Lessor is the owner of the motor vehicle equipment as described on the reverse side or is a Lessee thereof with right of release to Lessee herein and desires to lease and hire said motor vehicle equipment to Lessee for the purpose of transporting freight thereon over the routes of Lessee in accordance with the Terms and Conditions of this Agreement. Now, therefore, in consideration of the mutual covenants and agreements herein contained, the parties do hereby agree as follows:

1. Lessor does hereby lease to Lessee the motor vehicle equipment as described on reverse side hereof:
2. It is understood that exclusive possession, control, use and responsibility for the operation of the equipment (including full responsibility to the public, the shippers, and all regulatory agencies having jurisdiction) shall be that of the Lessee from the time the Lessee takes possession of the equipment. The Lessee shall issue the Lessor at that time a receipt specifically identifying the equipment to be leased and the date and time of day possession is transferred. The Lessee's exclusive possession, control, use and responsibility for the operation of the equipment shall last until:
 - (A) possession of the equipment is surrendered to the Lessor and the Lessor issues a receipt to the Lessee specifically identifying the equipment, date and time of day possession was returned to it; or
 - (B) until possession of the equipment is returned to the Lessor or given to another carrier in an interchange of equipment where such is contemplated. Such receipts may be signed by the Lessor and Lessee or their authorized representatives and a copy thereof shall be carried in the equipment while the equipment is in the possession of the Lessee.
3. Lessee hereby agrees to pay Lessor compensation for the use of said motor vehicle and the transportation service performed as outlined on the reverse side hereof.
4. Lessee agrees to provide the Lessor whose compensation is based on a percentage of gross revenue, before or at the time of settlement, a copy of the rated freight bill, computer generated document, or in the case of a contract carrier another form of documentation that contains the same information. Furthermore, the Lessor has the right to examine the Lessee's tariff, regardless of the method of compensation.
5. Lessor agrees that he will at all times, during the existence of this agreement, keep said motor vehicle in good condition and repair. In addition, the Lessor agrees to pay for all fuel, fuel and mileage taxes (including New York Mileage taxes), empty mileage, permits of all types, tolls, ferries, and base plates and licenses (unused portions to remain with the Lessor). If the Lessee is authorized to receive a refund or a credit for base plates purchased by the Lessor from, and issued in the name of, the Lessee or if the base plates are authorized to be sold by the Lessee to another Lessor, the Lessee shall refund to the initial Lessor on whose behalf the base plate was first obtained a prorated share of the amount received.
6. Lessee further agrees that having assumed exclusive possession, control, use and responsibility for the operation of the equipment during the period of the lease, Lessee will comply with all laws, rules and regulations of the Federal Highway Administration, Department of Transportation or any other authority or administrative agency having jurisdiction over the operations of motor vehicles, individual state or Federal. Lessee agrees to maintain this lease on the equipment at all times during the lease term, or alternatively, maintain on the equipment the requisite identification statement called for by 49 C.F.R. § 376.11 (c).
7. Lessor agrees that it will indemnify Lessee through deduction or payment for any and all pilferage, spoilage, shortage, loss or damage to cargo, or for fines resulting from violation of any applicable Federal, state or municipal law or regulation which occur as a result of the negligence or alleged negligence of Lessor, its agents, servants or employees, provided that Lessee furnishes to Lessor, before any such deductions are made, a written explanation and itemization of the deductions computed. Except when the violation results from the acts or omissions of the Lessor, the Lessee shall assume the risks and costs of fines for overweight and oversize trailers when the trailers are pre-loaded, sealed, or the load is containerized, or when the trailer or lading is otherwise outside of the Lessor's control, and for improperly permitted overdimension and overweight loads and shall reimburse the Lessor for any fines paid by the Lessor.
8. Lessee agrees to provide all identification of equipment required by all government agencies. Lessor agrees to display on both sides of each leased vehicle operated under its own power, either alone or in combination, all such identification according to standards set by the government agencies and the Lessee. Those standards include, but are not necessarily limited to, the display of the name of the Lessee under whose authority the vehicle(s) is being operated and the certificate, permit, or docket number assigned to such operating authority by the Federal Highway Administration, or any other number, name, or identifying device required by any other government agency. Such display of name and number shall be in letters and figures in sharp color contrast to the background and shall be readily legible during daylight hours from a distance of 50 feet while the vehicle is not in motion. Such display shall be kept in such manner as to remain so legible. The display may be accomplished through use of a movable device.
9. Lessee further agrees that this lease shall terminate at destination stated, and that Lessee will remove all signs, indications, or other evidence of name and certificate numbers belonging to Lessee before surrendering possession of equipment to Lessor. Lessor, however, agrees to assist the Lessee by removing for him all such identification and returning the same to the Lessee, or to obliterate fully and immediately all such identification upon termination of this agreement. In case of lost or stolen identification devices, a letter certifying its removal, will suffice.
10. Lessee agrees to maintain insurance for the protection of the public in accordance with 49 C.F.R. § 387 Subpart C and 49 U.S.C. § 13906. However, Lessor hereby agrees that it will indemnify and save the Lessee harmless, through deduction or payment, for any and all claims, suits, losses, fines, thefts, damages, liabilities, costs, or other expenses arising out of, based upon, or incurred because of injury to any person or persons or damage to property sustained or which may be alleged to have been sustained as a result of the use of the equipment leased hereby during the term of the lease by reason of any negligence or alleged negligence on the part of the Lessor, its agents, servants, or employees. Lessor further agrees to furnish Lessee a certificate of insurance naming Lessee as additional insured. Lessor agrees to obtain at his own expense bobtail and deadhead insurance. Insofar as damage to property is concerned, Lessee shall furnish to Lessor a written explanation and itemization of the deductions computed before such deductions are made. Nothing contained in this Paragraph 10 shall be construed to in anyway limit the liability of the Lessee to the public in connection with the use of said equipment under this lease.
11. Lessee agrees that the Lessor is not required to purchase or rent any product, equipment, or services from the Lessee as a condition of this agreement.
12. Lessor retains the status of an independent contractor to the Lessee Named, and Lessor further agrees to be responsible for and provide workers compensation coverage for all drivers furnished to Lessee.

(Rev. 2/98)

FLEET MANAGEMENT PRO

MASTER LEASE AGREEMENT

(49 C.F.R. PART 376)

From _____ To _____
(Date) (Date)

This agreement is between (Name) _____ MC# _____
(Date) (Lessee)

Address _____ City _____ State _____ Zip _____ Phone _____

hereinafter called the LESSEE, a carrier engaged in the business of transporting property by motor vehicle, AND

(Owner-Lessor's Name) _____ Soc. Sec./Fed. ID# _____

Address _____ City _____ State _____ Zip _____ Phone _____

hereinafter called the LESSOR, being the owner of or Lessee with right of release to Lessee herein, the equipment identified below.

EQUIPMENT IDENTIFICATION

EQUIPMENT <small>(Tractor/Trailer)</small>	MAKE	YEAR	MODEL	SERIAL NUMBER	UNIT NUMBER	LICENSE NO.	STATE	YEAR

COMPENSATION AGREEMENT

For and in consideration of the sum of \$ _____, or _____ % of gross revenue, or \$ _____ (cents/cwt; cents/loaded mile), it is hereby agreed that the Lessor shall lease the vehicles identified below to Lessee for use in loading and transporting such property as Lessee may require for the time period specified and under the terms and conditions set forth below and on the reverse side hereof which are made a part hereof the same as if written below. Payment of said compensation is due and payable to Lessor within 15 days after submission of necessary delivery documents, Lessee identification device and other paperwork concerning trip in the service of Lessee. Such delivery documents and paperwork shall consist of log books required by the D.O.T. and those documents, listed as follows, necessary for the authorized carrier to secure payment from the shipper:

The _____ shall be responsible for loading & unloading the property onto and from the motor vehicle. The compensation, if any, to be paid for this service is \$ _____.

In addition, the Lessee agrees to pay Lessor _____ % of all detention and accessorial service charges.

REMINDER TO LESSEE: Motor carriers are required to use drivers who are qualified under the safety regulations at 49 CFR Secs. 391.63 and 391.65. Also, Section 395.8(j)(2) requires a motor carrier who uses a driver intermittently to obtain from that driver a signed statement giving the total time on duty during the immediately preceding 7 days and the time at which the driver was last relieved from duty prior to beginning work for the motor carrier.

SPECIAL INSTRUCTIONS: _____

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT AT

Signature of Lessor X _____

Signature of Lessee X _____

City _____ State _____ Date _____

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**FORM NO. 82-FS-C4
 (Rev. 10/98)**

FLEET MANAGEMENT PRO

MASTER LEASE SUPPLEMENT AND EQUIPMENT RECEIPT

REPORT OF VEHICLE INSPECTION (Optional)

Indicate in the proper column the result of the inspection of each item listed:

ITEM	NOT DEFECTIVE		DESCRIPTION OF DEFECT	ITEM	NOT DEFECTIVE		DESCRIPTION OF DEFECT	ITEM	NOT DEFECTIVE		DESCRIPTION OF DEFECT
	DEFECTIVE				DEFECTIVE				DEFECTIVE		
Body				Fuel System				Speedometer			
Brakes				Glass				Springs			
Cooling System				Horn				Steering			
Coupling Devices				Leaks				Tires			
Drive Line				Lights (state which)				Wheels			
Emerg. Equip.				Mirrors, Rear Vision				Windshield Wipers			
Engine				Reflectors							
Exhaust											

Any other items requiring attention: _____

I hereby certify that on the _____ day of _____ I carefully inspected the equipment described above and that this is a true and correct report of the result of such inspection **X** _____ (Inspector's Signature)

HOURS OF SERVICE CERTIFICATION (49 CFR Sec. 395.8(j)) (Required)

Driver No. 1 _____	Driver No. 2 _____
Address _____	Address _____
Physical Date _____ Soc. Sec. No. _____	Physical Date _____ Soc. Sec. No. _____
Chauffeur's Lic. No. _____	Chauffeur's Lic. No. _____
This is to certify that my total on-duty hours for the preceding 7 days were _____ hours.	This is to certify that my total on-duty hours for the preceding 7 days were _____ hours.
My last tour of duty terminated at: _____ A.M. / P.M. Date _____	My last tour of duty terminated at: _____ A.M. / P.M. Date _____
X _____ (DRIVER-LESSOR SIGNATURE)	X _____ (DRIVER-LESSOR SIGNATURE)

MASTER LEASE EQUIPMENT RECEIPTS

(49 CFR Sec. 376.11)

Section 376.11(b) of the leasing regulations requires a carrier-lessee to issue an equipment receipt to a lessor before taking possession of the lessor's equipment. At the end of the lease agreement, the lessor in turn must issue a receipt to the lessee. The receipts that follow accomplish both requirements. The lessee fills out the top paragraph and then transmits the receipt to the lessor via mail, telegraph, facsimile, or other similar means. Upon completion of the lease movement, the lessor fills out the second paragraph and transmits his receipt to the lessee via similar means.

RECEIPT FOR EQUIPMENT. Carrier-Lessee _____ (Name) hereby accepts receipt for equipment as identified – MC # _____ Equip. ID/Serial # _____ – from Owner-Lessor _____ (Name) who is the owner of or the Lessee with right to release to Lessee herein said equipment.

Lessor's address _____ (City) _____ (State) _____ (Zip) _____ (Phone)

Load origin _____ (City) _____ (State) _____ (Zip) _____ (Phone) Date _____ at _____ a.m./p.m.

PRO # _____ Shipment Destination _____ (City) _____ (State)

Pieces _____ Weight _____

X _____ (Lessee's Signature)

RELEASE OF EQUIPMENT:

Date _____ at _____ a.m./p.m.

Final Destination _____ (City) _____ (State)

X _____ (Lessor's Signature)

Above signature will acknowledge a complete release of said equipment.

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(Pt. 1) LESSEE COPY

**84-FS-C-3 1586
(Rev. 4/07)**

FLEET MANAGEMENT PRO

AGREEMENT TERMS AND CONDITIONS

WHEREAS, LESSEE is a Motor Carrier engaged in the transportation of property in interstate commerce and whereas Lessor is the owner of the motor vehicle equipment as described on the reverse side or is a Lessee thereof with right of release to Lessee herein and desires to lease and hire said motor vehicle equipment to Lessee for the purpose of transporting freight thereon over the routes of Lessee in accordance with the Terms and Conditions of this Agreement. Now, therefore, in consideration of the mutual covenants and agreements herein contained, the parties do hereby agree as follows:

1. Lessor does hereby lease to Lessee the motor vehicle equipment as described on reverse side hereof:
2. It is understood that exclusive possession, control, use and responsibility for the operation of the equipment (including full responsibility to the public, the shippers, and all regulatory agencies having jurisdiction) shall be that of the Lessee from the time the Lessee takes possession of the equipment. The Lessee shall issue the Lessor at that time a receipt specifically identifying the equipment to be leased and the date and time of day possession is transferred. The Lessee's exclusive possession, control, use and responsibility for the operation of the equipment shall last until:
 - (A) possession of the equipment is surrendered to the Lessor and the Lessor issues a receipt to the Lessee specifically identifying the equipment, date and time of day possession was returned to it; or
 - (B) until possession of the equipment is returned to the Lessor or given to another carrier in an interchange of equipment where such is contemplated. Such receipts may be signed by the Lessor and Lessee or their authorized representatives and a copy thereof shall be carried in the equipment while the equipment is in the possession of the Lessee.
3. Lessee hereby agrees to pay Lessor compensation for the use of said motor vehicle and the transportation service performed as outlined on the reverse side hereof.
4. Lessee agrees to provide the Lessor whose compensation is based on a percentage of gross revenue, before or at the time of settlement, a copy of the rated freight bill, computer generated document, or in the case of a contract carrier another form of documentation that contains the same information. Furthermore, the Lessor has the right to examine the Lessee's tariff, regardless of the method of compensation.
5. Lessor agrees that he will at all times, during the existence of this agreement, keep said motor vehicle in good condition and repair. In addition, the Lessor agrees to pay for all fuel, fuel and mileage taxes (including New York Mileage taxes), empty mileage, permits of all types, tolls, ferries, and base plates and licenses (unused portions to remain with the Lessor). If the Lessee is authorized to receive a refund or a credit for base plates purchased by the Lessor from, and issued in the name of, the Lessee or if the base plates are authorized to be sold by the Lessee to another Lessor, the Lessee shall refund to the initial Lessor on whose behalf the base plate was first obtained a prorated share of the amount received.
6. Lessee further agrees that having assumed exclusive possession, control, use and responsibility for the operation of the equipment during the period of the lease, Lessee will comply with all laws, rules and regulations of the Federal Highway Administration, Department of Transportation or any other authority or administrative agency having jurisdiction over the operations of motor vehicles, individual state or Federal. Lessee agrees to maintain this lease on the equipment at all times during the lease term, or alternatively, maintain on the equipment the requisite identification statement called for by 49 C.F.R. § 376.11 (c).
7. Lessor agrees that it will indemnify Lessee through deduction or payment for any and all pilferage, spoilage, shortage, loss or damage to cargo, or for fines resulting from violation of any applicable Federal, state or municipal law or regulation which occur as a result of the negligence or alleged negligence of Lessor, its agents, servants or employees, provided that Lessee furnishes to Lessor, before any such deductions are made, a written explanation and itemization of the deductions computed. Except when the violation results from the acts or omissions of the Lessor, the Lessee shall assume the risks and costs of fines for overweight and oversize trailers when the trailers are pre-loaded, sealed, or the load is containerized, or when the trailer or lading is otherwise outside of the Lessor's control, and for improperly permitted overdimension and overweight loads and shall reimburse the Lessor for any fines paid by the Lessor.
8. Lessee agrees to provide all identification of equipment required by all government agencies. Lessor agrees to display on both sides of each leased vehicle operated under its own power, either alone or in combination, all such identification according to standards set by the government agencies and the Lessee. Those standards include, but are not necessarily limited to, the display of the name of the Lessee under whose authority the vehicle(s) is being operated and the certificate, permit, or docket number assigned to such operating authority by the Federal Highway Administration, or any other number, name, or identifying device required by any other government agency. Such display of name and number shall be in letters and figures in sharp color contrast to the background and shall be readily legible during daylight hours from a distance of 50 feet while the vehicle is not in motion. Such display shall be kept in such manner as to remain so legible. The display may be accomplished through use of a movable device.
9. Lessee further agrees that this lease shall terminate at destination stated, and that Lessee will remove all signs, indications, or other evidence of name and certificate numbers belonging to Lessee before surrendering possession of equipment to Lessor. Lessor, however, agrees to assist the Lessee by removing for him all such identification and returning the same to the Lessee, or to obliterate fully and immediately all such identification upon termination of this agreement. In case of lost or stolen identification devices, a letter certifying its removal, will suffice.
10. Lessee agrees to maintain insurance for the protection of the public in accordance with 49 C.F.R. § 387 Subpart C and 49 U.S.C. § 13906. However, Lessor hereby agrees that it will indemnify and save the Lessee harmless, through deduction or payment, for any and all claims, suits, losses, fines, thefts, damages, liabilities, costs, or other expenses arising out of, based upon, or incurred because of injury to any person or persons or damage to property sustained or which may be alleged to have been sustained as a result of the use of the equipment leased hereby during the term of the lease by reason of any negligence or alleged negligence on the part of the Lessor, its agents, servants, or employees. Lessor further agrees to furnish Lessee a certificate of insurance naming Lessee as additional insured. Lessor agrees to obtain at his own expense bobtail and deadhead insurance. Insofar as damage to property is concerned, Lessee shall furnish to Lessor a written explanation and itemization of the deductions computed before such deductions are made. Nothing contained in this Paragraph 10 shall be construed to in anyway limit the liability of the Lessee to the public in connection with the use of said equipment under this lease.
11. Lessee agrees that the Lessor is not required to purchase or rent any product, equipment, or services from the Lessee as a condition of this agreement.
12. Lessor retains the status of an independent contractor to the Lessee Named, and Lessor further agrees to be responsible for and provide workers compensation coverage for all drivers furnished to Lessee.

(Rev. 2/98)

FLEET MANAGEMENT PRO

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UNIFORM STRAIGHT BILL OF LADING

ORIGINAL – NOT NEGOTIABLE

Name of Carrier _____

From _____ Date _____

Street _____ City _____ County _____ State _____ Zip _____

Delivering Carrier _____ Trailer No. _____

Additional Shipment Information _____

Carrier's Pro No. _____

Shipper's Bill of Lading No. _____

Consignee's Reference/PO No. _____

Carrier's Code (SCAC) _____

RECEIVED, subject to individually determined rates or contracts that have been agreed upon in writing between the carrier and shipper, if applicable, otherwise to the rates, classifications and rules that have been established by the carrier and are available to the shipper, on request;

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown) marked, consigned, and destined as shown below, which said carrier agrees to carry to destination, if on its route, or otherwise to deliver to another carrier on the route to destination. Every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on the back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to _____
On Collect on Delivery Shipments, the letters "COD" must appear before consignee's name.

Destination Street _____
 City _____ County _____ State _____ Zip _____

Collect on Delivery \$ _____ and remit to: _____	C.O.D. charge Shipper <input type="checkbox"/>
Street _____ City _____ State _____	to be paid by Consignee <input type="checkbox"/>

Handling Units No. Type	Packages No. Type	HM	Kind of Package, Description of Articles, Special Marks and Exceptions (Subject to correction)	Weight (Subject to Correction)	Class or Rate Ref. (For Info. Only)	Cube (Optional)

☒ Mark "X" to designate Hazardous Materials as defined in Department of Transportation Regulations.

NOTE (1) Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property as follows:
 "The agreed or declared value of the property is specifically stated by the shipper to be not exceeding _____ per _____."

NOTE (2) Liability Limitation for loss or damage on this shipment may be applicable. See 49 U.S.C. § 14706(c)(1)(A) and (B).

NOTE (3) Commodities requiring special or additional care or attention in handling or stowing must be so marked and packaged as to ensure safe transportation with ordinary care. See Sec. 2(e) of NMFC Item 360.

Freight charges are PREPAID unless marked collect. CHECK BOX IF COLLECT

FOR FREIGHT COLLECT SHIPMENTS:

If this shipment is to be delivered to the consignee, without recourse on the consignor, the consignor shall sign the following statement:
 The carrier may decline to make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor)

Notify if problem enroute or at delivery _____ (for informational purposes only)
 Name _____ Fax No. _____ Tel. No. _____

Send freight bill to: _____
 Company Name _____ City _____ Street _____ State _____ Zip _____

Shipper _____ Carrier _____
 Per _____ Per _____ Date _____

Shipper Certification	Carrier Certification
This is to certify that the above named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation. Per _____ Date _____	Carrier acknowledges receipt of packages and required placards. Carrier certifies emergency response information was made available and/or carrier has the Department of Transportation emergency response guidebook or equivalent document in the vehicle. Per _____ Date _____ Package Nos. _____

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FLEET MANAGEMENT PRO

UNIFORM BILL OF LADING TERMS AND CONDITIONS

Sec. 1. (a) The carrier or the party in possession of any of the property described in this bill of lading shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier shall be liable for any loss or damage to a shipment or for any delay caused by an Act of God, the public enemy, the authority of law, or the act or default of shipper. Except in the case of negligence of the carrier or party in possession, the carrier or party in possession shall not be liable for loss, damage or delay which results: when the property is stopped and held in transit upon request of the shipper, owner or party entitled to make such request; or from faulty or impassible highway, or by lack of capacity of a highway bridge or ferry; or from a defect or vice in the property; or from riots or strikes. The burden to prove freedom from negligence is on the carrier or the party in possession.

Sec. 2. Unless arranged or agreed upon, in writing, prior to shipment, carrier is not bound to transport a shipment by a particular schedule or in time for a particular market, but is responsible to transport with reasonable dispatch. In case of physical necessity, carrier may forward a shipment via another carrier.

Sec. 3. (a) As a condition precedent to recovery, claims must be filed in writing with: any participating carrier having sufficient information to identify the shipment.

(b) Claims for loss or damage must be filed within nine months after the delivery of the property (or, in the case of export traffic, within nine months after delivery at the port of export), except that claims for failure to make delivery must be filed within nine months after a reasonable time for delivery has elapsed.

(c) Suits for loss, damage, injury or delay shall be instituted against any carrier no later than two years and one day from the day when written notice is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts of the claim specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier shall be liable, and such claims will not be paid.

(d) Any carrier or party liable for loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected, upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance, PROVIDED, that the carrier receiving the benefit of such insurance will reimburse the claimant for the premium paid on the insurance policy or contract.

Sec. 4. (a) If the consignee refuses the shipment tendered for delivery by carrier or if carrier is unable to deliver the shipment, because of fault or mistake of the consignor or consignee, the carrier's liability shall then become that of a warehouseman. Carrier shall promptly attempt to provide notice, by telephonic or electronic communication as provided on the face of the bill of lading, if so indicated, to the shipper or the party, if any, designated to receive notice on this bill of lading. Storage charges, based on carrier's tariff, shall start no sooner than the next business day following the attempted notification. Storage may be, at the carrier's option, in any location that provides reasonable protection against loss or damage. The carrier may place the shipment in public storage at the owner's expense and without liability to the carrier.

(b) If the carrier does not receive disposition instructions within 48 hours of the time of carrier's attempted first notification, carrier will attempt to issue a second and final confirmed notification. Such notice shall advise that if carrier does not receive disposition instructions within 10 days of that notification, carrier may offer the shipment for sale at a public auction and the carrier has the right to offer the shipment for sale. The amount of sale will be applied to the carrier's invoice for transportation, storage and other lawful charges. The owner will be responsible for the balance of charges not covered by the sale of the goods. If there is a balance remaining after all charges and expenses are paid, such balance will be paid to the owner of the property sold hereunder, upon claim and proof of ownership.

(c) Where carrier has attempted to follow the procedure set forth in subsections 4(a) and (b) above and the procedure provided in this section is not possible, nothing in this section shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law. When perishable goods cannot be delivered and disposition is not given within a reasonable time, the carrier may dispose of property to the best advantage.

(d) Where a carrier is directed by consignee or consignor to unload or deliver property at a particular location where consignor, consignee, or the agent of either, is not regularly located, the risk after unloading or delivery shall not be that of the carrier.

Sec. 5. (a) In all cases not prohibited by law, where a lower value than the actual value of the said property has been stated in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum recoverable amount for loss or damage, whether or not such loss or damage occurs from negligence.

(b) No carrier hereunder will carry or be liable in any way for any documents, coin money, or for any articles of extraordinary value not specifically rated in the published classification or tariffs unless a special agreement to do so and a stipulated value of the articles are endorsed on this bill of lading.

Sec. 6. Every party, whether principal or agent, who ships explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods. Such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. (a) The consignor or consignee shall be liable for the freight and other lawful charges accruing on the shipment, as billed or corrected, except that collect shipments may move without recourse to the consignor when the consignor so stipulates by signature or endorsement in the space provided on the face of the bill of lading. Nevertheless, the consignor shall remain liable for transportation charges where there has been an erroneous determination of the freight charges assessed, based upon incomplete or incorrect information provided by the consignor.

(b) Notwithstanding the provisions of subsection (a) above, the consignee's liability for payment of additional charges that may be found to be due after delivery shall be as specified by 49 U.S.C. §13706, except that the consignee need not provide the specified written notice to the delivering carrier if the consignee is a for-hire carrier.

(c) Nothing in this bill of lading shall limit the right of the carrier to require the prepayment or guarantee of the charges at the time of shipment or prior to delivery. If the description of articles or other information on this bill of lading is found to be incorrect or incomplete, the freight charges must be paid based upon the articles actually shipped.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature on the prior bill of lading or in connection with the prior bill of lading as to the statement of value or otherwise, or as to the election of common law or bill of lading liability shall be considered a part of this bill of lading as fully as if the same were written on or made in connection with this bill of lading.

Sec. 9. If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the terms and provisions and limitations of liability specified by the "Carriage of Goods By Sea Act" and any other pertinent laws applicable to water carriers.

FLEET MANAGEMENT PRO

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STRAIGHT BILL OF LADING – SHORT FORM

ORIGINAL – NOT NEGOTIABLE

Carrier's Pro No. _____
 Shipper's Bill of Lading No. _____
 Consignee's Reference/PO No. _____
 Carrier's Code (SCAC) _____

Name of Carrier _____

RECEIVED, subject to individually determined rates or contracts that have been agreed upon in writing between the carrier and shipper, if applicable, otherwise to the rates, classifications and rules that have been established by the carrier and are available to the shipper, on request;

From _____ Date _____
 Street _____ City _____ County _____ State _____ Zip _____

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown) marked, consigned, and destined as shown below, which said carrier agrees to carry to destination, if on its route, or otherwise to deliver to another carrier on the route to destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Bill of Lading set forth in the National Motor Freight Classification 100-X and successive issues. The shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to _____
On Collect on Delivery Shipments, the letters "COD" must appear before consignee's name.

Destination Street _____
 City _____ County _____ State _____ Zip _____
 Delivering Carrier _____ Trailer No. _____
 Additional Shipment Information _____

Collect on Delivery \$ _____ and remit to: _____ Street _____ City _____ State _____	C.O.D. charge to be paid by Shipper <input type="checkbox"/> Consignee <input type="checkbox"/>
---	--

Handling Units No. Type	Packages No. Type	HM	Kind of Package, Description of Articles, Special Marks and Exceptions (Subject to correction)	Weight (Subject to Correction)	Class or Rate Ref. (For Info. Only)	Cube (Optional)

Mark "X" to designate Hazardous Materials as defined in Department of Transportation Regulations.

NOTE (1) Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property as follows:
 "The agreed or declared value of the property is specifically stated by the shipper to be not exceeding _____ per _____."

NOTE (2) Liability Limitation for loss or damage on this shipment may be applicable. See 49 U.S.C. § 14706(c)(1)(A) and (B).

NOTE (3) Commodities requiring special or additional care or attention in handling or stowing must be so marked and packaged as to ensure safe transportation with ordinary care. See Sec. 2(e) of NMFC Item 360.

Freight charges are PREPAID unless marked collect. CHECK BOX IF COLLECT

FOR FREIGHT COLLECT SHIPMENTS:

If this shipment is to be delivered to the consignee, without recourse on the consignor, the consignor shall sign the following statement:
 The carrier may decline to make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor)

Notify if problem enroute or at delivery _____ (for informational purposes only)
 Name _____ Fax No. _____ Tel. No. _____

Send freight bill to: _____
 Company Name _____ City _____ Street _____ State _____ Zip _____

Shipper _____ Carrier _____
 Per _____ Per _____ Date _____

Shipper Certification	Carrier Certification
This is to certify that the above named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation. Per _____ Date _____	Carrier acknowledges receipt of packages and required placards. Carrier certifies emergency response information was made available and/or carrier has the Department of Transportation emergency response guidebook or equivalent document in the vehicle. Per _____ Date _____ Package Nos. _____

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FLEET MANAGEMENT PRO

UNIFIED CARRIER REGISTRATION -Year _____

To register online go to WWW.UCR.IN.GOV

SECTION 1. GENERAL INFORMATION					
USDOT Number	MC or MX Number	FF Number	Telephone Number	Fax Number	
Legal Name			E-Mail Address		
Doing Business Under the Following Name (DBA)					
Principal Place of Business Street Address (See Instructions)					
Principal Business City		Principal Business State		Zip Code	
Mailing Street Address					
Mailing City		Mailing State		Mailing Zip Code	
SECTION 2. CLASSIFICATION – Check All That Apply					
<input type="checkbox"/> Motor Carrier <input type="checkbox"/> Motor Private Carrier <input type="checkbox"/> Broker <input type="checkbox"/> Leasing Company <input type="checkbox"/> Freight Forwarder					
SECTION 3. FEES DUE-BROKERS, FREIGHT FORWARDERS AND LEASING COMPANIES ONLY					
<i>Note: If your company is also a motor carrier or motor private carrier, skip this section and go to section 4.</i>					
Brokers, freight forwarders and leasing companies (not a motor carrier combination), please submit the amount due of \$ 39.00 in the form of a credit card, Check, Cash or Money Order payable to _____ and go to Section 7.					
SECTION 4. NO. OF MOTOR VEHICLES– MOTOR CARRIER & MOTOR PRIVATE CARRIER					
<i>Check only one box:</i> <input type="checkbox"/> The number of vehicles shown below have been taken from section 26 of your last reported MCS-150 form. <input type="checkbox"/> The number of vehicles shown below is the total number owned and operated for the 12-month period ending June 30.					
NUMBER OF STRAIGHT TRUCKS AND TRACTORS (COLUMN A)	NUMBER OF TRAILERS (COLUMN B)	NUMBER OF MOTOR COACHES, SCHOOL BUSES, MINI-BUSES, VANS AND LIMOUSINES (COLUMN C)	TOTAL (COLUMN D)		
1. (Optional) Under this program you may <u>delete</u> any vehicles in Column A or B above that you have reported on your MCS 150 form that are used <u>only</u> in intrastate commerce. <i>(See instructions.)</i> ()					
2. (Optional) You may add vehicles that (a) <u>have not been shown</u> on the MCS 150 form that are defined as commercial motor vehicles operating solely in intrastate commerce; and/or (b) other self-propelled motor vehicles operating in intrastate or interstate commerce that: <ul style="list-style-type: none"> ▪ Have a gross vehicle weight rating or gross vehicle weight of 10,000 lbs or less, or a passenger capacity of 10 or less, including the driver; ▪ Are used on the highways in commerce; and ▪ To transport passengers or property for compensation. <i>(See instructions for definition of commercial motor vehicle)</i> 					
3. Total Number of Vehicles (TOTAL (COLUMN D) minus LINE 1 plus LINE 2) _____					
SECTION 5. FEE TABLE					
Number of Vehicles	Amount Due	Number of Vehicles	Amount Due	Number of Vehicles	Amount Due
0-2	\$39.00	6-20	\$231.00	101-1000	\$3,840.00
3-5	\$116.00	21-100	\$806.00	1001 or more	\$37,500.00
SECTION 6. FEES DUE – MOTOR CARRIER & MOTOR PRIVATE CARRIER					
Using the number of vehicles in Section 4, Line 3 above, enter the Amount Due from the table above.					\$
<i>Note: Payment can be made in the form of Credit Card, Check, Cash or Money Order. MAKE CHECKS PAYABLE TO: _____</i>					
SECTION 7. CERTIFICATION					
I, the undersigned, under penalty for false statement, certify that the above information is true and correct and that I am authorized to execute and file this document on behalf of the applicant. (Penalty provisions subject to the laws of the registration state.)					
Name of Owner or Authorized Representative (Printed)					Date
Signature			Title		

FLEET MANAGEMENT PRO

Reserved

FLEET MANAGEMENT PRO

Alabama

Fuel (IFTA)/Highway tax

Department of Revenue, Motor Carrier Services License Section

(334) 241-2999 (IFTA)

revenue.alabama.gov/motorvehicle/

Liquefied Petroleum Gas Board

(334) 241-8887

www.lpgb.state.al.us/

Secretary of State, Corporation Division

(334) 242-5324 (Corp. Division)

(334) 242-1170 (Cert. of Good Standing)

www.sos.state.al.us/

Operating authority/ Vehicle registration (IRP) and titling

Public Service Commission, Transportation Div.

Insurance & Registration Section

(334) 242-5176 (Operating Authority – Interstate, UCRA)

(334) 242-5200 (Operating Authority – Intrastate)

www.psc.state.al.us/

Alabama Department of Revenue, Motor Vehicle Division
, Title Section, Motor Carrier Services

(334) 242-9000 (Registration of Vehicles)

(334) 242-2999 (Reciprocity & Proration)

revenue.alabama.gov/motorvehicle/

Department of Agriculture & Industries, Agriculture
Investigative Division

(334) 240-7208 (Livestock Haulers Permit)

www.agi.alabama.gov

Alaska

Fuel (IFTA)/Highway tax

Department of Revenue, Income and Excise Audit
Division

(907) 269-6620 (Motor Fuel Tax)

www.tax.state.ak.us/

Operating authority/ Vehicle registration (IRP) and titling

Department of Transportation and Public Facilities,
Division of Measurement Standards and Commercial
Vehicle Enforcement (CVCSC)

(907) 465-3900 (Operating authority)

www.dot.state.ak.us/

Division of Motor Vehicles, Department of Administration

(907) 269-5559 (Vehicle Registration)

(907) 269-5551 (Vehicle Titling)

<http://doa.alaska.gov/dmv/>

FLEET MANAGEMENT PRO

Arkansas

Fuel (IFTA)/Highway tax

Department of Finance and Administration, Motor Fuel Tax Section
(501) 682-4800 (Fuel Registration/Decals; IFTA Registration)
(501) 682-4811 (Fuel Tax Refunds)
(501) 682-4775 (Taxes - Corporate; Franchise)
(501) 682-7104 (Taxes - Sales & Use)
(501) 682-7250 (Taxpayer Assistance Info.)
www.dfa.arkansas.gov/offices/motorVehicle/Pages/default.aspx

Operating Authority (UCR)/Vehicle Registration (IRP) and Titling

Arkansas Highway and Transportation Department
(501) 569-2000 (Operating Authority)
(501) 569-2000 (Vehicle Registration, IRP Unit; Reciprocity)
www.arkansashighways.com/

Arkansas Dept. of Finance & Administration
(501) 682-4653 (UCRA, IRP Unit; Reciprocity)
(501) 682-4692 (Vehicle Registration)
www.dfa.arkansas.gov/offices/motorVehicle/Pages/default.aspx

Arkansas Public Service Commission, Tax Commission
(501) 682-2051 (Annual Passenger Carrier Report)
www.state.ar.us/psc/

Department of Finance and Administration, Motor Vehicle Division
(501) 682-4692
www.dfa.arkansas.gov/offices/motorVehicle/Pages/default.aspx

Arizona

Fuel (IFTA)/Highway tax

Arizona Department of Transportation, Motor Vehicle Division
(602) 712-6775 (IFTA Registration)
(602) 255-0072
www.azdot.gov/MVD/index.asp

Arizona Corporation Commission
(602) 542-3285 (Annual Reports)
(602) 542-3026 (Corporations Section)
(602) 542-3026 (Cert. of Good Standing)
www.cc.state.az.us/

Department of Revenue, Sales and Use Tax Division
(602) 255-2060 (Corporate and Sales & Use Taxes)
www.azdor.gov/

FLEET MANAGEMENT PRO

Operating authority (UCR) / Vehicle registration (IRP) and titling

Arizona Department of Transportation, Motor Vehicle Division
(602) 712-6775 (Registration of Vehicles; Reciprocity & Proration)
(602) 255-0072 (Vehicle Titling)
www.azdot.gov/MVD/index.asp

California

Fuel (IFTA)/Highway tax

Board of Equalization, Fuel Taxes Division
(916) 322-9669 (Alternative Fuels and Interstate User - Diesel Fuel Tax)
(800) 400-7115 or (916) 322-9669 (IFTA)
www.boe.ca.gov/sptaxprog/spfuel.htm

Franchise Tax Board
(800) 338-0505
www.ftb.ca.gov/

Operating authority/ Vehicle registration (IRP) and titling

California Dept. of Motor Vehicles, Motor Carrier Permit Branch/Operations Unit
(916) 657-8153 (UCR/Motor Carrier Permit)
(916) 657-7971 (IRP Unit)
(916) 657-6346 Employer Pull Notice/Requestor Code Number MS H265
www.dmv.ca.gov
Division of Headquarters Operations
(800) 777-0133
www.dmv.ca.gov/vr/vr.htm

Public Utilities Commission
(800) 877-8867 (Household goods/passenger)
(800) 832-5660 (Operating Authority - Interstate Registration)
www.cpuc.ca.gov/puc/

Secretary of State
(916) 653-6814
www.sos.ca.gov/

Colorado

Fuel (IFTA)/Highway tax

Department of Revenue, Motor Carrier Services Division
(303) 205-8205 (Passenger Tax, Special Fuels, IFTA Helpline)
www.colorado.gov/revenue/tax

Operating authority (UCR)/Vehicle registration (IRP) and titling

Public Utilities Commission
(303) 894-2000 (Press 4) (Intrastate authority, UCR)
www.colorado.gov/cs/Satellite/DORA-PUC/CBON/DORA/1251632921146

FLEET MANAGEMENT PRO

Department of Revenue, Division of Motor Vehicles,
International Registrations
(303) 205-5602 (Registration of Vehicles; Reciprocity &
Proration/IRP)
(303) 205-5608 (Vehicle Titling)
(303) 205-5691 (Motor Carrier Services)
(303) 205-5765 (Vehicle Titling)
www.colorado.gov/revenue/dmv

Intrastate carriers based in Denver County, apply to the:
Denver Central Motor Vehicle Department
[www.colorado.gov/cs/Satellite/Revenue-MV/RMV/
1212139246185](http://www.colorado.gov/cs/Satellite/Revenue-MV/RMV/1212139246185)

Connecticut

Fuel (IFTA)/Highway tax

Department of Revenue Services, Registration Section
(860) 297-4870 (IFTA Registration; Motor Carrier Road
Tax)
(860) 541-3224 (Refunds)
www.ct.gov/drs/site/default.asp

Secretary of State
(860) 566-8570 (Annual Reports, Corporations Section)
(860) 566-8520 (Sales & Use Taxes)
www.sots.ct.gov/sots/site/default.asp

Operating authority (UCR)/Vehicle registration (IRP) and titling

Department of Motor Vehicles, IRP Unit
(860) 263-5281 (Interstate Exempt, UCRA, Registration of
Vehicles/IRP)
(800) 842-8222 (General Information)
(860) 263-5700 (Vehicle Titling)
www.ct.gov/dmv/site/default.asp

Department of Transportation, Motor Transport Services,
Bureau of Engineering and Highway Operations
(860) 594-2865 (Intrastate, Household Goods Operators)
www.ct.gov/dot/site/default.asp

Delaware

Fuel (IFTA)/Highway tax

Department of Transportation, Division of Motor Vehicles,
Transportation Services, Motor Carrier Services Section
(302) 744-2702 (Fuel Use Tax Registration - Decals; IFTA
Registration and Decals)
www.dmv.de.gov/
(302) 744-2715
www.deldot.gov/mfta/index.shtml

Secretary of State, Division of Corporations
(302) 739-3073 (Corporations Division)
<http://sos.delaware.gov/sos.shtml>

FLEET MANAGEMENT PRO

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Division of Motor Vehicles, IRP Unit
(302) 744-2701 (IRP Registration)
www.dmv.de.gov/

Department of Transportation, Division of Motor Vehicles,
Office of Public Carrier Regulation
(302) 744-2706 (Motorcoach authority)
www.deldot.gov/information/business/carrier/index.shtml
(302) 744-2502 (Motor Vehicle Division)
www.dmv.de.gov/index.shtml

District of Columbia

**Fuel (IFTA)/Highway
tax**

Office of Tax and Revenue
(202) 727-4829
<http://otr.cfo.dc.gov/>

Office of the Secretary of District of Columbia
(202) 727-6306
<http://os.dc.gov/>

Department of Consumer and Regulatory Affairs
(202) 442-4400
<http://dcra.dc.gov/>

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Department of Motor Vehicles, International Registration
Plan
(202) 737-4404
<http://dmv.dc.gov/page/irp-application-process>

Florida

**Fuel (IFTA)/Highway
tax**

Department of Highway Safety and Motor Vehicles,
Bureau of Motor Carrier Services
(850) 488-6921 (IFTA Registration)
www.flhsmv.gov/

Department of State
Division of Corporations
(850) 487-6000 (Corporations Division)
(850) 487-6056 (Annual Reports)
(850) 487-6052 (Domestic Charters)
(850) 487-6051 (Foreign Charters)
<http://sunbiz.org/>

Department of Revenue, Bureau of Tax Information and
Assistance
(800) 352-3671
<http://dor.myflorida.com/dor/>

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Florida Department of Revenue, Application Acceptance
Section
(850) 488-9750 (Importation Permit)
(800) 352-3671 (Florida only)
<http://dor.myflorida.com/dor/>

FLEET MANAGEMENT PRO

Florida Department of Agriculture and Consumer Services

(850) 410-0900 (Livestock Haulers Permit)

www.freshfromflorida.com

Department of Agriculture and Consumer Services

(850) 488-2221 (Intrastate Household Goods Registration)

(800) 435-7352

www.freshfromflorida.com

Florida Division of Motor Vehicles, Neil Kirkman Building

(850) 617-2000 (Registration of Vehicles – Intrastate)

(850) 617-3711 (Reciprocity - IRP - Room A110)

www.flhsmv.gov/

Georgia

Fuel (IFTA)/Highway tax

Georgia Department of Revenue

(404) 656-4055 (IFTA Registration)

(404) 656-4055 (Fuel Tax Registration)

(404) 656-4055 (Fuel Tax Reports)

(877) 423-6711 (Sales & Use Tax Forms/Sales Tax Information)

<http://motor.etax.dor.ga.gov/>

Secretary of State

(404) 656-2881 (Secretary of State)

(404) 656-2817 (Corporations Division; Certificates of Status)

<http://sos.ga.gov/>

Georgia Trucking Portal: <https://www.cvisn.dor.ga.gov/>

Operating authority (UCR)/Vehicle registration (IRP) and titling

Georgia Department of Public Safety

(404) 624-7243 (Intrastate Household Goods)

www.gamccd.net/Default.aspx

(855) 406-5221 (Unified Carrier Registration (UCR))

<https://www.cvisn.dor.ga.gov/Welcome/UCR>

Department of Revenue, Motor Vehicle Division

(404) 417-4477 or (404) 675-6135 (IRP/Vehicle

Registration/Titling)

<http://motor.etax.dor.ga.gov/>

Intrastate: County Tax Agent in county of applicant's residence.

Georgia Trucking Portal: <https://www.cvisn.dor.ga.gov/>

FLEET MANAGEMENT PRO

Hawaii

**Fuel (IFTA)/Highway
tax**

Department of Taxation
(808) 587-4242
<http://tax.hawaii.gov/>

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Hawaii Public Utilities Commission, Department of
Budget and Finance
(808) 586-2020 (Operating Authority)
dms.puc.hawaii.gov/dms/

City and County of Honolulu, Motor Vehicle & Licensing
Division
(808) 532-7700 (Registration of Vehicles)
<http://tinyurl.com/c94opfs>

Idaho

**Fuel (IFTA)/Highway
tax**

Idaho State Tax Commission, Revenue Operations
Division
(208) 334-7806 (IFTA)
(208) 334-7806 (Mileage Tax)
(208) 334-7660 (Corporate Income)
(208) 334-7660 (Ad Valorem Taxes)
tax.idaho.gov/

Idaho Secretary of State
(208) 334-2300 (Corporate Filings)
www.sos.idaho.gov/

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Idaho Transportation Department, Motor Carrier Services
- Registration
(208) 334-8611 (UCRA, Insurance)
<http://itd.idaho.gov/dmv/>

Illinois

**Fuel (IFTA)/Highway
tax**

Department of Revenue, Motor Fuel Use Tax Section
(217) 785-1397 (IFTA, Tax Returns, Fuel Permits, and
Decals)
www.revenue.state.il.us/Motorfuel/

Illinois Secretary of State
(217) 785-3000 or (800) 252-8980 (in IL only) (Secretary of
State Office)
(217) 782-7880 (Corporate Information)
(217) 782-7808 (Franchise Taxes; Annual Reports)
www.cyberdriveillinois.com

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Illinois Commerce Commission, Transportation Bureau
(217) 782-4654 (Operating Authority, UCRA)
(217) 782-4654 (Insurance)
www.icc.illinois.gov/

FLEET MANAGEMENT PRO

Intrastate Household Goods Test Appointment:
Springfield: (217) 782-4654
Des Plaines: (847) 294-4326

Secretary of State, Commercial and Farm Truck Division
(217) 782-4815/16 or 785-1800 (Registration of Vehicles/
IRP)
(217) 785-1810 (Mileage Tax & Farm Truck Division)
(217) 785-1800 (Automated menu)
Illinois Secretary of State Information:
www.cyberdriveillinois.com

Indiana

Fuel (IFTA)/Highway tax

Department of Revenue, Motor Carrier Services Division,
Motor Carrier Fuel Tax/IFTA
(317) 615-7345 (Annual Fuel Permits; IFTA Registration;
IFTA Tax Returns)
(317) 615-7200 (One-Stop Shopping)
www.in.gov/dor/4106.htm

Indiana Secretary of State
(317) 232-6531 (Corporations Division)
(317) 232-6576 (Annual Reports)
www.in.gov/sos/

Operating authority (UCR)/Vehicle registration (IRP) and titling

Indiana Department of Revenue, Motor Carrier Services
Division
(317) 615-7350 (UCRA)
(317) 615-7340 (IRP and Base Plate Registration)
www.in.gov/dor/4106.htm

Indiana Bureau of Motor Vehicles
(317) 233-6000 (Intrastate vehicles)
<http://in.gov/bmv/>

Iowa

Fuel (IFTA)/Highway tax

Department of Transportation, Office of Motor Carrier
Services
(515) 237-3268 (Interstate Fuel Taxes; IFTA Registration)
www.iowadot.gov/mvd/index.htm

Department of Revenue & Finance, Taxpayer Services
Section
(515) 281-3114 (Bulk Fuel Storage)
www.iowa.gov/tax/

Secretary of State
(515) 281-5204 (Corporations Division)
(515) 281-5204 (Annual Reports)
<http://sos.iowa.gov/>

FLEET MANAGEMENT PRO

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Iowa Department of Transportation, Office of Motor
Carrier Services
(515) 237-3268 (Operating Authority, UCRA, Insurance,
Registration of Vehicles/IRP)
(515) 237-3264 (Trip Permits/Fuel Permits, Proration &
Reciprocity)
(515) 237-3110 (Vehicle Titling)
Fax: (515)-237-3056
www.iowadot.gov/
www.iowadot.gov/mvd/index.htm

Kansas

**Fuel (IFTA)/Highway
tax**

Kansas Department of Revenue, Motor Fuel Tax Section
(785) 368-8222 (Interstate Fuel Taxes; IFTA Registration)
(785) 368-8222 (Fuel Use Tax Returns)
(785) 296-4564 (Secretary of State)
(785) 296-2365 (Ad Valorem/Property Tax)
(785) 296-7108 (Sales & Use Taxes)
<http://ksrevenue.org/dmvmc.html>

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Kansas Corporation Commission, Transportation Division
(785) 271-3145 Option 3 (Operating Authority - New
Applications/Renewals, UCRA Information)
(785) 271-3284 (Insurance Information – New
Applications and Renewals)
kcc.state.ks.us/

Department of Revenue, Division of Vehicles, Motor
Carrier Services Bureau
(785) 271-3145 (IRP/Apportioned Registration)
<http://ksrevenue.org/dmvmc.html>

Kentucky

**Fuel (IFTA)/Highway
tax**

Department of Vehicle Regulation, Division of Motor
Carriers
(502) 564-4540 (IFTA Information, Tax Reports, Cab
Cards)
(502) 564-4127 (Temporary Permits)
[http://transportation.ky.gov/Motor-Carriers/Pages/
default.aspx](http://transportation.ky.gov/Motor-Carriers/Pages/default.aspx)

Secretary of State
(502) 564-3490
www.sos.ky.gov/

Revenue Cabinet, Sales and Use Tax Division
(502) 564-4580
<http://revenue.ky.gov/>

FLEET MANAGEMENT PRO

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Department of Vehicle Regulation, Division of Motor Carriers, Qualifications/Permit Branch
(502) 564-4127 (Operating Authority/Insurance, Renewals, Passenger Carrier Information)
(502) 564-7650 (Household Goods Applications)
(502) 564-4540 (UCRA)
(502) 564-4120 (Registration of Buses, IRP Registration)
<http://transportation.ky.gov/Motor-Carriers/Pages/default.aspx>

Department of Vehicle Regulation
Division of Motor Vehicles Licensing
(502) 564-5301 (Registration of Trucks and Trailers)
<http://transportation.ky.gov/Motor-Carriers/Pages/default.aspx>

Transportation Cabinet, Department of Vehicle Regulation, Division of motor Vehicle Licensing
(502) 564-2737
www.dmv-department-of-motor-vehicles.com/KY_Kentucky_dmv_department_of_motor_vehicles.htm

Louisiana

**Fuel (IFTA)/Highway
tax**

Department of Revenue
Excise Tax Division
(225) 219-7656 (Special Fuels, IFTA, Bulk Fuel Storage)
(225) 925-4611 (Franchise Taxes)
(225) 925-7335 (Sales Taxes)
(225) 925-7635 (Excise Taxes)
<http://revenue.louisiana.gov/>

Secretary of State
(225) 925-7646
www.sos.la.gov/

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Public Service Commission, Motor Transportation Division
(225) 342-4414 (Operating Authority – Interstate)
(225) 342-4439 (Operating Authority – Intrastate)
(888) 421-8757 (Toll Free) (UCRA)
www.lpsc.org/

Department of Public Safety and Corrections, Office of Motor Vehicles
(225) 922-7198 or (225) 925-6146 (Registration of Vehicles)
(225) 925-6270/71/73 (Apportioned Plates; Reciprocity/IRP)

Department of Public Safety, Office of Motor Vehicles, Vehicle Titling
(877) 368-5463
<http://omv.dps.state.la.us/>

FLEET MANAGEMENT PRO

Maine

Fuel (IFTA)/Highway tax

Bureau of Motor Vehicles, Motor Carrier Services
(207) 624-9000 Ext. 52136 (IFTA), Ext. 52137 (Fuel decals)

www.maine.gov/sos/bmv/

Bureau of Taxation Excise Tax Section, State Office Building

(207) 287-2011 (Property Taxes)

(207) 287-3695 (Excise Taxes)

(207) 287-2336 (Sales Taxes)

www.state.me.us/revenue/

Operating authority (UCR)/Vehicle registration (IRP) and titling

Bureau of Motor Vehicles, Motor Carrier Services
(207) 624-9000

Ext. 52131 (UCR), Ext. 52135 (IRP), Ext. 52151

(Commercial Registration – Non-IRP)

www.maine.gov/sos/bmv/

Maryland

Fuel (IFTA)/Highway tax

Comptroller of the Treasury, Motor Fuel Tax Unit

(410) 260-7215 (IFTA Licensing)

(410) 260-7215 (Fuel Trip Permits)

www.comp.state.md.us/

Operating authority (UCR)/Vehicle registration (IRP) and titling

Maryland Department of Transportation, Motor Vehicles Administration

(410) 787-2971 (Registration of Vehicles – IRP)

(410) 787-2971 (Trip Permits - IRP)

(410) 768-7000 (Non-IRP registration)

www.mdot.maryland.gov/Office%20of%20Maryland%20Motor%20Carrier%20Program/Index.html

Public Service Commission, Transportation Division

(410) 767-8128 (Passenger Carrier Authority)

<http://www.mdot.maryland.gov/>

Massachusetts

Fuel (IFTA)/Highway tax

Massachusetts Department of Revenue, Bureau of Excise

(617) 887-5080 (IFTA/Fuel Use Taxes)

(617) 887-5040 (Fuel Use Taxes/Reports/Refunds)

(617) 727-4362 (Bulk Fuel Storage)

www.mass.gov/dor/

Secretary of State

(617) 727-2850

www.sec.state.ma.us/

Operating authority (UCR)/Vehicle registration (IRP) and titling

Massachusetts Dept. of Public Utilities, Transportation Oversight Division

(617) 305-3559 (Operating Authority, UCRA)

www.mass.gov/

FLEET MANAGEMENT PRO

Massachusetts Department of Transportation, Registry of Motor Vehicles Division
(617) 351-9320 or (617) 351-4500
Application for IRP registration may also be made to branch offices in Laurence, Springfield, and Milford.
<http://www.massdot.state.ma.us/>
www.massrmv.com/

Michigan

Fuel (IFTA)/Highway tax

Michigan Department of Treasury, Motor Fuel, Tobacco & Special Taxes Division
(517) 636-4580 (IFTA Registration, Motor Fuel Taxes)
(517) 373-3200 (Bulk Fuel Storage)
www.michigan.gov/treasury

Michigan Department of Licensing and Regulatory Affairs
(517) 241-6470
http://www.michigan.gov/lara/0,4601,7-154-35299_61343_35413_37081-139996--,00.html

Operating authority (UCR)/Vehicle registration (IRP) and titling

Michigan Public Service Commission, Licensing & Enforcement Division
(517) 322-1097 (Operating Authority – Intrastate)
(517) 322-1097 (Operating Authority - MPSC decals)
(517) 241-6030 (Operating Authority – UCR)
www.michigan.gov/mpsc

Michigan Department of State, IRP Unit
(517) 322-1097 (Reciprocity & Proration/IRP)
www.michigan.gov/sos/0,1607,7-127-1627---,00.html

Department of State, Driver and Vehicle Information Center
(888) 767-6424
www.michigan.gov/sos/0,1607,7-127-1585---,00.html

Minnesota

Fuel (IFTA)/Highway tax

Department of Public Safety, Driver and Vehicle Services - Central Office
(651) 205-4141
<https://dps.mn.gov/divisions/dvs/Pages/default.aspx>

Secretary of State
(651) 201-1324
www.sos.state.mn.us/

Department of Revenue, Petroleum Tax Office
(800) 657-3777
(651) 296-6181 (Sales & Use Taxes)
<http://www.revenue.state.mn.us/Pages/default.aspx>

FLEET MANAGEMENT PRO

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Department of Transportation, Office of Freight &
Commercial Vehicle Operations
(651) 366-3717
www.dot.state.mn.us/

Department of Public Safety, Driver and Vehicle Services
Division
(651) 205-4141 (Reciprocity/Proration – IRP, Trip Permits
– Registration)
(651) 297-2005 (Intrastate registration/U.S. DOT
numbers)
(651) 297-2005 (US DOT number information)
(651) 205-4141 (Reciprocity/Proration)
(651) 205-4141 (IRP)
To apply for a US DOT number online or download an
application form: [www.fmcsa.dot.gov/forms/print/r-l-
forms.htm](http://www.fmcsa.dot.gov/forms/print/r-l-forms.htm).
<https://dps.mn.gov/divisions/dvs/Pages/default.aspx>

Mississippi

**Fuel (IFTA)/Highway
tax**

Mississippi Department of Revenue, Petroleum Tax
Division
(601) 923-7150 (IFTA Information; Special Fuels Taxes)
www.dor.ms.gov/info/offices/petinfo.html

Secretary of State
(601) 359-1350
www.sos.ms.gov/

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Mississippi Department of Transportation, Motor Carrier
Division
(601) 359-1707 (Authority Applications/Original Stamp
Applications)
(888) 737-0061 (UCRA)
(601) 359-1707 (UCR Information/Insurance)
<http://mdot.ms.gov/portal/home.aspx>

State Tax Commission, Motor Vehicle Licensing Division
(601) 923-7142 (Reciprocity & Proration)
(601) 923-7143 (Registration of Vehicles)
(601) 923-7200 (Vehicle Titling)
www.dor.ms.gov/info/offices/mvlinf.html

Missouri

**Fuel (IFTA)/Highway
tax**

Department of Transportation, Highways and
Transportation Commission, Motor Carrier Services
Section
(573) 751-6433 (IFTA and Trip Permits)
(888) ASK-MoDOT (275-6636)
www.modot.org

FLEET MANAGEMENT PRO

Department of Revenue
(573) 751-2611 (Bulk Fuel Information)
(573) 751-4153 (Corporations)
<http://dor.mo.gov/motorv/>

Secretary of State
(573) 751-4936 (Secretary of State)
(573) 751-4153 (Corporations Division)
www.sos.mo.gov/

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Department of Transportation, Motor Carrier Services
Division
(573) 751-3358
(866) 831-MCRS (6277)
(573) 751-6433 (Reciprocity & Proration; IRP;
Registration of Vehicles)
www.modot.org
(573) 751-6433 (UCR Information)
(888) ASK-MoDOT (275-6636)
www.modot.org

Department of Revenue, Division of Motor Vehicles
(573) 526-3669
<http://dor.mo.gov/motorv/>

Montana

**Fuel (IFTA)/Highway
tax**

Department of Transportation, Motor Carrier Services
(406) 444-6130 (Vehicle Registration; IFTA)

Secretary of State
(406) 444-3665 (Corporations Division)
<http://sos.mt.gov/>

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Montana Public Service Commission
(406) 444-6198/6186 (Intrastate Authority)
<http://psc.mt.gov/>

Department of Transportation, Motor Carrier Services
(406) 444-2998 (UCRA/Authority Registration)
(406) 444-6130 (Reciprocity & Proration)

(406) 444-6198 (Insurance)
www.mdt.mt.gov/

Motor Vehicle Division, Title & Registration Bureau
(406) 846-6000
<https://doj.mt.gov/driving/vehicle-title-and-registration/>

Nebraska

**Fuel (IFTA)/Highway
tax**

Department of Revenue
(800) 554-3835 (Motor Fuels tax programs)
(402) 471-5730 (Lincoln residents)
www.revenue.nebraska.gov/

FLEET MANAGEMENT PRO

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Secretary of State
(402) 471-2554
www.sos.ne.gov/dyindex.html

Nebraska Department of Motor Vehicles
(402) 471-4435 (Interstate; Reciprocity & Proration)
(888) 622-1222 (Toll-free within continental U.S., UCRA)
(402) 471-3918 (Vehicle Titling)
www.dmv.state.ne.us/
www.dmv.state.ne.us/dvr/mvtitles

Public Service Commission
(402) 471-3101 (Intrastate)
(402) 471-4435 (UCR Information/Insurance)
(888) 622-1222 (Toll free within continental U.S.)
www.psc.state.ne.us/

Division of Motor Carrier Services
(402) 471-4435 (Reciprocity & Proration; Registration of
Vehicles)
(888) 622-1222 (Toll free within continental U.S.)
www.dmv.state.ne.us/

Nevada

**Fuel (IFTA)/Highway
tax**

Department of Motor Vehicles, Motor Carrier Bureau
(775) 684-4711 (IFTA Registration/Special Fuel User
Registration)
www.dmvnv.com/mchome.html

Secretary of State
(775) 684-5645 (New Corporations Division)
(775) 687-5708 (Annual Reports)
<http://nvsos.gov/>

Department of Taxation, Revenue Division
(866) 962-3707 (Sales & Use Taxes)
<http://tax.state.nv.us/>

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Department of Motor Vehicles, Motor Carrier Division
(775) 684-4711 (Non-fully regulated intrastate carrier
operating authority)
(775) 684-4368 (Vehicle Titling)
www.dmvnv.com/

Transportation Services Authority
(702) 486-3303 (Fully regulated intrastate household
goods and passenger)
(775) 688-2800 (Reno office)
<http://tsa.nv.gov/>

Non-Resident Business Permit: [http://www.dmvnv.com/
regpermits.htm](http://www.dmvnv.com/regpermits.htm)

FLEET MANAGEMENT PRO

New Hampshire

Fuel (IFTA)/Highway tax

Division of Motor Vehicles, Road Toll Administration
(603) 271-2311
www.nh.gov/safety/divisions/dmv/

New Hampshire Secretary of State, Corporate Division,
Department of State
(603) 271-3246
<http://sos.nh.gov/>

Operating authority (UCR)/Vehicle registration (IRP) and titling

New Hampshire Department of Safety, Road Toll Bureau
(603) 271-2311 (Operating Authority, UCRA)
www.nh.gov/safety/

Division of Motor Vehicles
(603) 227-4110
www.nh.gov/safety/divisions/dmv/

Department of Safety, Division of Motor Vehicles
(603) 227-4030 (Vehicle Registration)
(603) 227-4110 (Reciprocity; IRP)
(603) 227-4150 (Title)
www.nh.gov/safety/
<http://www.nh.gov/safety/divisions/index.html>

New Jersey

Fuel (IFTA)/Highway tax

Department of Transportation, Motor Vehicle Services,
Motor Carrier Unit
(609) 633-9400 (Fuel Use Tax – IFTA)
www.state.nj.us/transportation/

Secretary of State
(609) 984-1900 (Corporations Division)
(609) 292-6400 (Sales & Use Taxes)
www.state.nj.us/state/

Operating authority (UCR)/Vehicle registration (IRP) and titling

Motor Vehicle Commission, Motor Carriers Unit, IRP
Section
(609) 292-6500 (Registration of Vehicles – Non-
apportioned)
(609) 633-9399 (IRP/Reciprocity)
www.state.nj.us/mvc/Vehicle/index.htm

New Mexico

Fuel (IFTA)/Highway tax

New Mexico Motor Vehicle Division, Heavy Vehicle
Registration
(505) 827-0392 (Special Fuel Registration; Weight
Distance Tax/IFTA Permits; Tax ID Cards)
www.mvd.newmexico.gov/

FLEET MANAGEMENT PRO

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Taxation & Revenue Department
(505) 827-0870 (Property Tax Division)
(505) 827-0700 (Taxpayer Information)
www.tax.newmexico.gov/

New Mexico Public Regulation Commission,
Transportation Division
(505) 827-4519 (UCRA; Insurance)
(800) 947-4722
www.nmprc.state.nm.us/

Motor Vehicle Division, Commercial Vehicle Bureau
(505) 827-0392 (IRP and Proration; Vehicle License or
Registration)
www.mvd.newmexico.gov/

Taxation and Revenue Department, Motor Vehicle
Division
(505) 827-0700
www.dmv-department-of-motor-vehicles.com/

New York

**Fuel (IFTA)/Highway
tax**

New York State Tax Department, Department of Taxation
and Finance, HUT/IFTA Application Deposit Unit
(800) 470-4353 (NY residents)
(518) 457-5735
www.tax.ny.gov/

OSCAR – One Stop Credentialing and Registration
(518) 474-7667
www.oscar.ny.gov/OSCR/OSCRCarrierHome

Secretary of State, New York Department of State
(518) 473-2492 (Corporations Division)
www.dos.ny.gov/?NF=1

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Office of Safety & Security Services, New York
Department of Transportation
(518) 457-6500
www.dot.ny.gov/index

The Port Authority of New York and New Jersey, Port
Authority Technical Center
(212) 435-7000
www.panynj.gov/

Department of Environmental Conservation, Division of
Solid and Hazardous Materials
Hazardous waste inquiries: (518) 402-8704
Hazardous waste manifesting: (518) 402-8730
Low level radioactive waste: (518) 402-9625
Waste transporter permits: (518) 402-8792
www.dec.ny.gov/

FLEET MANAGEMENT PRO

Hauling in New York City
New York City Commission for Trade Waste: (212) 676-6219
OSCAR – One Stop Credentialing and Registration
(518) 474-7667
www.oscar.ny.gov/OSCR/OSCRCarrierHome

North Carolina

Fuel (IFTA)/Highway tax

Department of Revenue, Excise Tax Division
(919) 733-3409 (IFTA; Emergency Permits - IFTA only; Decals; Refunds)
(919) 733-3166 (Franchise Taxes)
www.dornc.com/

Secretary of State
(919) 733-4201 (Corporations Division)
www.secretary.state.nc.us/corporations/

Operating authority (UCR)/Vehicle registration (IRP) and titling

Department of Transportation, Division of Motor Vehicles, International Registration Plan Section
(919) 861-3720 (IRP, Vehicle Registration, UCRA)
(919) 733-4035 (Intrastate Insurance)
(919) 733-7631 (Insurance)
(919) 715-7000 (Vehicle Registration)
Fax: (919) 715-5998
www.ncdot.gov/dmv/default.html

www.ncdot.gov/dmv/vehicle/

www.ncdot.gov/dmv/vehicle/irp/

North Carolina Utilities Commission
(919) 733-4035 (Intrastate Authority)
www.ncuc.commerce.state.nc.us/

North Carolina Division of Tourism, Film and Sports Development
(919) 733-4171
www.visitnc.com

North Dakota

Fuel (IFTA)/Highway tax

North Dakota Department of Transportation, Motor Vehicle Division, Motor Carrier Services
(701) 328-2725 (IFTA Registration)
www.dot.nd.gov/

Secretary of State
(701) 328-2900 (Corporations Division)
www.nd.gov/sos/

State Tax Department
(701) 328-3127 (Property Taxes; Ad Valorem Taxes)
(701) 328-1246 (Sales Taxes)
www.nd.gov/tax/

FLEET MANAGEMENT PRO

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

North Dakota Department of Transportation, Motor
Vehicle Division, Motor Carrier Services
(701) 328-2725 (Vehicle Registration; Interstate Operating
Authority; UCRA; Intrastate Authority-Household Goods;
Reciprocity and Prorate)
www.dot.nd.gov/

Ohio

**Fuel (IFTA)/Highway
tax**

Ohio Department of Taxation, Fuel Use/IFTA Compliance
Unit
(614) 466-3921 (IFTA/Fuel Use Tax)
www.tax.ohio.gov

Secretary of State
(614) 466-2295 (Corporations Division)
www.sos.state.oh.us/

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Public Utilities Commission
(614) 466-3392 (Operating Authority Registration, UCRA)
(614) 466-3393/4335 (Insurance)
(800) 686-7826 (General Information)
(614) 466-7257 (Additional or Renewal Cab Card ID
Stamps)
(614) 466-7259 (Additional or Renewal PUCO Tax Decals)
(614) 466-3682 (Information from PUCO Enforcement)
(614) 466-0351 (Hazardous Materials Registration)
www.bmv.ohio.gov/

Bureau of Motor Vehicles
(614) 752-7800/7500 (Vehicle Registration)
www.bmv.ohio.gov/

Bureau of Motor Vehicles, IRP Processing Center
(614) 777-8400
(800) 477-0007 (International Registration Plan)
www.bmv.ohio.gov/

Bureau of Motor Vehicles
614-752-7671 (Titling)
www.bmv.ohio.gov/

Oklahoma

**Fuel (IFTA)/Highway
tax**

Oklahoma Tax Commission
(405) 521-3036 (IFTA - Motor Fuel Division, IFTA
Registration)
(405) 319-8200 (Ad Valorem Taxes)
(405) 521-3160 (Franchise Taxes)
(405) 521-3160 (Sales Taxes)
www.oktax.state.ok.us/

Secretary of State
(405) 521-3912
www.sos.state.ok.us/

FLEET MANAGEMENT PRO

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Oklahoma Corporation Commission, Transportation
Division
(405) 521-2251 (Authority/Insurance, UCRA)
(405) 521-2251 (License/IRC/Insurance)
www.occ.state.ok.us/

Oklahoma Corporation Commission
(405) 521-3036 (Vehicle Registration/IRP)
(405) 521-3036 (Vehicle Registration Non-IRP)
(405) 521-3036 (Titling)
www.occ.state.ok.us/

IRP applications:
Oklahoma Corporation Commission, Transportation
Division IFTA/IRP Section
www.occweb.com/TR/IFTA.htm

Oklahoma Tax Commission
(405) 521-3036 (Vehicle Registration; Proration/IRP)
(405) 521-3036 (Titling)
www.oktax.state.ok.us/

Oregon

**Fuel (IFTA)/Highway
Tax**

Oregon Department of Transportation, Motor Carrier
Transportation Division
(503) 373-1634 (IFTA for Oregon carriers)
(503) 378-6699 (Weight Mile Tax)
www.oregon.gov/ODOT/MCT/Pages/index.aspx

Oregon Secretary of State
(503) 986-2200 (Corporations Division)
<http://sos.oregon.gov/business/Pages/default.aspx>

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Oregon Department of Transportation, Motor Carrier
Transportation Division
(503) 378-6699 (Operating Authority, Insurance, IRP and
Prorate)
(503) 378-6643 (Registration/IRP, Weight Receipt and Tax
Identifier)
www.oregon.gov/ODOT/MCT/Pages/index.aspx

Oregon Department of Transportation, Driver and Motor
Vehicle Services Division
(503) 945-5000 (Trailers and vehicles under 26,000 lb)
www.oregon.gov/ODOT/DMV/Pages/vehicle/index.aspx

FLEET MANAGEMENT PRO

Pennsylvania

Fuel (IFTA)/Highway tax

Department of Revenue, Bureau of Motor Fuel Taxes
(800) 482-4382 (Motor Carrier Road Taxes)
(717) 787-5355 (IFTA Registration)
(800) 482-4382 (Fuel Use - Motor Carriers Road Tax -
New Applications)
(717) 783-9361 (Trip Permit)
(800) 482-4382 (Bulk Fuel Use Taxes/Fuel Tax Refunds)
www.revenue.state.pa.us

Secretary of State, Corporations Bureau
(717) 783-1057
www.dos.state.pa.us/portal/server.pt/community/departement_of_state/12405

Department of Revenue, Bureau of Corporation Taxes
(717) 783-6035 (Highway Use - Gross Receipts Taxes)
www.revenue.state.pa.us

Operating authority (UCR)/Vehicle registration (IRP) and titling

Secretary's Bureau, Public Utility Commission
(717) 787-3834 (Operating Authority – Intrastate)
(717) 787-1227 (Insurance Filing)
www.puc.state.pa.us/

Department of Transportation, Bureau of Motor Vehicles,
Commercial Registration Section
(717) 346-0608 (Vehicle Registration)
(717) 787-4309 (Commercial Registration)
(717) 787-4309 (IRP; Commercial Registration)
www.dmv.state.pa.us/

Department of Transportation, Bureau of Motor Vehicles
(717) 412-5300 (Titling)
www.dot.state.pa.us/

Rhode Island

Fuel (IFTA)/Highway tax

Department of Administration, Division of Taxation
(401) 222-2950 (IFTA/Fuel Use Taxes; Sales & Motor Fuel
Taxes; Refunds)
(401) 222-6317 (Fuel Use Tax)
<http://www.tax.state.ri.us/>

Secretary of State
(401) 277-3040 (Corporations Division)
(401) 277-2950 (Sales & Use Taxes)
<http://sos.ri.gov/>

Operating authority (UCR)/Vehicle registration (IRP) and titling

Public Utilities Commission, Division of Public Utilities
and Carriers
(401) 941-4500 ext. 149 (Intrastate authority)
(401) 780-2158 (UCRA)
<http://www.ripuc.org/>

FLEET MANAGEMENT PRO

Division of Motor Vehicles, IRP Services Section
(401) 728-6692 or (401) 588-3020
(401) 462-4368 (General Information)
<http://www.dmv.ri.gov/>

South Carolina

Fuel (IFTA)/Highway tax

South Carolina Dept. of Motor Vehicles, Motor Carrier Services

(803) 896-1990 (Fuel Tax Refunds)
(803) 896-3870 (IFTA Registration)
www.scdmvonline.com/DMVNew/default.aspx?n=ifta

South Carolina Department of Revenue and Taxation
(803) 896-3870 (IFTA Registration)
(803) 898-5788 (Sales & Use Taxes)
(803) 898-5222 (Property Tax)
www.sctax.org/default.htm

Operating authority (UCR)/Vehicle registration (IRP) and titling

South Carolina Division of Motor Vehicles, Motor Carrier Services

(803) 896-3870 (Operating Authority/UCRA/Insurance/IRP Registration)
(803) 896-5000 (Titling)
www.scdmvonline.com/DMVNew/default.aspx?n=titleandreg

Public Service Commission, Transportation Division
(803) 896-5191 (Passenger Authority)
www.dot.state.sc.us/

South Dakota

Fuel (IFTA)/Highway tax

Department of Revenue, Division of Motor Vehicles, Interstate Fuel Tax Section

(605) 773-4109 (Interstate Fuel Use)
(605) 773-4109 (IFTA Registration)
http://dor.sd.gov/Motor_Vehicles/

Department of Revenue, Special Tax Division
(605) 773-3311 (Property Tax Division)
(605) 773-5141 (Sales & Use Taxes)
http://dor.sd.gov/Taxes/Special_Taxes/

Operating authority (UCR)/Vehicle registration (IRP) and titling

Department of Revenue and Regulation, Motor Vehicle Division, UCR Program or Prorate and Commercial Licensing Section

(605) 773-4111 (Operating Authority, UCRA, Exempt, Vehicle Registration, Proration, Reciprocity)
(605) 773-3541 (Vehicle Titling)
http://dor.sd.gov/Motor_Vehicles/

FLEET MANAGEMENT PRO

Tennessee

Fuel (IFTA)/Highway tax

Department of Revenue, Motor Carrier Office
(615) 399-4267 (IFTA/Highway Fuel Tax)
www.tn.gov/revenue/motorcarrier/index.shtml

Secretary of State
(615) 741-2286 (Corporations)
(615) 741-4994 (Annual Reports)
(615) 741-0538 (Domestic Corporations)
(615) 741-0539 (Foreign Corporations)
www.state.tn.us/sos/

Department of Revenue, Andrew Jackson State Office Building
(615) 741-3133 (Franchise, Excise, & Income Taxes)
(615) 741-3581 (Sales & Use Taxes)
(615) 741-7071 (Tax Enforcement)
(615) 741-2481 (Taxpayer Services)
www.state.tn.us/revenue/

Operating authority (UCR)/Vehicle registration (IRP) and titling

Department of Safety, Cooper Hall
(615) 687-2285 (Operating Authority)
www.state.tn.us/safety/

Tennessee Dept. of Revenue, Taxpayer & Vehicle Services Division, Motor Carrier Section -- UCR
(615) 399-4266 or (615) 399-4265
www.state.tn.us/revenue/

Department of Safety
(615) 687-2285 (Operating Authority)
www.state.tn.us/safety/

Department of Revenue, Vehicle Services Section
(615) 741-3101
www.tn.gov/revenue/vehicle/index.shtml

Texas

Fuel (IFTA)/Highway tax

Comptroller of Public Accounts, Motor Fuel Tax Division
(800) 299-1700 - Press 5 for IFTA and Fuel
(512) 463-4600 – Tax Assistance and IFTA
(800) 252-1383 (Interstate Permits/IFTA) (Sales & Excise Taxes; Fuel Tax Refunds; Franchise Taxes)
www.window.state.tx.us/

Secretary of State
(512) 463-5555 (Corporations Section)
www.sos.state.tx.us/

FLEET MANAGEMENT PRO

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Texas Department of Motor Vehicles
(800) 299-1700 (Operating Authority; UCRA; Insurance
Filing)
(512) 465-7611 (Vehicle Registration)
(512) 374-5250 (Special Registration (IRP) Branch)
<http://www.txdmv.gov/>

Utah

**Fuel (IFTA)/Highway
tax**

State Tax Commission, Motor Vehicle Division, Motor
Carrier Services
(801) 297-6800 (IFTA Registration)
(801) 297-6800 (IFTA Tax Reports and IFTA Tax Returns)
(801) 297-6800 (Reefer/Bulk Fuel Refunds)
(801) 297-6800 (Special Fuel User Returns)
motorcarrier.utah.gov/

State Tax Commission
(801) 297-7780 (Certificates of Incorporation)
(801) 297-7780 (Corporation Amendments)
tax.utah.gov/

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Utah Dept. of Transportation, Ports-of-Entry, Motor
Carrier Division
(801) 965-4892
www.udot.utah.gov

Department of Transportation, Port-of-Entry
Headquarters
(801) 965-4892 (Operating Authority – UCR)
www.udot.utah.gov

Utah State Tax Commission, Motor Vehicle Division,
Motor Carrier Services
(801) 297-6800 (Vehicle Registration; Reciprocity &
Proration)
(888) 251-9555
motorcarrier.utah.gov

Vermont

**Fuel (IFTA)/Highway
tax**

Department of Motor Vehicles
(802) 828-2070 (IFTA Tax and Registration)
dmv.vermont.gov/commercial_trucking/IFTA

Vermont Department of Taxes
(802) 828-5723 (Business Tax Division)
(802) 828-5723 (Corporations)
(802) 828-2551 (Franchise & Misc. Taxes)
www.state.vt.us/tax/index.shtml

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Department of Motor Vehicles
(802) 828-2000 (Registration of Vehicles; Reciprocity)
(802) 828-2071 (IRP)
dmv.vermont.gov/

FLEET MANAGEMENT PRO

Virginia

Fuel (IFTA)/Highway tax

Department of Motor Vehicles, Motor Carrier Services
(866) 878-2582 (IFTA & Motor Fuel Road Taxes)
(804) 786-3697 (Fuel Tax Audit Section)
www.dmv.state.va.us/

Division of Motor Vehicles, Revenue Control Department
(804) 367-0929 (Bulk Fuel Storage)
www.dmv.state.va.us/

State Corporation Commission
(804) 786-3733
www.scc.virginia.gov/

Operating authority (UCR)/Vehicle registration (IRP) and titling

Department of Motor Vehicles, Motor Carrier Services
(804) 367-0269 (UCRA)
(866) 878-2582 Toll-Free (Operating Authority)
www.dmv.state.va.us/

Virginia Tourism Department
(804) 371-8148
www.virginia.org

Washington

Fuel (IFTA)/Highway tax

Department of Licensing, Fuel Tax Section
(360) 664-1868 (IFTA Information)
(360) 664-1852 (Special Fuel Users; Fuel Tax Refunds)
(360) 664-1868 (IFTA Tax Reports)
www.dol.wa.gov/vehicleregistration/ftfacts.html

Operating authority (UCR)/Vehicle registration (IRP) and titling

Utilities and Transportation Commission, Licensing Services
(360) 664-1160 or
(360) 664-1222 (UCRA)
www.utc.wa.gov/Pages/default.aspx

Utilities and Transportation Commission, Transportation Operations
(360) 664-1222 (Insurance)
www.utc.wa.gov/Pages/default.aspx

Department of Licensing
(360) 570-4915 (Registration of Vehicles)
(360) 664-1858 (IRP)
(360) 902-3770
www.dol.wa.gov/
www.dol.wa.gov/vehicleregistration/prorate.html
www.dol.wa.gov/vehicleregistration/titles.html

FLEET MANAGEMENT PRO

West Virginia

Fuel (IFTA)/Highway tax

West Virginia State Tax Department, Motor Fuels Tax Return Unit
(304) 558-1951 (IFTA Registration, Motor Carrier Road Tax & Fuel Tax Refunds)
(304) 558-8500 (Fuel Markers, Fuel Sales & Use Taxes)
www.wva.state.wv.us/wvtax/default.aspx

Secretary of State
(304) 558-8000
www.sos.wv.gov/Pages/default.aspx

Operating authority (UCR)/Vehicle registration (IRP) and titling

Public Service Commission, Motor Carrier -- UCR
(304) 340-0427/0377 (Operating Authority; UCRA)
(304) 340-0346 (UCR Information; Insurance)
www.psc.state.wv.us/

Division of Motor Vehicles
(304) 558-3629 or (304) 558-3900 (Fuel (IFTA)/Highway Tax)
www.transportation.wv.gov/Pages/default.aspx

Wisconsin

Fuel (IFTA)/Highway tax

Department of Transportation, Division of Motor Vehicles, Motor Carrier Services Section
(608) 266-9900 (IFTA Registration; Interstate Fuel Tax; Fuel Tax Refunds)
www.dot.wisconsin.gov/business/carriers/index.htm

Department of Revenue, Excise Tax Bureau
(608) 266-3223 or (608) 266-0064 (Motor Fuel Tax - Intrastate and Bulk)
www.revenue.wi.gov/contact/ise.html

Department of Financial Institutions
(608) 261-7577 (Corporations Division)
www.wdfi.org/corporations/

Department of Revenue
(608) 266-2772 (Corporation Franchise & Income Taxes)
(608) 266-2776 (Sales Taxes)
www.revenue.wi.gov/

FLEET MANAGEMENT PRO

**Operating authority
(UCR)/Vehicle
registration (IRP)
and titling**

Department of Transportation, Motor Carrier Services
(608) 267-5103 (Operating Authority - For-hire Carriers;
Insurance Requirements)
(608) 261-2574 (UCRA)
(608) 266-1356 (Authority - For-hire Carriers; Insurance)
(608) 266-9900 (IRP)
(608) 266-1466 (Intrastate Registration of Vehicles)
www.dot.wisconsin.gov/business/carriers/index.htm
www.dot.wisconsin.gov/business/carriers/insurance.htm
www.dot.state.wi.us/
www.dot.state.wi.us/drivers/vehicles/plates/walkin.htm
www.dot.state.wi.us/drivers/vehicles/title/

Wyoming

**Fuel (IFTA) highway
tax**

Department of Transportation, Fuel Licensing Section
(307) 777-4827 (IFTA Registration; Interstate Motor
Carrier Regulations; IFTA Tax Returns; Interstate Tax
Reports)
[www.dot.state.wy.us/home/trucking_commercial_vehicles/
ifta.html](http://www.dot.state.wy.us/home/trucking_commercial_vehicles/ifta.html)

Secretary of State
(307) 777-7311 (Corporations Division)
soswy.state.wy.us/

Department of Revenue and Taxation
(307) 777-5237 (Ad Valorem Taxes)
(307) 777-7961 (General Information)
revenue.wyo.gov/

**Operating Authority
(UCR)/Vehicle
registration (IRP)
and titling**

Department of Transportation, Regulatory/Authority
Division
(307) 777-4850 (Operating Authority; Insurance)
[www.dot.state.wy.us/home/trucking_commercial_vehicles/
operating_authority.html](http://www.dot.state.wy.us/home/trucking_commercial_vehicles/operating_authority.html)

Department of Transportation, Motor Vehicle Services
(307) 777-4829 (IRP; Proration)
(307) 777-4717 (Titling)
[www.dot.state.wy.us/home/trucking_commercial_vehicles/
irp.html](http://www.dot.state.wy.us/home/trucking_commercial_vehicles/irp.html)

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REFERENCE

Federal Motor Carrier Safety Administration Regional Offices

Agency Contacts

FMCSA Service Centers

The Federal Motor Carrier Safety Administration (FMCSA) maintains Service Centers, to which official correspondence may be directed, and Field Offices, where the safety investigators for each state are located. The field offices are also referred to as “divisions.” Each state has one Field Office, which is where the Division Administrator for that Field Office is located. The staffs at these offices are ready and willing to answer questions and help anyone who is interested in improving commercial vehicle safety.

Eastern Service Center

802 Cromwell Park Dr.
Ste. N
Glen Burnie, MD 21061

(443) 703-2240

Fax: (443) 703-2253

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, West Virginia

Southern Service Center

1800 Century Blvd., Ste. 1700
Atlanta, GA 30345

(404) 327-7400

Fax: (404) 327-7349

Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee

Midwestern Service Center

4749 Lincoln Mall Dr., Ste. 300A
Matteson, IL 60443

(708) 283-3577

Fax: (708) 283-3579

Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin

Western Service Center

Golden Hills Office Centre
12600 W. Colfax Ave., Ste. B-300
Lakewood, CO 80215

(303) 407-2350

Fax: (303) 407-2339

Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Northern Mariana Islands, Oregon, South Dakota, Texas, Utah, Washington, Wyoming

Note for Canadian and Mexican Carriers:

Canadian carriers should contact an FMCSA division (state) office in AK, ME, MI, MT, NY, ND, VT, or WA.

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Mexican carriers should contact an FMCSA division (state) office in AZ, CA, NM, or TX.

FMCSA field offices

Alabama

Federal Motor Carrier Safety Administration
520 Cotton Gin Rd.
Montgomery, AL 36117-2018
(334) 290-4954
Fax: (334) 290-4944

Alaska

Federal Motor Carrier Safety Administration
Frontier Bldg., Ste. 260
3601 "C" St.
Anchorage, AK 99503
(907) 271-4068
Fax: (907) 271-4069

Arizona

Federal Motor Carrier Safety Administration
400 E. Van Buren St., Ste. 401
Phoenix, AZ 85004
(602) 379-6851
Fax: (602) 379-3627

Arkansas

Federal Motor Carrier Safety Administration
2527 Federal Bldg.
700 W. Capitol Ave.
Little Rock, AR 72201
(501) 324-5050
Fax: (501) 324-6562

California

Federal Motor Carrier Safety Administration
1325 J St., Ste. 1540
Sacramento, CA 95814-2941
(916) 930-2760
Fax: (916) 930-2778

Colorado

Federal Motor Carrier Safety Administration
12300 W. Dakota Ave., Ste. 130
Lakewood, CO 80228
(720) 963-3130
Fax: (720) 963-3131

Connecticut

Federal Motor Carrier Safety Administration
Glastonbury Corporate Center
628-2 Hebron Ave., Ste. 302
Glastonbury, CT 06033-5007
(860) 659-6700
Fax: (860) 659-6725

Delaware

Federal Motor Carrier Safety Administration
College Business Park
1203 College Park Dr., Ste. 102
Dover, DE 19904-8703
(302) 734-8173
Fax: (302) 346-5101

District of Columbia

Federal Motor Carrier Safety Administration
1990 K St., NW, Ste. 510
Washington, DC 20006
(202) 219-3576
Fax: (202) 219-3546

Florida

Federal Motor Carrier Safety Administration
545 John Knox Rd., Rm. 102
Tallahassee, FL 32303
(850) 942-9338
Fax: (850) 942-9680

Georgia

Federal Motor Carrier Safety Administration
Two Crown Center
1745 Phoenix Blvd., Ste. 380
Atlanta, GA 30349
(678) 284-5130
Fax: (678) 284-5146

Hawaii

Federal Motor Carrier Safety Administration
Prince Jonah Kuhio Kalaniana'ole Bldg.
300 Ala Moana Blvd., Rm. 3-239
P.O. Box 50226
Honolulu, HI 96850
(808) 541-2790
Fax: (808) 541-2702

FLEET MANAGEMENT PRO

Idaho

Federal Motor Carrier Safety Administration
3200 N. Lakeharbor Ln., Ste. 161
Boise, ID 83703
(208) 334-1842
Fax: (208) 334-1046

Illinois

Federal Motor Carrier Safety Administration
3250 Executive Park Dr.
Springfield, IL 62703-4514
(217) 492-4608
Fax: (217) 492-4986

Indiana

Federal Motor Carrier Safety Administration
Minton-Capehart Federal Bldg.
575 N. Pennsylvania St., Rm. 261
Indianapolis, IN 46204-1520
(317) 226-7474
Fax: (317) 226-5657

Iowa

Federal Motor Carrier Safety Administration
105 6th St.
Ames, IA 50010-6337
(515) 233-7400
Fax: (515) 233-7494

Kansas

Federal Motor Carrier Safety Administration
1303 SW First American Pl., Ste. 200
Topeka, KS 66604-4040
(785) 271-1260
Fax: (877) 547-0378

Kentucky

Federal Motor Carrier Safety Administration
Federal Building and U.S. Courthouse
330 W. Broadway, Rm. 124
Frankfort, KY 40601
(502) 223-6779
Fax: (502) 223-6767

Louisiana

Federal Motor Carrier Safety Administration
5304 Flanders Dr., Ste. A
Baton Rouge, LA 70808
(225) 757-7640
Fax: (225) 757-7636

Maine

Federal Motor Carrier Safety Administration
Edmund S. Muskie Federal Bldg.
40 Western Ave., Rm. 411
Augusta, ME 04330
(207) 622-8358
Fax: (207) 622-8477

Maryland

Federal Motor Carrier Safety Administration
City Crescent Bldg.
10 S. Howard St., Ste. 2710
Baltimore, MD 21201
(410) 962-2889
Fax: (410) 962-3916

Massachusetts

Federal Motor Carrier Safety Administration
50 Mall Rd., Ste. 212
Burlington, MA 01803
(781) 425-3210
Fax: (781) 425-3225

Michigan

Federal Motor Carrier Safety Administration
Federal Bldg.
315 W. Allegan St., Rm. 219
Lansing, MI 48933-1514
(517) 853-5990
Fax: (517) 377-1868

Minnesota

Federal Motor Carrier Safety Administration
380 Jackson St.
Galtier Plaza, Ste. 500
St. Paul, MN 55101
(651) 291-6150
Fax: (651) 291-6001

Mississippi

Federal Motor Carrier Safety Administration
100 West Capitol St., Ste. 1049
Jackson, MS 39269
(601) 965-4219
Fax: (601) 965-4674

Missouri

Federal Motor Carrier Safety Administration
3219 Emerald Ln., Ste. 500
Jefferson City, MO 65109
(573) 636-3246
Fax: (573) 636-8901

FLEET MANAGEMENT PRO

Montana

Federal Motor Carrier Safety Administration
2880 Skyway Dr.
Helena, MT 59602
(406) 449-5304
Fax: (406) 449-5318

Nebraska

Federal Motor Carrier Safety Administration
100 Centennial Mall North, Rm. 406
Lincoln, NE 68508-5146
(402) 437-5986
Fax: (402) 437-5837

Nevada

Federal Motor Carrier Safety Administration
705 N. Plaza St., Ste. 204
Carson City, NV 89701
(775) 687-5335
Fax: (775) 687-8353

New Hampshire

Federal Motor Carrier Safety Administration
70 Commercial St., Ste. 102
Concord, NH 03301
(603) 228-3112
Fax: (603) 223-0390

New Jersey

Federal Motor Carrier Safety Administration
One Independence Way, Ste. 120
Princeton, NJ 08540
(609) 275-2604
Fax: (609) 275-5108

New Mexico

Federal Motor Carrier Safety Administration
2440 Louisiana Blvd., NE
Ste. 520
Albuquerque, NM 87110
(505) 346-7858
Fax: (505) 346-7859

New York

Federal Motor Carrier Safety Administration
Leo W. O'Brien Federal Bldg., Rm. 815
Clinton Ave. and N. Pearl St.
Albany, NY 12207
(518) 431-4145
Fax: (518) 431-4140

North Carolina

Federal Motor Carrier Safety Administration
310 New Bern Ave., Ste. 468
Raleigh, NC 27601
(919) 856-4378
Fax: (919) 856-4369

North Dakota

Federal Motor Carrier Safety Administration
1471 Interstate Loop
Bismarck, ND 58503
(701) 250-4346
Fax: (701) 250-4389

Ohio

Federal Motor Carrier Safety Administration
200 N. High St., Rm. 609
Columbus, OH 43215-2482
(614) 280-5657
Fax: (614) 280-6875

Oklahoma

Federal Motor Carrier Safety Administration
300 N. Meridian, Ste. 106 North
Oklahoma City, OK 73107-6560
(405) 605-6047
Fax: (405) 605-6176

Oregon

Federal Motor Carrier Safety Administration
The Equitable Center
530 Center St., NE, Ste. 440
Salem, OR 97301-3740
(503) 399-5775
Fax: (503) 316-2580

Pennsylvania

Federal Motor Carrier Safety Administration
215 Limekiln Rd., Ste. 200
New Cumberland, PA 17070
(717) 614-4060
Fax: (717) 614-4066

Puerto Rico

Federal Motor Carrier Safety Administration
Torre Chardón Ste. 207
350 Chardón St.
Hato Rey, PR 00918
(787) 766-5985
Fax: (787) 766-5015

FLEET MANAGEMENT PRO

Rhode Island

Federal Motor Carrier Safety Administration
20 Risho Ave., Ste. E
East Providence, RI 02914
(401) 431-6010
Fax: (401) 431-6019

South Carolina

Federal Motor Carrier Safety Administration
1835 Assembly St., Ste. 1253
Columbia, SC 29201-2430
(803) 765-5414
Fax: (803) 765-5413

South Dakota

Federal Motor Carrier Safety Administration
1410 E. Highway 14, Ste. B
Pierre, SD 57501
(605) 224-8202
Fax: (605) 224-1766

Tennessee

Federal Motor Carrier Safety Administration
640 Grassmere Park, Ste. 111
Nashville, TN 37211
(615) 781-5781
Fax: (615) 781-5780

Texas

Federal Motor Carrier Safety Administration
903 San Jacinto Blvd., Ste. 101
Austin, TX 78701
(512) 916-5440
Fax: (512) 916-5482

Utah

Federal Motor Carrier Safety Administration
310 E. 4500 S., Ste. 102
Salt Lake City, UT 84107-3993
(801) 288-0360
Fax: (801) 288-8867

Vermont

Federal Motor Carrier Safety Administration
Federal Bldg.
87 State St., Rm. 305
P.O. Box 338
Montpelier, VT 05601
(802) 828-4480
Fax: (802) 828-4581

Note for Canadian and Mexican Carriers: Canadian carriers should contact an FMCSA Field Office in AK, ME, MI, MT, NY, ND, VT, or WA. Mexican carriers should contact an FMCSA Field Office in AZ, CA, NM, or TX.

Virginia

Federal Motor Carrier Safety Administration
400 N. 8th St., Ste. 780
Richmond, VA 23219-4827
(804) 771-8585
Fax: (804) 771-8670

Washington

Federal Motor Carrier Safety Administration
2424 Heritage Ct., SW, Suite 302
Olympia, WA 98502-6031
(360) 753-9875
Fax: (360) 753-9024

West Virginia

Federal Motor Carrier Safety Administration
700 Washington St. East
Geary Plaza, Ste. 205
Charleston, WV 25301
(304) 347-5935
Fax: (304) 347-5617

Wisconsin

Federal Motor Carrier Safety Administration
One Point Pl., Ste. 101
Madison, WI 53719-2809
(608) 662-2010
Fax: (608) 829-7540

Wyoming

Federal Motor Carrier Safety Administration
2617 East Lincolnway, Ste. F
Cheyenne, WY 82001
(307) 772-2305
Fax: (307) 772-2905

FLEET MANAGEMENT PRO

Reserved

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Part 360—Fees for motor carrier registration and insurance

Sec.

- 360.1 Fees for records search, review, copying, certification, and related services.
- 360.3 Filing fees.
- 360.5 Updating user fees.

§360.1 Fees for records search, review, copying, certification, and related services.

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

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

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

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

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

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

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

(3) Printing shall be charged at the rate of \$.10 per page of computer generated output with a minimum charge of \$.25. A charge of \$30 per reel of magnetic tape will be made if the tape is to be permanently retained by the requestor.

§360.1 Fees for registration-related services (Effective October 23, 2015)

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

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

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

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

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

(A) The filing date of the bankruptcy petition;

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

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(C) The type of bankruptcy proceeding;

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

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

(3) Fees will be payable to the Federal Motor Carrier Safety Administration by a check payable in United States currency drawn upon funds deposited in a United States or foreign bank or other financial institution, money order payable in United States' currency, or credit card (VISA or MASTERCARD).

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

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

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

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

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

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

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

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

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

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

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

(f) Schedule of filing fees.

Type of Proceeding	Fee	
Part I: Licensing		
(1)	An application for motor carrier operating authority, a certificate of registration for certain foreign carriers, property broker authority, or freight forwarder authority	\$300
(2)	A petition to interpret or clarify an operating authority	3,000
(3)	A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plant site, or the change of a highway name or number.	50
(4)	A petition to renew authority to transport explosives	250
(5)	An application for authority to deviate from authorized regular-route authority	150
(6)	An application for motor carrier temporary authority issued in an emergency situation	100
(7)	Request for name change of a motor carrier, property broker, or freight forwarder	14
(8)	An application involving the merger, transfer, or lease of the operating rights of motor passenger and property carriers, property brokers, and household goods freight forwarders under 49 U.S.C.10321 and 10926	300
(9)-(49)	[Reserved]	
Part II: Insurance:		
(50)	(i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD)...	4,200
	(ii) An application for original qualification as self-insurer for cargo insurance	420

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Type of Proceeding		Fee
(51).....	A service fee for insurer, surety, or self-insurer accepted certificate of insurance, surety bond, and other instrument submitted in lieu of a broker surety bond	\$10 per accepted certificate, surety bond or other instrument submitted in lieu of a broker surety bond.
(52).....	A petition for reinstatement of revoked operating authority	80
(53)-(79).....	[Reserved]	
Part III: Services:		
(80).....	Request for service or pleading list for proceedings.....	13 per list
(81).....	Faxed copies of operating authority to applicants or their representatives who did not receive a served copy.....	5

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

- (i) All work will be suspended on the filing or proceeding, until the check is made good;
- (ii) A returned check charge of \$6.00 and any bank charges incurred by the FMCSA as a result of the dishonored check must be submitted with the filing fee which is outstanding; and
- (iii) If payment is not made within the time specified by the FMCSA, the proceeding will be dismissed or the filing may be rejected.

(2) If a person repeatedly submits dishonored checks to the FMCSA for filing fees, the FMCSA may notify the person that all future filing fees must be submitted in the form of a certified or cashier's check, moneyorder, or credit card.

§360.3 Filing fees. (Effective October 23, 2015)

(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

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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)	\$4,200.
	(ii) An application for original qualification as self-insurer for cargo insurance	\$420.

§360.5 Updating user fees.

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

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

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

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

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

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

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

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

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

(This rounding procedures excludes copying, printing and search fees.)

(e) **Rounding of updated fees.** Updated fees shall be rounded in the following manner:

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

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

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

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

§360.5 Updating user fees. (Effective October 23, 2015)

(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

Subpart A — How To Apply for Operating Authority

Sec.

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Appendix A to Subpart E of Part 365 — Explanation of Pre-Authorization Safety Audit Evaluation Criteria for Mexico-Domiciled Motor Carriers

Subpart A—How to apply for operating authority

§365.101 Applications governed by these rules.

These rules govern the handling of applications for operating authority of the following type:

(a) Applications for certificates and permits to operate as a motor common or contract carrier of property or passengers.

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

(b) Applications for permits to operate as a freight forwarder.

(c) [Reserved]

(d) Applications for licenses to operate as a broker of motor vehicle transportation.

(e) Applications for certificates under 49 U.S.C. 13902(b)(3) to operate as a motor carrier of passengers in intrastate commerce over regular routes if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.

(f) [Reserved]

(g) Applications for temporary motor carrier authority.

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

(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.

(i) Applications for non-North America-domiciled motor carriers to operate in foreign commerce as for-hire motor carriers of property and passengers within the United States.

§365.103 Modified procedure.

The FMCSA will handle licensing application proceedings using the modified procedure, if possible. The applicant and protestants send statements made under oath (verified statements) to each other and to the FMCSA. There are no personal appearances or formal hearings.

§365.105 Starting the application process: Form OP-1.

(a) Each applicant must file the appropriate form in the OP-1 series. Form OP-1 must be filed when requesting authority to operate as a motor property carrier, a broker of general freight, or a broker of household goods; Form OP-1(P) must be filed when requesting authority to operate as a motor passenger carrier; Form OP-1(FF) must be filed when requesting authority to operate as a freight forwarder; Form OP-1(MX) must be filed by a Mexico-domiciled motor property, including household goods, carrier, or a motor passenger carrier requesting authority to operate within the United States; and effective December 16, 2009.

Form OP-1(NNA) must be filed by a non-North America-domiciled motor property, including household goods, carrier or a motor passenger carrier requesting authority to operate within the United States. A separate filing fee in the amount set forth at 49 CFR 360.3(f)(1) is required for each type of authority sought.

(b) Obtain forms at a FMCSA Division Office in each State or at one of the FMCSA Service Centers. Addresses and phone numbers for the Division Offices and Service Centers can be found at: <http://www.fmcsa.dot.gov/aboutus/fieldoffices>. The forms and information about filing procedures can be downloaded at: <http://www.fmcsa.dot.gov/factsfigs/formspubs>; and from the do-it-yourself website at: <http://www.diy.dot.gov>.

§365.105 Starting the application process: Form MCSA-1, FMCSA Registration/Update (USDOT Number—Operating Authority Application). (Effective October 23, 2015)

(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”).

§365.107 Types of applications.

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

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(1) Motor common and contract carrier of property (except household goods), Mexican motor property carriers that perform private carriage and transport exempt items, and motor contract carrier of passengers transportation.

(2) Motor carrier brokerage of general commodities (except household goods).

(3) Certain types of motor passenger applications as described in Form OP-1 (P).

(b) Motor passenger “public interest” applications as described in Form OP-1 (P).

(c) Intrastate motor passenger applications under 49 U.S.C. 13902(b)(3) as described in Form OP-1, Schedule B.

(d) Motor common carrier of household goods applications, including Mexican carrier applicants. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The service proposed will serve a useful public purpose, responsive to a public demand or need.

(e) Motor contract carrier of household goods, household goods property broker, and freight forwarder applications. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The transportation to be provided will be consistent with the public interest and the national transportation policy of 49 U.S.C. 13101.

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

(g) In view of the expedited time frames established in this part for processing requests for permanent authority, applications for TA will be entertained *only* in exceptional circumstances (*i.e.*, natural disasters or national emergencies) when evidence of immediate service need can be specifically documented in a narrative supplement appended to Form OP-1 for motor property carriers, Form OP-1MX for Mexican property carriers and, Form OP-1(P) for motor passenger carriers. TA applications must be filed with the Division Office which has jurisdiction over the area in which applicant’s headquarters are located.

§365.107 Types of applications. (Effective October 23, 2015)

(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 of 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.

§365.109 FMCSA review of the application.

(a) FMCSA staff will review the application for correctness, completeness, and adequacy of the evidence (the *prima facie* case).

(1) Minor errors will be corrected without notification to the applicant.

(2) Materially incomplete applications will be rejected. Applications that are in substantial compliance with these rules may be accepted.

(3) All motor carrier applications will be reviewed for consistency with the FMCSA’s operational safety fitness policy. Applicants with “Unsatisfactory” safety fitness ratings from DOT will have their applications rejected.

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(4) FMCSA staff will review completed applications that conform with the FMCSA's safety fitness policy and that are accompanied by evidence of adequate financial responsibility.

(5) Financial responsibility is indicated by filing within 20 days from the date an application notice is published in the FMCSA Register:

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

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

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

(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 legal process agents—within 20 days from the date an application notice is published in the *FMCSA Register*.

(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.

(7) Applicants seeking to conduct operations for which tariffs are required may not commence such operations until tariffs are in effect.

(8) All applications must be completed in English.

(b) A summary of the application will be published as a preliminary grant of authority in the *FMCSA Register* to give notice to the public in case anyone wishes to oppose the application.

(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.

§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.

§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 within 10 days of the date of the letter of rejection.

(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.

(b) If the appeal is successful and the filing is found to be proper, the application shall be deemed to have been properly filed as of the decision date of the appeal.

§365.113 Changing the request for authority or filing supplementary evidence after the application is filed.

(a) Once the application is filed, the applicant may supplement evidence only with approval of the FMCSA.

(b) Amendments to the application generally are not permitted, but in appropriate instances may be entertained at the discretion of the FMCSA.

§365.115 After publication in the FMCSA register.

(a) Interested persons have 10 days from the date of *FMCSA Register* publication to file protests. See Subpart B of this part.

(b) If no one opposes the application, the grant published in the *FMCSA Register* will become effective by issuance of a certificate, permit, or license.

§365.117 Obtaining a copy of the application.

After publication, interested persons may request a copy of the application by contacting the FMCSA-designated contract agent (as identified in the *FMCSA Register*).

§365.119 Opposed applications.

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

§365.119 Opposed applications. (Effective October 23, 2015)

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.

§365.121 Filing a reply statement.

(a) If the application is opposed, applicant may file a reply statement. This statement is due within 20 days after *FMCSA Register* publication.

(b) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(c) The reply statement need not be notarized or verified. Applicant understands that the oath in the application form applies to all evidence submitted in the application. Separate legal arguments by counsel need not be notarized or verified.

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§365.123 Applicant withdrawal.

If the applicant wishes to withdraw an application, it shall request dismissal in writing.

Subpart B—How to oppose requests for authority

§365.201 Definitions.

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

§365.201 Definitions (Effective October 23, 2015)

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

§365.203 Time for filing.

A protest shall be filed (received at the FMCSA) within 10 days after notice of the application appears in the *FMCSA Register*. A copy of the protest shall be sent to applicant's representative at the same time. Failure timely to file a protest waives further participation in the proceeding.

§365.203 Time for filing. (Effective October 23, 2015)

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.

§365.205 Contents of the protest.

(a) All information upon which the protestant plans to rely is put into the protest.

(b) A protest must be verified, as follows:

I, _____, verify under penalty of perjury under laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this protest. (See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties.)

(Signature and Date)

(c) A protest not in substantial compliance with applicable statutory standards or these rules may be rejected.

(d) Protests must respond directly to the statutory standards for FMCSA review of the application. As these standards vary for particular types of applications, potential protestants should refer to the general criteria addressed at §365.107 and may consult the FMCSA at (202) 366-9805 for further assistance in developing their evidence.

§365.207 Withdrawal

A protestant wishing to withdraw from a proceeding shall inform the FMCSA and applicant in writing.

Subpart C—General rules governing the application process

§365.301 Applicable rules.

Generally, all application proceedings are governed by the FMCSA's Rules of Practice at part 386 of this chapter except as designated below.

§365.303 Contacting another party.

When a person wishes to contact a party or serve a pleading or letter on that party, it shall do so through its representative. The phone and FAX numbers and address of applicant's representative shall be listed in the *FMCSA Register*.

§365.305 Serving copies of pleadings.

(a) An applicant must serve all pleadings and letters on the FMCSA and all known participants in the proceeding, except that a reply to a motion need only be served on the moving party.

(b) A protestant need serve only the FMCSA and applicant with pleadings or letters.

§365.307 Replies to motions.

Replies to motions filed under this part are due within 5 days of the date the motion is filed at the FMCSA.

§365.309 FAX filings.

FAX filings of applications and supporting evidence are not permitted. To assist parties in meeting the expedited time frames established for protesting an application, however, the FMCSA will accept FAX filings of protests and any reply or rebuttal evidence. FAX filings of these pleadings must be followed by the original document, plus one copy for FMCSA recordkeeping purposes.

Subpart D—Transfer of operating rights Under 49 U.S.C. 10926

§365.401 Scope of rules.

These rules define the procedures that enable motor passenger and property carriers, property brokers, and household goods freight forwarders to obtain approval from the FMCSA to merge, transfer, or lease their operating rights in financial transactions not subject to 49 U.S.C. 11343. Transactions covered by these rules are governed by 49 U.S.C. 10321 and 10926. The filing fee is set forth at 49 CFR 360.3(f)(8).

§365.403 Definitions.

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

(a) **Transfer.** Transfers include all transactions (i.e., the sale or lease of interstate operating rights,¹ or the merger of two or more carriers or a carrier into a noncarrier) subject to 49 U.S.C. 10926, as well as the sale of property brokers' licenses under 49 U.S.C. 10321.

(b) **Operating rights.** Operating rights include:

(1) Certificates and permits issued to motor carriers;

¹ The execution of a chattel mortgage, deed of trust, or other similar document does not constitute a transfer or require the FMCSA's approval. However, a foreclosure for the purpose of

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- (2) Permits issued to freight forwarders;
- (3) Licenses issued to property brokers; and
- (4) Certificates of Registration issued to motor carriers. The term also includes authority held by virtue of the gateway elimination regulations published in the *Federal Register* as letter-notices.

(c) **Certificate of registration.** The evidence of a motor carrier's right to engage in interstate or foreign commerce within a single State is established by a corresponding State certificate.

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

(e) **Record holder.** The person shown on the records of the FMCSA as the legal owner of the operating rights.

(f) **Control.** A relationship between persons that includes actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, a holding or investment company, or any other means.

(g) **Category 1 transfers.** Transactions in which the person to whom the operating rights would be transferred is not an FMCSA carrier and is not affiliated with any FMCSA carrier.

(h) **Category 2 transfers.** Transactions in which the person to whom the operating rights would be transferred is an FMCSA carrier and/or is affiliated with an FMCSA carrier.

§365.405 Applications.

(a) **Procedural requirements.** (1) At least 10 days before consummation, an original and two copies of a properly completed Form OP-FC-1 and any attachments (see paragraph (b)(1)(viii) of this section) must be filed with the Federal Motor Carrier Safety Administration, IT Operations Division (MC-RIO), 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(2) At any time after the expiration of the 10-day waiting period, applicants may consummate the transaction, subject to the subsequent approval of the application by the FMCSA, as described below. The transferee may commence operations under the rights acquired from the transferor upon its compliance with the FMCSA's regulations governing insurance, and process agents. See 49 CFR parts 387, subpart C, and 366, respectively. In the alternative, applicants may wait until the FMCSA has issued a decision on their application before transferring the operating rights. If the transferee wants the transferor's operating authority to be reissued in its name, it should furnish the FMCSA with a statement executed by both transferor and transferee indicating that the transaction has been consummated. Authority will not be reissued until after the FMCSA has approved the transaction.

(b) **Information required.** (1) In category 1 and category 2 transfers, applicants must furnish the following information:

transferring an operating right to satisfy a judgment or claim against the record holder may not be effected without approval of the FMCSA.

(i) Full name, address, and signatures of the transferee and transferor.

(ii) A copy of the transferor's operating authority involved in the transfer proceeding.

(iii) A short summary of the essential terms of the transaction.

(iv) If relevant, the status of proceedings for the transfer of State certificate(s) corresponding to the Certificates of Registration being transferred.

(v) A statement as to whether the transfer will or will not significantly affect the quality of the human environment.

(vi) Certification by transferor and transferee of their current respective safety ratings by the United States Department of Transportation (*i.e.*, satisfactory, conditional, unsatisfactory, or unrated).

(vii) Certification by the transferee that it has sufficient insurance coverage under 49 U.S.C. 13906 for the service it intends to provide.

(viii) Information to demonstrate that the proposed transaction is consistent with the national transportation policy and satisfies the criteria for approval set forth at §365.409 of this part. (Such information may be appended to the application form and, if provided, would be embraced by the oath and verification contained on that form.)

(ix) If motor carrier operating rights are being transferred, certification by the transferee that it is not domiciled in Mexico nor owned or controlled by persons of that country.

(2) Category 2 applicants must also submit the following additional information:

(i) Name(s) of the carrier(s), if any, with which the transferee is affiliated.

(ii) Aggregate revenues of the transferor, transferee, and their carrier affiliates from interstate transportation sources for a 1-year period ending not earlier than 6 months before the date of the agreement of the parties concerning the transaction. If revenues exceed \$2 million, the transfer may be subject to 49 U.S.C. 14303 rather than these rules.

§365.407 Notice.

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

§365.409 FMCSA action and criteria for approval.

A transfer will be approved under this section if:

(a) The transaction is not subject to 49 U.S.C. 14303; and

(b) The transaction is consistent with the public interest; however,

(c) If the transferor or transferee has an "Unsatisfactory" safety fitness rating from DOT, the transfer may be denied. If an application is denied, the FMCSA will set forth the basis for its action in a decision or letter notice. If parties with "Unsatisfactory" safety fitness ratings consummate a transaction pursuant to the

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10-day rule at §365.405 of this part prior to the notification of FMCSA action, they do so at their own risk and subject to any conditions we may impose subsequently. Transactions that have been consummated but later are denied by the FMCSA are null and void and must be rescinded. Similarly, if applications contain false or misleading information, they are void *ab initio*.

§365.411 Responsive pleadings.

(a) Protests must be filed within 20 days after the date of publication of an approved transfer application in the *FMCSA Register*. Protests received prior to the notice will be rejected. Applicants may respond within 20 days after the due date of protests. Petitions for reconsideration of decisions denying applications must be filed within 20 days after the date of service of such decisions.

(b) Protests and petitions for reconsideration must be filed with the Federal Motor Carrier Safety Administration, IT Operations Division (MC-RIO), 1200 New Jersey Ave., SE., Washington, DC 20590-0001, and be served on appropriate parties.

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

(a) **Scope.** These procedures apply in the following circumstances:

(1) A change in the form of a business, such as the incorporation of a partnership or sole proprietorship;

(2) A change in the legal name of a corporation or partnership or change in the trade name or assumed name of any entity;

(3) A transfer of operating rights from a deceased or incapacitated spouse to the other spouse;

(4) A reincorporation and merger for the purpose of effecting a name change;

(5) An amalgamation or consolidation of a carrier and a noncarrier into a new carrier having a different name from either of the predecessor entities; and

(6) A change in the State of incorporation accomplished by dissolving the corporation in one State and reincorporating in another State.

(b) **Procedures.** To accomplish these changes, a letter must be sent to the Federal Motor Carrier Safety Administration, IT Operations Division (MC-RIO), 1200 New Jersey Ave., SE., Washington, DC 20590-0001. The envelope should be marked "NAME CHANGE". The applicant must provide:

(1) The docket number(s) and name of the carrier requesting the change;

(2) A copy of the articles of incorporation and the State certificate reflecting the incorporation;

(3) The name(s) of the owner(s) of the stock and the distribution of the shares;

(4) The names of the officers and directors of the corporation; and

(5) A statement that there is no change in the ownership, management, or control of the business. When this procedure is being used to transfer operating rights from a deceased or incapacitated spouse to the other spouse, documentation that the other spouse has the

legal right to effect such change must be included with the request. The fee for filing a name change request is in §360.3(f) of this chapter.

Subpart D—Transfers of Operating Authority (Effective October 23, 2015)

§365.401 Scope of rules. (Effective October 23, 2015)

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. (Effective October 23, 2015)

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. (Effective October 23, 2015)

(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.

Subpart E—Special rules for certain Mexico-domiciled carriers

§365.501 Scope of rules.

(a) The rules in this subpart 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.

(b) A Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo

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§365.503 Application.

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

(1) Form OP-1 (MX)-Application to Register Mexican Carriers for Motor Carrier Authority To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border;

(2) Form MCS-150-Motor Carrier Identification Report; and

(3) A notification of the means used to designate process agents, either by submission in the application package of Form BOC-3-Designation of Agents-Motor Carriers, Brokers and Freight Forwarders or a letter stating that the applicant will use a process agent service that will submit the Form BOC-3 electronically.

(b) The Federal Motor Carrier Safety Administration (FMCSA) will only process your application if it meets the following conditions:

(1) The application must be completed in English;

(2) The information supplied must be accurate, complete, and include all required supporting documents and applicable certifications in accordance with the instructions to Form OP-1 (MX), Form MCS-150, and Form BOC-3;

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

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

(c) You must submit the application to the address provided in Form OP-1(MX).

(d) You may obtain the application forms from any FMCSA Division Office or download it from the FMCSA website at: <http://www.fmcsa.dot.gov/factsfigs/formspubs.htm>

§365.505 Re-registration and fee waiver for certain applicants.

(a) If you filed an application using Form OP-1(MX) before May 3, 2002, you are required to file a new Form OP-1(MX). You do not need to submit a new fee when you file a new application under this subpart.

(b) If you hold a Certificate of Registration issued before April 18, 2002, authorizing operations beyond the municipalities along the United States-Mexico border and beyond the commercial zones of such municipalities, you are required to file an OP-1(MX) if you want to continue those operations. You do not need to submit a fee when you file an application under this subpart.

(1) You must file the application by November 4, 2003.

(2) The FMCSA may suspend or revoke the Certificate of Registration of any applicable holder that fails to comply with the procedures set forth in this section.

(3) Certificates of Registration issued before April 18, 2002, will remain valid until the FMCSA acts on the OP-1(MX) application.

§365.507 FMCSA action on the application.

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

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

(c) **Pre-authorization safety audit.** Every Mexico-domiciled carrier that applies under this part must satisfactorily complete an FMCSA-administered safety audit before FMCSA will grant provisional operating authority to operate in the United States. The safety audit is a review by the FMCSA of the carrier's written procedures and records to validate the accuracy of information and certifications provided in the application and determine whether the carrier has established or exercises the basic safety management controls necessary to ensure safe operations. The FMCSA will evaluate the results of the safety audit using the criteria in Appendix A to this subpart.

(d) If a carrier successfully completes the pre-authorization safety audit and the FMCSA approves its application submitted under this subpart, FMCSA will publish a summary of the application as a preliminary grant of authority in the *FMCSA Register* to give notice to the public in case anyone wishes to oppose the application, as required in §365.109(b) of this part.

(e) If the FMCSA grants provisional operating authority to the applicant, it will assign a distinctive USDOT Number that identifies the motor carrier as authorized to operate beyond the municipalities in the United States on the U.S.-Mexico international border and beyond the commercial zones of such municipalities. In order to operate in the United States, a Mexico-domiciled motor carrier with provisional operating authority must:

(1) Have its surety or insurance provider file proof of financial responsibility in the form of certificates of insurance, surety bonds, and endorsements, as required by §387.301 of this subchapter;

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

(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

(3) Comply with all provisions of the safety monitoring system in subpart B of part 385 of this subchapter, including successfully passing CVSA Level I inspections at least every 90 days and having decals affixed to each commercial motor vehicle operated in the United States as required by §385.103(c) of this subchapter.

(f) The FMCSA may grant permanent operating authority to a Mexico-domiciled carrier no earlier than 18 months after the date that provisional operating authority is granted and only after successful completion to the satisfaction of the FMCSA of the safety monitoring system for Mexico-domiciled carriers set out in subpart B of part 385 of this subchapter. Successful completion includes obtaining a satisfactory safety rating as the result of a compliance review.

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

(a) A motor carrier subject to this subpart must notify the FMCSA of any changes or corrections to the information in parts I, IA or II submitted on the Form OP-1(MX) or the Form BOC-3-Designation of Agents-Motor Carriers, Brokers and Freight Forwarders during the application process or after having been granted provisional operating authority. The carrier must notify the FMCSA in writing within 45 days of the change or correction.

(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.

(b) If a carrier fails to comply with paragraph (a) of this section, the FMCSA may suspend or revoke its operating authority until it meets those requirements.

§365.511 Requirement for CVSA inspection of vehicles during first three consecutive years of permanent operating authority.

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

Appendix A to Subpart E of Part 365— Explanation of pre-authorization safety audit evaluation criteria for Mexico-domiciled motor carriers

I. General

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

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

(c) The safety audit will include:

(1) Verification of available performance data and safety management programs;

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

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

(4) Verification of proof of financial responsibility;

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

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

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

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

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

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

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

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

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

II. Source of the data for the safety audit evaluation criteria

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

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

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

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

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

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

III. Overall determination of the carrier's basic safety management controls

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

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

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

(3) Verify proof of financial responsibility;

(4) Verify records of periodic vehicle inspections; and

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

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

IV. Evaluation of regulatory compliance

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

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

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

(d) The list of the acute and critical regulations, which are used in determining if a carrier has basic safety

management controls in place, is included in Appendix B, VII. List of Acute and Critical Regulations to part 385 of this subchapter.

(e) Noncompliance with acute and critical regulations are indicators of inadequate safety management controls and usually higher than average accident rates.

(f) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into six regulatory areas called "factors." The regulatory factors, evaluated on the adequacy of the carrier's safety management controls, are:

(1) Factor 1—General: Parts 387 and 390;

(2) Factor 2—Driver: Parts 382, 383 and 391;

(3) Factor 3—Operational: Parts 392 and 395;

(4) Factor 4—Vehicle: Part 393, 396 and inspection data for the last 12 months;

(5) Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397; and

(6) Factor 6—Accident: Recordable Accident Rate per Million Miles.

(g) For each instance of noncompliance with an acute regulation, 1.5 points will be assessed.

(h) For each instance of noncompliance with a critical regulation, 1 point will be assessed.

(i) **Vehicle Factor.** (1) When at least three vehicle inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months before the safety audit or performed at the time of the review, the Vehicle Factor (part 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute and critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor as follows:

(i) If the motor carrier has had at least three roadside inspections in the twelve months before the safety audit, and the vehicle OOS rate is 34 percent or higher, one point will be assessed against the carrier. That point will be added to any other points assessed for discovered noncompliance with acute and critical regulations of part 396 to determine the carrier's level of safety management control for that factor.

(ii) If the motor carrier's vehicle OOS rate is less than 34 percent, or if there are less than three inspections, the determination of the carrier's level of safety management controls will only be based on discovered noncompliance with the acute and critical regulations of part 396.

(2) Over two million inspections occur on the roadside each year in the United States. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Each safety audit will continue to have the requirements of part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

(j) **Accident Factor.** (1) In addition to the five regulatory factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate, which the carrier has experienced during the past 12 months. Recordable

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accident, as defined in 49 CFR 390.5, means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

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

(3) The recordable accident rate will be used in determining the carrier's basic safety management controls in Factor 6, Accident. It will be used only when a carrier incurs two or more recordable accidents within the 12 months before the safety audit. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.5 will be deemed to have inadequate basic safety management controls for the accident factor. The rates are the result of roughly doubling the United States national average accident rate in Fiscal Years 1994, 1995, and 1996.

(4) The FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: "If a driver, who exercises normal judgment and foresight, could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable."

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

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

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

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

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

(1) One instance of noncompliance with a critical regulation in part 387 scoring one point for Factor 1;

(2) Two instances of noncompliance with acute regulations in part 382 scoring three points for Factor 2;

(3) Three instances of noncompliance with critical regulations in part 396 scoring three points for Factor 4; and

(4) Three instances of noncompliance with acute regulations in parts 171 and 397 scoring four and one-half (4.5) points for Factor 5.

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

Part 366—Designation of process agent

Sec.

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

§366.1 Applicability.

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

§366.1 Applicability. (Effective October 23, 2015)

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)).

§366.2 Form of designation.

Designations shall be made on Form BOC-3, Designation of Agent for Service of Process. Only one completed current form may be on file. It must include all States for which agent designations are required. One copy must be retained by the carrier or broker at its principal place of business.

§366.2 Form of designation. (Effective April 25, 2016)

(a) Designations shall be made on Form BOC-3—Designation of Agents—Motor Carriers, Brokers and

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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.

§366.3 Eligible persons.

All persons (as defined at 49 U.S.C. 13102(16)) designated must reside or maintain an office in the State for which they are designated. If a State official is designated, evidence of his willingness to accept service of process must be furnished.

§366.3 Eligible persons. (Effective October 23, 2015)

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

§366.4 Required States.

(a) **Motor carriers.** Every motor carrier (of property or passengers) shall make a designation for each State in which it is authorized to operate and for each State traversed during such operations. Every motor carrier (including private carriers) operating in the United States in the course of transportation between points in a foreign country shall file a designation for each State traversed.

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

§366.4 Required States. (Effective October 23, 2015)

(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.

§366.5 Blanket designations.

Where an association or corporation has filed with the FMCSA a list of process agents for each State, motor carriers may make the required designations by using the following statement:

Those persons named in the list of process agents on file with the Federal Motor Carrier Safety Administration by _____

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

§366.5 Blanket designations. (Effective October 23, 2015)

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.

§366.6 Cancellation or change.

A designation may be canceled or changed only by a new designation except that, where a carrier or broker ceases to be subject to §366.4 in whole or in part for 1 year, designation is no longer required and may be canceled without making another designation.

§366.6 Cancellation or change. (Effective October 23, 2015)

(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

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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 370—Principles and practices for the investigation and voluntary disposition of loss and damage claims and processing salvage

Sec.

370.1	Applicability of regulations.
370.3	Filing of claims.
370.5	Acknowledgment of claims.
370.7	Investigation of claims
370.9	Disposition of claims.
370.11	Processing of salvage.

§370.1 Applicability of regulations.

The regulations set forth in this part shall govern the processing of claims for loss, damage, injury, or delay to property transported or accepted for transportation, in interstate or foreign commerce, by each motor carrier, water carrier, and freight forwarder (hereinafter called carrier), subject to 49 U.S.C. Subtitle IV, part B.

§370.3 Filing of claims.

(a) **Compliance with regulations.** A claim for loss or damage to baggage or for loss, damage, injury, or delay to cargo, shall not be voluntarily paid by a carrier unless filed as provided in paragraph (b) of this section, with the receiving or delivering carrier, or carrier issuing the bill of lading, receipt, ticket, or baggage check, or carrier on whose line the alleged loss, damage, injury, or delay occurred, within the specified time limits applicable thereto and as otherwise may be required by law, the terms of the bill of lading or other contract of carriage, and all tariff provisions applicable thereto.

(b) **Minimum filing requirements.** A written or electronic communication (when agreed to by the carrier and shipper or receiver involved) from a claimant, filed with a proper carrier within the time limits specified in the bill of lading or contract of carriage or transportation and:

- (1) Containing facts sufficient to identify the baggage or shipment (or shipments) of property,
- (2) Asserting liability for alleged loss, damage, injury, or delay, and

(3) Making claim for the payment of a specified or determinable amount of money, shall be considered as sufficient compliance with the provisions for filing claims embraced in the bill of lading or other contract of carriage; provided, however, that where claims are electronically handled, procedures are established to ensure reasonable carrier access to supporting documents.

(c) **Documents not constituting claims.** Bad order reports, appraisal reports of damage, notations of shortage or damage, or both, on freight bills, delivery receipts, or other documents, or inspection reports issued by carriers or their inspection agencies, whether the extent of loss or damage is indicated in dollars and

cents or otherwise, shall, standing alone, not be considered by carriers as sufficient to comply with the minimum claim filing requirements specified in paragraph (b) of this section.

(d) **Claims filed for uncertain amounts.** Whenever a claim is presented against a proper carrier for an uncertain amount, such as "\$100 more or less," the carrier against whom such claim is filed shall determine the condition of the baggage or shipment involved at the time of delivery by it, if it was delivered, and shall ascertain as nearly as possible the extent, if any, of the loss or damage for which it may be responsible. It shall not, however, voluntarily pay a claim under such circumstances unless and until a formal claim in writing for a specified or determinable amount of money shall have been filed in accordance with the provisions of paragraph (b) of this section.

(e) **Other claims.** If investigation of a claim develops that one or more other carriers has been presented with a similar claim on the same shipment, the carrier investigating such claim shall communicate with each such other carrier and, prior to any agreement entered into between or among them as to the proper disposition of such claim or claims, shall notify all claimants of the receipt of conflicting or overlapping claims and shall require further substantiation, on the part of each claimant of his title to the property involved or his right with respect to such claim.

§370.5 Acknowledgment of claims.

(a) Each carrier shall, upon receipt in writing or by electronic transmission of a proper claim in the manner and form described in the regulations, acknowledge the receipt of such claim in writing or electronically to the claimant within 30 days after the date of its receipt by the carrier unless the carrier shall have paid or declined such claim in writing or electronically within 30 days of the receipt thereof. The carrier shall indicate in its acknowledgement to the claimant what, if any, additional documentary evidence or other pertinent information may be required by it further to process the claim as its preliminary examination of the claim, as filed, may have revealed.

(b) The carrier shall at the time each claim is received create a separate file and assign thereto a successive claim file number and note that number on all documents filed in support of the claim and all records and correspondence with respect to the claim, including the acknowledgment of receipt. At the time such claim is received the carrier shall cause the date of receipt to be recorded on the face of the claim document, and the date of receipt shall also appear in the carrier's acknowledgment of receipt to the claimant. The carrier shall also cause the claim file number to be noted on the shipping order, if in its possession, and the delivery receipt, if any, covering such shipment, unless the carrier has established an orderly and consistent internal procedure for assuring:

(1) That all information contained in shipping orders, delivery receipts, tally sheets, and all other pertinent records made with respect to the transportation of the shipment on which claim is made, is available for examination upon receipt of a claim;

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(2) That all such records and documents (or true and complete reproductions thereof) are in fact examined in the course of the investigation of the claim (and an appropriate record is made that such examination has in fact taken place); and

(3) That such procedures prevent the duplicate or otherwise unlawful payment of claims.

§370.7 Investigation of claims.

(a) **Prompt investigation required.** Each claim filed against a carrier in the manner prescribed herein shall be promptly and thoroughly investigated if investigation has not already been made prior to receipt of the claim.

(b) **Supporting documents.** When a necessary part of an investigation, each claim shall be supported by the original bill of lading, evidence of the freight charges, if any, and either the original invoice, a photographic copy of the original invoice, or an exact copy thereof or any extract made therefrom, certified by the claimant to be true and correct with respect to the property and value involved in the claim; or certification of prices or values, with trade or other discounts, allowance, or deductions, of any nature whatsoever and the terms thereof, or depreciation reflected thereon; *Provided*, however, that where property involved in a claim has not been invoiced to the consignee shown on the bill of lading or where an invoice does not show price or value, or where the property involved has been sold, or where the property has been transferred at bookkeeping values only, the carrier shall, before voluntarily paying a claim, require the claimant to establish the destination value in the quantity, shipped, transported, or involved; *Provided, further*, that when supporting documents are determined to be a necessary part of an investigation, the supporting documents are retained by the carriers for possible FMCSA inspection.

(c) **Verification of loss.** When an asserted claim for loss of an entire package or an entire shipment cannot be otherwise authenticated upon investigation, the carrier shall obtain from the consignee of the shipment involved a certified statement in writing that the property for which the claim is filed has not been received from any other source.

§370.9 Disposition of claims.

(a) Each carrier subject to 49 U.S.C. Subtitle IV, part B which receives a written or electronically transmitted claim for loss or damage to baggage or for loss, damage, injury, or delay to property transported shall pay, decline, or make a firm compromise settlement offer in writing or electronically to the claimant within 120 days after receipt of the claim by the carrier; *Provided*, however, That, if the claim cannot be processed and disposed of within 120 days after the receipt thereof, the carrier shall at that time and at the expiration of each succeeding 60-day period while the claim remains pending, advise the claimant in writing or electronically of the status of the claim and the reason for the delay in making final disposition thereof and it shall retain a copy of such advice to the claimant in its claim file thereon.

(b) When settling a claim for loss or damage, a common carrier by motor vehicle of household goods as

defined in §375.103 of this chapter shall use the replacement costs of the lost or damaged item as a base to apply a depreciation factor to arrive at the current actual value of the lost or damaged item: *Provided*, That where an item cannot be replaced or no suitable replacement is obtainable, the proper measure of damages shall be the original costs, augmented by a factor derived from a consumer price index, and adjusted downward by a factor depreciation over average useful life.

§370.11 Processing of salvage.

(a) Whenever baggage or material, goods, or other property transported by a carrier subject to the provisions herein contained is damaged or alleged to be damaged and is, as a consequence thereof, not delivered or is rejected or refused upon tender thereof to the owner, consignee, or person entitled to receive such property, the carrier, after giving due notice, whenever practicable to do so, to the owner and other parties that may have an interest therein, and unless advised to the contrary after giving such notice, shall undertake to sell or dispose of such property directly or by the employment of a competent salvage agent. The carrier shall only dispose of the property in a manner that will fairly and equally protect the best interests of all persons having an interest therein. The carrier shall make an itemized record sufficient to identify the property involved so as to be able to correlate it to the shipment or transportation involved, and claim, if any, filed thereon. The carrier also shall assign to each lot of such property a successive lot number and note that lot number on its record of shipment and claim, if any claim is filed thereon.

(b) Whenever disposition of salvage material or goods shall be made directly to an agent or employee of a carrier or through a salvage agent or company in which the carrier or one or more of its directors, officers, or managers has any interest, financial or otherwise, that carrier's salvage records shall fully reflect the particulars of each such transaction or relationship, or both, as the case may be.

(c) Upon receipt of a claim on a shipment on which salvage has been processed in the manner herein before prescribed, the carrier shall record in its claim file thereon the lot number assigned, the amount of money recovered, if any, from the disposition of such property, and the date of transmittal of such money to the person or persons lawfully entitled to receive the same.

Part 371—Brokers of property

Subpart A—General Requirements

Sec.	
371.1	Applicability.
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371.3	Records to be kept by brokers.
371.7	Misrepresentation.
371.9	Rebating and compensation.
371.10	Duties and obligations of brokers.
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Subpart B—Special Rules for Household Goods Brokers

- 371.101 If I operate as a household goods broker in interstate or foreign commerce, must I comply with subpart B of this part?
- 371.103 What are the definitions of terms used in this subpart?
- 371.105 Must I use a motor carrier that has a valid U.S. DOT number and valid operating authority issued by FMCSA to transport household goods in interstate or foreign commerce?
- 371.107 What information must I display in my advertisements and Internet Web homepage?
- 371.109 Must I inform individual shippers which motor carriers I use?
- 371.111 Must I provide individual shippers with Federal consumer protection information?
- 371.113 May I provide individual shippers with a written estimate?
- 371.115 Must I maintain agreements with motor carriers before providing written estimates on behalf of these carriers?
- 371.117 Must I provide individual shippers with my policies concerning cancellation, deposits, and refunds?
- 371.121 What penalties may FMCSA impose for violations of this part?

Subpart A—General requirements

§371.1 Applicability.

This part applies, to the extent provided therein, to all brokers of transportation by motor vehicle as defined in §371.2.

§371.2 Definitions.

(a) **Broker**—means a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.

(b) **Bona fide agents**—are persons who are part of the normal organization of a motor carrier and perform duties under the carrier's directions pursuant to a pre-existing agreement which provides for a continuing relationship, precluding the exercise of discretion on the

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part of the agent in allocating traffic between the carrier and others.

(c) **Brokerage or brokerage service**—is the arranging of transportation or the physical movement of a motor vehicle or of property. It can be performed on behalf of a motor carrier, consignor, or consignee.

(d) **Non-brokerage service**— is all other service performed by a broker on behalf of a motor carrier, consignor, or consignee.

§371.3 Records to be kept by brokers.

(a) A broker shall keep a record of each transaction. For purposes of this section, brokers may keep master lists of consignors and the address and registration number of the carrier, rather than repeating this information for each transaction. The record shall show:

- (1) The name and address of the consignor;
- (2) The name, address, and registration number of the originating motor carrier;
- (3) The bill of lading or freight bill number;
- (4) The amount of compensation received by the broker for the brokerage service performed and the name of the payer;
- (5) A description of any non-brokerage service performed in connection with each shipment or other activity, the amount of compensation received for the service, and the name of the payer; and
- (6) The amount of any freight charges collected by the broker and the date of payment to the carrier.

(b) Brokers shall keep the records required by this section for a period of three years.

(c) Each party to a brokered transaction has the right to review the record of the transaction required to be kept by these rules.

§371.7 Misrepresentation.

(a) A broker shall not perform or offer to perform any brokerage service (including advertising), in any name other than that in which its registration is issued.

(b) A broker shall not, directly or indirectly, represent its operations to be that of a carrier. Any advertising shall show the broker status of the operation.

§371.9 Rebating and compensation.

(a) A broker shall not charge or receive compensation from a motor carrier for brokerage service where:

- (1) The broker owns or has a material beneficial interest in the shipment or
- (2) The broker is able to exercise control over the shipment because the broker owns the shipper, the shipper owns the broker, or there is common ownership of the two.

(b) A broker shall not give or offer to give anything of value to any shipper, consignor or consignee (or their officers or employees) except inexpensive advertising items given for promotional purposes.

§371.10 Duties and obligations of brokers.

Where the broker acts on behalf of a person bound by law or the FMCSA regulation as to the transmittal of bills or payments, the broker must also abide by the law or regulations which apply to that person.

§371.13 Accounting.

Each broker who engages in any other business shall maintain accounts so that the revenues and expenses relating to the brokerage portion of its business are segregated from its other activities. Expenses that are common shall be allocated on an equitable basis; however, the broker must be prepared to explain the basis for the allocation.

Subpart B—Special Rules for Household Goods Brokers

§371.101 If I operate as a household goods broker in interstate or foreign commerce, must I comply with subpart B of this part?

Yes, you must comply with all regulations in this subpart when you operate as a household goods broker offering services to individual shippers in interstate or foreign commerce. The regulations in this subpart do not apply to a household goods broker when providing services to commercial or government shippers in interstate or foreign commerce.

§371.103 What are the definitions of terms used in this subpart?

FMCSA means the Federal Motor Carrier Safety Administration within the U.S. Department of Transportation.

Household goods has the same meaning as the term is defined in §375.103 of this subchapter.

Household goods broker means a person, other than a motor carrier or an employee or bona fide agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation of household goods by motor carrier for compensation.

Individual shipper has the same meaning as the term is defined in §375.103 of this subchapter.

§371.105 Must I use a motor carrier that has a valid U.S. DOT number and valid operating authority issued by FMCSA to transport household goods in interstate or foreign commerce?

You may only act as a household goods broker for a motor carrier that has a valid, active U.S. DOT number and valid operating authority issued by FMCSA to transport household goods in interstate or foreign commerce.

§371.107 What information must I display in my advertisements and Internet Web homepage?

(a) You must prominently display in your advertisements and Internet Web homepage(s) the physical location(s) (street or highway address, city, and State) where you conduct business.

(b) You must prominently display your U.S. DOT registration number(s) and MC license number issued by the FMCSA in your advertisements and Internet Web homepage(s).

(c) You must prominently display in your advertisements and Internet Web site(s) your status as a household goods broker and the statement that you will not

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transport an individual shipper's household goods, but that you will arrange for the transportation of the household goods by an FMCSA-authorized household goods motor carrier, whose charges will be determined by its published tariff.

(d) If you provide estimates on any carrier's behalf pursuant to §371.113(b), you must prominently display in your Internet Web site(s) that the estimate must be based on the carrier's tariff and that the carrier is required to make its tariff available for public inspection upon a reasonable request.

(e) You may only include in your advertisements or Internet Web site(s) the names or logos of FMCSA-authorized household goods motor carriers with whom you have a written agreement as specified in §371.115 of this part.

§371.109 Must I inform individual shippers which motor carriers I use?

(a) You must provide to each potential individual shipper who contacts you a list of all authorized household goods motor carriers you use, including their U.S. DOT registration number(s) and MC license numbers. You may provide the list electronically or on paper.

(b) You must provide to each potential individual shipper who contacts you a statement indicating that you are not a motor carrier authorized by the Federal Government to transport the individual shipper's household goods, and you are only arranging for an authorized household goods motor carrier to perform the transportation services and, if applicable, additional services. You may provide the statement electronically or on paper.

§371.111 Must I provide individual shippers with Federal consumer protection information?

(a) You must provide potential individual shippers with Federal consumer protection information by one of the following three methods:

(1) Provide a hyperlink on your Internet Web site to the FMCSA Web site containing the information in FMCSA's publications "Ready to Move?—Tips for a Successful Interstate Move" and "Your Rights and Responsibilities When You Move."

(2) Distribute to each shipper and potential shipper at the time you provide an estimate, copies of FMCSA's publications "Ready to Move?—Tips for a Successful Interstate Move" and "Your Rights and Responsibilities When You Move."

(3) Distribute to each shipper and potential shipper at the time you provide an estimate, copies of "Ready to Move?—Tips for a Successful Interstate Move" and "Your Rights and Responsibilities When You Move" as modified and produced by the authorized, lawful motor carrier to which you intend to provide the shipment under your written agreement required by §371.115.

(b) If an individual shipper elects to waive physical receipt of the Federal consumer protection information by one of the methods described in paragraphs (a)(2) and (a)(3) of this section, and elects to access the same information via the hyperlink on the Internet as provided in paragraph (a)(1) of this section, you must include a clear and concise statement on the written estimate described in §371.113 that the individual shipper

expressly agreed to access the Federal consumer protection information on the Internet.

(c) You must obtain a signed, dated, electronic or paper receipt showing the individual shipper has received both booklets that includes, if applicable, verification of the shipper's agreement to access the Federal consumer protection information on the Internet.

(d) You must maintain the signed receipt required by paragraph (c) of this section for three years from the date the individual shipper signs the receipt.

§371.113 May I provide individual shippers with a written estimate?

(a) You may provide each individual shipper with an estimate of transportation and accessorial charges. If you provide an estimate, it must be in writing and must be based on a physical survey of the household goods conducted by the authorized motor carrier on whose behalf the estimate is provided if the goods are located within a 50-mile radius of the motor carrier's or its agent's location, whichever is closer. The estimate must be prepared in accordance with a signed, written agreement, as specified in §371.115 of this subpart.

(b) You must base your estimate upon the published tariffs of the authorized motor carrier who will transport the shipper's household goods.

(c)(1) A shipper may elect to waive the physical survey required in paragraph (a) of this section by written agreement signed by the shipper before the shipment is loaded.

(2) The household goods broker must explain the physical survey waiver agreement to the individual shipper in plain English. The physical survey waiver agreement must be printed on the written estimate and must be printed at no less than 7-point font size and with the font typeface Universe.

(3) A copy of the waiver agreement must be retained as an addendum to the bill of lading and is subject to the same record inspection and preservation requirements as are applicable to bills of lading.

(d) You must keep the records required by this section for three years following the date you provide the written estimate for an individual shipper who accepts the estimate and has you procure the transportation.

§371.115 Must I maintain agreements with motor carriers before providing written estimates on behalf of these carriers?

(a) In order to provide estimates of charges for the transportation of household goods, you must do so in accordance with the written agreement required by §375.409 of this subchapter. Your written agreement with the motor carrier(s) must include the following items:

(1) Your broker name as shown on your FMCSA registration, your physical address, and your U.S. DOT registration number and MC license number;

(2) The authorized motor carrier's name as shown on its FMCSA registration, its physical address, and its U.S. DOT registration number and MC license number;

(3) A concise, easy to understand statement that your written estimate to the individual shipper:

(i) Will be exclusively on behalf of the authorized household goods motor carrier;

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(ii) Will be based on the authorized household goods motor carrier's published tariff; and

(iii) Will serve as the authorized household goods motor carrier's estimate for purposes of complying with the requirements of part 375 of this chapter, including the requirement that the authorized household goods motor carrier relinquishes possession of the shipment upon payment of no more than 110 percent of a non-binding estimate at the time of delivery;

(4) Your owner's, corporate officer's, or corporate director's signature lawfully representing your household goods broker operation and the date;

(5) The signature of the authorized household goods motor carrier's owner, corporate officer, or corporate director lawfully representing the household goods motor carrier's operation and the date; and

(b) The signed written agreement required by this section is public information and you must produce it for review upon reasonable request by a member of the public.

(c) You must keep copies of the agreements required by this section for as long as you provide estimates on behalf of the authorized household goods motor carrier and for three years thereafter.

§371.117 Must I provide individual shippers with my policies concerning cancellation, deposits, and refunds?

(a) You must disclose prominently on your Internet Web site and in your agreements with prospective shippers your cancellation policy, deposit policy, and policy for refunding deposited funds in the event the shipper cancels an order for service before the date an authorized household goods motor carrier has been scheduled to pick up the shipper's property.

(b) You must maintain records showing each individual shipper's request to cancel a shipment and the disposition of each request for a period of three years after the date of a shipper's cancellation request. If you refunded a deposit, your records must include:

(1) Proof that the individual shipper cashed or deposited the check or money order, if the financial institution provides documentary evidence; or

(2) Proof that you delivered the refund check or money order to the individual shipper.

§371.121 What penalties may FMCSA impose for violations of this part?

The penalty provisions of 49 U.S.C. chapter 149, Civil and Criminal Penalties apply to this subpart. These penalties do not overlap. Notwithstanding these civil penalties, nothing in this section deprives an individual shipper of any remedy or right of action under existing law.

Part 373—Receipts and bills

Subpart A—Motor Carrier Receipts and Bills

Sec.

373.101 Motor Carrier bills of lading.

373.103 Expense bills.

373.105 Low value packages.

Subpart B—Freight Forwarders; Bills of Lading

373.201 Bills of lading for freight forwarders.

Subpart A—Motor carrier receipts and bills

§373.101 Motor carrier bills of lading.

Every motor common carrier shall issue a receipt or bill of lading for property tendered for transportation in interstate or foreign commerce containing the following information:

(a) Names of consignor and consignee.

(b) Origin and destination points.

(c) Number of packages.

(d) Description of freight.

(e) Weight, volume, or measurement of freight (if applicable to the rating of the freight).

The carrier shall keep a record of this information as prescribed in 49 CFR part 379.

§373.103 Expense bills.

(a) **Property.**

Every motor common carrier shall issue a freight or expense bill for each shipment transported containing the following information:

(1) Names of consignor and consignee (except on a reconsigned shipment, not the name of the original consignor).

(2) Date of shipment.

(3) Origin and destination points (except on a reconsigned shipment, not the original shipping point unless the final consignee pays the charges from that point).

(4) Number of packages.

(5) Description of freight.

(6) Weight, volume, or measurement of freight (if applicable to the rating of the freight).

(7) Exact rate(s) assessed.

(8) Total charges due, including the nature and amount of any charges for special service and the points at which such service was rendered.

(9) Route of movement and name of each carrier participating in the transportation.

(10) Transfer point(s) through which shipment moved.

(11) Address where remittance must be made or address of bill issuer's principal place of business.

The shipper or receiver owing the charges shall be given the original freight or expense bill and the carrier shall keep a copy as prescribed at 49 CFR part 379. If the bill is electronically transmitted (when agreed to by

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the carrier and payor), a receipted copy shall be given to the payor upon payment.

(b) **Charter service.** Every motor passenger common carrier providing charter service shall issue an expense bill containing the following information:

(1) Serial number, consisting of one of a series of consecutive numbers assigned in advance and imprinted on the bill.

(2) Name of carrier.

(3) Names of payor and organization, if any, for which transportation is performed.

(4) Date(s) transportation was performed.

(5) Origin, destination, and general routing of trip.

(6) Identification and seating capacity of each vehicle used.

(7) Number of persons transported.

(8) Mileage upon which charges are based, including any deadhead mileage, separately noted.

(9) Applicable rates per mile, hour, day, or other unit.

(10) Itemized charges for transportation, including special services and fees.

(11) Total charges assessed and collected.

The carrier shall keep a copy of all expense bills issued for the period prescribed at 49 CFR part 379. If any expense bill is spoiled, voided, or unused for any reason, a copy or written record of its disposition shall be retained for a like period.

§373.105 Low value packages.

The carrier and shipper may elect to waive the above provisions and use a more streamlined recordkeeping or documentation system for distribution of “low value” packages. This includes the option of shipping such packages under the provisions of 49 U.S.C. 14706(c). The shipper is responsible ultimately for determining which packages should be designated as low value. A useful guideline for this determination is an invoice value less than or equal to the costs of preparing a loss or damage claim.

Subpart B—Freight forwarders; bills of lading

§373.201 Receipts and bills of lading for freight forwarders

Each freight forwarder must issue the shipper a receipt or through bill of lading, covering transportation from origin to ultimate destination, on each shipment for which it arranges transportation in interstate commerce. Where a motor carrier receives freight at the origin and issues a receipt therefor on its form with a notation showing the freight forwarder’s name, then the freight forwarder, upon receiving the shipment at the “on line” or consolidating station, must issue a receipt or through bill of lading on its form as of the date the carrier receives the shipment.

Part 376—Lease and interchange of vehicles

Subpart A—General Applicability and Definitions

Sec.

376.1 Applicability.

376.2 Definitions.

Subpart B—Leasing Regulations

376.11 General leasing requirements.

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Subpart C—Exemptions for the Leasing Regulations

376.21 General exemptions.

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Subpart D—Interchange Regulations

376.31 Interchange of equipment.

Subpart E—Private Carriers and Shippers

376.42 Lease of equipment by regulated carriers.

Subpart A—General applicability and definitions

§376.1 Applicability.

The regulations in this part apply to the following actions by motor carriers registered with the Secretary to transport property:

(a) The leasing of equipment with which to perform transportation regulated by the Secretary.

(b) The leasing of equipment to motor private carrier or shippers.

(c) The interchange of equipment between motor common carriers in the performance of transportation regulated by the Secretary.

§376.2 Definitions.

(a) **Authorized carrier**— A person or persons authorized to engage in the transportation of property as a motor carrier under the provisions of 49 U.S.C. 13901 and 13902..

(b) **Equipment**— A motor vehicle, straight truck, tractor, semitrailer, full trailer, any combination of these and any other type of equipment used by authorized carriers in the transportation of property for hire.

(c) **Interchange**— The receipt of equipment by one motor common carrier of property from another such carrier, at a point which both carriers are authorized to serve, with which to continue a through movement.

(d) **Owner**— A person (1) to whom title to equipment has been issued, or (2) who, without title, has the right to exclusive use of equipment, or (3) who has lawful possession of equipment registered and licensed in any State in the name of that person.

(e) **Lease**— A contract or arrangement in which the owner grants the use of equipment, with or without driver, for a specified period to an authorized carrier for use in the regulated transportation of property, in

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exchange for compensation.

(f) **Lessor** — In a lease, the party granting the use of equipment, with or without driver, to another.

(g) **Lessee** — In a lease, the party acquiring the use of equipment with or without driver, from another.

(h) **Sublease** — A written contract in which the lessee grants the use of leased equipment, with or without driver, to another.

(i) **Addendum** — A supplement to an existing lease which is not effective until signed by the lessor and lessee.

(j) **Private carrier** — A person, other than a motor carrier, transporting property by motor vehicle in interstate or foreign commerce when (1) the person is the owner, lessee, or bailee of the property being transported; and (2) the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise.

(k) **Shipper** — A person who sends or receives property which is transported in interstate or foreign commerce.

(l) **Escrow fund** — Money deposited by the lessor with either a third party or the lessee to guarantee performance, to repay advances, to cover repair expenses, to handle claims, to handle license and State permit costs, and for any other purposes mutually agreed upon by the lessor and lessee.

(m) **Detention** — The holding by a consignor or consignee of a trailer, with or without power unit and driver, beyond the free time allocated for the shipment, under circumstances not attributable to the performance of the carrier.

Subpart B—Leasing regulations

§376.11 General leasing requirements.

Other than through the interchange of equipment as set forth in §376.31, and under the exemptions set forth in subpart C of these regulations, the authorized carrier may perform authorized transportation in equipment it does not own only under the following conditions:

(a) **Lease**— There shall be a written lease granting the use of the equipment and meeting the requirements contained in §376.12.

(b) **Receipts for equipment**— Receipts, specifically identifying the equipment to be leased and stating the date and time of day possession is transferred, shall be given as follows:

(1) When possession of the equipment is taken by the authorized carrier, it shall give the owner of the equipment a receipt. The receipt identified in this section may be transmitted by mail, telegraph, or other similar means of communication.

(2) When possession of the equipment by the authorized carrier ends, a receipt shall be given in accordance with the terms of the lease agreement if the lease agreement requires a receipt.

(3) Authorized representatives of the carrier and the owner may take possession of leased equipment and give and receive the receipts required under this subsection.

(c) **Identification of equipment**— The authorized carrier acquiring the use of equipment under this section shall identify the equipment as being in its service as follows:

(1) During the period of the lease, the carrier shall identify the equipment in accordance with the FMCSA's requirements in 49 CFR part 390 of this chapter (Identification of Vehicles).

(2) Unless a copy of the lease is carried on the equipment, the authorized carrier shall keep a statement with the equipment during the period of the lease certifying that the equipment is being operated by it. The statement shall also specify the name of the owner, the date and length of the lease, any restrictions in the lease relative to the commodities to be transported, and the address at which the original lease is kept by the authorized carrier. This statement shall be prepared by the authorized carrier or its authorized representative.

(d) **Records of equipment**— The authorized carrier using equipment leased under this section shall keep records of the equipment as follows:

(1) The authorized carrier shall prepare and keep documents covering each trip for which the equipment is used in its service. These documents shall contain the name and address of the owner of the equipment, the point of origin, the time and date of departure, and the point of final destination. Also, the authorized carrier shall carry papers with the leased equipment during its operation containing this information and identifying the lading and clearly indicating that the transportation is under its responsibility. These papers shall be preserved by the authorized carrier as part of its transportation records. Leases which contain the information required by the provisions in this paragraph may be used and retained instead of such documents or papers. As to lease agreements negotiated under a master lease, this provision is complied with by having a copy of a master lease in the unit of equipment in question and where the balance of documentation called for by this paragraph is included in the freight documents prepared for the specific movement.

(2) [Reserved]

§376.12 Written lease requirements.

Except as provided in the exemptions set forth in subpart C of this part, the written lease required under §376.11(a) shall contain the following provisions. The required lease provisions shall be adhered to and performed by the authorized carrier.

(a) **Parties**— The lease shall be made between the authorized carrier and the owner of the equipment. The lease shall be signed by these parties or by their authorized representatives.

(b) **Duration to be specific**— The lease shall specify the time and date or the circumstances on which the lease begins and ends. These times or circumstances shall coincide with the times for the giving of receipts required by §376.11(b).

(c) **Exclusive possession and responsibilities**— (1) The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease

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shall further provide that the authorized carrier lesseeshall assume complete responsibility for the operation of the equipment for the duration of the lease.

(2) Provision may be made in the lease for considering the authorized carrier lessee as the owner of the equipment for the purpose of subleasing it under these regulations to other authorized carriers during the lease.

(3) When an authorized carrier of household goods leases equipment for the transportation of household goods, as defined by the Secretary, the parties may provide in the lease that the provisions required by paragraph (c)(1) of this section apply only during the time the equipment is operated by or for the authorized carrier lessee.

(4) Nothing in the provisions required by paragraph (c)(1) of this section is intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the authorized carrier lessee. An independent contractor relationship may exist when a carrier lessee complies with 49 U.S.C. 14102 and attendant administrative requirements.

(d) **Compensation to be specified**— The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease. Such lease or addendum shall be delivered to the lessor prior to the commencement of any trip in the service of the authorized carrier. An authorized representative of the lessor may accept these documents. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached addendum may apply to equipment and driver's services either separately or as a combined amount.

(e) **Items specified in lease**— The lease shall clearly specify which party is responsible for removing identification devices from the equipment upon the termination of the lease and when and how these devices, other than those painted directly on the equipment, will be returned to the carrier. The lease shall clearly specify the manner in which a receipt will be given to the authorized carrier by the equipment owner when the latter retakes possession of the equipment upon termination of the lease agreement, if a receipt is required at all by the lease. The lease shall clearly specify the responsibility of each party with respect to the cost of fuel, fuel taxes, empty mileage, permits of all types, tolls, ferries, detention and accessorial services, base plates and licenses, and any unused portions of such items. The lease shall clearly specify who is responsible for loading and unloading the property onto and from the motor vehicle, and the compensation, if any, to be paid for this service. Except when the violation results from the acts or omissions of the lessor, the authorized carrier lessee shall assume the risks and costs of fines for overweight and oversize trailers when the trailers are pre-loaded, sealed, or the load is containerized, or when the trailer or lading is otherwise outside of the lessor's control, and for improperly per-

mitted overdimension and overweight loads and shall reimburse the lessor for any fines paid by the lessor. If the authorized carrier is authorized to receive a refund or a credit for base plates purchased by the lessor from, and issued in the name of, the authorized carrier, or if the base plates are authorized to be sold by the authorized carrier to another lessor the authorized carrier shall refund to the initial lessor on whose behalf the base plate was first obtained a prorated share of the amount received.

(f) **Payment period**— The lease shall specify that payment to the lessor shall be made within 15 days after submission of the necessary delivery documents and other paperwork concerning a trip in the service of the authorized carrier. The paperwork required before the lessor can receive payment is limited to log books required by the Department of Transportation and those documents necessary for the authorized carrier to secure payment from the shipper. In addition, the lease may provide that, upon termination of the lease agreement, as a condition precedent to payment, the lessor shall remove all identification devices of the authorized carrier and, except in the case of identification painted directly on equipment, return them to the carrier. If the identification device has been lost or stolen, a letter certifying its removal will satisfy this requirement. Until this requirement is complied with, the carrier may withhold final payment. The authorized carrier may require the submission of additional documents by the lessor but not as a prerequisite to payment. Payment to the lessor shall not be made contingent upon submission of a bill of lading to which no exceptions have been taken. The authorized carrier shall not set time limits for the submission by the lessor of required delivery documents and other paperwork.

(g) **Copies of freight bill or other form of freight documentation**— When a lessor's revenue is based on a percentage of the gross revenue for a shipment, the lease must specify that the authorized carrier will give the lessor, before or at the time of settlement, a copy of the rated freight bill or a computer-generated document containing the same information, or, in the case of contract carriers, any other form of documentation actually used for a shipment containing the same information that would appear on a rated freight bill. When a computer-generated document is provided, the lease will permit lessor to view, during normal business hours, a copy of any actual document underlying the computer-generated document. Regardless of the method of compensation, the lease must permit lessor to examine copies of the carrier's tariff or, in the case of contract carriers, other documents from which rates and charges are computed, provided that where rates and charges are computed from a contract of a contract carrier, only those portions of the contract containing the same information that would appear on a rated freight bill need be disclosed. The authorized carrier may delete the names of shippers and consignees shown on the freight bill or other form of documentation.

(h) **Charge-back items**— The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the

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lessor's compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.

(i) **Products, equipment, or services from authorized carrier**— The lease shall specify that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement. The lease shall specify the terms of any agreement in which the lessor is a party to an equipment purchase or rental contract which gives the authorized carrier the right to make deductions from the lessor's compensation for purchase or rental payments.

(j) **Insurance**— (1) The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to FMCSA regulations under 49 U.S.C. 13906. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.

(2) If the lessor purchases any insurance coverage for the operation of the leased equipment from or through the authorized carrier, the lease shall specify that the authorized carrier will provide the lessor with a copy of each policy upon the request of the lessor. Also, where the lessor purchases such insurance in this manner, the lease shall specify that the authorized carrier will provide the lessor with a certificate of insurance for each such policy. Each certificate of insurance shall include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to the lessor for each type of coverage, and the deductible amount for each type of coverage for which the lessor may be liable.

(3) The lease shall clearly specify the conditions under which deductions for cargo or property damage may be made from the lessor's settlements. The lease shall further specify that the authorized carrier must provide the lessor with a written explanation and itemization of any deductions for cargo or property damage made from any compensation of money owed to the lessor. The written explanation and itemization must be delivered to the lessor before any deductions are made.

(k) **Escrow funds**— If escrow funds are required, the lease shall specify:

(1) The amount of any escrow fund or performance bond required to be paid by the lessor to the authorized carrier or to a third party.

(2) The specific items to which the escrow fund can be applied.

(3) That while the escrow fund is under the control of the authorized carrier, the authorized carrier shall provide an accounting to the lessor of any transactions involving such fund. The carrier shall perform this accounting in one of the following ways:

(i) By clearly indicating in individual settlement sheets the amount and description of any deduction or addition made to the escrow fund; or

(ii) By providing a separate accounting to the lessor of any transactions involving the escrow fund. This separate accounting shall be done on a monthly basis.

(4) The right of the lessor to demand to have an accounting for transactions involving the escrow fund at any time.

(5) That while the escrow fund is under the control of the carrier, the carrier shall pay interest on the escrow fund on at least a quarterly basis. For purposes of calculating the balance of the escrow fund on which interest must be paid, the carrier may deduct a sum equal to the average advance made to the individual lessor during the period of time for which interest is paid. The interest rate shall be established on the date the interest period begins and shall be at least equal to the average yield or equivalent coupon issue yield on 91-day, 13-week Treasury bills as established in the weekly auction by the Department of Treasury.

(6) The conditions the lessor must fulfill in order to have the escrow fund returned. At the time of the return of the escrow fund, the authorized carrier may deduct monies for those obligations incurred by the lessor which have been previously specified in the lease, and shall provide a final accounting to the lessor of all such final deductions made to the escrow fund. The lease shall further specify that in no event shall the escrow fund be returned later than 45 days from the date of termination.

(l) **Copies of the lease**— An original and two copies of each lease shall be signed by the parties. The authorized carrier shall keep the original and shall place a copy of the lease on the equipment during the period of the lease unless a statement as provided for in §376.11(c)(2) is carried on the equipment instead. The owner of the equipment shall keep the other copy of the lease.

(m) This paragraph applies to owners who are not agents but whose equipment is used by an agent of an authorized carrier in providing transportation on behalf of that authorized carrier. In this situation, the authorized carrier is obligated to ensure that these owners receive all the rights and benefits due an owner under the leasing regulations, especially those set forth in paragraphs (d)-(k) of this section. This is true regardless of whether the lease for the equipment is directly between the authorized carrier and its agent rather than directly between the authorized carrier and each of these owners. The lease between an authorized carrier and its agent shall specify this obligation.

Subpart C—Exemptions for the leasing regulations

§376.21 General exemptions.

Except for §376.11(c) which requires the identification of equipment, the leasing regulations in this part shall not apply to:

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(a) Equipment used in substituted motor-for-rail transportation of railroad freight moving between points that are railroad stations and on railroad billing.

(b) Equipment used in transportation performed exclusively within any commercial zone as defined by the Secretary.

(c) Equipment leased without drivers from a person who is principally engaged in such a business.

(d) Any type of trailer not drawn by a power unit leased from the same lessor.

§376.22 Exemption for private carrier leasing and leasing between authorized carriers.

Regardless of the leasing regulations set forth in this part, an authorized carrier may lease equipment to or from another authorized carrier, or a private carrier may lease equipment to an authorized carrier under the following conditions:

(a) The identification of equipment requirements in §376.11(c) must be complied with;

(b) The lessor must own the equipment or hold it under a lease;

(c) There must be a written agreement between the authorized carriers or between the private carrier and authorized carrier, as the case may be, concerning the equipment as follows:

(1) It must be signed by the parties or their authorized representatives.

(2) It must provide that control and responsibility for the operation of the equipment shall be that of the lessee from the time possession is taken by the lessee and the receipt required under §376.11(b) is given to the lessor until: (i) Possession of the equipment is returned to the lessor and the receipt required under §376.11(b) is received by the authorized carrier; or (ii) in the event that the agreement is between authorized carriers, possession of the equipment is returned to the lessor or given to another authorized carrier in an interchange of equipment.

(3) A copy of the agreement must be carried in the equipment while it is in the possession of the lessee.

(4) Nothing in this section shall prohibit the use, by authorized carriers, private carriers, and all other entities conducting lease operations pursuant to this section, of a master lease if a copy of that master lease is carried in the equipment while it is in the possession of the lessee, and if the master lease complies with the provisions of this section and receipts are exchanged in accordance with §376.11(b), and if records of the equipment are prepared and maintained in accordance with §376.11(d).

(d) Authorized and private carriers under common ownership and control may lease equipment to each other under this section without complying with the requirements of paragraph (a) of this section pertaining to identification of equipment, and the requirements of paragraphs (c)(2) and (c)(4) of this section pertaining to equipment receipts. The leasing of equipment between such carriers will be subject to all other requirements of this section.

§376.26 Exemption for leases between authorized carriers and their agents.

The leasing regulations set forth in §376.12(e) through (l) do not apply to leases between authorized carriers and their agents.

Subpart D—Interchange regulations

§376.31 Interchange of equipment.

Authorized common carriers may interchange equipment under the following conditions:

(a) **Interchange agreement**— There shall be a written contract, lease, or other arrangement providing for the interchange and specifically describing the equipment to be interchanged. This written agreement shall set forth the specific points of interchange, how the equipment is to be used, and the compensation for such use. The interchange agreement shall be signed by the parties or by their authorized representatives.

(b) **Operating authority**— The carriers participating in the interchange shall be registered with the Secretary to provide the transportation of the commodities at the point where the physical exchange occurs.

(c) **Through bills of lading**— The traffic transported in interchange service must move on through bills of lading issued by the originating carrier. The rates charged and the revenues collected must be accounted for in the same manner as if there had been no interchange. Charges for the use of the interchanged equipment shall be kept separate from divisions of the joint rates or the proportions of such rates accruing to the carriers by the application of local or proportional rates.

(d) **Identification of equipment**— The authorized common carrier receiving the equipment shall identify equipment operated by it in interchange service as follows:

(1) The authorized common carrier shall identify power units in accordance with the FMCSA's requirements in 49 CFR part 390 of this chapter (Identification of Vehicles). Before giving up possession of the equipment, the carrier shall remove all identification showing it as the operating carrier.

(2) Unless a copy of the interchange agreement is carried on the equipment, the authorized common carrier shall carry a statement with each vehicle during interchange service certifying that it is operating the equipment. The statement shall also identify the equipment by company or State registration number and shall show the specific point of interchange, the date and time it assumes responsibility for the equipment, and the use to be made of the equipment. This statement shall be signed by the parties to the interchange agreement or their authorized representatives. The requirements of this paragraph shall not apply where the equipment to be operated in interchange service consists only of trailers or semitrailers.

(3) Authorized carriers under common ownership and control may interchange equipment with each other without complying with the requirements of paragraph (d)(1) of this section pertaining to removal of identification from equipment.

(e) **Connecting carriers considered as owner** —

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An authorized carrier receiving equipment in connection with a through movement shall be considered to the owner of the equipment for the purpose of leasing the equipment to other authorized carriers in furtherance of the movement to destination or the return of the equipment after the movement is completed.

Subpart E—Private carriers and shippers

§376.42 Lease of equipment by regulated carriers.

Authorized carriers may lease equipment and drivers from private carriers, for periods of less than 30 days, in the manner set forth in §376.22.

Part 377—Payment of transportation charges

Subpart A—Handling of C.O.D. Shipments

Sec.

- 377.101 Applicability.
- 377.103 Tariff requirements.
- 377.105 Collection and remittance.

Subpart B—Extension of Credit to Shippers by Motor Common Carriers, Water Common Carriers, and Household Goods Freight Forwarders

- 377.201 Scope.
- 377.203 Extension of credit to shippers.
- 377.205 Presentation of freight bills.
- 377.207 Effect of mailing freight bills or payments.
- 377.209 Additional charges.
- 377.211 Computation of time.
- 377.213 [Reserved]
- 377.215 [Removed and Reserved]
- 377.217 Interline settlement of revenues.

Subpart A—Handling of C.O.D. shipments

§377.101 Applicability.

The rules and regulations in this part apply to the transportation by motor vehicle of c.o.d. shipments by all common carriers of property subject to 49 U.S.C. 13702, except such transportation which is auxiliary to or supplemental of transportation by railroad and performed on railroad bills of lading, and except such transportation which is performed for freight forwarders and on freight forwarder bills of lading.

§377.103 Tariff requirements.

No common carrier of property subject to the provisions of 49 U.S.C. 13702, except as otherwise provided in §377.101, shall render any c.o.d. service unless such carrier has published, posted and filed tariffs which contain the rates, charges and rules governing such service, which rules shall conform to the regulations in this part.

§377.105 Collection and remittance.

Every common carrier of property subject to 49 U.S.C. 13702, except as otherwise provided in §377.101, which chooses to provide c.o.d. service may publish and maintain, or cause to be published and maintained for its account, a tariff or tariffs which set forth nondiscriminatory rules governing c.o.d. service and the collection and remittance of c.o.d. funds. Alternatively, any carrier that provides c.o.d. service, but does not wish to publish and maintain, or cause to be published and maintained, its own nondiscriminatory tariff, may adopt a rule requiring remittance of each c.o.d. collection directly to the consignor or other person designated by the consignor as payee within fifteen (15) days after delivery of the c.o.d. shipment to the consignee.

Subpart B—Extension of credit to shippers by motor common carriers, water common carriers, and household goods freight forwarders

§377.201 Scope

(a) **General.** These regulations apply to the extension of credit in the transportation of property under Federal Motor Carrier Safety Administration regulation by motor carriers and household goods freight forwarders, except as otherwise provided.

- (b) **Exceptions.** These regulations do not apply to—
- (1) Contract carriage operations.
 - (2) Transportation for—
 - (i) The United States or any department, bureau, or agency thereof,
 - (ii) Any State, or political subdivision thereof,
 - (iii) The District of Columbia.
 - (3) Property transportation incidental to passenger operations.

§377.203 Extension of credit to shippers.

- (a) **Authorization to extend credit.**
- (1) A carrier that meets the requirements in paragraph (a)(2) of this section may—
 - (i) Relinquish possession of freight in advance of the payment of the tariff charges, and
 - (ii) Extend credit in the amount of such charges to those who undertake to pay them (such persons are called *shippers* in this part).
 - (2) For such authorization, the carrier shall take reasonable actions to assure payment of the tariff charges within the credit periods specified—
 - (i) In this part, or
 - (ii) In tariff provisions published pursuant to the regulations in paragraph (d) of this section.
 - (b) **When the credit period begins.** The credit period shall begin on the day following presentation of the freight bill.
 - (c) **Length of credit period.** Unless a different credit period has been established by tariff publication pursuant to paragraph (d) of this section, the credit period is 15 days. It includes Saturdays, Sundays, and legal holidays.

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(d) **Carriers may establish different credit periods in tariff rules.** Carriers may publish tariff rules establishing credit periods different from those in paragraph (c) of this section. Such credit periods shall not be longer than 30 calendar days.

(e) **Service charges.**

(1) Service charges shall not apply when credit is extended and payments are made within the standard credit period. The term “standard credit period,” as used in the preceding sentence, means—

(i) The credit period prescribed in paragraph (c) of this section, or

(ii) A substitute credit period published in a tariff rule pursuant to the authorization in paragraph (d) of this section.

(2) Carriers may, by tariff rule, extend credit for an additional time period, subject if they wish to a service charge for that additional time. The combined length of the carrier’s standard credit period (as defined in paragraph (e)(1) of this section) and its additional credit period shall not exceed the 30-day maximum credit period prescribed in paragraph (d) of this section. When such a tariff rule is in effect, shippers may elect to postpone payment until the end of the extended credit period if, in consideration therefor, they include any published service charges when making their payment.

(3) Carriers may, by tariff rule, establish service charges for payments made after the expiration of an authorized credit period. Such a rule shall—

(i) Institute such charges on the day following the last day of an authorized credit period, and

(ii) Notify shippers—

(A) That its only purpose is to prevent a shipper who does not pay on time from having free use of funds due to the carrier,

(B) That it does not sanction payment delays, and

(C) That failure to pay within the authorized credit period will, despite this provision for such charges, continue to require the carrier, before again extending credit, to determine in good faith whether the shipper will comply with the credit regulations in the future.

(4) Tariff rules that establish charges pursuant to paragraph (e) (2) or (3) of this section may establish minimum charges.

(f) **Discounts.** Carriers may, by tariff rule, authorize discounts for early freight bill payments when credit is extended.

(g)(1) **Collection expense charges.** Carriers may, by tariff rule, assess reasonable and certain liquidated damages for all costs incurred in the collection of overdue freight charges. Carriers may use one of two methods in their tariffs:

(i) The first method is to assess liquidated damages as a separate additional charge to the unpaid freight bill. In doing so, the tariff rule shall disclose the exact amount of the charges by stating either a dollar or specified percentage amount (or a combination of both) of the unpaid freight bill. The tariff shall further specify the time period (which shall at least allow for the authorized credit period) within which the shipper must pay to avoid such liquidated damages.

(ii) The second method is to require payment of the full, nondiscounted rate instead of the discounted rate otherwise applicable. The difference between the discount and the full rate constitutes a carrier’s liquidated damages for its collection effort. Under this method the tariff shall identify the discount rates that are subject to the condition precedent and which require the shipper to make payment by a date certain. The date certain may not be set to occur by the carrier until at least after the expiration of the carrier’s authorized credit period.

(2) The damages, the timing of their applicability, and the conditions, if any, as provided by the tariff-rule methods allowed under paragraphs (g)(1) (i) and (ii) of this section also:

(i) Shall be clearly described in the tariff rule;

(ii) Shall be applied without unlawful prejudice and/or unjust discrimination between similarly situated shippers and/or consignees;

(iii) Shall be applied only to the nonpayment of original, separate and independent freight bills and shall not apply to aggregate “balance-due” claims sought for collection on past shipments by a bankruptcy trustee, or any other person or agent;

(iv) Shall not apply to instances of clear clerical or ministerial error such as non-receipt of a carrier’s freight bill, or shipper’s payment check lost in the mail, or carrier mailing of the freight bill to the wrong address;

(v) Shall not apply in any way to a charge for a transportation service if the carrier’s bill of lading independently provides that the shipper is liable for fees incurred by the carrier in the collection of freight charges on that same transportation service;

(vi) shall be applied only after the authorized credit period, and when the carrier has issued a revised freight bill or notice of imposition of collection expense charges for late payment within 90 days after expiration of the authorized credit period.

(3) As an alternative to the tariff-rule methods allowed under paragraphs (g)(1) (i) and (ii) of this section, a carrier may, wholly outside of its tariff, assess collection charges though contract terms in a bill of lading. By using the carrier and its bill of lading, the shipper accepts the bill of lading terms.

(h) **Discrimination prohibited.** Tariff rules published pursuant to paragraphs (d), (e), and (f) of this section shall not result in unreasonable discrimination among shippers.

§377.205 Presentation of freight bills.

(a) **“To be prepaid” shipments.**

(1) On “to be prepaid” shipments, the carrier shall present its freight bill for all transportation charges within the time period prescribed in paragraph (a)(2) of this section, except—

(i) As noted in paragraph (d) of this section, or

(ii) As otherwise excepted in this part.

(2) The time period for a carrier to present its freight bill for all transportation charges shall be 7 days, measured from the date the carrier received the shipment. This time period does not include Saturdays, Sundays, or legal holidays.

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(b) “Collect” shipments.

(1) On “collect” shipments, the carrier shall present its freight bill for all transportation charges within the time period prescribed in paragraph (b)(2) and of this section, except—

- (i) As noted in paragraph (d) of this section, or
- (ii) As otherwise excepted in this part.

(2) The time period for a carrier to present its freight bill for all transportation charges shall be 7 days, measured from the date the shipment was delivered at its destination. This time period does not include Saturdays, Sundays, or legal holidays.

(c) **Bills or accompanying written notices shall state penalties for late payment, credit time limits and service charge and/or collection expense charge and discount terms.** When credit is extended, freight bills or a separate written notice accompanying a freight bill or a group of freight bills presented at one time shall state that “failure timely to pay freight charges may be subject to tariff penalties” (or a statement of similar import). The bills or other notice shall also state the time by which payment must be made and any applicable service charge and/or collection expense charge and discount terms.

(d) **When the carrier lacks sufficient information to compute tariff charges.**

(1) When information sufficient to enable the carrier to compute the tariff charges is not then available to the carrier at its billing point, the carrier shall present its freight bill for payment within 7 days following the day upon which sufficient information becomes available at the billing point. This time period does not include Saturdays, Sundays, or legal holidays.

(2) A carrier shall not extend further credit to any shipper which fails to furnish sufficient information to allow the carrier to render a freight bill within a reasonable time after the shipment is tendered to the origin carrier.

(3) As used in this paragraph, the term “shipper” includes, but is not limited to, freight forwarders, and shippers’ associations and shippers’ agents.

§377.207 Effect of mailing freight bills or payments.

(a) **Presentation of freight bills by mail.** When carriers present freight bills by mail, the time of mailing shall be deemed to be the time of presentation of the bills. The term “freight bills,” as used in this paragraph, includes both paper documents and billing by use of electronic media such as computer tapes or disks, when the mails are used to transmit them.

(b) **Payment by mail.** When shippers mail acceptable checks, drafts, or money orders in payment of freight charges, the act of mailing them within the credit period shall be deemed to be the collection of the tariff charges within the credit period for the purposes of the regulations in this part.

(c) **Disputes as to date of mailing.** In case of dispute as to the date of mailing, the postmark shall be accepted as such date.

§377.209 Additional charges.

When a carrier—

(a) Has collected the amount of tariff charges represented in a freight bill presented by it as the total amount of such charges, and

(b) Thereafter presents to the shipper another freight bill for additional charges—the carrier may extend credit in the amount of such additional charges for a period of 30 calendar days from the date of the presentation of the freight bill for the additional charges.

§377.211 Computation of time.

Time periods involving calendar days shall be calculated pursuant to 49 CFR 386.32(a).

§377.213 [Reserved]

§377.215 [Removed and Reserved]

§377.217 Interline settlement of revenues.

Nothing in this part shall be interpreted as affecting the interline settlement of revenues from traffic which is transported over through routes composed of lines of common carriers subject to the Secretary’s jurisdiction under 49 U.S.C. subtitle IV, part B.

Part 378—Procedures governing the processing, investigation, and disposition of over-charge, duplicate payment, or overcollection claims

Sec.

378.1	Applicability.
378.2	Definitions.
378.3	Filing and processing claims.
378.4	Documentation of claims.
378.5	Investigation of claims.
378.6	Claim records.
378.7	Acknowledgment of claims
378.8	Disposition of claims.
378.9	Disposition of unidentified payments, overcharges, duplicate payments, and overcollections not supported by claims.

§378.1 Applicability.

The regulations set forth in this part govern the processing of claims for overcharge, duplicate payment, or overcollection for the transportation of property in interstate or foreign commerce by motor common carriers and household goods freight forwarders subject to 49 U.S.C. subtitle IV, part B.

§378.2 Definitions.

(a) **Carrier**— means a motor common carrier or household goods freight forwarder subject to 49 U.S.C. subtitle IV, part B.

(b) **Overcharge**— means an overcharge as defined in 49 U.S.C. 14704(b). It also includes duplicate payments as defined in paragraph (c) of this section and overcollections as defined in paragraph (d) of this section when a dispute exists between the parties concerning such charges.

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(c) **Duplicate payment**— means two or more payments for transporting the same shipment. Where one or more payment is not in the exact amount of the applicable tariff rates and charges, refunds shall be made on the basis of the excess amount over the applicable tariff rates and charges.

(d) **Overcollection**— means the receipt by a household goods carrier of a payment in excess of the transportation and/or accessorial charges applicable to a particular shipment of household goods, as defined in part 375 of this chapter, under tariffs lawfully on file with the United States Department of Transportation's Surface Transportation Board.

(e) **Unidentified payment**— means a payment which a carrier has received but which the carrier is unable to match with its open accounts receivable or otherwise identify as being due for the performance of transportation services.

(f) **Claimant**— means any shipper or receiver, or its authorized agent, filing a request with a carrier for the refund of an overcharge, duplicate payment, or overcollection.

§378.3 Filing and processing claims.

(a) A claim for overcharge, duplicate payment, or overcollection shall not be paid unless filed in writing or electronically communicated (when agreed to by the carrier and shipper or receiver involved) with the carrier that collected the transportation charges. The collecting carrier shall be the carrier to process all such claims. When a claim is filed with another carrier that participated in the transportation, that carrier shall transmit the claim to the collecting carrier within 15 days after receipt of the claim. If the collecting carrier is unable to dispose of the claim for any reason, the claim may be filed with or transferred to any participating carrier for final disposition.

(b) A single claim may include more than one shipment provided the claim on each shipment involves:

- (1) The same tariff issue or authority or circumstances,
- (2) Single line service by the same carrier, or
- (3) Service by the same interline carriers.

§378.4 Documentation of claims.

(a) Claims for overcharge, duplicate payment, or overcollection shall be accompanied by sufficient information to allow the carriers to conduct an investigation and pay or decline the claim within the time limitations set forth in §378.8. Claims shall include the name of the claimant, its file number, if any, and the amount of the refund sought to be recovered, if known.

(b) Except when the original freight bill is not a paper document but is electronically transmitted, claims for overcharge shall be accompanied by the original freight bill. Additional information may include, but is not limited to, the following:

- (1) The rate, classification, or commodity description or weight claimed to have been applicable.
- (2) Complete tariff authority for the rate, classification, or commodity description claimed.
- (3) Freight bill payment information.

(4) Other documents or data which is believed by claimant to substantiate the basis for its claim.

(c) Claims for duplicate payment and overcollection shall be accompanied by the original freight bill(s) for which charges were paid (except when the original freight bill is not a paper document but is electronically transmitted) and by freight bill payment information.

(d) Regardless of the provisions of paragraphs (a), (b), and (c) of this section, the failure to provide sufficient information and documentation to allow a carrier to conduct an investigation and pay or decline the claim within the allowable time limitation shall not constitute grounds for disallowance of the claim. Rather, the carrier shall comply with §378.5(c) to obtain the additional information required.

(e) A carrier shall accept copies instead of the original documents required to be submitted in this section where the carrier is furnished with an agreement entered into by the claimant which indemnifies the carrier for subsequent duplicate claims which might be filed and supported by the original documents.

§378.5 Investigation of claims.

(a) Upon receipt of a claim, whether written or otherwise, the processing carrier shall promptly initiate an investigation and establish a file, as required by §378.6.

(b) If a carrier discovers an overcharge, duplicate payment, or overcollection which has not been the subject of a claim, it shall promptly initiate an investigation and comply with the provisions in §378.9.

(c) In the event the carrier processing the claim requires information or documents in addition to that submitted with the claim, the carrier shall promptly notify the claimant and request the information required. This includes notifying the claimant that a written or electronically transmitted claim must be filed before the carrier becomes subject to the time limits for settling such a claim under §378.8.

§378.6 Claim records.

At the time a claim is received the carrier shall create a separate file and assign it a successive claim file number and note that number on all documents filed in support of the claim and all records and correspondence with respect to the claim, including the written or electronic acknowledgment of receipt required under §378.7. If pertinent to the disposition of the claim, the carrier shall also note that number on the shipping order and delivery receipt, if any, covering the shipment involved.

§378.7 Acknowledgment of claims.

Upon receipt of a written or electronically transmitted claim, the carrier shall acknowledge its receipt in writing or electronically to the claimant within 30 days after the date of receipt except when the carrier shall have paid or declined in writing or electronically within that period. The carrier shall include the date of receipt in its written or electronic claim which shall be placed in the file for that claim.

§378.8 Disposition of claims.

The processing carrier shall pay, decline to pay, or settle each written or electronically communicated claim

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within 60 days after its receipt by that carrier, except where the claimant and the carrier agree in writing or electronically to a specific extension based upon extenuating circumstances. If the carrier declines to pay a claim or makes settlement in an amount different from that sought, the carrier shall notify the claimant in writing or electronically, of the reason(s) for its action, citing tariff authority or other pertinent information developed as a result of its investigation.

§378.9 Disposition of unidentified payments, overcharges, duplicate payments, and overcollections not supported by claims.

(a)(1) Carriers shall establish procedures for identifying and properly applying all unidentified payments. If a carrier does not have sufficient information with which properly to apply such a payment, the carrier shall notify the payor of the unidentified payment within 60 days of receipt of the payment and request information which will enable it to identify the payment. If the carrier does not receive the information requested within 90 days from the date of the notice, the carrier may treat the unidentified payment as a payment in fact of freight charges owing to it. Following the 90-day period, the regular claims procedure under this part shall be applicable.

(a)(2) Notice shall be in writing and clearly indicate that it is a final notice and not a bill. Notice shall include: The check number, amount, and date; the payor's name; and any additional basic information the carrier is able to provide. The final notice also must inform payor that: (i) Applicable regulations allow the carrier to conditionally retain the payment as revenue in the absence of a timely response by the payor; and (ii) following the 90-day period the regular claims procedure shall be applicable.

(a)(3) Upon a carrier's receipt of information from the payor, the carrier shall, within 14 days: (i) Make a complete refund of such funds to the payor; or (ii) notify the payor that the information supplied is not sufficient to identify the unapplied payment and request additional information; or (iii) notify the payor of the carrier's determination that such payment was applicable to particular freight charges lawfully due the carrier. Where no refund is made by the carrier, the carrier shall advise the payor of its right to file a formal claim for refund with the carrier in accordance with the regular claims procedure under this part.

(b) When a carrier which participates in a transportation movement, but did not collect the transportation charges, finds that an overpayment has been made, that carrier shall immediately notify the collecting carrier. When the collecting carrier (when single or joint line haul) discovers or is notified by such a participating carrier that an overcharge, duplicate payment, or overcollection exists for any transportation charge which has not been the subject of a claim, the carrier shall create a file as if a claim had been submitted and shall record in the file the date it discovered or was notified of the overpayment. The carrier that collected the charges shall then refund the amount of the overpayment to the person who paid the transportation charges or to the

person that made duplicate payment within 30 days from the date of such discovery or notification.

Part 379—Preservation of records

Sec.

379.1	Applicability.
379.3	Records required to be retained.
379.5	Protection and storage of records.
379.7	Preservation of records.
379.9	Companies going out of business.
379.11	Waiver of requirements of the regulations in this part.
379.13	Disposition and retention of records.
Appendix A	to Part 379—Schedule of Records and Periods of Retention

§379.1 Applicability.

(a) The preservation of record rules contained in this part shall apply to the following:

- (1) Motor carriers and brokers;
- (2) Water carriers; and
- (3) Household goods freight forwarders.

(b) This part applies also to the preservation of accounts, records and memoranda of traffic associations, weighing and inspection bureaus, and other joint activities maintained by or on behalf of companies listed in paragraph (a) of this section.

§379.3 Records required to be retained.

Companies subject to this part shall retain records for the minimum retention periods provided in appendix A to this part. After the required retention periods, the records may be destroyed at the discretion of each company's management. It shall be the obligation of the subject company to maintain records that adequately support financial and operational data required by the Secretary. The company may request a ruling from the Secretary on the retention of any record. The provisions of this part shall not be construed as excusing compliance with the lawful requirements of any other governmental body prescribing longer retention periods for any category of records.

§379.5 Protection and storage of records.

(a) The company shall protect records subject to this part from fires, floods, and other hazards, and safeguard the records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of ventilation.

(b) The company shall notify the Secretary if prescribed records are substantially destroyed or damaged before the term of the prescribed retention periods.

§379.7 Preservation of records.

(a) All records may be preserved by any technology that is immune to alteration, modification, or erasure of the underlying data and will enable production of an accurate and unaltered paper copy.

(b) Records not originally preserved on hard copy shall be accompanied by a statement executed by a person having personal knowledge of the facts indicating the type of data included within the records. One comprehensive statement may be executed in lieu of individual statements for multiple records if the type of

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data included in the multiple records is common to all such records. The records shall be indexed and retained in such a manner as will render them readily accessible. The company shall have facilities available to locate, identify and produce legible paper copies of the records.

(c) Any significant characteristic, feature or other attribute that a particular medium will not preserve shall be clearly indicated at the beginning of the applicable records as appropriate.

(d) The printed side of forms, such as instructions, need not be preserved for each record as long as the printed matter is common to all such forms and an identified specimen of the form is maintained on the medium for reference.

§379.9 Companies going out of business.

The records referred to in the regulations in this part may be destroyed after business is discontinued and the company is completely liquidated. The records may not be destroyed until dissolution is final and all pending transactions and claims are completed. When a company is merged with another company under jurisdiction of the Secretary, the successor company shall preserve records of the merged company in accordance with the regulations in this part.

§379.11 Waiver of requirements of the regulations in this part.

A waiver from any provision of the regulations in this part may be made by the Secretary upon his/her own initiative or upon submission of a written request by the company. Each request for waiver shall demonstrate that unusual circumstances warrant a departure from prescribed retention periods, procedures, or techniques, or that compliance with such prescribed requirements would impose an unreasonable burden on the company.

§379.13 Disposition and retention of records.

The schedule in appendix A to this part shows periods that designated records shall be preserved. The descriptions specified under the various general headings are for convenient reference and identification, and are intended to apply to the items named regardless of what the records are called in individual companies and regardless of the record media. The retention periods represent the prescribed number of years from the date of the document and not calendar years. Records not listed in appendix A to this part shall be retained as determined by the management of each company.

Appendix A to Part 379—Schedule of records and periods of retention

Item and category of records	Retention period
A. CORPORATE AND GENERAL	
1. Incorporation and reorganization:	
(a) Charter or certificate of incorporation and amendments	Note A.
(b) Legal documents related to mergers, consolidations, reorganization, receiverships and similar actions which affect the identity or organization of the company	Note A.
2. Minutes of Directors, Executive Committees, Stockholders and other corporate meetings	Note A.
3. Titles, franchises and authorities:	
(a) Certificates of public convenience and necessity issued by regulating bodies	Until expiration or cancellation.
(b) Operating authorizations and exemptions to operate	Until expiration or cancellation.
(c) Copies of formal orders of regulatory bodies served upon the company	Note A.
(d) Deeds, charters, and other title papers	Until disposition of property.
4. Annual reports or statements to stockholders	3 years.
5. Contracts and agreements:	
(a) Service contracts, such as for operational management, accounting, financial or legal services, and agreements with agents	Until expiration or termination plus 3 years.
(b) Contracts and other agreements relating to the construction, acquisition or sale of real property and equipment except as otherwise provided in (a) above	Until expiration or termination plus 3 years.
(c) Contracts for the purchase or sale of material and supplies except as provided in (a) above	Until expiration.
(d) Shipping contracts for transportation or caretakers of freight	Until expiration.
(e) Contracts with employees and employee bargaining groups	Until expiration.
(f) Contracts, leases and agreements, not specifically provided for in this section	Until expiration or termination plus 1 year.
6. Accountant's auditor's, and inspector's reports:	
(a) Certifications and reports of examinations and audits conducted by public accountants	3 years.
(b) Reports of examinations and audits conducted by internal auditors, time inspectors, and others	3 years.
7. Other	Note A.
B. TREASURY	
1. Capital stock records:	
(a) Capital stock ledger	Note A.

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Item and category of records	Retention period
(b) Capital stock certificates, records of or stubs of	Note A.
(c) Stock transfer register	Note A.
2. Long-term debt records:	
(a) Bond indentures, underwritings, mortgages, and other long-term credit agreements .	Until redemption plus 3 years.
(b) Registered bonds and debenture ledgers	Until redemption plus 3 years.
(c) Stubs or similar records of bonds or other long-term debt issued.....	Note A.
3. Authorizations from regulatory bodies for issuance of securities including applications, reports, and supporting papers	Note A.
4. Records of securities owned, in treasury, or held by custodians, detailed ledgers and journals, or their equivalent	Until the securities are sold, redeemed or otherwise disposed of.
5. Other.....	Note A.
C. FINANCIAL AND ACCOUNTING	
1. Ledgers:	
(a) General and subsidiary ledgers with indexes	Until discontinuance of use plus 3 years.
(b) Balance sheets and trial balance sheets of general and subsidiary ledgers	3 years.
2. Journals:	
(a) General journals.....	Until discontinuance of use plus 3 years.
(b) Subsidiary journals and any supporting data, except as otherwise provided for, necessary to explain journal entries	3 years.
3. Cash books:	
(a) General cash books	Until discontinuance of use plus 3 years.
(b) Subsidiary cash books	3 years.
4. Vouchers:	
(a) Voucher registers, indexes, or equivalent	3 years.
(b) Paid and canceled vouchers, expenditure authorizations, detailed distribution sheets and other supporting data including original bills and invoices, if not provided for elsewhere.....	3 years.
(c) Paid drafts, paid checks, and receipts for cash paid out	3 years.
5. Accounts receivable:	
(a) Record or register of accounts receivable, indexes thereto, and summaries of distribution	3 years after settlement.
(b) Bills issued for collection and supporting data	3 years after settlement.
(c) Authorization for writing off receivables	1 year.
(d) Reports and statements showing age and status of receivables.....	1 year.
6. Records of accounting codes and instructions.....	3 years after discontinuance.
7. Other.....	Note A.
D. PROPERTY AND EQUIPMENT	
NOTE: All accounts, records, and memoranda necessary for making a complete analysis of the cost or value of property shall be retained for the periods shown. If any of the records elsewhere provided for in this schedule are of this character, they shall be retained for the periods shown below, regardless of any lesser retention period assigned.	
1. Property records:	
(a) Records which maintain complete information on cost or other value of all real and personal property or equipment.....	3 years after disposition of property.
(b) Records of additions and betterments made to property and equipment	3 years after disposition of property.
(c) Records pertaining to retirements and replacements of property and equipment	3 years after disposition of property.
(d) Records pertaining to depreciation.....	3 years after disposition of property.
(e) Records of equipment number changes	3 years after disposition of property.
(f) Records of motor and engine changes	3 years after disposition of property.
(g) Records of equipment lightweighed and stenciled	Only current or latest records.
2. Engineering records of property changes actually made	3 years after disposition of property.
3. Other.....	Note A.
E. PERSONNEL AND PAYROLL	
1. Personnel and payroll records	1 year.
F. INSURANCE AND CLAIMS	
1. Insurance records:	
(a) Schedules of insurance against fire, storms, and other hazards and records of premium payments	Until expiration plus 1 year.

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Item and category of records	Retention period
(b) Records of losses and recoveries from insurance companies and supporting papers	1 year after settlement.
(c) Insurance policies	Until expiration of coverage plus 1 year.
2. Claims records:	
(a) Claim registers, card or book indexes, and other records which record personal injury, fire and other claims against the company, together with all supporting data	1 year after settlement.
(b) Claims registers, card or book indexes, and other records which record overcharges, damages, and other claims filed by the company against others, together with all supporting data	1 year after settlement.
(c) Records giving the details of authorities issued to agents, carriers, and others for participation in freight claims	3 years.
(d) Reports, statements and other data pertaining to personal injuries or damage to property when not necessary to support claims or vouchers	3 years.
(e) Reports, statements, tracers, and other data pertaining to unclaimed, over, short, damaged, and refused freight, when not necessary to support claims or vouchers	1 year.
(f) Authorities for disposal of unclaimed, damaged, and refused freight	3 years.
3. Other	Note A.
G. TAXES	
1. Taxes	Note A.
H. PURCHASES AND STORES	
1. Purchases and stores	Note A.
I. SHIPPING AND AGENCY DOCUMENTS	
1. Bills of lading and releases:	
(a) Consignors' shipping orders, consignors' shipping tickets, and copies of bills of lading, freight bills from other carriers and other similar documents furnished the carrier for movement of freight	1 year.
(b) Shippers' order-to-notify bills of lading taken up and canceled	1 year.
2. Freight waybills:	
(a) Local waybills	1 year.
(b) Interline waybills received from and made to other carriers	1 year.
(c) Company freight waybills	1 year.
(d) Express waybills	1 year.
3. Freight bills and settlements:	
(a) Paid copy of freight bill retained to support receipt of freight charges:	
(1) Bus express freight bills provided no claim has been filed	1 year.
(2) All other freight bills	1 year.
(b) Paid copy of freight bill retained to support payment of freight charges to other carriers:	
(1) Bus express freight bills provided no claim has been filed	1 year.
(2) All other freight bills	1 year.
(c) Records of unsettled freight bills and supporting papers	1 year after disposition.
(d) Records and reports of correction notices	1 year.
4. Other freight records:	
(a) Records of freight received, forwarded, and delivered	1 year.
(b) Notice to consignees of arrival of freight; tender of delivery	1 year.
5. Agency records:	
(a) Cash books	1 year.
(b) Remittance records, bank deposit slips and supporting papers	1 year.
(c) Balance sheets and supporting papers	1 year.
(d) Statements of corrections in agents' accounts	1 year.
(e) Other records and reports pertaining to ticket sales, baggage handled, miscellaneous collections, refunds, adjustments, etc.	1 year.
J. TRANSPORTATION	
1. Records pertaining to transportation of household goods:	
(a) Estimate of charges	1 year.
(b) Order for service	1 year.
(c) Vehicle-load manifest	1 year.
(d) Descriptive inventory	1 year.

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	Item and category of records	Retention period
2.	Dispatchers' sheets, registers, and other records pertaining to movement of transportation equipment	3 years.
3.	Import and export records including bonded freight	2 years.
4.	Records, reports, orders and tickets pertaining to weighting of freight.....	3 years.
5.	Records of loading and unloading of transportation equipment.....	2 years.
6.	Records pertaining to the diversion or reconsignment of freight, including requests, tracers, and correspondence	2 years.
7.	Other.....	Note A.
K. SUPPORTING DATA FOR REPORTS AND STATISTICS		
1.	Supporting data for reports filed with the Federal Motor Carrier Safety Administration, the Surface Transportation Board, the Department of Transportation's Bureau of Transportation Statistics and regulatory bodies:	
	(a) Supporting data for annual financial, operating and statistical reports	3 years.
	(b) Supporting data for periodical reports of operating revenues, expenses, and income	3 years.
	(c) Supporting data for reports detailing use of proceeds from issuance or sale of company securities	3 years.
	(d) Supporting data for valuation inventory reports and records. This includes related notes, maps and sketches, underlying engineering, land, and accounting reports, pricing schedules, summary or collection sheets, yearly reports of changes and other miscellaneous data, all relating to the valuation of the company's property by the Federal Highway Administration, the Surface Transportation Board, the Department of Transportation's Bureau of Transportation Statistics or other regulatory body	3 years after disposition of the property.
2.	Supporting data for periodical reports of accidents, inspections, tests, hours of service, repairs, etc.	6 months.
3.	Supporting data for periodical statistical of operating results or performance by tonnage, mileage, passengers carried, piggyback traffic, commodities, costs, analyses of increases and decreases, or otherwise	3 years.
M. MISCELLANEOUS		
1.	Index of records	Until revised as record structure changes.
2.	Statement listing records prematurely destroyed or lost	For the remainder of the period as prescribed for records destroyed.

NOTE A: Records referenced to this note shall be maintained as determined by the designated records supervisory official. Companies should be mindful of the record retention requirements of the Internal Revenue Service, Securities and Exchange Commission, State and local jurisdictions, and other regulatory agencies. Companies shall exercise reasonable care in choosing retention periods, and the choice of retention periods shall reflect past experiences, company needs, pending litigation, and regulatory requirements.

Part 385 —Safety fitness procedures

	Subpart A—General		
Sec.		385.103	Safety monitoring system.
385.1	Purpose and scope.	385.105	Expedited action.
385.3	Definitions and acronyms	385.107	The safety audit.
385.4	Matter incorporated by reference	385.109	The compliance review.
385.5	Safety fitness standard.	385.111	Suspension and revocation of Mexico-domiciled carrier registration.
385.7	Factors to be considered in determining a safety rating.	385.113	Administrative review.
385.9	Determination of a safety rating.	385.115	Reapplying for provisional registration.
385.11	Notification of safety fitness determination.	385.117	Duration of safety monitoring system.
385.13	Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.	385.119	Applicability of safety fitness and enforcement procedures.
385.14	Motor carriers, brokers, and freight forwarders delinquent in paying civil penalties: prohibition on transportation.	Subpart C—Certification of Safety Auditors, Safety Investigators, and Safety Inspectors	
385.15	Administrative review.	385.201	Who is qualified to perform a review of a motor carrier or an intermodal equipment provider?
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Subpart A—General

§385.1 Purpose and scope.

(a) This part establishes the FMCSA's procedures to determine the safety fitness of motor carriers, to assign safety ratings, to direct motor carriers to take remedial

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action when required, and to prohibit motor carriers receiving a safety rating of “unsatisfactory” from operating a CMV.

(b) This part establishes the safety assurance program for a new entrant motor carrier initially seeking to register with FMCSA to conduct interstate operations. It also describes the consequences that will occur if the new entrant fails to maintain adequate basic safety management controls.

(c) This part establishes the safety permit program for a motor carrier to transport the types and quantities of hazardous materials listed in §385.403.

(d) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter, except non-business private motor carriers of passengers.

(e) Subpart F of this part establishes procedures to perform a roadability review of intermodal equipment providers to determine their compliance with the applicable Federal Motor Carrier Safety Regulations (FMCSRs).

§385.3 Definitions and acronyms.

Applicable safety regulations or requirements means 49 CFR chapter III, subchapter B—Federal Motor Carrier Safety Regulations or, if the carrier is an intrastate motor carrier subject to the hazardous materials safety permit requirements in subpart E of this part, the equivalent State standards; and 49 CFR chapter I, subchapter C—Hazardous Materials Regulations.

CMV means a commercial motor vehicle as defined in §390.5 of this subchapter.

Commercial motor vehicle shall have the same meaning as described in §390.5 of this subchapter, except that this definition will also apply to intrastate motor vehicles subject to the hazardous materials safety permit requirements of subpart E of this part.

FMCSA means the Federal Motor Carrier Safety Administration.

FMCSRs mean Federal Motor Carrier Safety Regulations (49 CFR parts 350–399).

HMRs means the Hazardous Materials Regulations (49 CFR parts 100–178).

Motor carrier operations in commerce means commercial motor vehicle transportation operations either—

- (1) In interstate commerce, or
- (2) Affecting interstate commerce.

New entrant is a motor carrier not domiciled in Mexico that applies for a United States Department of Transportation (DOT) identification number in order to initiate operations in interstate commerce.

New entrant registration is the registration (US DOT number) granted a new entrant before it can begin interstate operations in an 18-month monitoring period. A safety audit must be performed on a new entrant's operations within 12 months after receipt of its US DOT number for motor carriers of property and 120 days for motor carriers of passengers, and it must be found to

have adequate basic safety management controls to continue operating in interstate commerce at the end of the 18-month period.

PHMSA means Pipeline and Hazardous Materials Safety Administration

Preventable accident on the part of a motor carrier means an accident (1) that involved a commercial motor vehicle, and (2) that could have been averted but for an act, or failure to act, by the motor carrier or the driver.

Reviews. For the purposes of this part:

(1) **Compliance review** means an on-site examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial drivers license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints, or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action.

(2) **Safety Audit** means an examination of a motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of the FMCSRs and applicable HMRs and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings.

(3) **Safety management controls** means the systems, policies programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations, which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage.

(4) **Roadability review** means an onsite examination of the intermodal equipment provider's compliance with the applicable FMCSRs.

Safety ratings.

(1) **Satisfactory safety rating** means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in §385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(2) **Conditional safety rating** means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in §385.5(a) through (k).

(3) **Unsatisfactory safety rating** means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in §385.5(a) through (k).

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(4) **Unrated carrier** means that a safety rating has not been assigned to the motor carrier by the FMCSA.

§385.4 Matter incorporated by reference.

(a) **Incorporation by reference.** Certain material is incorporated by reference into this part with the approval of the Director of the *Federal Register* under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, FMCSA must publish notice of change in the *Federal Register* and the material must be available to the public. All approved material is available for inspection at Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave. SE., Washington, DC 20590-0001; Attention: Chief, Compliance Division at 202-366-1812, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, Maryland 20770-6319. Phone number (301) 830-6143.

(1) “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403,” April 1, 2014; incorporation by reference approved for §385.415(b).

(2) [Reserved]

§385.5 Safety fitness standard.

The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. For intrastate motor carriers subject to the hazardous materials safety permit requirements of subpart E of this part, the motor carrier must meet the equivalent State requirements. To meet the safety fitness standard, the motor carrier must demonstrate it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

(a) Commercial driver’s license standard violations (part 383 of this chapter),

(b) Inadequate levels of financial responsibility (part 387 of this chapter),

(c) The use of unqualified drivers (part 391 of this chapter),

(d) Improper use and driving of motor vehicles (part 392 of this chapter),

(e) Unsafe vehicles operating on the highways (part 393 of this chapter),

(f) Failure to maintain accident registers and copies of accident reports (part 390 of this chapter),

(g) The use of fatigued drivers (part 395 of this chapter),

(h) Inadequate inspection, repair, and maintenance of vehicles (part 396 of this chapter),

(i) Transportation of hazardous materials, driving and parking rule violations (part 397 of this chapter),

(j) Violation of hazardous materials regulations (parts 170-177 of this title), and

(k) Motor vehicle accidents and hazardous materials incidents.

§385.7 Factors to be considered in determining a safety rating.

The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following:

(a) Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization, automation, etc., is found to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly.

(b) Frequency and severity of regulatory violations.

(c) Frequency and severity of driver/vehicle regulatory violations identified during roadside inspections of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(d) Number and frequency of out-of-service driver/vehicle violations of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(e) Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews.

(f) For motor carrier operations in commerce and (if the motor carrier operates in the United States) in Canada and Mexico: Frequency of accidents; hazardous materials incidents; accident rate per million miles; indicators of preventable accidents; and whether such accidents, hazardous materials incidents, and preventable accident indicators have increased or declined over time.

(g) Number and severity of violations of CMV and motor carrier safety rules, regulations, standards, and orders that are both issued by a State, Canada, or Mexico and compatible with Federal rules, regulations, standards, and orders.

§385.9 Determination of a safety rating.

(a) Following a compliance review of a motor carrier operation, the FMCSA, using the factors prescribed in §385.7 as computed under the Safety Fitness Rating Methodology set forth in appendix B of this part, shall determine whether the present operations of the motor carrier are consistent with the safety fitness standard set forth in §385.5, and assign a safety rating accordingly.

(b) Unless otherwise specifically provided in this part, a safety rating will be issued to a motor carrier within 30 days following the completion of a compliance review.

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§385.11 Notification of safety fitness determination.

(a) The FMCSA will provide a motor carrier written notice of any safety rating resulting from a compliance review as soon as practicable, but not later than 30 days after the review. The notice will take the form of a letter issued from the FMCSA's headquarters office and will include a list of FMCSR and HMR compliance deficiencies which the motor carrier must correct.

(b) If the safety rating is "satisfactory" or improves a previous "unsatisfactory" safety rating, it is final and becomes effective on the date of the notice.

(c) In all other cases, a notice of a proposed safety rating will be issued. It becomes the final safety rating after the following time periods:

(1) For motor carriers transporting hazardous materials in quantities requiring placarding or transporting passengers by CMV—45 days after the date of the notice.

(2) For all other motor carriers operating CMVs—60 days after the date of the notice.

(d) A proposed safety rating of "unsatisfactory" is a notice to the motor carrier that the FMCSA has made a preliminary determination that the motor carrier is "unfit" to continue operating in interstate commerce, and that the prohibitions in §385.13 will be imposed after 45 or 60 days if necessary safety improvements are not made.

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(e) A motor carrier may request the FMCSA to perform an administrative review of a proposed or final safety rating. The process and the time limits are described in §385.15.

(f) A motor carrier may request a change to a proposed or final safety rating based upon its corrective actions. The process and the time limits are described in §385.17.

§385.13 Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.

(a) Generally, a motor carrier rated “unsatisfactory” is prohibited from operating a CMV. Information on motor carriers, including their most current safety rating, is available from the FMCSA on the Internet at <http://www.safersys.org>, or by telephone at (800) 832-5660.

(1) Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV in motor carrier operations in commerce beginning on the 46th day after the date of the FMCSA notice of proposed “unsatisfactory” rating.

(2) All other motor carriers rated as a result of reviews completed on or after November 20, 2000, are prohibited from operating a CMV in motor carrier operations in commerce beginning on the 61st day after the date of the FMCSA notice of proposed “unsatisfactory” rating. If FMCSA determines that the motor carrier is making a good-faith effort to improve its safety fitness, FMCSA may allow the motor carrier to operate for up to 60 additional days.

(b) A Federal agency must not use a motor carrier that holds an “unsatisfactory” rating to transport passengers in a CMV or to transport hazardous materials in quantities requiring placarding.

(c) A Federal agency must not use a motor carrier for other CMV transportation if that carrier holds an “unsatisfactory” rating which became effective on or after January 22, 2001.

(d) **Penalties** (1) If a proposed “unsatisfactory” safety rating becomes final, FMCSA will issue an order placing out of service the motor carrier’s operations in commerce. The out-of-service order shall apply both to the motor carrier’s operations in interstate commerce *and to its operations affecting interstate commerce*.

(2) If a motor carrier’s intrastate operations are declared out of service by a State, FMCSA must issue an order placing out of service the carrier’s operations in interstate commerce. The following conditions apply:

(i) The State that issued the intrastate out-of-service order participates in the Motor Carrier Safety Assistance Program and uses the FMCSA safety rating methodology provided in this part; and

(ii) The motor carrier has its principal place of business in the State that issued the out-of-service order.

(iii) The order prohibiting the motor carrier from operating a CMV in interstate commerce shall remain in effect until the State determines that the carrier is fit.

(3) Any motor carrier that operates CMVs in violation of this section is subject to the penalty provisions of 49 U.S.C. 521(b) and Appendix B to part 386 of the FMCSRs.

(e) **Revocation of operating authority.** If a proposed “unsatisfactory” safety rating or a proposed determination of unfitness becomes final, FMCSA will, following notice, issue an order revoking the operating authority of the owner or operator. For purposes of this section, the term “operating authority” means the registration required under 49 U.S.C. 13902 and §392.9a of this subchapter. Any motor carrier that operates CMVs after revocation of its operating authority will be subject to the penalty provisions listed in 49 U.S.C. 14901.

§385.14 Motor carriers, brokers, and freight forwarders delinquent in paying civil penalties: prohibition on transportation.

(a) A CMV owner or operator that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating CMVs in interstate commerce under 49 CFR 386.83.

(b) A broker, freight forwarder, or for-hire motor carrier that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating in interstate commerce, and its registration may be suspended under the provisions of 49 CFR 386.84.

§385.15 Administrative review.

(a) A motor carrier may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in assigning its proposed or final safety rating in accordance with §385.11.

(b) The motor carrier’s request must explain the error it believes the FMCSA committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.

(c) The motor carrier must submit its request in writing to the Chief Safety Officer, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(1) If a motor carrier has received a notice of a proposed “unsatisfactory” safety rating, it should submit its request within 15 days from the date of the notice. This time frame will allow the FMCSA to issue a written decision before the prohibitions outlined in §385.13 (a)(1) and (2) take effect. Failure to petition within this 15-day period may prevent the FMCSA from issuing a final decision before such prohibitions take effect.

(2) A motor carrier must make a request for an administrative review within 90 days of the date of the proposed safety rating issued under §385.11 (c) or a final safety rating issued under §385.11 (b), or within 90 days after denial of a request for a change in rating under §385.17(i).

(d) The FMCSA may ask the motor carrier to submit additional data and attend a conference to discuss the safety rating. If the motor carrier does not provide the information requested, or does not attend the conference, the FMCSA may dismiss its request for review.

(e) The FMCSA will notify the motor carrier in writing of its decision following the administrative review. The FMCSA will complete its review:

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(1) Within 30 days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed or final “unsatisfactory” safety rating.

(2) Within 45 days after receiving a request from any other motor carrier that has received a proposed or final “unsatisfactory” safety rating.

(f) The decision constitutes final agency action.

(g) Any motor carrier may request a rating change under the provisions of §385.17.

§385.17 Change to safety rating based upon corrective actions.

(a) A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of “conditional” or “unsatisfactory” may request a rating change at any time.

(b) A motor carrier must make this request in writing to the FMCSA Service Center for the geographic area where the carrier maintains its principal place of business. The addresses and geographical boundaries of the Service Centers are listed in §390.27 of this chapter.

(c) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standard and factors specified in §§385.5 and 385.7. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the FMCSA to consider.

(d) The FMCSA will make a final determination on the request for change based upon the documentation the motor carrier submits, and any additional relevant information.

(e) The FMCSA will perform reviews of requests made by motor carriers with a proposed or final “unsatisfactory” safety rating in the following time periods after the motor carrier’s request:

(1) Within 30 days for motor carriers transporting passengers in CMVs or placardable quantities of hazardous materials.

(2) Within 45 days for all other motor carriers.

(f) The filing of a request for change to a proposed or final safety rating under this section does not stay the 45-day period specified in §385.13(a)(1) for motor carriers transporting passengers or hazardous materials in quantities requiring placarding.

(g) FMCSA may allow a motor carrier (except a motor carrier transporting passengers or a motor carrier transporting hazardous materials in quantities requiring placarding) with a proposed rating of “unsatisfactory” to continue its motor carrier operations in commerce for up to 60 days beyond the 60 days specified in the proposed rating, if FMCSA determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin on the 61st day after the date of the notice of proposed “unsatisfactory” rating.

(h) If the FMCSA determines that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and fac-

tors specified in §§385.5 and 385.7, the agency will notify the motor carrier in writing of its upgraded safety rating.

(i) If the FMCSA determines that the motor carrier has not taken all the corrective actions required, or that its operations still fail to meet the safety standard and factors specified in §§385.5 and 385.7, the agency will notify the motor carrier in writing.

(j) Any motor carrier whose request for change is denied in accordance with paragraph (i) of this section may request administrative review under the procedures of §385.15. The motor carrier must make the request within 90 days of the denial of the request for a rating change. If the proposed rating has become final, it shall remain in effect during the period of any administrative review.

§385.19 Safety fitness information.

(a) Final ratings will be made available to other Federal and State agencies in writing, telephonically or by remote computer access.

(b) The final safety rating assigned to a motor carrier will be made available to the public upon request. Any person requesting the assigned rating of a motor carrier shall provide the FMCSA with the motor carrier’s name, principal office address, and, if known, the USDOT number or the docket number, if any.

(c) Requests should be addressed to the Federal Motor Carrier Safety Administration, Office of Information Technology (MC-RI), 1200 New Jersey Ave., SE., Washington, DC 20590-0001. The information can also be found at the SAFER website: <http://www.safer.org>.

(d) Oral requests by telephone to (800) 832-5660 will be given an oral response.

Subpart B—Safety Monitoring System for Mexico-Domiciled Carriers

§385.101 Definitions

Compliance Review means a compliance review as defined in §385.3 of this part.

Provisional certificate of registration means the registration under §368.6 of this subchapter that the FMCSA grants to a Mexico-domiciled motor carrier to provide interstate transportation of property within the United States solely within the municipalities along the United States-Mexico border and the commercial zones of such municipalities. It is provisional because it will be revoked if the registrant does not demonstrate that it is exercising basic safety management controls during the safety monitoring period established in this subpart.

Provisional operating authority means the registration under §365.507 of this subchapter that the

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FMCSA grants to a Mexico-domiciled motor carrier to provide interstate transportation within the United States beyond the municipalities along the United States-Mexico border and the commercial zones of such municipalities. It is provisional because it will be revoked if the registrant is not assigned a Satisfactory safety rating following a compliance review conducted during the safety monitoring period established in this subpart.

Safety audit means an examination of a motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of the FMCSRs and applicable HMRs and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings.

§385.103 Safety monitoring system.

(a) **General.** Each Mexico-domiciled carrier operating in the United States will be subject to an oversight program to monitor its compliance with applicable Federal Motor Carrier Safety Regulations (FMCSRs), Federal Motor Vehicle Safety Standards (FMVSSs), and Hazardous Materials Regulations (HMRs).

(b) **Roadside monitoring.** Each Mexico-domiciled carrier that receives provisional operating authority or a provisional Certificate of Registration will be subject to intensified monitoring through frequent roadside inspections.

(c) **CVSA decal.** Each Mexico-domiciled carrier granted provisional operating authority under part 365 of this subchapter must have on every commercial motor vehicle it operates in the United States a current decal attesting to a satisfactory inspection by a Commercial Vehicle Safety Alliance (CVSA) inspector.

(d) **Safety audit.** The FMCSA will conduct a safety audit on a Mexico-domiciled carrier within 18 months after the FMCSA issues the carrier a provisional Certificate of Registration under part 368 of this subchapter.

(e) **Compliance review.** The FMCSA will conduct a compliance review on a Mexico-domiciled carrier within 18 months after the FMCSA issues the carrier provisional operating authority under part 365 of this subchapter.

§385.105 Expedited action.

(a) A Mexico-domiciled motor carrier committing any of the following violations identified through roadside inspections, or by any other means, may be subjected to an expedited safety audit or compliance review, or may be required to submit a written response demonstrating corrective action:

(1) Using drivers not possessing, or operating without, a valid Licencia Federal de Conductor. An invalid Licencia Federal de Conductor includes one that is falsified, revoked, expired, or missing a required endorsement.

(2) Operating vehicles that have been placed out of service for violations of the Commercial Vehicle Safety Alliance (CVSA) North American Standard Out-of-Service Criteria, without making the required repairs.

(3) Involvement in, due to carrier act or omission, a hazardous materials incident within the United States involving:

(i) A highway route controlled quantity of a Class 7 (radioactive) material as defined in §173.403 of this title;

(ii) Any quantity of a Class 1, Division 1.1, 1.2, or 1.3 explosive as defined in §173.50 of this title; or

(iii) Any quantity of a poison inhalation hazard Zone A or B material as defined in §§173.115, 173.132, or 173.133 of this title.

(4) Involvement in, due to carrier act or omission, two or more hazardous material incidents occurring within the United States and involving any hazardous material not listed in paragraph (a)(3) of this section and defined in chapter I of this title.

(5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.

(6) Operating within the United States a motor vehicle that is not insured as required by part 387 of this chapter.

(7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

(b) Failure to respond to an agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's provisional operating authority or provisional Certificate of Registration until the required showing of corrective action is submitted to the FMCSA.

(c) A satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a safety audit or compliance review, as appropriate, during the provisional registration period.

§385.107 The safety audit.

(a) The criteria used in a safety audit to determine whether a Mexico-domiciled carrier exercises the necessary basic safety management controls are specified in Appendix A to this part.

(b) If the FMCSA determines, based on the safety audit, that the Mexico-domiciled carrier has adequate basic safety management controls, the FMCSA will provide

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the carrier written notice of this finding as soon as practicable, but not later than 45 days after the completion of the safety audit. The carrier's Certificate of Registration will remain provisional and the carrier's on-highway performance will continue to be closely monitored for the remainder of the 18-month provisional registration period.

(c) If the FMCSA determines, based on the safety audit, that the Mexico-domiciled carrier's basic safety management controls are inadequate, it will initiate a suspension and revocation proceeding in accordance with §385.111 of this subpart.

(d) The safety audit is also used to assess the basic safety management controls of Mexico-domiciled applicants for provisional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border under §365.507 of this subchapter.

§385.109 The compliance review.

(a) The criteria used in a compliance review to determine whether a Mexico-domiciled carrier granted provisional operating authority under §365.507 of this subchapter exercises the necessary basic safety management controls are specified in Appendix B to this part.

(b) **Satisfactory Rating.** If the FMCSA assigns a Mexico-domiciled carrier a Satisfactory rating following a compliance review conducted under this subpart, the FMCSA will provide the carrier written notice as soon as practicable, but not later than 45 days after the completion of the compliance review. The carrier's operating authority will remain in provisional status and its on-highway performance will continue to be closely monitored for the remainder of the 18-month provisional registration period.

(c) **Conditional Rating.** If the FMCSA assigns a Mexico-domiciled carrier a Conditional rating following a compliance review conducted under this subpart, it will initiate a revocation proceeding in accordance with §385.111 of this subpart. The carrier's provisional operating authority will not be suspended prior to the conclusion of the revocation proceeding.

(d) **Unsatisfactory Rating.** If the FMCSA assigns a Mexico-domiciled carrier an Unsatisfactory rating following a compliance review conducted under this subpart, it will initiate a suspension and revocation proceeding in accordance with §385.111 of this subpart.

§385.111 Suspension and revocation of Mexico-domiciled carrier registration.

(a) If a carrier is assigned an "Unsatisfactory" safety rating following a compliance review conducted under this subpart, or a safety audit conducted under this subpart determines that a carrier does not exercise the basic safety management controls necessary to ensure safe operations, the FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the compliance review or safety audit contains material error.

(b) For purposes of this section, material error is a mistake or series of mistakes that resulted in an erro-

neous safety rating or an erroneous determination that the carrier does not exercise the necessary basic safety management controls.

(c) If the carrier demonstrates that the compliance review or safety audit contained material error, its registration will not be suspended. If the carrier fails to show a material error in the safety audit, the FMCSA will issue an Order:

(1) Suspending the carrier's provisional operating authority or provisional Certificate of Registration and requiring it to immediately cease all further operations in the United States; and

(2) Notifying the carrier that its provisional operating authority or provisional Certificate of Registration will be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order.

(d) If a carrier is assigned a "Conditional" rating following a compliance review conducted under this subpart, the provisions of subparagraphs (a) through (c) of this section will apply, except that its provisional registration will not be suspended under paragraph (c)(1) of this section.

(e) If a carrier subject to this subpart fails to provide the necessary documents for a safety audit or compliance review upon reasonable request, or fails to submit evidence of the necessary corrective action as required by §385.105 of this subpart, the FMCSA will provide the carrier with written notice, as soon as practicable, that its registration will be suspended 15 days from the service date of the notice unless it provides all necessary documents or information. This suspension will remain in effect until the necessary documents or information are produced and:

(1) A safety audit determines that the carrier exercises basic safety management controls necessary for safe operations;

(2) The carrier is rated Satisfactory or Conditional after a compliance review; or

(3) The FMCSA determines, following review of the carrier's response to a demand for corrective action under §385.105, that the carrier has taken the necessary corrective action.

(f) If a carrier commits any of the violations specified in §385.105(a) of this subpart after the removal of a suspension issued under this section, the suspension will be automatically reinstated. The FMCSA will issue an Order requiring the carrier to cease further operations in the United States and demonstrate, within 15 days from the service date of the Order, that it did not commit the alleged violation(s). If the carrier fails to demonstrate that it did not commit the violation(s), the FMCSA will issue an Order revoking its provisional operating authority or provisional Certificate of Registration.

(g) If the FMCSA receives credible evidence that a carrier has operated in violation of a suspension order issued under this section, it will issue an Order requiring the carrier to show cause, within 10 days of the service date of the Order, why its provisional operating authority or provisional Certificate of Registration should not be revoked. If the carrier fails to make the necessary showing, the FMCSA will revoke its registration.

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(h) If a Mexico-domiciled motor carrier operates a commercial motor vehicle in violation of a suspension or out-of-service order, it is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A), not to exceed \$10,000 for each offense.

(i) Notwithstanding any provision of this subpart, a carrier subject to this subpart is also subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repeated violations of DOT regulations governing its motor carrier operations.

§385.113 Administrative review.

(a) A Mexico-domiciled motor carrier may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in assigning a safety rating or suspending or revoking the carrier's provisional operating authority or provisional Certificate of Registration under this subpart.

(b) The carrier must submit its request in writing, in English, to the Associate Administrator for Enforcement and Program Delivery (MC-E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(c) The carrier's request must explain the error it believes the FMCSA committed in assigning the safety rating or suspending or revoking the carrier's provisional operating authority or provisional Certificate of Registration and include any information or documents that support its argument.

(d) The FMCSA will complete its administrative review no later than 10 days after the carrier submits its request for review. The Associate Administrator's decision will constitute the final agency action.

§385.115 Reapplying for provisional registration.

(a) A Mexico-domiciled motor carrier whose provisional operating authority or provisional Certificate of Registration has been revoked may reapply under part 365 or 368 of this sub-chapter, as appropriate, no sooner than 30 days after the date of revocation.

(b) The Mexico-domiciled motor carrier will be required to initiate the application process from the beginning. The carrier will be required to demonstrate how it has corrected the deficiencies that resulted in revocation of its registration and how it will ensure that it will have adequate basic safety management controls. It will also have to undergo a pre-authorization safety audit if it applies for provisional operating authority under part 365 of this subchapter.

§385.117 Duration of safety monitoring system.

(a) Each Mexico-domiciled carrier subject to this subpart will remain in the safety monitoring system for at least 18 months from the date FMCSA issues its provisional Certificate of Registration or provisional operating authority, except as provided in paragraphs (c) and (d) of this section.

(b) If, at the end of this 18-month period, the carrier's most recent safety audit or safety rating was Satisfactory and no additional enforcement or safety improvement actions are pending under this subpart, the Mexico-domiciled carrier's provisional operating authority or

provisional Certificate of Registration will become permanent.

(c) If, at the end of this 18-month period, the FMCSA has not been able to conduct a safety audit or compliance review, the carrier will remain in the safety monitoring system until a safety audit or compliance review is conducted. If the results of the safety audit or compliance review are satisfactory, the carrier's provisional operating authority or provisional Certificate of Registration will become permanent.

(d) If, at the end of this 18-month period, the carrier's provisional operating authority or provisional Certificate of Registration is suspended under §385.111(a) of this subpart, the carrier will remain in the safety monitoring system until the FMCSA either:

(1) Determines that the carrier has taken corrective action; or

(2) Completes measures to revoke the carrier's provisional operating authority or provisional Certificate of Registration under §385.111(c) of this subpart.

§385.119 Applicability of safety fitness and enforcement procedures.

At all times during which a Mexico-domiciled motor carrier is subject to the safety monitoring system in this subpart, it is also subject to the general safety fitness procedures established in subpart A of this part and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

Subpart C—Certification of safety auditors, safety investigators, and safety inspectors

§385.201 Who is qualified to perform a review of a motor carrier or an intermodal equipment provider?

(a) An FMCSA employee, or a State or local government employee funded through the Motor Carrier Safety Assistance Program (MCSAP), who was qualified to perform a compliance review before June 17, 2002, may perform a compliance review, safety audit, roadability review, or roadside inspection if he or she complies with §385.203(b).

(b) A person who was not qualified to perform a compliance review before June 17, 2002, may perform a compliance review, safety audit, roadability review, or roadside inspection after complying with the requirements of §385.203(a).

§385.203 What are the requirements to obtain and maintain certification?

(a) After June 17, 2002, a person who is not qualified under §385.201(a) may not perform a compliance review, safety audit, roadability review, or roadside inspection unless he or she has been certified by FMCSA or a State or local agency applying the FMCSA standards after successfully completing classroom training and examinations on the FMCSRs and HMRs as described in detail on the FMCSA website (www.fmcsa.dot.gov). These employees must also comply with the maintenance of certification/qualification requirements of paragraph (b) of this section.

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(b) **Maintenance of certification/qualification.** A person may not perform a compliance review, safety audit, roadability review, or roadside inspection unless he or she meets the quality-control and periodic re-training requirements adopted by the FMCSA to ensure the maintenance of high standards and familiarity with amendments to the FMCSRs and HMRs. These maintenance of certification/qualification requirements are described in detail on the FMCSA website (www.fmcsa.dot.gov).

(c) The requirements of paragraphs (a) and (b) of this section for training, performance and maintenance of certification/qualification, which are described on the FMCSA website (www.fmcsa.dot.gov), are also available in hard copy from the Federal Motor Carrier Safety Administration, Professional Development and Training Division (MC-MHT), 4600 N. Fairfax Drive, Suite 700, Arlington, Virginia 22203.

§385.205 How can a person who has lost his or her certification be re-certified?

He or she must successfully complete the requirements of §385.203(a) and (b).

Subpart D—New entrant safety assurance program

§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 the FMCSA and receive a USDOT number. In addition, for-hire motor carriers must obtain operating authority from FMCSA following the registration procedures described in 49 CFR part 365, unless providing transportation exempt from 49 CFR part 365 registration requirements.

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

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

§385.301 What is a motor carrier required to do before beginning interstate operations? (Effective October 23, 2015)

(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.

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

A motor carrier may contact the FMCSA by internet (www.fmcsa.dot.gov); or Washington, DC headquarters by mail at, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington DC 20590-0001; fax (703) 280-4003; or telephone 1-800-832-5660, and request the application materials for a new entrant motor carrier.

§385.303 How does a motor carrier register with the FMCSA? (Effective October 23, 2015)

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.

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

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

(b) The application package will contain the following:

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

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

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

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

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

§385.305 What happens after the FMCSA receives a request for new entrant registration? (Effective October 23, 2015)

(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.

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(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.

§385.306 What are the consequences of furnishing misleading information or making a false statement in connection with the registration process?

A carrier that furnishes false or misleading information, or conceals material information in connection with the registration process, is subject to the following actions:

- (a) Revocation of registration.
- (b) Assessment of the civil and/or criminal penalties prescribed in 49 U.S.C. 521 and 49 U.S.C. chapter 149.

§385.307 What happens after a motor carrier begins operations as a new entrant?

After a new entrant satisfies all applicable pre-operational requirements, it will be subject to the new entrant safety monitoring procedures for a period of 18 months. During this 18-month period:

- (a) The new entrant's roadside safety performance will be closely monitored to ensure the new entrant has basic safety management controls that are operating effectively.
- (b) A safety audit will be conducted on the new entrant, once it has been in operation for enough time to have sufficient records to allow the agency to evaluate the adequacy of its basic safety management controls. This period will generally be at least 3 months.
- (c) All records and documents required for the safety audit shall be made available for inspection upon request by an individual certified under FMCSA regulations to perform safety audits.

§385.308 What may cause an expedited action?

(a) A new entrant that commits any of the following actions, identified through roadside inspections or by any other means, may be subjected to an expedited safety audit or a compliance review or may be required to submit a written response demonstrating corrective action:

(1) Using a driver not possessing a valid commercial driver's license to operate a commercial vehicle as defined under Sec. 383.5 of this chapter. An invalid com-

mercial driver's license includes one that is falsified, revoked, expired, or missing a required endorsement.

(2) Operating a vehicle placed out of service for violations of the Federal Motor Carrier Safety Regulations or compatible State laws and regulations without taking necessary corrective action.

(3) Being involved in, through action or omission, a hazardous materials reportable incident, as described under 49 CFR 171.15 or 171.16, involving—

(i) A highway route controlled quantity of certain radioactive materials (Class 7).

(ii) Any quantity of certain explosives (Class 1, Division 1.1, 1.2, or 1.3).

(iii) Any quantity of certain poison inhalation hazard materials (Zone A or B).

(4) Being involved in, through action or omission, two or more hazardous materials reportable incidents as described under 49 CFR 171.15 or 171.16, involving hazardous materials other than those listed above.

(5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.

(6) Operating a commercial motor vehicle without the levels of financial responsibility required under part 387 of this subchapter.

(7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

(b) If a new entrant that commits any of the actions listed in paragraph (a) of this section:

(1) Has not had a safety audit or compliance review, FMCSA will schedule the new entrant for a safety audit as soon as practicable.

(2) Has had a safety audit or compliance review, FMCSA will send the new entrant a notice advising it to submit evidence of corrective action within 30 days of the service date of the notice.

(c) FMCSA may schedule a compliance review of a new entrant that commits any of the actions listed in paragraph (a) of this section at any time if it determines the violation warrants a thorough review of the new entrant's operation.

(d) Failure to respond within 30 days of the notice to an Agency demand for a written response demonstrating corrective action will result in the revocation of the new entrant's registration.

§385.309 What is the purpose of the safety audit?

The purpose of a safety audit is to:

(a) Provide educational and technical assistance to the new entrant; and

(b) Gather safety data needed to make an assessment of the new entrant's safety performance and adequacy of its basic safety management controls.

§385.311 What will the safety audit consist of?

The safety audit will consist of a review of the new entrant's safety management systems and a sample of required records to assess compliance with the FMCSRs, applicable HMRs and related record-keeping

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requirements as specified in Appendix A of this part. The areas for review include, but are not limited to, the following:

- (a) Driver qualification;
- (b) Driver duty status;
- (c) Vehicle maintenance;
- (d) Accident register; and
- (e) Controlled substances and alcohol use and testing requirements.

§385.313 Who will conduct the safety audit?

An individual certified under the FMCSA regulations to perform safety audits will conduct the safety audit.

§385.315 Where will the safety audit be conducted?

The safety audit will generally be conducted at the new entrant's business premises.

§385.317 Will a safety audit result in a safety fitness determination by the FMCSA?

A safety audit will not result in a safety fitness determination. Safety fitness determinations follow completion of a compliance review.

§385.319 What happens after completion of the safety audit?

(a) Upon completion of the safety audit, the auditor will review the findings with the new entrant.

(b) **Pass.** If FMCSA determines the safety audit discloses the new entrant has adequate basic safety management controls, the Agency will provide the new entrant written notice as soon as practicable, but not later than 45 days after completion of the safety audit, that it has adequate basic safety management controls. The new entrant's safety performance will continue to be closely monitored for the remainder of the 18-month period of new entrant registration.

(c) **Fail.** If FMCSA determines the safety audit discloses the new entrant's basic safety management controls are inadequate, the Agency will provide the new entrant written notice, as soon as practicable, but not later than 45 days after the completion of the safety audit, that its USDOT new entrant registration will be revoked and its operations placed out-of-service unless it takes the actions specified in the notice to remedy its safety management practices.

(1) **60-day corrective action requirement.** All new entrants, except those specified in paragraph (c)(2) of this section, must take the specified actions to remedy inadequate safety management practices within 60 days of the date of the notice.

(2) **45-day corrective action requirement.** The new entrants listed below must take the specified actions to remedy inadequate safety management practices within 45 days of the date of the notice:

(i) A new entrant that transports passengers in a CMV designed or used to transport between 9 and 15 passengers (including the driver) for direct compensation.

(ii) A new entrant that transports passengers in a CMV designed or used to transport more than 15 passengers (including the driver).

(iii) A new entrant that transports hazardous materials in a CMV as defined in paragraph (4) of the definition of a "Commercial Motor Vehicle" in §390.5 of this subchapter.

§385.321 What failures of safety management practices disclosed by the safety audit will result in a notice to a new entrant that its USDOT new entrant registration will be revoked?

(a) **General.** The failures of safety management practices consist of a lack of basic safety management controls as described in Appendix A of this part or failure to comply with one or more of the regulations set forth in paragraph (b) of this section and will result in a notice to a new entrant that its USDOT new entrant registration will be revoked.

(b) **Automatic failure of the audit.** A new entrant will automatically fail a safety audit if found in violation of any one of the following 16 regulations:

Table to §385.321—Violations That Will Result in Automatic Failure of the New Entrant Safety Audit

Violation	Guidelines for determining automatic failure of the safety audit
1. §382.115(a)/§382.115(b)—Failing to implement an alcohol and/or controlled substances testing program (domestic and foreign motor carriers, respectively).	Single occurrence.
2. §382.201—Using a driver known to have an alcohol content of 0.04 or greater to perform a safety-sensitive function.	Single occurrence.
3. §382.211—Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.	Single occurrence.
4. §382.215—Using a driver known to have tested positive for a controlled substance.	Single occurrence.
5. §382.305—Failing to implement a random controlled substances and/or alcohol testing program.	Single occurrence.
6. §383.3(a)/§383.23(a)—Knowingly using a driver who does not possess a valid CDL.	Single occurrence.
7. §383.37(b)—Knowingly allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle with a commercial learner's permit or commercial driver's license which is disqualified by a State, has lost the right to operate a CMV in a State or who is disqualified to operate a commercial motor vehicle.	Single occurrence.
8. §383.51(a)—Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle.	Single occurrence. This violation refers to a driver operating a CMV as defined under §383.5.

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9. §387.7(a)—Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.	Single occurrence.
10. §387.31(a)—Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility.	Single occurrence.
11. §391.15(a)—Knowingly using a disqualified driver.	Single occurrence.
12. §391.11(b)(4)—Knowingly using a physically unqualified driver.	Single occurrence. This violation refers to a driver operating a CMV as defined under §390.5.
13. §395.8(a)—Failing to require a driver to make a record of duty status.	Requires a violation threshold (51% or more of examined records) to trigger automatic failure.
14. §396.9(c)(2)—Requiring or permitting the operation of a commercial motor vehicle declared "out-of-service" before repairs are made.	Single occurrence.
15. §396.11(c)—Failing to correct out-of-service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again.	Single occurrence.
16. §396.17(a)—Using a commercial motor vehicle not periodically inspected.	Requires a violation threshold (51% or more of examined records) to trigger automatic failure.

§385.323 May FMCSA extend the period under §385.319(c) for a new entrant to take corrective action to remedy its safety management practices?

(a) FMCSA may extend the 60-day period in §385.319(c)(1) for up to an additional 60 days provided FMCSA determines the new entrant is making a good faith effort to remedy its safety management practices.

(b) FMCSA may extend the 45-day period in §385.319(c)(2) for up to an additional 10 days if the new entrant has submitted evidence that corrective actions have been taken pursuant to §385.319(c) and the Agency needs additional time to determine the adequacy of the corrective action.

§385.325 What happens after a new entrant has been notified under §385.319(c) to take corrective action to remedy its safety management practices?

(a) If the new entrant provides evidence of corrective action acceptable to the FMCSA within the time period provided in §385.319(c), including any extension of that period authorized under §385.323, the FMCSA will provide written notification to the new entrant that its DOT new entrant registration will not be revoked and it may continue operations.

(b) If a new entrant, after being notified that it is required to take corrective action to improve its safety management practices, fails to submit a written response demonstrating corrective action acceptable to FMCSA within the time specified in §385.319, and any extension of that period authorized under §385.323,

FMCSA will revoke its new entrant registration and issue an out-of-service order effective on:

(1) Day 61 from the notice date for new entrants subject to §385.319(c)(1).

(2) Day 46 from the notice date for new entrants subject to §385.319(c)(2).

(3) If an extension has been granted under §385.323, the day following the expiration of the extension date.

(c) The new entrant may not operate in interstate commerce on or after the effective date of the out-of-service order.

§385.327 May a new entrant request an administrative review of a determination of a failed safety audit?

(a) If a new entrant receives a notice under §385.319(c) that its new entrant registration will be revoked, it may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in determining that its basic safety management controls are inadequate. The request must:

(1) Be made to the Field Administrator of the appropriate FMCSA Service Center.

(2) Explain the error the new entrant believes FMCSA committed in its determination.

(3) Include a list of all factual and procedural issues in dispute and any information or documents that support the new entrant's argument.

(b) FMCSA may request that the new entrant submit additional data and attend a conference to discuss the issues(s) in dispute. If the new entrant does not attend the conference or does not submit the requested data, FMCSA may dismiss the new entrant's request for review.

(c) A new entrant must submit a request for an administrative review within one of the following time periods:

(1) If it does not submit evidence of corrective action under §385.319(c), within 90 days after the date it is notified that its basic safety management controls are inadequate.

(2) If it submits evidence of corrective action under §385.319(c), within 90 days after the date it is notified that its corrective action is insufficient and its basic safety management controls remain inadequate.

(d) If a new entrant wants to assure that FMCSA will be able to issue a final written decision before the prohibitions outlined in §385.325(c) take effect, the new entrant must submit its request no later than 15 days from the date of the notice that its basic safety management controls are inadequate. Failure to submit the request within this 15-day period may result in revocation of new entrant registration and issuance of an out-of-service order before completion of administrative review.

(e) FMCSA will complete its review and notify the new entrant in writing of its decision within:

(1) 45 days after receiving a request for review from a new entrant that is subject to §385.319(c)(1).

(2) 30 days after receiving a request for review from a new entrant that is subject to §385.319(c)(2).

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(f) The Field Administrator's decision constitutes the final Agency action.

(g) Notwithstanding this subpart, a new entrant is subject to the suspension and revocation provisions of 49 U.S.C. 13905 for violations of DOT regulations governing motor carrier operations.

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

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

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

(1) Submit an updated MCS-150.

(1) Submit an updated Form MCSA-1.

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

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

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

(1) Submit an updated Form MCS-150.

(1) Submit an updated Form MCSA-1.

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

(3) Submit to a safety audit.

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

(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.

§385.331 What happens if a new entrant operates a CMV after having been issued an order placing its interstate operations out of service?

A new entrant that operates a CMV in violation of an out-of-service order is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A) for each offense as adjusted for inflation by 49 CFR part 386, Appendix B.

§385.333 What happens at the end of the 18-month safety monitoring period?

(a) If a safety audit has been performed within the 18-month period, and the new entrant is not currently subject to an order placing its operations out-of-service under §385.325(b) or under a notice ordering it to take specified actions to remedy its safety management controls under §385.319(c), the FMCSA will remove the

new entrant designation and notify the new entrant in writing that its registration has become permanent. Thereafter, the FMCSA will evaluate the motor carrier on the same basis as any other carrier.

(b) If a new entrant is determined to be "unfit" after a compliance review its new entrant registration will be revoked. (See §385.13)

(c) A new entrant that has reached the conclusion of the 18-month period but is under an order to correct its safety management practices under §385.319(c) will have its new entrant registration removed following FMCSA's determination that the specified actions have been taken to remedy its safety management practices. The motor carrier will be notified in writing that its new entrant designation is removed and that its registration has become permanent. Thereafter, the FMCSA will evaluate the motor carrier on the same basis as any other carrier.

(d) If a safety audit or compliance review has not been performed by the end of the 18-month monitoring period through no fault of the motor carrier, the carrier will be permitted to continue operating as a new entrant until a safety audit or compliance review is performed and a final determination is made regarding the adequacy of its safety management controls. Based on the results of the safety audit or compliance review, the FMCSA will either:

(1) Remove the new entrant designation and notify the new entrant in writing that its registration has become permanent; or

(2) Revoke the new entrant registration in accordance with §385.319(c).

§385.335 If the FMCSA conducts a compliance review on a new entrant, will the new entrant also be subject to a safety audit?

If the FMCSA conducts a compliance review on a new entrant that has not previously been subject to a safety audit and issues a safety fitness determination, the new entrant will not have to undergo a safety audit under this subpart. However, the new entrant will continue to be subject to the 18-month safety-monitoring period prior to removal of the new entrant designation.

§385.337 What happens if a new entrant refuses to permit a safety audit to be performed on its operations?

(a) If a new entrant refuses to permit a safety audit to be performed on its operations, FMCSA will provide the carrier with written notice that its registration will be revoked and its operations placed out of service unless the new entrant agrees in writing, within 10 days from the service date of the notice, to permit the safety audit to be performed. The refusal to permit a safety audit to be performed may subject the new entrant to the penalty provisions of 49 U.S.C. 521(b)(2)(A), as adjusted for inflation by 49 CFR part 386, Appendix B.

(b) If the new entrant does not agree to undergo a safety audit as specified in paragraph (a) of this section, its registration will be revoked and its interstate operations placed out of service effective on the 11th day from the service date of the notice issued under paragraph (a) of this section.

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Subpart E—Hazardous materials safety permits

§385.401 What is the purpose and scope of this subpart?

(a) This subpart contains the requirements for obtaining and maintaining a safety permit to transport certain hazardous materials. No one may transport the materials listed in §385.403 without a safety permit required by this subpart.

(b) This subpart includes:

- (1) Definitions of terms used in this subpart;
- (2) The list of hazardous materials that require a safety permit if transported in commerce;
- (3) The requirements and procedures a carrier must follow in order to be issued a safety permit and maintain a safety permit;
- (4) The procedures for a motor carrier to follow to initiate an administrative review of a denial, suspension, or revocation of a safety permit.

§385.402 What definitions are used in this subpart?

(a) The definitions in parts 390 and 385 of this chapter apply to this subpart, except where otherwise specifically noted.

(b) As used in this part,

Hazardous material has the same meaning as under §171.8 of this title: A substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under §5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see §172.101 of this title), and materials that meet the defining criteria for hazard classes and divisions in part 173 of this title.

Hazmat employee has the same meaning as under §171.8 of this title: A person who is employed by a hazmat employer as defined under §171.8 of this title, and who in the course of employment directly affects hazardous materials transportation safety. This term includes an owner-operator of a motor vehicle that transports hazardous materials in commerce. This term includes an individual who, during the course of employment:

- (1) Loads, unloads, or handles hazardous materials;
- (2) Manufactures, tests, reconditions, repairs, modifies, marks, or otherwise represents containers, drums, or packaging as qualified for use in the transportation of hazardous materials;
- (3) Prepares hazardous materials for transportation;
- (4) Is responsible for the safe transportation of hazardous materials; or
- (5) Operates a vehicle used to transport hazardous materials.

Liquefied natural gas (LNG) means a Division 2.1 liquefied natural gas material that is transported in a liquid state with a methane content of 85 percent or more.

Safety permit means a document issued by FMCSA that contains a permit number and confers authority to transport in commerce the hazardous materials listed in §385.403.

Shipment means the offering or loading of hazardous materials at one loading facility using one transport vehicle, or the transport of that transport vehicle.

§385.403 Who must hold a safety permit?

After the date following January 1, 2005, that a motor carrier is required to file a Motor Carrier Identification Report Form (MCS-150) according to the schedule set forth in §390.19(a) of this chapter, the motor carrier may not transport in interstate or intrastate commerce any of the following hazardous materials, in the quantity indicated for each, unless the motor carrier holds a safety permit:

(a) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in §173.403 of this title;

(b) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material or an amount of a Division 1.5 (explosive) material requiring placarding under part 172 of this title;

(c) More than one liter (1.08 quarts) per package of a “material poisonous by inhalation,” as defined in §171.8 of this title, that meets the criteria for “hazard zone A,” as specified in §173.116(a) or §173.133(a) of this title;

(d) A “material poisonous by inhalation,” in a “bulk packaging,” both as defined in §171.8 of this title, that meets the criteria for “hazard zone B,” as specified in §173.116(a) or §173.133(a);

(e) A “material poisonous by inhalation,” as defined in §171.8 of this title, that meets the criteria for “hazard zone C,” or “hazard zone D,” as specified in §173.116(a) of this title, in a packaging having a capacity equal to or greater than 13,248 L (3,500) gallons; or

(f) A shipment of compressed or refrigerated liquefied methane or liquefied natural gas, or other liquefied gas with a methane content of at least 85 percent, in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500) gallons).

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

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

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

(b) **Where to get forms and instructions.** The forms listed in paragraph (a) of this section, and instructions for completing the forms, may be obtained on the Internet at <http://www.fmcsa.dot.gov>, or by contacting

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FMCSA at Federal Motor Carrier Safety Administration, Office of Information Technology (MC-RI), 1200 New Jersey Ave., SE., Washington DC 20590-0001, Telephone: 1-800-832-5660.

(c) **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 on Form MCS-150B.** A motor carrier holding a safety permit must report to FMCSA any change in the information on its Form MCS-150B within 30 days of the change. The motor carrier must use Form MCS-150B to report the new information (contact information in paragraph (b) of this section).

§385.405 How does a motor carrier apply for a safety permit? (Effective October 23, 2015)

(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.

§385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

(a) **Motor carrier safety performance.** (1) The motor carrier must have a “Satisfactory” safety rating assigned by either FMCSA, pursuant to the Safety Fitness Procedures of this part, or the State in which the motor carrier has its principal place of business, if the State has adopted and implemented safety fitness procedures that are equivalent to the procedures in subpart A of this part; and

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

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

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

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

(b) **Satisfactory security program.** The motor carrier must certify that it has a satisfactory security program, including:

(1) A security plan meeting the requirements of part 172, subpart I of this title, and addressing how the carrier will ensure the security of the written route plan required by this part;

(2) A communications plan that allows for contact between the commercial motor vehicle operator and the motor carrier to meet the periodic contact requirements in §385.415(c)(1); and

(3) Successful completion by all hazmat employees of the security training required in §172.704(a)(4) and (a)(5) of this title.

(c) **Registration with the Pipeline and Hazardous Materials Safety Administration (PHMSA).**

The motor carrier must be registered with the PHMSA in accordance with part 107, subpart G of this title.

§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 in §385.407(a), FMCSA may issue it a temporary safety permit. To obtain a temporary safety permit a motor carrier must certify on Form MCS-150B that it is operating in full compliance with the HMRs; with the FMCSRs, and/or comparable State regulations, whichever is applicable; and with the minimum financial responsibility requirements in part 387 of this chapter or in State regulations, whichever is applicable.

(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.

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

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

(2) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA’s MCMIS; or

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

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

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

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

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

§385.411 Must a motor carrier obtain a safety permit if it has a State permit?

Yes. However, if FMCSA is able to verify that a motor carrier has a safety permit issued by a State under a program that FMCSA has determined to be equivalent to the provisions of this subpart, FMCSA will immediately issue a safety permit to the motor carrier upon receipt of an application in accordance with §385.405, without further inspection or investigation.

§385.413 What happens if a motor carrier receives a proposed safety rating that is less than Satisfactory?

(a) If a motor carrier does not already have a safety permit, it will not be issued a safety permit (including a temporary safety permit) unless and until a Satisfactory safety rating is issued to the motor carrier.

(b) If a motor carrier holds a safety permit (including a temporary safety permit), the safety permit will be subject to revocation or suspension (see §385.421).

§385.415 What operational requirements apply to the transportation of a hazardous material for which a permit is required?

(a) **Information that must be carried in the vehicle.** During transportation, the following must be maintained in each commercial motor vehicle that transports a hazardous material listed in §385.403 and must be made available to an authorized official of a Federal, State, or local government agency upon request.

(1) A copy of the safety permit or another document showing the permit number, provided that document clearly indicates the number is the FMCSA Safety Permit number;

(2) A written route plan that meets the requirements of §397.101 of this chapter for highway route-controlled Class 7 (radioactive) materials or §397.67 of this chapter for Division 1.1, 1.2, and 1.3 (explosive) materials; and

(3) The telephone number, including area code or country code, of an employee of the motor carrier or representative of the motor carrier who is familiar with the routing of the permitted material. The motor carrier employee or representative must be able to verify that the shipment is within the general area for the expected route for the permitted material. The telephone number, when called, must be answered directly by the motor carrier or its representative at all times while the permitted material is in transportation including storage incidental to transportation. Answering machines are not sufficient to meet this requirement.

(b)(1) Inspection of vehicle transporting Class 7 (radioactive) materials. Before a motor carrier may transport a highway route controlled quantity of a Class 7 (radioactive) material, the motor carrier must have a

pre-trip inspection performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of the “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403”, (incorporated by reference, see §385.4).

(2) All materials incorporated by reference are available for inspection at the Federal Motor Carrier Safety Administration, Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001; and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(c) **Additional requirements.** A motor carrier transporting hazardous materials requiring a permit under this part must also meet the following requirements:

(1) The operator of a motor vehicle used to transport a hazardous material listed in §385.403 must follow the communications plan required in §385.407(b)(2) to make contact with the carrier at the beginning and end of each duty tour, and at the pickup and delivery of each permitted load. Contact may be by telephone, radio or via an electronic tracking or monitoring system. The motor carrier or driver must maintain a record of communications for 6 months after the initial acceptance of a shipment of hazardous material for which a safety permit is required. The record of communications must contain the name of the driver, identification of the vehicle, permitted material(s) being transported, and the date, location, and time of each contact required under this section.

(2) The motor carrier should contact the Transportation Security Administration’s Transportation Security Coordination Center (703-563-3236 or 703-563-3237) at any time the motor carrier suspects its shipment of a hazardous material listed in §385.403 is lost, stolen or otherwise unaccounted for.

§385.417 Is a motor carrier’s safety permit number available to others?

Upon request, a motor carrier must provide the number of its safety permit to a person who offers a hazardous material listed in §385.403 for transportation in commerce. A motor carrier’s permit number will also be available to the public on the FMCSA Safety and Fitness Electronic Records System at <http://www.safersys.org>.

§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

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

(b) An existing safety permit will remain in effect pending FMCSA's processing of an application for renewal if a motor carrier submits the required application (Form MS-150B) in accordance with the schedule set forth in §390.19(a)(2) and (a)(3) of this chapter.

§385.419 How long is a safety permit effective? (Effective October 23, 2015)

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.

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

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

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

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

(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)).

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

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

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

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

(7) A motor carrier fails to comply with any other order issued under the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner showing that the

motor carrier is not fit to transport the hazardous materials listed in §385.403;

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

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

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

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

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

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

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

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

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

§385.423 Does a motor carrier have a right to an administrative review of a denial, suspension, or revocation of a safety permit?

A motor carrier has a right to an administrative review pursuant to the following procedures and conditions:

(a) **Less than Satisfactory safety rating.** If a motor carrier is issued a proposed safety rating that is less than Satisfactory, it has the right to request (1) an administrative review of a proposed safety rating, as set forth in §385.15, and (2) a change to a proposed safety rating based on corrective action, as set forth in §385.17. After a motor carrier has had an opportunity for administrative review of, or change to, a proposed safety rating, FMCSA's issuance of a final safety rating constitutes final agency action, and a motor carrier has no right to further administrative review of FMCSA's denial, suspension, or revocation of a safety permit

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when the motor carrier has been issued a final safety rating that is less than Satisfactory.

(b) **Failure to pay civil penalty or abide by payment plan.** If a motor carrier is notified that failure to pay a civil penalty will result in suspension or termination of its operating rights, it has the right to an administrative review of that proposed action in a show cause proceeding, as set forth in §386.83(b) or §386.84(b) of this chapter. The decision by FMCSA's Chief Safety Officer in the show cause proceeding constitutes final agency action, and a motor carrier has no right to further administrative review of FMCSA's denial, suspension, or revocation of a safety permit when the motor carrier has lost its operating rights or had its registration suspended for failure to pay a civil penalty or abide by a payment plan.

(c) **Other grounds.** Under circumstances other than those set forth in paragraphs (a) and (b) of this section, a motor carrier may submit a written request for administrative review within 30 days after service of a written notification that FMCSA has denied a safety permit, that FMCSA has immediately suspended or revoked a safety permit, or that FMCSA has proposed to suspend or revoke a safety permit. The rules for computing time limits for service and requests for extension of time in §§386.5, 386.6, and 386.8 of this chapter apply to the proceedings on a request for administrative review under this section.

(1) The motor carrier must send or deliver its written request for administrative review to FMCSA Chief Safety Officer, with a copy to FMCSA Chief Counsel, at the following addresses:

(i) Chief Safety Officer, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001. Attention: Adjudications Counsel (MC-CC).

(ii) Chief Counsel (MC-CC), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(2) A request for administrative review must state the specific grounds for review and include all information, evidence, and arguments upon which the motor carrier relies to support its request for administrative review.

(3) Within 30 days after service of a written request for administrative review, the Office of the Chief Counsel shall submit to the Chief Safety Officer a written response to the request for administrative review. The Office of the Chief Counsel must serve a copy of its written response on the motor carrier requesting administrative review.

(4) The Chief Safety Officer may decide a motor carrier's request for administrative review on the written submissions, hold a hearing personally, or refer the request to an administrative law judge for a hearing and recommended decision. The Chief Safety Officer or administrative law judge is authorized to specify, and must notify the parties of, specific procedural rules to be followed in the proceeding (which may include the procedural rules in part 386 of this chapter that are considered appropriate).

(5) If a request for administrative review is referred to an administrative law judge, the recommended decision

of the administrative law judge becomes the final decision of the Chief Safety Officer 45 days after service of the recommended decision is served, unless either the motor carrier or the Office of the Chief Counsel submits a petition for review to the Chief Safety Officer (and serves a copy of its petition on the other party) within 15 days after service of the recommended decision. In response to a petition for review of a recommended decision of an administrative law judge:

(i) The other party may submit a written reply within 15 days of service of the petition for review.

(ii) The Chief Safety Officer may adopt, modify, or set aside the recommended decision of an administrative law judge, and may also remand the petition for review to the administrative law judge for further proceedings.

(6) The Chief Safety Officer will issue a final decision on any request for administrative review when:

(i) The request for administrative review has not been referred to an administrative law judge;

(ii) A petition for review of a recommended decision by an administrative law judge has not been remanded to the administrative law judge for further proceedings; or

(iii) An administrative law judge has held further proceedings on a petition for review and issued a supplementary recommended decision.

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

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

Subpart F—Intermodal equipment providers

§385.501 Roadability review.

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

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

§385.503 Results of roadability review.

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

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

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(c) FMCSA may prohibit an intermodal equipment provider from tendering any intermodal equipment from a particular location or multiple locations if the agency determines the intermodal equipment provider's failure to comply with the FMCSRs constitutes an imminent hazard under §386.72(b)(1).

Subpart G—Reserved

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

§385.601 Scope of rules.

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

§385.603 Application.

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

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

(2) Form MCS-150—Motor Carrier Identification Report; and

(3) A notification of the means used to designate process agents, either by submission in the application package of Form BOC-3— Designation of Agents—Motor Carriers, Brokers and Freight Forwarders or a letter stating that the applicant will use a process agent service that will submit the Form BOC-3 electronically.

(b) FMCSA will only process an application if it meets the following conditions:

(1) The application must be completed in English;

(2) The information supplied must be accurate, complete, and include all required supporting documents and applicable certifications in accordance with the instructions to Form OP-1(NNA), Form MCS-150 and Form BOC-3;

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

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

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

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

§385.603 Application. (Effective October 23, 2015)

(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”).

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

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

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

§385.607 FMCSA action on the application.

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

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

(c) **Pre-authorization safety audit.** Every non-North America-domiciled motor carrier that applies under this part must satisfactorily complete an FMCSA-administered safety audit before FMCSA will grant new entrant registration to operate in the United States. The safety audit is a review by FMCSA of the carrier's written procedures and records to validate the accuracy of information and certifications provided in the application and determine whether the carrier has established or exercises the basic safety management controls necessary to ensure safe operations. FMCSA will evaluate the results of the safety audit using the criteria in the Appendix to this subpart.

(d) An application of a non-North America-domiciled motor carrier requesting for-hire operating authority under part 365 of this subchapter may be protested under §365.109(b). Such a carrier will be granted new entrant registration after successful completion of the

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pre-authorization safety audit and the expiration of the protest period, provided the application is not protested. If a protest to the application is filed with FMCSA, new entrant registration will be granted only if FMCSA denies or rejects the protest.

(e) If FMCSA grants new entrant registration to the applicant, it will assign a distinctive USDOT Number that identifies the motor carrier as authorized to operate in the United States. In order to initiate operations in the United States, a non-North America-domiciled motor carrier with new entrant registration must:

(1) Have its surety or insurance provider file proof of financial responsibility in the form of certificates of insurance, surety bonds, and endorsements, as required by §387.7(e)(2), §387.31(e)(2), and §387.301 of this subchapter, as applicable; and

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

(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.

(f) A non-North America-domiciled motor carrier must comply with all provisions of the safety monitoring system in part 385, subpart I of this subchapter, including successfully passing North American Standard commercial motor vehicle inspections at least every 90 days and having safety decals affixed to each commercial motor vehicle operated in the United States as required by §385.703(c) of this subchapter.

(g) FMCSA may not re-designate a non-North America-domiciled carrier's registration from new entrant to permanent prior to 18 months after the date its USDOT Number is issued and subject to successful completion of the safety monitoring system for non-North America-domiciled carriers set out in part 385, subpart I of this subchapter. Successful completion includes obtaining a Satisfactory safety rating as the result of a compliance review.

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

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

(2) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information in Section I, IA or II of Form OP-1(NNA)—Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers that occurs during the application process or after having been granted new entrant registration.

(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.

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

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

Appendix to Subpart H of Part 385— Explanation of Pre-Authorization Safety Audit Evaluation Criteria for Non-North America- Domiciled Motor Carriers

I. General

(a) FMCSA will perform a safety audit of each non-North America-domiciled motor carrier before granting the carrier new entrant registration to operate within the United States.

(b) FMCSA will conduct the safety audit at a location specified by the FMCSA. All records and documents must be made available for examination within 48 hours after a request is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period.

(c) The safety audit will include:

(1) Verification of available performance data and safety management programs;

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

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

(4) Verification of proof of financial responsibility;

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

(6) Inspection of available commercial motor vehicles to be used under new entrant registration, if any of these vehicles have not received a decal required by §385.703(c) of this subchapter;

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

(8) Verification of drivers' qualifications, including confirmation of the validity of the CDL, Canadian Commercial Driver's License, or Mexican Licencia de Federal de Conductor, as applicable, of each driver the carrier intends to assign to operate under its new entrant registration; and

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

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(d) To successfully complete the safety audit, a non-North America-domiciled motor carrier must demonstrate to FMCSA that it has the required elements in paragraphs I (c)(2), (3), (4), (7), and (8) of this appendix and other basic safety management controls in place which function adequately to ensure minimum acceptable compliance with the applicable safety requirements. FMCSA developed “safety audit evaluation criteria,” which uses data from the safety audit and roadside inspections to determine that each applicant for new entrant registration has basic safety management controls in place.

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

(1) Evaluate basic safety management controls and determine if each non-North America-domiciled carrier and each driver is able to operate safely in the United States; and

(2) Identify motor carriers and drivers who are having safety problems and need improvement in their compliance with the FMCSRs and the HMRs, before FMCSA issues new entrant registration to operate within the United States.

II. Source of the Data for the Safety Audit Evaluation Criteria

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

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

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

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

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

III. Overall Determination of the Carrier’s Basic Safety Management Controls

(a) The carrier will not receive new entrant registration if FMCSA cannot:

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

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

(3) Verify proof of financial responsibility;

(4) Verify records of periodic vehicle inspections; and

(5) Verify the qualifications of each driver the carrier intends to assign to operate commercial motor vehicles in the United States, as required by parts 383 and 391 of this subchapter, including confirming the validity of each driver’s CDL, Canadian Commercial Driver’s License, or Mexican Licencia de Federal de Conductor, as appropriate.

(b) If FMCSA confirms each item under paragraphs III (a)(1) through (5) of this appendix, the carrier will receive new entrant registration, unless FMCSA finds the carrier has inadequate basic safety management controls in at least three separate factors described in part IV of this appendix. If FMCSA makes such a determination, the carrier’s application for new entrant registration will be denied.

IV. Evaluation of Regulatory Compliance

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

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

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

(d) The list of the acute and critical regulations, which are used in determining if a carrier has basic safety management controls in place, is included in Appendix B, VII, List of Acute and Critical Regulations to part 385 of this subchapter.

(e) Noncompliance with acute and critical regulations are indicators of inadequate safety management controls and usually higher than average accident rates.

(f) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into six regulatory areas called “factors.” The regulatory factors, evaluated on the adequacy of the carrier’s safety management controls, are:

(1) Factor 1—General: Parts 387 and 390;

(2) Factor 2—Driver: Parts 382, 383, and 391;

(3) Factor 3—Operational: Parts 392 and 395;

(4) Factor 4—Vehicle; Parts 393, 396 and inspection data for the last 12 months;

(5) Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397; and

(6) Factor 6—Accident: Recordable Accident Rate per Million Miles.

(g) For each instance of noncompliance with an acute regulation, 1.5 points will be assessed.

(h) For each instance of noncompliance with a critical regulation, 1 point will be assessed.

(i) Vehicle Factor. (1) When at least three vehicle inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months before the safety audit or performed at the time of the review, the Vehicle Factor (part 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and

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noncompliance with acute and critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor as follows:

(i) If the motor carrier has had at least three roadside inspections in the twelve months before the safety audit, and the vehicle OOS rate is 34 percent or higher, one point will be assessed against the carrier. That point will be added to any other points assessed for discovered noncompliance with acute and critical regulations of part 396 of this chapter to determine the carrier's level of safety management control for that factor.

(ii) If the motor carrier's vehicle OOS rate is less than 34 percent, or if there are less than three inspections, the determination of the carrier's level of safety management controls will only be based on discovered noncompliance with the acute and critical regulations of part 396 of this chapter.

(2) Roadside inspection information is retained in the MCMIS and is integral to evaluating a motor carrier's ability to successfully maintain its vehicles, thus preventing being placed OOS during a roadside inspection. Each safety audit will continue to have the requirements of part 396 of this chapter, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

(j) Accident Factor. (1) In addition to the five regulatory factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate, which the carrier has experienced during the past 12 months. Recordable accident, as defined in 49 CFR 390.5, means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(2) [Reserved]

(3) The recordable accident rate will be used in determining the carrier's basic safety management controls in Factor 6, Accident. It will be used only when a carrier incurs two or more recordable accidents within the 12 months before the safety audit. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.5 will be deemed to have inadequate basic safety management controls for the accident factor. The rates are the result of roughly doubling the United States national average accident rate in Fiscal Years 1994, 1995, and 1996.

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

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

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

(i) Factor 1—General: Parts 390 and 387;

(ii) Factor 2—Driver: Parts 382, 383, and 391;

(iii) Factor 3—Operational: Parts 392 and 395;

(iv) Factor 4—Vehicle: Parts 393, 396 and the Out of Service Rate;

(v) Factor 5—Hazardous Materials: Part 171, 177, 180 and 397; and

(vi) Factor 6—Accident: Recordable Accident Rate per Million Miles;

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

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

(1) Notwithstanding FMCSA verification of the items listed in paragraphs III (a)(1) through (5) of this appendix, if the safety audit determines the carrier has inadequate basic safety management controls in at least three separate factors described in paragraph III of this appendix, the carrier's application for new entrant registration will be denied. For example, FMCSA evaluates a carrier finding:

(1) One instance of noncompliance with a critical regulation in part 387 scoring one point for Factor 1;

(2) Two instances of noncompliance with acute regulations in part 382 scoring three points for Factor 2;

(3) Three instances of noncompliance with critical regulations in part 396 scoring three points for Factor 4; and

(4) Three instances of noncompliance with acute regulations in parts 171 and 397 scoring four and one-half (4.5) points for Factor 5.

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

Subpart I—Safety Monitoring System for Non-North America-Domiciled Carriers

§385.701 Definitions.

The following definitions apply to this subpart:

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Compliance review means a compliance review as defined in §385.3 of this part.

New entrant registration means the provisional registration under subpart H of this part that FMCSA grants to a non-North America-domiciled motor carrier to provide interstate transportation within the United States. It will be revoked if the registrant is not assigned a Satisfactory safety rating following a compliance review conducted during the safety monitoring period established in this subpart.

Non-North America-domiciled motor carrier means a motor carrier of property or passengers whose principal place of business is located in a country other than the United States, Canada or Mexico.

§385.703 Safety monitoring system.

(a) **General.** Each non-North America-domiciled carrier new entrant will be subject to an oversight program to monitor its compliance with applicable Federal Motor Carrier Safety Regulations (FMCSRs), Federal Motor Vehicle Safety Standards (FMVSSs), and Hazardous Materials Regulations (HMRs).

(b) **Roadside monitoring.** Each non-North America-domiciled carrier new entrant will be subject to intensified monitoring through frequent roadside inspections.

(c) **Safety decal.** Each non-North America-domiciled carrier must have on every commercial motor vehicle it operates in the United States a current decal attesting to a satisfactory North American Standard Commercial Vehicle inspection by a certified FMCSA or State inspector pursuant to 49 CFR 350.201(k). This requirement applies during the new entrant operating period and for three years after the carrier's registration becomes permanent following removal of its new entrant designation.

(d) **Compliance review.** FMCSA will conduct a compliance review on a non-North America-domiciled carrier within 18 months after FMCSA issues the carrier a USDOT Number.

§385.705 Expedited action.

(a) A non-North America-domiciled motor carrier committing any of the following actions identified through roadside inspections, or by any other means, may be subjected to an expedited compliance review, or may be required to submit a written response demonstrating corrective action:

(1) Using a driver not possessing, or operating without, a valid CDL, Canadian Commercial Driver's License, or Mexican Licencia Federal de Conductor. An invalid commercial driver's license includes one that is falsified, revoked, expired, or missing a required endorsement.

(2) Operating a vehicle placed out of service for violations of the Federal Motor Carrier Safety Regulations without taking the necessary corrective action.

(3) Being involved in, through action or omission, a hazardous materials reportable incident, as described under 49 CFR 171.15 or 171.16, within the United States involving—

(i) A highway route controlled quantity of certain radioactive materials (Class 7).

(ii) Any quantity of certain explosives (Class 1, Division 1.1, 1.2, or 1.3).

(iii) Any quantity of certain poison inhalation hazard materials (Zone A or B).

(4) Being involved in, through action or omission, two or more hazardous materials reportable incidents, as described under 49 CFR 171.15 or 171.16, occurring within the United States and involving any hazardous material not listed in paragraph (a)(3) of this section.

(5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.

(6) Operating within the United States a commercial motor vehicle without the levels of financial responsibility required under part 387 of this subchapter.

(7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

(b) Failure to respond to an Agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's new entrant registration until the required showing of corrective action is submitted to the FMCSA.

(c) A satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a compliance review during the new entrant registration period.

§385.707 The compliance review.

(a) The criteria used in a compliance review to determine whether a non-North America-domiciled new entrant exercises the necessary basic safety management controls are specified in Appendix B to this part.

(b) **Satisfactory Rating.** If FMCSA assigns a non-North America-domiciled carrier a Satisfactory rating following a compliance review conducted under this subpart, FMCSA will provide the carrier written notice as soon as practicable, but not later than 45 days after the completion of the compliance review. The carrier's registration will remain in provisional status and its on-highway performance will continue to be closely monitored for the remainder of the 18-month new entrant registration period.

(c) **Conditional Rating.** If FMCSA assigns a non-North America-domiciled carrier a Conditional rating following a compliance review conducted under this subpart, it will initiate a revocation proceeding in accordance with §385.709 of this subpart. The carrier's new entrant registration will not be suspended prior to the conclusion of the revocation proceeding.

(d) **Unsatisfactory Rating.** If FMCSA assigns a non-North America-domiciled carrier an Unsatisfactory rating following a compliance review conducted under this subpart, it will initiate a suspension and revocation proceeding in accordance with §385.709 of this subpart.

§385.709 Suspension and revocation of non-North America-domiciled carrier registration.

(a) If a carrier is assigned an "Unsatisfactory" safety rating following a compliance review conducted under

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this subpart, FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the compliance review contains material error.

(b) For purposes of this section, material error is a mistake or series of mistakes that resulted in an erroneous safety rating.

(c) If the carrier demonstrates that the compliance review contained material error, its new entrant registration will not be suspended. If the carrier fails to show a material error in the compliance review, FMCSA will issue an Order:

(1) Suspending the carrier's new entrant registration and requiring it to immediately cease all further operations in the United States; and

(2) Notifying the carrier that its new entrant registration will be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order.

(d) If a carrier is assigned a "Conditional" rating following a compliance review conducted under this subpart, the provisions of paragraphs (a) through (c) of this section will apply, except that its new entrant registration will not be suspended under paragraph (c)(1) of this section.

(e) If a carrier subject to this subpart fails to provide the necessary documents for a compliance review upon reasonable request, or fails to submit evidence of the necessary corrective action as required by §385.705 of this subpart, FMCSA will provide the carrier with written notice, as soon as practicable, that its new entrant registration will be suspended 15 days from the service date of the notice unless it provides all necessary documents or information. This suspension will remain in effect until the necessary documents or information is produced and:

(1) The carrier is rated Satisfactory after a compliance review; or

(2) FMCSA determines, following review of the carrier's response to a demand for corrective action under §385.705, that the carrier has taken the necessary corrective action.

(f) If a carrier commits any of the actions specified in §385.705(a) of this subpart after the removal of a suspension issued under this section, the suspension will be automatically reinstated. FMCSA will issue an Order requiring the carrier to cease further operations in the United States and demonstrate, within 15 days from the service date of the Order, that it did not commit the alleged action(s). If the carrier fails to demonstrate that it did not commit the action(s), FMCSA will issue an Order revoking its new entrant registration.

(g) If FMCSA receives credible evidence that a carrier has operated in violation of a suspension order issued under this section, it will issue an Order requiring the carrier to show cause, within 10 days of the service date of the Order, why its new entrant registration should not be revoked. If the carrier fails to make the necessary showing, FMCSA will revoke its registration.

(h) If a non-North America-domiciled motor carrier operates a commercial motor vehicle in violation of a suspension or out-of-service order, it is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A), as adjusted by inflation, not to exceed amounts for each offense under part 386, Appendix B of this subchapter.

(i) Notwithstanding any provision of this subpart, a carrier subject to this subpart is also subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repeated violations of DOT regulations governing its motor carrier operations.

§385.711 Administrative review.

(a) A non-North America-domiciled motor carrier may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in assigning a safety rating or suspending or revoking the carrier's new entrant registration under this subpart.

(b) The carrier must submit its request in writing, in English, to the Associate Administrator for Enforcement and Program Delivery, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington DC 20590.

(c) The carrier's request must explain the error it believes FMCSA committed in assigning the safety rating or suspending or revoking the carrier's new entrant registration and include any information or documents that support its argument.

(d) FMCSA will complete its administrative review no later than 10 days after the carrier submits its request for review. The Associate Administrator's decision will constitute the final Agency action.

§385.713 Reapplying for new entrant registration.

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

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

(1) Submit an updated MCS-150.

(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);

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

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

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

(c) If the provisional new entrant registration was revoked because FMCSA found that the new entrant

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had failed to submit to a compliance review, it must do all of the following:

(1) Submit an updated MCS-150.

(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);

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

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

(4) Submit to a compliance review upon request.

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

(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.

§385.715 Duration of safety monitoring system.

(a) Each non-North America-domiciled carrier subject to this subpart will remain in the safety monitoring system for at least 18 months from the date FMCSA issues its new entrant registration, except as provided in paragraphs (c) and (d) of this section.

(b) If, at the end of this 18-month period, the carrier's most recent safety rating was Satisfactory and no additional enforcement or safety improvement actions are pending under this subpart, the non-North America-domiciled carrier's new entrant registration will become permanent.

(c) If, at the end of this 18-month period, FMCSA has not been able to conduct a compliance review, the carrier will remain in the safety monitoring system until a compliance review is conducted. If the results of the compliance review are satisfactory, the carrier's new entrant registration will become permanent.

(d) If, at the end of this 18-month period, the carrier's new entrant registration is suspended under §385.709(a) of this subpart, the carrier will remain in the safety monitoring system until FMCSA either:

(1) Determines that the carrier has taken corrective action; or

(2) Completes measures to revoke the carrier's new entrant registration under §385.709(c) of this subpart.

§385.717 Applicability of safety fitness and enforcement procedures.

At all times during which a non-North America-domiciled motor carrier is subject to the safety monitoring system in this subpart, it is also subject to the general safety fitness procedures established in sub-

part A of this part and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

Subpart J—Reserved

Subpart K—Pattern or Practice of Safety Violations by Motor Carrier Management

§385.901 Applicability.

The requirements in this subpart apply to for-hire motor carriers, employers, officers and persons registered or required to be registered under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368. When used in this subpart, the term "motor carrier" includes all for-hire motor carriers, employers, officers and other persons, however designated, that are registered or required to be registered under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368.

§385.903 Definitions.

As used in this subpart:

Agency Official means the Director of FMCSA's Office of Enforcement and Compliance or his or her designee.

Controlling Influence means having or exercising authority, whether by act or omission, to direct some or all of a motor carrier's operational policy and/or safety management controls.

Officer means an owner, director, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of the title attached to those functions, and any person, however designated, exercising controlling influence over the operations of a motor carrier.

Registration means the registration required under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368.

§385.905 Suspension or revocation of registration.

(a) **General.** (1) If a motor carrier engages or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations on commercial motor vehicle safety under 49 U.S.C. Chapter 311, subchapter III, FMCSA may suspend or revoke the motor carrier's registration.

(2) If a motor carrier permits any person to exercise controlling influence over the motor carrier's operations and that person engages in or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations on commercial motor vehicle safety 49 U.S.C. Chapter 311, subchapter III while acting on behalf of any motor carrier, FMCSA may suspend or revoke the motor carrier's registration.

(b) **Determination.** (1) The Agency Official may issue an order to revoke or suspend a motor carrier's registration, or require compliance with an order issued to redress violations of a statutory or regulatory requirement prescribed under 49 U.S.C. Chapter 311,

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subchapter III, upon a determination that the motor carrier engages or has engaged in a pattern or practice of avoiding regulatory compliance or masking or otherwise concealing regulatory noncompliance.

(2) The Agency Official may issue an order to revoke or suspend a motor carrier's registration, or require compliance with an order issued to redress violations of a statutory or regulatory requirement prescribed under 49 U.S.C. Chapter 311, subchapter III, upon a determination that the motor carrier permitted a person to exercise controlling influence over the motor carrier's operations if that person engages in or has engaged in a pattern or practice of avoiding regulatory compliance or masking or otherwise concealing regulatory noncompliance.

§385.907 Regulatory noncompliance.

A motor carrier or person acting on behalf of a motor carrier avoids regulatory compliance or masks or otherwise conceals regulatory noncompliance by, independently or on behalf of another motor carrier, failing to or concealing failure to:

(a) Comply with statutory or regulatory requirements prescribed under 49 U.S.C., Chapter 311, subchapter III;

(b) Comply with an FMCSA or State order issued to redress violations of a statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III;

(c) Pay a civil penalty assessed for a violation of a statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III; or

(d) Respond to an enforcement action for a violation of a statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III.

§385.909 Pattern or practice.

The Agency Official may determine that a motor carrier or person acting on behalf of a motor carrier engages or has engaged in a pattern or practice of avoiding regulatory compliance, or masking or otherwise concealing regulatory noncompliance for purposes of this subpart, by considering, among other things, the following factors, which, in the case of persons acting on behalf of a motor carrier, may be related to conduct undertaken on behalf of any motor carrier:

(a) The frequency, remoteness in time, or continuing nature of the conduct;

(b) The extent to which the regulatory violations caused by the conduct create a risk to safety;

(c) The degree to which the conduct has affected the safety of operations, including taking into account any crashes, deaths, or injuries associated with the conduct;

(d) Whether the motor carrier or person acting on a motor carrier's behalf knew or should have known that the conduct violated applicable statutory or regulatory requirements;

(e) Safety performance history, including pending or closed enforcement actions, if any;

(f) Whether the motor carrier or person acting on a motor carrier's behalf engaged in the conduct for the

purpose of avoiding compliance or masking or otherwise concealing noncompliance; and

(g) In the case of a person acting on a motor carrier's behalf, the extent to which the person exercises a controlling influence on the motor carrier's operations.

§385.911 Suspension proceedings.

(a) **General.** The Agency Official may issue an order to suspend a motor carrier's registration based on a determination made in accordance with §385.905(b).

(b) **Commencement of proceedings.** The Agency Official commences a proceeding under this section by serving an order to show cause to the motor carrier and, if the proceeding is based on the conduct of another person, by also serving a copy on the person alleged to have engaged in the pattern or practice that resulted in a proceeding instituted under this section, which:

(1) Provides notice that the Agency is considering whether to suspend the motor carrier's registration;

(2) Provides notice of the factual and legal basis for the order;

(3) Directs the motor carrier to show good cause within 30 days of service of the order to show cause why its registration should not be suspended;

(4) Informs the motor carrier that its response to the order to show cause must be in writing, state the factual and legal basis for its response, and include all documentation, if any, the motor carrier wants considered;

(5) Informs the motor carrier of the address and name of the person to whom the response should be directed and served;

(6) Provides notice to the person(s) alleged to have engaged in the pattern or practice that resulted in the proceeding instituted under this section, if any, of their right to intervene in the proceeding; and

(7) Informs the motor carrier that its registration will be suspended on the 35th day after service of the order, if the motor carrier or an intervening person does not respond to the order.

(c) **Right of individual person(s) to intervene.** A person(s) alleged to have engaged in the pattern or practice that resulted in a proceeding under this section may intervene in the proceeding. The person(s) may—but are not required to—serve a separate response and supporting documentation to an order served under paragraph (b) of this section, within 30 days of being served with the order. Failure to timely serve a response constitutes waiver of the right to intervene.

(d) **Review of response.** The Agency Official will review the responses to the order to show cause and determine whether the motor carrier's registration should be suspended.

(1) The Agency Official may take the following actions:

(i) If the Agency Official determines that the motor carrier's registration should be suspended, he or she will enter an order suspending the registration;

(ii) If the Agency Official determines that it is not appropriate to suspend the motor carrier's registration, he or she may enter an order directing the motor carrier to correct compliance deficiencies; or

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(iii) If the Agency Official determines the motor carrier's registration should not be suspended and a compliance order is not warranted, he or she will enter an order terminating the proceeding.

(2) If the Agency Official issues an order to suspend the motor carrier's registration, the order will:

(i) Provide notice to the motor carrier and any intervening person(s) of the right to petition for administrative review of the order within 15 days of service of the order suspending registration, and provide notice of the procedures in paragraph (e) of this section;

(ii) Provide notice that a timely petition for administrative review will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(iii) Provide notice that failure to timely serve a petition for administrative review constitutes waiver of the right to contest the order suspending the registration and will result in the order becoming a Final Agency Order 20 days after it is served.

(e) **Administrative review.** The motor carrier or the intervening person(s) may petition the Assistant Administrator for review of an order issued under paragraph (d)(1)(i) of this section. The petition must be in writing and served on the Assistant Administrator. Service on the Assistant Administrator is effected by delivering a copy to USDOT Dockets, Docket Operations, 1200 New Jersey Avenue, West Building Ground Floor, Room 12-140, SE., Washington, DC 20590-0001 or by submitting the documents electronically to www.regulations.gov. The petition must also be served on all parties to the proceedings and on Adjudications Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590-0001.

(1) A petition for review must be served within 15 days of the service date of the order for which review is requested. Failure to timely serve a request for review waives the right to request review.

(2) A petition for review must include:

(i) A copy of the order in dispute;

(ii) A copy of the petitioner's response to the order in dispute, with supporting documents if any;

(iii) A statement of all legal, factual and procedural issues in dispute; and

(iv) Written argument in support of the petitioner's position regarding the legal, factual or procedural issues in dispute.

(3) The Agency Official must serve a response to the petition for review no later than 15 days following receipt of the petition. The Agency Official must address each assignment of error by producing evidence or legal argument which supports the Agency Official's determination on that issue. The Agency Official's determination may be supported by circumstantial or direct evidence and the reasonable inferences drawn therefrom.

(4) The Assistant Administrator's review is limited to the legal, factual and procedural issues identified in the petition for review. The Assistant Administrator may, however, ask the parties to submit additional informa-

tion. If the petitioner does not provide the information requested, the Assistant Administrator may dismiss the petition for review.

(5) The Assistant Administrator will serve a written decision on the petition for review within 60 days of the close of the time period for serving a response to the petition for review or the date of service of the response served under paragraph (e)(3), whichever is later.

(6) If a petition for review is timely served in accordance with this section, the disputed order is stayed, pending the Assistant Administrator's review. The Assistant Administrator may enter an order vacating the automatic stay in accordance with the following procedures:

(i) The Agency Official may file a motion to vacate the automatic stay demonstrating good cause why the order should not be stayed. The Agency Official's motion must be in writing, state the factual and legal basis for the motion, be accompanied by affidavits or other evidence relied on, and be served on all parties.

(ii) Within 10 days of service of the motion to vacate the automatic stay, the petitioner may serve an answer in opposition, accompanied by affidavits or other evidence relied on.

(iii) The Assistant Administrator will issue a decision on the motion to vacate within 10 days of the close of the time period for serving the answer to the motion. The 60-day period for a decision on the petition for review in paragraph (e)(5) of this section does not begin until the Assistant Administrator issues a decision on the motion to vacate the stay.

(7) The Assistant Administrator's decision on a petition for review of an order issued under this section constitutes the Final Agency Order.

§385.913 Revocation proceedings.

(a) **General.** The Agency Official may issue an order to revoke a motor carrier's registration, if he or she:

(1) Makes a determination in accordance with §385.905(b), and

(2) Determines that the motor carrier has willfully violated any order directing compliance with any statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III for a period of at least 30 days.

(b) **Commencement of proceedings.** The Agency Official commences a proceeding under this section by serving an order to show cause to the motor carrier and, if the proceeding is based on the conduct of another person, by also serving a copy on the person alleged to have engaged in the pattern or practice that resulted in a proceeding instituted under this section, which:

(1) Provides notice that the Agency is considering whether to revoke the motor carrier's registration;

(2) Provides notice of the factual and legal basis for the order;

(3) Directs the motor carrier to comply with a statute, regulation or condition of its registration;

(4) Informs the motor carrier that the response to the order to show cause must be in writing, state the factual

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and legal basis for its response and include all documentation, if any, the motor carrier wants considered;

(5) Informs the motor carrier of the address and name of the person to whom the response should be directed and served;

(6) Provides notice to the person, if any, of his or her right to intervene in the proceeding within 30 days of service of the order; and

(7) Informs the motor carrier that its registration may be revoked on the 35th day after service of the order issued under this section if the motor carrier or intervening person has not demonstrated, in writing, compliance with the order, or otherwise shown good cause why compliance is not required or the registration should not be revoked.

(c) **Right of individual person(s) to intervene.** A person(s) alleged to have engaged in the pattern or practice that resulted in a proceeding instituted under this section may intervene in the proceeding. The person(s) may—but are not required to—serve a separate response and supporting documentation to an order served under paragraph (b) of this section, within 30 days of being served with the order. Failure to timely serve a response constitutes waiver of the right to intervene. If the Agency Official previously issued an order under §385.911 based on the same conduct, a person who was given the opportunity to but did not intervene under §385.911(c) may not intervene under this section.

(d) **Review of response.** The Agency Official will review the response(s) to the order and determine whether the motor carrier's registration should be revoked.

(1) The Agency Official will take one of the following actions:

(i) If the Agency Official determines the motor carrier's registration should be revoked, he or she will enter an order revoking the motor carrier's registration; or

(ii) If the Agency Official determines the motor carrier's registration should not be revoked, he or she will enter an order terminating the proceeding.

(2) If the Agency Official issues an order to revoke the motor carrier's registration, the order will:

(i) Provide notice to the motor carrier and any intervening person(s) of the right to petition for administrative review of the order within 15 days of service of the order revoking the motor carrier's registration, and provide notice of the procedures in §385.911(e);

(ii) Provide notice that a timely petition for review will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(iii) Provide notice that failure to timely serve a petition for review constitutes waiver of the right to contest the order revoking the motor carrier's registration and will result in the order becoming a Final Agency Order 20 days after it is served.

(iv) Provide notice that a Final Agency Order revoking the motor carrier's registration will remain in effect and bar approval of any subsequent application for registration until rescinded by the Agency Official pursuant to §385.915.

(e) **Administrative review.** The motor carrier or intervening person may petition the Assistant Administrator for review of an order issued under paragraph (d)(1)(i) of this section by following the procedures set forth in §385.911(e).

§385.915 Petitions for rescission.

(a) A motor carrier or intervening person may submit a petition for rescission of an order suspending or revoking registration under this subpart based on action taken to correct the deficiencies that resulted in the suspension or revocation.

(b) A petition for rescission must be made in writing to the Agency Official.

(c) A petition for rescission must include a copy of the order suspending or revoking the motor carrier's registration, a factual statement identifying all corrective action taken, and copies of supporting documentation.

(d) The Agency Official will issue a written decision on the petition within 60 days of service of the petition. The decision will state the factual and legal basis for the decision.

(e) If the Agency Official grants the petition, the written decision under paragraph (d) is the Final Agency Order. Rescinding an order suspending a motor carrier's registration permits that motor carrier to resume operations so long as it is in compliance with all other statutory and regulatory requirements. Rescinding an order revoking a motor carrier's registration does not have the effect of reinstating the revoked registration. In order to resume operations in interstate commerce, the motor carrier whose registration was revoked must reapply for registration. If registration is granted, the motor carrier would also become subject to the new entrant regulations at 49 CFR part 385.

(f) If the Agency Official denies the petition, the petitioner may petition the Assistant Administrator for review of the denial. The petition must be in writing and served on the Assistant Administrator. Service on the Assistant Administrator is effected by delivering a copy to USDOT Dockets, Docket Operations, 1200 New Jersey Avenue, West Building Ground Floor, Room 12-140 SE., Washington, DC 20590-0001 or by submitting the documents electronically to www.regulations.gov. The petition must also be served on all parties to the proceedings and on Adjudications Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590-0001. The petition for review of the denial must be served within 15 days of the service of the decision denying the petition for rescission. The petition for review must identify the legal, factual or procedural issues in dispute with respect to the denial of the petition for rescission. The petition for review may not, however, challenge the basis of the underlying suspension or revocation order.

(g) The Agency Official may file a written response within 15 days of receipt of the petition for review.

(h) The Assistant Administrator will issue a written decision on the petition for review within 60 days of service of the petition for review or a timely served response, whichever is later. The Assistant Administrator's decision constitutes the Final Agency Order.

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§385.917 Other orders unaffected; not exclusive remedy.

If a motor carrier subject to an order issued under this subpart is or becomes subject to any other order, prohibition, or requirement of the FMCSA, an order issued under this subpart is in addition to, and does not amend or supersede the other order, prohibition, or requirement. Nothing in this subpart precludes FMCSA from taking action against any motor carrier under 49 U.S.C. 13905 or 49 U.S.C. 31134 for other conduct amounting to willful failure to comply with an applicable statute, regulation or FMCSA order.

§385.919 Penalties.

(a) Any motor carrier that the Agency determines engages or has engaged in a pattern or practice of avoiding regulatory compliance or masking noncompliance or violates an order issued under this subpart shall be subject to the civil or criminal penalty provisions of 49 U.S.C. 521(b) and applicable regulations.

(b) Any motor carrier who permits the exercise of controlling influence over its operations by any person that the Agency determines, under this subpart, engages in or has engaged in a pattern or practice of avoiding regulatory compliance or masking noncompliance while acting on behalf of any motor carrier, shall be subject to the civil or criminal penalty provisions of 49 U.S.C. 521(b) and applicable regulations.

§385.921 Service and computation of time.

Service of documents and computations of time will be made in accordance with §§386.6 and 386.8 of this subchapter. All documents that are required to be served or filed must be served or filed with a certificate of service.

Subpart L—Reincarnated Carriers

§385.1001 Applicability.

The requirements in this subpart apply to for-hire motor carriers registered or required to be registered under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368.

§385.1003 Definitions.

As used in this subpart:

Agency Official means the Director of FMCSA's Office of Enforcement and Compliance or his or her designee.

Registration means the registration required under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368.

Reincarnated or affiliated motor carriers means motor carriers with common ownership, common management, common control or common familial relationship.

§385.1005 Prohibition.

Two or more motor carriers shall not use common ownership, common management, common control, or common familial relationship to enable any or all such motor carriers to avoid compliance, or mask or otherwise conceal non-compliance, or a history of non-compliance, with statutory or regulatory requirements

prescribed under 49 U.S.C. Chapter 311, subchapter III, or with an order issued under such requirements.

§385.1007 Determination of violation.

(a) **General.** The Agency Official may issue an order to suspend or revoke the registration of one or more motor carriers if he or she determines that the motor carrier or motor carriers have reincarnated or affiliated to avoid regulatory compliance or mask or otherwise conceal regulatory noncompliance, or a history of non-compliance.

(b) **Reincarnation or affiliation.** The Agency Official may determine that one or more motor carriers are reincarnated if there is substantial continuity between entities such that one is merely a continuation of the other. The Agency Official may determine that motor carriers are affiliates if business operations are under common ownership, common management, common control or common familial relationship. To make these determinations, the Agency Official may consider, among other things, the factors in 49 CFR 386.73(c) and examine, among other things, the records identified in 49 CFR 386.73(d).

(c) **Regulatory noncompliance.** The Agency Official may determine that a motor carrier or its officer, employee, agent, or authorized representative, avoids regulatory compliance or masks or otherwise conceals regulatory noncompliance, or a history of noncompliance by operating or attempting to operate a motor carrier as a reincarnated or affiliated entity to:

- (1) Avoid complying with an FMCSA order;
- (2) Avoid complying with a statutory or regulatory requirement;
- (3) Avoid paying a civil penalty;
- (4) Avoid responding to an enforcement action; or
- (5) Avoid being linked with a negative compliance history.

§385.1009 Suspension proceedings.

(a) **General.** The Agency Official may issue an order to suspend a motor carrier's registration based on a determination made in accordance with §385.1007.

(b) **Commencement of proceedings.** The Agency Official may commence a proceeding under this section by serving an order to one or more motor carriers which:

- (1) Provides notice that the Agency is considering whether to suspend the motor carrier's registration;
- (2) Provides notice of the factual and legal basis for the order;
- (3) Directs the motor carrier to comply with a regulation or condition of its registration;
- (4) Informs the motor carrier that the response to the order must be in writing, state the factual or legal basis for its response, and include all documentation, if any, the motor carrier wants considered;
- (5) Informs the motor carrier of the address and name of the person to whom the response should be directed and served;
- (6) Informs the motor carrier that its registration may be suspended on the 35th day after service of the order issued under this section if the motor carrier has not

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demonstrated, in writing, compliance with any compliance directive issued, or otherwise shown good cause why compliance is not required or the registration should not be suspended.

(c) **Review of response.** The Agency Official will review the responses to the order and determine whether the motor carrier's registration should be suspended.

(1) The Agency Official will take one of the following actions:

(i) If the Agency Official determines the motor carrier's registration should be suspended, he or she will enter an order suspending the motor carrier's registration; or

(ii) If the Agency Official determines the motor carrier's registration should not be suspended, he or she will enter an order terminating the proceeding.

(2) If the Agency Official issues an order to suspend the motor carrier's registration, the order will:

(i) Provide notice to the motor carrier of the right to petition the Assistant Administrator for review of the order within 15 days of service of the order suspending the registration, and provide notice of the procedures in §385.911(e);

(ii) Provide notice that a timely petition for review will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(iii) Provide notice that failure to timely serve a petition for review constitutes waiver of the right to contest the order suspending the motor carrier's registration and will result in the order becoming a Final Agency Order 20 days after it is served.

(iv) Provide notice that a Final Agency Order suspending the motor carrier's registration will remain in effect and bar approval of any subsequent application for registration until rescinded by the Agency Official pursuant to §385.1013.

(d) **Administrative Review.** The motor carrier may petition the Assistant Administrator for review of an order issued under paragraph (c)(1)(i) of this section by following the procedures set forth in §385.911(e).

§385.1011 Revocation proceedings.

(a) **General.** The Agency Official may issue an order to revoke a motor carrier's registration, if he or she:

(1) Makes a determination in accordance with §385.1007, and

(2) Determines that the motor carrier has willfully violated an order directing compliance for a period of at least 30 days.

(b) **Commencement of proceedings.** The Agency Official commences a proceeding under this section by serving an order to one or more motor carriers, which:

(1) Provides notice that the Agency is considering whether to revoke the motor carrier's registration;

(2) Provides notice of the factual and legal basis for the order;

(3) Directs the motor carrier to comply with a statute, regulation or condition of its registration;

(4) Informs the motor carrier that the response to the show cause order must be in writing, state the factual or legal basis for its response, and include all documentation, if any, the motor carrier wants considered;

(5) Informs the motor carrier of the address and name of the person to whom the response should be directed and served; and

(6) Informs the motor carrier that its registration may be revoked on the 35th day after service of the order issued under this section if the motor carrier has not demonstrated, in writing, compliance with any order directing compliance, or otherwise shown good cause why compliance is not required or the registration should not be revoked.

(c) **Review of response.** The Agency Official will review the response(s) to the order and determine whether the motor carrier's registration should be revoked.

(1) The Agency Official will take one of the following actions:

(i) If the Agency Official determines the motor carrier's registration should be revoked, he or she will enter an order revoking the motor carrier's registration; or

(ii) If the Agency Official determines the motor carrier's registration should not be revoked, he or she will enter an order terminating the proceeding.

(2) If the Agency Official issues an order to revoke the motor carrier's registration, the order will:

(i) Provide notice to the motor carrier and any intervening person(s) of the right to petition the Assistant Administrator for review of the order within 15 days of service of the order revoking the motor carrier's registration, and provide notice of the procedures in §385.911(e);

(ii) Provide notice that a timely petition for review will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(iii) Provide notice that failure to timely serve a petition for review constitutes waiver of the right to contest the order revoking the motor carrier's registration and will result in the order becoming a Final Agency Order 20 days after it is served.

(iv) Provide notice that a Final Agency Order revoking the motor carrier's registration will remain in effect and bar approval of any subsequent application for registration until rescinded by the Agency Official pursuant to §385.1013.

(d) **Administrative review.** The motor carrier or intervening person may petition the Assistant Administrator for review of an order issued under paragraph (c)(1)(i) of this section by following the procedures set forth in §385.911(e).

§385.1013 Petitions for rescission.

A motor carrier may submit a petition for rescission of an order suspending or revoking registration under this subpart by following the procedures set forth in §385.915.

§385.1015 Other orders unaffected; not exclusive remedy.

If a motor carrier subject to an order issued under this subpart is or becomes subject to any other order, prohibition, or requirement of the FMCSA, an order issued

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under this subpart is in addition to, and does not amend or supersede the other order, prohibition, or requirement. Nothing in this subpart precludes FMCSA from taking action against any motor carrier under 49 U.S.C. 13905 for other conduct amounting to willful failure to comply with an applicable statute, regulation or FMCSA order.

§385.1017 Penalties.

Any motor carrier that the Agency determines to be in violation of this subpart shall be subject to the civil or criminal penalty provisions of 49 U.S.C. 521(b) and applicable regulations.

§385.1019 Service and computation of time.

Service of documents and computations of time will be made in accordance with §§386.6 and 386.8 of this subchapter. All documents that are required to be served or filed must be served or filed with a certificate of service.

Appendix A to Part 385—Explanation of safety audit evaluation criteria

I. General

(a) Section 210 of the Motor Carrier Safety Improvement Act (49 U.S.C. 31144) directed the Secretary to establish a procedure whereby each owner and each operator granted new authority must undergo a safety review within 12 months after receipt of its US DOT number for motor carriers of property and 120 days for motor carriers of passengers. The Secretary was also required to establish the elements of this safety review, including basic safety management controls. The Secretary, in turn, delegated this to the FMCSA.

(b) To meet the safety standard, a motor carrier must demonstrate to the FMCSA that it has basic safety management controls in place which function adequately to ensure minimum acceptable compliance with the applicable safety requirements. A “safety audit evaluation criteria” was developed by the FMCSA, which uses data from the safety audit and roadside inspections to determine that each owner and each operator applicant for new entrant registration, provisional operating authority, or provisional Certificate of Registration has basic safety management controls in place. The term “safety audit” is the equivalent to the “safety review” required by §210. Using “safety audit” avoids any possible confusion with the safety reviews previously conducted by the agency that were discontinued on September 30, 1994.

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

1. Evaluate basic safety management controls and determine if each owner and each operator is able to operate safely in interstate commerce; and
2. Identify owners and operators who are having safety problems and need improvement in their compliance with the FMCSRs and the HMRs, before they are granted permanent registration.

II. Source of the Data for the Safety Audit Evaluation Criteria

(a) The FMCSA’s evaluation criteria are built upon the operational tool known as the safety audit. This tool

was developed to assist auditors and investigators in assessing the adequacy of a new entrant’s basic safety management controls.

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

1. Determine if a carrier has the basic safety management controls required by 49 U.S.C. 31144;
2. Meet the requirements of Section 350 of the DOT Appropriations Act; and
3. In the event that a carrier is found not to be in compliance with applicable FMCSRs and HMRs, the safety audit can be used to educate the carrier on how to comply with U.S. safety rules.

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

III. Determining if the Carrier Has Basic Safety Management Controls

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

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

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

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

(e) Noncompliance with acute and critical regulations are indicators of inadequate safety management controls and usually higher than average accident rates.

(f) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into six regulatory areas called “factors.” The regulatory factors, evaluated on the basis of the adequacy of the carrier’s safety management controls, are:

1. Factor 1—General: Parts 387 and 390;
2. Factor 2—Driver: Parts 382, 383 and 391;
3. Factor 3—Operational: Parts 392 and 395;
4. Factor 4—Vehicle: Part 393, 396 and inspection data for the last 12 months;
5. Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397; and
6. Factor 6—Accident: Recordable Accident Rate per Million Miles.

(g) For each instance of noncompliance with an acute regulation, 1.5 points will be assessed.

(h) For each instance of noncompliance with a critical regulation, 1 point will be assessed.

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(i) FMCSA also gathers information on compliance with applicable household goods and Americans with Disabilities Act of 1990 requirements, but failure to comply with these requirements does not affect the determination of the adequacy of basic safety management controls.

A. Vehicle Factor

(a) When at least three vehicle inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months before the safety audit or performed at the time of the review, the Vehicle Factor (Part 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute and critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor as follows:

1. If the motor carrier has had at least three roadside inspections in the twelve months before the safety audit, and the vehicle OOS rate is 34 percent or higher, one point will be assessed against the carrier. That point will be added to any other points assessed for discovered noncompliance with acute and critical regulations of part 396 to determine the carrier's level of safety management control for that factor; and

2. If the motor carrier's vehicle OOS rate is less than 34 percent, or if there are less than three inspections, the determination of the carrier's level of safety management controls will only be based on discovered noncompliance with the acute and critical regulations of part 396.

(b) Over two million inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Each safety audit will continue to have the requirements of part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

B. The Accident Factor

(a) In addition to the five regulatory factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate, which the carrier has experienced during the past 12 months. Recordable accident, as defined in 49 CFR 390.5, means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

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

(c) The recordable accident rate will be used in determining the carrier's basic safety management controls

in Factor 6, Accident. It will be used only when a carrier incurs two or more recordable accidents within the 12 months before the safety audit. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.5 will be deemed to have inadequate basic safety management controls for the accident factor. The rates are the result of roughly doubling the national average accident rate in Fiscal Years 1994, 1995, and 1996.

(d) The FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: "If a driver, who exercises normal judgment and foresight, could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable."

C. Factor Ratings

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

If the recordable accident rate is greater than 1.7 recordable accidents per million miles for an urban carrier (1.5 for all other carriers), the carrier is determined to have inadequate basic safety management controls.

IV. Overall Determination of the Carrier's Basic Safety Management Controls

(a) If the carrier is evaluated as having inadequate basic safety management controls in at least three separate factors, the carrier will be considered to have inadequate safety management controls in place and corrective action will be necessary in order to avoid having its new entrant registration, provisional operating authority, or provisional Certificate of Registration revoked.

(b) For example, FMCSA evaluates a carrier finding:

(1) One instance of noncompliance with a critical regulation in part 387 scoring one point for Factor 1;

(2) Two instances of noncompliance with acute regulations in part 382 scoring three points for Factor 2;

(3) Three instances of noncompliance with critical regulations in part 396 scoring three points for Factor 4; and

(4) Three instances of noncompliance with acute regulations in parts 171 and 397 scoring four and one-half (4.5) points for Factor 5.

(c) In this example, the carrier scored three or more points for Factors 2, 4, and 5 and FMCSA determined the carrier had inadequate basic safety management controls in at least three separate factors. FMCSA will require corrective action in order to avoid having the carrier's new entrant registration revoked, or having

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the provisional operating authority or provisional Certificate of Registration suspended and possibly revoked.

Appendix B to Part 385—Explanation of safety rating process

(a) Section 215 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31144) directed the Secretary of Transportation to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles operating in interstate or foreign commerce. The Secretary, in turn, delegated this responsibility to the Federal Motor Carrier Safety Administration (FMCSA).

(b) As directed, FMCSA promulgated a safety fitness regulation, entitled “Safety Fitness Procedures,” which established a procedure to determine the safety fitness of motor carriers through the assignment of safety ratings and established a “safety fitness standard” which a motor carrier must meet to obtain a *satisfactory* safety rating.

(c) Critical regulations are those identified as such where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier’s management controls. An example of a critical regulation is §395.3(a)(1), requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

(d) The safety rating process developed by FMCSA is used to:

1. Evaluate safety fitness and assign one of three safety ratings (*satisfactory*, *conditional*, or *unsatisfactory*) to motor carriers operating in interstate commerce. This process conforms to §385.5, Safety fitness standard, and §385.7, Factors to be considered in determining a safety rating.

2. Identify motor carriers needing improvement in their compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs). These are carriers rated *unsatisfactory* or *conditional*.

(e) The hazardous materials safety permit requirements of part 385, subpart E apply to intrastate motor carriers. Intrastate motor carriers that are subject to the hazardous materials safety permit requirements in subpart E will be rated using equivalent State requirements whenever the FMCSRs are referenced in this appendix.

(f) The safety rating will be determined by applying the SFRM equally to all of a company’s motor carrier operations in commerce, including if applicable its operations in Canada and/or Mexico.

I. Source of Data for Rating Methodology

(a) The FMCSA’s rating process is built upon the operational tool known as the CR. This tool was developed to assist Federal and State safety specialists in gathering pertinent motor carrier compliance and accident information.

(b) The CR is an in-depth examination of a motor carrier’s operations and is used (1) to rate unrated motor carriers, (2) to conduct a follow-up investigation on motor carriers rated *unsatisfactory* or *conditional* as

a result of a previous review, (3) to investigate complaints, or (4) in response to a request by a motor carrier to reevaluate its safety rating. Documents such as those contained in driver qualification files, records of duty status, vehicle maintenance records, and other records are thoroughly examined for compliance with the FMCSRs and HMRs. Violations are cited on the CR document. Performance-based information, when available, is utilized to evaluate the carrier’s compliance with the vehicle regulations. Recordable accident information is also collected.

II. Converting CR Information Into a Safety Rating

(a) The FMCSA gathers information through an in-depth examination of the motor carrier’s compliance with identified “acute” or “critical” regulations of the FMCSRs and HMRs.

(b) Acute regulations are those identified as such where non-compliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier. An example of an acute regulation is §383.37(b), allowing, requiring, permitting, or authorizing an employee with more than one Commercial Driver’s License (CDL) to operate a commercial motor vehicle. Noncompliance with §383.37(b) is usually discovered when the motor carrier’s driver qualification file reflects that the motor carrier had knowledge of a driver with more than one CDL, and still permitted the driver to operate a commercial motor vehicle. If the motor carrier did not have such knowledge or could not reasonably be expected to have such knowledge, then a violation would not be cited.

(c) Critical regulations are those identified as such where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier’s management controls. An example of a critical regulation is §395.3(a)(1), requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

(d) The list of the acute and critical regulations which are used in determining safety ratings is included at the end of this document.

(e) Noncompliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates. The FMCSA has used non-compliance with acute regulations and patterns of noncompliance with critical regulations since 1989 to determine motor carriers’ adherence to the Safety fitness standard in §385.5.

(f) The regulatory factors, evaluated on the basis of the adequacy of the carrier’s safety management controls, are: (1) Parts 172 and 173; (2) Parts 387 and 390; (3) Parts 382, 383, and 391; (4) Parts 392 and 395; (5) Parts 393 and 396 when there are less than three vehicle inspections in the last 12 months to evaluate; and (6) Parts 397, 171, 177 and 180.

(g) For each instance of noncompliance with an acute regulation or each pattern of noncompliance with a critical regulation during the CR, one point will be assessed. A pattern is more than one violation. When a number of

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documents are reviewed, the number of violations required to meet a pattern is equal to at least 10 percent of those examined.

(h) However, each pattern of noncompliance with a critical regulation relative to Part 395, Hours of Service of Drivers, will be assessed two points.

A. Vehicle Factor

(a) When a total of *three or more inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months prior to the CR or performed at the time of the review*, the Vehicle Factor (Parts 393 and 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute regulations and/or a pattern of noncompliance with critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor rating as follows:

1. If a motor carrier has three or more roadside vehicle inspections in the twelve months prior to the carrier review, or three vehicles inspected at the time of the review, or a combination of the two totaling three or more, and the vehicle OOS rate is 34 percent or greater, the initial factor rating will be *conditional*. The requirements of Part 396, Inspection, Repair, and Maintenance, will be examined during each review. The results of the examination could lower the factor rating to *unsatisfactory* if noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered. If the examination of the Part 396 requirements reveals no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *conditional*.

2. If a carrier's vehicle OOS rate is less than 34 percent, the initial factor rating will be *satisfactory*. If noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered during the examination of Part 396 requirements, the factor rating will be lowered to *conditional*. If the examination of Part 396 requirements discovers no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *satisfactory*.

(b) Nearly two million vehicle inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Since many of the roadside inspections are targeted to visibly defective vehicles and since there are a limited number of inspections for many motor carriers, the use of that data is limited. Each CR will continue to have the requirements of Part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

B. Accident Factor

(a) In addition to the five regulatory rating factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate for the past 12 months. A recordable accident, consistent with the definition for "accident" in 49 CFR 390.5, means an occurrence involving a commercial motor vehicle on a highway in motor

carrier operations in commerce or within Canada or Mexico (if the motor carrier also operates in the United States) that results in a fatality; in bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or in one or more motor vehicles incurring disabling damage that requires the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) Recordable accidents per million miles were computed for each CR performed in Fiscal Years 1994, 1995 and 1996. The national average for all carriers rated was 0.747, and .839 for carriers operating entirely

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within the 100 air mile radius.

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

(d) The recordable accident rate will be used to rate Factor 6, Accident. It will be used only when a motor carrier incurs two or more recordable accidents occurred within the 12 months prior to the CR. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable accident rate greater than 1.7 will receive an *unsatisfactory* rating for the accident factor. All other carriers with a recordable accident rate greater than 1.5 will receive an *unsatisfactory* factor rating. The rates are a result of roughly doubling the national average accident rate for each type of carrier rated in Fiscal Years 1994, 1995 and 1996.

(e) The FMCSA will continue to consider preventability when a motor carrier contests a rating by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: "If a driver, who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable."

C. Factor Ratings

(a) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into five regulatory areas called "factors."

(b) The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor. Factor Ratings are determined as follows:

Factors

Factor 1 General=Parts 387 and 390

Factor 2 Driver=Parts 382, 383 and 391

Factor 3 Operational=Parts 392 and 395

Factor 4 Vehicle=Parts 393 and 396

Factor 5 Haz. Mat.=Parts 397, 171, 177 and 180

Factor 6 Accident Factor=Recordable Rate

"Satisfactory"—if the acute and/or critical=0 points

"Conditional"—if the acute and/or critical=1 point

"Unsatisfactory"—if the acute and/or critical=2 or more points

III. Safety Rating

A. Rating Table

(a) The ratings for the six factors are then entered into a rating table which establishes the motor carrier's safety rating.

(b) The FMCSA has developed a computerized rating formula for assessing the information obtained from the CR document and is using that formula in assigning a safety rating.

Motor Carrier Safety Rating Table

Factor ratings		Overall safety rating
Unsatisfactory	Conditional	
0	2 or fewer	Satisfactory.
0	more than 2	Conditional.
1	2 or fewer	Conditional.
1	more than 2	Unsatisfactory.
2 or more	0 or more	Unsatisfactory.

B. Proposed Safety Rating

(a) The proposed safety rating will appear on the CR. The following appropriate information will appear after the last entry on the CR, MCS-151, part B.

"Your proposed safety rating is SATISFACTORY."

OR

"Your proposed safety rating is CONDITIONAL." The proposed safety rating will become the final safety rating 45 days after you receive this notice.

OR

"Your proposed safety rating is UNSATISFACTORY." The proposed safety rating will become the final safety rating 45 days after you receive this notice.

(b) Proposed safety ratings of *conditional* or *unsatisfactory* will list the deficiencies discovered during the CR for which corrective actions must be taken.

(c) Proposed *unsatisfactory* safety ratings will indicate that, if the *unsatisfactory* rating becomes final, the motor carrier will be subject to the provision of §385.13, which prohibits motor carriers rated *unsatisfactory* from transporting hazardous materials requiring placarding or more than 15 passengers, including the driver.

IV. Assignment of Final Rating/Motor Carrier Notification

When the official rating is determined in Washington, D.C., the FMCSA notifies the motor carrier in writing of its safety rating as prescribed in §385.11. A proposed *conditional* safety rating (which is an improvement of an existing *unsatisfactory* rating) becomes effective as soon as the official safety rating from Washington, D.C. is issued, and the carrier may also avail itself of relief under the §385.15, Administrative Review and §385.17, Change to safety rating based on corrective actions.

V. Motor Carrier Rights to a Change in the Safety Rating

Under §§385.15 and 385.17, motor carriers have the right to petition for a review of their ratings *if there are factual or procedural disputes*, and to request another review after corrective actions have been taken. They are the procedural avenues a motor carrier which believes its safety rating to be in error may exercise, and the means to request another review after corrective action has been taken.

VI. Conclusion

(a) The FMCSA believes this "safety fitness rating methodology" is a reasonable approach for assigning a safety rating which best describes the current safety fitness posture of a motor carrier as required by

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thesafety fitness regulations (§385.9). This methodology has the capability to incorporate regulatory changes as they occur.

(b) Improved compliance with the regulations leads to an improved rating, which in turn increases safety. This increased safety is our regulatory goal.

VII. List of Acute and Critical Regulations

§382.115(a) Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier) (acute).

§382.115(b) Failing to implement an alcohol and/or controlled substances testing program (foreign motor carrier) (acute).

§382.201 Using a driver known to have an alcohol concentration of 0.04 or greater (acute).

§382.211 Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382 (acute).

§382.213(b) Using a driver known to have used a controlled substance (acute).

§382.215 Using a driver known to have tested positive for a controlled substance (acute).

§382.301(a) Using a driver before the motor carrier has received a negative pre-employment controlled substance test result (critical).

§382.303(a) Failing to conduct post accident testing on driver for alcohol (critical).

§382.303(b) Failing to conduct post accident testing on driver for controlled substances (critical).

§382.305 Failing to implement a random controlled substances and/or an alcohol testing program (acute).

§382.305(b)(1) Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical).

§382.305(b)(2) Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical).

§382.309(a) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 (acute).

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§382.309(b) Using a driver who has not undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances (acute).

§382.503 Allowing a driver to perform safety sensitive function, after engaging in conduct prohibited by subpart B, without being evaluated by substance abuse professional, as required by §382.605 (critical).

§382.505(a) Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04 (acute).

§382.605(c)(1) Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02 or with verified negative test result, after engaging in conduct prohibited by part 382 subpart B (acute).

§382.605(c)(2)(ii) Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and/or controlled substance tests in the first 12 months following the driver's return to duty (critical).

§383.23(a) Operating a commercial motor vehicle without a valid commercial driver's license (critical).

§383.37(a) Knowingly allowing, requiring, permitting, or authorizing an employee who does not have a current CLP or CDL, who does not have a CLP or CDL with the proper class or endorsements, or who operates a CMV in violation of any restriction on the CLP or CDL to operate a CMV (acute).

§383.37(b) Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle (acute).

§383.37(c) Knowingly allowing, requiring, permitting, or authorizing an employee with more than one commercial driver's license to operate a commercial motor vehicle (acute).

§383.51(a) Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle (acute).

§387.7(a) Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage (acute).

§387.7(d) Failing to maintain at principal place of business required proof of financial responsibility (critical).

§387.31(a) Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility (acute).

§387.31(d) Failing to maintain at principal place of business required proof of financial responsibility for passenger carrying vehicles (critical).

§390.15(b)(2) Failing to maintain copies of all accident reports required by State or other governmental entities or insurers (critical).

§390.35 Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records (acute).

§391.11(b)(4) Using a physically unqualified driver (acute).

§391.15(a) Using a disqualified driver (acute).

§391.45(a) Using a driver not medically examined and certified (critical).

§391.45(b)(1) Using a driver not medically examined and certified during the preceding 24 months (critical).

§391.51(a) Failing to maintain driver qualification file on each driver employed (critical).

§391.51(b)(2) Failing to maintain inquiries into driver's driving record in driver's qualification file (critical).

§391.51(b)(7) Failing to maintain medical examiner's certificate in driver's qualification file (critical).

§392.2 Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated (critical).

§392.4(b) Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle (acute).

§392.5(b)(1) Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage (acute).

§392.5(b)(2) Requiring or permitting a driver who shows evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle (acute).

§392.6 Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed (critical).

§392.9(a)(1) Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured (critical).

§395.1(h)(1)(i) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska) (critical).

§395.1(h)(1)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska) (critical).

§395.1(h)(1)(iii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska.) (critical).

§395.1(h)(1)(iv) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (critical).

§395.1(h)(2)(i) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska) (critical).

§395.1(h)(2)(ii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska) (critical).

§395.1(h)(2)(iii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (critical).

§395.1(h)(2)(iv) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after

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having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (critical).

§395.1(o) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours (critical).

§395.3(a)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive without taking an off-duty period of at least 10 consecutive hours prior to driving (critical).

§395.3(a)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty (critical).

§395.3(a)(3)(i) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours (critical).

§395.3(a)(3)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive if more than 8 hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes (critical).

§395.3(b)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical).

§395.3(b)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical).

§395.5(a)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours (critical).

§395.5(a)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours (critical).

§395.5(b)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical).

§395.5(b)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical).

§395.8(a) Failing to require driver to make a record of duty status (critical).

§395.8(e) False reports of records of duty status (critical).

§395.8(i) Failing to require driver to forward within 13 days of completion, the original of the record of duty status (critical).

§395.8(k)(1) Failing to preserve driver's record of duty status for 6 months (critical).

§395.8(k)(1) Failing to preserve driver's records of duty status supporting documents for 6 months (critical).

§396.3(b) Failing to keep minimum records of inspection and vehicle maintenance (critical).

§396.9(c)(2) Requiring or permitting the operation of a motor vehicle declared "out-of-service" before repairs were made (acute).

§396.11(a) Failing to require driver to prepare driver vehicle inspection report (critical).

§396.11(c) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute).

§396.17(a) Using a commercial motor vehicle not periodically inspected (critical).

§396.17(g) Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards (acute).

§397.5(a) Failing to ensure a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material is attended at all times by its driver or a qualified representative (acute).

§397.7(a)(1) Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).

§397.7(b) Parking a motor vehicle containing hazardous material(s) other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).

§397.13(a) Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2 (critical).

§397.19(a) Failing to furnish driver of motor vehicle transporting Division 1.1, 1.2, or 1.3 (explosive) materials with a copy of the rules of part 397 and/or emergency response instructions (critical).

§397.67(d) Requiring or permitting the operation of a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, or 1.3 that is not accompanied by a written route plan (critical).

§397.101(d) Requiring or permitting the operation of a motor vehicle containing highway route-controlled quantity, as defined in §173.403, of radioactive materials that is not accompanied by a written route plan.

§171.15 Carrier failing to give immediate telephone notice of an incident involving hazardous materials (critical).

§171.16 Carrier failing to make a written report of an incident involving hazardous materials (critical).

§172.313(a) Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words "Inhalation Hazard" (acute).

§172.704(a)(4) Failing to provide security awareness training (critical).

§172.704(a)(5) Failing to provide in-depth security awareness training (critical).

§172.800(b) Transporting HM without a security plan (acute).

§172.800(b) Transporting HM without a security plan that conforms to Subpart I requirements (acute).

§172.800(b) Failure to adhere to a required security plan (acute).

§172.802(b) Failure to make copies of security plan available to hazmat employees (critical).

§173.24(b)(1) Accepting for transportation or transporting a package that has an identifiable release of a hazardous material to the environment (acute).

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§173.421(a) Accepting for transportation or transporting a Class 7 (radioactive) material described, marked, and packaged as a limited quantity when the radiation level on the surface of the package exceeds 0.005mSv/hour (0.5 mrem/hour) (acute).

§173.431(a) Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).

§173.431(b) Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).

§173.441(a) Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits (acute).

§173.442(b) Accepting for transportation or transporting a package containing Class 7 (radioactive) material when the temperature of the accessible external surface of the loaded package exceeds 50 °C (122 °F) in other than an exclusive use shipment, or 85 °C (185 °F) in an exclusive use shipment (acute).

§173.443(a) Accepting for transportation or transporting a package containing Class 7 (radioactive) material with removable contamination on the external surfaces of the package in excess of permissible limits (acute).

§177.800(c) Failing to instruct a category of employees in hazardous materials regulations (critical).

§177.801 Accepting for transportation or transporting a forbidden material (acute).

§177.817(a) Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper (critical).

§177.817(e) Failing to maintain proper accessibility of shipping papers (critical).

§177.823(a) Moving a transport vehicle containing hazardous material that is not properly marked or placarded (critical).

§177.835(a) Loading or unloading a Class 1 (explosive) material with the engine running (acute).

§177.835(c) Accepting for transportation or transporting Division 1.1, 1.2, or 1.3 (explosive) materials in a motor vehicle or combination of vehicles that is not permitted (acute).

§177.835(j) Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted (acute).

§177.841(e) Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals unless an exception in §177.841(e)(i) or (ii) is met (acute).

§180.407(a) Transporting a shipment of hazardous material in cargo tank that has not been inspected or retested in accordance with §180.407 (critical).

§180.407(c) Failing to periodically test and inspect a cargo tank (critical).

§180.415 Failing to mark a cargo tank which passed an inspection or test required by §180.407 (critical).

§180.417(a)(1) Failing to retain cargo tank manufacturer's data report certificate and related papers, as required (critical).

§180.417(a)(2) Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required (critical).

Part 386—Rules of practice for motor carrier, intermodal equipment provider, broker, freight forwarder, and hazardous materials proceedings

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Appendix A to Part 386—Penalty Schedule; Violations of Notices and Orders

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Appendix B to Part 386—Penalty Schedule; Violations and Monetary Penalties

EDITORIAL NOTE: Nomenclature changes to part 386 appear at 65 FR 7755, Feb. 16, 2000, and 66 FR 49873, Oct. 1, 2001.

Subpart A—Scope of rules; definitions and general provisions

§386.1 Scope of the rules in this part.

(a) The rules in this part govern proceedings before the Assistant Administrator, who also acts as the Chief Safety Officer of the Federal Motor Carrier Safety Administration (FMCSA), under applicable provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379), and the Hazardous Materials Regulations (49 CFR parts 171–180).

(b) The purpose of the proceedings is to enable the Assistant Administrator:

(1) To determine whether a motor carrier, intermodal equipment provider (as defined in §390.5 of this chapter), property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations; and

(2) To issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both, if such violations are found.

§386.2 Definitions.

Abate or abatement means to discontinue regulatory violations by refraining from or taking actions identified in a notice to correct noncompliance.

Administration means the Federal Motor Carrier Safety Administration.

Administrative adjudication means a process or proceeding to resolve contested claims in conformity with the Administrative Procedure Act, 5 U.S.C. 554–558.

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Agency means the Federal Motor Carrier Safety Administration.

Agency Counsel means the attorney who prosecutes a civil penalty matter on behalf of the Field Administrator.

Assistant Administrator means the Assistant Administrator of the Federal Motor Carrier Safety Administration. The Assistant Administrator is the Chief Safety Officer of the agency pursuant to 49 U.S.C. 113(e). Decisions of the Assistant Administrator in motor carrier, broker, freight forwarder, and hazardous materials proceedings under this part are administratively final.

Broker means a person who, for compensation, arranges or offers to arrange the transportation of property by an authorized motor carrier. A motor carrier, or person who is an employee or bona fide agent of a carrier, is not a broker within the meaning of this section when it arranges or offers to arrange the transportation

of shipments which it is authorized to transport and which it has accepted and legally bound itself to transport.

Civil forfeiture proceedings means proceedings to collect civil penalties for violations under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. Chapter 313); the Hazardous Materials Transportation Act of 1975, as amended (49 U.S.C. Chapter 51); the Motor Carrier Safety Act of 1984 (49 U.S.C. Chapter 311, Subchapter III); section 18 of the Bus Regulatory Reform Act of 1982 (49 U.S.C. 31138); section 30 of the Motor Carrier Act of 1980 (49 U.S.C. 31139); and the ICC Termination Act of 1995 (49 U.S.C. Chapters 131–149).

Civil penalty proceedings means proceedings to collect civil penalties for violations of regulations and statutes within the jurisdiction of FMCSA.

Claimant means the representative of the Federal Motor Carrier Safety Administration authorized to make claims.

Commercial regulations means statutes and regulations that apply to persons providing or arranging transportation for compensation subject to the Secretary's jurisdiction under 49 U.S.C. Chapter 135. The statutes are codified in Part B of Subtitle IV, Title 49, U.S.C. (49 U.S.C. 13101 through 14913). The regulations include those issued by the Federal Motor Carrier Safety Administration or its predecessors under authority provided in 49 U.S.C. 13301 or a predecessor statute.

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Decisionmaker means the Assistant Administrator of FMCSA, acting in the capacity of the decisionmaker or any person to whom the Assistant Administrator has delegated his/her authority in a civil penalty proceeding. As used in this subpart, the Agency decisionmaker is the official authorized to issue a final decision and order of the Agency in a civil penalty proceeding.

Default means an omission or failure to perform a legal duty within the time specified for action, failure to reply to a Notice of Claim within the time required, or failure to submit a reply in accordance with the requirements of this part. A default may result in issuance of a Final Agency Order or additional penalties against the defaulting party.

Department means the U.S. Department of Transportation.

Docket Operations means the U.S. Department of Transportation's docket management system, which is the central repository for original copies of all documents filed before the agency decisionmaker.

Driver qualification proceeding means a proceeding commenced under 49 CFR §391.47 or by issuance of a letter of disqualification.

Federal Motor Carrier Commercial Regulations (FMCCRs) means statutes and regulations applying to persons providing or arranging transportation for compensation subject to the Secretary's jurisdiction under 49 U.S.C. Chapter 135. The statutes are codified in Part B of Subtitle IV, Title 49 U.S.C. (49 U.S.C. 13101 through 14913). The regulations include those issued by FMCSA or its predecessors under authority provided in 49 U.S.C. 13301 or a predecessor statute.

Field Administrator means the head of an FMCSA Service Center who has been delegated authority to initiate compliance and enforcement actions on behalf of FMCSA.

Final Agency Order means the final action by FMCSA issued pursuant to this part by the appropriate Field Administrator (for default judgments under §386.14) or the Assistant Administrator, or settlement agreements which become the Final Agency Order pursuant to 386.22, or decisions of the Administrative Law Judge, which become the Final Agency Order pursuant to 386.61 or binding arbitration awards. A person who fails to perform the actions directed in the Final Agency Order commits a violation of that order and is subject to an additional penalty as prescribed in Subpart G of this part.

FMCSRs means the Federal Motor Carrier Safety Regulations.

Formal hearing means an evidentiary hearing on the record in which parties have the opportunity to conduct discovery, present relevant evidence, and cross-examine witnesses.

Freight forwarder means 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, consolidating, break-bulk, and distribution of shipments;

(2) Assumes responsibility for transportation from place of receipt to destination; and

(3) Uses for any part of the transportation a carrier subject to FMCSA jurisdiction.

Hearing officer means a neutral Agency employee designated by the Assistant Administrator to preside over an informal hearing.

HMRs means Hazardous Materials Regulations.

Informal hearing means a hearing in which the parties have the opportunity to present relevant evidence to a neutral Hearing Officer, who will prepare findings of fact and recommendations for the Agency decisionmaker. The informal hearing will not be on the transcribed record and discovery will not be allowed. Parties will have the opportunity to discuss their case and present testimony and evidence before the Hearing Officer without the formality of a formal hearing.

Mail means U.S. first class mail, U.S. registered or certified mail, or use of a commercial delivery service.

Motor carrier means a motor carrier, motor private carrier, or motor carrier of migrant workers as defined in 49 U.S.C. 13102 and 31501.

Notice of Claim (NOC) means the initial document issued by FMCSA to assert a civil penalty for alleged violations of the FMCSRs, HMRs, or FMCCRs.

Notice of Violation (NOV) means a document alleging a violation of the FMCSRs, HMRs, or FMCCRs, for which corrective action, other than payment of a civil penalty, is recommended.

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

Petitioner means a party petitioning to overturn a determination in a driver qualification proceeding.

Reply means a written response to a Notice of Claim, admitting or denying the allegations contained within the Notice of Claim. In addition, the reply provides the mechanism for determining whether the respondent seeks to pay, settle, contest, or seek binding arbitration of the claim. See §386.14. If contesting the allegations, the reply must also set forth all known affirmative defenses and factors in mitigation of the claim.

Respondent means a party against whom relief is sought or claim is made.

Secretary means the Secretary of Transportation.

Submission of written evidence without hearing means the submission of written evidence and legal argument to the Agency decision maker, or his/her representative, in lieu of a formal or informal hearing.

§386.3 Separation of functions.

(a) Civil penalty proceedings will be prosecuted by Agency Counsel who represent the Field Administrator. In Notices of Violation, the Field Administrator will be represented by Agency Counsel.

(b) An Agency employee, including those listed in paragraph (c) of this section, engaged in the performance of investigative or prosecutorial functions in a

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civil penalty proceeding may not, in that case or a factually related case, discuss or communicate the facts or issues involved with the Agency decision maker, Administrative Law Judge, Hearing Officer or others listed in paragraph (d) of this section, except as counsel or a witness in the public proceedings. This prohibition also includes the staff of those covered by this section.

(c) The Deputy Chief Counsel, Assistant Chief Counsel for Enforcement and Litigation, and attorneys in the Enforcement and Litigation Division serve as enforcement counsel in the prosecution of all cases brought under this part.

(d) The Chief Counsel, the Special Counsel to the Chief Counsel, and attorneys serving as Adjudications Counsel advise the Agency decision maker regarding all cases brought under this Part.

(e) Nothing in this part shall preclude agency decision makers or anyone advising an agency decision maker from taking part in a determination to launch an investigation or issue a complaint, or similar preliminary decision.

§386.4 Appearances and rights of parties.

(a) A party may appear in person, by counsel, or by other representative, as the party elects, in a proceeding under this subpart.

(b) A person representing a party must file a notice of appearance in the proceeding, in the manner provided in §386.7 of this subpart. The notice of appearance must list the name, address, telephone number, and facsimile number of the person designated to represent the party. A copy of the notice of appearance must be served on each party, in the manner provided in §386.6 of this subpart. The notice of appearance must be filed and served before the representative can participate in the proceeding. Any changes in an attorney or representative's contact information must be served and filed according to §§386.6 and 386.7 in a timely manner.

(c) A separate notice of appearance must be filed by a representative in each case. Blanket appearances on behalf of a party will not be accepted.

§386.5 Form of filings and extensions of time.

(a) **Form.** Each document must be typewritten or legibly handwritten.

(b) **Contents.** Unless otherwise specified in this part, each document must contain a short, plain statement of the facts on which the person's case rests and a brief statement of the action requested in the document. Except by prior order, all contents will be made publicly available.

(c) **Length.** Except for the Notice of Claim and reply, motions, briefs, and other filings may not exceed 20 pages except as permitted by Order following a motion to exceed the page limitation based upon good cause shown. Exhibits or attachments in support of the relevant filing are not included in the page limit.

(d) **Paper and margins.** Filed documents must be printed on 8 1/2" by 11" paper with a one-inch margin on all four sides of text, to include pagination and footnotes.

(e) **Spacing, and font size for typewritten documents.** Typewritten documents will use the following line format: single-spacing for the caption and footnotes, and double-spacing for the main text. All printed matter must appear in at least 12-point font, including footnotes.

(f) **Extensions of time.** Only those requests showing good cause will be granted. No motion for continuance or postponement of a hearing date filed within 15 days of the date set for a hearing will be granted unless accompanied by an affidavit showing extraordinary circumstances warrant a continuance. Unless directed otherwise by the Agency decision maker before whom a matter is pending, the parties may stipulate to reasonable extensions of time by filing the stipulation in the official docket and serving copies on all parties on the certificate of service. Motions for extensions of time must be filed in accordance with §386.7 and served in accordance with §386.6. A copy must also be served upon the person presiding over the proceeding at the time of the filing.

§386.6 Service.

(a) **General.** All documents must be served upon the party or the party's designated agent for service of process. If a notice of appearance has been filed in the specific case in question in accordance with §386.4, service is to be made on the party's attorney of record or its designated representative.

(b) **Type of service.** A person may serve documents by personal delivery utilizing governmental or commercial entities, U.S. mail, commercial mail delivery, and upon prior written consent of the parties, facsimile. Written consent for facsimile service must specify the facsimile number where service will be accepted. When service is made by facsimile, a copy will also be served by any other method permitted by this section. Facsimile service occurs when transmission is complete.

(c) **Certificate of service.** A certificate of service will accompany all documents served in a proceeding under this Part. The certificate must show the date and manner of service, be signed by the person making service, and list the persons served in accordance with §386.7.

(d) **Date of service.** A document will be considered served on the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(e) **Valid service.** A properly addressed document, sent in accordance with this subpart, which was returned, unclaimed, or refused, is deemed to have been served in accordance with this subpart. The service will be considered valid as of the date and the time the document was mailed, or the date personal delivery of the document was refused. Service by delivery after 5 p.m. in the time zone in which the recipient will receive delivery is deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday.

(f) **Presumption of service.** There shall be a presumption of service if the document is served where a party or a person customarily receives mail or at the address designated in the entry of appearance. If an

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entry of appearance has been filed on behalf of the party, service is effective upon service of a document to its representative.

§386.7 Filing of documents.

Address and method of filing. A person serving or tendering a document for filing must personally deliver or mail one copy of each document to all parties and counsel or their designated representative of record if represented. A signed original and one copy of each document submitted for the consideration of the Assistant Administrator, an Administrative Law Judge, or Hearing Officer must be personally delivered or mailed to: Department of Transportation Docket Operations, 1200 New Jersey Ave., SE., Washington, DC 20590-0001. A person will serve a copy of each document on each party in accordance with §386.6 of this subpart.

§386.8 Computation of time.

(a) **Generally.** In computing any time period set out in these rules or in an order issued hereunder, the time computation begins with the day following the act, event, or default. The last day of the period is included unless it is a Saturday, Sunday, or legal Federal holiday in which case the time period will run to the end of the next day that is not a Saturday, Sunday, or legal Federal holiday. All Saturdays, Sundays, and legal Federal holidays except those falling on the last day of the period will be computed.

(b) **Date of entry of orders.** In computing any period of time involving the date of the entry of an order, the date of entry is the date the order is served.

(c) Computation of time for delivery by mail.

(1) Service of all documents is deemed effected at the time of mailing.

(2) Documents are not deemed filed until received by Docket Operations.

(3) Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days will be added to the prescribed period.

Subpart B—Commencement of proceedings, pleadings

§386.11 Commencement of proceedings.

(a) **Driver qualification proceedings.** These proceedings are commenced by the issuance of a determination by the Director, Office of Carrier, Driver, and Vehicle Safety Standards (MC-PS), in a case arising under §391.47 of this chapter or by the issuance of a letter of disqualification.

(1) Such determination and letters must be accompanied by the following:

(i) A citation of the regulation under which the action is being taken;

(ii) A copy of all documentary evidence relied on or considered in taking such action, or in the case of voluminous evidence a summary of such evidence;

(iii) Notice to the driver and motor carrier involved in the case that they may petition for review of the action;

(iv) Notice that a hearing will be granted if the Assistant Administrator determines there are material factual issues in dispute;

(v) Notice that failure to petition for review will constitute a waiver of the right to contest the action; and

(vi) Notice that the burden or proof will be on the petitioner in cases arising under §391.47 of this chapter.

(2) At any time before the close of hearing, upon application of a party, the letter or determination may be amended at the discretion of the administrative law judge upon such terms as he approves.

(b) **Notice of Violation.** The Agency may issue a Notice of Violation as a means of notifying any person subject to the rules in this part that it has received information (i.e., from an investigation, audit, or any other source) wherein it has been alleged the person has violated provisions of the FMCSRs, HMRs, or FMCCRs.

The Notice of Violation serves as an informal mechanism to address compliance deficiencies. If the alleged deficiency is not addressed to the satisfaction of the Agency, formal enforcement action may be taken in accordance with paragraph (c) of this section. A Notice of Violation is not a prerequisite to the issuance of a Notice of Claim. The Notice of Violation will address the following issues, as appropriate:

(1) The specific alleged violations.

(2) Any specific actions the Agency determines are appropriate to remedy the identified problems.

(3) The means by which the notified person can inform the Agency that it has received the Notice of Violation and either has addressed the alleged violation or does not agree with the Agency's assertions in the Notice of Violation.

(4) Any other relevant information.

(c) **Civil penalty proceedings.** These proceedings are commenced by the issuance of a Notice of Claim.

(1) Each Notice of Claim must contain the following:

(i) A statement setting forth the facts alleged.

(ii) A statement of the provisions of law allegedly violated by the respondent.

(iii) The proposed civil penalty and notice of the maximum amount authorized to be claimed under statute.

(iv) The time, form, and manner whereby the respondent may pay, contest, or otherwise seek resolution of the claim.

(2) In addition to the information required by paragraph (c)(1) of this section, the Notice of Claim may contain such other matters as the Agency deems appropriate.

(3) In proceedings for collection of civil penalties for violations of the motor carrier safety regulations under the Motor Carrier Safety Act of 1984, the Agency may require the respondent to post a copy of the Notice of Claim in such place or places and for such duration as the Agency may determine appropriate to aid in the enforcement of the law and regulations.

§386.12 Complaint.

(a) **Complaint of substantial violation.** Any person may file a written complaint with the Assistant Administrator alleging that a substantial violation of any

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regulation issued under the Motor Carrier Safety Act of 1984 is occurring or has occurred within the preceding 60 days. A substantial violation is one which could reasonably lead to, or has resulted in, serious personal injury or death. Each complaint must be signed by the complainant and must contain:

(1) The name, address, and telephone number of the person who files it;

(2) The name and address of the alleged violator and, with respect to each alleged violator, the specific provisions of the regulations that the complainant believes were violated; and

(3) A concise but complete statement of the facts relied upon to substantiate each allegation, including the date of each alleged violation.

(b) **Action on complaint of substantial violation.** Upon the filing of a complaint of a substantial violation under paragraph (a) of this section, the Assistant Administrator shall determine whether it is nonfrivolous and meets the requirements of paragraph (a) of this section. If the Assistant Administrator determines the complaint is nonfrivolous and meets the requirements of paragraph (a), he/she shall investigate the complaint. The complainant shall be timely notified of findings resulting from such investigation. The Assistant Administrator shall not be required to conduct separate investigations of duplicative complaints. If the Assistant Administrator determines the complaint is frivolous or does not meet the requirements of the paragraph (a), he/she shall dismiss the complaint and notify the complainant in writing of the reasons for such dismissal.

(c) Notwithstanding the provisions of section 552 of title 5, United States Code, the Assistant Administrator shall not disclose the identity of complainants unless it is determined that such disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Assistant Administrator shall take every practical means within the Assistant Administrator's authority to assure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of such disclosure.

§386.13 Petitions to review and request for hearing: Driver qualification proceedings.

(a) Within 60 days after service of the determination under §391.47 of this chapter or the letter of disqualification, the driver or carrier may petition to review such action. Such petitions must be submitted to the Assistant Administrator and must contain the following:

(1) Identification of what action the petitioner wants overturned;

(2) Copies of all evidence upon which petitioner relies in the form set out in §386.49;

(3) All legal and other arguments which the petitioner wishes to make in support of his position;

(4) A request for oral hearing, if one is desired, which must set forth material factual issues believed to be in dispute;

(5) Certification that the petition has been filed in accordance with §386.6(c); and

(6) Any other pertinent material.

(b) Failure to submit a petition as specified in paragraph (a) of this section shall constitute a waiver of the right to petition for review of the determination or letter of disqualification. In these cases, the determination or disqualification issued automatically becomes the final decision of the Assistant Administrator 30 days after the time to submit the reply or petition to review has expired, unless the Assistant Administrator orders otherwise.

(c) If the petition does not request a hearing, the Assistant Administrator may issue a final decision and order based on the evidence and arguments submitted.

§386.14 Reply.

(a) **Time for reply to the Notice of Claim.** Respondent must serve a reply to the Notice of Claim in writing within 30 days following service of the Notice of Claim. The reply is to be served in accordance with §386.6 upon the Service Center indicated in the Notice of Claim.

(b) **Options for reply.** The respondent must reply to the Notice of Claim within the time allotted by choosing one of the following:

(1) Paying the full amount asserted in the Notice of Claim in accordance with §386.18 of this part;

(2) Contesting the claim by requesting administrative adjudication pursuant to paragraph (d) of this section; or

(3) Seeking binding arbitration in accordance with the Agency's program. Although the amount of the proposed penalty may be disputed, referral to binding arbitration is contingent upon an admission of liability that the violations occurred.

(c) **Failure to answer the Notice of Claim.** (1) Respondent's failure to answer the Notice of Claim in accordance with paragraph (a) may result in the issuance of a Notice of Default and Final Agency Order by the Field Administrator. The Notice of Default and Final Agency Order will declare respondent to be in default and further declare the Notice of Claim, including the civil penalty proposed in the Notice of Claim, to be the Final Agency Order in the proceeding. The Final Agency Order will be effective five days following service of the Notice of Default and Final Agency Order.

(2) The default constitutes an admission of all facts alleged in the Notice of Claim and a waiver of respondent's opportunity to contest the claim. The default will be reviewed by the Assistant Administrator in accordance with Sec. 386.64(b), and the Final Agency Order may be vacated where a respondent demonstrates excusable neglect, a meritorious defense, or due diligence in seeking relief.

(3) Failure to pay the civil penalty as directed in a Final Agency Order constitutes a violation of that order, subjecting the respondent to an additional penalty as prescribed in Subpart G of this part.

(d) **Request for administrative adjudication.** The respondent may contest the claim and request administrative adjudication pursuant to paragraph (b)(2) of this section. An administrative adjudication is a process to resolve contested claims before the Assistant Administrator, Administrative Law Judge, or Hearing

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Officer. Once an administrative adjudication option is elected, it is binding on the respondent.

(1) **Contents.** In addition to the general requirements of this section, the reply must be in writing and state the grounds for contesting the claim and must raise any affirmative defenses the respondent intends to assert. Specifically, the reply:

(i) Must admit or deny each separately stated and numbered allegation of violation in the claim. A statement that the person is without sufficient knowledge or information to admit or deny will have the effect of a denial. Any allegation in the claim not specifically denied in the reply is deemed admitted. A mere general denial of the claim is insufficient and may result in a default being entered by the Agency decision maker upon motion by the Field Administrator.

(ii) Must include all known affirmative defenses, including those relating to jurisdiction, limitations, and procedure.

(iii) Must state which one of the following options respondent seeks:

- (A) To submit written evidence without hearing; or
 - (B) An informal hearing; or
 - (C) A formal hearing.
- (2) [Reserved].

§386.15 Removed and Reserved.

§386.16 Action on replies to the Notice of Claim.

(a) **Requests to submit written evidence without a hearing.** Where respondent has elected to submit written evidence in accordance with §386.14(d)(1)(iii)(A):

(1) Agency Counsel must serve all written evidence and argument in support of the Notice of Claim no later than 60 days following service of respondent's reply. The written evidence and argument must be served on the Assistant Administrator in accordance with §§386.6 and 386.7. The submission must include all pleadings, notices, and other filings in the case to date.

(2) Respondent will, not later than 45 days following service of Agency Counsel's written evidence and argument, serve its written evidence and argument on the Assistant Administrator in accordance with §§386.6 and 386.7.

(3) Agency Counsel may file a written response to respondent's submission. Any such submission must be filed within 20 days of service of respondent's submission.

(4) All written evidence submitted by the parties must conform to the requirements of §386.49.

(5) Following submission of evidence and argument as outlined in this section, the Assistant Administrator may issue a Final Agency Order and order based on the evidence and arguments submitted, or may issue any other order as may be necessary to adjudicate the matter.

(b) **Requests for hearing.** (1) If a request for a formal or informal hearing has been filed, the Assistant Administrator will determine whether there exists a

dispute of a material fact at issue in the matter. If so, the matter will be set for hearing in accordance with respondent's reply. If it is determined that there does not exist a dispute of a material fact at issue in the matter, the Assistant Administrator may issue a decision based on the written record, or may request the submission of further evidence or argument.

(2) If a respondent requests a formal or informal hearing in its reply, the Field Administrator must serve upon the Assistant Administrator and respondent a notice of consent or objection with a basis to the request within 60 days of service of respondent's reply. Failure to serve an objection within the time allotted may result in referral of the matter to hearing.

(3) Requests for formal hearing. Following the filing of an objection with basis, the Field Administrator must serve a motion for Final Agency Order pursuant to Sec. 386.36 unless otherwise ordered by the Assistant Administrator. The motion must set forth the reasons why the Field Administrator is entitled to judgment as a matter of law. Respondent must, within 45 days of service of the motion for Final Agency Order, submit and serve a response to the Field Administrator's motion. After reviewing the record, the Assistant Administrator will either set the matter for hearing by referral to the Office of Hearings or issue a Final Agency Order based upon the submissions.

(4) Requests for informal hearing.

(i) If the Field Administrator objects with basis to a request for an informal hearing, he/she must serve the objection, a copy of the Notice of Claim, and a copy of respondent's reply, on the respondent and Assistant Administrator, pursuant to paragraph (b)(2) of this section. Based upon the Notice of Claim, the reply, and the objection with basis, the Assistant Administrator will issue an order granting or denying the request for informal hearing.

(A) Informal hearing granted. If the request for informal hearing is granted by the Assistant Administrator, a Hearing Officer will be assigned to hear the matter and will set forth the date, time and location for hearing. No further motions will be entertained, and no discovery will be allowed. At hearing, all parties may present evidence, written and oral, to the Hearing Officer, following which the Hearing Officer will issue a report to the Assistant Administrator containing findings of fact and recommending a disposition of the matter. The report will serve as the sole record of the proceedings. The Assistant Administrator may issue a Final Agency Order adopting the report, or issue other such orders as he/she may deem appropriate. By participating in an informal hearing, respondent waives its right to a formal hearing.

(B) Informal hearing denied. If the request for informal hearing is denied, the Field Administrator must serve a motion for Final Agency Order pursuant to §386.36, unless otherwise directed by the Assistant Administrator. The motion must set forth the reasons why the Field Administrator is entitled to judgment as a matter of law. Respondent must, within 45 days of service of the motion for Final Agency Order, submit and serve a response to the Field Administrator's motion.

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After reviewing the record, the Assistant Administrator will set the matter for formal hearing by referral to the Office of Hearings, or will issue a Final Agency Order based upon the submissions.

(C) Nothing in this section shall limit the Assistant Administrator's authority to refer any matter for formal hearing, even in instances where respondent seeks only an informal hearing.

§386.17 Intervention.

After the matter is called for hearing and before the date set for the hearing to begin, any person may petition for leave to intervene. The petition is to be served on the administrative law judge. The petition must set forth the reasons why the petitioner alleges he/she is entitled to intervene. The petition must be served on all parties in accordance with §386.31. Any party may file a response within 10 days of service of the petition. The administrative law judge shall then determine whether to permit or deny the petition. The petition will be allowed if the administrative law judge determines that the final decision could directly and adversely affect the petitioner or the class he/she represents, and if the petitioner may contribute materially to the disposition of the proceeding and his/her interest is not adequately represented by existing parties. Once admitted, a petitioner is party for the purpose of all subsequent proceedings.

§386.18 Payment of the claim.

(a) Payment of the full amount claimed may be made at any time before issuance of a Final Agency Order and will constitute an admission of liability by the respondent of all facts alleged in the Notice of Claim, unless the parties agree in writing that payment shall not be treated as an admission. After the issuance of a Final Agency Order, claims are subject to interest, penalties, and administrative charges, in accordance with 31 U.S.C. 3717; 49 CFR part 89; and 31 CFR 901.9.

(b) If respondent elects to pay the full amount as its response to the Notice of Claim, payment must be served upon the Field Administrator at the Service Center designated in the Notice of Claim within 30 days following service of the Notice of Claim. No written reply is necessary if respondent elects the payment option during the 30-day reply period. Failure to serve full payment within 30 days of service of the Notice of Claim when this option has been chosen may constitute a default and may result in the Notice of Claim, including the civil penalty assessed by the Notice of Claim, becoming the Final Agency Order in the proceeding pursuant to §386.14(c).

(c) Unless otherwise agreed in writing by the parties, payment of the full amount in response to the Notice of Claim constitutes an admission of liability by the respondent of all facts alleged in the Notice of Claim. Payment waives respondent's opportunity to further contest the claim and will result in the Notice of Claim becoming the Final Agency Order.

Subpart C—Settlement agreements

§386.22 Settlement agreements and their contents.

(a) **Settlement agreements.** (1) When negotiations produce an agreement as to the amount or terms of pay-

ment of a civil penalty or the terms and conditions of an order, a settlement agreement shall be drawn and signed by the respondent and the Field Administrator or his/her designee. Such settlement agreement must contain the following:

- (i) The statutory basis of the claim;
- (ii) A brief statement of the violations;
- (iii) The amount claimed and the amount paid;
- (iv) The date, time, and place and form of payment;
- (v) A statement that the agreement is not binding on the Agency until executed by the Field Administrator or his/her designee;
- (vi) A statement that failure to pay in accordance with the terms of the agreement or to comply with the terms of the agreement may result in the reinstatement of any penalties held in abeyance and may also result in the loss of any reductions in civil penalties asserted in the Notice of Claim, in which case the original amount asserted will be due immediately; and
- (vii) A statement that the agreement is the Final Agency Order.

(2) A settlement agreement may contain any conditions, actions, or provisions agreed by the parties to redress the violations cited in the Notice of Claim or notice of violation.

(3) A settlement agreement accepted and approved by the Assistant Administrator or Administrative Law Judge is a Final Agency Order which is binding on all parties according to its terms. Consent to a settlement agreement which has not yet been approved by the Assistant Administrator or Administrative Law Judge may not be withdrawn for a period of 30 days.

(b) **Civil Penalty Proceedings not before Agency Decisionmaker.** When the parties have agreed to a settlement at any time prior to the case coming before the Agency decision maker, the parties may execute an appropriate agreement for disposing of the case. The agreement does not require approval by the Agency decision maker. The agreement becomes the Final Agency Order upon execution by the Field Administrator or his/her designee.

(c) **Civil Penalty Proceedings before Agency Decisionmaker.** When a respondent has agreed to a settlement of a civil penalty before a Final Agency Order has been issued, the parties may execute an appropriate agreement for disposal of the case by consent for the consideration of the Assistant Administrator. The agreement is filed with the Assistant Administrator, who may accept it, reject it and direct that proceedings in the case continue, or take such other action as he/she deems appropriate. If the Assistant Administrator accepts the agreement, he/she shall enter an order in accordance with its terms. The settlement agreement becomes the Final Agency Order as of the date the Assistant Administrator enters an order accepting the settlement agreement.

(d) **Civil Penalty Proceedings before Administrative Law Judge (ALJ).** When a respondent has agreed to a settlement of a civil penalty before the hearing is concluded, the parties may execute an appropriate agreement for disposing of the case by consent for the

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consideration of the ALJ. The agreement is filed with the ALJ who may accept it, reject it and direct that proceedings in the case continue, or take such other action as he/she deems appropriate. If the ALJ accepts the agreement, he/she shall enter an order in accordance with its terms. The settlement agreement becomes the Final Agency Order as per §386.61.

(e) **Civil Penalty Proceedings before Hearing Officer.** When a respondent has agreed to a settlement of a civil penalty before the hearing is concluded, the parties may execute an appropriate agreement for disposal of the case for the consideration of the Hearing Officer. The agreement is filed with the Hearing Officer, who, within 20 days of receipt, will make a report and recommendation to the Assistant Administrator who may accept it, reject it and direct that proceedings in the case continue, or take such other action as he/she deems appropriate. If the Assistant Administrator accepts the agreement, he/she will enter an order in accordance with its terms. The settlement agreement becomes the Final Agency Order as of the date the Assistant Administrator enters an order accepting the settlement agreement.

Subpart D—General rules and hearings

§386.31 Official notice.

Upon notification to all parties, the Assistant Administrator or Administrative Law Judge may take official notice of any fact or document not appearing in evidence in the record. Any party objecting to the official notice must file an objection within 10 days after service of the notice. If a Final Agency Order has been issued, and the decision rests on a material and disputable fact of which the Agency decision maker has taken official notice, a party may challenge the action of official notice in accordance with §386.64 of this part.

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Reserved

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§386.32 Removed.**§386.33 Removed.****§386.34 Motions.**

(a) General. An application for an order or ruling not otherwise covered by these rules shall be by motion. All motions filed prior to the calling of the matter for a hearing shall be to the Assistant Administrator. All motions filed after the matter is called for hearing shall be to the administrative law judge.

(b) Form. Unless made during hearing, motions shall be made in writing, shall state with particularity the grounds for relief sought, and shall be accompanied by affidavits or other evidence relied upon.

(c) Answers. Except when a motion is filed during a hearing, any party may file an answer in support or opposition to a motion, accompanied by affidavits or other evidence relied upon. Such answers shall be served within 20 days after the motion is served or within such other time as the Assistant Administrator or administrative law judge may set.

(d) Argument. Oral argument or briefs on a motion may be ordered by the Assistant Administrator or the administrative law judge.

(e) Disposition. Motions may be ruled on immediately or at any other time specified by the administrative law judge or the Assistant Administrator.

(f) Suspension of time. The pendency of a motion shall not affect any time limits set in these rules unless expressly ordered by the Assistant Administrator or administrative law judge.

§386.35 Motions to dismiss and Motions for a more definite statement.

(a) Motions to dismiss must be made within the time set for reply or petition to review, except motions to dismiss for lack of jurisdiction, which may be made at any time.

(b) Motions for a more definite statement may be made in lieu of a reply. The motion must point out the defects complained of and the details desired. If the motion is granted, the pleading complained of must be remedied within 15 days of the granting of the motion or it will be stricken. If the motion is denied, the party who requested the more definite statement must file his pleading within 10 days after the denial.

§386.36 Motions for final agency order.

(a) Generally. Unless otherwise provided in this section, the motion and answer will be governed by §386.34. Either party may file a motion for final order. The motion must be served in accordance with §§ 386.6 and 386.7. If the matter is still pending before the service center, upon filing, the matter is officially transferred from the service center to the Agency decision maker, who will then preside over the matter.

(b) Form and content.

(1) Movant's filing must contain a motion and memorandum of law, which may be separate or combined and must include all responsive pleadings, notices, and other filings in the case to date.

(2) The motion for final order must be accompanied by written evidence in accordance with §386.49.

(3) The motion will state with particularity the grounds upon which it is based and the substantial matters of law to be argued. A Final Agency Order may be issued if, after reviewing the record in a light most favorable to the non-moving party, the Agency decision maker determines no genuine issue exists as to any material fact.

(c) Answer to Motion. The non-moving party will, within 45 days of service of the motion for final order, submit and serve a response to rebut movant's motion.

§386.37 Discovery.

(a) Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; request for production of documents or other evidence for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery may not commence until the matter is pending before the Assistant Administrator or referred to the Office of Hearings.

(c) Except as otherwise provided in these rules, in the Administrative Procedure Act, 5 U.S.C. 551 et seq., or by the Assistant Administrator or Administrative Law Judge, in the absence of specific Agency provisions or regulations, the Federal Rules of Civil Procedure may serve as guidance in administrative adjudications.

§386.38 Scope of discovery.

(a) Unless otherwise limited by order of the Assistant Administrator or, in cases that have been called for a hearing, the administrative law judge, in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(b) It is not ground for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Assistant Administrator or the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

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§386.39 Protective orders.

Upon motion by a party or other person from whom discovery is sought, and for good cause shown, the Assistant Administrator or the administrative law judge, if one has been appointed, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (a) The discovery not be had;
- (b) The discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (c) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (d) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters;
- (e) Discovery be conducted with no one present except persons designated by the Assistant Administrator or the administrative law judge; or
- (f) A trade secret or other confidential research, development, or commercial information may not be disclosed or be disclosed only in a designated way.

§386.40 Supplementation of responses.

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

- (a) A party is under a duty to supplement timely his/her response with respect to any question directly addressed to:
 - (1) The identity and location of persons having knowledge of discoverable matters; and
 - (2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he or she is expected to testify and the substance of his or her testimony.
- (b) A party is under a duty to amend timely a prior response if he or she later obtains information upon the basis of which:
 - (1) He or she knows the response was incorrect when made; or
 - (2) He or she knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.
- (c) A duty to supplement responses may be imposed by order of the Assistant Administrator or the administrative law judge or agreement of the parties.

§386.41 Stipulations regarding discovery.

Unless otherwise ordered, a written stipulation entered into by all the parties and filed with the Assistant Administrator or the administrative law judge, if one has been appointed, may: (a) Provide that depositions be taken before any person, at any time or place, upon sufficient notice, and in any manner, and when so taken may be used like other depositions; and (b) modify the proce-

dures provided by these rules for other methods of discovery.

§386.42 Written interrogatories to parties.

(a) Without leave, any party may serve upon any other party written interrogatories to be answered by the party to whom the interrogatories are directed; or, if that party is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who will furnish the information available to that party.

(b) The maximum number of interrogatories served will not exceed 30, including all subparts, unless the Assistant Administrator or Administrative Law Judge permits a larger number on motion and for good cause shown. Other interrogatories may be added without leave, so long as the total number of approved and additional interrogatories does not exceed 30.

(c) Each interrogatory shall be answered separately and fully in writing under oath unless it is objected to, in which event the grounds for objection shall be stated and signed by the party, or counsel for the party, if represented, making the response. The party to whom the interrogatories are directed shall serve the answers and any objections within 30 days after the service of the interrogatories, or within such shortened or longer period as the Assistant Administrator or the Administrative Law Judge may allow.

(d) Motions to compel may be made in accordance with §386.45.

(e) A notice of discovery must be served on the Assistant Administrator or, in cases that have been referred to the Office of Hearings, on the Administrative Law Judge. A copy of the interrogatories, answers, and all related pleadings must be served on all parties to the proceeding.

(f) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Assistant Administrator or Administrative Law Judge may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

§386.43 Production of documents and other evidence; entry upon land for inspection and other purposes; and physical and mental examination.

(a) Any party may serve on any other party a request to:

- (1) Produce and permit the party making the request, or a person acting on his or her behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the request is served; or

- (2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, photographing, testing, or for other purposes as stated in paragraph (a)(1).

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(3) Submit to a physical or mental examination by a physician.

(b) The request may be served on any party without leave of the Assistant Administrator or administrative law judge.

(c) The request shall:

(1) Set forth the items to be inspected either by individual item or category;

(2) Describe each item or category with reasonable particularity;

(3) Specify a reasonable time, place, and manner of making the inspection and performing the related acts;

(4) Specify the time, place, manner, conditions, and scope of the physical or mental examination and the person or persons by whom it is to be made. A report of examining physician shall be made in accordance with Rule 35(b) of the Federal Rules of Civil Procedure, Title 28, U.S. Code, as amended.

(d) The party upon whom the request is served shall serve on the party submitting the request a written response within 30 days after service of the request.

(e) The response shall state, with respect to each item or category:

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made in whole or in part, in which case the reasons for objection shall be stated.

(f) A copy of each request for production and each written response shall be served on all parties and filed with the Assistant Administrator or the administrative law judge, if one has been appointed.

§386.44 Request for admissions.

(a) **Request for admission.** (1) Any party may serve upon any other party a request for admission of any relevant matter or the authenticity of any relevant document. Copies of any document about which an admission is requested must accompany the request.

(2) Each matter for which an admission is requested shall be separately set forth and numbered. The matter is admitted unless within 15 days after service of the request, the party to whom the request is directed serves upon the party requesting the admission a written answer signed by the party or his/her attorney.

(3) Each answer must specify whether the party admits or denies the matter. If the matter cannot be admitted or denied, the party shall set out in detail the reasons.

(4) A party may not issue a denial or fail to answer on the ground that he/she lacks knowledge unless he/she has made reasonable inquiry to ascertain information sufficient to allow him/her to admit or deny.

(5) A party may file an objection to a request for admission within 10 days after service. Such motion shall be filed with the administrative law judge if one has been appointed, otherwise it shall be filed with the Assistant Administrator. An objection must explain in detail the reasons the party should not answer. A reply to the objection may be served by the party requesting the admission within 10 days after service of the objection. It is not sufficient ground for objection to claim that the mat-

ter about which an admission is requested presents an issue of fact for hearing.

(b) **Effect of admission.** Any matter admitted is conclusively established unless the Assistant Administrator or administrative law judge permits withdrawal or amendment. Any admission under this rule is for the purpose of the pending action only and may not be used in any other proceeding.

(c) If a party refuses to admit a matter or the authenticity of a document which is later proved, the party requesting the admission may move for an award of expenses incurred in making the proof. Such a motion shall be granted unless there was a good reason for failure to admit.

§386.45 Motion to compel discovery.

(a) If a deponent fails to answer a question propounded or a party upon whom a request is made pursuant to §386.42 through 386.44, or a party upon whom interrogatories are served fails to respond adequately or objects to the request, or any part thereof, or fails to permit inspection as requested, the discovering party may move the Assistant Administrator or the administrative law judge, if one has been appointed, for an order compelling a response or inspection in accordance with the request.

(b) The motion shall set forth:

(1) The nature of the questions or request;

(2) The response or objections of the party upon whom the request was served; and

(3) Arguments in support of the motion.

(c) For purposes of this section, an evasive answer or incomplete answer or response shall be treated as a failure to answer or respond.

(d) In ruling on a motion made pursuant to this section, the Assistant Administrator or the administrative law judge, if one has been appointed, may make and enter a protective order such as he or she is authorized to enter on a motion made pursuant to §386.39(a).

§386.46 Depositions.

(a) When, how, and by whom taken.

(1) The deposition of any witness may be taken at reasonable times subsequent to the appointment of an Administrative Law Judge. Prior to referral to the Office of Hearings, a party may petition the Assistant Administrator, in accordance with §386.37, for leave to conduct a deposition based on good cause shown.

(2) Depositions may be taken by oral examination or upon written interrogatories before any person having power to administer oaths.

(3) The parties may stipulate in writing or the Administrative Law Judge may upon motion order that a deposition be taken by telephone or other remote electronic means.

(4) If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice.

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(5) If the deposition is to be recorded by videotape or audio-tape, the notice shall specify the method of recording.

(b) Application. Any party desiring to take the deposition of a witness must indicate to the witness and all other parties the time when, the place where, and the name and post office address of the person before whom the deposition is to be taken; the name and address of each witness; and the subject matter concerning which each such witness is expected to testify.

(c) Notice. A party desiring to take a deposition must give notice to the witness and all other parties. Notice must be in writing. Notice of the deposition must be given not less than 20 days from when the deposition is to be taken if the deposition is to be held within the continental United States and not less than 30 days from when the deposition is to be taken if the deposition is to be held elsewhere, unless a shorter time is agreed to by the parties or by leave of the Assistant Administrator or Administrative Law Judge by motion for good cause shown.

(d) Depositions upon written questions. Within 14 days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Within 7 days after being served with cross-questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The Assistant Administrator or Administrative Law Judge may enlarge or shorten the time for cause shown.

(e) Taking and receiving in evidence. Each witness testifying upon deposition must be sworn, and any other party must be given the right to cross-examine. The questions propounded and the answers to them, together with all objections made, must be reduced to writing; read by or to, and subscribed by the witness; and certified by the person administering the oath. The person who took the deposition must seal the deposition transcript in an envelope and file it in accordance with §386.7. Subject to objections to the questions and answers as were noted at the time of taking the deposition and which would have been valid if the witness were personally present and testifying, the deposition may be read and offered in evidence by the party taking it as against any party who was present or represented at the taking of the deposition or who had due notice of it.

(f) Witness Limit. No party may seek deposition testimony of more than five witnesses without leave of the Agency decision maker for good cause shown. Individual depositions are not to exceed 8 hours for any one witness.

(g) Motion to terminate or limit examination. During the taking of a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party or improper questions propounded. The deposition will then be adjourned. The objecting party or deponent must, however, immediately move for a ruling on his or her objections to the deposition conduct or proceedings before the Assistant Administrator

or Administrative Law Judge, who then may limit the scope or manner of the taking of the deposition.

§386.47 Use of deposition at hearings.

(a) Generally. At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of expert witnesses, particularly the deposition of physicians, may be used by any party for any purpose, unless the Assistant Administrator or administrative law judge rules that such use would be unfair or a violation of due process.

(3) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private organization, partnership, or association which is a party, may be used by any other party for any purpose.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds: (i) That the witness is dead; or (ii) that the witness is out of the United States or more than 100 miles from the place of hearing unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(5) If only part of a deposition is offered in evidence by a party, any other party may require him or her to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

(b) Objections to admissibility. Except as provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

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(3) Objections to the form or written interrogatories are waived unless served in writing upon the party propounding them.

(c) **Effect of taking using depositions.** A party shall not be deemed to make a person his or her own witness for any purpose by taking his or her deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by any other party of a deposition as described in paragraph (a)(2) of this section. At the hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or her or by any other party.

§386.48 Medical records and physicians' reports.

In cases involving the physical qualifications of drivers, copies of all physicians' reports, test results, and other medical records that a party intends to rely upon shall be served on all other parties at least 30 days prior to the date set for a hearing. Except as waived by the Director, Office of Carrier, Driver, and Vehicle Safety Standards (MC-PS), reports, test results and medical records not served under this rule shall be excluded from evidence at any hearing.

§386.49 Form of written evidence.

All written evidence should be submitted in the following forms:

(a) A written statement of a person having personal knowledge of the facts alleged, or

(b) Documentary evidence in the form of exhibits attached to a written statement identifying the exhibit and giving its source.

§386.51 Amendment and withdrawal of pleadings.

(a) Except in instances covered by other rules, any time more than 15 days prior to the hearing, a party may amend his/her pleadings by serving the amended pleading on the Assistant Administrator or the administrative law judge, if one has been appointed, and on all parties. Within 15 days prior to the hearing, an amendment shall be allowed only at the discretion of the Administrative law judge. When an amended pleading is filed, other parties may file a response and objection within 10 days.

(b) A party may withdraw his/her pleading any time more than 15 days prior to the hearing by serving a notice of withdrawal on the Assistant Administrator or the Administrative Law Judge. Within 15 days prior to the hearing a withdrawal may be made only at the discretion of the Assistant Administrator or the Administrative Law Judge. The withdrawal will be granted absent a finding that the withdrawal will result in injustice, prejudice, or irreparable harm to the non-moving party, or is otherwise contrary to the public interest.

§386.52 Appeals from interlocutory rulings.

(a) **General.** Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the Administrative Law Judge to the Assistant Administra-

tor until the Administrative Law Judge's decision has been entered on the record. A decision or order of the Assistant Administrator on the interlocutory appeal does not constitute a Final Agency Order for the purposes of judicial review under §386.67.

(b) **Interlocutory appeal for cause.** If a party files a written request for an interlocutory appeal for cause with the Administrative Law Judge, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the Administrative Law Judge issues a decision on the request. If the Administrative Law Judge grants the request, the proceedings are stayed until the Assistant Administrator issues a decision on the interlocutory appeal. The Administrative Law Judge must grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) [Reserved].

(d) **Procedure.** A party must file a notice of interlocutory appeal, with any supporting documents, with the Assistant Administrator, and serve copies on each party and the Administrative Law Judge, not later than 10 days after the Administrative Law Judge's oral decision has been issued, or a written decision has been served. A party must file a reply brief, if any, with the Assistant Administrator and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief. The Assistant Administrator will render a decision on the interlocutory appeal, within a reasonable time after receipt of the interlocutory appeal.

(e) The Assistant Administrator may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals, and may order such further relief as required.

§386.53 Subpoenas, witness fees.

(a) Applications for the issuance of subpoenas must be submitted to the Assistant Administrator, or in cases that have been called for a hearing, to the administrative law judge. The application must show the general relevance and reasonable scope of the evidence sought. Any person served with a subpoena may, within 7 days after service, file a motion to quash or modify. The motion must be filed with the official who approved the subpoena. The filing of a motion shall stay the effect of the subpoena until a decision is reached.

(b) Witnesses shall be entitled to the same fees and mileage as are paid witnesses in the courts of the United States. The fees shall be paid by the party at whose instance the witness is subpoenaed or appears.

(c) Paragraph (a) of this section shall not apply to the Administrator or employees of the FMCSA or to the production of documents in their custody. Application for the attendance of such persons or the production of such documents at a hearing shall be made to the Assistant Administrator or administrative law judge, if one is appointed, and shall set forth the need for such evidence and its relevancy.

§386.54 Administrative Law Judge.

(a) **Powers of an Administrative Law Judge.** The Administrative Law Judge may take any action and

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may prescribe all necessary rules and regulations to govern the conduct of the proceedings to ensure a fair and impartial hearing, and to avoid delay in the disposition of the proceedings. In accordance with the rules in this subchapter, an Administrative Law Judge may do the following:

- (1) Give notice of and hold prehearing conferences and hearings.
- (2) Administer oaths and affirmations.
- (3) Issue subpoenas authorized by law.
- (4) Rule on offers of proof.
- (5) Receive relevant and material evidence.
- (6) Regulate the course of the administrative adjudication in accordance with the rules of this subchapter and the Administrative Procedure Act.
- (7) Hold conferences to settle or simplify the issues by consent of the parties.
- (8) Dispose of procedural motions and requests, except motions that under this part are made directly to the Assistant Administrator.
- (9) Issue orders permitting inspection and examination of lands, buildings, equipment, and any other physical thing and the copying of any document.
- (10) Make findings of fact and conclusions of law, and issue decisions.
- (11) To take any other action authorized by these rules and permitted by law.

(b) **Limitations on the power of the Administrative Law Judge.** The Administrative Law Judge is bound by the procedural requirements of this part and the precedent opinions of the Agency. This section does not preclude an Administrative Law Judge from barring a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that proceeding.

(c) **Disqualification.** The Administrative Law Judge may disqualify himself or herself at any time, either at the request of any party or upon his or her own initiative. Assignments of Administrative Law Judges are made by the Chief Administrative Law Judge upon the request of the Assistant Administrator. Any request for a change in such assignment, including disqualification, will be considered only for good cause which would unduly prejudice the proceeding.

§386.55 Prehearing conferences.

(a) **Convening.** At any time before the hearing begins, the administrative law judge, on his/her own motion or on motion by a party, may direct the parties or their counsel to participate with him/her in a prehearing conference to consider the following:

- (1) Simplification and clarification of the issues;
- (2) Necessity or desirability of amending pleadings;
- (3) Stipulations as to the facts and the contents and authenticity of documents;
- (4) Issuance of and responses to subpoenas;
- (5) Taking of depositions and the use of depositions in the proceedings;
- (6) Orders for discovery, inspection and examination of premises, production of documents and other physical objects, and responses to such orders;

(7) Disclosure of the names and addresses of witnesses and the exchange of documents intended to be offered in evidence; and

(8) Any other matter that will tend to simplify the issues or expedite the proceedings.

(b) **Order.** The administrative law judge shall issue an order which recites the matters discussed, the agreements reached, and the rulings made at the prehearing conference. The order shall be served on the parties and filed in the record of the proceedings.

§386.56 Hearings.

(a) As soon as practicable after his/her appointment, the administrative law judge shall issue an order setting the date, time, and place for the hearing. The order shall be served on the parties and become a part of the record of the proceedings. The order may be amended for good cause shown.

(b) **Conduct of hearing.** The administrative law judge presides over the hearing. Hearings are open to the public unless the administrative law judge orders otherwise.

(c) **Evidence.** Except as otherwise provided in these rules and the Administrative Procedure Act, 5 U.S.C. 551 et seq., the Federal rules of Evidence shall be followed.

(d) **Information obtained by investigation.** Any document, physical exhibit, or other material obtained by the Administration in an investigation under its statutory authority may be disclosed by the Administration during the proceeding and may be offered in evidence by counsel for the Administration.

(e) **Record.** The hearing shall be stenographically transcribed and reported. The transcript, exhibits, and other documents filed in the proceedings shall constitute the official record of the proceedings. A copy of the transcript and exhibits will be made available to any person upon payment of prescribed costs.

§386.57 Proposed findings of fact, conclusions of law.

The administrative law judge shall afford the parties reasonable opportunity to submit proposed findings of fact, conclusions of law, and supporting reasons therefor. If the administrative law judge orders written proposals and arguments, each proposed finding must include a citation to the specific portion of the record relied on to support it. Written submissions, if any, must be served within the time period set by the administrative law judge.

§386.58 Burden of proof.

(a) **Enforcement cases.** The burden of proof shall be on the Administration in enforcement cases.

(b) **Conflict of medical opinion.** The burden of proof in cases arising under §391.47 of this chapter shall be on the party petitioning for review under §386.13(a).

Subpart E—Decision

§386.61 Decision.

(a) **Administrative Law Judge.** After receiving the proposed findings of fact, conclusions of law, and arguments of the parties, the administrative law judge shall

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issue a decision. If the proposed findings of fact, conclusions of law, and arguments were oral, he/she may issue an oral decision. The decision of the administrative law judge becomes the final decision of the Assistant Administrator 45 days after it is served unless a petition or motion for review is filed under §386.62. The decision shall be served on all parties and on the Assistant Administrator.

(b) **Hearing Officer.** The Hearing Officer will prepare a report to the Assistant Administrator containing findings of fact and recommended disposition of the matter within 45 days after the conclusion of the hearing. The Assistant Administrator will issue a Final Agency Order adopting the report, or may make other such determinations as appropriate. The Assistant Administrator's decision to adopt a Hearing Officer's report may be reviewed in accordance with §386.64.

§386.62 Review of administrative law judge's decision.

(a) All petitions to review must be accompanied by exceptions and briefs. Each petition must set out in detail objections to the initial decision and shall state whether such objections are related to alleged errors of law or fact. It shall also state the relief requested. Failure to object to any error in the initial decision shall waive the right to allege such error in subsequent proceedings.

(b) Reply briefs may be filed within 30 days after service of the appeal brief.

(c) No other briefs shall be permitted except upon request of the Assistant Administrator.

(d) Copies of all briefs must be served on all parties.

(e) No oral argument will be permitted except on order of the Assistant Administrator.

§386.63 Decision on review.

Upon review of a decision, the Assistant Administrator may adopt, modify, or set aside the administrative law judge's findings of fact and conclusions of law. He/she may also remand proceedings to the administrative law judge with instructions for such further proceedings as he/she deems appropriate. If not remanded, the Assistant Administrator shall issue a final order disposing of the proceedings, and serve it on all parties.

§386.64 Reconsideration.

(a) Within 20 days following service of the Final Agency Order, any party may petition the Assistant Administrator for reconsideration of the order. If a civil penalty was imposed, the filing of a petition for reconsideration stays the entire action, unless the Assistant Administrator orders otherwise.

(b) In the event a Notice of Default and Final Agency Order is issued by the Field Administrator as a result of the respondent's failure to reply in accordance with §386.14(a), the only issue that will be considered upon reconsideration is whether a default has occurred under §386.14(c). The Final Agency Order may be vacated where a respondent can demonstrate excusable neglect, a meritorious defense, or due diligence in seeking relief.

(c) Either party may serve an answer to a petition for reconsideration within 30 days of the service date of the petition.

(d) Following the close of the 30-day period, the Assistant Administrator will rule on the petition.

(e) The ruling on the petition will be the Final Agency Order. A petition for reconsideration of the Assistant Administrator's ruling will not be permitted.

§386.65 Failure to comply with final order.

If, within 30 days of receipt of a final agency order issued under this part, the respondent does not submit in writing his/her acceptance of the terms of an order directing compliance, or, where appropriate, pay a civil penalty, or file an appeal under §386.67, the case may be referred to the Attorney General with a request that an action be brought in the appropriate United States District Court to enforce the terms of a compliance order or collect the civil penalty.

§386.66 Motions for rehearing or for modification.

(a) No motion for rehearing or for modification of an order shall be entertained for 1 year following the date the Assistant Administrator's order goes into effect. After 1 year, any party may file a motion with the Assistant Administrator requesting a rehearing or modification of the order. The motion must contain the following:

(1) A copy of the order about which the change is requested;

(2) A statement of the changed circumstances justifying the request; and

(3) Copies of all evidence intended to be relied on by the party submitting the motion.

(b) Upon receipt of the motion, the Assistant Administrator may make a decision denying the motion or modifying the order in whole or in part. He/she may also, prior to making his/her decision, order such other proceedings under these rules as he/she deems necessary and may request additional information from the party making the motion.

§386.67 Judicial review.

(a) Any party to the underlying proceeding, who, after an administrative adjudication, is adversely affected by a Final Agency Order issued under 49 U.S.C. 521 may, within 30 days of service of the Final Agency Order, petition for review of the order in the United States Court of Appeals in the circuit where the violation is alleged to have occurred, or where the violator has its principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit.

(b) Judicial review will be based on a determination of whether the findings and conclusions in the Final Agency Order were supported by substantial evidence or were otherwise not in accordance with law. No objection that has not been raised before the Agency will be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceedings under this section will not, unless

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ordered by the court, operate as a stay of the Final Agency Order of the Agency.

Subpart F—Injunctions and imminent hazards

§386.71 Injunctions.

Whenever it is determined that a person has engaged, or is about to engage, in any act or practice constituting a violation of section 31502 of title 49, United States Code; of the Motor Carrier Safety Act of 1984; the Hazardous Materials Transportation Act; or any regulation or order issued under that section or those Acts for which the Federal Motor Carrier Safety Administrator exercises enforcement responsibility, the Chief Counsel may request the United States Attorney General to bring an action in the appropriate United States District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages, as provided by section 213(c) of the Motor Carrier Safety Act of 1984 and section 111(a) of the Hazardous Materials Transportation Act (49 U.S.C. 507(c) 5122).

§386.72 Imminent hazard.

(a) Whenever it is determined that an imminent hazard exists as a result of the transportation by motor vehicle of a particular hazardous material, the Chief Counsel or Deputy Chief Counsel of the FMCSA may bring, or request the United States Attorney General to bring, an action in the appropriate United States District Court for an order suspending or restricting the transportation by motor vehicle of the hazardous material or for such other order as is necessary to eliminate or ameliorate the imminent hazard, as provided by 49 U.S.C. 5122. In this paragraph, “imminent hazard” means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before a notice of investigation proceeding, or other administrative hearing or formal proceeding, to abate the risk of harm can be completed.

(b)(1) Whenever it is determined that a violation of 49 U.S.C. 31502 or the Motor Carrier Safety Act of 1984, as amended, or the Commercial Motor Vehicle Safety Act of 1986, as amended, or a regulation issued under such section or Acts, or a combination of such violations, poses an imminent hazard to safety, the Director of the Office of Enforcement and Compliance or a Division Administrator, or his or her delegate, shall order:

(i) A commercial motor vehicle or employee operating such vehicle out-of-service, or order an employer to cease all or part of the employer’s commercial motor vehicle operations, as provided by 49 U.S.C. 521(b)(5);

(ii) An intermodal equipment provider’s specific vehicle or equipment out-of-service, or order an intermodal equipment provider to cease all or part of its operations, as provided by 49 U.S.C. 521(b)(5) and 49 U.S.C. 31151(a)(3)(I).

(2) In making any such order, no restrictions shall be imposed on any vehicle, terminal or facility, employee,

employer or intermodal equipment provider beyond that required to abate the hazard.

(3) In this paragraph (b), *imminent hazard* means any condition of vehicle, intermodal equipment, employee, or commercial motor vehicle operations that substantially increases the likelihood of serious injury or death if not discontinued immediately.

(4) Upon the issuance of an order under paragraph (b)(1) of this section, the motor carrier employer, intermodal equipment provider or driver employee shall comply immediately with such order. Opportunity for review shall be provided in accordance with 5 U.S.C. 554, except that such review shall occur not later than 10 days after issuance of such order, as provided by section 213(b) of the Motor Carrier Safety Act of 1984 (49 U.S.C. 521(b)(5)). An order to an employer or intermodal equipment provider to cease all or part of its operations shall not prevent vehicles in transit at the time the order is served from proceeding to their immediate destinations, unless any such vehicle or its driver is specifically ordered out-of-service forthwith. However, vehicles and drivers proceeding to their immediate destination shall be subject to compliance upon arrival.

(5) For purposes of this section, the term *immediate destination* is the next scheduled stop of the vehicle already in motion where the cargo on board can be safely secured.

(6) Failure to comply immediately with an order issued under this section shall subject the motor carrier employer, intermodal equipment provider, or driver to penalties prescribed in subpart G of this part.

§386.73 Operations out of service and record consolidation proceedings (reincarnated carriers).

(a) **Out-of-service order.** An FMCSA Field Administrator or the Director of FMCSA’s Office of Enforcement and Compliance (Director) may issue an out-of-service order to prohibit a motor carrier, intermodal equipment provider, broker, or freight forwarder from conducting operations subject to FMCSA jurisdiction upon a determination by the Field Administrator or Director that the motor carrier, intermodal equipment provider, broker, or freight forwarder or an officer, employee, agent, or authorized representative of such an entity, operated or attempted to operate a motor carrier, intermodal equipment provider, broker, or freight forwarder under a new identity or as an affiliated entity to:

- (1) Avoid complying with an FMCSA order;
- (2) Avoid complying with a statutory or regulatory requirement;
- (3) Avoid paying a civil penalty;
- (4) Avoid responding to an enforcement action; or
- (5) Avoid being linked with a negative compliance history.

(b) **Record consolidation order.** In addition to, or in lieu of, an out-of-service order issued under this section, the Field Administrator or Director may issue an order consolidating the records maintained by FMCSA concerning the current motor carrier,

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intermodal equipment provider, broker, and freight forwarder and its affiliated motor carrier, intermodal equipment provider, broker, or freight forwarder or its previous incarnation, for all purposes, upon a determination that the motor carrier, intermodal equipment provider, broker, and freight forwarder or officer, employee, agent, or authorized representative of the same, operated or attempted to operate a motor carrier, intermodal equipment provider, broker, or freight forwarder under a new identity or as an affiliated entity to:

- (1) Avoid complying with an FMCSA order;
- (2) Avoid complying with a statutory or regulatory requirement;
- (3) Avoid paying a civil penalty;
- (4) Avoid responding to an enforcement action; or
- (5) Avoid being linked with a negative compliance history.

(c) **Standard.** The Field Administrator or Director may determine that a motor carrier, intermodal equipment provider, broker, or freight forwarder is reincarnated if there is substantial continuity between the entities such that one is merely a continuation of the other. The Field Administrator or Director may determine that a motor carrier, intermodal equipment provider, broker, or freight forwarder is an affiliate if the business operations are under common ownership and/or common control. In making this determination, the Field Administrator or Director may consider, among other things, the following factors:

- (1) Whether the new or affiliated entity was created for the purpose of evading statutory or regulatory requirements, an FMCSA order, enforcement action, or negative compliance history. In weighing this factor, the Field Administrator or Director may consider the stated business purpose for the creation of the new or affiliated entity.
- (2) The previous entity's safety performance history, including, among other things, safety violations and enforcement actions of the Secretary, if any;
- (3) Consideration exchanged for assets purchased or transferred;
- (4) Dates of company creation and dissolution or cessation of operations;
- (5) Commonality of ownership between the current and former company or between current companies;
- (6) Commonality of officers and management personnel;
- (7) Identity of physical or mailing addresses, telephone, fax numbers, or email addresses;
- (8) Identity of motor vehicle equipment;
- (9) Continuity of liability insurance policies or commonality of coverage under such policies;
- (10) Commonality of drivers and other employees;
- (11) Continuation of carrier facilities and other physical assets;
- (12) Continuity or commonality of nature and scope of operations, including customers for whom transportation is provided;

(13) Advertising, corporate name, or other acts through which the company holds itself out to the public;

(d) **Evaluating factors.** The Field Administrator or Director may examine, among other things, the company management structures, financial records, corporate filing records, asset purchase or transfer and title history, employee records, insurance records, and any other information related to the general operations of the entities involved and factors in paragraph (c) of this section.

(e) **Effective dates.** An order issued under this section becomes the Final Agency Order and is effective on the 21st day after it is served unless a request for administrative review is served and filed as set forth in paragraph (g) of this section. Any motor carrier, intermodal equipment provider, broker, or freight forwarder that fails to comply with any prohibition or requirement set forth in an order issued under this section is subject to the applicable penalty provisions for each instance of noncompliance.

(f) **Commencement of proceedings.** The Field Administrator or Director may commence proceedings under this section by issuing an order that:

- (1) Provides notice of the factual and legal basis of the order;
- (2) In the case of an out-of-service order, identifies the operations prohibited by the order;
- (3) In the case of an order that consolidates records maintained by FMCSA, identifies the previous entity and current or affiliated motor carriers, intermodal equipment providers, brokers, or freight forwarders whose records will be consolidated;
- (4) Provides notice that the order is effective upon the 21st day after service;
- (5) Provides notice of the right to petition for administrative review of the order and that a timely petition will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and
- (6) Provides notice that failure to timely request administrative review of the order constitutes waiver of the right to contest the order and will result in the order becoming a Final Agency Order 21 days after it is served.

(g) **Administrative review.** A motor carrier, intermodal equipment provider, broker, or freight forwarder issued an order under this section may petition for administrative review of the order. A petition for administrative review is limited to contesting factual or procedural errors in the issuance of the order under review and may not be submitted to demonstrate corrective action. A petition for administrative review that does not identify factual or procedural errors in the issuance of the order under review will be dismissed. Petitioners seeking to demonstrate corrective action may do so by submitting a Petition for Rescission under paragraph (h) of this section.

(1) A petition for administrative review must be in writing and served on the Assistant Administrator, Federal Motor Carrier Safety Administration, 1200 New

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Jersey Ave. SE., Washington, DC 20590-0001, Attention: Adjudications Counsel, or by electronic mail to *FMCSA.Adjudication@dot.gov*. A copy of the petition for administrative review must also be served on the Field Administrator or Director who issued the order, at the physical address or electronic mail account identified in the order.

(2) A petition for administrative review must be served within 15 days of the date the Field Administrator or Director served the order issued under this section. Failure to timely request administrative review waives the right to administrative review and constitutes an admission of the facts alleged in the order.

(3) A petition for administrative review must include:

(i) A copy of the order in dispute; and

(ii) A statement of all factual and procedural issues in dispute.

(4) If a petition for administrative review is timely served and filed, the petitioner may supplement the petition by serving documentary evidence and/or written argument that supports its position regarding the procedural or factual issues in dispute no later than 30 days from the date the disputed order was served. The supplementary documentary evidence or written argument may not expand the issues on review and need not address every issue identified in the petition. Failure to timely serve supplementary documentary evidence and/or written argument constitutes a waiver of the right to do so.

(5) The Field Administrator or Director must serve written argument and supporting documentary evidence, if any, in defense of the disputed order no later than 15 days following the period in which petitioner may serve supplemental documentary evidence and/or written argument in support of the petition for administrative review.

(6) The Assistant Administrator may ask the parties to submit additional information or attend a conference to facilitate administrative review.

(7) The Assistant Administrator will issue a written decision on the request for administrative review within 30 days of the close of the time period for the Field Administrator or the Director to serve written argument and supporting documentary evidence in defense of the order, or the actual filing of such written argument and documentary evidence, whichever is earlier.

(8) If a petition for administrative review is timely served in accordance with this subsection, the disputed order is stayed, pending the Assistant Administrator's review. The Assistant Administrator may enter an order vacating the automatic stay in accordance with the following procedures:

(i) The Agency Official may file a motion to vacate the automatic stay demonstrating good cause why the order should not be stayed. The Agency Official's motion must be in writing, state the factual and legal basis for the motion, be accompanied by affidavits or other evidence relied on, and be served on the petitioner and Assistant Administrator.

(ii) The petitioner may file an answer in opposition, accompanied by affidavits or other evidence relied on. The answer must be served within 10 days of service of the motion.

(iii) The Assistant Administrator will issue a decision on the motion to vacate the automatic stay within 10 days of the close of the time period for serving the answer to the motion. The 30-day period for review of the petition for administrative review in paragraph (g)(7) of this section is tolled from the time the Agency Official's motion to lift a stay is served until the Assistant Administrator issues a decision on the motion.

(9) The Assistant Administrator's decision on a petition for administrative review of an order issued under this section constitutes the Final Agency Order.

(h) **Petition for rescission.** A motor carrier, intermodal equipment provider, broker, or freight forwarder may petition to rescind an order issued under this section if action has been taken to correct the deficiencies that resulted in the order.

(1) A petition for rescission must be made in writing to the Field Administrator or Director who issued the order.

(2) A petition for rescission must include a copy of the order requested to be rescinded, a factual statement identifying all corrective action taken, and copies of supporting documentation.

(3) Upon request and for good cause shown, the Field Administrator or Director may grant the petitioner additional time, not to exceed 45 days, to complete corrective action initiated at the time the petition for rescission was filed.

(4) The Field Administrator or Director will issue a written decision on the petition for rescission within 60 days of service of the petition. The written decision will include the factual and legal basis for the determination.

(5) If the Field Administrator or Director grants the request for rescission, the written decision is the Final Agency Order.

(6) If the Field Administrator or Director denies the request for rescission, the petitioner may file a petition for administrative review of the denial with the Assistant Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590-0001, Attention: Adjudication Counsel or by electronic mail to *FMCSA.Adjudication@dot.gov*. The petition for administrative review of the denial must be served and filed within 15 days of the service of the decision denying the request for recession. The petition for administrative review must identify the disputed factual or procedural issues with respect to the denial of the petition for rescission. The petition may not, however, challenge the underlying basis of the order for which rescission was sought.

(7) The Assistant Administrator will issue a written decision on the petition for administrative review of the denial of the petition for rescission within 60 days. The Assistant Administrator's decision constitutes the Final Agency Order.

(i) **Other orders unaffected.** If a motor carrier, intermodal equipment provider, broker, or freight forwarder subject to an order issued under this section is or becomes subject to any other order, prohibition, or requirement of the FMCSA, an order issued under this

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section is in addition to, and does not amend or supersede such other order, prohibition, or requirement. A motor carrier, intermodal equipment provider, broker, or freight forwarder subject to an order issued under this section remains subject to the suspension and revocation provisions of 49 U.S.C. 13905 for violations of regulations governing their operations.

(j) **Inapplicability of subparts.** Subparts B, C, D, and E of this part, except §386.67, do not apply to this section.

Subpart G—Penalties

§386.81 General.

(a) The amounts of civil penalties that can be assessed for regulatory violations subject to the proceedings in this subchapter are established in the statutes granting enforcement powers. The determination of the actual civil penalties assessed in each proceedings is based on those defined limits or minimums and consideration of information available at the time the claim is made concerning the nature, gravity of the violations and, with respect to the violator, the degree of culpability, history of prior offenses, effect on ability to continue to do business, and such other matters as justice and public safety may require. In addition to these factors, a civil penalty assessed under 49 U.S.C. 14901(a) and (d) concerning household goods is also based on the degree of harm caused to a shipper and whether the shipper has been adequately compensated before institution of the civil penalty proceeding. In adjudicating the claims and orders under the administrative procedures herein, additional information may be developed regarding these factors that may affect the final amount of the claim.

(b) When assessing penalties for violations of notices and orders or settling claims based on these assessments, consideration will be given to good faith efforts to achieve compliance with the terms of the notices and orders.

§386.82 Civil penalties for violations of notices and orders.

(a) Additional civil penalties are chargeable for violations of notices and orders which are issued under civil forfeiture proceedings pursuant to 49 U.S.C. 521(b). These notices and orders are as follows:

- (1) Notice to abate—§386.11 (b)(2) and (c)(1)(iv);
- (2) Notice to post—§386.11(c)(3);
- (3) Final order—§386.14, §386.17, §386.22, and §386.61; and
- (4) Out-of-service order—§386.72(b)(1).

(b) A schedule of these additional penalties is provided in the appendix A to this part. All the penalties are maximums, and discretion will be retained to meet special circumstances by setting penalties for violations of notices and orders, in some cases, at less than the maximum.

(c) Claims for penalties provided in this section and in the appendix A to this part shall be made through the civil forfeiture proceedings contained in this part. The issues to be decided in such proceedings will be limited

to whether violations of notices and orders occurred as claimed and the appropriate penalty for such violations. Nothing contained herein shall be construed to authorize the reopening of a matter already finally adjudicated under this part.

§386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited.

(a)(1) **General rule.** (i) A CMV owner or operator that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA's final agency order, is prohibited from operating in interstate commerce starting on the next (*i.e.*, the 91st) day. The prohibition continues until the FMCSA has received full payment of the penalty.

(ii) An intermodal equipment provider that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA's final agency order, is prohibited from tendering intermodal equipment to motor carriers for operation in interstate commerce starting on the next (*i.e.*, the 91st) day. The prohibition continues until the FMCSA has received full payment of the penalty.

(2) **Civil penalties paid in installments.** The FMCSA Service Center may allow a CMV owner or operator, or an intermodal equipment provider, to pay a civil penalty in installments. If the CMV owner or operator, or intermodal equipment provider, fails to make an installment payment on schedule, the payment plan is void and the entire debt is payable immediately. A CMV owner or operator, or intermodal equipment provider, that fails to pay the full outstanding balance of its civil penalty within 90 days after the date of the missed installment payment, is prohibited from operating in interstate commerce on the next (*i.e.*, the 91st) day. The prohibition continues until the FMCSA has received full payment of the entire penalty.

(3) **Appeals to Federal Court.** If the CMV owner or operator, or intermodal equipment provider, appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so directs.

(b) **Show cause proceeding.** (1) FMCSA will notify a CMV owner or operator, or intermodal equipment provider, in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in the CMV owner or operator, or an intermodal equipment provider, being prohibited from operating in interstate commerce.

(2) The notice will order the CMV owner or operator, or intermodal equipment provider, to show cause why it should not be prohibited from operating in interstate commerce on the 91st day after the date specified for payment. The prohibition may be avoided only by submitting to the Chief Safety Officer:

(i) Evidence that the respondent has paid the entire amount due; or

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(ii) Evidence that the respondent has filed for bankruptcy under chapter 11, title 11, United States Code. Respondents in bankruptcy must also submit the information required by paragraph (d) of this section.

(3) The notice will be delivered by certified mail or commercial express service. If the principal place of business of a CMV owner or operator, or an intermodal equipment provider, is in a foreign country, the notice will be delivered to the designated agent of the CMV owner or operator or intermodal equipment provider.

(c) A CMV owner or operator, or intermodal equipment provider that continues to operate in interstate commerce in violation of this section may be subject to additional sanctions under paragraph IV of (i) appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor in a case under 11 U.S.C. chapter 11. CMV owners or operators, or intermodal equipment providers, in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (*i.e.*, chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

§386.84 Sanction for failure to pay civil penalties or abide by payment plan; suspension or revocation of registration.

(a)(1) **General rule.** The registration of a broker, freight forwarder, for-hire motor carrier, foreign motor carrier or foreign motor private carrier that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's final agency order, will be suspended starting on the next (*i.e.*, the 91st) day. The suspension continues until the FMCSA has received full payment of the penalty.

(2) **Civil penalties paid in installments.** The FMCSA Service Center may allow a respondent broker, freight forwarder, for-hire motor carrier, foreign motor carrier or foreign motor private carrier to pay a civil penalty in installments. If the respondent fails to make an installment payment on schedule, the payment plan is void and the entire debt is payable immediately. The registration of a respondent that fails to pay the remainder of its civil penalty in full within 90 days after the date of the missed installment payment is suspended on the next (*i.e.*, the 91st) day. The suspension continues until the FMCSA has received full payment of the entire penalty.

(3) **Appeals to Federal Court.** If the respondent broker, freight forwarder, for-hire motor carrier, foreign motor carrier or foreign motor private carrier appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so directs.

(b) **Show Cause Proceeding.** (1) The FMCSA will notify a broker, freight forwarder, for-hire motor carrier,

foreign motor carrier or foreign motor private carrier in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due will result in the suspension of the respondent's registration.

(2) The notice will order the respondent to show cause why its registration should not be suspended on the 91st day after the date specified for payment. The prohibition may be avoided only by submitting to the Chief Safety Officer:

(i) Evidence that the respondent has paid the entire amount due; or

(ii) Evidence that the respondent has filed for bankruptcy under chapter 11, title 11, United States Code. Respondents in bankruptcy must also submit the information required by paragraph (d) of this section.

(3) The notice will be delivered by certified mail or commercial express service. If a respondent's principal place of business is in a foreign country, it will be delivered to the respondent's designated agent.

(c) The registration of a broker, freight forwarder, for-hire motor carrier, foreign motor carrier or foreign motor private carrier that continues to operate in interstate commerce in violation of this section after its registration has been suspended may be revoked after an additional notice and opportunity for a proceeding in accordance with 49 U.S.C. 13905(c). Additional sanctions may be imposed under paragraph IV(i) of appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor in a case under chapter 11, title 11, United States Code. Brokers, freight forwarders, for-hire motor carriers, foreign motor carriers or foreign motor private carriers in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (*i.e.*, chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

Appendix A to Part 386—Penalty schedule; violations of notices and orders

I. Notice to Abate

Violation—Failure to cease violations of the regulations in the time prescribed in the notice. (The time within to comply with a notice to abate shall not begin to run with respect to contested violations, *i.e.*, where there are material issues in dispute under §386.14, until such time as the violation has been established.)

Penalty reinstatement of any deferred assessment or payment of a penalty or portion thereof.

II. Subpoena

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Violation—Failure to respond to Agency subpoena to appear and testify or produce records.

Penalty—minimum of \$1,000 but not more than \$10,000 per violation.

III. Final Order

Violation—Failure to comply with Final Agency Order.

Penalty—Automatic reinstatement of any penalty previously reduced or held in abeyance and restoration of the full amount assessed in the Notice of Claim less any payments previously made.

IV. Out-of-Service Order

a. Violation—Operation of a commercial vehicle by a driver *during* the period the driver was placed out of service.

Penalty—Up to \$2,100 per violation. (For purposes of this violation, the term “driver” means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. Violation—Requiring or permitting a driver to operate a commercial vehicle during the period the driver was placed out of service.

Penalty—Up to \$16,000 per violation. (This violation applies to motor carriers, including an independent contractor who is not a “driver,” as defined under paragraph IVa above.)

c. Violation—Operation of a commercial motor vehicle or intermodal equipment by a driver after the vehicle or intermodal equipment was placed out-of-service and before the required repairs are made.

Penalty—\$2,100 each time the vehicle or intermodal equipment is so operated. (This violation applies to drivers as defined in IVa above.)

d. Violation—Requiring or permitting the operation of a commercial motor vehicle or intermodal equipment placed out-of-service before the required repairs are made.

Penalty—Up to \$16,000 each time the vehicle or intermodal equipment is so operated after notice of the defect is received.

(This violation applies to intermodal equipment providers and motor carriers, including an independent owner-operator who is not a “driver,” as defined in IVa above.)

e. Violation—Failure to return written certification of correction as required by the out-of-service order.

Penalty—Up to \$750 per violation.

f. Violation—Knowingly falsifies written certification of correction required by the out-of-service order.

Penalty—Considered the same as the violations described in paragraphs IVc and IVd above, and subject to the same penalties.

Note: Falsification of certification may also result in criminal prosecution under 18 U.S.C. 1001.

g. Violation—Operating in violation of an order issued under §386.72(b) to cease all or part of the employer’s commercial motor vehicle operations or to cease all or part of an intermodal equipment provider’s operations,

i.e., failure to cease operations as ordered.

Penalty—Up to \$25,000 per day the operation continues after the effective date and time of the order to cease.

h. Violation—Operating in violation of an order issued under §386.73.

Penalty—Up to \$16,000 per day the operation continues after the effective date and time of the out-of-service order.

i. Violation—Conducting operations during a period of suspension under §§386.83 or 386.84 for failure to pay penalties.

Penalty—Up to \$11,000 for each day that operations are conducted during the suspension period.

j. Violation—Conducting operations during a period of suspension or revocation under §§385.911, 385.913, 385.1009 or 385.1011.

Penalty—Up to \$11,000 for each day that operations are conducted during the suspension or revocation period.

Appendix B to Part 386—Penalty schedule; violations and monetary penalties

The Debt Collection Improvement Act of 1996 [Public Law 104–134, title III, chapter 10, Sec. 31001, par. (s), 110 Stat. 1321–373] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust for inflation “each civil monetary penalty provided by law within the jurisdiction of the Federal agency * * *” and to publish that regulation in the *Federal Register*. Pursuant to that authority, the inflation-adjusted civil penalties listed in paragraphs (a) through (h) of this appendix supersede the corresponding civil penalty amounts listed in title 49, United States Code.

What are the types of violations and maximum monetary penalties?

(a) Violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

(1) **Recordkeeping.** A person or entity that fails to prepare or maintain a record required by parts 40, 382, 385, and 390–99 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of \$1,000 for each day the violation continues, up to \$10,000.

(2) **Knowing falsification of records.** A person or entity that knowingly falsifies, destroys, mutilates, or changes a report or record required by parts 382, 385, and 390–99 of this subchapter, knowingly makes or causes to be made a false or incomplete record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation or order of the Secretary is subject to a maximum civil penalty of \$10,000 if such action misrepresents a fact that constitutes a violation other than a reporting or recordkeeping violation.

(3) **Non-recordkeeping violations.** A person or entity that violates parts 382, 385, or 390–99 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed \$11,000 for each violation.

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(4) **Non-recordkeeping violations by drivers.** A driver who violates parts 382, 385, and 390–99 of this subchapter, except a recordkeeping violation, is subject to a civil penalty not to exceed \$2,750.

(5) **Violation of 49 CFR 392.5.** A driver placed out of service for 24 hours for violating the alcohol prohibitions of 49 CFR 392.5(a) or (b) who drives during that period is subject to a civil penalty not to exceed \$3,750 for each violation.

(6) **Egregious violations of driving-time limits in 49 CFR part 395.** A driver who exceeds, and a motor carrier that requires or permits a driver to exceed, by more than 3 hours the driving-time limit in 49 CFR 395.3(a) or 395.5(a), as applicable, shall be deemed to have committed an egregious driving-time limit violation. In instances of an egregious driving-time violation, the Agency will consider the “gravity of the violation,” for purposes of 49 U.S.C. 521(b)(2)(D), sufficient to warrant imposition of penalties up to the maximum permitted by law.

(b) **Commercial driver’s license (CDL) violations.** Any person who violates 49 CFR Part 383, Subparts B, C, E, F, G, or H is subject to a civil penalty of \$3,750.

(c) **Special penalties pertaining to violations of out-of-service orders by CDL-holders.** A CDL-holder who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than \$2,100 nor more than \$3,750. An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes that employee to operate a CMV during any period in which the CDL-holder is subject to an out-of-service order, is subject to a civil penalty of not less than \$3,750 or more than \$16,000.

(d) **Financial responsibility violations.** A motor carrier that fails to maintain the levels of financial responsibility prescribed by Part 387 of this subchapter is subject to a maximum penalty of \$16,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(e) **Violations of the Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations found in Subpart E of Part 385.** This paragraph applies to violations by motor carriers, drivers, shippers and other persons who transport hazardous materials on the highway in commercial motor vehicles or cause hazardous materials to be so transported.

(1) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than \$250 and not more than \$50,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(2) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to training related to the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty

of not less than \$450 and not more than \$50,000 for each violation.

(3) All knowing violations of 49 U.S.C. chapter 51 or orders, regulations, or exemptions issued under the authority of that chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container that is represented, marked, certified, or sold as being qualified for use in the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than \$250 and not more than \$50,000 for each violation.

(4) Whenever regulations issued under the authority of 49 U.S.C. chapter 51 require compliance with the FMCSRs while transporting hazardous materials, any violations of the FMCSRs will be considered a violation of the HMRs and subject to a civil penalty of not less than \$250 and not more than \$50,000.

(5) If any violation subject to the civil penalties set out in paragraphs (e)(1) through (4) of this appendix results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than \$105,000 for each offense.

(f) **Operating after being declared unfit by assignment of a final “unsatisfactory” safety rating.** (1) A motor carrier operating a commercial motor vehicle in interstate commerce (except owners or operators of commercial motor vehicles designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51) is subject, after being placed out of service because of receiving a final “unsatisfactory” safety rating, to a civil penalty of not more than \$25,000 (49 CFR 385.13). Each day the transportation continues in violation of a final “unsatisfactory” safety rating constitutes a separate offense.

(2) A motor carrier operating a commercial motor vehicle designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51 is subject, after being placed out of service because of receiving a final “unsatisfactory” safety rating, to a civil penalty of not more than \$75,000 for each offense. If the violation results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than \$175,000 for each offense. Each day the transportation continues in violation of a final “unsatisfactory” safety rating constitutes a separate offense.

(g) **Violations of the commercial regulations (CRs).** Penalties for violations of the CRs are specified in 49 U.S.C. Chapter 149. These penalties relate to transportation subject to the Secretary’s jurisdiction under 49 U.S.C. Chapter 135. Unless otherwise noted, a separate violation occurs for each day the violation continues.

(1) A person who fails to make a report, to specifically, completely, and truthfully answer a question, or to make, prepare, or preserve a record in the form and manner prescribed is liable for a minimum penalty of \$1,000 per violation.

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(2) A person who operates as a carrier or broker for the transportation of property in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$10,000 per violation.

(3) A person who operates as a motor carrier of passengers in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$25,000 per violation.

(4) A person who operates as a foreign motor carrier or foreign motor private carrier in violation of the provisions of 49 U.S.C. 13902 (c) is liable for a minimum penalty of \$650 per violation.

(5) A person who operates as a foreign motor carrier or foreign motor private carrier without authority, before the implementation of the land transportation provisions of the North American Free Trade Agreement, outside the boundaries of a commercial zone along the United States-Mexico border is liable for a maximum penalty of \$11,000 for an intentional violation and a maximum penalty of \$32,500 for a pattern of intentional violations.

(6) A person who operates as a motor carrier or broker for the transportation of hazardous wastes in violation of the registration provisions of 49 U.S.C. 13901 is liable for a minimum penalty of \$20,000 and a maximum penalty of \$40,000 per violation.

(7) A motor carrier or freight forwarder of household goods, or their receiver or trustee, that does not comply with any regulation relating to the protection of individual shippers is liable for a minimum penalty of \$1,100 per violation.

(8) A person—

(i) Who falsifies, or authorizes an agent or other person to falsify, documents used in the transportation of household goods by motor carrier or freight forwarder to evidence the weight of a shipment or

(ii) Who charges for services which are not performed or are not reasonably necessary in the safe and adequate movement of the shipment is liable for a minimum penalty of \$2,200 for the first violation and \$6,500 for each subsequent violation.

(9) A person who knowingly accepts or receives from a carrier a rebate or offset against the rate specified in a tariff required under 49 U.S.C. 13702 for the transportation of property delivered to the carrier commits a violation for which the penalty is equal to three times the amount accepted as a rebate or offset and three times the value of other consideration accepted or received as a rebate or offset for the six-year period before the action is begun.

(10) A person who offers, gives, solicits, or receives transportation of property by a carrier at a different rate than the rate in effect under 49 U.S.C. 13702 is liable for a maximum penalty of \$120,000 per violation. When acting in the scope of his/her employment, the acts or omissions of a person acting for or employed by a carrier or shipper are considered to be the acts and omissions of that carrier or shipper, as well as that person.

(11) Any person who offers, gives, solicits, or receives a rebate or concession related to motor carrier transportation subject to jurisdiction under subchapter I of 49

U.S.C. Chapter 135, or who assists or permits another person to get that transportation at less than the rate in effect under 49 U.S.C. 13702, commits a violation for which the penalty is \$220 for the first violation and \$275 for each subsequent violation.

(12) A freight forwarder, its officer, agent, or employee, that assists or willingly permits a person to get service under U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to \$650 for the first violation and up to \$2,200 for each subsequent violation.

(13) A person who gets or attempts to get service from a freight forwarder under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to \$650 for the first violation and up to \$2,200 for each subsequent violation.

(14) A person who knowingly authorizes, consents to, or permits a violation of 49 U.S.C. 14103 relating to loading and unloading motor vehicles or who knowingly violates subsection (a) of 49 U.S.C. 14103 is liable for a penalty of not more than \$11,000 per violation.

(15) A person, or an officer, employee, or agent of that person, who tries to evade regulation under Part B of Subtitle IV, Title 49, U.S.C. for carriers or brokers is liable for a penalty of \$220 for the first violation and at least \$275 for a subsequent violation.

(16) A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under Part B of Subtitle IV, Title 49, U.S.C., or an officer, agent, or employee of that person, is liable for a maximum penalty of \$6,500 per violation if it does not make the report, does not completely and truthfully answer the question within 30 days from the date the Secretary requires the answer, does not make or preserve the record in the form and manner prescribed, falsifies, destroys, or changes the report or record, files a false report or record, makes a false or incomplete entry in the record about a business related fact, or prepares or preserves a record in violation of a regulation or order of the Secretary.

(17) A motor carrier, water carrier, freight forwarder, or broker, or their officer, receiver, trustee, lessee, employee, or other person authorized to receive information from them, who discloses information identified in 49 U.S.C. 14908 without the permission of the shipper or consignee is liable for a maximum penalty of \$2,200.

(18) A person who violates a provision of Part B, Subtitle IV, Title 49, U.S.C., or a regulation or order under Part B, or who violates a condition of registration related to transportation that is subject to jurisdiction under subchapter I or III or Chapter 135, or who violates a condition of registration of a foreign motor carrier or foreign motor private carrier under section 13902, is liable for a penalty of \$650 for each violation if another penalty is not provided in 49 U.S.C. Chapter 149.

(19) A violation of Part B, Subtitle IV, Title 49, U.S.C., committed by a director, officer, receiver, trustee, lessee, agent, or employee of a carrier that is a corporation is also a violation by the corporation to which the penalties

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of Chapter 149 apply. Acts and omissions of individuals acting in the scope of their employment with a carrier are considered to be the actions and omissions of the carrier as well as the individual.

(20) In a proceeding begun under 49 U.S.C. 14902 or 14903, the rate that a carrier publishes, files, or participates in under section 13702 is conclusive proof against the carrier, its officers, and agents that it is the legal rate for the transportation or service. Departing, or offering to depart, from that published or filed rate is a violation of 49 U.S.C. 14902 and 14903.

(21) A person—

(i) Who knowingly and willfully fails, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods in interstate commerce for which charges have been estimated by the motor carrier transporting such goods, and for which the shipper has tendered a payment in accordance with part 375, subpart G of this chapter, is liable for a civil penalty of not less than \$10,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(ii) Who is a carrier or broker and is found to be subject to the civil penalties in paragraph (i) of this appendix may also have his or her carrier and/or broker registration suspended for not less than 12 months and not more than 36 months under 49 U.S.C. chapter 139. Such suspension of a carrier or broker shall extend to and include any carrier or broker having the same ownership or operational control as the suspended carrier or broker.

(22) A broker for transportation of household goods who makes an estimate of the cost of transporting any such goods before entering into an agreement with a motor carrier to provide transportation of household goods subject to FMCSA jurisdiction is liable to the United States for a civil penalty of not less than \$10,000 for each violation.

(23) A person who provides transportation of household goods subject to jurisdiction under 49 U.S.C. chapter 135, subchapter I, or provides broker services for such transportation, without being registered under 49 U.S.C. chapter 139 to provide such transportation or services as a motor carrier or broker, as the case may be, is liable to the United States for a civil penalty of not less than \$25,000 for each violation.

(h) **Copying of records and access to equipment, lands, and buildings.** A person subject to 49 U.S.C. chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI of title 49 U.S.C. who fails to allow promptly, upon demand in person or in writing, the Federal Motor Carrier Safety Administration, an employee designated by the Federal Motor Carrier Safety Administration, or an employee of a MCSAP grant recipient to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property, in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b), is subject to a civil penalty of not more than \$1,000 for each offense. Each day of a continuing violation constitutes a separate offense, except that the total of all civil penalties against any violator for all

offenses related to a single violation shall not exceed \$10,000.

(i) A person, or an officer, employee, or agent of that person, that by any means tries to evade regulation of motor carriers under Title 49, United States Code chapter 5, chapter 51, subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502, or a regulation issued under any of those provisions, shall be fined at least \$2,000 but not more than \$5,000 for the first violation and at least \$2,500 but not more than \$7,500 for a subsequent violation.

Part 387—Minimum levels of financial responsibility for motor carriers

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Editorial Note: Nomenclature changes to Part 387 appear at 67 FR 61821-61824, Oct. 2, 2002.

Subpart A—Motor carriers of property

§387.1 Purpose and scope.

This subpart prescribes the minimum levels of financial responsibility required to be maintained by motor carriers of property operating motor vehicles in interstate, foreign, or intrastate commerce. The purpose of these regulations is to create additional incentives to motor carriers to maintain and operate their vehicles in a safe manner and to assure that motor carriers maintain an appropriate level of financial responsibility for motor vehicles operated on public highways.

§387.3 Applicability.

(a) This subpart applies to for-hire motor carriers operating motor vehicles transporting property in interstate or foreign commerce.

(b) This subpart applies to motor carriers operating motor vehicles transporting hazardous materials, hazardous substances, or hazardous wastes in interstate, foreign, or intrastate commerce.

(c) **Exception.** (1) The rules in this part do not apply to a motor vehicle that has a gross vehicle weight rating (GVWR) of less than 10,001 pounds. This exception does not apply if the vehicle is used to transport any quantity of a Division 1.1, 1.2, or 1.3 material, any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A, or to a highway route controlled quantity of a Class 7 material as it is defined in 49 CFR 173.403, in interstate or foreign commerce.

(2) The rules in this part do not apply to the transportation of nonbulk oil, nonbulk hazardous materials, substances, or wastes in intrastate commerce, except that the rules in this part do apply to the transportation of a highway route controlled quantity of a Class 7 material as defined in 49 CFR 173.403, in intrastate commerce.

§387.5 Definitions.

As used in this subpart—

Accident includes continuous or repeated exposure to the same conditions resulting in public liability which the insured neither expected nor intended.

Bodily injury means injury to the body, sickness, or disease including death resulting from any of these.

Cancellation of insurance means the withdrawal of insurance coverage by either the insurer or the insured.

Endorsement means an amendment to an insurance policy.

Environmental restoration means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water of any commodity transported by a motor carrier. This shall include the cost of

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removal and the cost of necessary measure taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Evidence of security means a surety bond or a policy of insurance with the appropriate endorsement attached.

Financial responsibility means the financial reserves (e.g., insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this part covering public liability.

For-hire carriage means the business of transporting, for compensation, the goods or property of another.

In bulk means the transportation, as cargo, of property, except Division 1.1, 1.2, or 1.3 materials, and Division 2.3, Hazard Zone A gases, in containment systems with capacities in excess of 3,500 water gallons.

In bulk (Division 1.1, 1.2, and 1.3 explosives) means the transportation, as cargo, of any Division 1.1, 1.2, or 1.3 materials in any quantity.

In bulk (Division 2.3, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A materials) means the transportation, as cargo, of any Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material, in any quantity.

Insured and principal means the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.

Insurance premium means the monetary sum an insured pays an insurer for acceptance of liability for public liability claims made against the insured.

Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes, but is not limited to, a motor carrier's agent, officer, or representative; an employee responsible for hiring, supervising, training, assigning, or dispatching a driver; or an employee concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

Property damage means damage to or loss of use of tangible property.

Public liability means liability for bodily injury or property damage and includes liability for environmental restoration.

State means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

§387.7 Financial responsibility required.

(a) No motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in §387.9 of this subpart.

(b)(1) Policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated. Cancellation

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may be effected by the insurer or the insured motor carrier giving 35 days' notice in writing to the other. The 35 days' notice shall commence to run from the date the notice is mailed. Proof of mailing shall be sufficient proof of notice.

(2) **Exception.** Policies of insurance and surety bonds may be obtained for a finite period of time to cover any lapse in continuous compliance.

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

- (i) The Certificate of Registration;
- (ii) The required insurance endorsement (Form MCS-90); and
- (iii) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the temporary insurance coverage authorized by this exception. Mexican motor carriers insured under this exception are also exempt from the notice of cancellation requirements stated on Form MCS-90.

(c) Policies of insurance and surety bonds required under this section may be replaced by other policies of insurance or surety bonds. The liability of the retiring insurer or surety, as to events after the termination date, shall be considered as having terminated on the effective date of the replacement policy of insurance or surety bond or at the end of the 35 day cancellation period required in paragraph (b) of this section, whichever is sooner.

(d) Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business. The proof shall consist of:

(1) "Endorsement(s) for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980" (Form MCS-90) issued by an insurer(s);

(2) A "Motor Carrier Surety Bond for Public Liability Under Section 30 of the Motor Carrier Act of 1980" (Form MCS-82) issued by a surety; or

(3) A written decision, order, or authorization of the Federal Motor Carrier Safety Administration authorizing a motor carrier to self-insure under §387.309, provided the motor carrier maintains a satisfactory safety rating as determined by the Federal Motor Carrier Safety Administration under part 385 of this chapter.

(e)(1) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

(2) In addition to maintaining proof of financial responsibility as required by paragraph (d) of this section, non-North America-domiciled private and for-hire motor carriers shall file evidence of financial responsibility with FMCSA in accordance with the requirements of subpart C of this part.

(f) All vehicles operated within the United States by motor carriers domiciled in a contiguous foreign country, shall have on board the vehicle a legible copy, in English, of the proof of the required financial responsibility (Forms MCS-90 or MCS-82) used by the motor carrier to comply with paragraph (d) of this section.

(g) Any motor vehicle in which there is no evidence of financial responsibility required by paragraph (f) of this section shall be denied entry into the United States.

§387.9 Financial responsibility, minimum levels.

The minimum levels of financial responsibility referred to in §387.7 of this subpart are hereby prescribed as follows:

Schedule of limits (Public liability)

Type of carriage	Commodity transported	January 1, 1985
(1) For-hire (In interstate or foreign commerce, with a gross vehicle weight rating of 10,001 or more pounds).	Property (nonhazardous).	\$ 750,000
(2) For-hire and Private (In interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,001 or more pounds).	Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2 and 1.3 materials. Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403.	5,000,000
(3) For-hire and Private (In interstate or foreign commerce, in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,001 or more pounds).	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials, and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	1,000,000
(4) For-hire and Private (In interstate or foreign commerce, with a gross vehicle weight rating of less than 10,001 pounds).	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	5,000,000

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§387.11 State authority and designation of agent.

A policy of insurance or surety bond does not satisfy the financial responsibility requirements of this subpart unless the insurer or surety furnishing the policy or bond is—

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates; or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

(d) A Canadian insurance company legally authorized to issue a policy of insurance in the Province or Territory of Canada in which the Canadian motor carrier has its principal place of business or domicile, and that is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction over the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

§387.13 Fiduciaries.

The coverage of fiduciaries shall attach at the moment of succession of such fiduciaries.

§387.15 Forms.

Endorsements for policies of insurance (Illustration I) and surety bonds (Illustration II) must be in the form prescribed by the FMCSA and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated, as required in §387.7 of this subpart. The continuous coverage requirement does not apply to Mexican motor carriers insured under §387.7(b)(3) of this subpart. The endorsement and surety bond shall be issued in the exact name of the motor carrier.

ILLUSTRATION I

Form MCS-90 (3/82)
Form Approved
OMB No. 2125-0074
ENDORSEMENT FOR MOTOR CARRIER POLICIES OF
INSURANCE FOR PUBLIC LIABILITY UNDER SECTIONS 29
AND 30 OF THE MOTOR CARRIER ACT OF 1980

Issued to _____
of _____
Dated at _____
this _____
day of _____, 19 _____

Amending Policy No. _____
Effective Date _____
Name of Insurance Company _____
Countersigned by _____
Authorized Company Representative

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "X", for the limits shown:

This insurance is primary and the company shall not be liable for amounts in excess of \$_____ for each accident.

This insurance is excess and the company shall not be liable for amounts in excess of \$_____ for each accident in excess of the underlying limit of \$_____ for each accident.

Whenever required by the FMCSA the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the policy is in force as of a particular date. The telephone number to call is:

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's jurisdiction, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, D.C.).

DEFINITIONS AS USED IN THIS ENDORSEMENT

Accident includes continuous or repeated exposure to conditions which results in bodily injury, property damage, or environmental damage which the insured neither expected or intended.

Motor Vehicle means a land vehicle, machine, truck, tractor, trailer, or semi-trailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Environmental Restoration means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Property Damage means damage to or loss of use of tangible property.

Public Liability means liability for bodily injury, property damage, and environmental restoration.

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The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Administration.

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

ILLUSTRATION II

Form MCS-82 (4/83)
 (Form approved by Office of Management and Budget under control no. 2125-0075)
 MOTOR CARRIER PUBLIC LIABILITY SURETY BOND
 UNDER SECTIONS 29 AND 30 OF THE MOTOR CARRIER
 ACT OF 1980

Parties	Surety company and principal place of business address	Motor carrier principal, FMCSA Docket No. and principal place of business
_____	_____	_____
_____	_____	_____
_____	_____	_____

Purpose—This is an agreement between the Surety and the Principal under which the Surety, its successors and assignees, agree to be responsible for the payment of any final judgment or judgments against the Principal for public liability, property damage, and environmental restoration liability claims in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing provisions—(1) Sections 29 and 30 of the Motor Carrier Act of 1980 (49 U.S.C. 13906).

(2) Rules and regulations of the Federal Motor Carrier Safety Administration.

Conditions—The Principal is or intends to become a motor carrier of property subject to the applicable governing provisions relating to financial responsibility for the protection of the public.

This bond assures compliance by the Principal with the applicable governing provisions, and shall inure to the benefit of any person or persons who shall recover a final judgment or judgments against the Principal for public liability, property damage, or environmental restoration liability claims (excluding injury to or death of the Principal's employees while engaged in the course of their employment, and loss of or damage to property of the principal, and the cargo transported by the Principal). If every final judgment shall be paid for such claims resulting from the negligent operation, maintenance, or use of motor vehicles in transportation subject to the applicable governing provisions, then this obligation shall be void, otherwise it will remain in full effect.

Within the limits described herein, the Surety extends to such losses regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the Principal or elsewhere.

The liability of the Surety on each motor vehicle subject to the financial responsibility requirements of Section's 29 and 30 of the Motor Carrier Act of 1980 for each accident shall not exceed \$____, and shall be a continuing one not with-standing any recovery hereunder.

The surety agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the surety bond is in force as of a particular date. The telephone number to call is: _____

This bond is effective from _____ (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described herein. The principal or the Surety may at any time terminate this bond by giving (1) thirty-five (35) days notice in writing to the other party (said 35

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day notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the Principal is subject to the FMCSA's jurisdiction, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date notice is received by the FMCSA at its office in Washington, D.C.). The Surety shall not be liable for the payment of any judgment or judgments against the Principal for public liability, property damage, or environmental restoration claims resulting from accidents which occur after the termination of this bond as described herein, but such termination shall not affect the liability of the Surety for the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

(AFFIX CORPORATE SEAL)

Date _____
Surety _____
City _____
State _____
By _____

ACKNOWLEDGEMENT OF SURETY

State of _____
County of _____
On this ____ day of _____, 19 _____, before me personally came _____, who, being by me duly sworn, did depose and say that he/she resides in _____; that he/she is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the board of directors of said corporation, that he/she signed his/her name thereto by like order, and he/she duly acknowledged to me that he executed the same for and on behalf of said corporation.

(OFFICIAL SEAL)

Title of official administering oath _____
Surety Company file No. _____

§387.17 Violation and penalty.

Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for civil penalty of no more than \$11,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the Administrator, or his/her designee by written notice. In determining the amount of such penalty, the Administrator, or his/her designee shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, effect on ability to continue to do business, and such other matters as justice may require.

§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).

Subpart B—Motor carriers of passengers

§387.25 Purpose and scope.

This subpart prescribes the minimum levels of financial responsibility required to be maintained by for-hire motor carriers of passengers operating motor vehicles in interstate or foreign commerce. The purpose of these regulations is to create additional incentives to carriers to operate their vehicles in a safe manner and to assure that they maintain adequate levels of financial responsibility.

§387.27 Applicability.

(a) This subpart applies to for-hire motor carriers transporting passengers in interstate or foreign commerce.

(b) **Exception.** The rules in this subpart do not apply to—

(1) A motor vehicle transporting only school children and teachers to or from school;

(2) A motor vehicle providing taxicab service and having a seating capacity of less than 7 passengers and not operated on a regular route or between specified points;

(3) A motor vehicle carrying less than 16 individuals in a single daily round trip to commute to and from work; and

(4) A motor vehicle operated by a motor carrier under contract providing transportation of preprimary, primary, and secondary students for extracurricular trips organized, sponsored, and paid by a school district.

§387.29 Definitions.

As used in this subpart—

Accident includes continuous or repeated exposure to the same conditions resulting in public liability which the insured neither expected nor intended.

Bodily injury means injury to the body, sickness, or disease including death resulting from any of these.

Endorsement means an amendment to an insurance policy.

Financial responsibility means the financial reserves (e.g., insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this subpart covering public liability.

For hire carriage means the business of transporting, for compensation, passengers and their property, including any compensated transportation of the goods or property or another.

Insured and principal means the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.

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Insurance premium means the monetary sum an insured pays an insurer for acceptance of liability for public liability claims made against the insured.

Motor carrier means a for-hire motor carrier. The term includes, but is not limited to, a motor carrier's agent, officer, or representative; an employee responsible for hiring, supervising, training, assigning, or dispatching a driver; or an employee concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

Property damage means damage to or loss of use of tangible property.

Public liability means liability for bodily injury or property damage.

Seating capacity means any plan view location capable of accommodating a person at least as large as a 5th percentile adult female, if the overall seat configuration and design and vehicle design is such that the position is likely to be used as a seating position while the vehicle is in motion, except for auxiliary seating accommodations such as temporary or folding jump seats. Any bench or split bench seat in a passenger car, truck or multipurpose passenger vehicle with a gross vehicle weight rating less than 10,000 pounds, having greater than 50 inches of hip room (measured in accordance with SEA Standards J1100(a)) shall have not less than three designated seating positions, unless the seat design or vehicle design is such that the center position cannot be used for seating.

§387.31 Financial responsibility required.

(a) No motor carrier shall operate a motor vehicle transporting passengers until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in §387.33 of this subpart.

(b) Policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated.

(1) Cancellation may be effected by the insurer or the insured motor carrier giving 35 days notice in writing to the other. The 35 days notice shall commence to run from the date the notice is mailed. Proof of mailing shall be sufficient proof of notice.

(2) **Exception.** Policies of insurance and surety bonds may be obtained for a finite period of time to cover any lapse in continuous compliance.

(3) **Exception.** Mexican motor carriers may meet the minimum financial responsibility requirements of this subpart by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurers that meet the requirements of §387.35 of this subpart. A Mexican motor carrier so insured must have available for inspection in each of its vehicles copies of the following documents:

(i) The required insurance endorsement (Form MCS-90B); and

(ii) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the temporary insurance coverage authorized by this exception.

Mexican motor carriers insured under this exception are also exempt from the notice of cancellation requirements stated on Form MCS-90B.

(c) Policies of insurance and surety bonds required under this section may be replaced by other policies of insurance or surety bonds. The liability of retiring insurer or surety, as to events after the termination date, shall be considered as having terminated on the effective date of the replacement policy of insurance or surety bond or at the end of the 35 day cancellation period required in paragraph (b) of this section, whichever is sooner.

(d) Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business. The proof shall consist of—

(1) "Endorsement(s) for Motor Carriers of Passengers Policies of Insurance for Public Liability Under Section 18 of the Bus Regulatory Reform Act of 1982" (Form MCS-90B) issued by an insurer(s); or

(2) A "Motor Carrier of Passengers Surety Bond for Public Liability Under Section 18 of the Bus Regulatory Reform Act of 1982" (Form MCS-82B) issued by a surety.

(e)(1) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

(2) In addition to maintaining proof of financial responsibility as required by paragraph (d) of this section, non-North America-domiciled private and for-hire motor carriers shall file evidence of financial responsibility with FMCSA in accordance with the requirements of subpart C of this part.

(f) All passenger carrying vehicles operated within the United States by motor carriers domiciled in a contiguous foreign country, shall have on board the vehicle a legible copy, in English, of the proof of the required financial responsibility (Forms MCS-90B or MCS-82B) used by the motor carrier to comply with paragraph (d) of this section.

(g) Any motor vehicle in which there is no evidence of financial responsibility required by paragraph (f) of this section shall be denied entry into the United States.

§387.33 Financial responsibility, minimum levels.

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

Schedule of Limits

Public Liability

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

Vehicle Seating Capacity	Effective Dates	
	Nov. 19, 1983	Nov. 19, 1985
(1) Any vehicle with a seating capacity of 16 passengers or more	\$2,500,000	\$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less ¹	750,000	1,500,000

¹Except as provided in §387.27(b).

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§387.33 Financial responsibility, minimum levels. (Effective October 23, 2015)

(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 ²Except 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.

§387.35 State authority and designation of agent.

A policy of insurance or surety bond does not satisfy the financial responsibility requirements of this subpart unless the insurer or surety furnishing the policy or bond is—

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates, or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

(d) A Canadian insurance company legally authorized to issue a policy of insurance in the Province or Territory of Canada in which the Canadian motor carrier has its principal place of business or domicile, and that is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction over the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

§387.37 Fiduciaries.

The coverage of fiduciaries shall attach at the moment of succession of such fiduciaries.

§387.39 Forms.

Endorsements for policies of insurance (Illustration I) and surety bonds (Illustration II) must be in the form prescribed by the FMCSA and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated as required in §387.31 of this subpart. The continuous coverage requirement does not apply to Mexican motor carriers insured under §387.31(b)(3) of this subpart. The endorsement and surety bond shall be issued in the exact name of the motor carrier.

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U.S. Department
of Transportation
Federal Motor Carrier
Safety Administration

ENDORSEMENT FOR MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY UNDER SECTION 18 OF THE BUS REGULATORY REFORM ACT OF 1982

Form Approved:
OMB No.: 2126-0008

Issued to _____ of _____
Dated at _____ this _____ day of _____, 20____
Amending Policy No. _____ Effective Date _____
Name of Insurance Company _____

Countersigned by _____
Authorized Company Representative

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "[X]" for the limits shown:

- This insurance is primary and the company shall not be liable for amounts in excess of \$ _____ for each accident.
- This insurance is excess and the company shall not be liable for amounts in excess of \$ _____ for each accident in excess of the underlying limit of \$ _____ for each accident.
- Whenever required by the Federal Motor Carrier Safety Administration (FMCSA), the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the policy is in force as of a particular date. The telephone number to call is: _____.

Cancellation of this endorsement may be effected by the company of the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's registration requirements, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, D.C.).

DEFINITIONS AS USED IN THIS ENDORSEMENT

Accident includes continuous or repeated exposure to conditions which result in Public Liability which the insured neither expected nor intended.
Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Motor Carrier means a for-hire carrier of passengers by motor vehicle.
Property Damage means damage to or loss of use of tangible property
Public Liability means liability for bodily injury or property damage.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a for-hire motor carrier of passengers with Section 18 of the Bus Regulatory Reform Act of 1982 and the rules and regulations of the Federal Motor Carrier Safety Administration.

However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment received against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to financial responsibility requirements of Section 18 of the Bus Regulatory Reform Act of 1982 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

The Bus Regulatory Reform Act of 1982 requires limits of financial responsibility according to vehicle seating capacity, it is the MOTOR CARRIER'S obligation to obtain the required limits of financial responsibility. THE SCHEDULE OF LIMITS SHOWN ON THE REVERSE SIDE DOES NOT PROVIDE COVERAGE. The limits shown in the schedule are for information purposes only.

SCHEDULE OF LIMITS

PUBLIC LIABILITY

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

Vehicle Seating Capacity	Effective Dates	
	Nov. 19, 1983	Nov. 19, 1985
(1) Any vehicle with a seating capacity of 16 passengers or more.	\$2,500,000	\$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less.	\$ 750,000	\$1,500,000

Form MCS-90B
(6/2003)

FLEET MANAGEMENT PRO



U.S. Department of Transportation
Federal Motor Carrier Safety Administration

Form Approved
OMB No.: 2126-0008

MOTOR CARRIER PUBLIC LIABILITY SURETY BOND UNDER SECTION 18 OF THE BUS REGULATORY REFORM ACT OF 1982

PARTIES	Surety Company and Principal Place of Business Address _____ _____ _____ _____	Motor Carrier Principal, FMCSA Docket No. _____ and Principal Place of Business Address _____ _____ _____ _____
----------------	--	---

PURPOSE This is an agreement between the Surety and the Principal under which the Surety, its successors and assignees, agree to be responsible for the payment of any final judgment or judgments against the Principal for public liability and property damage claims in the sums prescribed herein, subject to the governing provisions and following conditions.

GOVERNING PROVISIONS (1) Section 18 of the Bus Regulatory Reform Act of 1982
(2) Rules and regulations of the Federal Motor Carrier Safety Administration (FMCSA)

CONDITIONS The Principal is or intends to become a motor carrier of passengers subject to the applicable governing provisions relating to financial responsibility for the protection of the public.

This bond assures compliance by the Principal with the applicable governing provisions, and shall inure to the benefit of any person or persons who shall recover a final judgment or judgments against the Principal for public liability or property damage claims (excluding injury to or death of the Principal's employees while engaged in the course of their employment, and loss of or damage to property of the Principal, and the cargo transported by the Principal). If every final judgment shall be paid for such claims resulting from the negligent operation, maintenance, or use of motor vehicles in transportation subject to the applicable governing provisions, then this obligation shall be void, otherwise it will remain in full effect.

Within the limits described herein, the Surety extends to such losses regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the Principal or elsewhere.

The liability of the Surety for each motor vehicle subject to the applicable governing provisions for each accident shall not exceed \$ _____, and shall be a continuing one notwithstanding any recovery thereunder.

The surety agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the surety bond is in force as of a particular date. The telephone number to call is _____.

This bond is effective from _____ (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described herein. The Principal or the Surety may at any time terminate this bond by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the Principal is subject to the FMCSA's registration requirements, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date notice is received by the FMCSA at its office in Washington, D.C.). The Surety shall not be liable for the payment of any judgment or judgments against the Principal for public liability or property damage claims resulting from accidents which occur after the termination of this bond as described herein, but such termination shall not affect the liability of the Surety from the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

Date

(AFFIX CORPORATE SEAL) _____
Surety

City State

By _____

ACKNOWLEDGMENT OF SURETY

STATE OF _____ COUNTY OF _____

On this _____ day of _____, 20____, before me personally came _____, who, being by me duly sworn, did depose and say that he resides in _____, that he/she is _____ of the _____, the corporation described in and which executes the foregoing instrument, that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the board of directors of said corporation, that he signed his name thereto by like order, and he duly acknowledged to me that he executed the same for and on behalf of said corporation.

Title of official administering oath

(OFFICIAL SEAL)
Surety Company File No. _____
Form MCS-82B
(9/2003)

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§387.41 Violation and penalty.

Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for civil penalty of no more than \$11,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the Administrator or his designee, by written notice. In determining the amount of such penalty, the Administrator or his designee shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, effect on ability to continue to do business, and such other matters as justice may require.

§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).

Subpart C—Surety bonds and policies of insurance for motor carriers and property brokers

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

(a) **Public liability.** (1) No common or contract carrier or foreign (Mexican) motor private carrier or foreign motor carrier transporting exempt commodities subject to Subtitle IV, part B, chapter 135 of Title 49 of the United States Code shall engage in interstate or foreign commerce, and no certificate or permit shall be issued to such a carrier or remain in force unless and until there shall have been filed with and accepted by the FMCSA surety bonds, and 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 of the United States Code, or for loss of or damage to property of others, or, in the case of motor carriers of property operating freight vehicles described in §387.303(b)(2) of this part, for environmental restoration.

(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.

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

(b) **Household goods motor carriers-cargo insurance.** No household goods motor carrier subject to subtitle IV, part B, chapter 135 of title 49 of the U.S. Code shall engage in interstate or foreign commerce, nor shall any certificate be issued to such a household goods motor carrier or remain in force unless and until there shall have been filed with and accepted by the FMCSA, a surety bond, certificate of insurance, proof of qualifications as a self-insurer, or other securities or agreements in the amounts prescribed in §387.303, conditioned upon such carrier making compensation to individual shippers for all property belonging to individual shippers and coming into the possession of such carrier in connection with its transportation service. The terms “household goods motor carrier” and “individual shipper” are defined in part 375 of this subchapter.

(c) **Continuing compliance required.** Such security as is accepted by the FMCSA in accordance with the requirements of Section 13906 of Title 49 of the United States Code shall remain in effect at all times.

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

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

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

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

(i) Small freight vehicles:

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

(ii) Passenger carriers.

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Passenger Carriers: Kind of Equipment

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

(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.

(2) Motor carriers subject to §387.301(a)(2) are required to have security for the required minimum limits as follows:

Kind of equipment	Commodity transported	Minimum limits
(i) Freight vehicles of 10,001 pounds (4,536 kilograms) or more GVWR.	Property (non-hazardous)	\$750,000

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

(3) Motor carriers subject to the minimum limits governed by this section, which are also subject to Department of Transportation limits requirements, are at no time required to have security for more than the required minimum limits established by the Secretary of Transportation in the applicable provisions of 49 CFR Part 387—Minimum Levels of Financial Responsibility for Motor Carriers.

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

- (i) The certificate of registration;

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(ii) The required insurance endorsement (Form MCS-90); and

(iii) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the insurance coverage.

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

(c) **Household goods motor carriers: Cargo liability.** Security required to compensate individual shippers for loss or damage to property belonging to them and coming into the possession of household goods motor carriers in connection with their transportation service;

(1) For loss of or damage to household goods carried on any one motor vehicle—\$5,000,

(2) For loss of or damage to or aggregate of losses or damages of or to household goods occurring at any one time and place—\$10,000.

§387.305 Combination vehicles.

The following combinations will be regarded as one motor vehicle for purposes of this part, (a) a tractor and trailer or semi-trailer when the tractor is engaged solely in drawing the trailer or semi-trailer, and (b) a truck and trailer when both together bear a single load.

§387.307 Broker surety bond or trust fund.

(a) **Security.** A broker must have a surety bond or trust fund in effect for \$75,000. The FMCSA will not issue a broker license until a surety bond or trust fund for the full limits of liability prescribed herein is in effect. The broker license shall remain valid or effective only as long as a surety bond or trust fund remains in effect and shall ensure the financial responsibility of the broker.

(b) **Evidence of security.** Evidence of a surety bond must be filed using the FMCSA's prescribed Form BMC-84. Evidence of a trust fund with a financial institution must be filed using the FMCSA's prescribed Form BMC 85. The surety bond or the trust fund shall ensure the financial responsibility of the broker by providing for payments to shippers or motor carriers if the broker fails to carry out its contracts, agreements, or arrangements for the supplying of transportation by authorized motor carriers.

(c) **Financial Institution.** When used in this section and in forms prescribed under this section, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, shall mean—Each agent, agency, branch or office within the United States of any person, as defined by the ICC Termination Act, doing business in one or more of the capacities listed below:

(1) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));

(2) A commercial bank or trust company;

(3) An agency or branch of a foreign bank in the United States;

(4) An insured institution (as defined in section 401(a) of the National Housing Act (12 U.S.C. 1724(a));

(5) A thrift institution (savings bank, building and loan association, credit union, industrial bank or other);

(6) An insurance company;

(7) A loan or finance company; or

(8) A person subject to supervision by any State or Federal bank supervisory authority.

(d) **Forms and Procedures—**

(1) **Forms for broker surety bonds and trust agreements.** Form BMC-84 broker surety bond will be filed with the FMCSA for the full security limits under paragraph (a) of this section; or Form BMC-85 broker trust fund agreement will be filed with the FMCSA for the full security limits under paragraph (a) of this section.

(2) **Broker surety bonds and trust fund agreements in effect continuously.** Surety bonds and trust fund agreements shall specify that coverage thereunder will remain in effect continuously until terminated as herein provided.

(i) **Cancellation notice.** The surety bond and the trust fund agreement may be cancelled as only upon 30 days' written notice to the FMCSA, on prescribed Form BMC 36, by the principal or surety for the surety bond, and on prescribed Form BMC 85, by the trustor/broker or trustee for the trust fund agreement. The notice period commences upon the actual receipt of the notice at the FMCSA's Washington, DC office.

(ii) **Termination by replacement.** Broker surety bonds or trust fund agreements which have been accepted by the FMCSA under these rules may be replaced by other surety bonds or trust fund agreements, and the liability of the retiring surety or trustee under such surety bond or trust fund agreements shall be considered as having terminated as of the effective date of the replacement surety bond or trust fund agreement. However, such termination shall not affect the liability of the surety or the trustee hereunder for the payment of any damages arising as the result of contracts, agreements or arrangements made by the broker for the supplying of transportation prior to the date such termination becomes effective.

(3) **Filing and copies.** Broker surety bonds and trust fund agreements must be filed with the FMCSA in duplicate.

§387.309 Qualifications as a self-insurer and other securities or agreements.

(a) **As a self-insurer.** The FMCSA will consider and will approve, subject to appropriate and reasonable conditions, the application of a motor carrier to qualify as a self-insurer, if the carrier furnishes a true and accurate statement of its financial condition and other evidence that establishes to the satisfaction of the FMCSA the ability of the motor carrier to satisfy its obligation for bodily injury liability, property damage liability, or cargo liability. Application Guidelines: In addition to filing Form BMC 40, applicants for authority to self-insure against bodily injury and property damage claims should submit evidence that will allow the FMCSA to determine:

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(1) The adequacy of the tangible net worth of the motor carrier in relation to the size of operations and the extent of its request for self-insurance authority. Applicant should demonstrate that it will maintain a net worth that will ensure that it will be able to meet its statutory obligations to the public to indemnify all claimants in the event of loss.

(2) The existence of a sound self-insurance program. Applicant should demonstrate that it has established, and will maintain, an insurance program that will protect the public against all claims to the same extent as the minimum security limits applicable to applicant under §387.303 of this part. Such a program may include, but not be limited to, one or more of the following: irrevocable letters of credit; irrevocable trust funds; reserves; sinking funds; third party financial guarantees, parent company or affiliate sureties; excess insurance coverage; or other similar arrangements.

(3) The existence of an adequate safety program. Applicant must submit evidence of a current "satisfactory" safety rating by the United States Department of Transportation. Non-rated carriers need only certify that they have not been rated. Applications by carriers with a less than satisfactory rating will be summarily denied. Any self-insurance authority granted by the FMCSA will automatically expire 30 days after a carrier receives a less than satisfactory rating from DOT.

(4) Additional information. Applicant must submit such additional information to support its application as the FMCSA may require.

(b) **Other securities or agreements.** The commission also will consider applications for approval of other securities or agreements and will approve any such application if satisfied that the security or agreement offered will afford the security for the protection of the public contemplated by 49 U.S.C. 13906.

§387.311 Bonds and certificates of insurance.

(a) **Public liability.** Each Form BMC 82 surety bond filed with the FMCSA must be for the full limits of liability required under §387.303(b)(1). Form MCS-82 surety bonds and other forms of similar import prescribed by the Department of Transportation, may be aggregated to comply with the minimum security limits required under §387.303(b)(1) or §387.303(b)(2). Each Form BMC 91 certificate of insurance filed with the FMCSA will always represent the full security minimum limits required for the particular carrier, while it remains in force, under §§387.303(b)(1) or 387.303(b)(2), whichever is applicable. Any previously executed Form BMC 91 filed before the current revision which is left on file with the FMCSA after the effective date of this regulation, and not canceled within 30 days of that date will be deemed to certify the same coverage limits as would the filing of a revised Form BMC 91. Each Form BMC 91X certificate of insurance filed with the FMCSA will represent the full security limits under §§387.303(b)(1) or 387.303(b)(2) or the specific security limits of coverage as indicated on the face of the form. If the filing reflects aggregation, the certificate must show clearly whether the insurance is primary or, if excess coverage, the amount of underlying coverage as well as amount of the maximum limits of coverage. *Each Form BMC 91MX

certificate of insurance filed with the FMCSA will represent the security limits of coverage as indicated on the face of the form. The Form BMC 91MX must show clearly whether the insurance is primary or, if excess coverage, the amount of underlying coverage as well as amount of the maximum limits of coverage.

(b) **Cargo liability.** Each Form BMC 83 surety bond filed with the FMCSA must be for the full limits of liability required under §387.303(c). Each Form BMC 34 certificate of insurance filed with the FMCSA will represent the full security limits under §387.303(c) or the specific limits of coverage as indicated on the face of the form. If the filing reflects aggregation, the certificate must show clearly whether the insurance is primary or, if excess coverage, the amount of underlying coverage as well as amount of the maximum limits of coverage.

(c) Each policy of insurance in connection with certificate of insurance which is filed with the FMCSA, the shall be amended by attachment of the appropriate endorsement prescribed by the FMCSA and the certificate of insurance filed must accurately reflect that endorsement.

§387.313 Forms and procedures.

(a) **Forms for endorsements, certificates of insurance, and others.**

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

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

For aggregation of insurance for all other carriers to cover security limits under §387.303(b)(1) or (b)(2), a separate Department of Transportation prescribed form endorsement and *Form BMC 91X* certificate is required of each insurer.

When insurance is provided by more than one insurer to aggregate coverage for security limits under §387.303(c) a separate Form BMC 32 endorsement and Form BMC 34 certificate of insurance is required for each insurer.

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

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

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

Form BMC 90 endorsement will be used with each filing of Form BMC 91 or Form BMC 91X certificate with the FMCSA which certifies to coverage not governed by the requirements of the Department of Transportation.

Form BMC 32 endorsement and *Form BMC 34* certificate of insurance and *Form BMC 83* surety bonds are used for the limits of cargo liability under §387.303(c).

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

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

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

(6) **Surety bonds and certificates in effect continuously.**—Surety bonds and certificates of insurance shall specify that coverage thereunder will remain in effect continuously until terminated as herein provided, except (1) when filed expressly to fill prior gaps or lapses in coverage or to cover grants of emergency temporary authority of unusually short duration and the filing clearly so indicates, or (2) in special or unusual circumstances, when special permission is obtained for filing certificates of insurance or surety bonds on terms meeting other particular needs of the situation.

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

(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>.

(c) **Name of insured.** Certificates of insurance and surety bonds shall be issued in the full and correct name of the individual, partnership, corporation or other person to whom the certificate, permit, or license is, or is to be, issued. In the case of a partnership all partners shall be named.

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

the case may be, which period of thirty (30) days shall commence to run from the date such notice on the prescribed form is actually received by the FMCSA.

(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>.

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

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

§387.315 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the FMCSA unless issued by an insurance or surety company that is authorized (licensed or admitted) to issue bonds or underlying insurance policies:

(a) In each State in which the motor carrier is authorized by the FMCSA to operate, or

(b) In the State in which the motor carrier has its principal place of business or domicile, and will designate in writing upon request by the FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any State in which the carrier operates, or

(c) In any State, and is eligible as an excess or surplus lines insurer in any State in which business is written, and will make the designation of process agent described in paragraph (b) of this section.

(d) In the Province or Territory of Canada in which a Canadian motor carrier has its principal place of business or domicile, and will designate in writing upon request by FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any State in which the carrier operates.

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§387.317 Refusal to accept, or revocation by the FMCSA of surety bonds, etc.

The FMCSA may, at any time, refuse to accept or, may revoke its acceptance of any bond, certificate of insurance, qualifications as a self-insurer, rety or other securities or agreements if, in its judgment such security does not comply with these sections or for any reason fails to provide satisfactory or adequate protection for the public. Revocation of acceptance of any certificate of insurance, surety bond or other security shall not relieve the motor carrier from compliance with §387.301(d).

§387.319 Fiduciaries.

(a) **Definitions.** The terms “insured” and “principal” as used in a certificate of insurance, surety bond, and notice of cancellation, filed by or for a motor carrier, include the motor carrier and its fiduciary as the moment of succession. The term “fiduciary” means any person authorized by law to collect and preserve property of incapacitated, financially disabled, bankrupt, or deceased holders of operating rights, and assignees of such holders.

(b) Insurance coverage in behalf of fiduciaries to apply concurrently. The coverage furnished under the provisions of this section on behalf of fiduciaries shall not apply subsequent to the effective date of other insurance, or other security, filed with and approved by the FMCSA in behalf of such fiduciaries. After the coverage provided in this section shall have been in effect thirty (30) days, it may be cancelled or withdrawn within the succeeding period of thirty (30) days by the insurer, the insured, the surety, or the principal upon ten (10) days’ notice in writing to the FMCSA at its office in Washington, D.C., which period of ten (10) days shall commence to run from the date such notice is actually received by the FMCSA. After such coverage has been in effect for a total of sixty (60) days, it may be cancelled or withdrawn only in accordance with §1043.7.

§387.321 Operations in foreign commerce.

No motor carrier may operate in the United States in the course of transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country unless and until there shall have been filed with and accepted by the FMCSA a certificate of insurance, surety bond, proof of qualifications as a self-insurer, or other securities or agreements in the amount prescribed in §387.303(b), 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 between places in a foreign country or between a place in one foreign country and a place in another foreign country, insofar as such transportation takes place in the United States, or for loss of or damage to property of others. The security for the protection of the public required by this section shall be maintained in effect at all times and shall be subject to the provisions of §§387.309 through 387.319. The requirements of §387.315(a) shall be satisfied if the insurance or surety company, in addition to having been approved by the FMCSA, is legally authorized to issue policies or surety bonds in at least one of the States in the United States, or one of the Provinces in Canada, and has filed with the FMCSA the name and address of a person upon whom legal process may be served in each State in or through which the motor carrier operates. Such designation may from time to time be changed by like designation similarly filed, but shall be maintained during the effectiveness of any certificate of insurance or surety bond issued by the company, and thereafter with respect to any claims arising during the effectiveness of such certificate or bond. The term “motor carrier” as used in this section shall not include private carriers or carriers operating under the partial exemption from regulation in 49 U.S.C. 13503 and 13506.

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

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

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

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

Electronic Insurance Filing Transactions

Field name	Number of positions	Description	Required F=filing C=cancel B=both	Start field	End field
Record type	1 Numeric	1 = Filing 2 = Cancellation	B	1	1
Insurer number	8 Text	FMCSA Assigned Insurer Number (Home Office) With Suffix (Issuing Office), If Different, e.g. 12345-01	B	2	9
Filing type	1 Numeric	1 = BI & PD 2 = Cargo 3 = Bond 4 = Trust Fund	B	10	10
FMCSA docket number	8 Text	FMCSA Assigned MC or FF Number, e.g., MC000045.	B	11	18
Insured legal name	120 Text	Legal Name	B	19	138

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Field name	Number of positions	Description	Required F=filing C=cancel B=both	Start field	End field
Insured d/b/a name	60 Text	Doing Business As Name If Different From Legal Name.	B	139	198
Insured address	35 Text	Either street or mailing address	B	199	233
Insured city	30 Text		B	234	263
Insured state	2 Text		B	264	265
Insured zip code	9 Numeric	(Do not include dash if using 9 digit code)	B	266	274
Insured country	2 Text	(Will default to US)	B	275	276
Form code	10 Text	BMC-91, BMC-91X, BMC-34, BMC-35, ETC	B	277	286
Full, primary or excess coverage	1 Text	If BMC-91X, P or E = indicator of primary or excess policy; 1 = Full under §387.303(b)(1); 2 = Full under §387.303(b)(2).	F	287	287
Limit of liability	5 Numeric	\$ in Thousands	F	288	292
Underlying limit of liability	5 Numeric	\$ in Thousands (will default to \$000 if Primary).	F	293	297
Effective date	8 Text	MM/DD/YY Format for both Filing or Cancellation.	B	298	305
Policy number	25 Text	Surety companies may enter bond number.	B	306	330

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

§387.323 Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations. (Effective October 23, 2015)

(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.

Subpart D—Surety bonds and policies of insurance for freight forwarders

§387.401 Definitions.

(a) **Freight forwarder** means 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, consolidating, break-bulk, and distribution of shipments; and
- (2) Assumes responsibility for transportation from place of receipt to destination; and
- (3) Uses for any part of the transportation a carrier subject to FMCSA jurisdiction.

(b) **Household goods freight forwarder (HHGFF)** means a freight forwarder of household goods, unaccompanied baggage, or used automobiles.

(c) **Motor vehicle** means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used to transport property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails. The following combinations will be regarded as one motor vehicle:

- (1) A tractor that draws a trailer or semitrailer; and
- (2) A truck and trailer bearing a single load.

§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 in §387.405, for loss of or damage to household goods.

(b) **Public liability.** A HHGFF may not perform transfer, collection, and delivery service until it has filed with the FMCSA and appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at §387.405, conditioned to pay any final judgment recovered against such HHGFF for bodily injury to or the death of any person, or loss of or damage to property (except cargo) of others, or, in the case of freight vehicles described at 49 CFR 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.

(c) **Surety bond or trust fund.** A freight forwarder must have a surety bond or trust fund in effect. The FMCSA will not issue a freight forwarder license until a surety bond or trust fund for the full limit of liability prescribed in §387.405 is in effect. The freight forwarder license shall remain valid or effective only as long as a surety bond or trust fund remains in effect and shall ensure the financial responsibility of the freight forwarder. The requirements applicable to property broker surety bonds and trust funds in §387.307 shall apply to the surety bond or trust fund required by this paragraph.

§387.403 General requirements. (Effective October 23, 2015)

(a) **Cargo.** A household goods freight forwarder may not operate until it has filed with FMCSA an appropriate surety bond, certificate of insurance, qualifications

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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.

§387.405 Limits of liability.

The minimum amounts for cargo and public liability security are identical to those prescribed for motor carriers at 49 CFR 387.303. The minimum amount for the surety bond or trust fund is identical to that prescribed for brokers at 49 CFR 387.307.

§387.407 Surety bonds and certificates of insurance.

(a) The limits of liability under §387.405 may be provided by aggregation under the procedures at 49 CFR part 387, subpart C.

(b) Each policy of insurance used in connection with a certificate of insurance filed with the FMCSA shall be amended by attachment of the appropriate endorsement prescribed by the FMCSA (or the Department of Transportation, where applicable).

§387.409 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the FMCSA unless issued by an insurance or surety company that is authorized (licensed or admitted) to issue bonds or underlying insurance policies:

(a) In each State in which the freight forwarder is authorized by the FMCSA to perform service, or

(b) In the State in which the freight forwarder has its principal place of business or domicile, and will designate in writing upon request by the FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any State in which the freight forwarder performs service; or

(c) In any State, and is eligible as an excess or surplus lines insurer in any State in which business is written, and will make the designation of process agent prescribed in paragraph (b) of this section.

(d) In the Province or Territory of Canada in which a Canadian freight forwarder has its principal place of business or domicile, and will designate in writing upon request by FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any State in which the freight forwarder operates.

§387.411 Qualifications as a self-insurer and other securities or agreements.

(a) **Self-insurer.** The FMCSA will approve the application of a freight forwarder to qualify as a self-insurer if it is able to meet its obligations for bodily-injury, property-damage, and cargo liability without adversely affecting its business.

(b) **Other securities and agreements.** The FMCSA will grant applications for approval of other securities and agreements if the public will be protected as contemplated by 49 U.S.C. 13906(c).

§387.413 Forms and procedures.

(a) **Forms.** Endorsements for policies of insurance, surety bonds, certificates of insurance, applications to qualify as a self-insurer or for approval of other securities or agreements and notices of cancellation must be in the form prescribed at 49 CFR part 387, subpart C.

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

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

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

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

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

(f) **Termination of Forms BMC-32 and BMC-34 for freight forwarders of property other than household goods.** Form BMC-32 endorsements and Form BMC-34 certificates of insurance issued to freight forwarders of property other than household goods that have been accepted by the FMCSA under these rules will expire on March 21, 2011.

§387.415 Acceptance and revocation by the FMCSA.

The FMCSA may at any time refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, qualifications as a self-insurer, or other security or agreement that does not comply with these rules or fails to provide adequate public protection.

§387.417 Fiduciaries.

(a) **Interpretations.** The terms "insured" and "principal" as used in a certificate of insurance, surety bond,

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and notice of cancellation, filed by or for a freight forwarder, include the freight forwarder and its fiduciary (as defined at 49 CFR 387.319(a)) as of the moment of succession.

(b) **Span of security coverage.** The coverage furnished for a fiduciary shall not apply after the effective date of other insurance or security, filed with and accepted by the FMCSA for such fiduciary. After the coverage shall have been in effect 30 days, it may be cancelled or withdrawn within the succeeding 30 days by the insurer, the insured, the surety, or the principal 10 days after the FMCSA receives written notice. After such coverage has been in effect 60 days, it may be cancelled or withdrawn only in accordance with §387.413(d).

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

Insurers may, at their option and in accordance with the requirements and procedures set forth at 49 CFR 387.323, file certificates of insurance, surety bonds, and other securities and agreements electronically.

§387.419 Electronic filing of surety bonds, certificates of insurance and cancellations. (Effective October 23, 2015)

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

Subpart A—General Applicability and Definitions

Sec.	
390.1	Purpose.
390.3	General applicability.
390.5	Definitions.
390.7	Rules of construction.

Subpart B—General Requirements and Information

390.9	State and local laws, effect on.
390.11	Motor carrier to require observance of driver regulations.
390.13	Aiding or abetting violations.
390.15	Assistance in investigations and special studies.
390.16	[Reserved]
390.17	Additional equipment and accessories.
390.19	Motor carrier identification report.
390.21	Marking of CMVs.
390.23	Relief from regulations.
390.25	Extension of relief from regulations—emergencies.
390.27	Locations of motor carrier safety service centers.
390.29	Location of records or documents.
390.31	Copies of records or documents.
390.33	Commercial motor vehicles used for purposes other than defined.
390.35	Certificates, reports, and records: falsification, reproduction, or alteration.
390.37	Violation and penalty.
390.39	Exemptions for “covered farm vehicles.”

Subpart C—Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment

390.40	What responsibilities do intermodal equipment pro-
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	viders have under the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399)?
390.42	What are the responsibilities of drivers and motor carriers operating intermodal equipment?
390.44	What are the procedures to correct the safety record of a motor carrier or an intermodal equipment provider?
390.46	Are State and local laws and regulations on the inspection, repair, and maintenance of intermodal equipment preempted by the Federal Motor Carrier Safety Regulations?

Subpart D—National Registry of Certified Medical Examiners

390.101	Scope.
390.103	Eligibility requirements for medical examiner certification.
390.105	Medical examiner training programs.
390.107	Medical examiner certification testing.
390.109	Issuance of the FMCSA medical examiner certification credential.
390.111	Requirements for continued listing on the National Registry of Certified Medical Examiners.
390.113	Reasons for removal from the National Registry of Certified Medical Examiners.
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Subpart E—Unified Registration System

390.201	USDOT Registration.
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Subpart A—General Applicability and Definitions

Sec.	
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390.17	Additional equipment and accessories.
390.19	Motor carrier identification report.
390.21	Marking of CMVs.
390.23	Relief from regulations.
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390.27	Locations of motor carrier safety service centers.
390.29	Location of records or documents.
390.31	Copies of records or documents.
390.33	Commercial motor vehicles used for purposes other than defined.
390.35	Certificates, reports, and records: falsification, reproduction, or alteration.
390.37	Violation and penalty.
390.39	Exemptions for “covered farm vehicles.”

Subpart C—Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment

390.40	What responsibilities do intermodal equipment providers have under the Federal Motor Carrier Safety
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- Regulations (49 CFR parts 350–399)?
- 390.42 What are the responsibilities of drivers and motor carriers operating intermodal equipment?
- 390.44 What are the procedures to correct the safety record of a motor carrier or an intermodal equipment provider?
- 390.46 Are State and local laws and regulations on the inspection, repair, and maintenance of intermodal equipment preempted by the Federal Motor Carrier Safety Regulations?

Subpart D—National Registry of Certified Medical Examiners

- 390.101 Scope.
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- 390.111 Requirements for continued listing on the National Registry of Certified Medical Examiners.
- 390.113 Reasons for removal from the National Registry of Certified Medical Examiners.
- 390.115 Procedure for removal from the National Registry of Certified Medical Examiners.

Subpart A—General applicability and definitions

§390.1 Purpose.

This part establishes general applicability, definitions, general requirements and information as they pertain to persons subject to this chapter.

§390.3 General applicability.

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

(b) The rules in Part 383, 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, Minimum levels of financial responsibility for motor carriers, are applicable to motor carriers as provided in §§387.3 or 387.27 of this subchapter.

(d) **Additional requirements.** Nothing in 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 which are applicable to that motor carrier's operations.

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

(3) All motor vehicle equipment and accessories required by this subchapter shall be maintained in com-

pliance 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 (f), 392.80, and 392.82 of this chapter.

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

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

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

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

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

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

(g) **Motor carriers that transport hazardous materials in intrastate commerce.** The rules in the following provisions of subchapter B of this chapter 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 chapter.

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

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

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

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

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

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(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.

§390.3 General applicability. (Effective October 23, 2015)

(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 (f), 392.80, and 392.82 of this chapter;

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

(3) The occasional transportation of personal property by individuals not for compensation 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 provisions of §§391.15(e) and (f), 392.80, and 392.82, 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.

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(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 E 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.

§390.5 Definitions.

Unless specifically defined elsewhere, in this subchapter:

Accident means—

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

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

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

(2) The term accident does not include:

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

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

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

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

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

Charter transportation of passengers means transportation, using a bus, of a group of persons who

pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin.

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

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

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

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

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

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

Covered farm vehicle—

(1) Means a straight truck or articulated vehicle—

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

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

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

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

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

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

(ii) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, of more than 26,001 pounds may utilize the exemptions in §390.39 anywhere

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in the State of registration or across State lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

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

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

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

(1) *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.*

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

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

(iii) Headlamp or taillight damage.

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

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

(1) Between vehicle manufacturer's facilities;

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

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

(4) To a motor carrier's terminal or repair facility for the repair of disabling damage (as defined in §390.5) following a crash; or

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

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

Driver means any person who operates any commercial motor vehicle.

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

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

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

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

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

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

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

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

Employer means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business,

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or assigns employees to operate it, but such term does not include the United States, any state, any political subdivision of a State, or an agency established under a compact between States approved by the Congress of the United States.

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

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Highway means any road, street, or way, whether on public or private property, open to public travel. “Open to public travel” means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

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

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

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

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

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

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

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

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

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

Medical examiner means the following:

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

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

Medical variance means a driver has received one of the following from FMCSA that allows the driver to be issued a medical certificate:

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

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

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

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

Motor vehicle means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Federal Motor Carrier Safety Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or

a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

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

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

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

Operator—See driver.

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

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

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

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

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

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

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

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

Radar detector means any device or mechanism to detect the emission of radio microwaves, laser beams or any other future speed measurement technology employed by enforcement personnel to measure the speed of commercial motor vehicles upon public roads

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and highways for enforcement purposes. Excluded from this definition are radar detection devices that meet both of the following requirements:

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

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

Regional Director of Motor Carriers means the Regional Field Administrator, for a given geographical area of the United States.

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

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

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

Secretary means the Secretary of Transportation.

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

Special agent See Appendix B to Subchapter B—Special agents.

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

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

(1) This action includes, but is not limited to, short message service, emailing, instant messaging, a command or request to access a World Wide Web page, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any other form of electronic text retrieval or entry, for present or future communication.

(2) Texting does not include:

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

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

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

Trailer includes:

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

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

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

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

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

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

Use a hand-held mobile telephone means:

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

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

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

§390.7 Rules of construction.

(a) In Part 325 of Subchapter A and in this subchapter, unless the context requires otherwise:

(1) Words imparting the singular include the plural;

(2) Words imparting the plural include the singular;

(3) Words imparting the present tense include the future tense.

(b) In this subchapter the word—

(1) **Officer** includes any person authorized by law to perform the duties of the office;

(2) **Writing** includes printing and typewriting;

(3) **Shall** is used in an imperative sense;

(4) **Must** is used in an imperative sense;

(5) **Should** is used in a recommendatory sense;

(6) **May** is used in a permissive sense; and

(7) **Includes** is used as a word of inclusion, not limitation.

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Subpart B—General requirements and information

§390.9 State and local laws, effect on.

Except as otherwise specifically indicated, Subchapter B of this chapter is not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto.

§390.11 Motor carrier to require observance of driver regulations.

Whenever in Part 325 of Subchapter A or in this subchapter a duty is prescribed for a driver or a prohibition is imposed upon the driver, it shall be the duty of the motor carrier to require observance of such duty or prohibition. If the motor carrier is a driver, the driver shall likewise be bound.

§390.13 Aiding or abetting violations.

No person shall aid, abet, encourage, or require a motor carrier or its employees to violate the rules of this chapter.

§390.15 Assistance in investigations and special studies.

(a) Each motor carrier and intermodal equipment provider must do the following:

(1) Make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative, or authorized third party representative within such time as the request or investigation may specify.

(2) Give an authorized representative all reasonable assistance in the investigation of any accident, including providing a full, true, and correct response to any question of the inquiry.

(b) For accidents that occur after April 29, 2003, motor carriers must maintain an accident register for three years after the date of each accident. For accidents that occurred on or prior to April 29, 2003, motor carriers must maintain an accident register for a period of one year after the date of each accident. Information placed in the accident register must contain at least the following:

(1) A list of accidents as defined at §390.5 of this chapter containing for each accident:

- (i) Date of accident.
- (ii) City or town, or most near, where the accident occurred and the State where the accident occurred.
- (iii) Driver Name.
- (iv) Number of injuries.
- (v) Number of fatalities.
- (vi) Whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicle involved in the accident, were released.

(2) Copies of all accident reports required by State or other governmental entities or insurers.

§390.16 [Reserved]

§390.17 Additional equipment and accessories.

Nothing in this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this subchapter, provided such equipment and accessories do not decrease the safety of operation of the commercial motor vehicles on which they are used.

§390.19 Motor carrier, hazardous materials safety permit applicant/holder, and intermodal equipment provider identification reports.

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

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

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

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

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

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

USDOT Number ending in:	Must file by last day of:
1.....	January
2.....	February
3.....	March
4.....	April
5.....	May
6.....	June
7.....	July
8.....	August
9.....	September
0.....	October

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

(4) A person that fails to complete biennial updates to the information pursuant to paragraph (b)(2) of this section is subject to the penalties prescribed in 49 U.S.C.

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521(b)(2)(B) or 49 U.S.C. 14901(a), as appropriate, and deactivation of its USDOT Number.

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

(d) **Where to file.** The required form under paragraph (a) of this section must be filed with FMCSA Office of Information Management. 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 Information Management, MC-RIO, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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

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

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

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

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

(i) A Mexico-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border must pass the pre-authorization safety audit under §365.507 of this subchapter. The Agency will not issue a USDOT Number until expiration of the protest period provided in §365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest.

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

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

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

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

§390.19 Motor carrier identification reports for certain Mexico-domiciled motor carriers (Effective October 23, 2015)

(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.

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(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.

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

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

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

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

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The lessor's identification number preceded by the letters "USDOT" is displayed in accordance with paragraphs (c) and (d) of this section; and

(iii) The rental agreement entered into by the lessor and the renting motor carrier conspicuously contains the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) The identification marking must be shown on a document placed in a weathertight compartment affixed to the frame of the item of intermodal equipment. The color of the letters used in the document must contrast sharply in color with the background of the document. The document must include additional information to identify the specific item of intermodal equipment (such as the VIN and 4-character SCAC code and 6-digit unique identifying number).

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

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

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

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

§390.23 Relief from regulations.

(a) Parts 390 through 399 of this chapter shall not apply to any motor carrier or driver operating a commercial motor vehicle to provide emergency relief during an emergency, subject to the following time limits:

(1) Regional emergencies.

(i) The exemption provided by paragraph (a)(1) of this section is effective only when:

(A) An emergency has been declared by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; or

(B) The FMCSA Field Administrator has declared that a regional emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) Except as provided in §390.25, this exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 30 days from the date of the initial declaration of the emergency or the exemption from the regulations by the FMCSA Field Administrator, whichever is less.

(2) Local emergencies.

(i) The exemption provided by paragraph (a)(2) of this section is effective only when:

(A) An emergency has been declared by a Federal, State, or local government official having authority to declare an emergency; or

(B) The FMCSA Field Administrator has declared that a local emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) This exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 5 days from the date of the initial declaration of the emergency or the exemption from the regulations by the FMCSA Field Administrator, whichever is less.

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(3) Tow Trucks responding to emergencies.

(i) The exemption provided by paragraph (a)(3) of this section is effective only when a request has been made by a Federal, State or local police officer for tow trucks to move wrecked or disabled motor vehicles.

(ii) This exemption shall not exceed the length of the motor carrier's or driver's direct assistance in providing emergency relief, or 24 hours from the time of the initial request for assistance by the Federal, State or local police officer, whichever is less.

(b) Upon termination of direct assistance to the regional or local emergency relief effort, the motor carrier or driver is subject to the requirements of parts 390 through 399 of this chapter, with the following exception: A driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with parts 390 through 399 of this chapter. However, a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least 10 consecutive hours off duty before the driver is required to return to such terminal or location. Having returned to the terminal or other location, the driver must be relieved of all duty and responsibilities. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches such driver or commercial motor vehicle to another location to begin operations in commerce.

(c) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to a regional or local emergency relief effort, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive in commerce until the driver has met the requirements of §§395.3(a) and (c) and 395.5(a) of this chapter.

§390.25 Extension of relief from regulations—emergencies.

The FMCSA Field Administrator may extend the 30-day time period of the exemption contained in §390.23(a)(1), but not the 5-day time period contained in §390.23(a)(2) or the 24-hour period contained in §390.23(a)(3). Any motor carrier or driver seeking to extend the 30-day limit shall obtain approval from the FMCSA Field Administrator in the region in which the motor carrier's principal place of business is located before the expiration of the 30-day period. The motor carrier or driver shall give full details of the additional relief requested. The FMCSA Field Administrator shall determine if such relief is necessary taking into account both the severity of the ongoing emergency and the nature of the relief services to be provided by the carrier or driver. If the FMCSA Field Administrator approves an extension of the exemption, he or she shall establish a new time limit and place on the motor carrier or driver any other restrictions deemed necessary.

§390.27 Locations of motor carrier safety service centers.

Service center	Territory included	Location of office
Eastern	CT, DC, DE, MA, MD, ME, NJ, NH, NY, PA, PR, RI, VA, VT, Virgin Islands, WV...	802 Cromwell Park Drive, Suite N, Glen Burnie, MD 21061.
Midwestern	IA, IL, IN, KS, MI, MO, MN NE., OH, WI	4749 Lincoln Mall Drive, Suite 300A, Matteson, IL 60443.
Southern.....	AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN.....	1800 Century Boulevard, Suite 1700, Atlanta, GA 30345-3220
Western.....	American Samoa, AK, AZ, CA, CO, Guam, HI, ID, Mariana Islands, MT, ND, NM, NV, OR, SD, TX, UT, WA, WY.....	Golden Hills Office Centre, 12600 West Colfax Avenue, Suite B-300, Lakewood, CO 80215.

Note 1: Canadian carriers, for information regarding proper service center, contact an FMCSA division (State) office in AK, ME, MI, MT, NY, ND, VT, or WA.

Note 2: Mexican carriers are handled through the four southern border divisions and the Western Service Center. For information regarding the proper service center, contact an FMCSA division (State) office in AZ, CA, NM, or TX.

§390.29 Location of records or documents.

(a) A motor carrier with multiple offices or terminals may maintain the records and documents required by this subchapter at its principal place of business, a regional office, or driver work-reporting location unless otherwise specified in this subchapter.

(b) All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location shall be made available for inspection upon request by a special agent or authorized representative of the Federal Motor Carrier Safety Administration at the motor carrier's principal place of business or other location specified by the agent or representative within 48 hours after a request is made.

Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period of time.

§390.31 Copies of records or documents.

(a) All records and documents required to be maintained under this subchapter must be preserved in their original form for the periods specified, unless the records and documents are suitably photographed and the microfilm is retained in lieu of the original record for the required retention period.

(b) To be acceptable in lieu of original records, photographic copies of records must meet the following minimum requirements:

(1) Photographic copies shall be no less readily accessible than the original record or document as normally

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filed or preserved would be and suitable means or facilities shall be available to locate, identify, read, and reproduce such photographic copies.

(2) Any significant characteristic, feature or other attribute of the original record or document, which photography in black and white will not preserve, shall be clearly indicated before the photograph is made.

(3) The reverse side of printed forms need not be copied if nothing has been added to the printed matter common to all such forms, but an identified specimen of each form shall be on the film for reference.

(4) Film used for photographing copies shall be of permanent record-type meeting in all respects the minimum specifications of the National Bureau of Standards, and all processes recommended by the manufacturer shall be observed to protect it from deterioration or accidental destruction.

(5) Each roll of film shall include a microfilm of a certificate or certificates stating that the photographs are direct or facsimile reproductions of the original records. Such certificate(s) shall be executed by a person or persons having personal knowledge of the material covered thereby.

(c) All records and documents required to be maintained under this subchapter may be destroyed after they have been suitably photographed for preservation.

(d) **Exception.** All records except those requiring a signature may be maintained through the use of computer technology provided the motor carrier can produce, upon demand, a computer printout of the required data.

§390.33 Commercial motor vehicles used for purposes other than defined.

Whenever a commercial motor vehicle of one type is used to perform the functions normally performed by a commercial motor vehicle of another type, the requirements of this subchapter and Part 325 of Subchapter A shall apply to the commercial motor vehicle and to its operation in the same manner as though the commercial motor vehicle were actually a commercial motor vehicle of the latter type.

Example: If a commercial motor vehicle other than a bus is used to perform the functions normally performed by a bus, the regulations pertaining to buses and to the transportation of passengers shall apply to that commercial motor vehicle.

§390.35 Certificates, reports, and records: falsification, reproduction, or alteration.

No motor carrier, its agents, officers, representatives, or employees shall make or cause to make—

(a) A fraudulent or intentionally false statement on any application, certificate, report, or record required by Part 325 of subchapter A or this subchapter;

(b) A fraudulent or intentionally false entry on any application, certificate, report, or record required to be used, completed, or retained, to comply with any requirement of this subchapter or Part 325 of Subchapter A; or

(c) A reproduction, for fraudulent purposes, of any application, certificate, report, or record required by this subchapter or Part 325 of Subchapter A.

§390.37 Violation and penalty.

Any person who violates the rules set forth in this subchapter or Part 325 of Subchapter A may be subject to civil or criminal penalties.

§390.39 Exemptions for “covered farm vehicles.”

(a) **Federal requirements.** A covered farm vehicle, as defined in §390.5, including the individual operating that vehicle, is exempt from the following:

(1) Any requirement relating to commercial driver’s licenses in 49 CFR Part 383 or controlled substances and alcohol use and testing in 49 CFR Part 382;

(2) Any requirement in 49 CFR Part 391, Subpart E, Physical Qualifications and Examinations.

(3) Any requirement in 49 CFR Part 395, Hours of Service of Drivers.

(4) Any requirement in 49 CFR Part 396, Inspection, Repair, and Maintenance.

(b) **State requirements—(1) In general.**—Federal transportation funding to a State may not be terminated, limited, or otherwise interfered with as a result of the State exempting a covered farm vehicle, including the individual operating that vehicle, from any State requirement relating to the operation of that vehicle.

(2) **Exception.**—Paragraph (b)(1) of this section does not apply with respect to a covered farm vehicle transporting hazardous materials that require a placard.

(c) **Other exemptions and exceptions.**—The exemptions in paragraphs (a) and (b) of this section are in addition to, not in place of, the agricultural exemptions and exceptions in §§383.3(d)(1), 383.3(e), 383.3(f), 391.2(a), 391.2(b), 391.2(c), 391.67, 395.1(e)(1), 395.1(e)(2), 395.1(h), 395.1(i), and 395.1(k) of this chapter. Motor carriers and drivers may utilize any combination of these exemptions and exceptions, providing they comply fully with each separate exemption and exception.

Subpart C—Requirements and information for intermodal equipment providers and for motor carriers operating intermodal equipment

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

An intermodal equipment provider must—

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

(a) Identify its operations to the FMCSA by filing the Form MCSA-1 required by §390.201.

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

(c) Systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and

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maintained, in a manner consistent with §396.3(a)(1), as applicable, all intermodal equipment intended for interchange with a motor carrier.

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

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

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

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

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

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

(j) Refrain from placing intermodal equipment in service on the public highways if that equipment has been found to pose an imminent hazard, as defined in §396.72(b)(3) of this chapter.

§390.42 What are the responsibilities of drivers and motor carriers operating intermodal equipment?

(a) Before operating intermodal equipment over the road, the driver accepting the equipment must inspect the equipment components listed in §392.7(b) of this subchapter and be satisfied they are in good working order.

(b) A driver or motor carrier transporting intermodal equipment must report to the intermodal equipment provider, or its designated agent, any known damage, defects, or deficiencies in the intermodal equipment at the time the equipment is returned to the provider or the provider's designated agent. The report must include, at a minimum, the items in §396.11(b)(2) of this chapter.

§390.44 What are the procedures to correct the safety record of a motor carrier or an intermodal equipment provider?

(a) **An intermodal equipment provider or its agent** may electronically file questions or concerns at <http://dataqs.fmcsa.dot.gov> about Federal and State data that reference the provider. This includes safety violations alleging that the components, parts, or accessories of intermodal chassis or trailers listed in §392.7(b) of this chapter were not in good working order when inspected at roadside. An intermodal equipment provider should not be held responsible for such violations because a motor carrier indicated pursuant to

§392.7(b) that these components, parts, or accessories had no safety defects at the time of the pre-trip inspection.

(b) A motor carrier or its agent may electronically file questions or concerns at <http://dataqs.fmcsa.dot.gov> about Federal and State data that reference the motor carrier. This includes safety violations alleging that any components, parts, or accessories of intermodal chassis or trailers, except those listed in §392.7(b) of this chapter, were not in good working order when inspected at roadside. Such violations will not be used by FMCSA in making a safety fitness determination of a motor carrier (unless there is evidence that the driver or motor carrier caused or substantially contributed to the violations) because the driver could not readily detect these violations during a pre-trip inspection performed in accordance with §392.7(b).

(c) An intermodal equipment provider, or its agent, may request FMCSA to investigate a motor carrier believed to be in noncompliance with responsibilities under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office.

(d) A motor carrier or its agent may request FMCSA to investigate an intermodal equipment provider believed to be in noncompliance with responsibilities under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office.

§390.46 Are State and local laws and regulations on the inspection, repair, and maintenance of intermodal equipment preempted by the Federal Motor Carrier Safety Regulations?

(a) **General.** As provided by 49 U.S.C. 31151(d), a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization relating to the inspection, repair, and maintenance of intermodal equipment is preempted if such law, regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed by the Federal Motor Carrier Safety Regulations.

(b) **Pre-existing State requirements—**(1) **In general.** Pursuant to 49 U.S.C. 31151(e)(1), unless otherwise provided in paragraph (b)(2) of this section, a State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005, shall remain in effect only until June 17, 2009.

(2) **Nonpreemption determinations—**(i) **In general.** Pursuant to 49 U.S.C. 31151(e)(2), and notwithstanding paragraph (a) of this section, a State requirement described in paragraph (b)(1) of this section is not preempted if the Administrator determines that the State requirement is as effective as the FMCSA final rule and does not unduly burden interstate commerce.

(ii) **Application required.** Paragraph (b)(2)(i) of this section applies to a State requirement only if the State applies to the Administrator for a determination with respect to the requirement before the effective date of the final rule (June 17, 2009). The Administrator will

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make a determination with respect to any such application within 6 months after the date on which the Administrator receives the application.

(iii) **Amended State requirements.** If a State amends a regulation for which it previously received a nonpreemption determination from the Administrator under paragraph (b)(2)(i) of this section, it must apply for a determination of nonpreemption for the amended regulation. Any amendment to a State requirement not preempted under this subsection because of a determination by the Administrator may not take effect unless it is submitted to the Agency before the effective date of the amendment, and the Administrator determines that the amendment would not cause the State requirement to be less effective than the FMCSA final rule on “Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment” and would not unduly burden interstate commerce.

Subpart D—National Registry of Certified Medical Examiners

§390.101 Scope.

The rules in this subpart establish the minimum qualifications for FMCSA certification of a medical examiner and for listing the examiner on FMCSA’s National Registry of Certified Medical Examiners. The National Registry of Certified Medical Examiners Program is designed to improve highway safety and operator health by requiring that medical examiners be trained and certified to determine effectively whether an operator meets FMCSA physical qualification standards under part 391 of this chapter. One component of the National Registry Program is the registry itself, which is a national database of names and contact information for medical examiners who are certified by FMCSA to perform medical examinations of operators.

§390.103 Eligibility requirements for medical examiner certification.

(a) To receive medical examiner certification from FMCSA a person must:

(1) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations. The applicant must be an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional authorized by applicable State laws and regulations to perform physical examinations.

(2) Complete a training program that meets the requirements of §390.105.

(3) Pass the medical examiner certification test provided by FMCSA and administered by a testing organization that meets the requirements of §390.107 and that has electronically forwarded to FMCSA the applicant’s completed test and application information no more than three years after completion of the training program required by paragraph (a)(2) of this section. An applicant must not take the test more than once every 30 days.

(b) If a person has medical examiner certification from FMCSA, then to renew such certification the medical examiner must remain qualified under paragraph (a)(1) of this section and complete additional testing and training as required by §390.111(a)(5).

§390.105 Medical examiner training programs.

An applicant for medical examiner certification must complete a training program that:

(a) Is conducted by a training provider that:

(1) Is accredited by a nationally recognized medical profession accrediting organization to provide continuing education units; and

(2) Meets the following administrative requirements:

(i) Provides training participants with proof of participation.

(ii) Provides FMCSA point of contact information to training participants.

(b) Provides training to medical examiners on the following topics:

(1) Background, rationale, mission, and goals of the FMCSA medical examiner’s role in reducing crashes, injuries, and fatalities involving commercial motor vehicles.

(2) Familiarization with the responsibilities and work environment of commercial motor vehicle operation.

(3) Identification of the operator and obtaining, reviewing, and documenting operator medical history, including prescription and over-the-counter medications.

(4) Performing, reviewing, and documenting the operator’s medical examination.

(5) Performing, obtaining, and documenting additional diagnostic tests or medical opinion from a medical specialist or treating physician.

(6) Informing and educating the operator about medications and non-disqualifying medical conditions that require remedial care.

(7) Determining operator certification outcome and period for which certification should be valid.

(8) FMCSA reporting and documentation requirements.

Guidance on the core curriculum specifications for use by training providers is available from FMCSA.

§390.107 Medical examiner certification testing.

An applicant for medical examiner certification or recertification must apply, in accordance with the minimum specifications for application elements established by FMCSA, to a testing organization that meets the following criteria:

(a) The testing organization has documented policies and procedures that:

(1) Use secure protocols to access, process, store, and transmit all test items, test forms, test data, and candidate information and ensure access by authorized personnel only.

(2) Ensure testing environments are reasonably comfortable and have minimal distractions.

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(3) Prevent to the greatest extent practicable the opportunity for a test taker to attain a passing score by fraudulent means.

(4) Ensure that test center staff who interact with and proctor examinees or provide technical support have completed formal training, demonstrate competency, and are monitored periodically for quality assurance in testing procedures.

(5) Accommodate testing of individuals with disabilities or impairments to minimize the effect of the disabilities or impairments while maintaining the security of the test and data.

(b) Testing organizations that offer testing of examinees not at locations that are operated and staffed by the organizations but by means of remote, computer-based systems must, in addition to the requirements of paragraph (a) of this section, ensure that such systems:

(1) Provide a means to authenticate the identity of the person taking the test.

(2) Provide a means for the testing organization to monitor the activity of the person taking the test.

(3) Do not allow the person taking the test to reproduce or record the contents of the test by any means.

(c) The testing organization has submitted its documented policies and procedures as defined in paragraph (a) of this section and, if applicable, paragraph (b) of this section to FMCSA and agreed to future reviews by FMCSA to ensure compliance with the criteria listed in this section.

(d) The testing organization administers only the currently authorized version of the medical examiner certification test developed and furnished by FMCSA.

§390.109 Issuance of the FMCSA medical examiner certification credential.

Upon compliance with the requirements of §390.103(a) or (b), FMCSA will issue to a medical examiner applicant an FMCSA medical examiner certification credential with a unique National Registry Number and will add the medical examiner's name to the National Registry of Certified Medical Examiners. The certification credential will expire 10 years after the date of its issuance.

§390.111 Requirements for continued listing on the National Registry of Certified Medical Examiners.

(a) To continue to be listed on the National Registry of Certified Medical Examiners, each medical examiner must:

(1) Continue to meet the requirements of this subpart and the applicable requirements of part 391 of this chapter.

(2) Report to FMCSA any changes in the application information submitted under §390.103(a)(3) within 30 days of the change.

(3) Continue to be licensed, certified, or registered, and authorized to perform physical examinations, in accordance with the applicable laws and regulations of each State in which the medical examiner performs examinations.

(4) Maintain documentation of State licensure, registration, or certification to perform physical examinations for each State in which the examiner performs examinations and maintain documentation of and completion of all training required by this section and §390.105. The medical examiner must make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(5) Maintain medical examiner certification by completing training and testing according to the following schedule:

(i) No sooner than 4 years and no later than 5 years after the date of issuance of the medical examiner certification credential, complete periodic training as specified by FMCSA.

(ii) No sooner than 9 years and no later than 10 years after the date of issuance of the medical examiner certification credential:

(A) Complete periodic training as specified by FMCSA; and

(B) Pass the test required by §390.103(a)(3).

(b) FMCSA will issue a new medical examiner certification credential valid for 10 years to a medical examiner who complies with paragraphs (a)(1) through (4) of this section and who successfully completes the training and testing as required by paragraphs (a)(5)(i) and (ii) of this section.

§390.113 Reasons for removal from the National Registry of Certified Medical Examiners.

FMCSA may remove a medical examiner from the National Registry of Certified Medical Examiners when a medical examiner fails to meet or maintain the qualifications established by this subpart, the requirements of other regulations applicable to the medical examiner, or otherwise does not meet the requirements of 49 U.S.C. 31149. The reasons for removal may include, but are not limited to:

(a) The medical examiner fails to comply with the requirements for continued listing on the National Registry of Certified Medical Examiners, as described in §390.111.

(b) FMCSA finds that there are errors, omissions, or other indications of improper certification by the medical examiner of an operator in either the completed Medical Examination Reports or the medical examiner's certificates.

(c) The FMCSA determines the medical examiner issued a medical examiner's certificate to an operator of a commercial motor vehicle who failed to meet the applicable standards at the time of the examination.

(d) The medical examiner fails to comply with the examination requirements in §391.43 of this chapter.

(e) The medical examiner falsely claims to have completed training in physical and medical examination standards as required by this subpart.

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§390.115 Procedure for removal from the National Registry of Certified Medical Examiners.

(a) **Voluntary removal.** To be voluntarily removed from the National Registry of Certified Medical Examiners, a medical examiner must submit a request to the FMCSA Director, Office of Carrier, Driver and Vehicle Safety Standards. Except as provided in paragraph (b) of this section, the Director, Office of Carrier, Driver and Vehicle Safety Standards will accept the request and the removal will become effective immediately. On and after the date of issuance of a notice of proposed removal from the National Registry of Certified Medical Examiners, as described in paragraph (b) of this section, however, the Director, Office of Carrier, Driver and Vehicle Safety Standards will not approve the medical examiner's request for voluntary removal from the National Registry of Certified Medical Examiners.

(b) **Notice of proposed removal.** Except as provided by paragraphs (a) and (e) of this section, FMCSA initiates the process for removal of a medical examiner from the National Registry of Certified Medical Examiners by issuing a written notice of proposed removal to the medical examiner, stating the reasons that removal is proposed under §390.113 and any corrective actions necessary for the medical examiner to remain listed on the National Registry of Certified Medical Examiners.

(c) **Response to notice of proposed removal and corrective action.** A medical examiner who has received a notice of proposed removal from the National Registry of Certified Medical Examiners must submit any written response to the Director, Office of Carrier, Driver and Vehicle Safety Standards no later than 30 days after the date of issuance of the notice of proposed removal. The response must indicate either that the medical examiner believes FMCSA has relied on erroneous reasons, in whole or in part, in proposing removal from the National Registry of Certified Medical Examiners, as described in paragraph (c)(1) of this section, or that the medical examiner will comply and take any corrective action specified in the notice of proposed removal, as described in paragraph (c)(2) of this section.

(1) **Opposing a notice of proposed removal.** If the medical examiner believes FMCSA has relied on an erroneous reason, in whole or in part, in proposing removal from the National Registry of Certified Medical Examiners, the medical examiner must explain the basis for his or her belief that FMCSA relied on an erroneous reason in proposing the removal. The Director, Office of Carrier, Driver and Vehicle Safety Standards will review the explanation.

(i) If the Director, Office of Carrier, Driver and Vehicle Safety Standards finds FMCSA has wholly relied on an erroneous reason for proposing removal from the National Registry of Certified Medical Examiners, the Director, Office of Carrier, Driver and Vehicle Safety Standards will withdraw the notice of proposed removal and notify the medical examiner in writing of the determination. If the Director, Office of Carrier, Driver and Vehicle Safety Standards finds FMCSA has partly relied on an erroneous reason for proposing removal from the National Registry of Certified Medical Examiners, the Director, Office of Carrier, Driver and Vehicle Safety

Standards will modify the notice of proposed removal and notify the medical examiner in writing of the determination. No later than 60 days after the date the Director, Office of Carrier, Driver and Vehicle Safety Standards modifies a notice of proposed removal, the medical examiner must comply with this subpart and correct any deficiencies identified in the modified notice of proposed removal as described in paragraph (c)(2) of this section.

(ii) If the Director, Office of Carrier, Driver and Vehicle Safety Standards finds FMCSA has not relied on an erroneous reason in proposing removal, the Director, Office of Carrier, Driver and Vehicle Safety Standards will affirm the notice of proposed removal and notify the medical examiner in writing of the determination. No later than 60 days after the date the Director, Office of Carrier, Driver and Vehicle Safety Standards affirms the notice of proposed removal, the medical examiner must comply with this subpart and correct the deficiencies identified in the notice of proposed removal as described in paragraph (c)(2) of this section.

(iii) If the medical examiner does not submit a written response within 30 days of the date of issuance of a notice of proposed removal, the removal becomes effective and the medical examiner is immediately removed from the National Registry of Certified Medical Examiners.

(2) **Compliance and corrective action.**(i) The medical examiner must comply with this subpart and complete the corrective actions specified in the notice of proposed removal no later than 60 days after either the date of issuance of the notice of proposed removal or the date the Director, Office of Carrier, Driver and Vehicle Safety Standards affirms or modifies the notice of proposed removal, whichever is later. The medical examiner must provide documentation of compliance and completion of the corrective actions to the Director, Office of Carrier, Driver and Vehicle Safety Standards. The Director, Office of Carrier, Driver and Vehicle Safety Standards may conduct any investigations and request any documentation necessary to verify that the medical examiner has complied with this subpart and completed the required corrective action(s). The Director, Office of Carrier, Driver and Vehicle Safety Standards will notify the medical examiner in writing whether he or she has met the requirements to continue to be listed on the National Registry of Certified Medical Examiners.

(ii) If the medical examiner fails to complete the proposed corrective action(s) within the 60-day period, the removal becomes effective and the medical examiner is immediately removed from the National Registry of Certified Medical Examiners. The Director, Office of Carrier, Driver and Vehicle Safety Standards will notify the person in writing that he or she has been removed from the National Registry of Certified Medical Examiners.

(3) At any time before a notice of proposed removal from the National Registry of Certified Medical Examiners becomes final, the recipient of the notice of proposed removal and the Director, Office of Carrier, Driver and Vehicle Safety Standards may resolve the matter by mutual agreement.

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(d) **Request for administrative review.** If a person has been removed from the National Registry of Certified Medical Examiners under paragraph (c)(1)(iii), (c)(2)(ii), or (e) of this section, that person may request an administrative review no later than 30 days after the date the removal becomes effective. The request must be submitted in writing to the FMCSA Associate Administrator for Policy and Program Development. The request must explain the error(s) committed in removing the medical examiner from the National Registry of Certified Medical Examiners, and include a list of all factual, legal, and procedural issues in dispute, and any supporting information or documents.

(1) **Additional procedures for administrative review.** The Associate Administrator may ask the person to submit additional data or attend a conference to discuss the removal. If the person does not provide the information requested, or does not attend the scheduled conference, the Associate Administrator may dismiss the request for administrative review.

(2) **Decision on administrative review.** The Associate Administrator will complete the administrative review and notify the person in writing of the decision. The decision constitutes final Agency action. If the Associate Administrator decides the removal was not valid, FMCSA will reinstate the person and reissue a certification credential to expire on the expiration date of the certificate that was invalidated under paragraph (g) of this section. The reinstated medical examiner must:

(i) Continue to meet the requirements of this subpart and the applicable requirements of part 391 of this chapter.

(ii) Report to FMCSA any changes in the application information submitted under §390.103(a)(3) within 30 days of the reinstatement.

(iii) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations.

(iv) Maintain documentation of State licensure, registration, or certification to perform physical examinations for each State in which the examiner performs examinations maintain documentation of completion of all training required by §390.105 and §390.111. The medical examiner must also make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(v) Complete periodic training as required by the Director, Office of Carrier, Driver and Vehicle Safety Standards.

(e) **Emergency removal.** In cases of either willfulness or in which public health, interest, or safety requires, the provisions of paragraph (b) of this section are not applicable and the Director, Office of Carrier, Driver and Vehicle Safety Standards may immediately remove a medical examiner from the National Registry of Certified Medical Examiners and invalidate the certification credential issued under §390.109. A person

who has been removed under the provisions of this paragraph may request an administrative review of that decision as described under paragraph (d) of this section.

(f) **Reinstatement on the National Registry of Certified Medical Examiners.** No sooner than 30 days after the date of removal from the National Registry of Certified Medical Examiners, a person who has been voluntarily or involuntarily removed may apply to the Director, Office of Carrier, Driver and Vehicle Safety Standards to be reinstated. The person must:

(1) Continue to meet the requirements of this subpart and the applicable requirements of part 391 of this chapter.

(2) Report to FMCSA any changes in the application information submitted under §390.103(a)(3).

(3) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations.

(4) Maintain documentation of State licensure, registration, or certification to perform physical examinations for each State in which the person performs examinations and maintains documentation of completion of all training required by §§390.105 and 390.111. The medical examiner must also make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The person must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(5) Complete training and testing as required by the Director, Office of Carrier, Driver and Vehicle Safety Standards.

(6) In the case of a person who has been involuntarily removed, provide documentation showing completion of any corrective actions required in the notice of proposed removal.

(g) **Effect of final decision by FMCSA.** If a person is removed from the National Registry of Certified Medical Examiners under paragraph (c) or (e) of this section, the certification credential issued under §390.109 is no longer valid. However, the removed person's information remains publicly available for 3 years, with an indication that the person is no longer listed on the National Registry of Certified Medical Examiners as of the date of removal.

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

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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.
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.

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§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 399—Employee safety and health standards

Subparts A through K [Reserved]

Subpart L—Step, handhold, and deck requirements for commercial motor vehicles

Sec.	
399.201	Purpose and scope.
399.203	Applicability.
399.205	Definitions.
399.207	Truck and truck-tractor access requirements.
399.209	Test procedures.
399.211	Maintenance.

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Subparts A—K [Reserved]

Subpart L—Step, handhold, and deck requirements for commercial motor vehicles

§399.201 Purpose and scope.

This subpart prescribes step, handhold, and deck requirements on commercial motor vehicles. These requirements are intended to enhance the safety of motor carrier employees.

§399.203 Applicability.

This subpart applies to all trucks and truck-tractors, having a high profile cab-over-engine (COE) configuration, for entrance, egress and back of cab access, manufactured on and after September 1, 1982.

§399.205 Definitions.

Cab-over-engine (COE)—A truck or truck-tractor having all, or the front portion, of the engine under the cab.

COE - High profile—A COE having the door sill step above the height of the front tires.

Deck plate—A horizontal surface designed to provide a person with stable footing for the performance of work such as the connection and disconnection of air and electrical lines, gaining access to permanently-mounted equipment or machinery or for similar needs.

Door sill step—Any step normally protected from the elements by the cab door when closed.

Effective peripheral grip—Any shaped surface, free of sharp edges, in which a full grasp can be made to secure a handhold by a person.

Fingertip grasp—A handhold surface which provides a person contact restricted to finger segments 1 and/or 2 only; or which limits wrap-around closure of finger segment 1 with the palm of the hand to 90 degrees as shown in Illustration I.

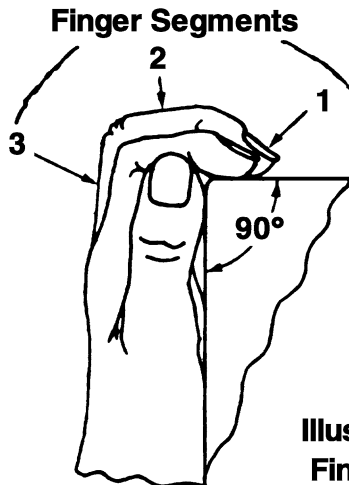


Illustration I
Fingertip Grasp

Full grasp—A handhold surface which provides a person contact with finger segments 2 and 3 and which provides space for finger segment 1 to wrap around

toward the palm of the hand beyond the 90-degree surface restriction shown in Illustration I. The handhold need not require contact between fingers and thumb. For example, the hand position shown in Illustration II qualifies as full grasp.

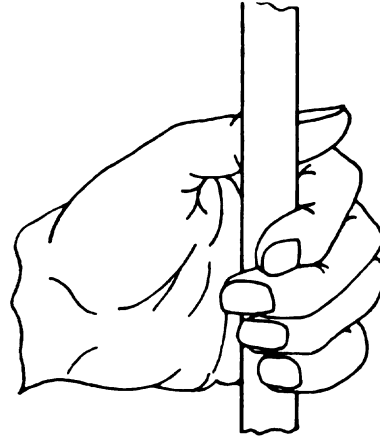


Illustration II
Full Grasp

Ground—The flat horizontal surface on which the tires of a motor vehicle rest.

Handhold—That which qualifies as providing full grasp if a person is able to find a hand position on the handhold which allows more than fingertip grasp.

Handprint—The surface area contacted by the hand when grasping a handhold. The size of this area is the width of the hand across the metacarpal and half the circumference of the handhold. The hand breadth of the typical person is 88.9 millimeters (3.5 inches).

Person—Any individual within the 5th percentile female adult through the 95th percentile male adult of anthropometric measures as described by the 1962 Health Examination Survey, "Weight, Height and Selected Body Dimensions of Adults, United States 1960–1962" which is incorporated by reference. It is Public Health Service publication No. 1000-Series 11-No. 8 and is for sale from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. When ordering use NTIS Accession No. PB 267174. It is also available for inspection at the Office of the Federal Register Library, Room 8301, 1100 L Street, NW, Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register on July 17, 1979. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the *Federal Register*.

Slip resistant material—Any material designed to minimize the accumulation of grease, ice, mud and other debris and afford protection from accidental slipping.

§399.207 Truck and truck-tractor access requirements.

(a) **General rule.** Any person entering or exiting the cab or accessing the rear portion of a high profile COE

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truck or truck-tractor shall be afforded sufficient steps and handholds, and/or deck plates to allow the user to have at least 3 limbs in contact with the truck or truck-tractor at any time. This rule applies to intermediate positions as well as transition between intermediate positions. To allow for changes in climbing sequence, the step design shall include, as a minimum, one intermediate step of sufficient size to accommodate two feet. **Exception.** If air and electrical connections necessary to couple or uncouple a truck-tractor from a trailer are accessible from the ground, no step, handholds, or deck plates are required to permit access to the rear of the cab.

(b) **Performance requirements.** All high profile COE trucks or truck-tractors shall be equipped on each side of the vehicle where a seat is located, with a sufficient number of steps and handholds to conform with the requirements of paragraph (a) of this section and shall meet the performance requirements:

(1) **Vertical height.** All measurements of vertical height shall be made from ground level with the vehicle at unladen weight.

(2) **Distance between steps.** The distance between steps, up to and including the door sill step, shall provide any person a stable resting position which can be sustained without body motion and by exerting no more arm force than 35 percent of the person's body weight per grasp during all stages of entry and exit. This criterion applies to intermediate positions as well as transition between intermediate positions above ground level.

(i) When the ground provides the person foot support during entry or is the final step in the sequence during exit, and the step is 508 millimeters (20 inches) or more above ground, the stable resting position shall be achievable by the person using both hands to grasp the handhold(s) and requiring no more arm force than 35 percent of body weight per grasp.

(ii) The vertical height of the first step shall be no more than 609 millimeters (24 inches) from ground level.

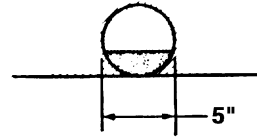
(3) **Construction.** Each step or deck plate shall be of a slip resistant design which minimizes the accumulation of foreign material. Wherever practicable, a self-cleaning material should be used.

(4) **Foot accommodation.** Step depth or clearance and step width necessary to accommodate a climbing person are defined by using a minimum 127 millimeter (5 inch) diameter disc as shown in Illustration III.

(i) **Single foot accommodation.** The disc shall fit on a tread rung, or in a step recess, with no exterior overhang.

(ii) **Two-foot accommodations.** Two discs shall fit on a tread rung, or in a step recess, with no exterior overhang.

Single - foot Accommodation



Two - foot Accommodation

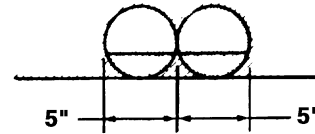


Illustration III
Foot Accommodation

(5) **Step strength.** Each step must withstand a vertical static load of at least 204 kilograms (450 pounds) uniformly distributed over any 127 millimeter (5 inch) increment of step width.

(6) **Handhold location.** A handhold must be located within the reach of any person entering or exiting the vehicle.

(7) **Exterior mounting specifications for handholds.** Each handhold, affixed to the exterior of the vehicle, shall have at least 38 millimeters (1.5 inches) clearance between the handhold and the surface to which it is mounted for the distance between its mounting points.

(8) **Handhold size and shape.** Each handhold shall be free of sharp edges (minimum 1 millimeter [0.04 inch] radius) and have an effective peripheral grip length that permits full grasp by any person.

(9) **Handhold strength.** Each handhold shall withstand a horizontal static load of at least 114 kilograms (250 pounds) uniformly distributed over the area of a hand print and applied away from the mounting surface.

(10) **Deck plates.** Deck plates shall be on the rear of a truck-tractor as necessary to couple or uncouple air and/or electrical connections.

(11) **Deck plate strength.** Each deck plate shall be capable of withstanding the vertical static load of a least 205 kilograms (450 pounds) uniformly distributed over a 127 millimeter (5 inch) diameter disc.

§399.209 Test procedures.

(a) The force exerted on a handhold will be measured using a handheld spring scale or force transducer which can be attached to the vehicle and is free to rotate into alignment with a person's hand position.

(b) Hand grasp will be evaluated by observing the handgrip of any individual who conforms with the definition of "person" appearing in §399.205 of this subpart.

§399.211 Maintenance.

All steps, handholds, and/or deck plates required by this subpart shall be adequately maintained to serve their intended function.

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Reserved

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Notes

REFERENCE

FMCSA Summary

Summary of the FMCSA Safety Regulations

This section is a summary of Parts 391, 392, 393, 395, and 396. These regulations apply to all commercial vehicles and their drivers.

Reminder: As with Part 390, when the term *commercial motor vehicle* (CMV) is used in these parts of the regulations, it means any self-propelled or towed motor vehicle used on a highway in interstate commerce used to transport passengers or property when the vehicle:

- Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 10,001 pounds or more, whichever is greater; or
- Is designed or used to transport more than 15 passengers, including the driver; or
- Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, Chapter I, Subchapter C.

Following these parts, Parts 382 and 383 will be summarized. These two parts apply *only* to drivers of commercial motor vehicles requiring a commercial driver's license to operate, and their employers.

Part 391

Part 391 is generally referred to as the "Driver Qualification" regulations. Part 391 establishes minimum driver qualification standards (for *all* drivers of commercial motor vehicles) and motor carrier responsibility with regard to ensuring these standards are met.

Part 391 — Qualifications of drivers, is made up of seven subparts:

- **Subpart A** — General
- **Subpart B** — Qualifications and disqualifications
- **Subpart C** — Background and character
- **Subpart D** — Examinations and tests
- **Subpart E** — Physical qualifications and examinations
- **Subpart F** — Files and records

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Notes

- **Subpart G** — Limited exemptions

Subpart A — General, outlines the scope of Part 391, and provides a few general exemptions to the driver qualification requirements.

§391.1 Scope of the rules of this Part; additional qualifications; duties of carrier-drivers, lays the foundation for Part 391.

§391.2 General exemptions — Unless your drivers operate farm equipment during harvest time, or you transport live bees (apiarian operation), you don't need to worry about the general exemptions listed here.

Subpart B Defines the qualifications and disqualifications for commercial drivers. Before you can even consider hiring a driver, the individual must meet certain minimum qualifications as prescribed by the FMCSA.

These minimum qualification standards are listed here, in Subpart B. Here is also where you begin the process of establishing and setting your *hiring standards*.

Section 391.11 states quite clearly that no person *shall* operate any of your CMVs unless that person is first qualified to do so. What makes a person qualified?

According to §391.11(b), a driver is qualified to drive a commercial motor vehicle in interstate commerce if the individual:

- Is at least 21 years old;
- Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records (§391.11(b)(2) is the *must be able to read and write English* requirement);
- Can, by reason of experience, training, or both, safely operate the type of CMV you intend to have the driver drive;
- Is physically qualified to drive a commercial motor vehicle (more on this when we come to *Subpart E — Physical qualifications and examinations*);
- Has one valid commercial motor vehicle operator's license;
- Has prepared and furnished you with a list of violations (other than parking tickets) covering the last 12 months.
- Is not disqualified to drive a CMV (see §391.15 below); and
- Has successfully completed a driver's road test and has been issued a certificate of driver's road test (see §391.31 below), or has presented you with an operator's license or a certificate of road test from a previous or current employer (see §391.33 below for more information).

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§391.15 Disqualification of drivers, prohibits you from using a *disqualified* driver to operate any of your CMVs. Keep in mind that the disqualification rules found in §391.15 apply to both driver applicants and your current drivers.

One of the most important things to understand about §391.15 is how it relates to §383.51, disqualification of CDL licensed drivers. Section 383.51 applies to *interstate and intrastate* drivers required to have a CDL to operate the vehicle. Section 391.15 applies to *interstate* drivers of commercial vehicles over 10,000 pounds, transporting hazmat requiring a placard, or transporting more than 15 passengers (including the driver). If a driver is subject to both sections, the more stringent regulation will apply. In most cases that will be §383.51.

Under **§391.15(b) Disqualification for loss of driving privileges**, (1) if a driver loses his or her CMV operator's license (either temporarily or permanently) by reason of revocation, suspension, withdrawal, or denial, that driver becomes *disqualified*.

How do you discover any of the above conditions? Your driver is required to tell you.

§391.15(c) provides further disqualification information involving:

- Disqualification for criminal and other offenses;
- Disqualifying offenses; and
- Duration of disqualification.

§391.15(d) Disqualification for violation of out-of-service orders, a driver who is convicted of violating an out-of-service order is disqualified for the following period of time:

- First violation — A driver is disqualified for not less than 90 days nor more than one year if the driver is convicted of a first violation of an out-of-service order.
- Second violation — A driver is disqualified for not less than one year nor more than five years if, during any 10 year period, the driver is convicted of two violations of out-of-service orders in separate incidents.
- Third or subsequent violation — A driver is disqualified for not less than three years nor more than five years if, during any 10 year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents.

Subpart C relates to the background and character of your current drivers, as well as those you intend to make employees.

§391.21 Application for employment, provides the requirements (actual content) your driver applications must contain. Your applications for driver employment (at a minimum) must contain:

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- Name and address of your company;
- Applicant's name, address, date of birth, and social security number;
- Applicant's address(es) for the past three years;
- Date the application was submitted;
- Issuing state, number, and expiration date of applicant's operator's license;
- Nature and extent of applicant's experience operating motor vehicles;
- List of all motor vehicle accidents in which the applicant was involved during the last three years;
- List of all violations of motor vehicle laws and ordinances of which applicant was convicted or forfeited bond or collateral (paid a fine for) during the last three years;
- A statement detailing facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle issued to the applicant, or a statement that no such denial, revocation, or suspension has occurred;
- A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted, and should include:
 - The dates he or she was employed by that employer,
 - The reason for leaving the employ of that employer,
 - Whether the applicant was subject to the FMCSRs while employed by that previous employer, and
 - Whether the job was designated as a safety-sensitive function in any DOT regulated mode subject to alcohol and controlled substances testing requirements as required by 49 CFR Part 40.
 - In addition, if the applicant will operate a commercial motor vehicle as defined by §383.5, the applicant must list the names and addresses of the applicant's employers during the 7-year period preceding the 3 years mentioned above for which the applicant was an operator of a commercial motor vehicle, together with the dates of employment and the reasons for leaving such employment;
- A certification statement that the information supplied is correct; and

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Although these regulations may appear very involved and complicated, in reality the annual review process is a fairly straightforward 3-step process. At least once every 12 months, and for each driver you employ, you are required to:

- Make an inquiry into the driver's driving record (run an annual MVR — §391.25(a));
- Review the annual MVR, and create a note that includes the name of the person who performed the review, and the date of the review (§391.25(c)(2)); and
- Have each driver prepare a list of all violations he or she has been convicted of (also known as the driver's annual *certification of violations* — (§391.27(a)).

§391.31 Road test, outlines the requirements for road testing your drivers. A road test is simply a way to help determine if a driver applicant can properly inspect and safely operate the type of vehicle you intend to assign him or her.

Subpart E — Physical Qualifications and Examinations, was created to ensure that only drivers who are physically and mentally able to safely to operate CMVs are allowed to do so.

§391.41 Physical qualifications for drivers, states that a person *shall not* drive a commercial motor vehicle unless he or she is physically qualified to do so and, except as provided in §391.67, has on his or her person the original, or a photographic copy, of a *medical examiner's certificate* that he or she is physically qualified to drive a commercial motor vehicle.

In all, there are 13 physical qualifications listed under §391.41(b). Most are self-explanatory.

§391.45 Persons who must be medically examined and certified, pretty much answers the question, "Who must be medically certified?"

According to §391.45, and in order to operate a CMV, the following persons must be examined:

- Any person who has not been medically examined and certified as physically qualified to operate a commercial motor vehicle;
- Any driver who has not been medically examined and certified as qualified to operate a commercial motor vehicle during the preceding 24 months; and
- Any driver whose ability to perform his or her normal duties has been impaired by a physical or mental injury or disease.

Subpart F — There are three sections within Subpart F that have record maintenance and retention requirements. The sections are:

- §391.51 General requirements for driver qualification (DQ) files.
- §391.53 Driver Investigation History File.

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or semitrailers that operate on the Interstate Highway System at a gross vehicle weight greater than 80,000 lbs.

Because of their length and special characteristics, LCVs require special training as well as a “double/triple trailer” endorsement on drivers’ CDLs. Employers are prohibited from allowing drivers to operate LCVs unless those drivers can produce either:

- An LCV Driver-Training Certificate as evidence of successful completion of an LCV driver training course; or
- An LCV Driver-Training Certificate of Grandfathering, showing that the driver is exempt from the training requirements based on experience.

Motor carriers must retain all LCV training certificates or certificates of grandfathering in their employees’ Driver Qualification files.

Each motor carrier must maintain a qualification file for each Longer Combination Vehicle (LCV) driver-instructor it employs or uses. The LCV driver-instructor qualification file may be combined with his/her personnel file.

The LCV driver-instructor qualification file must include the following information:

- Evidence that the instructor has met the requirements of 49 CFR 380.301 or 380.303; and
- A photographic copy of the individual’s currently valid CDL with the appropriate endorsements.

§391.63 Multiple-employer drivers, is the last regulation we will discuss in Part 391.

In a nutshell, §391.63 provides the qualification requirements for a driver who, in any period of 7 consecutive days, is employed or used as a driver by **more** than a single motor carrier.

A person who works for a non-motor carrier (such as a driver leasing or temporary employment company) and drives on a part-time basis for only one motor carrier (even if it is only one day per month), *does not* meet the definition of a multiple-employer driver. The motor carrier must fully qualify this type of driver and maintain a qualification file on this person as a regularly employed driver, since the driver is employed by only one motor carrier.

If you are using, or intend to use, a multiple-employer driver, keep the following requirements in mind. A driver’s qualification file for a driver meeting the definition of multiple-employer driver must include:

- A medical exam certificate, original or a copy (§391.43(g)),
- A road test form and certificate (§391.31(g)), or license or certificate accepted in lieu of road test (§391.33),

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While both of these regulations go into greater detail, in a nutshell, §392.4 and §392.5 prohibit your drivers from using or being under the influence of drugs or alcohol prior to going and while on duty.

Section 392.4 states that no driver *shall* be on duty and possess, be under the influence of, or use a controlled substance. The exception is for a controlled substance prescribed by a licensed medical practitioner, as long as the substance does not affect the driver's ability to safely operate a motor vehicle.

Section 392.5 states that no driver *shall* use or be under the influence of alcohol four hours prior to going on duty or having physical control of a CMV, or while on duty. Section 392.5 also states a driver cannot be on duty or operate a commercial vehicle while in possession of an alcoholic beverage.

Most motor carriers address §392.4 and §392.5 by simply adopting a zero-tolerance drug and alcohol policy — which, from a safety and liability stand point, is the recommended best practice.

§392.6 Schedules to conform with speed limits, is a regulation that affects both safety and operations. Section 392.6 is the *thou shall not speed* regulation.

Section 392.6 prohibits dispatch from scheduling or assigning any driver to a run or other work assignment that would require that driver to operate at a speed higher than the posted limits.

§392.7 Equipment, inspection and use, is also known as the *pre-trip inspection* requirement — although the actual term *pre-trip inspection* is not found anywhere in §392.7. The regulation requires the driver be satisfied that the required parts and accessories are in good working order before operating the vehicle.

§392.8 Emergency equipment, inspection, and use, simply states that:

- All your CMVs must be equipped with emergency equipment as required and specified by **§393.95**;
- No driver shall operate one of your CMVs until he or she is first *satisfied* that this equipment is in place and ready for use (make sure this statement is in your company's pre-trip inspection procedures); and
- No driver shall fail to make use of this equipment when and if need arises.

§392.9 Safe loading, establishes a few simple and common sense requirements with regard to cargo securement.

A CMV may not be driven unless the load has been:

- Properly distributed,
- Adequately secured, and

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In the event of a breakdown or crash, there are requirements your drivers need to follow to warn other motorists and to prevent additional accidents.

§392.22 Emergency signals, stopped commercial motor vehicles, outlines the guidelines for stopped vehicles on a traveled portion of a highway. In the case of a breakdown, crash, or accident, your drivers are required to:

- Immediately activate the vehicle's hazard warning signal flashers; and
- Continue the flashing until the required warning devices have been placed.
- Place the required warning devices within 10 minutes if the CMV is stopped on the traveled portion or the shoulder of a highway.

There is only one regulation found under Subpart D — that being **§392.33 Obscure lamps or reflectors**. This regulation requires your drivers to make sure none of their lights or reflectors are hidden from view.

Subpart F contains **§392.50 Ignition of fuel; prevention**. This is a basic safety and common sense regulation that concerns the fueling of your CMVs. Basically, §392.50 states that no driver shall:

- Fuel his or her vehicle while the engine is running;
- Smoke or expose an open flame while fueling;
- Ensure the fuel nozzle is in continuous contact with the vehicle's intake pipe to the fuel tank; and
- Prevent others from creating a dangerous situation while fueling.

Subpart G — Prohibited Practices, is the last Subpart to Part 392. Although there are several prohibited practices listed under Subpart G, we will only review a couple of the regulations we believe are the most important. The first deals with *unauthorized passengers*.

§392.60 Unauthorized persons not to be transported, states no driver *shall* transport any unauthorized person in any of your vehicles.

This makes sense not only from a corporate liability standpoint, but also for the personal safety of your drivers. As a matter of company policy, the transporting of any unauthorized passengers needs to be strictly forbidden.

Most motor carriers do have some form of a ride-along program. If this is the case with your organization, make sure it covers the following requirements.

When written authorization is issued by you for a driver to have a passenger, the authorization must:

- State the name of the person to be transported;

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- The points where the transportation is to begin and end; and
- The date upon which the authority expires.

§392.71 Radar detectors; use and/or possession, is as straightforward as a regulation can get. It states quite clearly that your drivers are prohibited from using any type of radar detector in a CMV.

Part 393

Part 393 pertains almost exclusively to mechanical and maintenance issues, and is rather technical and lengthy. For the sake of this summary we will only summarize the subpart topics. There are ample sources for the detailed regulations should the need to study them come up.

Subpart A, General, provides the scope, applicability, and definitions used in the part.

Subpart B, Lighting devices, reflectors, and electrical equipment, provides the regulations for lights and reflectors, and the related equipment.

Subpart C, Brakes, provides the requirements for brakes.

Subpart D, Glazing and window construction provides the requirements for windshield and other windows.

Subpart E, Fuel system lists the regulations for all types of fuel systems, liquid, compressed natural gas, and compressed petroleum gas.

Subpart F, Coupling devices provides the regulations on systems used to connect (couple) commercial vehicles together.

Subpart G, Miscellaneous parts and accessories covers a wide range of vehicle components (tire, wipers, speedometer, exhaust, etc.) that are not covered elsewhere in Part 393.

Subpart H, Emergency equipment specifies what emergency equipment a commercial motor vehicle must carry (warning devices, extinguisher, etc.).

Subpart I, Protection against shifting and falling cargo is a rather lengthy subpart, providing both the general cargo securement requirements as well as specific commodity securement requirements for “high risk” commodities such as metal coils, concrete pipe, and large rolls of paper.

Subpart J is the last subpart and contains the regulations pertaining to frames, cabs, wheels, steering, and suspensions.

While not part of the FMCSA regulations on parts and accessories, speed limiters are a compliance issue for carriers that operate in Canada. Presently, two Canadian provinces have a speed limiting law. In the United States several major trucking associations and motor carriers, and several safety organizations have petitioned the United States Department of Transportation to consider similar regulations.

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The law in Ontario and Quebec will require all heavy trucks (defined in the law as a truck over 11,000 kilograms, or roughly 24,250 pounds) built after 1995 be limited to a maximum speed of 105 kilometers per hour (roughly 65 miles per hour). The laws also require that as much as is practical the speed limiter be tamperproof. Once it is set at the appropriate speed, the driver is not to have the ability to alter it.

Under the law, carriers would be responsible for compliance. Carriers that have the technical know-how and correct equipment (hardware and software) should be able to do the programming themselves. If the carrier does not have the know-how or equipment, the programming will need to be done at a dealer or repair facility that has the correct capabilities.

Once implemented, compliance will be verified through speeding citations and during roadside inspections (officers will be allowed to check the vehicle's speed setting during inspections). If a driver is stopped for operating in excess of 105 kilometers per hour, the carrier can be cited for violating the speed limiting law (a vehicle violation). If the driver was exceeding the posted speed limit at the time, the driver may be cited for speeding (a separate violation).

Both Ontario and Quebec will be doing soft enforcement (operating an educational period) from January 1, 2009, to June 30, 2009. After June 1, 2009, citations will be issued for violations.

One key point is this law applies to every heavy truck (built after 1995) operating in Ontario and Quebec, ***regardless of where the vehicle is registered.*** Trucks entering Ontario and Quebec from other provinces or the United States will be required to comply with this law.

Part 395

Part 395 is the part of the regulations that contains the hours-of-service regulations. This is a very complicated part, and one that many carriers are fined because of, so we will spend a fair amount of time summarizing it.

Some Fleet Managers view hours-of-service compliance as a "safety department" issue. The FMCSA views hours-of-service compliance as an "operational" issue. A carrier's operation is expected to comply with these regulations. Throughout this entire part the terminology used is "No motor carrier shall permit or require a driver to...nor shall a driver..." To sum it up, the carrier is responsible for the actions of their drivers, and controlling their drivers, in this area.

Part 395 contains the following active sections:

- §395.0 Compliance date for certain requirements for hours of service of drivers;
- §395.1 Scope of rules in this part;
- §395.2 Definitions;

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- **Driving time** means all time spent at the driving controls of a commercial motor vehicle in operation.
- **Multiple stops** means all stops made in any one village, town, or city may be computed (logged) as one.
- **On-duty time** means all time from the time a driver begins work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. On duty time shall include:
 - All time at a plant, terminal, facility, or other property of a motor carrier or shipper, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;
 - All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;
 - All driving time as defined in the term driving time;
 - All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
 - All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
 - All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle;
 - All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by Part 382 of this subchapter when directed by a motor carrier;
 - Performing any other work in the capacity, employ, or service of a motor carrier; and
 - Performing *any* compensated work for a person who is not a motor carrier.

For “waiting time” to be off-duty, the following off-duty conditions must be met:

- The driver must be relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.

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No motor carrier shall permit or require a driver of a property-carrying commercial motor vehicle to drive, nor shall any driver **drive** a property-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after:

- Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or
- Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

In addition to the above, the regulations contain a *restart* provision, that states:

- Any period of 7 consecutive days may end with the beginning of any off-duty period of **34** or more consecutive hours; or
- Any period of 8 consecutive days may end with the beginning of any off-duty period of **34** or more consecutive hours.

As of July 1, 2013, to be considered a valid restart, the restart must be a minimum of 34 hours long and include two consecutive 1 a.m. to 5 a.m. periods.

Also as of July 1, 2013, drivers will only be allowed one 34-hour restart in any 168 hour period (168 hours are "seven days" from the current time). The driver cannot start another 34 hour restart until 168 hours has passed since the start of the driver's last 34-hour restart. If the driver has multiple 34-hour or more breaks in a 168 hour period, the driver must designate in the remarks section of his/her log which 34-hour or more break is being used as a restart.

§395.5 Maximum driving time for passenger-carrying vehicles — No motor carrier shall permit or require any driver used by it to drive a passenger-carrying commercial motor vehicle, nor shall any such driver drive a passenger-carrying commercial motor vehicle:

- More than 10 hours following 8 consecutive hours off duty; or
- For any period after having accumulated 15 hours on duty following 8 consecutive hours off duty.

In addition to the 10- and 15-hour rules, passenger-carrying drivers are also subject to the same 60 hour/7-day or 70 hour/8-day rule.

No motor carrier shall permit or require a driver of a passenger-carrying commercial motor vehicle to drive, nor shall any driver drive a passenger-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after:

- Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or
- Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

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- **Driver's signature/certification** — The driver shall certify to the correctness of all entries by signing each record of duty status with his or her legal name or name of record. The driver's signature certifies that all entries required by this section made by the driver are true and correct;
- **24 hour period starting time** (e.g., midnight, 9:00 a.m., noon, 3:00 p.m.) — The time standard in effect at the driver's *home terminal*;
- **Main office address** — Your main office address shall be shown on each record of duty status;
- **Remarks** — The log must have space for remarks to record changes in duty status;
- **Name of co-driver** (if applicable);
- **Total hours** (far right edge of grid) — The total hours in each duty status must be recorded, including 1) off duty other than in a sleeper berth; 2) off duty in a sleeper berth; 3) driving, and 4) on-duty not driving, shall be entered to the right of the grid, the total of such entries shall equal 24 hours; and
- **Shipping document number(s)**, or name of shipper and commodity.

As far as actually filling out the record of duty status, keep the following requirements in mind. Your drivers must:

- Keep the record of duty status **current** to the time shown for the last change-of-duty status.
- Make sure all entries are **legible** and in the driver's own handwriting.
- Submit or forward by mail the original record of duty status to the regular employing motor carrier within **13 days** following the completion of the form.
- Retain a copy of each record of duty status for the previous **7 consecutive days** which shall be in their possession and available for inspection while on duty.

Under §395.8 you are required to systematically retain records of duty status and all *supporting documents* for each driver you employ for a period of **six months** from the date of receipt.

Carriers are no longer allowed to "throw all logs and receipts in boxes and tell the auditor to find the ones they want" during an audit. Rulings on this practice have determined it is a violation of the record of duty status and supporting document regulations and interpretations. If the carrier cannot present the documents in a manner that makes them usable for auditors the carrier can be fined and the FMCSA can lower the carrier's safety rating (*Darrell Andrews Trucking vs. FMCSA, United States Court of Appeals, District of Columbia Circuit, 7/26/02*).

Supporting documents are the records of the motor carrier which are maintained in the ordinary course of business and used by the motor

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carrier to verify the information recorded on the driver's record of duty status. Examples are: Bills of lading, carrier pros, freight bills, dispatch records, driver call-in records, gate record receipts, weight/scale tickets, fuel receipts, fuel billing statements, toll receipts, international registration plan receipts, international fuel tax agreement receipts, trip permits, port of entry receipts, cash advance receipts, delivery receipts, lumper receipts, interchange and inspection reports, lessor settlement sheets, over/short and damage reports, agricultural inspection reports, CVSA reports, accident reports, telephone billing statements, credit card receipts, driver fax reports, on-board computer reports, border crossing reports, custom declarations, traffic citations, overweight/oversize reports and citations, and/or other documents directly related to the motor carrier's operation, which are retained by the motor carrier in connection with the operation of its transportation business. Supporting documents may include other documents which the motor carrier maintains and can be used to verify information on the driver's records of duty status.

Go directly to jail: Sec. 395.8(e) states, "Failure to complete the record of duty activities of this section or §395.15, failure to preserve a record of such duty activities, or making of false reports in connection with such duty activities shall make the *driver* and/or the *carrier liable to prosecution.*"

Motor carrier officials and drivers have been, and will continue to be, prosecuted for egregious examples of record of duty status falsification.

The FMCSA is very serious about the issue of falsification — meaning you should be too!

§395.13 Drivers declared out of service is the next regulation we'll discuss. This is an important issue, so make sure everyone at the company is familiar with it.

§395.13 is the regulation that grants every special agent of the FMCSA (roadside inspectors, state troopers, etc.) authorization to declare a driver out of service for violations of the hours-of-service regulations.

During a roadside inspection, if a driver's log book is not up-to-date, or is in violation, the inspecting agent will shut the driver down for a full 8 or 10 hours, depending on the type of operation — property- or passenger-carrying.

If it should happen, your driver better not leave until the full break has been taken. Under no circumstances should your drivers be allowed to violate such orders!

Note: Fines for violating an out-of-service order range from **\$1,100-\$2,750** for drivers, and **\$2,750-\$11,000** for employers.

§395.15 allows carriers to use Automatic On-Board Recording Devices (AOBRD) rather than having their driver complete logs. These regulations provide the technical and operational requirements for AOBRDs.

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Part 396

Part 396 concerns itself with the safety of your commercial motor vehicles. Part 396 is relatively small, containing only 13 regulations and no subparts.

However, whether you do your own vehicle maintenance, or outsource the maintenance function, you need to:

- Develop a thorough understanding of the important requirements of Part 396; and
- Incorporate adequate management controls to ensure compliance and the safety of your vehicles.

§396.3 Inspection, repair, and maintenance, states that you must have in place a *systematic* method of inspecting, repairing, and maintaining your CMVs, and that all safety related parts and accessories must be in safe and proper operating condition at all times.

§396.3 also lists the maintenance record retention requirements. For each CMV you control (operate) for 30 consecutive days or more, you *shall* create a file that contains the following:

- An identification of the vehicle including:
 - Your company-assigned vehicle number (if so marked),
 - Owner of the vehicle if not company owned,
 - Make,
 - Serial number,
 - Year, and
 - Tire size.
- A means to indicate the nature and due date of the various inspection and maintenance operations to be performed (the preventive maintenance schedule for the vehicle); and
- A record of inspections, repairs, and maintenance indicating their date and nature (work orders generated for the vehicle).

The records must be retained where the vehicle is either housed or maintained for a period of 1 year *and* for 6 months after the motor vehicle leaves your control. The exception to this is records relating to an engine change. Appendix A to Part 379 requires records pertaining to an engine change be maintained by the carrier for three years after disposal of the equipment.

§396.9 Inspection of motor vehicles in operation, is the regulation that provides agents of the FMCSA with the authority to perform inspections of your vehicles while in operation — being driven on a *highway*.

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This regulation also authorizes these same agents to declare a vehicle *out of service* if they believe continued operation of the vehicle is likely to cause an accident or breakdown due to a safety-related defect or deficiency.

If placed out of service, the vehicle cannot be operated again until any and all defects and deficiencies have been repaired.

Note: Fines for violating an out-of-service order range from **\$1,100–\$2,750** for drivers, and **\$2,750–\$11,000** for employers.

Generally, when one of your drivers undergoes a roadside inspection, the inspecting agent will complete an inspection report known as an MCS-63.

Whenever your drivers receive an inspection report (MCS-63) at a roadside inspection, make sure they all know the following requirements:

- The driver shall deliver the report to the motor carrier upon arrival at the next terminal or facility.
- If the driver is not scheduled to arrive at a terminal or facility within 24 hours, he or she shall immediately mail the report to the carrier;
- Motor carriers shall correct all defects noted; and
- A motor carrier official is to certify on the form that violations have been corrected and mail the completed form to the address shown. This must be done within 15 days following the date of the inspection.

§396.11 Driver vehicle inspection report(s) (DVIRs), is the next requirement we'll address — and this is a big one.

Your drivers, operations, and maintenance personnel must have a thorough understanding of the DVIR process. Make sure it is adequately covered during any training.

What exactly is this process? To ensure vehicle safety, each of your drivers is required to perform a *post-trip* inspection at the end of each workday on all vehicle operated. The driver is then required to complete a DVIR.

Whatever DVIR form you use, remember, at a minimum, it must include provisions for three signatures:

- The signature of the driver who actually prepared the report;
- The signature of the mechanic who certified the reported defects or deficiencies were repaired or corrected — or that no corrections were needed; and
- The signature of the next driver who reviews the DVIR as part of his or her pre-trip inspection acknowledging the corrective action taken.

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§396.13 Driver inspection, is the second *pre-trip* inspection requirement found in the FMCSRs. Along with §392.7, it reinforces your drivers' responsibility to satisfy themselves that the CMV is in safe operating condition (see *Part 392* for more information). This section also closes the loop on the DVIR process. It states your drivers must review the last DVIR and sign the report *only* if safety-related defects or deficiencies were noted and repairs were made.

§396.17 and §396.19 Periodic inspection, is the regulation that requires each of your CMVs to be inspected at least once every 12 months. This is the annual vehicle inspection regulation.

The regulations require that all CMVs controlled by you and operated in interstate commerce pass an inspection at least annually. You are responsible to ensure all your vehicles are inspected.

If you do your own periodic inspections, they must be performed by a qualified inspector who meets the requirements found in §396.19.

§396.21 Periodic inspection recordkeeping requirements, provides the documentation rules for your periodic inspections.

The qualified inspector performing your annual inspections must prepare a report for each inspection which identifies:

- The name of the individual performing the inspection;
- The motor carrier operating the vehicle;
- The date of the inspection;
- The vehicle inspected; and
- The components inspected.

All periodic inspection reports must be retained where your vehicles are housed or maintained, for 14 months.

Finally, a copy of the inspection report, or a decal containing minimal information about the inspection must be on your vehicles.

Likewise, **§396.25 Qualifications of brake inspectors**, provides the requirements for anyone you may have inspect, repair, service, or maintain the brakes of your CMVs.

A brake inspector is defined as a person who is an employee of a motor carrier responsible for ensuring that inspections, maintenance, repairs, or service to the brakes meet applicable safety standards.

However, a driver with an *air brake* endorsement on his or her CDL is qualified to inspect air brakes, but is *not* qualified to perform brake adjustments or other brake-related tasks without having the training or experience required.

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Together with Part 40, the drug and alcohol testing regulations are chocked full of complex testing, training, and recordkeeping requirements, enough to fill a complete book. Chances are, you'll be leaving some of the administration of these regulations up to others, so let's concentrate on those sections that you *need* to understand.

Subpart A — General

§382.111 Other requirements imposed by employers needs to be thoroughly reviewed and seriously considered.

This section reiterates the fact that the federal regulations are the *minimum* requirements. This regulation allows you, in general, to impose additional, or more stringent, requirements.

However, keep in mind that these regulations are quite strict when it comes to the separation of the DOT drug and alcohol testing program from any company-specific requirements. You must be certain that you are in full compliance with DOT requirements before you start imposing additional restrictions, tests, and/or penalties on your drivers.

Under **§382.113 Requirement for notice**, before you send an employee for a DOT-required drug or alcohol test, you must notify them (verbally or in writing) that the test(s) are required by the DOT under Part 382. If it's a company test (not a DOT test), you must *not* tell them that it's a DOT-required test.

The simplest method to accomplish this may be to hand your drivers a copy of a notification form when you instruct them to report for a test.

§382.121 Employee admission of alcohol and controlled substances use, allows you to set up a "voluntary admission" program that will allow your drivers to admit to a drug or alcohol problem without becoming subject to the DOT's rehabilitation requirements. After undergoing treatment, the employee will return to work for you.

If you want a self-admission program at your company, you'll need a written, voluntary self-identification program or policy that meets the requirements of §382.121.

Employees admitting to a problem under this provision must do so *before* reporting for duty, and must not use this as an excuse to avoid a DOT-required drug or alcohol test.

Subpart B — Prohibitions:

Driver prohibitions — Your drivers are prohibited from:

- Reporting for duty with a blood-alcohol content (BAC) of 0.04 or greater;
- Using drugs, unless under a doctor's advice;
- Using alcohol while performing, or 4 hours before performing, safety-sensitive functions;

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- Follow-up tests

§382.301 Pre-employment testing requires you to have in your hand a *verified* negative drug test result before a new driver first performs a safety-sensitive function for your company.

§382.303 Post-accident testing, requires you to test your drivers for drugs and alcohol after certain types of accidents. Here is a table that shows the specific requirements:

Type of accident	Was a citation issued to the CMV driver?	Does a test have to be performed?
Human fatality	YES	YES
	NO	YES
Bodily injury with treatment away from the scene	YES	YES
	NO	NO
Disabling damage requiring tow	YES	YES
	NO	NO

The alcohol test is to be completed within two hours of the accident. If this is not possible, the driver and carrier need to document why it could not be completed. In such cases the carrier and driver then have an additional six hours to complete the alcohol test, or a total of eight hours from the time of the accident.

The drug test must be completed within 32 hours of the accident. *The FMCSA will not accept any excuses if the tests are not performed.* Once the tests are complete the driver can return to duty.

§382.305 Random testing, is another complex, often-violated regulation. It says you must be randomly testing all of your CDL drivers for drugs and alcohol at the rates required in the regulations.

Presently, you must test at least 50 percent of your drivers for drugs, and 10 percent of your drivers for alcohol, over the calendar year. The test should be performed when the driver is reporting for duty or performing a safety sensitive function. The driver cannot receive any advanced warning about the test.

Selected drivers must report for testing immediately after being notified. Alcohol tests must take place while the driver is performing safety-sensitive functions, or immediately before or immediately after performing safety-sensitive functions.

Your random program must test *randomly*. This is where many companies get into trouble. Drawing names or ID numbers out of a hat is *not* random selection.

Even if you have only two drivers, you must select them for random testing using a *scientifically valid method*.

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Generally, this section requires you should keep these records under lock and key, such as in a locked filing cabinet. The records may be combined with driver qualification files or personnel records, but then those records as well must be secured. The records should only be released to anyone other than program administrators if a release signed by the driver is presented.

The record retention requirements vary depending on the type of record and the results of the drug/alcohol test(s).

Records to keep indefinitely

Records related to the education and training of breath alcohol technicians (BATs), screening test technicians (STTs), supervisors, and drivers must be maintained:

- While the individual performs the functions which required the training, AND
- For two years after ceasing to perform those functions.

Records to keep for 5 years

- Alcohol test results of 0.02 BAC or greater,
- Positive drug test results,
- Documentation of refusals to submit to testing,
- Documents sent by MRO relating to positive test results,
- Documents from previous employers relating to positive test results
- EBT calibration documentation,,
- SAP's evaluations and referrals
- Return-to-duty and follow-up test results,
- Documents presented by driver to dispute test results
- Administrative records, including:
 - Agreements with collection sites, labs, BATs, STTs, MROs, and C/TPAs;
 - Names and positions of officials and their role in the testing program(s);
 - Semi-annual laboratory statistical summaries of urinalysis; and
 - Your testing policy and procedures, and
- Annual calendar year summary, if required.

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§382.505 Other alcohol-related conduct. If a driver's DOT alcohol test result is between 0.02 and 0.04 BAC, the driver must be removed from duty for at least 24 hours. The driver should not return to work until his or her next regularly scheduled duty period.

Subpart F — Alcohol Misuse and Controlled Substances Use Information, Training, and Referral.

§382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances states you must provide your drivers with a copy of your written policies and other materials concerning alcohol abuse and drug use, and you must obtain a signed receipt from them certifying that the driver have received these materials.

382.603 Training for supervisors requires that supervisors receive at least two hours of training to help them determine when "reasonable suspicion" exists to require drivers to undergo drug or alcohol testing. Supervisors must receive one hour of training on the signs of alcohol abuse and one hour on the signs of drug use.

Like the educational materials provided to drivers, this training only has to be provided once. If you have proof that another employer has trained one of your supervisors, you do not *have* to train him or her again. However, it makes sense to keep your supervisors' observational skills sharp by providing your own training, and by providing it on a recurring basis.

You must maintain documentation of this training until two years after the supervisor stops performing the functions of a supervisor.

Part 383

Part 383 tells you who needs a commercial driver's license (CDL), how to obtain one, and how to lose one. In other words, it governs the issuance of CDLs and the *disqualification* of licensed drivers who violate safety regulations.

Much of this Part applies to the states, which are charged with implementing the federal CDL regulations and issuing driver's licenses. However, motor carriers operating vehicles that require CDLs must be familiar with this Part, and should incorporate portions of the rules and regulations into their policies, training programs, and safety management system.

Part 383 — Commercial Driver's License Standards; Requirements and Penalties, contains 10 Subparts:

- **Subpart A** — General
- **Subpart B** — Single License Requirement
- **Subpart C** — Notification Requirements and Employer Responsibilities

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- **Subpart D** — Driver Disqualifications and Penalties
- **Subpart E** — Testing and Licensing Procedures
- **Subpart F** — Vehicle Groups and Endorsements
- **Subpart G** — Required Knowledge and Skills
- **Subpart H** — Tests
- **Subpart J** — Commercial Driver’s License Document

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Because portions of Part 383 apply only to the states, we’ll discuss only those sections that affect motor carriers.

Subpart A — General

As the title implies, Subpart A contains general information that applies to the entire Part, including definitions. It contains the definitions used in this part, and the applicability (states, carriers, and drivers).

Subpart B — Single License Requirement

Subpart B contains only two sections: one requires that CMV drivers hold a CDL, and the other requires that they only hold a *single* license.

Subpart C — Notification Requirements and Employer Responsibilities

The regulations in Subpart C are aimed at keeping you abreast of your drivers’ traffic violations, license suspensions, and driving history.

Your drivers are required to report convictions and suspensions to you. This is where your safety management controls come into play — make sure your written policies clearly state that your drivers are required to report convictions and suspensions to you. We’ll go into more detail below, but here is a quick summary of the requirements:

IF your driver:	THEN he or she must:
Is convicted of a traffic violation in any type of vehicle	Notify you and the state within 30 days, supplying specific information.
Has his or her license suspended or otherwise loses the right to drive	Notify you by the end of the business day following the day the driver was notified.

§383.35 Notification of previous employment, closes that loophole for CDL drivers by requiring that they provide a 10-year employment history whether their state enforces §391.21 or not.

CDL driver applicants must provide 10 years’ worth of employment history at the time of application, including:

- Names and addresses of previous employers for which the applicant was a CMV operator;
- Dates of employment; and

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- The reason for leaving.

You must inform the applicant that the information may be used, and previous employer's may be contacted, to investigate the driver's work history.

§383.37 Employer responsibilities, contains some general, common-sense prohibitions directed at the employer. In simple terms, you can't let a driver operate a CMV if he or she:

- Has an invalid license or has been disqualified;
- Is subject to an out-of-service order; or
- Is violating a railroad-highway grade crossing rule.

Subpart D — Driver Disqualifications and Penalties

This subpart concerns *disqualification*, and you and your drivers must be familiar with the violations that can result in disqualification, because a disqualified driver must not get behind the wheel. It describes "major" violations, which are ones that can result in immediate disqualification, and "serious" violations, which when combined with another serious violation within a three year time span can result in the driver being disqualified.

Which offenses can result in disqualification? The following table summarizes the four categories of offenses, what they include, and the disqualification period that can result:

CATEGORY	INCLUDES	PERIOD
Major offenses	DUI/DWI, refusing to take an alcohol test, leaving an accident scene, using a vehicle to commit a felony, causing a fatality through negligent driving, etc.	1 year to life
Serious traffic violations	Speeding (15+ mph over limit), reckless driving, following too closely, driving without a CDL or the proper endorsement, etc.	60–120 days
Railroad-highway grade crossing offenses	Failing to slow down or stop when required, failing to leave enough space in front of or underneath vehicle, failing to obey traffic control device, etc.	60 days to 1 year or more
Violations of out-of-service orders	Violating a driver or vehicle out-of-service order	90 days to 5 years

Subpart F — Vehicle Groups and Endorsements

Subpart F provides the regulations on vehicle classes and endorsements. Drivers are required to have a CDL with the correct class and endorsement when they are operating the vehicle on a public roadway. The

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DOCUMENT(S) TO BE RETAINED	RETENTION PERIOD	RETENTION LOCATION
<p>**“Test results” includes:</p> <ul style="list-style-type: none"> ▪ Copy of alcohol test form, with results; ▪ Copy of drug test chain of custody form; ▪ Documents sent to the employer by the MRO; ▪ Documentation of any refusal to submit; ▪ Documents provided by a driver to dispute results; and ▪ Previous employer test results (see §§382.301(c), 40.25, and 391.23). <p>See §40.333 and §382.401.</p>		
<p>Records related to the collection process (except EBT calibration records):</p> <ul style="list-style-type: none"> ▪ Collection logbooks (if used); ▪ Documents related to the random selection process; ▪ Documentation of BAT training; ▪ Documentation of reasoning for reasonable suspicion testing; ▪ Documentation of reasoning for post-accident testing; ▪ Documents verifying a medical explanation for the inability to provide adequate breath or urine for testing; and ▪ Consolidated annual calendar year summaries. <p>See §40.333 and §382.401.</p>	2 years	
<p>1. Negative and cancelled drug test results*, and 2. Alcohol test results* with concentration less than 0.02.</p> <p>**“Test results” includes:</p> <ul style="list-style-type: none"> ▪ Copy of alcohol test form, with results; ▪ Copy of drug test chain of custody form; ▪ Documents sent to the employer by the MRO; ▪ Documentation of any refusal to submit; ▪ Documents provided by a driver to dispute results; and ▪ Previous employer test results (see §§382.301(c), 40.25, and 391.23) <p>See §40.333 and §382.401.</p>	1 year	

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DOCUMENT(S) TO BE RETAINED	RETENTION PERIOD	RETENTION LOCATION
Accidents (Part 390)		
1. Accident register. 2. Copies of accident reports required by states, other governmental entities, or insurers. See §390.15(b).	3 years	Unspecified
Driver Qualification (Part 391)		
1. Application for employment (§391.21); 2. Initial 3-year motor vehicle record (MVR) from state(s) (§391.23(a)(1)); 3. Road test form and certificate (§391.31(g)), or license or certificate accepted in lieu of road test (§391.33); 4. Medical exam certificate (original or a copy) (§391.43(g)) or MVR showing CDL driver's medical certification status and self-certification information* (§391.23(m)); 5. Documentation that the medical examiner is listed on the National Registry* (for exams conducted after May 20, 2014); 6. Any documentation of a medical variance*; 7. Annual driving record* (§391.25(a)); 8. Note relating to annual review* (§391.25(c)(2)); 9. Drivers' list of violations* (§391.27); 10. Any other matter relating to a driver's qualifications or ability to drive a motor vehicle safely. *The following may be removed 3 years after execution: <ul style="list-style-type: none"> • Medical examiner's certificate or copy of MVR with medical certification information, • Annual motor vehicle record from state(s), • Note relating to annual review of driving record, • Annual list of violations (prepared by the driver), and • Letter granting a waiver of a physical disqualification. See §391.51.	Employment + 3 years	Driver Qualification file Note: May be combined with personnel file.

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DOCUMENT(S) TO BE RETAINED	RETENTION PERIOD	RETENTION LOCATION
<p>After Jan. 29, 2015, CDL holders who provide a new medical certificate to the state driver licensing agency must carry a copy of the certificate until the state has time to enter the information into the driving record. Employers must also keep a copy of the new certificate until an updated driving record is obtained. (This also applies to CLP holders after July 7, 2015.)</p> <p>See §391.23(m)(2) and §391.41(a).</p>	Up to 15 days after the certificate was issued	On driver's person and in the driver qualification file
Hours of Service (Part 395)		
<p>For all 100-air-mile and 150-air-mile radius drivers, "accurate and true time records" showing:</p> <ul style="list-style-type: none"> • The time the driver reports for duty each day, • The time the driver is released from duty each day, • Total number of hours on duty each day, and • Total time on duty for the preceding 7 days for drivers used for the first time or intermittently. <p>See §395.1(e).</p>	6 months	Unspecified
<p>For drivers used intermittently, a signed statement giving:</p> <ul style="list-style-type: none"> • The total time on duty during the immediately preceding 7 days, and • The time at which the driver was last relieved from duty. <p>See §395.8(j)(2).</p>	6 months	Unspecified
<p>Records of duty status (driver logs) and all supporting documents. "Supporting documents" are listed in Question 10 in the interpretations to Sec. 395.8. Logs must be submitted within 13 days of completion (§395.8(i)).</p> <p>See §395.8(k)(1).</p>	6 months from date of receipt	Unspecified
<p>A copy of each log for the previous 7 consecutive days (whether hand-written or electronic)</p> <p>See §395.8(k)(2) and §395.15(b)(4).</p>	7 days	In vehicle
<p>For companies using automatic on-board recording devices that use location codes instead of city/state information, a list of the location codes showing all possible location identifiers.</p> <p>See §395.15(d)(2).</p>	Unspecified	In vehicle and at principal place of business

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DOCUMENT(S) TO BE RETAINED	RETENTION PERIOD	RETENTION LOCATION
1. Original Driver Vehicle Inspection Report (DVIR), 2. Certificate of repairs, and 3. Certification of driver's review. Note pre-trip requirements in §392.7 and §396.13. Only §396.13 has recordkeeping requirements. See §396.11(c)(2) and Question 18 in the interpretations.	3 months	Principal place of business or where vehicle is housed or maintained
Intermodal equipment providers must maintain drivers' intermodal equipment inspection reports, including: <ul style="list-style-type: none"> ▪ The original driver report, ▪ The certification of repairs, and ▪ The certification of the driver's pre-inspection review. See §396.12(d).	3 months	Unspecified
Documentation of periodic inspection (a report or other document such as a sticker or decal). See §396.17(c) and §396.23(a).	Continuously	In or on vehicle
Evidence of an individual's qualifications to conduct annual inspections. See §396.19(b).	Until 1 year after employee stops performing inspections	Unspecified
Periodic inspection report (original or copy). See §396.21(b)(1).	14 months	Where the vehicle is housed or maintained
Evidence of a brake inspector's qualifications. See §396.25(e).	Until 1 year after employee stops performing inspections	Principal place of business or where employee is based
Hazardous Materials (Part 397)		
Signed receipt documenting that hazmat driver has received a copy of the regulations and emergency instructions per §397.19(a). Applies to transportation of explosives only. See §397.19(b).	1 year	Unspecified
A written route plan, for transporting highway route controlled Class 7 (radioactive) materials, per §397.101(d).	Unspecified.	In driver's possession, and filed with the FMCSA and shipper.
Certificate of training, for drivers transporting highway route controlled Class 7 (radioactive) materials, per §397.101(e).	Employment + 3 years	Driver Qualification file, and in driver's immediate possession

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This subject index is designed to help you quickly locate information in Fleet management pro. Because each chapter is numbered separately, subject categories are referenced by chapter and page number within that chapter.

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