**Policy Name** Suspension of Motor Carrier Operating Authority Registration for Invalid Process Agent (BOC-3) Filings (MC-RS-2019-0002)

Each motor carrier, broker or freight forwarder must file a designation of process agent before receiving operating authority registration (49 C.F.R. 366.109T). Further, each motor carrier, broker or freight forwarder must maintain an accurate process agent designation on file with FMCSA to maintain active registration (49 C.F.R. 366.6T).

While the regulation provides that a designation may only be cancelled by filing a new designation or name change, FMCSA reasonably concludes that this means the motor carrier, broker or freight forwarder must maintain a valid process agent designation at all times for operating authority registration to remain active.

## Policy Description/Summary

FMCSA requires each applicant for Operating Authority Registration to designate a Process Agent in every State in which it conducts business or maintains an office. Because operating authority is nationwide, for motor carriers operating in the lower 48 States this requires designation of a process agent in each of the contiguous 48 states. A motor carrier, broker, or freight forwarder may only cancel a designation by filing a new designation, 49 C.F.R. 366.6T.

A Process Agent is a representative upon whom court papers may be served in any legal proceeding brought against a Motor Carrier, Broker, or Freight Forwarder. Some process agent companies offer “blanket coverage,” where an individual process agent has been designated in each State. For a fee, these commercial companies will arrange a Process Agent in any State. Visit the Process Agents website at www.fmcsa.dot.gov/registration/process-agents to find more information about designation of Process Agents and a list of blanket companies. Please refer to 49 C.F.R. Part 366 for additional information about Designation of Process Agents.

Generally, FMCSA serves demands, notices of claim, orders to show cause, out-of-service orders and orders suspending or revoking operating authority registration by trackable mail with no signature required to (1) the motor carrier’s mailing address and (2) the motor carrier’s BOC-3 agent. Under 49 C.F.R. Part 366, service on the BOC-3 agent is only valid if motor carrier had active operating authority within the previous year and has not proactively cancelled its BOC-3 agent.

FMCSA enforcement personnel and State partners have reported an inability to complete service of process for enforcement actions in some cases where the regulated entity has not filed a new designation but the contractual relationship with the designated process agent has been terminated. The Agency has a Service Frequently Asked Questions – Recommended Guidelines document (dated January 2019) to address how to find and serve the motor carrier on a current and valid agent obtained from the state’s Secretary of State’s office.

If service on the BOC-3 agent is not valid, or if the process agent refuses service (for breach of contract, the agent went out of business, etc.), the process agent is no longer contractually obligated to represent the carrier, broker or freight forwarder. In addition, many process agents have reported a misguided belief that they must accept service for an entity they are no longer contractually bound to represent if a BOC-3 is still on file identifying the process agent. However, the regulations in 49 C.F.R. Part 366 apply to motor carriers, brokers and freight forwarders, not to process agents, 49 C.F.R. 366.1T.

PROCEDURE

If FMCSA Enforcement Personnel discover that a motor carrier’s BOC-3 filing as identified in the Agency’s registration system is not valid, staff from the FMCSA Service Center should notify the Office of Registration and Safety Information (MC-RS) via email. Additionally, State Agency Enforcement Personnel can notify their appropriate FMCSA Service Center if they discover that a motor carrier’s BOC-3 filing as identified in the Agency’s registration system is not valid. The Service Center should notify MC-RS via email. The Service Center should provide as evidence a copy of the document which was attempted to be served, along with a statement indicating the process agent shown on the motor carrier’s record in the Agency’s registration system refused to accept service on behalf of the motor carrier, broker or freight forwarder.

If a process agent blanket company contacts MC-RS directly when the company dissolves its business relationship with a motor carrier, broker, or freight forwarder, MC-RS will document the evidence available to initiate a suspension proceeding. The MC-RS transportation specialist handling the matter should request a notarized statement on company letterhead from the process agent stating the date when the business relationship was terminated. The Blanket Company may submit this information via mail to FMCSA, Office of Registration and Safety Information (MC-RS), Chief, Registration, Licensing, and Insurance Division (Mail Stop W65-331), 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Upon notification from the Service Center or documentation of evidence received directly from a process agent, MC-RS may issue an Order to Show Cause, under 49 USC 13905, for suspension of the motor carrier, broker, or freight forwarder operating authority registration for failure to maintain a valid designation of process agent. The motor carrier, broker, or freight forwarder will have 30 days from the date of service to file a new Form BOC-3 with a valid process agent designation or otherwise demonstrate why the process agent designation on file is valid. If the motor carrier fails to complete this action within the 30 days, MC-RS may suspend the carrier’s operating authority registration by issuing a final suspension order. MC-RS will upload all documentation to the motor carrier’s record in the FMCSA’s Electronic Document Management System (EDMS).