

Rules of
Department of Economic
Development
Division 265—Division of Motor Carrier
and Railroad Safety
Chapter 2—Practice and Procedure

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**Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT**
**Division 265—Division of Motor Carrier
and Railroad Safety**
Chapter 2—Practice and Procedure

4 CSR 265-2.010 Definitions

PURPOSE: This rule defines terms used in the rules comprising 4 CSR 265-2 Practice and Procedure.

Editor's Note: The following material is incorporated into this rule by reference:

- 1) *Missouri Division of Transportation, Single State Registration System (SSRS) Procedures Manual (Jefferson City, MO: Department of Economic Development Revised July 1, 1994);*
- 2) *Section 4005 of Title IV of Public Law 102-240 (49 U.S. Code 11506) (Washington: U.S. Government Printing Office, 1993).*

In accordance with section 536.031(4), RSMo, the full text of material incorporated by reference will be made available to any interested person at the Office of the Secretary of State and the headquarters of the adopting state agency.

(1) Administrative law judge means one of the administrative law judges appointed to the division.

(2) Administrative law judge section means the section of the division consisting of the three (3) administrative law judges, acting together or independently.

(3) Applicant means any person on whose behalf application is made before the division for permission or authorization which the division is empowered to grant under its statutory or other delegated authority.

(4) Complainant means any person, corporation or municipality on whose behalf a complaint is filed with the division.

(5) Corporation includes a corporation, company, association or joint stock association, or limited liability company.

(6) Counsel means the counsel to the division and includes all deputies and assistants.

(7) Director means the chief administrative officer of the division.

(8) Division means the Division of Transportation as created by Chapter 622, RSMo.

(9) Division staff means all division personnel other than those individuals assigned to the administrative law judge section.

(10) Intervenor means a person petitioning to intervene before the division, either in support of or in opposition to the relief being requested, and who is granted the right to participate as a party.

(11) Municipality includes a city, town, village, county or other political subdivision.

(12) Participant without intervention means any person allowed by the division to take part in a proceeding before it without formal intervention or designation as a party.

(13) Partnership is an association of two (2) or more persons to carry on as co-owners a business for profit and includes a registered limited liability partnership.

(14) Party includes any applicant, complainant or respondent and any person having intervened in proceedings before the division.

(15) Person includes any individual, business entity or governmental entity.

(16) Pleading means any application, complaint, petition, answer, protest or motion made to the division, including any appendices, documents and exhibits attached to or incorporated by reference in the pleading.

(17) Respondent means any person against whom any complaint is filed or to whom an order or notice is issued by the division on its own initiative instituting a proceeding or an investigation.

(18) Shipper means the person who controls the transportation provided by a carrier, and refers to the actual shipper rather than an intermediary. The shipper may be nominally either the consignor or consignee, but must be one or the other. The payment of the charges for the transportation is evidence that the person who pays is the person who controls the transportation, and the person who pays is presumed to be the shipper. However, this presumption is rebuttable, and can be rebutted by evidence demonstrating that a person not paying the transportation charges actually controls the selection of the carrier and the routing of the shipment, who would be presumed to be the shipper in such an instance.

(19) *Single State Registration System (SSRS) Procedures Manual* means the procedures

manual for the registration of interstate motor carrier operations in this state under the authority of the Interstate Commerce Commission (ICC), which implements the SSRS under Section 4005 of Title IV of P.L. 102-240 (49 U.S.C. 11506), and which is adopted by the division.

*AUTHORITY: section 622.027, RSMo 1994. * Emergency rule filed June 14, 1985, effective July 1, 1985, expired Oct. 28, 1985. Original rule filed Aug. 1, 1985, effective Oct. 29, 1985. Amended: Filed July 31, 1986, effective Oct. 27, 1986. Amended: Filed Nov. 4, 1992, effective July 8, 1993. Emergency amendment filed Dec. 1, 1994, effective Dec. 11, 1994, expired Dec. 19, 1994. Emergency amendment filed Dec. 20, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency amendment filed April 20, 1995, effective May 1, 1995, expired Aug. 28, 1995. Emergency amendment filed Aug. 18, 1995, effective Aug. 29, 1995, expired Feb. 24, 1996. Amended: Filed Aug. 3, 1995, effective Feb. 25, 1996. Emergency amendment filed Aug. 16, 1996, effective Aug. 28, 1996, expired Feb. 23, 1997.*

**Original authority: 622.027, RSMo 1985, 1993, 1995.*

4 CSR 265-2.020 Principal Offices

PURPOSE: This rule announces the principal offices of the Division of Motor Carrier and Railroad Safety.

(1) The principal office of the Division of Transportation is located in the Harry S Truman State Office Building, Room 230, 301 West High Street in Jefferson City, Missouri. All general inquiries to the division, cover letters, motions, and other pleadings and responses to division orders should be addressed to the Director, Division of Motor Carrier and Railroad Safety, P.O. Box 1216, Jefferson City, MO 65102. The division's main telephone number is (314) 751-7100; its main fax number is (314) 526-3651.

*AUTHORITY: section 622.027, RSMo 1994. * Emergency rule filed June 14, 1985, effective July 1, 1985, expired Oct. 28, 1985. Original rule filed Aug. 1, 1985, effective Oct. 29, 1985. Amended: Filed May 17, 1989, effective Sept. 11, 1989. Emergency amendment filed Dec. 1, 1994, effective Dec. 11, 1994, expired Dec. 19, 1994. Amended: Filed Aug. 3, 1995, effective Feb. 25, 1996. Emergency amendment filed Aug. 16, 1996, effective Aug. 28, 1996, expired Feb. 23, 1997.*

**Original authority: 622.027, RSMo 1985, 1993, 1995.*

4 CSR 265-2.030 Records of the Division

PURPOSE: This rule appoints a custodian of records for the division and sets forth guidelines to be followed when reviewing records of the division.

Editor's Note: The following material is incorporated into this rule by reference:

1) 49 U.S. Code sections 504 and 523(c) (Washington: U. S. Government Printing Office, 1993).

In accordance with section 536.031(4), RSMo, the full text of material incorporated by reference will be made available to any interested person at the Office of the Secretary of State and the headquarters of the adopting state agency.

(1) The director shall keep a full and true record of all the proceedings of the division, of all books, maps, documents and papers ordered filed by the division and of all orders made by each of the administrative law judges. In addition, the director shall maintain a docket of all proceedings filed with proceedings set for hearing and shall assign each matter an appropriate docket number. These records shall be available for public inspection and copying at the office of the director from 8:00 a.m. to 12:00 noon, and 1:00 p.m. to 5:00 p.m., Monday through Friday, except for legal holidays or as otherwise provided in subsection (1)(A) of this rule.

(A) The following records of the division, or possessed by the division, shall be closed records, and shall not be open to public inspection or copying, or made public, except as otherwise provided by order or permission of a court, the division's administrative law judge, or when formally filed with the division in a hearing or proceeding, or when otherwise required to be made public under the rules of the division or Chapters 386—391, RSMo. The closure of records to public access under this subsection shall not be deemed to preclude lawful discovery of these records by a party in an administrative or court proceeding:

1. All records which may be closed records under Chapter 610, RSMo;

2. Under section 386.480, RSMo, all information furnished to the division or its employees by any motor carrier, railroad corporation, street railroad corporation, their agents or employees or by any corporation or person subject to the jurisdiction of the division, pursuant to the requirement of any statute or court order, any rule, order or subpoena of the division or its administrative law

judge, or any audit, investigation or discovery by the division staff, except that insurance certificates, surety bonds, endorsements and cancellation notices filed pursuant to section 390.126, RSMo or 4 CSR 265-10.030 shall be open records;

3. Under 49 U.S.C. section 523(c), all records or information acquired by division staff during an inspection of the equipment or records of a motor carrier, a private carrier by motor vehicle or a lessor of equipment to such a carrier, if that inspection was delegated and funded or reimbursed by the Secretary of Transportation of the United States under 49 U.S.C. section 504; and

4. Under section 387.310, RSMo, any fact or information received by the division or its staff during the course of any inspection or examination of railroad corporations, street railroad corporations and common carriers.

(2) The director of the division shall be the official custodian of records for the division and shall be responsible for maintaining the division's records. The director may delegate some or all of his/her custodial duties to division personnel under his/her supervision. Requests for access to or copies of public records of the division may be made in writing addressed to Director, Missouri Division of Motor Carrier and Railroad Safety, P.O. Box 1216, Jefferson City, MO 65102 or in person at the division's principal office. Copies of records, papers and official documents furnished to public officers for use in their official capacity will be provided without charge. All other persons requesting copies of public records of the division shall be liable for the actual cost of document search and duplication, and shall make payment, in full, within thirty (30) days of invoice.

(3) Every person who requests access to public records of the division may be required, before access is granted, to deposit a driver's license or other positive identification as a security deposit with the custodian of records, to be retained until the person finishes reviewing the records and returns the records to the custodian. No person shall damage, mutilate, deface or otherwise alter the original records of the division, except duly authorized state personnel in the course of the authorized destruction of records as prescribed by law, nor shall any person remove any original records of the division from the offices of the division without the written permission of the custodian of records or his/her authorized representative.

(4) For a certificate authorizing an issue of bonds, notes or other evidences of indebtedness, a fee of one dollar (\$1) will be charged for each thousand dollars of the face value of the authorized issue or fraction of it, up to one (1) million dollars; and a fee of fifty cents (50¢) will be charged for each one thousand dollars (\$1000) over one (1) million dollars and up to ten (10) million dollars; and a fee of twenty-five cents (25¢) will be charged for each one thousand dollars (\$1000) over ten (10) million dollars, with a minimum fee in any case of twenty-five dollars (\$25); provided, that no fee shall be charged for an issue or that part of an issue which is made for the purpose of guaranteeing, taking over, refunding, discharging or retiring any bond, note or other evidence of indebtedness up to the amount of the issue guaranteed, taken over, refunded, discharged or retired.

AUTHORITY: section 622.027, RSMo 1994. Emergency rule filed June 14, 1985, effective July 1, 1985, expired Oct. 28, 1985. Original rule filed Aug. 1, 1985, effective Oct. 29, 1985. Amended: Filed May 17, 1989, effective Sept. 11, 1989. Amended: Filed Nov. 4, 1992, effective July 8, 1993. Emergency amendment filed Dec. 1, 1994, effective Dec. 11, 1994, expired Dec. 19, 1994. Emergency amendment filed Dec. 20, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency amendment filed April 20, 1995, effective May 1, 1995, expired Aug. 28, 1995. Emergency amendment filed Aug. 18, 1995, effective Aug. 29, 1995, expired Feb. 24, 1996. Amended: Filed Aug. 3, 1995, effective Feb. 25, 1996.*

**Original authority: 622.027, RSMo 1985, 1993, 1995.*



MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT
DIVISION OF TRANSPORTATION
DECLARATION

NOTE: This Declaration should be used to comply with Division rule 4 CSR 265-2.030(1)(A)4.C., relating to public access to railroad safety records.

STATE OF MISSOURI)
) SS
COUNTY OF _____)

NAME

REPRESENTING

of lawful age, solemnly declares, under penalty of perjury, as follows:

1. I am requesting the Division of Transportation within the Department of Economic Development, State of Missouri (Division), to allow me and/or my authorized representatives to inspect and/or copy certain railroad-highway crossing records or other railroad safety records described as follows:

(Check box if continued on separate page(s), which are attached hereto and adopted by this reference as part of this declaration.)

2. The Division has informed me that the described records contain reports, surveys, schedules, lists or data compiled for the purpose of identifying, evaluating or planning the safety enhancement of railway-highway crossings pursuant to 23 U.S.C. § 130, or developing a highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds.

WHEREFORE, pursuant to 23 U.S.C. § 409 (as amended) and as a condition of being allowed to inspect and/or copy the described records, I DECLARE AND PROMISE that I do not want, will not use, and will not authorize or knowingly allow any other person to use, the requested records or any information extracted therefrom for purposes of discovery, or to be admitted into evidence in a federal or state court proceeding or considered for any other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in those records. I acknowledge that use of these records or information contrary to this declaration and promise may also constitute a violation of Division rule 4 CSR 265-2.030(1)(A)4.D., and may be punishable by civil and criminal penalties.

I declare, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.
(If executed on behalf of a corporation firm or other person, I am authorized to make this declaration on behalf of that corporation, firm or other person.) Executed on this _____ day of _____, 19 _____.

SIGNATURE

PRINT NAME

PRINT ADDRESS

MO 419-0307 (10-92)



4 CSR 265-2.040 Practice by Attorneys

PURPOSE: This rule sets forth who may practice as an attorney before the division.

(1) The counsel employed by the division shall represent the staff in investigations, contested cases and other proceedings before the division and appear for the division in all courts and before federal regulatory bodies and, in general, perform all duties and services as attorney and counsel to the division which the division may reasonably require.

(2) The practice by attorneys other than those from the offices of the division will be as follows:

(A) Any person who signs a pleading or brief, or who enters an appearance at a hearing for another person, by this act expressly represents that s/he is authorized to so act, that s/he is a licensed attorney-at-law in Missouri or the state of his/her residence;

(B) A nonresident attorney who is a member of the Missouri Bar and maintains an office in Missouri for the practice of law may practice law before the division as is the case of a resident attorney;

(C) Any attorney not a member of the Missouri Bar, but who is a member in good standing of the bar of any court of record, may be permitted to appear and participate in a particular case before the division under the following conditions: the visiting attorney shall file with his/her initial pleading a statement identifying each court of which s/he is a member of the bar and certifying that neither s/he nor any member of his/her firm is disqualified to appear in any court. The statement also shall designate some member of the Missouri Bar having an office within Missouri as associate counsel; the designated attorney shall enter his/her appearance as an attorney of record; and

(D) An eligible law student may appear before the division upon compliance with Missouri Civil Rule 13.

AUTHORITY: section 622.027, RSMo 1986. Emergency rule filed June 14, 1985, effective July 1, 1985, expired Oct. 28, 1985. Original rule filed Aug. 1, 1985, effective Oct. 29, 1985.*

**Original authority: 622.027, RSMo 1985.*

4 CSR 265 2.050 Computation of Effective Dates

PURPOSE: This rule sets standards for computation of effective dates of any order or time prescribed by the division.

(1) In computing any period of time prescribed or allowed by the division, the day that the division order is issued is not to be included. The last day of the period will be included unless it falls on a Saturday, Sunday or state holiday in which case it is extended to the end of the next working day.

(2) When the period of time prescribed or allowed is less than seven (7) days, Saturdays, Sundays and legal holidays falling within the period will be excluded and the period will be extended accordingly.

(3) In computing the effective date of any order of the division, the order is considered effective at 12:01 a.m. on the effective date designated in the order, whether or not the date is a Sunday or legal holiday.

(4) When an act is required or allowed to be done at or within a specified time, the administrative law judge section, at its discretion, may—

(A) Order the period enlarged if a request is made before the expiration of the period originally prescribed or extended by a previous order; or

(B) Permit the act to be done after the expiration of the specified period, if good cause is shown unless the lapse of that time period causes the division to lose jurisdiction over the matter or case.

AUTHORITY: section 622.027, RSMo 1986. Emergency rule filed June 14, 1985, effective July 1, 1985, expired Oct. 28, 1985. Original rule filed Aug. 1, 1985, effective Oct. 29, 1985. Amended: Filed July 31, 1986, effective Oct. 27, 1986.*

**Original authority: 622.027, RSMo 1985.*

4 CSR 265-2.055 Name and Address Changes for Motor Carriers, Railroad Corporations and Certain Contracting Shippers

PURPOSE: This rule requires motor carriers and railroad corporations to notify the division of changes of their names (including fictitious names) and any change of address of their principal place of business, prescribes the procedures for those changes, and requires intrastate motor contract carriers of passengers or household goods to notify the division of changes in the name or address of contracting shippers they are authorized to serve under their contract carrier permits.

Editor's Note: The following material is incorporated into this rule by reference:

1) Missouri Division of Transportation, Single State Registration System SSRS Procedures Manual (Jefferson City, MO: Department of Economic Development, Revised July 1, 1994).

In accordance with section 536.031(4), RSMo, the full text of material incorporated by reference will be made available to any interested person at the Office of the Secretary of State and the headquarters of the adopting state agency.

(1) A motor carrier's change of address from one (1) state to a different state and a motor carrier's change of name shall not be recognized by the division until approved by order of the division's administrative law judge. Until the carrier has filed with this division the request and documentation required under this rule, and until an order approving any motor carrier's change of address to a different state or motor carrier's change of name has been issued, the division may continue to mail or deliver any notices, orders and other correspondence to the carrier in the previous name and at the previous address as it appears on record with the division, and this mailing or delivery shall be valid as if no change of name or address had occurred.

(2) Motor carriers holding intrastate operating authority from this division shall file with the division, not later than five (5) days after a change of name (including any fictitious name) or change of address of their principal place of business becomes effective, a written request that the division record the carrier's change of name, change of address, or both. The request shall state the numbers of every certificate and permit issued to that carrier by the division and currently in force, including both active and suspended authority. The division shall not recognize or approve a change of name or change of address under this section until the carrier has complied with the following requirements:

(A) New certificates of insurance or surety bonds setting forth the carrier's new name and address shall be filed with and approved by the division, in accordance with 4 CSR 265-10.030;

(B) If the change involves any change of name by a corporation, limited liability partnership or any change of fictitious name of any person holding intrastate operating authority, notice of the change of name or change of fictitious name shall be filed with the Missouri secretary of state, as otherwise required by law; and

(C) If the carrier becomes a nonresident as a result of a change of address and the carrier does not maintain an office or agent in this

state, it shall file with the division a writing which designates the director of this division as the carrier's authorized agent upon whom legal service may be had in all actions arising in this state from any operation of a motor vehicle under authority of any certificate or permit issued to the carrier.

(3) Motor carriers holding Interstate Commerce Commission (ICC) operating authority which have been registered with this division, as required under 4 CSR 265-2.065, shall notify this division of every change of name or address as required by the *Single State Registration System (SSRS) Procedures Manual*.

(4) Motor carriers holding an interstate permit issued by this division authorizing operations exempt from ICC regulation shall notify this division of every change of name (including fictitious names), and every change of address of their principal place of business, in writing, within five (5) days after the effective date of the change. The division shall not recognize or approve a change of name or change of address under this section until the carrier has complied with the following requirements:

(A) In the case of a change of name, the carrier shall file with the division a new Uniform Application for Registration of Interstate Operations Exempt from Economic Jurisdiction of ICC (Form A-1), clearly marked in the upper right-hand corner with the words Name Change Only or Name and Address Change and the carrier's interstate permit number assigned by this division; and

(B) New certificates of insurance or surety bonds setting forth the carrier's new name and address shall be filed with and approved by the division, in accordance with 4 CSR 265-10.030.

(5) If a motor carrier's change of name involves any change in the form of business entity owning the operating authority, such as changing from an individual to a partnership or corporation, or changing from a corporation or partnership to an individual, these changes are transfers within the meaning of section 390.111, RSMo. Except as otherwise provided under subsections (3)(A) and (4)(A) of this rule, both the transfer or and transferee shall apply to the division for approval of every transfer as required under 4 CSR 265-2.066.

(6) Motor carriers holding authority from this division to operate both in intrastate and interstate commerce shall comply with all applicable provisions of sections (1)–(5) of this rule.

(7) Every railroad corporation, within the meaning of section 386.020, RSMo, which owns, holds, operates, controls or manages a railroad located within this state shall notify this division of every change of its true name, fictitious or assumed name, address of its principal office, and mailing address, if different, within five (5) days after the change of name or address becomes effective, by filing with the division a written request by an authorized employee, officer or agent of the railroad corporation, that the division record the carrier's new name and address. Until the carrier has filed with this division the request and documentation required under this rule, and until an order approving any rail carrier's change of address to a different state or rail carrier's change of name has been issued, the division may continue to mail or deliver any notices, orders and other correspondence to the carrier in the previous name and at the previous address as it appears on record with the division, and this mailing or delivery shall be valid as if no change of name or address had occurred.

(8) Every contract carrier holding a contract carrier permit issued by the division under section 390.061, RSMo, which authorizes the intrastate transportation of passengers or household goods, shall file with the division, not later than five (5) days after learning of any change of name or change of address of a contracting shipper named in the permit, a written request that the division record the shipper's change of name, change of address, or both. The request shall state the carrier's own name and the number assigned to the contract carrier permit by the division, together with the former name and address of the shipper, and the new name and address of the shipper. The carrier shall attach a copy of a letter or other writing from the shipper giving notice of the change of name or address, or both. This section shall also apply if the shipper's change of name involves any change of the entity under contract with the carrier, by incorporation, merger or consolidation of the shipper, or by the shipper's assignment or delegation of the contract or contract rights to another entity.

AUTHORITY: section 622.027, RSMo 1994. Original rule filed May 2, 1991, effective Dec. 9, 1991. Amended: Filed Nov. 4, 1992, effective July 8, 1993. Emergency amendment filed Dec. 1, 1994, effective Dec. 11, 1994, expired Dec. 19, 1994. Emergency amendment filed Dec. 20, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency amendment filed April 20, 1995, effective May 1, 1995, expired Aug. 28, 1995.*

Emergency amendment filed Aug. 18, 1995, effective Aug. 29, 1995, expired Feb. 24, 1995. Amended: Filed Aug. 3, 1995, effective Feb. 25, 1996.

**Original authority: 622.027, RSMo 1985, 1993, 1995.*



For Division use only:
Case No. _____

FORM A

**UNIFORM APPLICATION FOR REGISTRATION
OF OPERATING AUTHORITY ISSUED BY ICC**

To: DIVISION OF TRANSPORTATION
P.O. Box 1216
Jefferson City, Missouri 65102

Date _____

Applicant _____

Street _____

City _____ State _____ Zip _____

ICC Operating Authority No. MC _____ Type of Route: Regular

Certificate Permit TA Irregular

Type of Carrier:

Property Passenger Common Contract

Give Principal Office Address, if different than above:

Street _____ City _____ State _____

If individual, give name and address:

If corporation, give state in which incorporated: _____

Name of President _____ Name of Secretary _____

If partnership, give name and address of partners:

Process Agent for State: Applicant hereby designates the Director of the Division of Transportation of the State of Missouri as its authorized agent upon whom legal service may be had in all actions arising in Missouri from the operation of motor vehicles under authority of this Division. If applicant desires to designate a local agent for service of process please give name and address:

I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute and file this document on behalf of the above application. (Federal penalties, maximum of \$10,000 or imprisonment for five years, or both, 18 U.S. Code 1001; State penalties as prescribed by law.)

Signature _____

Title _____

Instructions: A copy of the ICC operating authority must be attached to the application. Only the signed original of Form A shall be filed with the Division.

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of Section 11506(c) of the Interstate Commerce Act (49 U.S.C., Sec. 11506(c)).

MO 419-1336 (2-87)



For Division use only:

Case No. _____

FORM A-1

UNIFORM APPLICATION FOR REGISTRATION OF INTERSTATE OPERATIONS
EXEMPT FROM ECONOMIC JURISDICTION OF ICC

To: DIVISION OF TRANSPORTATION
P.O. Box 1216
Jefferson City, Missouri 65102

Date _____

Applicant _____

Street _____

City _____ State _____ Zip _____

Mailing Address: _____

Type of Carrier:

- Sec. 10526(a)(5) (Cooperative Association Exemption)
- Sec. 10526(a)(6) (Agricultural Commodities Exemption)
- Sec. 10526(a)(7) (Newspaper Exemption)
- Sec. 10526(a)(8)(A) (Transportation of passengers adjacent to Air Transport Exemption)
- Sec. 10526(a)(8)(B) (Transportation of property (including baggage) adjacent to Air Transport Exemption)
- Sec. 10526(a)(8)(C) (Transportation of property because of weather conditions or aircraft mechanical failure)
- Sec. 10526(a)(11) (Used Pallets and Containers Exemption)
- Sec. 10526(a)(12) (Decorative Rock Exemption)
- Sec. 10526(a)(13) (Wood Chips Exemption)
- Sec. 10526(b)(3) (Tow Truck Exemption)
- Sec. 10524(b) (Intercompany Hauling Exemption)
- _____ (Other)

If Individual, give name and address: _____

If Corporation, give State in which incorporated: _____

Name of President _____ Name of Secretary _____

If Partnership, give name and address of partners:

PROCESS AGENT FOR STATE: Applicant hereby designates the Director of the Division of Transportation of the State of Missouri as its authorized agent upon whom legal service may be had in all actions arising in Missouri from the operation of motor vehicles under authority of this Division.

I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute and file this document on behalf of the above applicant. (State penalties as prescribed by law.)

Signature

Title

4 CSR 265-2.057 Interpretation of Federal Preemption Under Section 601 of the Federal Aviation Administration Authorization Act of 1994

PURPOSE: This rule sets forth the division's interpretation of the effects of federal preemption on its regulation of intrastate motor carriers of property (except household goods) in Missouri intrastate commerce.

Editor's Note: The following material is incorporated into this rule by reference:

- 1) *Federal Aviation Administration Authorization Act of 1994 (H.R. 2739, 103d Congress, 2d Session) (49 U.S. Code sections 11501(h) and 41713(B));*
- 2) *49 Code of Federal Regulations section 172.101; and*
- 3) *49 Code of Federal Regulations parts 100—177.*

In accordance with section 536.031(4), RSMo, the full text of material incorporated by reference will be made available to any interested person at the Office of the Secretary of State and the headquarters of the adopting state agency.

(1) Effective January 1, 1995, under Section 601 of the Federal Aviation Administration Authorization Act of 1994 (H.R. 2739, 103d Congress, 2d Session) (49 U.S.C. sections 11501(h) and 41713(b)), the states generally can no longer enact or enforce any law, regulation or other provision having the force and effect of law relating to the prices, routes, or services of any motor carrier with respect to the transportation of property (except household goods). This preemption does not restrict the regulatory authority of the state with respect to motor vehicle safety, which the division interprets as including the safe transportation of hazardous materials by motor vehicle, or the authority of a state to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization. This section sets forth the division's interpretation of the effects of this preemptive federal law.

(2) The federal preemption does not relieve any person who engages in the business of a motor carrier of property on the public highways, and whose vehicles are not exempted under section 390.030, RSMo, from the requirement of having in force a certificate under section 390.051.1., RSMo, or a permit under section 390.061.1., RSMo. But, the division interprets the preemption as modifying the standards and procedures applicable to issuing such certificates and permits. Until

receiving further legislative direction from the Missouri general assembly as provided by law, the division shall issue new certificates and permits authorizing the transportation of property (except household goods) under the standards and procedures prescribed by law which are not preempted by Section 601 of the Federal Aviation Administration Authorization Act of 1994, as interpreted by this rule and any other applicable division rules.

(3) Certificates or permits issued by the division and in force on December 31, 1994, and which authorize a person to transport any property as a common carrier or contract carrier by motor vehicle, shall remain in force (unless suspended or revoked by order of the division as provided by law), and shall be interpreted after December 31, 1994, as certificates and permits authorizing that person to transport property (except household goods) as a common carrier and as a contract carrier by motor vehicle on the public highways between all points within Missouri; except that no certificate or permit issued by the division shall be interpreted as authorizing the intrastate transportation of any hazardous material as designated in 49 CFR section 172.101, in any quantity or manner which is subject to regulation under 49 CFR parts 100—177, except hazardous materials expressly authorized in that certificate or permit.

(4) The statutory difference between "common carrier" and "contract carrier", as those terms are defined in section 390.020, RSMo, is directly related to the service provided by the motor carrier, in that a common carrier serves the general public, but a contract carrier is restricted to serving contracting shippers only, under individual transportation contracts. The division concludes that under the federal preemption no meaningful distinction between common carriers and contract carriers can be enforced by the state with respect to the transportation of property (except household goods). After December 31, 1994, every applicant who demonstrates that it is qualified to engage in the business of a motor carrier of property (except household goods) in intrastate commerce, as required by this rule, shall be granted a certificate and permit to operate in intrastate commerce both as a common carrier and as a contract carrier. Contract carriers of property (except household goods) in Missouri intrastate commerce after December 31, 1994, shall no longer be required to file transportation contracts with the division. After December 31, 1994, contract carrier permits issued by the

division shall be interpreted as not limiting the transportation of property (except household goods) for any specific contracting parties, and shall not name specific contracting shippers with respect to the transportation of property (except household goods).

(5) Section 601 of the Federal Aviation Administration Authorization Act of 1994 expressly states that its general rule of preemption shall not restrict the safety regulatory authority of a state with respect to motor vehicles. All applicants for intrastate certificates and permits under this rule shall be carefully examined to determine their safety fitness to transport property by motor vehicle upon the public highways. Under the division's safety regulatory authority, it has previously authorized and will continue to authorize the transportation of hazardous materials (as defined in 49 CFR part 172) by motor vehicle upon the public highways to the extent that applicants demonstrate their qualifications to transport those commodities safely, and their satisfactory compliance with all applicable laws and regulations governing the transportation of hazardous materials by motor vehicle.

(6) Whenever a motor carrier which holds an intrastate certificate or permit or both requests from this division a copy of its certificate or permit or both, or the division reissues a motor carrier's intrastate certificate or permit or both for any other lawful reason, except as otherwise provided in 4 CSR 265-2.060(8) and 4 CSR 265-2.065(7)(C), the division staff may file a pleading proposing a restatement of the carrier's operating authority, as modified by the federal preemption and interpreted in the division's rules. A motor carrier may also request the division to restate its intrastate certificate or permit or both, by a pleading filed with the division at any time in accordance with the requirements of division rule 4 CSR 265-2.080.

(A) The division shall serve the proposed, restated certificate or permit or both on the motor carrier, with an order of an administrative law judge directing that the carrier may object to the proposed restatement of the certificate or permit or both, by filing a written pleading to be received by the division within twenty (20) days after the date of service of the division staff's proposed, restated certificate or permit or both. The motor carrier may informally discuss the proposed restatement of the certificate or permit or both, and any objections, with the division's counsel, but absent an appropriate order from the administrative law judge, that shall not extend the time for pleading any objections.



(B) If no objection is timely received, then the division shall issue a restated certificate or permit or both in conformity with the proposed, restated certificate or permit or both, without further proceedings.

(C) If a written objection is timely received, the division's general counsel shall consider the basis for the objection, and may direct the reissuance of a proposed certificate or permit or both, as amended in response to the motor carrier's objection. If the general counsel concludes that the objection is not well-founded, s/he shall serve notice of this conclusion on the carrier, which shall also notify the carrier that it may request a hearing on the objection before an administrative law judge, by the filing of a written request for a hearing, to be filed within twenty (20) days after service of the notice.

(D) If the carrier timely files a request for hearing on the carrier's objection to the proposed, restated certificate or permit or both, then the division shall set the matter for hearing and decision by an administrative law judge.

AUTHORITY: section 622.027, RSMo 1994. Emergency rule filed Dec. 1, 1994, effective Dec. 11, 1994, expired Dec. 19, 1994. Emergency rule filed Dec. 20, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 20, 1995, effective May 1, 1995, expired Aug. 28, 1995. Emergency rule filed Aug. 18, 1995, effective Aug. 29, 1995, expired Feb. 24, 1996. Original rule filed Aug. 3, 1995, effective Feb. 25, 1996. Emergency rescission and rule filed Aug. 16, 1996, effective Aug. 28, 1996, expired Feb. 23, 1997.

**Original authority: 622.027, RSMo 1985, 1993, 1995.*

4 CSR 265-2.060 General Application Requirements for the Issuance and Transfer of Intrastate Motor Carrier Certificates, Permits and Temporary Authority

PURPOSE: This rule sets forth the requirements that applications to the division requesting an intrastate motor carrier certificate or permit must meet.

Editor's Note: The following material is incorporated into this rule by reference:

- 1) 49 U. S. Code, section 1614 (Washington: United States Government Printing Office, 1993); and
- 2) Notice Register of Motor Carrier Cases.

In accordance with section 536.031(4), RSMo, the full text of material incorporated

by reference will be made available to any interested person at the Office of the Secretary of State and the headquarters of the adopting state agency.

(1) Applicability—Every application for the issuance or transfer of a common carrier certificate under 390.051, RSMo, a contract carrier permit under section 390.061, RSMo, or both, or for the issuance of temporary authority under section 390.081, RSMo, which authorizes the transportation of passengers or property on the public highways in Missouri intrastate commerce shall be filed in conformity with the requirements of this rule, division rule 4 CSR 265-2.080 (Pleadings), and other rules of the division whenever applicable.

(2) Prescribed Application Forms—The applicant shall complete and file the application form, including all exhibits required by the application form, which is adopted by the division and prescribed as follows:

(A) Form MO-1, Application For a Certificate/Permit to Operate in Intrastate Commerce Transporting Property (Except Household Goods), shall be filed in duplicate for applications under section 390.051, RSMo or section 390.061, RSMo, for the issuance or transfer of a certificate and permit which authorizes operations as a common carrier and contract carrier in intrastate commerce transporting property (except household goods), and applications for the enlargement of such a certificate and permit to authorize the transportation of additional hazardous materials (except household goods);

(B) Form MO-2, Application For a Certificate OR Permit to Operate in Intrastate Commerce Transporting Household Goods or Passengers, shall be filed in *triplicate* for applications for the issuance or transfer of a certificate which authorizes operations as a common carrier under section 390.051, RSMo, or a permit which authorizes operations as a contract carrier under section 390.061, RSMo, in intrastate commerce transporting household goods or passengers (except as provided in subsection (2)(C)). The applicant may request the division to include a certificate and permit which authorizes operations as a common carrier and contract carrier in intrastate commerce transporting property (except household goods);

(C) Form MO-3, Application for a Certificate/Permit to Operate in Intrastate Corporations a Not for Profit Corporation Transporting Passengers Other Than in Charter Service, shall be filed in duplicate for applications under section 390.063, RSMo, for the issuance of a certificate which authorizes

operations as a common carrier, or a permit which authorizes operations as a contract carrier, in intrastate commerce transporting exclusively passengers other than in charter service who are—

1. Elderly;
2. Handicapped;
3. Preschool disadvantaged children transported for the purpose of participating in a federal head start program; or
4. Transported in areas other than "urbanized areas" for which the motor carrier is authorized to be subsidized or reimbursed under section 18 of the Urban Mass Transportation Act of 1964, as amended, section 1614 of Title 49, *United States Code*, with federal funds administered by the Missouri Highways and Transportation Department, except that priority shall be given to serving passengers who are elderly, handicapped or preschool disadvantaged children under the proposed certificate or permit; and

(D) Form MO-4, Application for a Temporary Certificate or Permit to Operate in Intrastate Commerce Transporting Household Goods or Passengers, shall be filed in duplicate for applications under section 390.081, RSMo, for the issuance of temporary authority which authorizes operations as a common carrier or contract carrier in intrastate commerce transporting household goods or passengers for a period not to exceed ninety (90) days.

(3) Verification—The application shall be completed and verified by the applicant, or by an authorized representative of the applicant under oath or penalty of perjury, and if the application involves the transfer of a certificate or permit or both, the transferor's statement shall also be completed and verified by the transferor, or by an authorized representative of the transferor under oath or penalty of perjury. All verifications shall be made upon personal knowledge, or reasonable information and belief of the matters verified. The application shall include the original signature of the natural person who verifies it, and the original signature of the applicant's attorney, if any.

(4) Required Documentation—The application shall not be accepted for filing with the division until the division has received the following required documentation:

(A) Completed Application Form and Exhibits—The completed application form prescribed by section (2), including any exhibits required by the application form, which shall be verified as required by section (3),



and signed as required by section (5) of division rule 4 CSR 265-2.080;

(B) Liability Insurance Coverage—Form E—Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, or Form G—Uniform Motor Carrier Bodily Injury and Property Damage Surety Bond, executed in triplicate by the applicant's insurance provider, which shall provide liability insurance coverage in the required form and shall be filed with and approved by the division only in accordance with the requirements of 4 CSR 265-10.030; or in the alternative, notice that the applicant has been approved for self-insurance by order of this division, in accordance with the requirements of section 390.126.1., RSMo, and division rules 4 CSR 265-10.030 and 4 CSR 265-2.068.

1. Exception—Household Goods and Passengers Other Than in Charter Service. Applications for a certificate or permit which authorizes the intrastate transportation of household goods, or passengers other than in charter service (EXCEPT applications by not for profit corporations under section 390.063, RSMo), may be filed without the documentation required by subsection (4)(B), but the division shall not issue the requested certificate or permit until the division has received, approved and filed the documents required by this subsection. Fax copies of the insurance certificate or bond shall be accepted by the division only in conformity with the requirements under 4 CSR 265-10.030(3);

(C) Vehicle Licensing and Fees—Form B-1—Uniform Application for Licensing of Vehicles or Driveway Operations, showing the number and type of vehicle licenses requested by the applicant for each motor vehicle to be operated in Missouri intrastate commerce under the requested operating authority during the current license year, together with payment of the aggregate license fees payable under 4 CSR 265-10.020 by a certified check or money order payable to Director of Revenue.

1. Exception—Not for Profit Corporations, Passengers Other Than in Charter Service—Subsection (4)(C) shall not apply to applications properly filed by a not for profit corporation on Form MO-3, Application For a Certificate or Permit to Operate in Intrastate Commerce as a Not For Profit Corporation Transporting Passengers Other Than in Charter Service;

(D) Corporate Standing—If the applicant is a corporation or limited liability partnership, confirmation that the applicant is properly incorporated or registered and in good standing with the Office of the Missouri Secretary of State. The division has estab-

lished a computer link by which to verify an applicant's corporate standing with the Office of the Missouri Secretary of State, but the division may require an applicant to file written evidence of its incorporation, registration or good standing whenever deemed necessary by the division; and

(E) Fictitious Name Registration—If the applicant operates as a motor carrier under any trade name or fictitious name, confirmation that the applicant has properly registered its fictitious name as required by law with the Office of the Missouri Secretary of State. The division has established a computer link by which to verify an applicant's registration of fictitious names with the Office of the Missouri Secretary of State, but the division may require an applicant to file written evidence of the proper registration of its fictitious name whenever deemed necessary by the division.

(5) Form of Applications—The following requirements also apply to motor carrier applications under this rule:

(A) Photocopied Forms, Original Signatures—Photocopies of the prescribed application and exhibit forms may be filed in lieu of the printed forms, if they are clearly legible, but the application shall include one (1) original signature of every person whose signature is required;

(B) Substitution of Exhibits—If it would be unduly burdensome for the applicant to reproduce the required information on Exhibits C, D, or E, as prescribed in this rule, then in lieu of filing the division's prescribed exhibit form, the applicant may file the required information with the prescribed application form in a writing which plainly sets forth the same information required by the prescribed exhibit form, in the same or a similarly unambiguous format, which shall be designated by the same exhibit letter as the prescribed exhibit for which it is substituted; and

(C) Additional Information—Applications may include additional, relevant information besides the forms required in this rule, but such additional information shall not unnecessarily repeat the information required by the prescribed forms.

(6) Applicable Standards, Generally—Except as otherwise provided in subsections (6)(A)—(E), the division shall grant the application if it determines on the basis of the information filed by the applicant, evidence submitted by the division staff, and any other information received by the division and filed in the case, that the applicant is in compliance with the applicable safety and insurance requirements,

and is willing to properly perform the service of a motor carrier of property or passengers, and to conform to the applicable provisions of Chapter 390, RSMo, and the requirements of the division established thereunder.

(A) Exception—Charter Service—Whenever the application seeks the issuance of a certificate or permit which authorizes the intrastate transportation of passengers in charter service as a common carrier or contract carrier, the division shall also make findings as required by subsection 3 of section 390.051, RSMo, or subsection 3 of section 390.061, RSMo, and shall not grant the application unless it finds that the applicant is fit, willing and able to properly perform the service proposed, and to conform to the provisions of Chapter 390, RSMo, and the rules and orders of the division.

(B) Exception—Household Goods or Passengers Other Than in Charter Service, Common Carriers—Whenever the application seeks the issuance of a certificate which authorizes the intrastate transportation of household goods, or passengers other than in charter service (other than a passenger application under section 390.063, RSMo) as a common carrier, the division shall also make findings as required by subsections 4 and 5 of section 390.051, RSMo, and shall not grant the application unless it finds that the applicant is fit, willing and able to properly perform the service proposed, and to conform to the provisions of Chapter 390, RSMo, and the rules and orders of the division, and that the service proposed will serve a useful present or future public purpose; but the division shall not grant that application if it finds on the basis of evidence presented by persons objecting to the issuance of a certificate that the transportation to be authorized by the requested certificate will be inconsistent with the public convenience and necessity.

(C) Exception—Household Goods or Passengers Other than in Charter Service, Contract Carriers—Whenever the application seeks the issuance of a permit which authorizes the intrastate transportation of household goods, or passengers other than in charter service (other than a passenger application under section 390.063, RSMo) as a contract carrier, the division shall also make findings as required by subsection 4 of section 390.061, RSMo, and shall not grant the application unless it finds that the applicant is fit, willing and able to properly perform the service proposed, and to conform to the provisions of Chapter 390, RSMo, and the rules and orders of the division, and that the service proposed will serve a useful present or future purpose; but the division shall not grant that application if it finds on the basis



of evidence presented by persons objecting to the issuance of a permit that the transportation to be authorized by the requested permit will be inconsistent with the public convenience and necessity.

(D) Exception—Not For Profit Corporations, Passengers Other Than In Charter Service— Whenever the application seeks the issuance of a certificate or permit which authorizes a not for profit corporation to perform the intrastate transportation of passengers other than in charter service exclusively as provided in section 390.063, RSMo, as a common carrier or contract carrier, the division shall also make findings as required by subsection 3 of section 390.063, RSMo, and shall not grant the application unless it finds that the applicant is willing and able to properly perform the service proposed, and to conform to the provisions of Chapter 390, RSMo, and the rules and orders of the division.

(E) Exception—Temporary Authority— Whenever the application seeks the issuance of temporary authority which authorizes the intrastate transportation of household goods or passengers as a common carrier or contract carrier, under section 390.081, RSMo, the division shall not grant the application unless it finds that there is an urgent and immediate need for the proposed motor carrier service from, to or between a point or points or within a territory having no carrier service deemed capable of meeting such need.

(7) Hearings, Generally—Except as otherwise provided in subsections (7)(A) and (B), if the administrative law judge determines that the applicant is qualified, the application shall be granted without a hearing. If the administrative law judge determines that the information on record concerning the applicant's qualifications is not adequate to finally determine the application, the division staff may be directed to investigate the applicant's qualifications more thoroughly before the administrative law judge makes a final determination of the application. If the administrative law judge or the division staff opposes granting the application, a hearing shall be held to determine the merits of the application.

(A) Exception—Household Goods or Passengers Other Than in Charter Service— Whenever the application seeks the issuance of a certificate or permit which authorizes the intrastate transportation of household goods, or passengers other than in charter service (except a passenger application by a not for profit corporation under section 390.063, RSMo) as a common carrier or contract car-

rier, the division shall publish notice of that application in the *Notice Register of Motor Carrier Cases*, and shall schedule a hearing and otherwise proceed as required by the applicable provisions of sections 390.051, 390.061 and 390.062, RSMo and 4 CSR 265-2.200.

(B) Exception—Temporary Authority— Whenever the application seeks the issuance of temporary authority which authorizes the intrastate transportation of household goods or passengers as a common carrier or contract carrier, under section 390.081, RSMo, the division shall determine the application without a hearing or other proceeding.

(8) Transfers—Division staff's review of each proposed transfer of a certificate or permit shall include a consideration of how the proposed transfer will affect the transferor's and transferee's other operating authority, if any. Division staff may file, together with any recommendation or motion in the case, a proposed certificate or permit for the transferee and, if the transfer or is to retain any authority from the division after the transfer, a proposed certificate or permit for the transfer or also, setting forth the proposed authority as if the proposed transfer were approved by the division. In setting forth the proposed operating authority, division staff shall apply the principles of merger with reference to duplicated or overlapping authority as provided in 4 CSR 265-2.190 and, in accordance with those principles, may edit or modify the authority to delete extra pieces of authority that are deemed to be merged and no longer effective as separate pieces of authority, or to correct spelling, typographical, grammatical or format errors not altering the substance of the authority. Division staff shall serve copies of the proposed certificate(s) or permit(s) upon both the transfer or and the transferee. If neither of the applicants objects to the proposed certificate(s) or permit(s) before the effective date of the order of transfer, then their objections, if any, shall be waived and the division may issue the resulting certificate(s) or permit(s) as proposed by division staff, unless otherwise ordered by the administrative law judge. The administrative law judge shall determine any timely-filed objections to division staff's proposed certificate(s) or permit(s).

AUTHORITY: section 622.027, RSMo 1994. Emergency rule filed June 14, 1985, effective July 1, 1985, expired Oct. 28, 1985. Original rule filed Aug. 1, 1985, effective Oct. 29, 1985. Emergency amendment filed Aug. 1, 1986, effective Aug. 13, 1986, expired Oct. 27, 1986. Amended: Filed July 31, 1986,*

effective Oct. 27, 1986. Emergency rescission filed Oct. 3, 1986, effective Oct. 23, 1986, expired Dec. 11, 1986. Amended: Filed Nov. 2, 1987, effective Feb. 11, 1988. Emergency amendment filed Sept. 21, 1988, effective Oct. 1, 1988, expired Dec. 29, 1988. Amended: Filed Oct. 17, 1988, effective Dec. 29, 1988. Amended: Filed May 17, 1989, effective Sept. 11, 1989. Emergency amendment filed Nov. 4, 1992, effective Nov. 14, 1992, expired March 13, 1993. Emergency amendment filed March 3, 1993, effective March 13, 1993, expired July 10, 1993. Amended: Filed Nov. 4, 1992, effective July 8, 1993. Emergency amendment filed Dec. 1, 1994, effective Dec. 11, 1994, expired Dec. 19, 1994. Emergency amendment filed Dec. 20, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency amendment filed April 20, 1995, effective May 1, 1995, expired Aug. 28, 1995. Emergency rule and rescission filed Aug. 18, 1995, effective Aug. 29, 1995, expired Feb. 24, 1996. Rescinded and readopted: Filed Aug. 3, 1995, effective Feb. 25, 1996. Emergency amendment filed Aug. 16, 1996, effective Aug. 28, 1996, expired Feb. 23, 1997.

**Original authority: 622.027, RSMo 1985, 1993, 1995.*