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I. BACKGROUND

Motor carriers can operate interstate¹ and intrastate². To obtain "interstate" authority, motor carriers must comply with federal regulations. Intrastate motor carriers must also comply with state regulations, which usually mirror the federal regulations. In the area of insurance, both interstate and intrastate motor carriers must comply with minimum financial responsibility requirements, and their insurers must provide certificates of insurance to the appropriate authorities. If these requirements are not met, the motor carrier will be precluded from obtaining the required authority to operate.

The purpose of minimum financial responsibility requirements 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. 49 C.F.R. § 387.1. Under the Motor Carrier Act of 1980. certain motor carriers engaged in interstate commerce must register Secretary of Transportation and comply with minimum financial responsibility requirements. 49 U.S.C. §§ 13902(a)(1) and 31139. In fact, an interstate motor carrier cannot obtain the authority to operate unless it procures at least a minimum level of public-liability insurance. 49 U.S.C. § 13906 (2000); 49 C.F.R. § 387.1, et seq. When the motor carrier's operations are limited to intrastate hauling, the state where it operates likewise requires compliance with its minimum financial responsibility requirements.

If the insurance policy that provides the minimum financial responsibility requirements does not provide coverage for the accident in question, federal and state legislative schemes are in place to protect the public from the lack of insurance. In the federal scheme, a statute is in place that requires an endorsement to the policy, the MCS-90 Endorsement.³ The MCS-90

ensures that a motor carrier has independent financial responsibility to pay for losses sustained by the general public arising out of its operations. *John Deere Ins. Co. v. Nueva*, 229 F.3d 855 n. 3 (9th Cir. 2000), *cert. denied*, 534 U.S. 1127, 122 S.Ct. 1063 (2002). It is designed to eliminate the possibility of denial of coverage by an insurer based on limiting provisions contained in the policy, and to insure that injured members of the public are able to receive judgments from negligent authorized intestate carriers. *Id. at 855-57; Travelers Ins. Co. v. Transport Ins. Co.*, 787 F.2d 1133, 1139 (7th Cir. 1986).

States also require endorsements to the policies issued to intrastate motor carriers. The most common is the Form F Endorsement, which has the same effect as the MCS-90, is promulgated by the National Association of Regulatory Utilities Commissioners ("NARUC") pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act. Following the scheme of the federal regulations, Texas, a member of the NARUC, adopted Forms E, a certification by the insurer of insurance, and Form F Endorsement to insure that the public is protected from uninsured intrastate carriers.

This paper will discuss the MCS-90 and Form F Endorsements and the federal and state insurance filing requirements.

II. THE MCS-90 ENDORSEMENT⁴

The regulations mandate that all entities receiving payment to haul others' property across state lines have an MCS-90 Endorsement attached to any liability policy. 49 C.F.R. § 387.15. Any MCS-90 Endorsement to a policy of insurance must be in the form

⁴ The endorsement, originally promulgated by the ICC, was directed to trucking companies' practice of using leased or borrowed vehicles, which often resulted in evasion of safety requirements and confusion about financial responsibility for damage caused by the operation of these vehicles. *Empire Fire & Marine Ins. Co. v. Guar. Nat'l Ins. Co.*, 868 F.2d 357, 362-63 (10th Cir. 1989).

¹ "Interstate" refers to the hauling across state lines.

² "Intrastate" refers to hauling within state lines.

³ An MCS-90 Endorsement is often referred to as an "ICC endorsement" because its form was initially prescribed under statutes delegating some of the enforcement powers to the Interstate Commerce Commission. The ICC, however, was abolished by the ICC Termination

Act of 1995, and its responsibilities were transferred to the Surface Transportation Board of the Department of Transportation. <u>Public Law</u> <u>No. 104-88</u>, Section 201, 109 Stat. 803, 932-934, December 1995.

prescribed the Federal Motor Carrier Safety Administration. 49 C.F.R. § 387.15. The endorsement must specify that "the coverage thereunder will remain in effect continuously until terminated, as required in §387.7(b)(3) . . ." *Id.* Moreover, the endorsement has to be issued "in the exact name of the motor carrier." *Id.*

A. Language of the MCS-90 Endorsement

The MCS-90 Endorsement form prescribed by the Federal Motor Carrier Safety Regulation is fully set forth in Appendix A. The following language, which is part of the endorsement, is pivotal to the analysis of the endorsement:

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 vehicles subject to the financial motor 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.

49 C.F.R. § 387.15 (emphasis added).

1. <u>Applicable Law to the Operation and Effect</u> of the MCS-90 Endorsement

"Federal law applies to the operation and effect of [the MCS-90] endorsements." "Courts that consider the applicability of an MCS-90 Endorsement. а federallv mandated endorsement to motor carrier insurance policies, construe its operation and effect as a matter of federal law." Canal Ins. Co. v. First Gen. Ins. Co., 889 F.2d 604, 610 (5th Cir. 1989), modified on other grounds, 901 F.2d 45 (5th Cir. 1990); see also John Deere, John Deere Ins. Co. v. Nueva, 229 F.3d 855, 856 (9th Cir. 2000), cert. denied, 534 U.S. 1127, 122 S.Ct. 1063 (2002); Ford Motor Co. v. Transport Indemn. Co., 795 F.2d 538, 545 (6th Cir. 1986). Thus, for interpretation of the MCS-90 Endorsement, courts turn to federal jurisprudence.

- 2. <u>Endorsement Must Be Filed With The</u> <u>Federal Motor Carrier Safety Administration</u> <u>Or With The Base-State</u>
- a. Filing Requirement

Under federal law, an interstate motor carrier operating under a permit issued by the Secretary of Transportation must file a bond, insurance policy, or other type of security "sufficient to pay, not more than the amount of the security, for each final judgment against the [carrier] for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of [its] motor vehicles ..." U.S.C. § 13906(a)(1). Certificates of 49 insurance or other securities or agreements are filed with and accepted by the Federal Motor Carrier Safety Administration, "conditioned to pay any final judgment recovered against such motor carrier ..." 49 C.F.R. § 387.301. The purpose of this statute is to insure that a motor carrier has independent financial responsibility to pay for losses sustained by the public. Travelers Ins. Co. v. Transport Ins. Co., 787 F.2d 1133, 1139 (7th Cir. 1986).

While the Federal Motor Carrier Safety Administration ("FMCSA") is the primary repository for financial responsibility filings and has exclusive jurisdiction over interstate carriers, under the Unified Carrier Registration ("UCR"), interstate motor carriers register and make their filings in their base state without the need of filing with the FMCSA.⁵ See Appendix C for registration and filing requirements in Texas.⁶

b. Cancellation

The MCS-90 Endorsement specifies that insurance coverage "will remain in effect continuously until terminated." 49 C.F.R. 387.15. The MCS-90 remains in effect unless and until it is cancelled in the manner prescribed by federal law. *Canal Ins. Co. v. First Gen. Ins. Co.*, 889 F.2d 604, 610 (5th Cir. 1989), *modified on other grounds*, 901 F.2d 45 (5th Cir. 1990). The MCS-90 requires a 35-day grace period after the termination of the insurance policy.⁷ 49

⁵ In 1991. Congress passed the Intermodal Surface Transportation Efficiency Act which, among other things, directed the ICC to replace the existing multi-state registration system with a simplified single state registration system. The Single State Insurance Registration (SSIR) went into effect on January 1, 2004. 49 C.F.R. §§ 1023 and 1162 (1994). The SSIR was repealed, and its stead the Unified Carrier Registration (UCR) was enacted. Under the UCR, a motor carrier must register by December 31, 2008, in the state of its principal place of business or in the participating state where it expect to operate the greatest number of vehicles in the coming vear. Proof of insurance for interstate commerce is demonstrated by the filing of a Form BMC 91 or Form BMC 91X Certificate in the registration state. 49 C.F.R. §§ 1023.4(c)(2) and 1043.7(3). The single state registration is intended to replace the multi-state registration system, which uses the individual Form E filing, which is discussed below, with amore simplified svstem.

⁶ See also 43 Tex. Admin. Code §18.17, dealing with Single State Registration System (Appendix C).

⁷ 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 C.F.R. §387.7(b)(1). Cancellation may be effectuated by the insurer or the insured motor carrier. *Id.* The notice requirement operates independent of any other policy provision. *Northland Ins. Co. v. New Hampshire Ins. Co.*, 63 F.Supp.2d 128, 130 (D.N.H. 1999).

3. The MCS-90 Is A Surety Agreement

The MCS-90 does not provide insurance coverage, nor does it extend coverage under the policy in favor of the insured. Canal Ins. Co. v. Carolina Cas. Ins. Co., 59 F.3d 281, 283 (1st Cir. The purpose of the MCS-90 1995). Endorsement "is to protect the public, not to create a windfall to the insured. Harco Nat'l Ins. Co. v. Bobac Trucking, Inc., 107 F.3d 733, 735-36 (9th Cir. 1997). The endorsement seeks to ensure that ultimate responsibility lies with the insured trucking company. See Carolina Cas. Ins. Co. v. E.C. Trucking, 396 F.3d 837, 841 (7th Cir. 2005); T.H.E. Ins. Co. v. Larsen Intermodal Servs., Inc., 242 F.3d 667, 672 (5th Cir. 2001); Adams v. Royal Indemn. Co., 99 F.3d 964, 968-69 (10th Cir. 1996); Canal Ins. Co. v. First Gen. Ins. Co., 889 F.2d 604, 611 (5th Cir. 1989); Ford Motor Co. v. Transp. Indemn. Co., 795 F.2d 538, 544 (6th Cir. 1986); Travelers Ins. Co. v. Transp. Ins. Co., 787 F.2d 1133, 1139 (7th Cir. 1986); Carolina Cas. Ins. Co. v. Underwriters Ins. Co., 569 F.2d 304, 312 (5th Cir. 1978).

The MCS-90's reimbursement obligation is seen as a surety agreement that creates "a reimbursable obligation as to final judgments rendered against the named insured." John Deere Ins. Co. v. Nueva, 229 F.3d 855, 856 (9th Cir. 2000), cert. denied, 534 U.S. 1127, 122 S.Ct. 1063 (2002); see also Harco Nat' Ins. Co., 107 F.3d at 735-36; see also Travelers Indemn. Co. of Illinois v. W. Am. Specialized Transp. Serv., Inc., 408 F.3d 256, 260 (5th Cir. 2005) ("MCS-90 Endorsement is 'in effect, suretyship by the insurance carrier to protect the public- a safety net' and not an ordinary insurance provision to protect the insured."). Implicit in any surety agreement is the principal's obligation to reimburse the surety for the amount it pays. McGirt v. Royal Ins. Co., 399 F.Supp.2d 655, 666 (D.Md. 2005).

B. <u>When Is The MCS-90 Endorsement</u> <u>Triggered?</u>

commence from the date the notice is received by the FMCSA at its office in Washington, D.C.). 49 C.F.R. §387.7(b)(1).

1. <u>No Coverage Under The Policy</u>

The endorsement's application is triggered only when the policy to which it is attached does not provide coverage to the insured. *Minter v. Great American Ins. Co.*, 423 F.3d 460, 470-71 (5th Cir. 2005) (*citing T.H.E. Ins. Co. v. Larsen Intermodal Servs., Inc.*, 242 F.3d 667, 672 (5th Cir. 2001)). Moreover, the endorsement trumps non-cooperation and notice clauses. *Campbell v. Bartlett*, 975 F.2d 1596, 1580-81 (10th Cir. 1992). The only time that the MCS-90 does not apply is when there is coverage under the policy. *OOIDA Risk Retention Group, Inc. v. Williams*, 544 F.Supp.2d 540, 547 (N.D.Tex. 2008).

a. No Duty To Defend

Federal courts consistently hold that the MCS-90 Endorsement does not create a duty to defend claims not covered by the policy but only by the endorsement. See Harco Nat' Ins. Co., 107 F.3d at 735-36 (*citing Canal Ins. Co.,* 889 F.2d at 612); Carolina Cas. Ins. Co. v. Ins. Co. of N. America,595 F.2d 128, 144 (3rd Cir. 1979); National Am. Ins. Co. v. Central States Carrier, Inc., 785 F.Supp. 793, 797 (D.Ind. 1992)).

2. When The Named Insured Is Sued

The MCS-90 Endorsement refers only to the "insured" and does not mention "motor carrier." 49 C.F.R. 387.15. Specifically, the endorsement states:

... 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...

49 C.F.R. § 387.15. The endorsement itself does not define the term "insured." However, the term is defined in Part 387 of the regulations as "the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier." 49 C.F.R. § 387.5. The definition does not include the motor carrier, its agents, representatives or employees.⁸

Nonetheless, some courts have extended the definition of "insured" contained in the regulations to include the definition of "insured" in the policy. The net result in this line of cases is that anyone who is an omnibus insured in the policy may also qualify as the "insured" in the MCS-90 Endorsement.

The MCS-90 indirectly modified the insurer's policy definition of "insured" to expand coverage to include permissive users of the trailer. John Deere Ins. Co. v. Nueva, 229 F.3d 853, 857 (9th Cir. 2000) (citing Adams v. Royal Indemn. Co., 99 F.3d 964, 970 (10th Cir. 1996)); see also Lynch v. Yob, 768 N.e.2d 1158, 1165 (Ohio 2002) (MCS-90 Endorsement required insurer to indemnify driver as the permissive user of leased trailer): Pierre v. Providence Washington Ins. Co., 784 N.E.2d 52, 754 N.Y.2d 179 (App. N.Y. 2002) (citing Adams and Nueva); Integral Ins. Co. v. Lawrence Fulbright Trucking, 930 F.2d 258 (2nd Cir. 1991) (endorsement extends to owner of trailer even though there was no evidence of negligence on his part). The reasoning behind this line of cases is to give effect to the purpose of the MCS-90 Endorsement, to allow the public to recover when a negligent uninsured motor carrier is negligent.

An argument against extending the definition of "insured" is that MCS-90 Endorsement obligates the insurer only to pay "any final judgment recovered against the insured." 49 C.F.R. 387.15. "Because the exact language used in the endorsement is mandated by a federal regulation and not subject to modification by the parties, the definition of 'insured' found in the policy is not conclusive." Del Real v. United States Fire Ins. Crum & Forster, 64 F.Supp.2d 958, 964 (E.D. Cal. 1998). The language in the endorsement and the intent of the parties indicate that the term "insured" refers only to the named insured. Id. The holding in Del Real, however, is in the minority.

training, assigning, or dispatching of drivers and employees concerned with the installation, inspection and maintenance of motor vehicle equipment and/or accessories." The term "forhire motor carrier" is defined as "a person engaged in the transportation of goods or passengers for compensation," and a "private motor carrier" as a "person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier." 49 C.F.R. § 390.5.

⁸ A motor carrier is defined in 49 C.F.R. § 390.5 as "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,

a. The Motor Carriers That Are Exempt From Federal Motor Carrier Regulations

The federal financial responsibility requirement applies to "for hire motor carriers operating motor vehicles transporting property interstate or foreign commerce." 49 C.F.R. §387.3 (a). It likewise applies to "motor carriers operating motor vehicles transporting hazardous materials, hazardous substances, or hazardous wastes in interstate, foreign, or intrastate commerce." 49 C.F.R. § 387.3(b). It does not apply, however, to:

(1) a motor vehicle that has a gross vehicle weight rating (GVWR) of less than 10,000 pounds. 49 C.F.R. § 3878(c)(1).

(2) 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. 49 C.F.R. § 3878(c)(2).

b. Agricultural Hauling

Title 49 provides that neither the Secretary of Transportation nor the Surface Transportation Board has jurisdiction over transportation by motor vehicle of "agricultural or horticultural commodities (other than manufactured products thereof)." 49 U.S.C. § 13506(a)(6)(B). There is likewise no jurisdiction over motor vehicles controlled and operated by agricultural cooperative associations. 49 U.S.Ca. § 13506(a)(5). In terms of the applicability of the MCS-90, hauling of agricultural products are considered an agricultural activity exempt from federal regulations, including the MCS-90 Endorsement. Illinois Central Railroad Co. v. DuPont, 26 F.3d 665, 667 (5th Cir. 2003) (but, MSC-90 endorsement not included in policy); Branson v. MGA Ins. Co., Inc., 673 So. 2d 89 (Fla. Dist. Ct. App. 5th Dist. 1996) (transporting potatoes intrastate).

On the other hand, some courts have held that the MCS-90 Endorsement applies notwithstanding the transportation of an agricultural commodity. *Century Indemn. Co. v. Carlson*, 133 F.3d 591, 600 (8th Cir. 1998) (because the motor carrier engaged in interstate commerce, whether shipment was agricultural was irrelevant). In *Royal Indemn. Co. v. Jacobsen*, 863 F.Supp. 1537 (D.Utah 1994), the court ruled that an MCS-90 Endorsement provided coverage regardless of the fact that the truck was hauling hay from Utah to Nevada. The insurer's argument that the agricultural use was except from federal regulations was ignored, and the court ruled that a "trip specific" reading of the regulations was incorrect. *Id.* It is clear that the court's intent was to effectuate the intent behind the MCS-90 Endorsement, the protection of the public.

c. A Lessor Is Not A Motor Carrier

Motor carriers that use leased vehicles are required to have "control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier." 49 U.S.C. § 14102(a)(4). Under 49 C.F.R. § 376.12(c)(1), the lease agreements covering the leased vehicles "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 is required to further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease." 49 C.F.R. § 376.12(c)(1). The control and responsibility requirements "render lessee carriers vicariously liable, notwithstanding traditional principles of agency, for injuries sustained by third parties resulting from the negligence of the drivers of leased vehicles." Johnson v. S.O.S. Transport, Inc., 926 F.2d 5216, 522 (6th Cir. 1991).

When a lessor of a vehicle leases it, it does not retain possession or control of a vehicle and is, therefore, not a "motor carrier" as that term is defined under 49 C.F.R. § 387.5. *Del Real v. United States Fire Ins. Crum & Forster*, 64 F.Supp.2d 958, 965 (E.D.Cal. 1998); see also *Castro v. Budget Rent-A-Car System, Inc.*, 65 Cal.Rptr.3d 430 (2d Dist. 2007). This is so even if the lessor has DOT authorization. *Id.* at 439. As long as the lessor is not acting as a motor carrier at the time of the accident, it cannot be held liable under the MCS-90. *Id.*

3. Interstate Transportation

Federal Motor Carrier Safety Regulations apply only to interstate transportation. Accordingly, the MCS-90 applies only to motor carriers engaged in interstate commerce. *Century Indemn. Co. v. Carlson*, 133 F.3d 591, 594 (8th Cir. 1998). It does not apply to wholly intrastate hauls. *Thompson v. Harco Nat'l Ins. Co.*, 120 S.W.3d 511, 514-16 (Tex. App. – Dallas 2003, pet. denied), *cert. denied*, 543 U.S. 876, 125 S.Ct. 100 (2004); *Branson v. MGA Ins. Co.*, 673 So.2d 89, 91 (Fla.Dist.Ct.App. 1996).

Courts focus on the nature of the trip to determine the applicability of the MCS-90. If a trip starts at one point in a state and ends at another point in the same state, the Federal Motor Carrier Safety Regulations do not apply. For example, the insurer of a motor carrier engaged in an intrastate run and not involved in interstate commerce, did not have any duty to pay under the MCS-90 Endorsement even though the shipment would eventually end up in interstate commerce. General Sec. Ins. Co. v. Barrentine, 829 S.2d 980 (Fla.Dist.Ct.App. 2002). Likewise, the insurer of a motor carrier without federal authority to operate as an interstate carrier -- and involved in purely intrastate hauling -- was not obligated to pay a judgment under the MCS-90 Endorsement. Kolencik v. Progressive Preferred Ins. Co., 2006 WL 738715 (N.D. Ga. 2006).

On the other hand, when a shipper enters into lease agreement for a vehicle with the clear intent of using it for interstate shipping services, the MCS-90 applies to a single intrastate use of such vehicle. Reliance Nat'l Ins. Co. v. Royal Indemn. Co., 2001 WL 984737, at *4-7 (S.D.N.Y. 2001). Likewise, when an MCS-90 Endorsement is attached to the policy issued to an intrastate motor carrier, a court may effectuate the endorsement even though the motor carrier does not haul property across state lines. Heron v. Transportation Cas. Ins. Co., 650 S.E.2d 699, 702 (Va. 2007). The reasoning is that the policy will be given effect independently from nature of the the transportation service. Id.

a. Accident Occuring In México

In the Fifth Circuit, the MCS-90 will more than likely not obligate an insurer to cover an accident occurring in México. *Lincoln General Ins. Co. v. Garcia*, 501 F.3d 436 (5th Cir. 2007). In *Garcia*, at issue was the counter-part of the MCS-90 for buses, the MCS-90B. The court found that the MCS-90B endorsement did not apply to an accident in México, because México was not a place where the motor carrier was subject to the minimum financial responsibility requirements of U.S. federal law. *Id.* at 442. Based on *Garcia*, the same reasoning will apply to a case involving the MCS-90 Endorsement when the accident occurs in a foreign country.

4. Judgment Requirement

If an insurance contract has an arbitration clause, the MCS-90 Endorsement does not preempt arbitration. *Szczepanik v. Through Transport Mut. Ins. Assoc., Ltd.,* 2008 WL 2166193, at *4 (D.C.N.J. May 21, 2008). An arbitration clause determines the forum and the procedure for dispute resolution, but not the ultimate question of liability. *Id.*

C. <u>When Is The MCS-90 Endorsement Not</u> <u>Applicable?</u>

Despite the fact that there is no coverage under the policy to which the endorsement is attached, several factual circumstances exist that affect the application of the MCS-90. Following are some of the most common situations.

1. Endorsement Is Not Attached To The Policy

The MCS-90 Endorsement is mandated as part of the insurance policy issued to authorized motor carriers. 49 C.F.R. § 397.15. If, however, the endorsement is not attached to the policy, courts are split on whether the endorsement should be read into the policy.

a. Endorsement Is Part Of The Policy As A Matter Of Law

Some courts find that the MCS-90 Endorsement becomes part of an insurance policy as a matter of law even when the endorsement is not physically attached to the policy itself. See Waters v. Miller, 560 F.Supp.2d 1318, 1321-22 (M.D.Ga. 2008) (citing Hagans v. Glens Falls Ins. Co., 465 F.2d 1249, 1252 (10th Cir.1972) (assuming that because "all parties proceed on the premise that the policy ... contains" the the reauired endorsement, endorsement became part of the policy); Prestige Cas. Co. v. Mich. Mut. Ins. Co., 99 F.3d 1340, 1348 n. 6 (6th Cir.1996) (citing Hagans for the proposition that "[a]Ithough the ICC endorsement in fact is not attached to [the insurer's] policy, [the insurer] acknowledges it is incorporated as a matter of law.")); see also Travelers Ins. Co. v. Transp. Ins. Co., 787 F.2d 1133, 1139 (7th Cir.1986) (citing Hagans for the proposition that the MCS-90 "endorsement may be read into a policy certified to the [federal agency governing interstate commerce] as a matter of law").

In analyzing Hagans, the court in Waters pointed out that the Hagans "court simply assumed that the endorsement was incorporated into the policy because the parties acted as though it was. Waters, 560 F.Supp.2d at 1322. The court also noted that Hagans was distinguishable because the insurer filed a certificate of insurance with the ICC certifying that it had issued a policy in conformity with the ICC's rules "When an insurer and regulations. ld. represents affirmatively the federal to government that the policy issued to its insured complies with federal law, a reasonable argument can be made that the insurer should be estopped from denying the existence of the endorsement." Id.

b. To Be Effective, Endorsement Must Be Attached To Policy

The Fifth Circuit is among the jurisdictions that require the endorsement to be attached to the underlying policy. See, e.g., Illinois Cent. R. Co. *v. DuPont*, 326 F.3d 665 (5th Cir. 2003). In DuPont, the Railroad sued a logging company for property damage. The logging company driver was hauling logs for the company, but was driving his own truck at the time of the accident. The insurance policy did not contain an MCS-90 Endorsement although required by law. The Fifth Circuit was faced with the issue of whether to include the endorsement as a matter of law. The court held that the failure to include the policy did not give rise to a reformation remedy. Id. at 668. The court found that the regulations place the burden on the insured, not the insurer, to obtain the necessary insurance endorsements. Id. at 669. The court reasoned that imputing the endorsement into the policy "would create a perverse incentive" for motor carriers, who "would have an incentive not to comply with the regulations and obtain the endorsement and pay the additional premium

Other courts have also declined to incorporate the MCS-90 into the policies absent evidence showing that the insured informed the insurer of its needs for interstate coverage. *Waters*, 560 F.Supp.2d at 1323 (*citing Brewer v. Maynard*, 2007 WL 2119250, at *2-3 (S.D.W.Va. July 20, 2007); *Howard v. Quality Xpress, Inc.*, 128 N.M. 79, 82, 989 P.2d 896 (refusing to incorporate MCS-90 into the policy when "nothing in the record indicates that ... [the] insurer had any basis to believe that the insurance contract needed to" comply with federal regulations); *Thompson v. Eroglu*, 2006 WL 3849286, at *7 (Ohio App. Dec. 29, 2006) (finding in favor of insurer who "was unaware of [the insured's] interstate hauling" and observing that "the fact that [the insured] transported waste in interstate commerce and should have been subject to the federal regulations does not mean that he actually complied with the applicable federal regulations")).

Based on *Waters*, it follows that any motor carrier whose insurer must certify to the federal authorities that insurance was issued to its insured is likely going to be liable under the MCS-90 Endorsement, even if the endorsement is not contained in the policy.

2. <u>Dispute Between Insurers Or Between The</u> <u>Insurer And The Insured.</u>

Where "an insurance policy provides no coverage for non-listed vehicles except to thirdparty members of the public through operation of the endorsement, the policy provides no coverage for purposes of disputes among insurers over ultimate liability." John Deere Ins. *Co. v. Nueva*, 229 F.3d 855, 858 (9th Cir. 2000) (quoting John Deere Ins. Co. v. Truckin' USA, 122 F.3d 270, 275 (5th Cir. 1997)). The integral purpose of the MCS-90 Endorsement is to protect the public and should not be "implicated in a dispute between two insurers." John Deere, Likewise, the MCS-90 229 F.3d at 858. protection is not triggered in disputes between the insured and its insurers. Canal Ins. Co. v. First General Ins. Co., 889 F.2d 604, 611 (5th Cir. 1990) (observing that the MCS-90 protections "serves no purpose against the insured or among insurers"), modified on other grounds, 901 F.2d 54 (5th Cir. 1990).

The majority of circuits are likewise in agreement that the MCS-90 Endorsement does not affect the obligations between joint insurers. Canal Ins. Co. v. Lincoln Gen. Ins. Co., 2008 WL 3103270 (W.D. Wash. Aug. 8, 2008) (citing Canal Ins. Co. v. Distribution Servs., Inc., 320 F.3d 488, 492 (4th Cir. 2003) ("MCS-90 Endorsement does not control the allocation of loss among insurers"); Carolina Cas. Ins. Co. v. Underwriters Ins. Co., 569 F.2d 303, 313 (5th Cir. 1978) (MCS-90 protects members of the public and cannot be invoked by insurers which need no equivalent protection); see also T.H.E. Ins. Co. v. Larsen Intermodal Servs., Inc., 232 F.3d 667, 672 (5th Cir. 2001); Empire Fire & Marine Ins. Co. v. J. Transport, Inc., 880 F.2d 1291, 1298 (11th Cir. 1989); Travelers Ins. Co. v. Transport Ins. Co., 787 F.2d 1133, 1140 (7th Cir.

1986); Grinnell Mut. Reinsurance Co. v. Empire Fire & Marine Ins. Co., 722 F.2d 1400, 1404-05 (8th Cir. 1983); Carolina Cas. Ins. Co. v. Ins. Co. of N. America, 595 F.2d 128 (3rd Cir. 1979); Carolina Cas. Ins. Co. v. Transport Indemn. Co., 533 F. Supp. 22, 25 (D.S.C. 1981), aff'd, 676 F.2d 690 (4th Cir. 1982)); but see Carolina Cas. Ins. Co. v. Yeates, 533 F.3d 1202, 1204 (10th Cir. 2008); Prestige Cas. Co. v. Michigan Mut. Ins. Co., 99 F.3d 1340, 1348-49 (6th Cir.1996); Empire Fire & Marine Ins. Co. v. Guaranty Nat. Ins. Co., 868 F.2d 357, 361-64 (10th Cir. 1989). "The operation of the endorsement is limited, and does not alter the relationship between the insured and insurer or joint insurers as otherwise provided in the applicable policy." Canal Ins. Co.. 2008 WL 3103270, at *7.

The issue of the state guaranty fund substituting for the insolvent insurer was addressed in *Pilling v. Virginia Prop. & Cas.*, 95 Fed. Appx. 126 (6th Cir. 2004). The court held that when the motor carrier's insurer became insolvent and the state guaranty fund was substituted in for the insolvent insurer, the potential amount of coverage was limited to the state guaranty maximum, but the priority of the insurers did not change. *Id.*

3. <u>Employee Or Independent Contractor Suing</u> <u>The Motor Carrier</u>

The status of an injured person vis-à-vis the motor carrier is important in determining whether the MCS-90 Endorsement applies. An employee or an independent contractor is not entitled to benefits under the MCS-90 regardless of whether o not they were a passenger or a driver at the time of the accident.

The regulations define "employee" as:

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 Unites 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.

49 C.F.R. § 390.5 (emphasis added). This definition eliminates the traditional common law distinction between employees and independent contractors. Consumers County Mut. Ins. Co. v. PW & Sons Trucking, Inc., 307 F.3d 362, 365-366 (5th Cir. 2002). In *PW* & Sons, two drivers, Bob and Palliet, were hired to haul loads to various locations. On the return trip, Bob was driving and Palliet was in sleeping in the sleeper An accident occurred leaving Palliet berth. seriously injured. Palliet made a demand on Consumers, and Consumers filed a declaratory judgment action seeking a declaration that the policy did not cover Palliet because he was an Palliet argued that he was an employee. independent contractor.

The Fifth Circuit considered the policy as a whole, and determined that the definition of "employee" set forth in 49 C.F.R. §390.5 applied both the policy and to the MCS-90 to Endorsement. The court held that regardless of his common law status as an independent contractor, Palliet fell within the definition of "employee" in 49 C.F.R. § 390.5, precluding him from recovering under both the MCS-90 and under the underlying policy. Id.; see also Basha v. Ghalib, 2008 WL 3199464, at *4-5 (Ohio App. Aug. 7, 2008) (when plaintiffs not associated with insured trucking company, MCS-90 applies); Perry v. Harco Natl. Ins. Co., 129 F.3d 1072 (9th Cir. 1997) (for MCS-90 purposes, the plaintiff's husband, who was driving at the time of the accident and was argued to be an independent contractor, was a statutory employee and thus precluded from coverage); Amerisure Mut. Ins. Co. v. Carey Transp., Inc., 2007 WL 29235 (Mich. App. Jan. 4, 2007), cert. denied, 734 N.W.2d 207, 479 Mich. 851 (2007) (injured plaintiff barred by employee exclusion in policy as well as in MCS-90 even though sleeping the berth at the time of accident while her fellow-employee/husband driving); Canal Ins. v. A & R Transportation and Warehouse, LLC., 827 N.E.2d 942, 947-948 (III.App. 2005) (since statutory definition of employee for purposes of the MCS-90 included "independent contractors," plaintiff driver was employee of insured and MCS-90 Endorsement not triggered).

4. MCS-90 Endorsement Applied To Trailers

Courts differ on whether the MCS-90 attached to a policy issued to the trailer's owner applies to an accident in which the owner was not the motor carrier. In *John Deere Ins. Co. v. Nueva*,

229 F.3d 853, 857 (9th Cir. 2000), the driver of a tractor-trailer allegedly negligently caused the accident. The tractor was not insured, but the trailer was. There was no allegation that the owner of the trailer was negligent. The court reasoned that the "primary purpose of the MCS-90 [was] to assure that injured members are able to obtain judgment from negligent authorized interstate carriers." Id. Accordingly, the MCS-90 indirectly modified the insurer's policy definition of "insured" to expand coverage to include permissive users of the trailer. Id. (citing Adams v. Royal Indemn. Co., 99 F.3d 964, 970 (10th Cir. 1996)); see also Lynch v. Yob, 768 N.e.2d 1158, 1165 (Ohio 2002) (MCS-90 Endorsement in trailer owner's policy required insurer to indemnify driver as the permissive user of leased trailer): Pierre v. Providence Washington Ins. Co., 784 N.E.2d 52, 754 N.Y.2d 179 (App. N.Y. 2002) (citing Adams and Nueva); Integral Ins. Co. v. Lawrence Fulbright Trucking, 930 F.2d 258 (2nd Cir. 1991) (endorsement extends to owner of trailer even though there was no evidence of negligence on his part).

It is noteworthy that the MCS-90 Endorsement obligates the insurer only to pay "any final judgment recovered against the insured." 49 C.F.R. 387.15. "Because the exact language used in the endorsement is mandated by a federal regulation and not subject to modification by the parties, the definition of 'insured' found in the policy is not conclusive." *Del Real v. United States Fire Ins. Crum & Forster*, 64 F.Supp.2d 958, 964 (E.D. Cal. 1998). The language in the endorsement and the intent of the parties indicate that the term "insured" refers only to the named insured. *Id.*

D. <u>What Is Amount Of Surety Under MCS-90</u> Endorsement

1. Minimum Financial Requirements

Appendix B sets forth the minimum financial requirements for motor carriers. See 49 C.F.R. §387.9. The issue presented is whether the MCS-90 Endorsement is limited to the minimum financial requirements of 40 C.F.R. §387.9 or to the limits of the policy to which it is attached.

2. <u>Face Amount Of Policy vs. The Minimum</u> <u>Financial Limits</u>

Courts that have held that the insurer must pay the face amount of the policy rely on the language of the MCS-90 Endorsement, which

recognizes the insurer's right of reimbursement. See 49 C.F.R. § 387.15 (Illustration I). The endorsement states that, "all terms and conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insurer and the insurer." Id.; see also Real Legacy Assurance Co. v. Santori Trucking, Inc., 560 F.Supp.2d 143, 146 (D.P.R. 2008); Stevens v. Fireman's Fund Ins. Co., 2002 WL 31951274, at *6-8 (S.D.Ohio Nov. 6, 2002) (potential liability under MCS-90 constrained by stated policy limit), aff'd, 375 F.3d 464 (6th Cir. 2004); Hamm v. Canal Ins. Co., 10 F.Supp.2d 539, 545-48 (M.D.N.C. 1998) (policy's per accident limit establishes maximum liability under MCS-90), aff'd, 178 F.3d 1283 (4th Cir. 1999); Carolina Cas. Ins. Co. v. Zinsmaster. 2007 WL 670937. at *4-5 (N.D.Ind. Feb. 27, 2007) (MCS-90 Endorsement's security cannot be below \$750,000, but level of payment is amount of coverage under policy). The reasoning is that the language of §387.15 does not alter the limits or exclusions of the underlying contract. Santori Trucking, Inc., 560 F.Supp.2d at 146. Accordingly, the insurer can pay up to the face limits of the policy, and seek reimbursement for that amount. Id. at 146-148.

The same reasoning applies in cases involving "drop down" coverage that substitutes the excess insurer for the primary insurer upon insolvency of the primary insurer. Wells v. Gulf Ins. Co. 484 F.3d 313 (5th Cir. 2007); McGirt v. Gulf Ins., Co., 207 Fed. Appx. 305 (4th Cir. 2006), cert. denied, 127 S. Ct. 2133, 167 L. Ed. 2d 864 (2007); Kline v. Gulf Ins. Co., 466 F.3d 450, 452 (6th Cir. 2006). When an excess carrier is not required to satisfy a carrier's minimum level of financial responsibility, the MCS-90 Endorsement does not require it to satisfy a judgment below its liability floor simply because it is the first solvent insurer. Wells. 484 F.3d at 317-18; see also Kline, 466 F.3d at In Kline, the plaintiff obtained a \$3.2 452. judgment against BTI. BTI had self-insurance for \$1 million and a \$1 million deductible under its policy with Reliant. Reliant had a \$1 million excess policy and Gulf had a second layer excess over that amount. BTI was insolvent, so Reliant paid its \$1 million. The plaintiff argued that Gulf should pay the difference between \$3.2 and \$1 million. The Sixth Circuit disagreed, and held that the "limits of liability described herein" clause preserved the liability limits. Id. at 455. Gulf only had to pay \$200,000.

3. <u>Deductibles</u>

The obligation of the insurer extend to amounts that are deductibles under the terms of the policy. *Am. Inter-Fidelity Exch. V. Am. Re-Insurance Co.*, 17 F.3d 1018 (7th Cir. 1994); see *also Rideau v. J. Edwards*, 985 So.2d 311, 315 (La. App. 2008).

E. <u>Right To Seek Reimbursement From The</u> <u>Motor Carrier</u>

The plain, unambiguous language of the MCS-90 Endorsement recognizes the insurer's right of reimbursement. The endorsement states, in pertinent part, "The insured agrees to reimburse the company ... 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." 49 C.F.R. § 387.15 (Illustration I): see also Canal Ins. Co. v. Distribution Servs. Inc., 176 F.Supp.2d 559, 565 (E.D.Va. 2001) ("[The insured's] reimbursement obligation is ... consistent with ... the language ... of the MCS-90 Endorsement."). The endorsement also states, "[A]II 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 [insurer]." 49 C.F.R. § 387.15 (Illustration I).

The MCS-90's reimbursement obligation is seen as a surety agreement that creates "a reimbursable obligation as to final judgments rendered against the named insured." John Deere, 229 F.3d at 856; see also Harco Nat' Ins. Co., 107 F.3d at 735-36; see also Travelers Indemn. Co. of Illinois v. W. Am. Specialized *Transp. Serv., Inc.*, 408 F.3d 256, 260 (5th Cir. 2005) ("MCS-90 Endorsement is 'in effect, suretyship by the insurance carrier to protect the public- a safety net' and not an ordinary insurance provision to protect the insured."). Implicit in any surety agreement is the principal's obligation to reimburse the surety for the amount it pays. McGirt v. Royal Ins. Co. 399 F.Supp.2d 655, 666 (D.Md. 2005). The insurer can recover any payments the insured would not have been liable for under the policy. Travelers Indemn. Co. of Illinois v. W. Am. Specialized Transp. Serv., Inc., 408 F.3d at 260. "The endorsement does not extinguish the debt of the insured; it transfers the right to receive the insured's debt obligation from the judgment creditor to the insurer." Id.

III. FORMS E AND F

Texas law requires that each motor carrier operating in Texas obtain liability insurance in at least the minimum amount prescribed by administrative regulation. Tex. Transp. Code § 643.101. An intrastate motor carrier must certify compliance with minimal insurance requirements by filing with the Texas Department of Transportation ("Tex-DOT") а Form Е certification, known as the Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance.⁹ Form E certifies that Form F Endorsement, the state counter-part to the MCS-90, is attached to the policy and that a policy was issued to the motor carrier. The purpose of the filing requirements is to ensure that liability insurance is always available for the protection of motorists injured by commercial motor carriers. Nat'l Cas. Co. v. Lane Express. Inc. 998 S.W.2d 256 263 (Tex. App. - Dallas 1999, pet. denied) (citing Commercial Standard Ins. Co. v. McKissack, 153 S.W.2d 997, 1000-01 (Tex.Civ.App. - Fort Worth 1941, writ ref'd)). Form F is contained in Appendix D.

Form F Endorsement, known as the Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement, operates much like the MCS-90 Endorsement by amending the underlying policy "to provide insurance for automobile bodily injury and property damage liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby." See Form F in Appendix D.

A. Language Of Forms E And F

Form E provides in part:

⁹ Form E and other related uniform forms were issued by the National Association of Regulatory Utility Commissioners ("NARUC") to promulgate the Section 202(b)(2) of the Interstate Commerce Act. The NARUC is a non-profit organization dedicated to represent the interests of State public entities who regulate, among other subjects. intrastate transportation. NARUC's mission is to provide uniform regulations that serves the public interest. See www.naruc.org/about.cfm. NARUC within its member states. The forms are used by multiple states, including Texas, as counterparts to the MCS-90. See note 5 above for an explanation of the use of Form E for multi-jurisdiction filings relating to interstate commerce.

A policy or policies of insurance effective ____ 12:01 A.M. standard time at from the address of the insured stated in said policy or policies and continuing until canceled as provided herein, which, by attachment of the Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement [From F endorsement], has or have been amended to provide automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the Sate in which the commission [Tex-DOT] has jurisdiction or regulations promulgated in accordance therewith.

See Appendix D, which includes a Form E. Form F

1. <u>Applicable Law To The Operation And Effect</u> <u>Of The Form F Endorsement</u>

Form E and F are uniform forms promulgated pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act. The forms are intended to comply with multiple state laws as well as the ICA. Nat'l Cas. Co. v. Lane Express, Inc. 998 S.W.2d 256 265 (Tex. App. - Dallas 1999. pet. denied). Therefore, courts are hesitant to ignore the plain language of the form and decline to interpret by adding or restricting the intent behind Form F. Id.; see also Scottsdale Ins. Co., Inc. v. Oklahoma Transit Authority, Inc., 2008 WL 896639, at *6 (N.D. Okla. March 29, 2008). Thus, the plain meaning of the endorsement will be given effect. Id.

2. <u>Texas' Minimum Insurance Levels</u>

The minimum levels of insurance are set forth in 43 Tex. Admin. Code § 18.16(a). See Appendix E (Table of insurance limits required in Texas).

3. Form F Endorsement Must Be Filed With The Texas Department Of Transportation

In Texas, a motor carrier duty to file proof of commercial automobile liability insurance with the Tex-DOT is fulfilled through its insurer, surety company, bank or other financial institution. 43 Tex. Admin. Code §§ 18.16(a) and 18.16(e)(2). The filing must be made in a form acceptable to the Tex-DOT director and to the Texas Department of Insurance. 43 Tex. Admin. Code § 18.16(e)(2) & (4). Form E is the form approved in Texas to certify that insurance was issued to the motor carrier.

a. Cancellation

Form F must be cancelled by the insurer with the Tex-DOT. 43 Tex. Admin Code § 18.16(f). The form used to cancel Form F is Form K. See Appendix D for a copy of this form. With regard to cancellation, Form F states:

This certificate and the endorsement described herein may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the insured giving thirty (3) days' notice in writing to the State Commission [Tex-DOT], such thirty (30 days' notice to commence to run from the date notice is actually received in the office of the Commission [Tex-DOT]. (Emphasis added).

In Texas, an insurer does not need to give notice to the state in order to effect cancellation replacement coverage when has been purchased. 43 Tex. Admin. Code §18.16(f).¹⁰ Thus, an insurer's failure to give notice to the state of the cancellation of a motor carrier liability policy issued does not render the cancellation ineffective where the touring company subsequently purchased replacement coverage, thus satisfying the state's interest in protecting the innocent third parties from uninsured carriers. *Lancer Ins. Co. v. Shelton*, 245 F.Appx. 355 (5th Cir. 2007); see also Truck Ins. Exchange v. E.H. Martin, Inc. 876 S.W.2d 200, 204-205 (Tex. App. - Waco 1994, writ denied) (applying former sections of the Texas Administrative Code, court found that cancellation effective when replacement insurance issued to insured).

b. Effect Of Failure To Cancel

If cancellation is not effectuated either by filing Form K or by obtaining replacement insurance, then Form F continues in effect even though, for example, the policy period expired or there is another limitation that precludes coverage under the underlying policy. If the insured is sued, the

¹⁰ Proof of insurance coverage for a seven day or 90 day certificate of registration may, however, be canceled by the insurance company without 30 days notice if the certificate of registration is expired, suspended, or revoked, and the insurance company provides a cancellation date on the proof of insurance coverage. 43 Tex. Admin. Code §18.16(f).

insurer is responsible for payment to the plaintiff under Form F.

4. Form F Is A Guaranty/Surety Agreement

Form F serves as a "guaranty to the public that the insurer will be liable for any damages awarded if the insured is unable to pay." Scottsdale Ins. Co., Inc. v. Oklahoma Transit Authority, Inc., 2008 WL 896639, at *5 (N.D.Okla. March 29, 2008) (citing Ross Neely Systems, Inc. v. Occidental Fire & Cas. Co. of *North Carolina*, 196 F.3d 1347, 1351 (11th Cir. 1999); Lancer Ins. Co. v. Shelton, 245 Fed. Appx. 355, 358 (5th Cir. 2007) (Form F exists "to ensure that liability insurance is always available for the protection of motorists injuries by commercial motor carriers"): Kolencik v. Progressive Preferred Ins. Co., 2006 WL 738715, *4 (N.D.Ga. Mar. 17, 2006) (the purpose of the insurance is not for the benefit of the insured but for the sole benefic of the public)). Its purpose is for the insurer to serve as a surety to the insured's performance. Ross Neely Systems, Inc., 196 F.3d at 1351.

B. When Is Form F Endorsement Triggered?

Form F is triggered when the underlying policy does not provide coverage.

1. <u>No Coverage Under The Policy</u>

The purpose of Form F is to protect the members of the public who have been injured by the negligent acts of a motor carrier even if the vehicle is not covered under the carrier's policy. *Scottsdale Ins. Co., Inc. v. Oklahoma Transit Authority, Inc.,* 2008 WL 896639, at *5 (N.D.Okla. March 29, 2008) (*citing Driskell v. Empire Fire & Marine Ins. Co.,* 547 S.E.2d 360, 365 (Ga.App. 2001); *American Nat'l Ins. Co. v. Levy,* 594 N.Y.2d 118 (N.Y.Sup.Ct. 1992)).

Forms E and F have the "effect of making the Form F insurer an insurer of last resort when no insurance would otherwise be available." *Nat'l Cas. Co. v. Lane Express, Inc.* 998 S.W.2d 256, 263 (Tex. App. – Dallas 1999, pet. denied). "This may occur, for example, when a motor carrier fails to pay the required premium for insuring a vehicle or another carrier covering the vehicle refuses or is unable to honor a claim." *Id.* It may also occur if the vehicle involved is not listed in the main policy. *Love-Diggs v. Tirath*, 911 A.2d 539 (Pa. 2006). Generally, there is no duty to defend if there is no coverage under the policy notwithstanding the application of Form F endorsement. In *Driskell*, however, the Georgia Court of Appeals found that the insurer had a duty to defend because Form F was triggered. *Empire Fire & Marine Ins. Co. v. Driskell*, 585 S.E.2d 657, 449-50 (App. Ga. 2003). The court reasoned that the underlying policy provided coverage by virtue of Form F. It found that the "Form F Endorsement enlarged the scope of the policy to include the unscheduled vehicles up to the statutory minimum." *Id.* at 450. Accordingly, the duty to defend applied. *Id.*

2. The Motor Carrier Is Involved

The motor carrier is required to show proof that it is insured; therefore, Form F applies only to it. See. e.g., Progressive County Mutual Ins. Co. v. Carway, 951 S.W.2d 108, 113 (Tex. App. -Houston [14th Dist. 1997, pet. rehearing denied). Moreover, when the insurer certifies in Form E that a specific motor carrier has insurance, it is not certifying that any other possible insured under the policy is entitled to ripe the benefits of the Form F Endorsement. Id. at 112-113. Accordingly, the "insured" referred to in Form F refers only to the named insured, not to others who may fall within the definition of "Persons Insured" in other parts of the policy. Nat'l Cas. Co. v. Lane Express, Inc. 998 S.W.2d 256, 264 (Tex. App. - Dallas 1999, pet denied); see also Wolcott v. Trailways Lines, Inc.,774 So.2d 1054, 1057 (La.App. 2000).

3. Insurer Has Reimbursement Recourse

An insurer who pays under Form F can seek reimbursement from the insured even if the insured did not consent to pay a claim. Scottsdale Ins. Co., Inc. v. Oklahoma Transit Authority, Inc., 2008 WL 896639, at *6 (N.D.Okla. March 29, 2008). The right to seek reimbursement is not contingent on the insured's agreement to reimbursement or to consent to the payment under Form F. Id. For F "is a standard form used by insurance companies across the country, and every court to consider the issue has found that Form F permits the insurer to seek reimbursement from the insured for liability arising solely under Form F." Id Form F balances the (citations omitted). obligations of the insurer against the interests of the public, and requires an insurer to pay claims arising out of the use of uninsured vehicles operated by motor carriers. Id. (citing Ross

Neely Systems, Inc. v. Occidental Fire & Cas. Co. of North Carolina, 196 F.3d 1347, 1351 (11th Cir. 1999)).

- C. When Is Form F Not Applicable?
- 1. Motor Carrier Transports Interstate

The Texas Administrative Code defines a motor carrier as "[a] person that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state." 43 Tex. Admin. Code § 18.2(27). Based on this definition, if the motor carrier is operating outside Texas, Form F does not apply. *Alphonse v. W.M. Kinner Transport Co.,* 452 F.2d 700, 702-03 (5th Cir. 1971) (plaintiffs not entitled to reform policy to cover claims arising out of operations beyond boundaries of Texas).

2. <u>Endorsement F Survives Claim Of Alleged</u> <u>Fraud Or Misrepresentation Of Insured At</u> <u>Inception Of Policy</u>

An insurer's claim that the policy is void because of fraud or misrepresentation at the inception of the policy will not preclude the application of Form F. Omaha Indemn. Co. v. Pall, Inc. 817 S.W.2d 491, 497 (Mo. App. E.D. 1991). "So strong is the intent to protect the public that even fraud or misrepresentation . . . has long been rejected as an acceptable reason for the avoidance of liability, so long as the insurance is compulsory." Id. (citing Aetna Cas. & Surety Co. v. O'Conner, 170 N.E.2d 681 (N.Y. 1960)).¹¹

When compulsory or financial responsibility insurance policy is at issue, the insurer cannot retrospectively avoid coverage under to escape liability to the claimant on these grounds. See, e.g., Farmers Ins. Exchange v. Rose, 411 F.2d 270 (9th Cir. Ariz. 1969) (applying Arizona law); Allstate Ins. Co. v. Dorr, 411 F.2d 198 (9th Cir. Ariz. 1969) (applying Arizona law); Continental Western Ins. Co. v. Clay, 248 Kan. 889, 811 P.2d 1202 (1991); National Guild Ins. Co. v. Johns, 247 Md. 27, 230 A.2d 86 (1967) (recognizing rule, although not decided under compulsory act); In re Opinion of Justices, 251 Mass. 569, 147 N.E. 681 (1925); Atlantic Casualty Ins. Co. v. Bingham, 10 N.J. 460, 92 A.2d 1, 34 A.L.R.2d 1293 (1952); Search Term Begin Aetna Casualty & Surety Co. v. O'Connor, 8 N.Y.2d 359, 207 N.Y.S.2d 679, 170 N.E.2d 681, 83 A.L.R.2d 1099 (1960 Search Term End); Ferguson v. Employers Mut. Casualty Co., 254 S.C. 235, 174 S.E.2d 768 (1970) all cited in 7 A Couch on Ins. § 106:33 (June 2008).

D. <u>How Much Is Insurer Liable For Under Form</u> <u>F?</u>

The courts are split on whether the limits of the policy or the statutory minimum limits apply. One view is that the state's minimum financial statutory limits describe the insurance that a motor carrier must have to operate, and that Form F sets out the minimum amount that it covers by reference to the statutory limits. Kolencik v. Progressive Preferred Ins. Co., 2006 WL 738715, at *4-5 (N.D. Ga. Mar. 17, 2006). The reasoning is that Form F does not extend coverage of the underlying policy and that rules insurance construction require of the endorsement to take precedence over conflicting language in the policy.. Id., at *5; see also Empire Fire & Marine Ins. Co. v. Driskell, 547 S.E.2d 360,363-364 (App. Ga. 2001), affm'd, 585 S.E.2d 657 (App. Ga. 2003); Ross v. Stephens, 269 S.E.2d 705, 708 (Ga. 1998); Kinard v. Nat'l Indemn. Co., 483 S.E.2d 664, 668 (App. Ga. 1997).

1. <u>Punitive Damages May Be Covered Under</u> <u>Form F</u>

Form F may not cover punitive damages. *Ross Neely Systems, Inc. v. Occidental Fire & Cas. Co. of North Carolina*, 196 F.3d 1347, 1351 (11th Cir. 1999). Under Form F, the insurer is only required to provide the amount required by the state's statutes and regulations. *Id.* If the regulations only allow for recovery of negligence and wanton disregard, punitive damages are within the statutory scheme. *Id.*

- E. Insurer's Right To Seek Reimbursement
- 1. No Requirement Of A Final Judgment

Unlike the MCS-90, an insurer who pays under Form F may seek reimbursement from the insured without the need of a final judgment so long as it paid the plaintiff pursuant to the endorsement. *Nat'l Cas. Co. v. Lane Express, Inc.* 998 S.W.2d 256, 265 (Tex. App. – Dallas 1999, pet denied).

In *Lane Express*, the named insured settled the claim with the plaintiff. The insurer did not sign

¹¹ There are no MCS-90 cases with these same facts that the author was able to find. However, the same reasoning can be applied to a policy containing the MCS-90 Endorsement.

the settlement agreement. The insurer paid part of the settlement and sought reimbursement from the insured, who alleged that a judgment was required before the right to reimbursement was triggered. The Dallas Court of Appeals, disagreeing with the insured, noted that the word "judament" was not contained in the endorsement. Rather, "Form F provides that 'the insured agrees to reimburse the company for any payment made by the company it would not have been obligated to make under the terms of this policy except by reason of the obligation assuming in making ... [the Form E] certification.' (Emphasis Added)." Id. at 265. Because Form F is a uniform endorsement intended to comply with multiple state laws and with federal law, the court saw no reason to limit reimbursement to judaments. Id.

2. Reimbursement Can Be Sought Only Against The Named Insured

Reimbursement can only be sought against the named insured. Nat'l Cas. Co. v. Lane Express, Inc. 998 S.W.2d 256, 264 (Tex. App. - Dallas 1999, pet denied). The "insured" referred to in Form F refers only against the named insured, not others who may fall within the definition of "Persons Insured" in other parts of the policy. Id. This is so because Form F provides for reimbursement from the "insured." Id. The reasoning is that only the name insured, who signs the policy and whose name appears in the body of the policy, is a party to the insurance contract and the insurer has no authority to bind any parties who are not parties to the contract when later seeking reimbursement from them. ld.

IV. Conclusions

Under both the MCS-90 and the Form F endorsement, courts have gone out of their way to effectuate the intent behind their enactment, to protect the public from negligent insolvent motor carriers. Lately, however, courts are focusing more on the "plain language" of the endorsement. Texas and the Fifth Circuit are leaders in this interpretation when these endorsements are at issue.

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APPENDIX A

Form MCS-90 (3/82) as set forth in 49 C.F.R.§ 387.15

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 semitrailer 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.

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

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

	Surety	company place of b	and	Motor	carrier	prin	cipal
Parties	principal	place of b	usiness	FMCSA	Docket	No.	and
	address			principal	place of	busine	<u>ss</u>
					* ************************		

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 insure 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 notwithstanding 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 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 _____

Ву _____

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/she executed the same for and on behalf of said corporation.

(OFFICIAL SEAL)

Title of official administering oath ______ Surety Company file No

[46 FR 30982, June 11, 1981, as amended at 48 FR 52683, Nov. 21, 1983; 49 FR 27292, July 2, 1984; 49 FR 38290, Sept. 28, 1984; 51 FR 33856, Sept. 23, 1986; 53 FR 12160, Apr. 13, 1988; 54 FR 49092, Nov. 29, 1989; 59 FR 63924, Dec. 12, 1994; 66 FR 49873, Oct. 1, 2001; 70 FR 58065, Oct. 5, 2005]

APPENDIX B

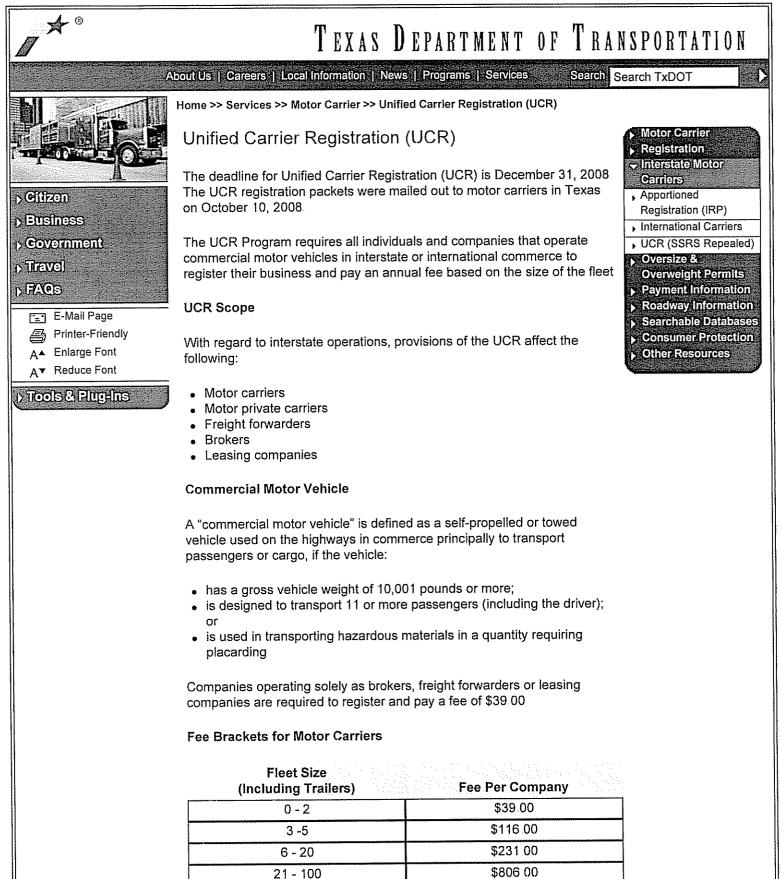
§387.9 Financial responsibility, minimum levels.

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 10,000 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

Appendix C



\$3,840.00

\$37,500.00

101 - 1,000

More than 1000

Example: A motor carrier operating 8 tractors, 12 trailers and 16 straight trucks has a fleet size of 36 commercial motor vehicles and pays \$806.00

Important Registration Information

Online Registration

To avoid delays, it is highly recommended that you register online.

The online system is operated by the State of Indiana and there are two convenience fees with each transaction (\$3 00 to the State of Indiana and either a \$1.00 e-check or 2.5% of the total due for credit card transactions).

Register by Mail

If your base state is Texas, and you would prefer to register by mail, you must download the UCR application packet [pdf, 6 pages].

Please note: To ensure the returned receipt of your UCR Registration in the mail by the December 31 deadline, you must submit your application(s) and payment to us by December 5, 2008.

Please read the instructions completely and forward your payment and completed application to:

Texas Department of Transportation Motor Carrier Division P.O. Box 12984 Austin, TX. 78711-2984

Payments by mail must be made by check or money order:

- Make checks payable to the "Texas Department of Transportation."
- Please place your USDOT# on the front of your check.

For further information, or if you would like to learn more about UCR call 1 (800) 299-1700, select 2,1,2. Please continue to visit this site for more information

Note: The Department of Public Safety is scheduled to begin enforcement January 1, 2009

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125 East 11th Street , Austin. Texas 78701 Copyright 2008 Texas Department of Transportation All Rights Reserved

What is my base state for UCR?

- (A) If your <u>principle place of business</u> as completed in Section 1 of the form is AK, AL, AR, CA, CO, CT, DE, GA, IA, ID, IL, IN, KS, KY, LA, MA, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NM, NY, OH, OK, PA, RI, SC, SD, TN, TX, UT, VA, WA, WI or, WV, <u>you must use that state</u> <u>as your base state</u>. If your principle place of business is not in one of these states, go to (B).
- (B) If your principle place of business is not one of the states listed in (A) above but you have an office or operating facility located in one of the states listed in (A) above, you must use that state as your base state
- (C) If you cannot select a base state using (A) or (B) above, you must select your base state from (A) above that is nearest to the location of your principle place of business; or
- (D) Select your base state as follows:
 - a. If your principle place of business is in DC, MD, NJ, or VT or the Canadian Province of ON NB, NL, NS, PE or QC, you may select one of the following states: CT, DE, MA, ME, NH, NY, PA, RI, VA or WV.
 - b. If your principle place of business is in FL or a state of Mexico, you may select one of the following states: AL, AR, GA, KY, LA, MS, NC, OK, SC, TN or TX
 - c. If your principle place of business is in the Canadian Province of ON or MB, you may select one of the following states: IA, IL, IN, KS, MI, MN, MO, NE, OH or WI.
 - d. If your principle place of business is in AZ, NV, OR or WY or the Canadian Province of AB, MB, SK or BC or a state of Mexico, you may select one of the following states: AK, CA, CO, ID, MT, ND, NM, SD, UT or WA.

Change of Base State

• If you selected your base state using (C) or (D) above and your principle place of business has moved to a qualified state in (A) or (B) above, you may at the next registration year change your base state to a state listed in (A) or (B).

Section 1. – General Information

Enter all identifying information for your company. The owner and DBA name should be identical to what is on file for your USDOT number (See http://safer.fmcsa.dot.gov/CompanySnapshot.aspx) Enter the principle place of business address that serves as your headquarters and where your operational records are maintained or can be made available.

Section 2. - Classification (Definitions)

- "Motor carrier" means a person providing commercial motor vehicle transportation for compensation.
- Motor private carrier" means a person who provides interstate transportation of property in order to support its primary line of business.
- "Broker" means a person, other than a motor carrier, who sells or arranges for transportation by a motor carrier for compensation.
- Freight forwarder" means a person that arranges for truck transportation of cargo belonging to others, utilizing for-hire carriers to provide the actual truck transportation, and also performs or provides for assembling, consolidating, break-bulk and distribution of shipments and assumes responsibility for transportation from place of receipt to destination.
- "Leasing company" means a person or company engaged in the business of leasing or renting for compensation motor vehicles they own without drivers to a motor carrier, motor private carrier, or freight forwarder.

Section 3. - Fees Due-Brokers, Freight Forwarders and Leasing Companies

Brokers, freight forwarders and leasing companies pay the lowest fee tier <u>If your company is also a motor carrier</u> (whether private or for-hire) you will skip this section of the application.

Section 4. - No. Of Motor Vehicles-- Motor Carrier & Motor Private Carrier

- Check the appropriate box indicating where you obtained the vehicle count for the numbers you entered into the table in this section.
 In the table, enter the number of commercial motor vehicles you reported on your last MCS-150 form or the total number of commercial motor vehicles owned and operated for the 12-month period ending June 30 of the year immediately prior to the year for which the UCR registration is made. This table includes owned and leased vehicles (term of lease for more than 30 days). Any vehicle designed to transport more than 8 passengers including the driver and 10 or less passengers including the driver is not defined as a commercial motor vehicle for purpose of payment of fees under this program. None of these vehicles should be counted in column D of the table.
- Option 1. You may subtract the number of property carrying vehicle(s) used solely in intrastate commerce (never used to carry interstate freight) that you included in Section 4, Columns A or B. You may not enter on this line the number of passenger carrying vehicles included in Column C that were used solely in intrastate commerce.
- Option 2. You may add the number of owned commercial motor vehicles (straight trucks, tractors, trailers, motor coaches, school buses, minibuses, vans or limousines) that were used only in intrastate commerce if they were not included in Columns A, B or C above. You may also include on this line the number of other self propelled vehicles (not trailers) used in interstate or intrastate commerce to transport passengers or property for compensation that are not defined as a commercial motor vehicle that 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.
- Line 3, Total Number of Vehicles. Add the number of vehicles shown in Column D, subtract any vehicles you reported in Option 1 and add any vehicles you reported under Option 2 and show the total on Line 3. Use this total number of vehicles and go to the fee table in Section 5. Pay the amount due for your total number of vehicles
- Definition "Commercial motor vehicle" (as defined under 49 USC Section 31101) means a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo, if the vehicle: (1) Has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater; (2) Is designed to transport more than 10 passengers including the driver; or (3) Is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103."

Section 5. - Fee Table for Motor Carrier & Motor Private Carrier

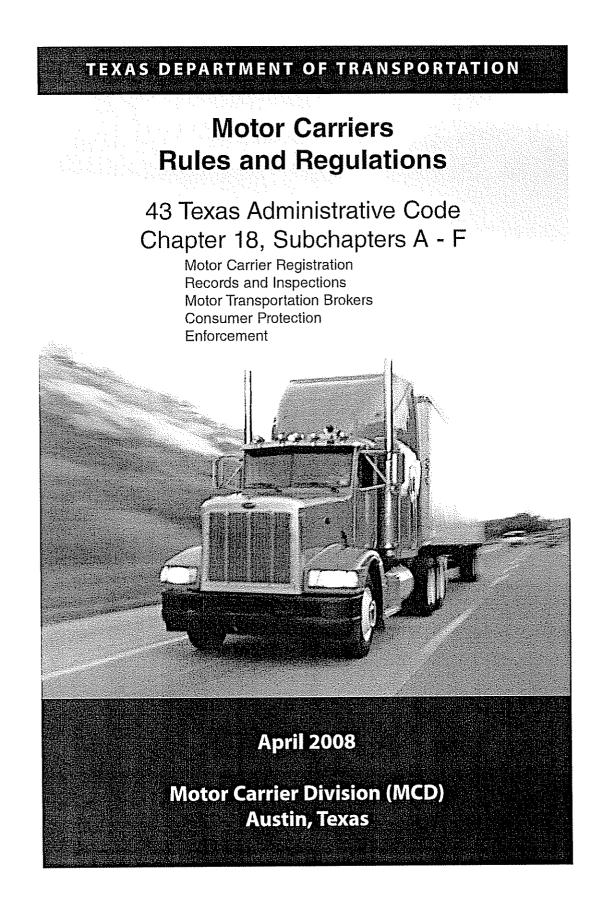
• This table is the approved UCR fees you will pay dependent upon the number of vehicles reported in Section 4. This fee may change from year to year Contact your base state if you do not have the fee table for the correct registration period.

Section 6. – Fee Due for Motor Carrier & Motor Private Carrier

• Enter the amount due for the total number of vehicles calculated in Section 4.

Section 7. - Certification

• The owner or an individual who has a power of attorney to sign on behalf of the owner or owners must sign this form. This certification indicates that the information is correct under penalty of perjury

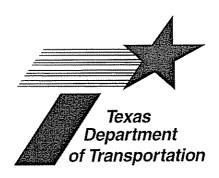


FOREWORD

The Texas Department of Transportation (TxDOT) is charged by the Texas Legislature with registering motor carriers and motor transportation brokers; protecting the welfare of the public; and ensuring fair treatment of consumers by household goods carriers. To accomplish these tasks, the department adopted the rules in this booklet to provide uniform regulation.

If you need more information or assistance, contact the department at:

Texas Department of Transportation Motor Carrier Division - BC 125 E. 11th Street Austin, TX 78701-2483 1-800/299-1700 http://www.txdot.gov



Administrative rules are amended as needed to reflect legislative mandates and policy revisions. The information in this booklet is current at the time of publication.

This booklet is also available online at http://www.txdot.gov select "Motor Carriers" and then "Publications." Subchapter B. Motor Carrier Registration

(1) the new insurance filing is received by the department; and

(2) a cancellation notice has not been received for previous insurance filings

(h) Insolvency of insurance carrier If the insurer of a motor carrier becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the motor carrier must file an affidavit with the department. The affidavit must be executed by an owner, partner or officer of the motor carrier, and show that:

(1) no accidents have occurred and no claims have arisen during the insolvency of the insurance carrier; or

(2) all claims have been satisfied.

(i) Notifications The department shall notify the Texas Department of Public Safety and other law enforcement agencies of each motor carrier whose certificate of registration has been revoked for failing to maintain liability insurance coverage

§18.17. Single State Registration System.

(a) Applicability. The State of Texas, through the department, participates in the Single State Registration System established by §4005 of Title IV of the Intermodal Surface Transportation Efficiency Act of 1991, 49 U S C. §14504, and Transportation Code, Chapter 645. A for-hire interstate carrier that is not registered under the Single State Registration System and is exempt from economic regulation by the Federal Motor Carrier Safety Administration under the Interstate Commerce Act shall register pursuant to Transportation Code, Chapter 643, and the provisions of §18 13 of this subchapter.

(1) An interstate carrier must file with the department an application to register for all states of travel as required by 49 U S.C. §14504 before beginning operations in Texas if the carrier has its principal place of business:

(A) in Texas; or

(B) outside a participating state and selects Texas as its registration state under 49 C F R §367 3

(2) An interstate carrier that is authorized by the Federal Motor Carrier Safety Administration to transport passengers or property and that must register in a state other than Texas must fully comply with 49 U S.C §14504 before operating in Texas

(3) If an applicant's principal place of business is located outside a participating state, the applicant shall apply for registration in the state in which the applicant will operate the largest number of motor vehicles during the next registration year. The applicant may choose a registration state from participating states in which it will operate an equal number of vehicles if it will not operate a larger number in any other participating state.

(b) Initial application for single state registration. An application for single state registration must be made with the department's Motor Carrier Division on a form approved by the director All information provided to the department must agree with information in the most recent Federal Motor Carrier Safety Administration certificate or permit issued to the applicant

(1) Additional materials An application must contain the following:

(A) information concerning all vehicles, whether owned or leased, that the applicant or registrant operates under Federal Motor Carrier Safety Administration (FMCSA) authority;

(B) a statement whether the applicant will be transporting hazardous commodities in interstate or foreign commerce; and

(C) applicable fees payable under subsection (i) of this section

(2) Requirements regarding principal place of business. An interstate carrier's principal place of business for registration is the business address the interstate carrier indicated on the order issued by the Federal Motor Carrier Safety Administration or the business address reported by the registrant to the Federal Motor Carrier Safety Administration as a change of address. The registrant must provide a physical address and may not provide only a post office box. The registrant may provide a second address, including a post office box, for use solely as a mailing address. An applicant domiciled in a rural area that does not have a street address may submit a rural route with a box number.

(3) Documents improperly filed If an applicant files or causes to be filed any document that contains any misrepresentation, misstatement or omission of required information or that does not include the payment of fees, the document will be deemed incomplete and will not be processed by the department until all items have been corrected.

(c) Registration issuance. The department will mail a registration receipt to an applicant that meets the requirements of this section and whose registration is approved. The registration receipt qualifies the registrant to operate under its Federal Motor Carrier Safety Administration certificate or permit in all jurisdictions indicated.

(d) Registration receipts A registration receipt becomes effective on the date specified on the receipt and expires on the 31st day of December of the registration year for which it was issued A registrant must retain its original registration receipt at its principal place of business for three years.

(1) Copies. A copy of the registration receipt, to be provided by the registrant, shall be carried in each motor vehicle for which the registrant has paid the applicable fees. On demand, the driver of a motor vehicle shall present a copy of a registration receipt for inspection by any department certified inspector in accordance with §18 31 of this chapter or any other authorized government personnel for inspection

(2) Alterations of registration receipts The department may revoke the registration of an interstate carrier that alters its registration receipt Any law enforcement officer is authorized to confiscate the altered copy on sight. The confiscated registration receipt shall be returned to the department after any court action is completed by the state in which it was confiscated.

(3) Transfer of registration receipts between vehicles A registration receipt may be transferred from a vehicle taken out of service to the registrant's replacement vehicle

(4) Lost or stolen registration receipts If the registrant fails to receive a

receipt mailed by the department or a registration receipt is otherwise lost, stolen or destroyed, a registrant may request a replacement registration receipt, which will be provided without charge

(e) Amendments and corrections after original registration

(1) Any time a registrant is issued new FMCSA operating authority, order or re-entitlement or if any amendments or revisions are made by the FMCSA to the registrant's authority and operations, the registrant must contact the department to request a new registration receipt.

(2) Change of registrant name If the registrant changes its name and a re-entitlement is issued by the FMCSA, the registrant must contact the department to request a new registration receipt.

(3) Change of registration state A registration state may be changed only if the registrant changes its principal place of business or if its existing registration state ceases to participate in the Single State Registration System

(A) If the registrant changes its principal place of business to a nonparticipating state, it shall retain the current registration state designation for registration purposes and file notice of a business address change in the form of a copy of a letter from the interstate carrier to the Federal Motor Carrier Safety Administration and shall also submit a new proof of insurance filing in its registration state

(B) If a registrant changes its principal place of business to another participating state, the registrant shall:

(i) notify its current registration state and the new registration state within 30 days after making its selection;

(ii) notify its insurer immediately; and

(iii) file in the new registration state all the documents

required of a new registrant.

(C) If a registrant changes its principal place of business during a registration period and that change affects its reciprocity status, the registrant will not be given credit or refund for fees paid for that registration period. The current registration state will use the new principal place of business when determining fees for additional states of travel or equipment.

(4) Transfer of ownership When Federal Motor Carrier Safety Administration authority is transferred to a new owner, the current registrant shall notify the department in writing to cancel its registration, and the new owner shall register with the department in accordance with this section

(5) Other conditions requiring supplemental application. A supplemental application shall be filed if there is:

(A) an addition of equipment; or

(B) an addition of states of travel

(6) Additional vehicles A registrant may not operate more vehicles in any participating state than the number for which fees have been paid

(7) Failure to update process agent. If a registrant fails to file a change in its process agent with the FMCSA, the department may suspend its

registration under §18 72 of this chapter

(f) Correction of application form To correct an application form, an interstate carrier may notify the department in writing or correct the application returned by the department.

(g) Cancellation of registration At the written request of a registrant, the department will cancel the interstate carrier's registration.

(h) Expiration and renewal of registration

(1) Expiration. Registrations issued under this section are valid for the period beginning January 1 and ending December 31 or for any portion of that period. If registration is for a fraction of a year, the registration fee will not be pro-rated

(2) Renewal. To renew an interstate carrier's registration, a registrant must follow the procedure outlined in subsection (b) of this section before December 1 of the existing registration period. The department will mail or send electronically a renewal notice to each registrant between August 1 and November 30 of the existing registration period Failure to receive the notice does not relieve the registrant of the responsibility to renew

(i) Payment of Fees

(1) Fees must be paid as specified in §18.15 of this subchapter.

(2) If an applicant has evidence that any fees collected or charged on or before November 15, 1991, were different from the fees specified in the department's Form RS-1A, the applicant shall submit the evidence to the department with the application After considering the submission, the department will notify the applicant or registrant if the proper fee has not been paid Each participating state, in computing the appropriate portion of the revenue due the department for its registrants, may use the department's Form RS-2 to determine the registrant's per-vehicle fee

(j) Insurance requirements The applicant must ensure that proof of insurance is filed with the FMCSA. Proof of insurance must be in accordance with the levels and forms specified by 49 C.F.R., Part 387, Subpart C A copy of the applicant's public liability policy with the endorsements attached shall be maintained at the interstate carrier's principal place of business

(1) Registrant name Proof of insurance shall be filed in the full and correct name of the person to whom the certificate or permit is issued The registrant's full name, must include all owner names and any fictitious name or d/b/a. The name and business address on the proof of insurance must be identical to the name and business address contained in its application and in its most recent Federal Motor Carrier Safety Administration order.

(2) Form of proof. Proof of insurance shall be filed as specified by 49 C F R, Part 387, Subpart C A "certificate of insurance" issued by an insurance agent will not be accepted as proof of insurance

(3) Self insurers If an applicant has been approved for self-insurance by the Federal Motor Carrier Safety Administration, the applicant must indicate the status of such self-insurance on the application form. The applicant must also file with the department a copy of the Federal Motor Carrier Safety Administration order approving a public liability self-insurance or other public liability security or agreement under the provisions of 49 C F.R., Part 387, Subpart C. The registrant shall immediately notify the department if the self-insurance plan is suspended, revoked or modified by a Federal Motor Carrier Safety Administration order. Failure to comply may result in the suspension of the registration

(4) Changes in status A registrant shall immediately notify the department of all changes in the status of the registrant's public liability protection

(5) Incorrect or falsified proof of insurance. If an insurance company notifies the department that information relating to a registrant's proof of insurance is incorrect or has been falsified, the department may verify the insurance information of the insured.

(A) If the department finds that incorrect or falsified filings have been made, the department will notify the registrant immediately and request new proof of insurance

(B) If new and valid proof of insurance is not received, the department may initiate a proceeding for suspension or revocation of a registration, assessment of an administrative penalty or both

(6) Cancellation of insurance On receiving notice of cancellation of a registrant's proof of insurance, the department will notify the registrant in writing that its registration to operate in all states of travel is suspended on the effective date of the cancellation of the insurance as specified in 49 C.F.R. §387 317.

(Λ) If insurance lapses because a proof of insurance has not been filed with the correct name and business address, the interstate carrier's registration will be suspended until proper proof of insurance is filed with the department.

(B) When sufficient proof of insurance or other proof of compliance is filed and in effect after a suspension of the registration, the department will immediately reinstate the interstate carrier's registration and notify the registrant that its registration is restored

§18.18. Unified Carrier Registration System.

(a) The state of Texas, through the department, shall participate in the federal motor carrier registration program under the Unified Carrier Registration system as defined in §18 2(46) of this chapter

§18.19. Short-Term Lease and Substitute Vehicles.

(a) Registration A short-term lease vehicle registered under this section is exempt from the registration requirements described in §18 13 of this subchapter while leased to a registered motor carrier

Appendix D

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FORM E

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY CERTIFICATE OF INSURANCE

(Execute in Triplicate)

_____ (hereinafter called Commission) Filed with (Name of Commission)

This is to certify, that the _____(Name of Company)

(hereinafter called Company) of_

(Home Office Address of Company)

has issued to

(Name of Motor Carrier)

of

(Address of Motor Carrier)

a policy or policies of insurance effective from _____ ____ 12:01 A.M. standard time at the address of the insured stated in said policy or policies and continuing until canceled as provided herein, which, by attachment of the Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement, has or have been amended to provide automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the Commission has jurisdiction or regulations promulgated in accordance therewith

Whenever requested, the Company agrees to furnish the Commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the insured giving thirty (30) days' notice in writing to the State Commission, such thirty (30) days' notice to commence to run from the date notice is actually received in the office of the Commission.

Countersigned at			
	eet Address)	(City)	(State) (Zip Code)
This	day of		
		Authorized Comp	ony Poprosontativo
		Autionzea Compa	any Representative

Insurance Company File No. (Policy Number)

This form determined by the National Association of Regulatory Utilities Commissioners and promulgated pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act (49 U S C., Sec 302[b][2]).

Form F

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE ENDORSEMENT

It is agreed that:

- 1 The certification of the policy, as proof of financial responsibility under the provisions of any State motor carrier law or regulations promulgated by any State Commission having jurisdiction with respect thereto, amends the policy to provide insurance for automobile bodily injury and property damage liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby; provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by reason of the obligation assumed in making such certification.
- 2. The Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance has been filed with the State Commissions indicated on the reverse side hereof.
- 3. This endorsement may not be cancelled without cancellation of the policy to which it is attached Such cancellation may be effected by the company or the insured giving thirty (30) days notice in writing to the State Commission with which such certificate has been filed, such thirty (30) days' notice to commence to run from the date. the notice is actually received in the office of such Commission.

	Attached to a	ind forming pai	rt of policy No. Commenced was	• • · · • • • · · ·	and the second and the second s	• • •
issu	ed by			P-4、4-4-4-4、4、4-2-2-2-2-4-4-4-4-4-4-4-4-4	herein called'	
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to		- 4.	of states of states of states	х	neomonea e maise des una site	
	Dated at	× • • • •		day of	and the second	
			Countersigned by		thorized Representative	

IRB 3538A

FORM K

UNIFORM NOTICE OF CANCELLATION OF MOTOR CARRIER INSURANCE POLICIES

(Execute in Triplicate)

Check Type Canceled: BI and PD_____ Cargo _____

Filed with

(hereinafter called Commission)

(Name of Commission)

This is to advise that under the terms of a policy or policies issued

to

(Name of Motor Carrier)

of

(Address of Motor Carrier)

by_

(Name of Company)

of

(Address)

said policy or policies, including any and all endorsements forming a part hereof or certificates issued in connection therewith, is (are) hereby canceled effective as of the _____day of _____, ____, 12:01 A M, standard time at the address of the Insured as stated in said policy or policies provided such date is not less than thirty (30) days after the actual receipt of this notice by the Commission

Signature of Insurer

Insurance Company File No._____ (Policy Number)

This form determined by the National Association of Regulatory Utilities Commissioners and promulgated pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., Sec 302[b][2]).

FORM L

UNIFORM NOTICE OF CANCELLATION OF MOTOR CARRIER SURETY BONDS

(Execute in Triplicate)

Check	Type Canceled:
BI and	PD
Cargo	

Filed with (hereinafter called Commission). (Name of Commission)

This is to advise that under the terms of surety bond(s) executed on behalf

of_	
	(Name of Principal)
of_	
	(Address of Principal)
by	
	(Name of Surety)
of	
-	(Address of Surety)

said bond(s), including any and all riders or certificates attached thereto or issued in connection therewith, is (are) hereby canceled effective as of the _____day of _____, ____, 12:01 A M , standard time, at the address of the Principal as stated in said bond(s) provided such date is not less than thirty (30) days after the actual receipt of this notice by the Commission.

Signature of Principal or Surety

Insurance Company File No._____ (Policy Number)

This form determined by the National Association of Regulatory Utilities Commissioners and promulgated pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act (49 U.S.C. Sec 302[b][2])

Figure: 43 TAC §18.16(a)

Appendix E

Type of Vehicle	Minimum Insurance Level
1. Household goods carriers (gross vehicle weight less than 26,000 lbs.).	\$300,000
2. Buses designed or used to transport more than 15 passengers (including the driver), but fewer than 26 passengers (not including the driver).	\$500,000
3. Commercial motor vehicles which are buses with a seating capacity of 15 passengers or fewer (including the driver) operated by a foreign motor carrier and foreign motor private carrier as defined in 49 U.S.C. §13102.	\$1,500,000
4. Buses designed or used to transport 26 passengers or more (not including the driver).	\$5,000,000
5. Commercial school buses, regardless of the passenger capacity as described in Transportation Code, §643.1015.	\$500,000
6. Commercial motor vehicles that are buses with a seating capacity of 16 passengers or more (including the driver) operated by a foreign motor carrier or foreign motor private carrier as defined in 49 U.S.C. §13102.	\$5,000,000
7. Farm trucks (gross vehicle weight 48,000 lbs. or more).	\$500,000
8. Commercial motor vehicles (gross vehicle weight in excess of 26,000 lbs.).	\$500,000
9. Commercial motor vehicles, as defined in 49 C.F.R. §390.5, operated by a foreign motor carrier or foreign motor private carrier as defined in 49 U.S.C. §13102.	\$750,000
10. Commercial motor vehicles - Oil listed in 49 C.F.R. §172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 C.F.R. §171.8 and listed in 49 C.F.R. §172.101, but not mentioned in item 10 of this table.	\$1,000,000

11. Commercial motor vehicles – Hazardous substances, as defined in	\$5,000,000
49 C.F.R. §171.8, transported in cargo tanks, portable tanks, or	
hopper-type vehicles with capacities in excess of 3,500 water gallons;	
or any quantity of Division 1.1, 1.2, and 1.3 materials, any quantity of	
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	
49 C.F.R. §173.403.	