INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS

TRANSPORTATION DIVISION

What Every Bus Driver Should Know About the Federal Bus Safety Laws and Regulations

LAWRENCE M. MANN
Alper & Mann P.C.
9205 Redwood Avenue
Bethesda, Maryland 20817
(202) 298-9191

June 2019

IN GENERAL

The bus safety laws are contained in a number of statutes and regulations. This booklet is intended to provide every bus driver with a general summary. It should be used as a guide only, and if a specific problem arises, the applicable law or regulation should be reviewed. For copies of specific provisions of any law or regulation, contact SMART's Transportation Division's Washington Office.at (202)543-7714, or the Transportation Division's General Counsel's Office at (216)228-9400.

Whenever you discover a safety violation which the bus company does not immediately correct, you should promptly contact your union representative, and/or the Federal Motor Carrier Safety Administration (FMCSA) and, in as much detail as possible, set forth the facts. If you have a legal question concerning the safety laws or regulations, you may contact SMART's Transportation Division General Counsel's Office, or Lawrence M. Mann, who prepared this reference book, 9205 Redwood Avenue, Bethesda, Maryland, (202)298-9191.

Note: Some of the sections summarized cover more than just bus operations, and include other CMV operations.

Some major bus safety laws are as follows:

Commercial Motor Vehicle Safety Act of 1986(Title XII of Public Law 99-570, 49 U.S.C. 2701 et seq.)
The Motor Carrier Safety Act of 1984, 49 U.S.C. 2501 et seq.
The Motor Carrier Act of 1980, 49 U.S.C. 10927, note;
The Bus Regulatory Reform Act of 1982, 49 U.S.C. 10927, note.
Moving Ahead for Progress in the 21st Century Act("MAP-21"),which contains the Commercial Motor Vehicle Safety Enhancement Act of 2012 and Motorcoach Enhanced Safety Act of 2012 (Pub. L. 112-141)
National Traffic and Motor Vehicle Safety Act of 1966, 49 U.S.C. 30101 et. seq.

Because of their complexity, the summaries a number of the regulations are exactly as published in the Code of Federal Regulations (cited as"CFR" and /or "FR."). In some other cases, portions of a summary prepared by the FMCSA have been copied. The applicable statute("USC") and/or regulations are usually cited at the end of each subject that has been summarized.

NOTE:

Throughout this book, the word "bus" is used interchangeably with "CMV" or "commercial motor vehicle."

Whenever a section is discussed with "…." after a subsection(Ex. "(b)…."), that means the subsection has no relevance to bus drivers.

About the Author

Lawrence M. Mann, born Wilmington, North Carolina, January 30, 1940; admitted to bar, in 1967, District of Columbia. Education: University of North Carolina (B.A., 1962); Georgetown University (L.L.B., 1966). Special Assistant to United States Senator Vance Hartke, 1964-1965. Member, Legal Staff, U.S. House of Representatives Post Office and Civil Service Committee, 1965-1966. Counsel, Commission on Political Activity of Government Personnel, 1967. Member, The District of Columbia Bar; Bar Association of the District of Columbia.

He has been selected in the latest editions of *Who's Who in American Law; The Best Lawyers in America;* and *The National Law Journal*—Top Rated Lawyers, Personal Injury Litigation. He has been listed in the *Washingtonian Magazine* as one of the best lawyers in Washington, D.C., and in the *Washington Post*—Baltimore & Washington Top Lawyers. For over 25 years, he has achieved the highest rating by the Martindale-Hubbell Law Directory.

He is a member in good standing of the Bars of the following courts:

	Date Admitted
U.S. Supreme Court	03/27/72
U.S. District Court for the District of Columbia	01/20/67
U.S. Court of Appeals for the District of Columbia Circuit	02/16/67
U.S. Court of Appeals for the 11th Circuit	10/01/81
U.S. Court of Appeals for the 10th Circuit	11/06/78
U.S. Court of Appeals for the 9th Circuit	07/08/75
U.S. Court of Appeals for the 8th Circuit	02/13/75
U.S. Court of Appeals for the 7th Circuit	02/13/67
U.S. Court of Appeals for the 6th Circuit	03/27/90
U.S. Court of Appeals for the 5th Circuit	12/21/81

U.S. Court of Appeals for the 4th Circuit	03/14/75
U.S. Court of Appeals for the 3rd Circuit	06/05/87
U.S. Court of Appeals for the 2nd Circuit	10/25/88
U.S. Court of Federal Claims	02/11/70

TABLE OF CONTENTS

FREQUENTLY USED ABBREVIATIONS IN THIS BOOK

BAT-qualified breath alcohol technician
AC-alcohol concentration
ASD-alcohol screening device
C.F.R-Code of Federal Regulations
CDL-Commercial Drivers License
CMV-commercial motor vehicle
DER-designated employer representative
EBT-evidential breath testing device
FMCSA-Federal Motor Carrier Safety Administration
FMCSR-Federal Motor Carrier Safety Regulations
FMVSS-Federal Motor Vehicle Safety Standards
FR-Federal Register
Fed. Reg.-Federal Register
FTA-Federal Transit Administration
HOS-Hours of Service
MAP-21- Moving Ahead for Progress in the 21st Century legislation
MRO-medical review officer
NHTSA-National Highway Traffic Safety Administration
SAP- substance abuse professional
SST-screening test technician
U.S.C.-United States Code 1

SELECTED STATUTES:

1. 49 U.S.C. CHAPTER 315—MOTOR CARRIER SAFETY ACT

§31501. Definitions

In this chapter—

(1) ….

(2) "motor carrier", "motor common carrier", "motor private carrier", "motor vehicle", and "United States" have the same meanings given those terms in section 13102 of this title.

(3) ….

(Pub. L. 97–449, Jan. 12, 1983, 96 Stat. 2438, §3101; renumbered §31501 and amended Pub. L. 103–272, §1(c), (e), July 5, 1994, 108 Stat. 745, 1029; Pub. L. 103–429, §6(26), Oct. 31, 1994, 108 Stat. 4380; Pub. L. 104–88, title III, §308(k)(1), (2), Dec. 29, 1995, 109 Stat. 947, 948.)

§31502. Requirements for qualifications, hours of service, safety, and equipment standards

(a) Application.—This section applies to transportation—

(1) described in sections 13501 and 13502 of this title; and

(2) to the extent the transportation is in the United States and is between places in a foreign country, or between a place in a foreign country and a place in another foreign country.

(b) Motor Carrier and Private Motor Carrier Requirements.—The Secretary of Transportation may prescribe requirements for—

(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and

(2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.

(c) ….

(d) Considerations.—Before prescribing or revising any requirement under this section, the Secretary shall consider the costs and benefits of the requirement.

(e) Exception.—

(1) In general.—Notwithstanding any other provision of law, regulations issued under this section or section 31136 regarding—

(A) maximum driving and on-duty times applicable to operators of commercial motor vehicles,

(B) physical testing, reporting, or recordkeeping, and

(C) the installation of automatic recording devices associated with establishing the maximum driving and on-duty times referred to in subparagraph (A), shall not apply to any driver of a utility service vehicle during an emergency period of not more than 30 days declared by an elected State or local government official under paragraph (2) in the area covered by the declaration.

(2) Declaration of emergency.—An elected State or local government official or elected officials of more than one State or local government jointly may issue an emergency declaration for purposes of paragraph (1) after notice to the Field Administrator of the Federal Motor Carrier Safety Administration with jurisdiction over the area covered by the declaration.

(3) Incident report.—Within 30 days after the end of the declared emergency period the official who issued the emergency declaration shall file with the Field Administrator a report of each safety-related incident or accident that occurred during the emergency period involving—

(A) a utility service vehicle driver to which the declaration applied; or

(B) a utility service vehicle of the driver to which the declaration applied. 3

(4) Definitions.—In this subsection, the following definitions apply:

(A) Driver of a utility service vehicle.—The term "driver of a utility service vehicle" means any driver who is considered to be a driver of a utility service vehicle for purposes of section 345(a)(4) 1 of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note; 109 Stat. 613).

(B) Utility service vehicle.—The term "utility service vehicle" has the meaning that term has under section 345(e)(6) of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note).

§31503. Research, investigation, and testing

(a) General Authority.—The Secretary of Transportation may investigate and report on the need for regulation by the United States Government of sizes, weight, and combinations of motor vehicles and qualifications and maximum hours of service of employees of a motor carrier subject to subchapter I of chapter 135 of this title and a motor private carrier. The Secretary shall use the services of each department, agency, or instrumentality of the Government and each organization of motor carriers having special knowledge of a matter being investigated.

(b) Use of Services.—In carrying out this chapter, the Secretary may use the services of a department, agency, or instrumentality of the Government having special knowledge about safety, to conduct scientific and technical research, investigation, and testing when necessary to promote safety of operation and equipment of motor vehicles. The Secretary may reimburse the department, agency, or instrumentality for the services provided.

§31504. Identification of motor vehicles

(a) General Authority.—The Secretary of Transportation may—

(1) issue and require the display of an identification plate on a motor vehicle used in transportation provided by a motor private carrier and a motor carrier of migrant workers subject to section 31502(c) of this title, except a motor contract carrier; and

(2) require each of those motor private carriers and motor carriers of migrant workers to pay the reasonable cost of the plate.

(b) Limitation.—A motor private carrier or a motor carrier of migrant workers may use an identification plate only as authorized by the Secretary.

(Pub. L. 97–449, Jan. 12, 1983, 96 Stat. 2439, §3104; renumbered §31504 and amended Pub. L. 103–272, §1(c), (e), July 5, 1994, 108 Stat. 745, 1030.)

2. MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT("MAP-21")

Note: This law was enacted in 2012, and contained numerous provisions for funding and improved safety covering all aspects transportation. Below are some of the major sections which directly affect bus companies and bus drivers. The most significant provisions are in Subtitle G.

Subtitle C: Driver Safety –

§32301of MAP-21

Directs the Secretary, by March 31, 2013, to complete a field study of the efficacy of Federal Motor Carrier Safety Administration's (FMCSA) 2011 restart rule (the 34-hours of service [HOS] restart rule) with respect to commercial motor vehicle operators subject to federal maximum driving time requirements.

Directs the Secretary to prescribe regulations to require commercial motor vehicles involved in interstate commerce, and operated by a driver subject to both federal hours-of-service and record of duty status requirements, to be equipped with an electronic logging device meeting certain performance and design standards and requirements. Requires the Secretary to institute appropriate measures to ensure information collected by such devices is used by enforcement personnel only to determine compliance with HOS requirements.

§32302 Revises medical examiner requirements.

Requires the Secretary to establish a national registry of medical examiners. Requires a medical examiner to pass an examination developed by the Secretary in order to be listed in the national registry.

Requires the Secretary to review annually the licensing agencies of 10 states to assess the accuracy, validity, and timeliness of physical examination reports and medical examiner certificates submitted to them.

Prescribes requirements for the electronic filing of medical examiner certificates.

Authorizes the Secretary to use certain SAFETEA-LU funds to support the development costs for such electronic filing systems.

§32303

Requires an employer to ascertain at least once every 12 months the driving record of each commercial motor vehicle driver it employs.

Requires the Secretary to issue minimum standards and develop a plan for development of a national driver record notification system.

§32304

Directs the Secretary to issue final regulations establishing minimum entry-level training requirements for individual operators of commercial motor vehicles.

§32305 Revises the commercial driver's license (CDL) information system program.

Requires the comprehensive national plan to modernize the CDL information system to specify that states must use the systems to receive and submit conviction and disqualification data.

Requires a state by a certain deadline to implement a state CDL information system and practices for the exclusive electronic exchange of driver history record information on the federal system, including the posting of convictions, withdrawals, and disqualifications.

Requires a state to request drug and alcohol information pertaining to a CDL applicant before renewing or issuing an individual a CDL.

Requires a state to submit a plan to DOT for a state CDL program plan complying with the requirements of this section during the period beginning on the date the plan is submitted and ending on September 30, 2016.

§32306

Authorizes the Secretary to require a state, as a condition of receiving a commercial motor vehicle driver information program grant, to provide the Secretary access to all the state's licensing status and driver history records via an electronic information system.

§32307 Revises certain employer responsibility requirements.

Prohibits an employer from allowing an employee to operate a commercial motor vehicle during a period that the employer should reasonably know that such employee has a

revoked, suspended, or canceled driver's license, or has more than one driver's license.

§32308

Directs the Secretary, in coordination with the Secretary of Defense (DOD), to assess federal and state regulatory, economic, and administrative challenges faced by current and former Armed Forces members in obtaining CDLs who, during their service, received safety training and operated qualifying commercial vehicles.

Directs the Secretary to establish accelerated licensing procedures to assist veterans to acquire CDLs.

Subtitle D: Safe Roads Act of 2012 –

§32402

Directs the Secretary to establish, operate, and maintain a national clearinghouse for verified positive alcohol and controlled substance test results and test refusals of commercial motor vehicle operators as well as violations by them of FMCSA alcohol and controlled substances regulations.

Prohibits an employer from hiring an individual to operate a commercial motor vehicle unless, during the preceding three-year period, the individual: (1) did not test positive for use of alcohol and controlled substances, or completed the return-to-duty process after initially testing positive; (2) did not refuse to be tested, or completed the return-to-duty process after initially refusing to be tested; or (3) did not violate FMCSA alcohol and controlled substances regulations.

Subjects an employer, employee, medical review officer, or service agent to certain civil and criminal penalties for violations of such requirements.

Subtitle E: Enforcement –

§32501

Revises requirements for enforcement of various specified regulations regarding commercial motor vehicles, including: (1) safety inspection of carrier equipment by an employee of a recipient of a grant to a state for a motor carrier safety program or the enforcement of related federal regulations; and (2) authorization to adopt procedures to place out of service the commercial motor vehicle of a foreign-domiciled or domestic motor carrier that fails to promptly allow a DOT property inspection and copying of records.

§32503

Prescribes a civil penalty of up to $25,000 for violation of operation out of service orders.

§32504

Authorizes the Secretary, or an authorized state official carrying out motor carrier safety enforcement activities, to enforce an imminent hazard out-of-service order, or a related regulation, by towing and impounding a commercial motor vehicle until the order is rescinded.

§32505

Increases monetary penalties for evasion of specified regulations.

§32506

Eliminates ability to pay from consideration in determining the amount of a civil penalty for violations of commercial motor vehicle safety regulations.

§32507

Requires the Secretary to disqualify an individual from operating a commercial motor vehicle for up to 30 days if allowing the individual to continue to do so would create an imminent hazard in the sense of any condition of vehicle, employee, or commercial motor vehicle operations which substantially increases the likelihood of serious injury or death if not discontinued immediately.

§32508

Authorizes the Secretary to disclose commercial motor vehicle safety-related information to appropriate personnel of state or local governmental agencies or instrumentalities authorized to carry out respective commercial motor vehicle safety activities and commercial driver's license laws.

Subtitle F: Compliance, Safety, Accountability –

§32601

Sets forth the goal of the Motor Carrier Safety Assistance Program is to ensure that the Secretary, states, local government agencies, and other political jurisdictions work in partnership to establish motor carrier, commercial motor vehicle, and driver safety improvement programs.

§32602

Revises requirements for the performance and registration information program.

§32603

Authorizes appropriations from the HTF (other than the Mass Transit Account) for FMCSA programs through FY2014, including: (1) motor carrier safety grants; (2) FMCSA administrative expenses; (3) CDL program improvement grants; (4) border enforcement grants; (5) performance and registration information system management grants; (6) commercial vehicle information systems and networks deployment grants; (7) safety data improvement grants; (8) a set-aside for high priority activities that improve commercial motor vehicle safety and compliance with commercial motor vehicle safety regulations; (9) a set-aside for new entrant motor carrier audit grants; (10) FMCSA and NHTSA outreach and education; and (11) the commercial motor vehicle operators grant program.

Revises border enforcement grant requirements.

Eliminates the requirement for the reimbursement to states of up to 100% of the costs for carrying out border commercial motor vehicle safety programs and projects. Authorizes the Secretary instead to identify and implement processes to reduce the administrative burden on the states and DOT concerning the application and management of the commercial motor vehicle safety and operators grant programs.

§32604

Revises CDL program improvement grant requirements.

Prohibits state use of grant funds to rent, lease, or buy land or buildings.

§32605

Directs the Secretary to report to Congress on resuming the Commercial Vehicle Information Systems and Networks Program.

Subsection G: Motor Coach Enhanced Safety Act of 2012

§32703

Directs the Secretary to prescribe regulations requiring motorcoaches to be installed with safety belts at each seating position.

Requires the Secretary to prescribe regulations establishing improved strength and crush resistance standards for motorcoach roofs.

Directs the Secretary to consider requiring: (1) advanced glazing standards for each motorcoach portal to prevent passenger ejection, (2) motorcoaches to be equipped with stability enhancing technology to reduce the number and frequency of rollover crashes, and (3) motorcoaches to be equipped with direct tire pressure monitoring systems.

Directs the Secretary to: (1) consider issuing a rule to upgrade performance standards for tires used on motorcoaches, or (2) report to Congress on why such a standard is not warranted.

Authorizes the Secretary to assess the feasibility, benefits, and costs of applying any safety belt installation of anti-ejection safety countermeasure requirements to, and so requiring a retrofit for, motorcoaches manufactured before the date on which the requirement applies to new motorcoaches.

§32704

Requires the Secretary to: (1) conduct research and testing with respect to fire prevention and mitigation (for which standards may be issued), occupant impact protection, compartmentalization safety countermeasures, and collision avoidance; and (2) issue final motor vehicle safety standards if warranted.

§32706

Directs the Secretary to ensure the concurrence of transportation research programs. Authorizes the combining of rulemakings into a single rulemaking proceeding.

§32707

Requires the Secretary to: (1) determine the safety fitness and assign a rating, updated triennially, for each registered motorcoach operator; and (2) establish a process for monitoring regularly the safety performance of each operator following the assignment of a rating.

Directs the Secretary to establish requirements to improve accessibility to the public of safety rating information of motorcoach services and operations.

§32708

Directs the Secretary to report to Congress on the feasibility, benefits, and costs of establishing a certification system for motorcoach driver training programs of public and private schools and of motor carriers and motorcoach operators that provide such training.

§32709

Directs the Secretary to review and assess the current knowledge and skill testing requirements for a CDL passenger endorsement to determine what improvements to such requirements are necessary to ensure the safe operation of commercial passenger motor vehicles.

§32710

Directs the Secretary to complete a rulemaking proceeding to consider requiring states to conduct annual inspections of commercial passenger motor vehicles.

Subtitle I: Miscellaneous - Part I: Miscellaneous –
§32911

Requires minimum federal commercial motor vehicle safety regulations to ensure that commercial motor vehicle operators are not coerced by a motor carrier, shipper, receiver, or transportation intermediary to violate such regulations.

§32913

Revises requirements with respect to the waiver of federal commercial motor vehicle safety regulations.

Requires the Secretary to post on the Medical Review Board website: (1) any request for an exemption from the physical qualification standards for commercial motor vehicle drivers, and (2) specified information about any person granted such an exemption.

AMENDMENTS BY FMCSA IMPLEMENTING MAP-21

The FMCSA has amended some of its regulations implementing the requirements contained in MAP-21: Mostly, these changes only indirectly affect bus drivers. Currently, there are other amendments pending.

§32102 –Safety Fitness of New Operators

Previously, 49 U.S.C. 31144 required new entrant motor carriers to undergo a safety review within 18 months of beginning operations.

Section 32102 of MAP-21 changed that time period to 12 months for property carriers and 120 days for passenger carriers. This final rule amends 49 CFR 385.3 and 49 CFR part 385, Appendix A(I)(a), to change references from an 18 month safety review to 12-month and 120-day safety reviews.

§32108—Increased Penalties for Operating Without Registration

Previously, 49 U.S.C. §14901(a) set the civil penalty for violating the Agency's reporting, recordkeeping, and registration requirements at $500, except for violations of passenger carrier registration requirements, which were set at $2,000[1] MAP-21 Section 32108 increased the penalties to $1,000 for violating the reporting and recordkeeping requirements, $10,000 for non-passenger carrier registration violations, and $25,000 for passenger carrier registration violations. It also changed the penalty for transporting hazardous wastes without the appropriate registration from a maximum of $20,000 to a minimum of $20,000 and a maximum of $40,000. This final rule amends 49 C.F.R. part 386, Appendix B (g)-(3) and (6), to reflect these new penalties.

REGULATIONS IMPLEMENTING MAP-21

1. State Safety Oversight

On March 16, 2016, FTA issued a final rule This rule replaces the existing regulations for state safety oversight of rail fixed guideway public transportation systems in 49 CFR part 659. It strengthens states' authorities to prevent and mitigate accidents and incidents on public transportation systems. In the MAP-21, Congress directed FTA to establish a comprehensive public transportation safety program, one element of which is the State Safety Oversight (SSO) Program. (See 49 U.S.C. 5329). The purpose of today's final rule is to carry out the several

[1] The penalties referenced in this rule refer to statutorily enacted amounts. In 2007, the Agency amended 49 CFR part 386, Appendix B to increase the civil penalties to adjust for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Dept Collection Improvement Act of 1996 (Pub. L. 104-131, title III, chapter 10, Sec. 31001, par. (s), 110 Stat 1321-373). 72 Fed. Reg. 55100 (Sept. 28, 2007). The agency adjusted these penalty amounts to $650 and $2200.

explicit statutory mandates to strengthen the States' oversight of the safety of their Rail Transit Agencies (RTAs), including that States' oversight agencies have the necessary enforcement authority, legal independence, and financial and human resources for overseeing the number, size, and complexity of the RTAs within their jurisdictions.
81 Fed. Reg. 14230, March 16, 2016

2.Bus Testing Program

The FTA issued a new pass/fail standard and new aggregated scoring system for buses and modified vans (hereafter referred to as ``bus'' or ``buses'') that are subject to FTA's bus testing program, as mandated by MAP-21. The pass/fail standard and scoring system address the following categories: Structural integrity, safety, maintainability, reliability, fuel economy, emissions, noise, and performance. Recipients of FTA grants are prohibited from using FTA financial assistance to procure new buses that have not met the minimum performance standards established by today's final rule. Finally, FTA is requiring bus manufacturers to provide country-of-origin information for test unit bus components, in lieu of applying Buy America U.S. content requirements to all buses submitted for testing.

The Bus Testing Program applies to recipients of FTA capital assistance who purchase new model transit buses or existing bus models being produced with a major change. The Bus Testing Program is generally not applicable to purchasers of school buses or over-the-road motorcoaches, unless those buses are being acquired with FTA funding for use in public transportation service.
81 Fed. Reg. 50367, August 1, 2016

3.Public Transportation Agency Safety Plans

FTA published a final rule for Public Transportation Agency Safety Plans as authorized by MAP–21. This final rule requires States and certain operators of public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53 to develop Public Transportation Agency Safety Plans based on the Safety Management System approach. Operators of public transportation
systems will be required to implement the safety plans. The development and implementation of safety plans will help ensure that public transportation systems are safe nationwide.

At a minimum, and consistent with each Public Transportation Agency Safety Plan must:
•Include the documented processes and procedures for the transit agency's Safety Management System, which consists of four main elements: (1) Safety Management Policy, (2) Safety Risk Management, (3) Safety Assurance, and (4) Safety Promotion. *See*, 49 CFR 673.11(a)(2));

•Include performance targets based on the safety performance criteria
established under the National Public Transportation Safety Plan (49 CFR 673.11(a)(3));

•Address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and National Public Transportation Safety Plan (49 CFR 673.11(a)(4)); and

•Establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan (49 CFR 673.11(a)(5)).

Each rail transit agency must include in its Public Transportation Agency Safety Plan an emergency preparedness and response plan, as historically required by FTA under the former regulatory provisions of the State Safety Oversight rule at 49 CFR part 659 (49 CFR 673.11(a)(6).

83 Fed. Reg. 34418, July 19, 2018.

4.Minimum Training Requirements for Entry-Level CMV Operators

Note: This will be more fully summarized later in this document.

This regulation enhances the safety of commercial motor vehicle (CMV) operations on our Nation's highways by establishing more extensive entry-level driver training (ELDT) requirements. It revises the mandatory training requirements for entry-level operators of CMVs who are required to possess a Class A or Class B commercial driver's license (CDL) or a hazardous materials (H), passenger (P), or school bus (S) endorsement for their license for the first time.

81 Fed. Reg. 88732, December 8, 2016

5. Requirement for Seat Belts on New Over-the Road Busses

This final rule amends the Federal motor vehicle safety standard (FMVSS) on occupant crash protection to require lap/shoulder seat belts for each passenger seating position in: (a) All new over-the-road buses; and (b) in new buses other than over-the-road buses, with a gross vehicle weight rating (GVWR) greater than 11,793 kilograms (kg) (26,000 pounds (lb)).The notice of proposed rulemaking preceding this final rule called buses with GVWR greater than 11,793 kg (26,000 lb) "motorcoaches". NHTSA's safety research on seat belts in large buses (greater than 11,793 kg (26,000 lb) GVWR) completed in 2009, shows that the installation of lap/shoulder belts on the vehicles is practicable and effective and could reduce the risk of fatal injuries in rollover crashes by 77 percent, primarily by preventing occupant ejection. Lap/shoulder belts are also highly effective in preventing fatalities and serious injuries in frontal crashes, and will enhance protection in side crashes in the affected buses.
78 Fed. Reg. 70416 (Nov. 25, 2013)

COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986

(a) Short Title.--This title may be cited as the "Commercial Motor Vehicle Safety Act of 1986".
(b) Table of Contents.--

§12002. LIMITATION ON NUMBER OF DRIVER'S LICENSES.

No person who operates a commercial motor vehicle shall at any time have more than one driver's license, except during the 10-day period beginning on the date such person is issued a driver's license and except whenever a State law enacted on or before June 1, 1986, requires such person to have more than one driver's license.

§12003. NOTIFICATION REQUIREMENTS.

(a) Notification of Violations.--

(1) To states.--Each person who operates a commercial vehicle, who has a driver's license issued by a State, and who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) in any other State shall notify a State official designated by the State which issued such license of such violation, within 30 days after the date such person is found to have committed such violation.

(2) To employers.—Each person who operates a commercial vehicle, who has a driver's license issued by a State, and who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) shall notify his or her employer of such violation, within 30 days after the date such person is found to have committed such violation.

(b) Notification of Suspensions.--Each employee who has a driver's license suspended, revoked, or cancelled by a State, who loses the right to operate a commercial motor vehicle in a State for any period, or who is disqualified from operating a commercial motor vehicle for any period shall notify his or her employer of such suspension, revocation, cancellation, lost right, or disqualification, within 30 days after the date of such suspension, revocation, cancellation, lost

right, or disqualification.

(c) Notification of Previous Employment.--

(1) General rule.—Subject to paragraph (2) of this subsection, each person who operates a commercial motor vehicle and applies for employment as an operator of a commercial motor vehicle with an employer shall notify at the time of such application the employer of his or her previous employment as an operator of a commercial motor vehicle.

(2) Period of previous employment.--The Secretary shall establish by regulation the period for which previous employment must be notified under
paragraph (1), except that such period shall not be less than a 10-year period ending on the date of application for employment.

§12004. EMPLOYER RESPONSIBILITIES.

No employer shall knowingly allow, permit, or authorize an employee to operate a commercial motor vehicle in the United States during any period--

(1) in which such employee has a driver's license suspended, revoked, or cancelled by a State, has lost the right to operate a commercial motor vehicle in a State, or has been disqualified from operating a commercial motor vehicle; or
(2) in which such employee has more than 1 driver's license, except during the 10-day period beginning on the date such employee is issued a driver's license and except whenever a State law enacted on or before June 1, 1986, requires such employee to have more than one driver's license. The second exception in paragraph (2) shall not be effective after December 31, 1989.

§12005. TESTING OF OPERATORS.

(a) Establishment of Minimum Federal Standards.--The Secretary shall issue regulations to establish minimum Federal standards for testing and ensuring the fitness of persons who operate commercial motor vehicles. Such regulations--

(1) shall establish minimum Federal standards for written tests and driving tests of persons who operate such vehicles;

(2) shall require a driving test of each person who operates or will operate a commercial motor vehicle in a vehicle which is representative of the type of vehicle such person operates or will operate;

(3) shall establish minimum Federal testing standards for operation of commercial motor vehicles and, if the Secretary considers appropriate to carry out the objectives of this title, may establish different minimum testing standards for different classes of commercial motor vehicles;

(4) shall ensure that each person taking such tests has a working knowledge 14 of (A) regulations pertaining to safe operation of a commercial motor vehicle issued by the Secretary and contained in title 49 of the Code of Federal Regulations, and (B) any safety system of such vehicle;

(5) in the case of a person who operates or will operate a commercial motor vehicle carrying a hazardous material, shall ensure—

(A) that such person is qualified to operate a commercial motor vehicle in accordance with all regulations pertaining to motor vehicle transportation of such material issued by the Secretary under the Hazardous Materials Transportation Act; and

(B) that such person has a working knowledge of--

(i) such regulations,

(ii) handling of such material,

(iii) the operation of emergency equipment used in response to emergencies arising out of the transportation of such material, and

(iv) appropriate response procedures to be followed in such emergencies;

(6) shall establish minimum scores for passing such tests;

(7) shall ensure that each person taking such tests is qualified to operate a commercial motor vehicle under the regulations issued by the Secretary and contained in title 49 of the Code of Federal Regulations to the extent such regulations are applicable to such person; and

(8) may require—

(A) issuance of a certification of fitness to operate a commercial motor vehicle to each person who passes such tests; and

(B) such person to have a copy of such certification in his or her possession whenever such person is operating a commercial motor vehicle.

(b) Requirement for Operation of CMV.--

(1) General rule.--Except as provided under paragraph (2), no person may operate a commercial motor vehicle unless such person has taken and passed a written and driving test to operate such vehicle which meets the minimum Federal standards established by the Secretary under subsection (a).

(2) Exception.--The Secretary may issue regulations which provide that a person—

(A) who passes a driving test for operation of a commercial motor vehicle in accordance with the minimum standards established under subsection (a), and

(B) who has a driver's license which is not suspended, revoked, or canceled,may operate such a vehicle for a period not to exceed 90 days.

(3) Effective date.--Paragraph (1) shall take effect on such date as the Secretary shall establish by regulation.

(c) Basic Grant Program…. 15

§12006. COMMERCIAL DRIVER'S LICENSE.

The Secretary, after consultation with the States, shall issue regulations establishing minimum uniform standards for the issuance of commercial drivers' licenses by the States and for information to be contained on such licenses. Such standards shall, at a minimum, require that--

(1) each person who is issued a commercial driver's license passes a written and driving test for the operation of a commercial motor vehicle which complies with the minimum Federal standards established by the Secretary under section 12005(a);

(2) the commercial drivers' licenses are, to the maximum extent practicable, tamper proof; and

(3) each commercial driver's license contain the following information:

(A) the name and address of the person to whom such license is issued and a physical description of such person;

(B) the social security number or such other number or information as the Secretary determines appropriate to identify such person;

(C) the class or type of commercial motor vehicle or vehicles which such person is authorized to operate under such license;

(D) the name of the State which issued such license; and

(E) the dates between which such license is valid.

§12007. COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM.

(a) Deadline.--The Secretary shall either enter into an agreement under subsection (b) for operation of, or establish under subsection (c), an information system which will serve as a clearinghouse and depository of information pertaining to the licensing and identification of operators of commercial motor vehicles and the disqualification of such operators from operating commercial motor vehicles. In carrying out this section, the Secretary consult the States.

(b) Agreement for Use of Non-Federal System.--

(1) Review.-- The Secretary shall conduct a review of information systems utilized by 1 or more States pertaining to the driving status of operators of motor vehicles and other State-operated information systems for the purpose of determining whether or not any of such systems could be utilized to carry out this section.

(2) Agreement.--If the Secretary determines that one of the information systems reviewed under paragraph (1) could be utilized to carry out this section and the State or States utilizing such system agree to the use of such system for carrying out this section, the Secretary may enter into an agreement with such State or States for the use of such system in 16 accordance with the provisions of this section and section 12009(c).

(3) Terms of agreement.--Any agreement entered into under this subsection shall contain such terms and conditions as the Secretary considers necessary to carry out the objectives of this title.

(c) Establishment.--If the Secretary does not enter into an agreement under subsection (b), the Secretary shall establish an information system pertaining to the driving status and licensing of operators of commercial motor vehicles in accordance with the provisions of this section.

(d) Minimum Information.--The information system under this section shall, at a minimum, include the following information concerning each operator of a commercial motor vehicle:

(1) Such information as the Secretary considers appropriate to ensure identification of such operator.

(2) The name and address of such operator and a physical description of such operator.

(3) The social security number of such operator or such other number or information as the Secretary determines appropriate to identify such operator.

(4) The name of the State which issued the driver's license to such operator.

(5) The dates between which such license is valid.

(6) Whether or not such operator has or has had a driver's license which authorized such person to operate a commercial motor vehicle suspended, revoked, or canceled by a State, has lost the right to operate a commercial motor vehicle in a State for any period, or has been disqualified from operating a commercial motor vehicle.

(e) Availability of Information.--

(1) To state.--Upon request of a State, the Secretary or the operator of the information system, as the case may be, may make available to such State information in the information system under this section. (2) To the employee.--Upon request of an employee, the Secretary or the operator of the information system, as the case may be, may make available to such employee information in the information system relating to such employee.

(3) To employer.--Upon request of an employer or prospective employer of an employee and after notification of such employee, the Secretary or the operator of the information system, as the case may be, may make available to such employer or prospective employer information in the information system relating to such employee.

(4) To the secretary.--Upon the request of the Secretary, the operator of the information system shall make available to the Secretary such information pertaining to the driving status and licensing of operators of commercial motor vehicles (including the information required by subsection (d)) as the Secretary may request.

(f) Collection of Fees.--If the Secretary establishes an information system under this section, the Secretary shall establish a fee system for utilization of the information system. The amount of fees collected pursuant to this subsection in any fiscal year shall as nearly as possible equal the costs of operating the information system in such fiscal year. The Secretary shall deposit fees collected under this subsection in the Highway Trust Fund (other than the Mass Transit Account).

(g) Funding….

§12008. FEDERAL DISQUALIFICATIONS.

(a) Drunk Driving; Leaving the Scene of an Accident; Felonies.--

(1) First offense.--

(A) General rule.--Except as provided in subparagraph (B) and paragraph

(2), the Secretary shall disqualify from operating a commercial motor vehicle for a period of not less than 1 year each person--

(i) who is found to have committed a first violation--

(I) of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance, or

(II) of leaving the scene of an accident involving a commercial motor vehicle operated by such person; or

(ii) who uses a commercial motor vehicle in the commission of a felony (other than a felony described in subsection (b)).

(B) Special rule.--If the vehicle operated or used in connection with the violation or the commission of the felony referred to in subparagraph (A) is transporting a hazardous material required by the Secretary to be placarded under section 105 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804), the Secretary shall disqualify the person for a period of not less than 3 years.

(2) Second offense.--

(A) General rule.--Subject to subparagraph (B), the Secretary shall disqualify from operating a commercial motor vehicle for life each person--

(i) who is found to have committed more than one violation of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance;

(ii) who is found to have committed more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by such person;

(iii) who uses a commercial motor vehicle in the commission of more than one felony arising out of different criminal episodes; or

(iv)(I) who is found to have committed a violation described in clause (i) or

(ii), and (II) who is found to have committed a violation described in the other of such clauses or uses a commercial motor vehicle in the commission of a felony.

(B) Special rule.--The Secretary may issue regulations which establish guidelines (including conditions) under which a disqualification for life under subparagraph (A) may be reduced to a period of not less than 10 years.

(b) Controlled Substance Felonies.--The Secretary shall disqualify from operating a commercial motor vehicle for life each person who uses a commercial motor vehicle in the

commission of a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(c) Serious Traffic Violations.--

(1) Second violation.--The Secretary shall disqualify from operating a commercial motor vehicle for a period of not less than 60 days each person who, in a 3-year period, is found to have committed 2 serious traffic violations involving a commercial motor vehicle operated by such person.

(2) Third violation.--The Secretary shall disqualify from operating a commercial motor vehicle for a period of not less than 120 days each person who, in a 3-year period, is found to have committed 3 serious traffic violations involving a commercial motor vehicle operated by such person.

(d) Enforcement of Drinking and Driving Regulations.--

(1) Out of service.--Not later than 1 year after the date of enactment of this title, the Secretary, for purposes of enforcing section 392.5 of the Code of Federal Regulations, shall issue regulations which establish and enforce an out of service period of 24 hours for any person who violates such section.

(2) Violations of out-of-service orders.--No person shall violate an out-ofservice order issued under paragraph (1) of this subsection.

(3) Reporting requirements.--Not later than 1 year after the date of the enactment of this title, the Secretary shall issue regulations establishing and enforcing requirements for reporting of out-of-service orders issued pursuant to regulations issued under paragraph (1). Regulations issued under this paragraph shall, at a minimum, require an operator of a commercial motor vehicle who is issued such an order to report such issuance to his or her employer and to the State which issued such operator his or her driver's license.

(e) Limitation on Applicability.-- 19

(1) General rule.--Notwithstanding any requirement of subsections (a), (b), and (c) of this section, the Secretary does not have to disqualify from operating a commercial motor vehicle any person who has been disqualified from operating a commercial motor vehicle in accordance with such requirement by the State which issued the driver's license which authorized such person to operate such vehicle.

(2) Satisfaction of state disqualification.--For purposes of paragraph (1), suspension, revocation, or cancellation of a driver's license which authorizes a person to operate a commercial motor vehicle by a State shall be treated as disqualification of such person from operating such vehicle.

(f) Blood Alcohol Concentration Level.--

(1) Study.--

(A) National academy of sciences.--Not later than 30 days after the date of the enactment of this title, the Secretary shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the appropriateness of reducing the blood alcohol concentration level at or above which a person when operating a commercial motor vehicle is deemed to be driving while under the influence of alcohol from 0.10 to 0.04 percent.

(B) Report.--In entering into any arrangements with the National Academy of Sciences for conducting the study under this subsection, the Secretary shall request the National Academy of Sciences to submit, not later than 1 year after the date of the enactment of this title, to the Secretary a report on the results of such study.

(2) Rulemaking.--Not later than 1 year after the date of the enactment of this title, the Secretary shall commence a rulemaking to determine whether or not, for purposes of this section and section 12009 of this Act, the blood alcohol concentration level at or above which a person when operating a commercial motor vehicle is deemed to be driving while under the influence of alcohol should be reduced from 0.10 to 0.04 percent (or some other percentage less than 0.10).

(3) Issuance of rule.--Not later than 2 years after the date of the enactment of this title, the Secretary shall issue a rule which establishes, for purposes of this section and section 12009 of this Act, the blood alcohol concentration level at or above which a person when operating a commercial motor vehicle shall be deemed to be driving while under the influence of alcohol at 0.10 percent or such lesser percentage as the Secretary determines appropriate.

(4) Failure of the secretary to issue rule.--If the Secretary does not issue a rule described in paragraph (3) in the 2-year period beginning on the date of the enactment of this title, for purposes of this section and section 12009 of this Act, the blood alcohol concentration level at or above which a person 20 operating a commercial motor vehicle shall be deemed to be driving while under the influence of alcohol shall be 0.04 percent.

§12009. REQUIREMENTS FOR STATE PARTICIPATION.

(a) In General.--In order not to have funds withheld under section 12011 from apportionment, each State shall comply with the following requirements:

(1) Testing program.--The State shall adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with all of the minimum Federal standards established by the Secretary under section 12005(a).

(2) Test standards.--The State shall not issue a commercial driver's license to a person unless such person passes a written and driving test for the operation of a commercial motor vehicle which complies with such minimum standards.

(3) Driving while under the influence--The State shall have in effect and enforce a law which provides that any person with a blood alcohol concentration level at or above the level established by or under section 12008(f) when operating a commercial motor vehicle is deemed to be driving while under the influence of alcohol.

(4) CDL issuance and information.--The State shall authorize a person to operate a commercial motor vehicle only by issuance of a commercial driver's license which contains the information described in section 12006(a)(3).

(5) Advance notification of licensing.--At least 60 days before issuance of a commercial driver's license or such shorter period as the Secretary may establish by regulation, the State shall notify the Secretary or the operator of the information system under section 12007, as the case may be, of the proposed issuance of such license and such other information as the Secretary may require to ensure identification of the person applying for such license.

(6) Information request.--Before issuance of a commercial driver's license to a person, the State shall request from any other State which has issued a commercial driver's license to such person all information pertaining to the driving record of such person.

(7) Notification of licensing.--Within 30 days after issuance of a commercial driver's license, the State shall notify the Secretary or the operator of the information system under section 12007, as the case may be, of the issuance.

(8) Notification of disqualifications.--Within 10 days after disqualification of the holder of a commercial driver's license from operating a commercial 21 motor vehicle (or after suspension, revocation, or cancellation of such license) for a period of 60 days or more, the State shall notify--

(A) the Secretary or the operator of the information system under section 12007, as the case may be, and

(B) the State which issued the license, of such disqualification, suspension, revocation, or cancellation.

(9) Notification of traffic violations.--Within 10 days after a person who operates a commercial motor vehicle, who has a driver's license issued by any other State, and who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) in the State, shall notify a State official designated by the State which issued such license of such violation, within 10 days after the date such person is found to have committed such violation.

(10) Limitation on licensing.--The State shall not issue a commercial driver's license to a person during a period in which such person is disqualified from operating a commercial motor vehicle or the driver's license of such person is suspended, revoked, or canceled.

(11) Return of old licenses.--The State shall not issue a commercial driver's license to a person who has a commercial driver's license issued by any other State unless such person first returns the driver's license issued by such other State.

(12) Domicile requirement.--The State shall issue commercial drivers' licenses only to those persons who operate or will operate commercial motor vehicles and are domiciled in the State; except that the State, in accordance with such regulations as the Secretary shall issue, may issue a commercial driver's license to a person who operates or will operate a commercial motor vehicle and who is not domiciled in a State which does issue commercial drivers' licenses.

(13) Penalty approval.--The State shall impose such penalties as the State determines appropriate and the Secretary approves for operating a commercial motor vehicle while not having a commercial driver's license, while having a driver's license suspended, revoked, or canceled, or while being disqualified from operating a commercial motor vehicle.

(14) Reciprocity.--The States shall allow any person--

(A) who has a commercial driver's license--

(i) which is issued by any other State in accordance with the minimum Federal standards for the issuance of such licenses, and

(ii) which is not suspended, revoked, or cancelled; and

(B) who is not disqualified from operating a commercial motor vehicle; 22 to operate a commercial motor vehicle in the State.

(15) First offenses.--The State shall disqualify from operating a commercial motor vehicle for a period of not less than 1 year each person--

(A) who is found to have committed a first violation--

(i) of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance, or

(ii) of leaving the scene of an accident involving a commercial motor vehicle operated by such person; or

(B) who uses a commercial motor vehicle in the commission of a felony (other than a felony described in paragraph (17)); except that if the vehicle being operated or used in connection with such violation or the commission of such felony is transporting a hazardous material required by the Secretary to be placarded under section 105 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804), the State shall disqualify such person from operating a commercial motor vehicle for a period of not less than 3 years.

(16) Second offenses.--

(A) General rule.--Subject to subparagraph (B), the State shall disqualify from operating

a commercial motor vehicle for life each person--

(i) who is found to have committed more than one violation of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance;

(ii) who is found to have committed more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by such person;

(iii) who uses a commercial motor vehicle in the commission of more than one felony arising out of different criminal episodes; or

(iv)(I) who is found to have committed a violation described in clause (i) or (ii), and

(II) who is found to have committed a violation described in the other of such clauses or uses a commercial motor vehicle in the commission of a felony.

(B) Special rule.--The State, in accordance with such guidelines (including conditions) as the Secretary may establish by regulation, may reduce a disqualification for life in accordance with subparagraph (A) to a period of not less than 10 years.

(17) Drug offenses.--The State shall disqualify from operating a commercial motor vehicle for life each person who uses a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(18) Second serious traffic violation.--The State shall disqualify from operating a commercial motor vehicle for a period of not less than 60 days each person who, in a 3-year period, is found to have committed 2 serious traffic violations involving a commercial motor vehicle operated by such person.

(19) Third serious traffic violation.--The State shall disqualify from operating a commercial motor vehicle for a period of not less than 120 days each person who, in a 3-year period, is found to have committed 3 serious traffic violations involving a commercial motor vehicle operated by such person.

(20) National driver register information.--Before issuing a commercial driver's license to operate a commercial motor vehicle to any person, the State shall request the Secretary for information from the National Driver Register established pursuant to the National Driver Register Act of 1982(23 U.S.C. 401 note) (after such Register is determined by the Secretary to be operational)--

(A) on whether such person has been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) on whether such person has had a license (other than a license authorizing such person to operate a commercial motor vehicle) suspended, revoked, or cancelled for cause in the 3-year period ending on the date of application for such commercial driver's license; and

(C) on whether such person has been convicted of any of the offenses specified in section 205(a)(3) of such Act. The State shall give full weight and consideration to such information in deciding whether to issue a commercial driver's license to such person.

(21) (a)Out of service regulations.--The State shall adopt and enforce any regulations issued by the Secretary under section 12008(d)(1).

(b) Satisfaction of State Disqualification Requirement.--A State may satisfy the requirements of subsection (a) that the State disqualify a person who operates a commercial motor vehicle if the State suspends, revokes, or cancels the driver's license issued to such person in accordance with the requirements of such subsection.

(c) Notification.--Not later than 30 days after being notified by a State of the proposed issuance of a commercial driver's license to any person, the Secretary or the operator of the

information system under section 12007, as the case may be, shall notify such State of whether or not such person has a commercial driver's license issued by any other State or has been disqualified from operating a commercial motor vehicle by any other State or the Secretary.

§12010. GRANT PROGRAM.

(a) Establishment.--The Secretary may make a grant to a State in a fiscal year if the State enters into an agreement with the Secretary to participate in such fiscal year in the commercial driver's license program established by this title and the information system required by this title and to comply with the requirements of section 12009.

(b) Minimum amount of grant.--The Secretary shall determine the amount of grants in a fiscal year to be made under this section to a State eligible to receive such grants in the fiscal year; except that--

(1) such State shall not be granted less than $100,000 under this section in the fiscal year; and

(2) to the extent that any States are granted more than $100,000 per State in the fiscal year under this section, the Secretary shall ensure that such States are treated equitably.

(c) Limitation on Use of Funds.--A State receiving a grant under this section may only use the funds provided under such grant for issuing commercial driver's licenses and complying with the requirements of section 12009.

(d) Contract Authority.--Notwithstanding any other provision of law, approval by the Secretary of a grant to a State under this section shall be deemed to be a contractual obligation of the United States for payment of the amount of the grant.

(e) Period of Availability.--Funds made available to carry out this section shall remain available for obligation by the State for the fiscal year for which such funds are made available. Any of such funds not obligated before the last day of such period shall no longer be available to such State and shall be available to the Secretary for carrying out the purposes of this title. Funds made available pursuant to this section shall remain available until expended.

(f) Funding.--There shall be available to the Secretary to carry out this section $5,000,000 from funds made available to carry out section 404 of the
Surface Transportation Assistance Act of 1982 for each of fiscal years 1989,
1990, and 1991.

§12011. WITHHOLDING OF HIGHWAY FUNDS FOR STATE NONCOMPLIANCE.

(a) First Year.--The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year succeeding the first fiscal year beginning after September 30, 1992, throughout which the State does not substantially comply with any requirement of section 12009(a) of this Act.

(b) After the First Year.--The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of each fiscal year after the second fiscal year beginning after September 30, 1992, throughout which the State
does not substantially comply with any requirement of section 12009(a) of this Act.

(c) Period of Availability; Effect of Compliance and Noncompliance.--

(1) Funds withheld on or before September 30, 1995.--

(A) Period of availability.--Any funds withheld under this section from apportionment to any State on or before September 30, 1995, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(B) of such title but for this section, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of such title but for this section, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) Funds withheld after September 30, 1965.--No funds withheld under this subsection from apportionment to any State after September 30, 1995, shall be available for apportionment to such State.

(2) Apportionment of withheld funds after compliance.--If, before the last day of the period for which funds withheld under this section from apportionment are to remain available for apportionment to a State under paragraph (1), the State substantially complies with all of the requirements of section 12009(a) of this Act for a period of 365 days, the Secretary shall on the day following the last day of such period apportion to such State the withheld funds remaining available for apportionment to such State.

(3) Period of availability of subsequently apportioned funds.--Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure until the end of the third fiscal year succeeding the fiscal year in which such funds are apportioned. Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5) of such title, shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of such title.

(4) Effect of noncompliance.--If, at the end of the period for which funds withheld under this section from apportionment are available for apportionment to a State under paragraph (1), the State has not substantially complied with all of the requirements of section 12009

(a) of this Act for a 365-day period, such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5) of such title, such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of such title.

§12012. PENALTIES.[2]

---

[2] The penalty provisions have been increased by subsequent amendments.

(a) Notice of Violation.--Paragraph (1) of section 521(b) of title 49, United States Code, is amended by inserting "or section 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986" after "the Motor Carrier Safety Act of 1984" and by striking out "section" the second place it appears and inserting in lieu thereof "sections". (b) Civil Penalties.--Paragraph (2) of such section is amended, by inserting

"(A) In general.--" before "Except as", by inserting "(other than subparagraph

(B))" before ", except for recordkeeping violations", and by striking out the

last two sentences and inserting in lieu thereof the following:

"(B) Violations pertaining to cdls.--Any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of section 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986 shall be liable to the United States for a civil penalty not to exceed $2,500 for each offense.

"(C) Determination of amount.--The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.".

FOOTNOTE 2 (continued)

(c) Posting of Notice.--Paragraph (3) of such section is amended by inserting "or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986" after "the Motor Carrier Safety Act of

§12013. WAIVER AUTHORITY.

Notwithstanding any other provision of this title, after notice and an opportunity for comment, the Secretary may waive, in whole or in part, application of any provision of this title or any regulation issued under this title with respect to class of persons or class of commercial motor vehicles if the Secretary determines that such waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. Any waiver under this section shall be published in the Federal Register, together with reasons for such waiver.

§12014. COMMERCIAL MOTOR VEHICLE SAFETY GRANTS.[3]

"(b) Funds authorized to be appropriated, and funds made available, by this section shall be used to reimburse States pro rata for the Federal share of the costs incurred.

"(c) Grants made pursuant to the authority of this part shall be for periods not to exceed one year.

"(d) Notwithstanding any other provision of law, beginning after September 30, 1986,

---

1984".

(d) Out of Service Orders.--Paragraph (5)(A) of such section is amended
By inserting "or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986" after "the Motor Carrier Safety Act of 1984"And by striking out "section" the second place it appears and inserting in lieu thereof "sections".

(e) Criminal Penalties.--Paragraph (6) of such section is amended by inserting "(A) In general.--" before "Any person" and by adding at the end thereof the following:

"(B) Violations pertaining to cdls.--Any person who knowingly and willfully violates--

"(i) any provision of section 12002, 12003(b), 12003(c), 12004,
12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act
Of 1986 or a regulation issued under such section, or "(ii) with respect to notification of a serious traffic violation as defined under section 12019 of such 27
Act, any provision of section 12003(a) of such Act or a regulation issued under such section 12003(a), shall, upon conviction, be subject for each offense to a fine not to exceed $5,000 or imprisonment for a term not to exceed 90 days, or both.".

(f) Conforming Amendments.--(1) Paragraph (2) of such section is amended by inserting "Civil Penalty.--" after "(2)", by indenting subparagraph (A), as designated by subsection (b) of this section, and aligning such subparagraph with subparagraph (B), as added by such subsection (b).

(2) Paragraph (6) of such section is amended by inserting "Criminal Penalties.--" after "(6)" and by indenting subparagraph (A), as designated by subsection (e) of this section, and aligning such subparagraph with subparagraph (B), as added by such subsection (e).

(g) Technical Amendments.--(1) Paragraph (6) of such section is further amended by striking out "for a fine" and inserting in lieu thereof "to a fine". (2) Paragraph (13) of such section is amended by striking out "section 4" and inserting in lieu thereof "section 204".

---

[3] This provision has been increased by subsequent amendments.

Section 404 of the Surface Transportation Assistance Act of 1982 (49
U.S.C. 2304) is amended to read as follows:
"Authorizations

"Sec. 404. (a)(1) To carry out the purposes of section 402 of this title, there is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) $10,000,000 for fiscal year 1984, $20,000,000 for fiscal year 1985, and $30,000,000 for fiscal year 1986.

"(2) Subject to section 9503(c)(1) of the Internal Revenue Code of 1986, there shall be available to the Secretary to incur obligations to carry out section 402 of this title, out of the Highway Trust Fund (other than the Mass Transit Account), $50,000,000 per fiscal year for each of fiscal years 1987 and 1988 and $60,000,000 per fiscal year for each of fiscal years 1989,
1990, and 1991.

approval by the Secretary of a grant to a State under section 402 shall be deemed a contractual obligation of the United States for payment of the Federal share of the costs incurred by such State in development or implementation or both of programs to enforce commercial motor vehicle rules, regulations, standards, and orders.

"(e) Funds authorized to be appropriated, and funds made available, to carry out this section shall remain available for obligation by the Secretary for the fiscal year for which such funds are authorized or made available, as the case may be, and the three succeeding fiscal years.

"(f) On October 1 of each fiscal year beginning after September 30, 1986, the Secretary may deduct, from funds made available for such fiscal year by subsection (a)(2), an amount not to exceed one-half of one percent of the amount of such funds for administering section 402 of this title in such fiscal year.".

§12015….

§12016. RADAR DEMONSTRATION PROJECT.

(a) Project Description.--Notwithstanding any other provision of law, the Secretary, in cooperation with State and local law enforcement officials, shall conduct a demonstration project to assess the benefits of continuous use of unmanned radar equipment on highway safety on a section of highway with a high rate of motor vehicle accidents. Such project shall be conducted in northern Kentucky on a hilly section of Interstate Route I-75 between Fort Mitchell and the Brent Spence Bridge over the Ohio River during the 24-month period beginning on the date of the enactment of this title.

(b) Reports.--

(1) Interim report.--Not later than 18 months after the date of the enactment of this title, the Secretary shall transmit to Congress an interim report on the results of the demonstration project conducted under subsection (a), together with any recommendations on whether or not to extend the duration of such demonstration project and whether or not to expand the scope of such project.

(2) Final report.--Not later than 60 days after completion of the demonstration project conducted under subsection (a), the Secretary shall transmit to Congress a final report on the results of such project, together with any such recommendations.

§12017. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this title shall be construed to diminish, limit, or otherwise affect the authority of the Secretary to regulate commercial motor vehicle safety involving motor vehicles with a gross vehicle weight rating of less than 26,001 pounds or such lesser gross vehicle weight rating as determined appropriate by the Secretary under section 12019(6)(A) of this Act.

§12018. REGULATIONS.

(a) Authority To Issue.--The Secretary may issue such regulations as may Be necessary to carry out this title.

(b) Compliance With Title 5.--All regulations under this title shall be issued in accordance with section 553 of title 5, United States Code (without regard to sections 556 and 557 of such title).

§12019. DEFINITIONS.

For purposes of this title--

(1) **Alcohol**.--The term "alcohol" has the meaning the term alcoholic beverage has under section 158(c) of title 23, United States Code.

(2) **Driver's license**.--The term "driver's license" means a license issued by a State to an individual which authorizes the individual to operate a motor vehicle on highways.

(3) **Commerce**.--The term "commerce" means--

(A) trade, traffic, and transportation within the jurisdiction of the United States between a place in a State and a place outside of such State (including a place outside the United States); and

(B) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in subparagraph (A).

(4) **Commercial driver's license**.--The term "commercial driver's license" means a license issued by a State to an individual which authorizes the individual to operate a class of commercial motor vehicle.

(5) **Motor vehicle**.--The term "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used and on highways, except that such term does not include a vehicle, machine, tractor, trailer, semitrailer operated exclusively on a rail.

(6) **Commercial motor vehicle**.--The term "commercial motor vehicle"
Means a motor vehicle used in commerce to transport passengers or property--

(A) if the vehicle has a gross vehicle weight rating of 26,001 or more pounds or such a lesser gross vehicle weight rating as the Secretary determines appropriate by regulation but not less than a gross vehicle weight rating of 10,001 pounds;

(B) if the vehicle is designed to transport more than 15 passengers, including the driver; or

(C) if such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act.

A motor vehicle which is used in the transportation of hazardous materials and which has a gross vehicle weight rating of less than 26,001 pounds(or such gross vehicle weight rating as determined appropriate by the Secretary under subparagraph (A)) shall not be included as a commercial motor vehicle pursuant to subparagraph (C) if such hazardous material is listed as hazardous pursuant to section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Department of Transportation or if such hazardous material is a consumer commodity or limited quantity hazardous material as defined under section 171.8 of title 49 of the Code of Federal Regulations. The Secretary may waive the application of the preceding sentence to any motor vehicle or class of motor vehicles if the Secretary determines that such waiver is in the interest of safety.

(7) **Controlled substance**.--The term "controlled substance" has the meaning such term has under section 102 of the Controlled Substances Act (21 U.S.C. 802).

(8) **Employee**.--The term "employee" means an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) who is employed by an employer.

(9) **Employer**.--The term "employer" means any person (including the United States, a State, or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns employees to operate such a vehicle.

(10) **Felony**.--The term "felony" means an offense under State or Federal law that is punishable by death or imprisonment for a term exceeding 1 year.

(11) **Hazardous material**.--The term "hazardous material" has the meaning such term has under section 103 of the Hazardous Materials Transportation Act.

(12) **Serious traffic violation**.--The term "serious traffic violation" means--

(A) excessive speeding, as defined by the Secretary by regulation;

(B) reckless driving, as defined under State or local law; 31

(C) a violation of a State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal traffic accident; and

(D) any other similar violation of a State or local law relating to motor vehicle traffic control (other than a parking violation) which the Secretary determines by regulation is serious.

(13) **Secretary**.--The term "Secretary" means the Secretary of Transportation.

(14) **State.--**The term "State" means a State of the United States and the District of Columbia.

(15) **United States.--**The term "United States" means the 50 States and the District of Columbia.

ALCOHOL AND DRUG TESTING

A. PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

Congress has mandated that all bus drivers receive pre-employment, post-accident, random, reasonable suspicion, and return to duty alcohol and drug testing. Drivers are prohibited from alcohol possession or use on the job or 4 hours before going to work, and prohibited from using drugs on duty(except for certain prescription drugs) or having a positive test from prior use. Depending upon the nature of the violation, a driver will be removed from employment for varying periods of time.

NOTE: There are two sections which may apply. One is part 382, which is administered by the Federal Motor Carrier Safety Administration, and is summarized below. The other is part 685, which applies to those motorcoach companies which receive federal funding from the Federal Transit Administration. FTA provides financial and technical assistance to local public transit systems, including buses, subways, light rail, commuter rail, trolleys and ferries. That is summarized separately.

Subpart A—General

§382.101 Purpose
§382.103 Applicability.
§382.105 Testing procedures.
§382.107 Definitions.
§382.109 Preemption of State and local laws.
§382.111 Other requirements imposed by employers.
§382.113 Requirements for notice.
§382.115 Starting date for testing programs.
§382.117 Public interest exclusion.
§382.119 Stand-down waiver provision.
§382.121 Employee admission of alcohol and controlled substances use.

Subpart B—Prohibitions

§382.201 Alcohol concentration.
§382.205 On-duty use.
§382.207 Pre-duty use.

Authority:
49 U.S.C. 31133, 31136, 31301 et seq., 31502; and 49 CFR 1.73.
Source:
66 FR 43103, Aug. 17, 2001, unless otherwise noted.

Subpart A—General

§382.101 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

§382.103 Applicability.

(a) This part applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State, and is subject to:

(1) The commercial driver's license requirements of part 383 of this subchapter;

(2) The Licencia Federal de Conductor (Mexico) requirements; or

(3) The commercial drivers license requirements of the Canadian National Safety Code.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of two or more covered employees in the random testing selection pool.

(c) The exceptions contained in §390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in §390.3(f) of this subchapter must comply with the requirements of this part, unless otherwise specifically provided in paragraph (d) of this section.

(d) Exceptions. This part shall not apply to employers and their drivers:

(1) Required to comply with the alcohol and/or controlled substances testing requirements of part 655 of this title (Federal Transit Administration alcohol and controlled substances testing regulations); or

(2) Who a State must waive from the requirements of part 383 of this subchapter. These individuals include active duty military personnel; members of the reserves; and members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training and national guard military technicians (civilians who are required to wear military uniforms), and active duty U.S. Coast Guard personnel; or

(3) Who a State has, at its discretion, exempted from the requirements of part 383 of this subchapter. These individuals may be:

(i) Operators of a farm vehicle which is:

(A) Controlled and operated by a farmer;

(B) Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm;

(C) Not used in the operations of a common or contract motor carrier; and

(D) Used within 241 kilometers (150 miles) of the farmer's farm.

(ii) Firefighters or other persons who operate commercial motor vehicles which are necessary for the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals, and are not subject to normal traffic regulation.

§382.105 Testing procedures.

Each employer shall ensure that all alcohol or controlled substances testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol or controlled substances testing are made applicable to employers by this part.

§382.107 Definitions.

Words or phrases used in this part are defined in §§386.2 and 390.5 of this subchapter, and §40.3 of this title, except as provided in this section—

Actual knowledge for the purpose of subpart B of this part, means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in §382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under §382.307.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

Alcohol use means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

Commerce means:

(1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; and

(2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle—

(1) Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

(2) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation (or confirmatory) drug test means a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

Confirmation (or confirmatory) validity test means a second test performed on a urine specimen to further support a validity test result.

Confirmed drug test means a confirmation test result received by an MRO from a laboratory.

Consortium/Third party administrator (C/TPA) means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to

administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for purposes of this part.

Controlled substances mean those substances identified in §40.85 of this title.

Designated employer representative (DER) is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the company. Service agents cannot serve as DERs.

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) Inclusions. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) Exclusions. (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlight or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which make them inoperative.

DOT Agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, and 655), in accordance with part 40 of this title.

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

Employer means a person or entity employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with this part. The term, as used in this part, means the entity responsible for overall implementation of DOT drug and alcohol program requirements, including individuals employed by the entity who take personnel actions resulting from violations of this part and any applicable DOT agency regulations. Service agents are not employers for the purposes of this part.

Licensed medical practitioner means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this part.

Refuse to submit (to an alcohol or controlled substances test) means that a driver:

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see §40.61(a) of this title);

(2) Fail to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences (see §40.63(c) of this title) a pre-employment test is not deemed to have refused to test;

(3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations. Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63(c) of this title) for a pre-employment test is not deemed to have refused to test;

(4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen (see §§40.67(l) and 40.69(g) of this title);

(5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2) of this title);

(6) Fail or declines to take a second test the employer or collector has directed the driver to take;

(7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d) of this title. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;

(8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process); or

(9) Is reported by the MRO as having a verified adulterated or substituted test result.

Safety-sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

(1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;

(2) All time inspecting equipment as required by §§392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All time spent at the driving controls of a commercial motor vehicle in operation;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of §393.76 of this subchapter);

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test (or initial test) means:

(1) In drug testing, a test to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.

(2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Stand-down means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

66 Fed. Reg. 43103, Aug. 17, 2001, as amended at 68 FR 75458, De 31, 2003

§382.109 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public.

§382.111 Other requirements imposed by employers.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

§382.113 Requirement for notice.

Before performing each alcohol or controlled substances test under this part, each employer shall notify a driver that the alcohol or controlled substances test is required by this part. No employer shall falsely represent that a test is administered under this part.

§382.115 Starting date for testing programs.

(a) All domestic-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations.

(b) All foreign-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations in the United States.

§382.117 Public interest exclusion.

No employer shall use the services of a service agent who is subject to public interest exclusion in accordance with 49 CFR part 40, Subpart R.

§382.119 Stand-down waiver provision.

(a) Employers are prohibited from standing employees down, except consistent with a waiver from the Federal Motor Carrier Safety Administration as required under this section.

(b) An employer subject to this part who seeks a waiver from the prohibition against standing down an employee before the MRO has completed the verification process shall follow the procedures in 49 CFR 40.21. The employer must send a written request, which includes all of the information required by that section to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(c) The final decision whether to grant or deny the application for a waiver will be made by the Administrator or the Administrator's designee.

(d) After a decision is signed by the Administrator or the Administrator's designee, the employer will be sent a copy of the decision, which will include the terms and conditions for the waiver or the reason for denying the application for a waiver.

(e) Questions regarding waiver applications should be directed to the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

66 Fed. Reg. 43103, Aug. 17, 2001, as amended at 72 Fed. Reg. 55700, Oct. 1, 2007

§382.121 Employee admission of alcohol and controlled substances use.

(a) Employees who admit to alcohol misuse or controlled substances use are not subject to the referral, evaluation and treatment requirements of this part and part 40 of this title, provided that:

(1) The admission is in accordance with a written employer-established voluntary self-identification program or policy that meets the requirements of paragraph (b) of this section;

(2) The driver does not self-identify in order to avoid testing under the requirements of this part;

(3) The driver makes the admission of alcohol misuse or controlled substances use prior to performing a safety sensitive function (i.e., prior to reporting for duty); and

(4) The driver does not perform a safety sensitive function until the employer is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

(b) A qualified voluntary self-identification program or policy must contain the following elements:

(1) It must prohibit the employer from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters of the program or policy and paragraph (a) of this section;

(2) It must allow the employee sufficient opportunity to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem;

(3) It must permit the employee to return to safety sensitive duties only upon successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert, i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor;

(4) It must ensure that:

(i) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty test with a result indicating an alcohol concentration of less than 0.02; and/or

(ii) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty controlled substance test with a verified negative test result for controlled substances use; and

(5) It may incorporate employee monitoring and include non-DOT follow-up testing.

Subpart B—Prohibitions

§382.201 Alcohol concentration.

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

§382.205 On-duty use.

No driver shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.

§382.207 Pre-duty use.

No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.

§382.209 Use following an accident.

No driver required to take a post-accident alcohol test under §382.303 shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

§382.211 Refusal to submit to a required alcohol or controlled substances test.

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under §382.303, a random alcohol or controlled substances test required under §382.305, a reasonable suspicion alcohol or controlled substances test required under §382.307, or a follow-up alcohol or controlled substances test required under §382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

§382.213 Controlled substances use.

(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in §382.107, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(b) No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

(c) An employer may require a driver to inform the employer of any therapeutic drug use.

§382.215 Controlled substances testing.

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. No employer having actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

Subpart C—Tests Required

§382.301 Pre-employment testing.

(a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for controlled substances as a condition prior to being used, unless the employer uses the exception in paragraph (b) of this section. No employer shall allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the employer has received a controlled substances test result from the MRO or C/TPA indicating a verified negative test result for that driver.

(b) An employer is not required to administer a controlled substances test required by paragraph (a) of this section if:

(1) The driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days; and

(2) While participating in that program, either:

(i) Was tested for controlled substances within the past 6 months (from the date of application with the employer), or

(ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and

(3) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.

(c)(1) An employer who exercises the exception in paragraph (b) of this section shall contact the controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:

(i) Name(s) and address(es) of the program(s).

(ii) Verification that the driver participates or participated in the program(s).

(iii) Verification that the program(s) conforms to part 40 of this title.

(iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(v) The date the driver was last tested for controlled substances.

(vi) The results of any tests taken within the previous six months and any other violations of subpart B of this part.

(2) An employer who uses, but does not employ a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (c)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with §382.401. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this part and part 40 of this title, the employer shall conduct a pre-employment controlled substances test.

(d) An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, it must comply with the following requirements:

(1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).

(3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40 of this title.

(5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

§382.303 Post-accident testing.

(a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol for each of its surviving drivers:

if the accident involved the loss of human life; or

(2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for controlled substances for each of its surviving drivers:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(c) The following table notes when a post-accident test is required to be conducted by paragraphs (a)(1), (a)(2), (b)(1), and (b)(2) of this section:

Type of accident involved Citation issued to the CMV driver Test must be performed by employer

TABLE FOR § 382.303(A) AND (B)

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
i. Human fatality	YES NO	YES YES
ii. Bodily injury with immediate medical treatment away from the scene	YES NO	YES NO
iii. Disabling damage to any motor vehicle requiring tow away	YES NO	YES NO

(d)(1) Alcohol tests. If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

(2) Controlled substance tests. If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

(e) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(f) An employer shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(g)(1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the employer.

(2) The results of a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.

(h) Exception. This section does not apply to:

(1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or

(2) An occurrence involving only the loading or unloading of cargo; or

(3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in §571.3 of this title) by an employer unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with §177.823 of this title.

§382.305 Random testing.

(a) Every employer shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.

(b)(1) Except as provided in paragraphs (c) through (e) of this section, the minimum annual percentage rate for random alcohol testing shall be 10 percent of the average number of driver positions.

(2) Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions.

(c) The FMCSA Administrator's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol management information system reports required by §382.403. In order to ensure reliability of the data, the FMCSA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. In the event of a change in the annual percentage rate, the FMCSA Administrator will publish in the Federal Register the new minimum annual percentage rate for random alcohol testing of drivers. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication in the Federal Register.

(d)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the FMCSA Administrator may lower this rate to 10 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of §382.403 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the FMCSA Administrator may lower this rate to 25 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of §382.403 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(e)(1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of §382.403 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent for all driver positions.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of §382.403 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FMCSA Administrator

will increase the minimum annual percentage rate for random alcohol testing to 50 percent for all driver positions.

(f) The FMCSA Administrator's decision to increase or decrease the minimum annual percentage rate for controlled substances testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the controlled substances management information system reports required by §382.403. In order to ensure reliability of the data, the FMCSA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. In the event of a change in the annual percentage rate, the FMCSA Administrator will publish in the Federal Register the new minimum annual percentage rate for controlled substances testing of drivers. The new minimum annual percentage rate for random controlled substances testing will be applicable starting January 1 of the calendar year following publication in the Federal Register.

(g) When the minimum annual percentage rate for random controlled substances testing is 50 percent, the FMCSA Administrator may lower this rate to 25 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of §382.403 for two consecutive calendar years indicate that the positive rate is less than 1.0 percent.

(h) When the minimum annual percentage rate for random controlled substances testing is 25 percent, and the data received under the reporting requirements of §382.403 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions.

(i)(1) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers.

(2) Each driver selected for random alcohol and controlled substances testing under the selection process used, shall have an equal chance of being tested each time selections are made.

(3) Each driver selected for testing shall be tested during the selection period.

(j)(1) To calculate the total number of covered drivers eligible for random testing throughout the year, as an employer, you must add the total number of covered drivers eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered drivers must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., daily, weekly, bi-weekly) you do not need to compute this total number of covered drivers rate more than on a once per month basis.

(2) As an employer, you may use a service agent (e.g., a C/TPA) to perform random selections for you, and your covered drivers may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.

(k)(1) Each employer shall ensure that random alcohol and controlled substances tests conducted under this part are unannounced.

(2) Each employer shall ensure that the dates for administering random alcohol and controlled substances tests conducted under this part are spread reasonably throughout the calendar year.

(l) Each employer shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, the employer shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(m) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(n) If a given driver is subject to random alcohol or controlled substances testing under the random alcohol or controlled substances testing rules of more than one DOT agency for the same employer, the driver shall be subject to random alcohol and/or controlled substances testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.

(o) If an employer is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

66 Fed. Reg. 43103, Aug. 17, 2001, as amended at 67 Fed. Reg. 61821, Oct. 2, 2002; 68 Fed.Reg. 75459, Dec. 31, 2003

§382.307 Reasonable suspicion testing.

(a) An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning alcohol. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(b) An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

(c) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or company official who is trained in accordance with §382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.

(d) Alcohol testing is authorized by this section only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the work

day that the driver is required to be in compliance with this part. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(e)(1) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (a) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (a) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until:

(i) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or

(ii) Twenty four hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this part concerning the use of alcohol.

(3) Except as provided in paragraph (e)(2) of this section, no employer shall take any action under this part against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit an employer with independent authority of this part from taking any action otherwise consistent with law.

(f) A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or company official who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

§382.309 Return-to-duty testing.

The requirements for return-to-duty testing must be performed in accordance with 49 CFR part 40, subpart O.

§382.311 Follow-up testing.

The requirements for follow-up testing must be performed in accordance with 49 CFR part 40, subpart O.

Subpart D—Handling of Test Results, Records Retention, and Confidentiality

§382.401 Retention of records.

(a) General requirement. Each employer shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) Period of retention. Each employer shall maintain the records in accordance with the following schedule:

(1) Five years. The following records shall be maintained for a minimum of five years:

(i) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater,

(ii) Records of driver verified positive controlled substances test results,

(iii) Documentation of refusals to take required alcohol and/or controlled substances tests,

(iv) Driver evaluation and referrals,

(v) Calibration documentation,

(vi) Records related to the administration of the alcohol and controlled substances testing programs, and

(vii) A copy of each annual calendar year summary required by §382.403.

(2) Two years. Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).

(3) One year. Records of negative and canceled controlled substances test results (as defined in part 40 of this title) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.

(4) Indefinite period. Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions.

(c) Types of records. The following specific types of records shall be maintained. "Documents generated" are documents that may have to be prepared under a requirement of this part. If the record is required to be prepared, it must be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used;

(ii) Documents relating to the random selection process;

(iii) Calibration documentation for evidential breath testing devices;

(iv) Documentation of breath alcohol technician training;

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;

(vi) Documents generated in connection with decisions on post-accident tests;

(vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and

(viii) A copy of each annual calendar year summary as required by §382.403.

(2) Records related to a driver's test results:

(i) The employer's copy of the alcohol test form, including the results of the test;

(ii) The employer's copy of the controlled substances test chain of custody and control form;

(iii) Documents sent by the MRO to the employer, including those required by part 40, subpart G, of this title;

(iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this part;

(v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this part; and

(vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the employer:

(A) Must obtain in connection with the exception contained in §382.301, and

(B) Must obtain as required by §382.413.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance; and

(ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.

(5) Records related to education and training:

(i) Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;

(ii) Documentation of compliance with the requirements of §382.601, including the driver's signed receipt of education materials;

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;

(iv) Documentation of training for breath alcohol technicians as required by §40.213(a) of this title; and

(v) Certification that any training conducted under this part complies with the requirements for such training.

(6) Administrative records related to alcohol and controlled substances testing:

(i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third party service providers;

(ii) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s);

(iii) Semi-annual laboratory statistical summaries of urinalysis required by §40.111(a) of this title; and

(iv) The employer's alcohol and controlled substances testing policy and procedures.

(d) Location of records. All records required by this part shall be maintained as required by §390.31 of this subchapter and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Motor Carrier Safety Administration.

(e) OMB control number. (1) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and have been assigned OMB control number 2126-0012.

(2) The information collection requirements of this part are found in the following sections: Sections 382.105, 382.113, 382.301, 382.303, 382.305, 382.307, 382.401, 382.403, 382.405, 382.409, 382.411, 382.601, 382.603.

66 Fed. Reg. 43103, Aug. 17, 2001, as amended at 67 Fed. Reg. 61821, Oct. 2, 2002; 68 Fed. Reg. 75459, Dec. 31, 2003

§382.403 Reporting of results in a management information system.

(a) An employer shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(b) If an employer is notified, during the month of January, of a request by the Federal Motor Carrier Safety Administration to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the FMCSA by March 15 of that year. The employer shall ensure that the annual summary report is accurate and received by March 15 at the location that the FMCSA specifies in its request. The employer must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at §40.26 and appendix H to part 40). The employer may also use the electronic version of the MIS

form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission. For information on the electronic version of the form, see:
http://www.fmcsa.dot.gov/safetyprogs/drugs/engtesting.htm.

(c) When the report is submitted to the FMCSA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

(d) If you have a covered employee who performs multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for the same employer), count the employee only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Employers may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(e) A service agent (e.g., Consortia/Third party administrator as defined in 49 CFR 382.107) may prepare the MIS report on behalf of an employer. However, a company official (e.g., Designated employer representative) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

66 Fed. Reg. 43103, Aug. 17, 2001, as amended at 68 Fed. Reg. 75459, Dec. 31, 2003

§382.405 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this section, no employer shall release driver information that is contained in records required to be maintained under §382.401.

(b) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. The employer shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each employer shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(d) Each employer shall make available copies of all results for employer alcohol and/or controlled substances testing conducted under this part and any other information pertaining to the employer's alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a driver to the decision maker in a lawsuit, grievance, or administrative proceeding initiated by or on behalf of the individual, and arising from a positive DOT drug or alcohol test

or a refusal to test (including, but not limited to, adulterated or substituted test results) of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver). Additionally, an employer may disclose information in criminal or civil actions in accordance with §40.323(a)(2) of this title.

(h) An employer shall release information regarding a driver's records as directed by the specific written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's specific written consent as outlined in §40.321(b) of this title.

§382.407 Medical review officer notifications to the employer.

Medical review officers shall report the results of controlled substances tests to employers in accordance with the requirements of part 40, Subpart G, of this title.

§382.409 Medical review officer record retention for controlled substances.

(a) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of five years for verified positive controlled substances test results.

(b) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of one year for negative and canceled controlled substances test results.

(c) No person may obtain the individual controlled substances test results retained by a medical review officer or third party administrator, and no medical review officer or third party administrator shall release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph (c) shall prohibit a medical review officer or third party administrator from releasing, to the employer or to officials of the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances testing program under this part, the information delineated in part 40, Subpart G, of this title.

§382.411 Employer notifications.

(a) An employer shall notify a driver of the results of a pre-employment controlled substances test conducted under this part, if the driver requests such results within 60 calendar days of being notified of the disposition of the employment application. An employer shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this part if the test results are verified positive. The employer shall also inform the driver which controlled substance or substances were verified as positive.

(b) The designated employer representative shall make reasonable efforts to contact and request each driver who submitted a specimen under the employer's program, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

(c) The designated employer representative shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 72 hours.

§382.413 Inquiries for alcohol and controlled substances information from previous employers.

Employers shall request alcohol and controlled substances information from previous employers in accordance with the requirements of §40.25 of this title.

Subpart E—Consequences for Drivers Engaging in Substance Use-Related Conduct

§382.501 Removal from safety-sensitive function.

(a) Except as provided in subpart F of this part, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by subpart B of this part or an alcohol or controlled substances rule of another DOT agency.

(b) No employer shall permit any driver to perform safety-sensitive functions; including driving a commercial motor vehicle, if the employer has determined that the driver has violated this section.

(c) For purposes of this subpart, commercial motor vehicle means a commercial motor vehicle in commerce as defined in §382.107, and a commercial motor vehicle in interstate commerce as defined in part 390 of this subchapter.

§382.503 Required evaluation and testing.

No driver who has engaged in conduct prohibited by subpart B of this part shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title. No employer shall permit a driver who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title.

§382.505 Other alcohol-related conduct.

(a) No driver tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, including driving a commercial motor vehicle, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

§382.507 Penalties.

Any employer or driver who violates the requirements of this part shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b). In addition, any employer or driver who violates the requirements of 49 CFR part 40 shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b).

Subpart F—Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

§382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.

(a) General requirements. Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements.

(1) The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this part and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

(2) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

(b) Required content. The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the employer to answer driver questions about the materials;

(2) The categories of drivers who are subject to the provisions of this part;

(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;

(4) Specific information concerning driver conduct that is prohibited by this part;

(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under §382.303(d);

(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by §382.303(d);

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under part 40, subpart O, of this title;

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

(c) Optional provision. The materials supplied to drivers may also include information on additional employer policies with respect to the use of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(d) Certificate of receipt. Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

§382.603 Training for supervisors.

Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under §382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required.

§382.605 Referral, evaluation, and treatment.

The requirements for referral, evaluation, and treatment must be performed in accordance with 49 CFR part 40, Subpart O.

B. PART 655—PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT OPERATIONS

Contents

AUTHORITY: 49 U.S.C. 5331 (as amended); 49 CFR 1.91

SOURCE: 66 Fed. Reg. 42002, Aug. 9, 2001, unless otherwise noted.

Subpart A—General
§655.1 Purpose.

The purpose of this part is to establish programs to be implemented by employers that

receive financial assistance from the Federal Transit Administration (FTA) and by contractors of those employers, that are designed to help prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of prohibited drugs by employees who perform safety-sensitive functions.

§655.2 Overview.

(a) This part includes nine subparts. Subpart A of this part covers the general requirements of FTA's drug and alcohol testing programs. Subpart B of this part specifies the basic requirements of each employer's alcohol misuse and prohibited drug use program, including the elements required to be in each employer's testing program. Subpart C of this part describes prohibited drug use. Subpart D of this part describes prohibited alcohol use. Subpart E of this part describes the types of alcohol and drug tests to be conducted. Subpart F of this part addresses the testing procedural requirements mandated by the Omnibus Transportation Employee Testing Act of 1991, and as required in 49 CFR Part 40. Subpart G of this part lists the consequences for covered employees who engage in alcohol misuse or prohibited drug use. Subpart H of this part contains administrative matters, such as reports and recordkeeping requirements. Subpart I of this part specifies how a recipient certifies compliance with the rule.
(b) This part must be read in conjunction with 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

§655.3 Applicability.

(a) Except as specifically excluded in paragraphs (b), and (c) of this section, this part applies to:

(1) Each recipient and subrecipient receiving Federal assistance under 49 U.S.C. 5307, 5309, or 5311; and

(2) Any contractor of a recipient or subrecipient of Federal assistance under 49 U.S.C. 5307, 5309, 5311.

(b) A recipient operating a railroad regulated by the Federal Railroad Administration (FRA) shall follow 49 CFR Part 219 and §655.83 for its railroad operations, and shall follow this part for its non-railroad operations, if any.

(c) A recipient operating a ferryboat regulated by the United States Coast Guard (USCG) that satisfactorily complies with the testing requirements of 46 CFR Parts 4 and 16, and 33 CFR Part 95 shall be in concurrent compliance with the testing requirements of this part. This exception shall not apply to the provisions of section 655.45, or subparts G, or H of this part.
66 Fed. Reg. 42002, Aug. 9, 2001, as amended at 71 Fed. Reg. 69198, Nov. 30, 2006; 78 Fed. Reg. 37993, June 25, 2013

§655.4 Definitions.

For this part, the terms listed in this section have the following definitions. The definitions of additional terms used in this part but not listed in this section can be found in 49 CFR Part 40.

Accident means an occurrence associated with the operation of a vehicle, if as a result:

(1) An individual dies; or

(2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or

(3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or

(4) With respect to an occurrence in which the public transportation vehicle involved is a rail car, trolley car, trolley bus, or vessel, the public transportation vehicle is removed from operation.

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

Anti-drug program means a program to detect and deter the use of prohibited drugs as required by this part.

Certification means a recipient's written statement, authorized by the organization's governing board or other authorizing official that the recipient has complied with the provisions of this part. (See §655.82 and §655.83 for certification requirements.)

Contractor means a person or organization that provides a safety-sensitive service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered employee means a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to this part. A volunteer is a covered employee if:

(1) The volunteer is required to hold a commercial driver's license to operate the vehicle; or

(2) The volunteer performs a safety-sensitive function for an entity subject to this part and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

Disabling damage means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusion.* Damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.* (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or tail light damage.

(iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable.

DOT or *The Department* means the United States Department of Transportation.

DOT agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring drug and alcohol testing. See 14 CFR part 121, appendices I and J; 33 CFR part 95; 46 CFR parts 4, 5, and 16; and 49 CFR parts 199, 219, 382, and 655.

Employer means a recipient or other entity that provides public transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

FTA means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

Performing (a safety-sensitive function) means a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Positive rate for random drug testing means the number of verified positive results for

random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.,* positive, negative, and refusals) under this part.

Railroad means:

(1) All forms of non-highway ground transportation that run on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service that was operated by the Consolidated Rail Corporation as of January 1, 1979; and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

(2) Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Recipient means a person that receives Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311 directly from the Federal Government.

Refuse to submit means any circumstance outlined in 49 CFR 40.191 and 40.261.

Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

(1) Operating a revenue service vehicle, including when not in revenue service;

(2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;

(3) Controlling dispatch or movement of a revenue service vehicle;

(4) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. 5307 or 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. 5311 and contracts out such services;

(5) Carrying a firearm for security purposes.

Vehicle means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A public transportation vehicle is a vehicle used for public transportation or for ancillary services.

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of alcohol random screening tests (including refusals) conducted under this part.

66 Fed. Reg. 42002, Aug. 9, 2001, as amended at 68 Fed. Reg. 75462, Dec. 31, 2003; 78 Fed. Reg. 37993, June 25, 2013

§655.5 Stand-down waivers for drug testing.

(a) An employer subject to this part may petition the FTA for a waiver allowing the employer to stand down, per 49 CFR Part 40, an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.

(b) Each petition for a waiver must be in writing and include facts and justification to support the waiver. Each petition must satisfy the requirements for obtaining a waiver, as provided in 49 CFR 40.21.

(c) Each petition for a waiver must be submitted to the Office of Safety and Security, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW.

Washington, DC 20590.

(d) The Administrator may grant a waiver subject to 49 CFR 40.21(d).

§655.6 Preemption of state and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any state or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the state or local requirement and any requirement in this part is not possible; or

(2) Compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of state criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol misuse leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§655.7 Starting date for testing programs.

An employer must have an anti-drug and alcohol misuse testing program in place by the date the employer begins operations.

Subpart B—Program Requirements

§655.11 Requirement to establish an anti-drug use and alcohol misuse program.

Each employer shall establish an anti-drug use and alcohol misuse program consistent with the requirements of this part.

§655.12 Required elements of an anti-drug use and alcohol misuse program.

An anti-drug use and alcohol misuse program shall include the following:

(a) A statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace, including the consequences associated with prohibited drug use and alcohol misuse. This policy statement shall include all of the elements specified in §655.15. Each employer shall disseminate the policy consistent with the provisions of §655.16.

(b) An education and training program which meets the requirements of §655.14.

(c) A testing program, as described in Subparts C and D of this part, which meets the requirements of this part and 49 CFR Part 40.

(d) Procedures for referring a covered employee who has a verified positive drug test result or an alcohol concentration of 0.04 or greater to a Substance Abuse Professional, consistent with 49 CFR Part 40.

§655.13 [Reserved]

§655.14 Education and training programs.

Each employer shall establish an employee education and training program for all covered employees, including:

(a) *Education.* The education component shall include display and distribution to every covered employee of: informational material and a community service hot-line telephone number for employee assistance, if available.

(b) *Training*—(1) *Covered employees.* Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

(2) *Supervisors.* Supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of

training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§655.15 Policy statement contents.

The local governing board of the employer or operator shall adopt an anti-drug and alcohol misuse policy statement. The statement must be made available to each covered employee, and shall include the following:

(a) The identity of the person, office, branch and/or position designated by the employer to answer employee questions about the employer's anti-drug use and alcohol misuse programs.

(b) The categories of employees who are subject to the provisions of this part.

(c) Specific information concerning the behavior and conduct prohibited by this part.

(d) The specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part.

(e) The procedures that will be used to test for the presence of illegal drugs or alcohol misuse, protect the employee and the integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct covered employee.

(f) The requirement that a covered employee submit to drug and alcohol testing administered in accordance with this part.

(g) A description of the kind of behavior that constitutes a refusal to take a drug or alcohol test, and a statement that such a refusal constitutes a violation of the employer's policy.

(h) The consequences for a covered employee who has a verified positive drug or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater, or who refuses to submit to a test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional, as required by 49 CFR Part 40.

(i) The consequences, as set forth in §655.35 of subpart D, for a covered employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(j) The employer shall inform each covered employee if it implements elements of an anti-drug use or alcohol misuse program that are not required by this part. An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.

§655.16 Requirement to disseminate policy.

Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer's anti-drug and alcohol misuse policies and procedures.

§655.17 Notice requirement.

Before performing a drug or alcohol test under this part, each employer shall notify a covered employee that the test is required by this part. No employer shall falsely represent that a test is administered under this part.

§655.18-655.20 [Reserved]

Subpart C—Prohibited Drug Use

§655.21 Drug testing.

(a) An employer shall establish a program that provides testing for prohibited drugs and drug metabolites in the following circumstances: pre-employment, post-accident, reasonable suspicion, random, and return to duty/follow-up.

(b) When administering a drug test, an employer shall ensure that the following drugs are

tested for:

(1) Marijuana;

(2) Cocaine;

(3) Opioids[4]

(4) Amphetamines; and

(5) Phencyclidine.

(c) Consumption of these products is prohibited at all times.

§655.22-655.30 Reserved]

Subpart D—Prohibited Alcohol Use

§655.31 Alcohol testing.

(a) An employer shall establish a program that provides for testing for alcohol in the following circumstances: post-accident, reasonable suspicion, random, and return to duty/follow-up. An employer may also conduct pre-employment alcohol testing.

(b) Each employer shall prohibit a covered employee, while having an alcohol concentration of 0.04 or greater, from performing or continuing to perform a safety-sensitive function.

§655.32 On duty use.

Each employer shall prohibit a covered employee from using alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

§655.33 Pre-duty use.

(a) *General.* Each employer shall prohibit a covered employee from using alcohol within 4 hours prior to performing safety-sensitive functions. No employer having actual knowledge that a covered employee has used alcohol within four hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions.

(b) *On-call employees.* An employer shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include:

(1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function.

(2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.

§655.34 Use following an accident.

Each employer shall prohibit alcohol use by any covered employee required to take a

---

[4] On April 23, 2019, the DOT made minor technical corrections to the FTA and PHMSA regulations governing drug testing for safety- sensitive employees to ensure consistency with the recent amendments made to the Department of Transportation's regulation which added requirements to test for oxycodone, oxymorphone, hydrocodone, and hydromorphone to DOT-regulated drug testing programs. The changes make it necessary to refer to these substances, as well as the previously covered drugs morphine, 6- acetylmorphine, and codeine, by the more inclusive term ``opioids,'' rather than ``opiates.'' This rule amends the term in regulations to ensure that all DOT drug testing rules are consistent with one another. In addition, this rule makes a conforming amendment to include the term ``opioids'' in the wording of the Department's annual information collection requirement and clarifications to section 40.26 and Appendix H regarding the requirement for employers to follow the Department's instructions for the annual information collection.

post-accident alcohol test under §655.44 for eight hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.

§655.35 Other alcohol-related conduct.

(a) No employer shall permit a covered employee tested under the provisions of subpart E of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:

(1) The employee's alcohol concentration measures less than 0.02; or

(2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

§655.36-655.40 [Reserved]

Subpart E—Types of Testing

§655.41 Pre-employment drug testing.

(a)(1) Before allowing a covered employee or applicant to perform a safety-sensitive function for the first time, the employer must ensure that the employee takes a pre-employment drug test administered under this part with a verified negative result. An employer may not allow a covered employee, including an applicant, to perform a safety-sensitive function unless the employee takes a drug test administered under this part with a verified negative result.

(2) When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under this part, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in §655.62.

(b) An employer may not transfer an employee from a nonsafety-sensitive function to a safety-sensitive function until the employee takes a pre-employment drug test administered under this part with a verified negative result.

(c) If a pre-employment drug test is canceled, the employer shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result.

(d) When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result.

§655.42 Pre-employment alcohol testing.

An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, the employer must comply with the following requirements:

(a) The employer must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(b) The employer must treat all covered employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (*i.e.*, you must not test some covered employees and not others).

(c) The employer must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(d) The employer must conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40.

(e) The employer must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.02.

§655.43 Reasonable suspicion testing.

(a) An employer shall conduct a drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.

(b) An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor(s), or other company official(s) who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.

(c) Alcohol testing is authorized under this section only if the observations required by paragraph (b) of this section are made during, just preceding, or just after the period of the workday that the covered employee is required to be in compliance with this part. An employer may direct a covered employee to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(d) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (b) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (b) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

§655.44 Post-accident testing.

(a) Accidents. (1) *Fatal accidents.* (i) As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the public transportation vehicle at the time of the accident. Post-accident drug and alcohol testing of the operator is not required under this section if the covered employee is tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration rule 49 CFR 389.303(a)(1) or (b)(1).

(ii) The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(2) Nonfatal *accidents.* (i) As soon as practicable following an accident not involving the loss of human life in which a public transportation vehicle is involved, the employer shall drug and alcohol test each covered employee operating the public transportation vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(ii) If an alcohol test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and maintain the record. Records shall be submitted to FTA upon request of the Administrator.

(b) An employer shall ensure that a covered employee required to be drug tested under this section is tested as soon as practicable but within 32 hours of the accident.

(c) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing.

(d) The decision not to administer a drug and/or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test.

(e) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(f) The results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section provided such test conforms to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the employer. Such test results may be used only when the employer is unable to perform a post-accident test within the required period noted in paragraphs (a) and (b) of this section.

66 Fed. Reg. 42002, Aug. 9, 2001, as amended at 78 Fed. Reg. 37993, June 25, 2013

§655.45 Random testing.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees; the random alcohol testing rate shall be 10 percent. As provided in paragraph (b) of this section, this rate is subject to annual review by the Administrator.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug and alcohol testing is based, respectively, on the reported positive drug and alcohol violation rates for the entire industry. All information used for this determination is drawn from the drug and alcohol Management Information System (MIS) reports required by this part. In order to ensure reliability of the data, the Administrator shall consider the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry's verified positive results and violation rates. Each year, the Administrator will publish in the FEDERAL REGISTER the minimum annual percentage rates for random drug and alcohol testing of covered employees. The new minimum annual percentage rate for random drug and alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c) Rates for drug testing. (1) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered

employees if the Administrator determines that the data received under the reporting requirements of §655.72 for the two preceding consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(2) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of §655.72 for the calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug or random alcohol testing to 50 percent of all covered employees.

(d) Rates for alcohol testing. (1)(i) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of §655.72 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(ii) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of §655.72 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(2)(i) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of §655.72 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(ii) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of §655.72 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

(e) The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(f) The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rates for random drug and alcohol testing determined by the Administrator. If the employer conducts random drug and alcohol testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random drug and alcohol testing at the same minimum annual percentage rate under this part.

(g) Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed.

(h) Each employer shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceed to the test site immediately. If the employee

is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately.

(i) A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

(j) If a given covered employee is subject to random drug and alcohol testing under the testing rules of more than one DOT agency for the same employer, the employee shall be subject to random drug and alcohol testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(k) If an employer is required to conduct random drug and alcohol testing under the drug and alcohol testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

§655.46 Return to duty following refusal to submit to a test, verified positive drug test result and/or breath alcohol test result of 0.04 or greater.

Where a covered employee refuses to submit to a test, has a verified positive drug test result, and/or has a confirmed alcohol test result of 0.04 or greater, the employer, before returning the employee to duty to perform a safety-sensitive function, shall follow the procedures outlined in 49 CFR Part 40.

§655.47 Follow-up testing after returning to duty.

An employer shall conduct follow-up testing of each employee who returns to duty, as specified in 49 CFR Part 40, subpart O.

§655.48 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.

If an employer chooses to permit a covered employee to perform a safety-sensitive function within 8 hours of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04, the employer shall retest the covered employee to ensure compliance with the provisions of §655.35. The covered employee may not perform safety-sensitive functions unless the confirmation alcohol test result is less than 0.02.

§655.49 Refusal to submit to a drug or alcohol test.

(a) Each employer shall require a covered employee to submit to a post-accident drug and alcohol test required under §655.44, a random drug and alcohol test required under §655.45, a reasonable suspicion drug and alcohol test required under §655.43, or a follow-up drug and alcohol test required under §655.47. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

(b) When an employee refuses to submit to a drug or alcohol test, the employer shall follow the procedures outlined in 49 CFR Part 40.

§655.50 [Reserved]

Subpart F—Drug and Alcohol Testing Procedures

§655.51 Compliance with testing procedures requirements.

The drug and alcohol testing procedures in 49 CFR Part 40 apply to employers covered by this part, and must be read together with this part, unless expressly provided otherwise in this

part.

§655.52 Substance abuse professional (SAP).

The SAP must perform the functions in 49 CFR Part 40.

§655.53 Supervisor acting as collection site personnel.

An employer shall not permit an employee with direct or immediate supervisory responsibility or authority over another employee to serve as the urine collection person, breath alcohol technician, or saliva-testing technician for a drug or alcohol test of the employee.

§655.54-655.60 [Reserved]

Subpart G—Consequences

§655.61 Action when an employee has a verified positive drug test result or has a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a test.

(a) (1) Immediately after receiving notice from a medical review officer (MRO) or a consortium/third party administrator (C/TPA) that a covered employee has a verified positive drug test result, the employer shall require that the covered employee cease performing a safety-sensitive function.

(2) Immediately after receiving notice from a Breath Alcohol Technician (BAT) that a covered employee has a confirmed alcohol test result of 0.04 or greater, the employer shall require that the covered employee cease performing a safety-sensitive function.

(3) If an employee refuses to submit to a drug or alcohol test required by this part, the employer shall require that the covered employee cease performing a safety-sensitive function.

(b) Before allowing the covered employee to resume performing a safety-sensitive function, the employer shall ensure the employee meets the requirements of 49 CFR Part 40 for returning to duty, including taking a return to duty drug and/or alcohol test.

§655.62 Referral, evaluation, and treatment.

If a covered employee has a verified positive drug test result, or has a confirmed alcohol test of 0.04 or greater, or refuses to submit to a drug or alcohol test required by this part, the employer shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs.

§655.63-655.70 [Reserved]

Subpart H—Administrative Requirements

§655.71 Retention of records.

(a) *General requirement.* An employer shall maintain records of its anti-drug and alcohol misuse program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* In determining compliance with the retention period requirement, each record shall be maintained for the specified minimum period of time as measured from the date of the creation of the record. Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of covered employee verified positive drug or alcohol test results, documentation of refusals to take required drug or alcohol tests, and covered employee referrals to the substance abuse professional, and copies of annual MIS reports submitted to FTA.

(2) *Two years.* Records related to the collection process and employee training.

(3) One *year.* Records of negative drug or alcohol test results.

(c) Types *of records.* The following specific records must be maintained:

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol tests.

(iv) Documents generated in connection with decisions on post-accident drug and alcohol testing.

(v) MRO documents verifying existence of a medical explanation of the inability of a covered employee to provide an adequate urine or breathe sample.

(2) Records related to test results:

(i) The employer's copy of the custody and control form.

(ii) Documents related to the refusal of any covered employee to submit to a test required by this part.

(iii) Documents presented by a covered employee to dispute the result of a test administered under this part.

(3) Records related to referral and return to duty and follow-up testing: Records concerning a covered employee's entry into and completion of the treatment program recommended by the substance abuse professional.

(4) Records related to employee training:

(i) Training materials on drug use awareness and alcohol misuse, including a copy of the employer's policy on prohibited drug use and alcohol misuse.

(ii) Names of covered employees attending training on prohibited drug use and alcohol misuse and the dates and times of such training.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

(5) Copies of annual MIS reports submitted to FTA.

§655.72 Reporting of results in a management information system.

(a) Each recipient shall annually prepare and maintain a summary of the results of its anti-drug and alcohol misuse testing programs performed under this part during the previous calendar year.

(b) When requested by FTA, each recipient shall submit to FTA's Office of Safety and Security, or its designated agent, by March 15, a report covering the previous calendar year (January 1 through December 31) summarizing the results of its anti-drug and alcohol misuse programs.

(c) Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf.

(d) As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40, §40.25 and appendix H. You may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, see: *http://transit-safety.volpe.dot.gov/DAMIS.*

(e) To calculate the total number of covered employees eligible for random testing throughout the year, as an employer, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered employees must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis. As an employer, you may use a service agent (e.g., C/TPA) to perform random selections for you; and your covered employees may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.

(f) If you have a covered employee who performs multi-DOT agency functions (e.g., an employee drives a paratransit vehicle and performs pipeline maintenance duties for you), count the employee only on the MIS report for the DOT agency under which he or she is random tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Employers may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(g) A service agent (e.g., Consortia/Third Party Administrator as defined in 49 CFR part 40) may prepare the MIS report on behalf of an employer. However, a company official (e.g., Designated Employer Representative as defined in 49 CFR part 40) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

66 Fed. Reg. 42002, Aug. 9, 2001, as amended at 68 Fed. Reg. 75462, Dec. 31, 2003

§655.73 Access to facilities and records.

(a) Except as required by law, or expressly authorized or required in this section, no employer may release information pertaining to a covered employee that is contained in records required to be maintained by §655.71.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs or misuse of alcohol, including any records pertaining to his or her drug or alcohol tests. The employer shall provide promptly the records requested by the employee. Access to a covered employee's records shall not be contingent upon the employer's receipt of payment for the production of those records.

(c) An employer shall permit access to all facilities utilized and records compiled in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or to a State oversight agency authorized to oversee rail fixed guideway systems.

(d) An employer shall disclose data for its drug and alcohol testing programs, and any other information pertaining to the employer's anti-drug and alcohol misuse programs required to be maintained by this part, to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee or to a State oversight agency authorized to oversee rail fixed guideway systems, upon the Secretary's request or the respective agency's request.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's drug or alcohol testing related to the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written

request from the covered employee. Subsequent disclosure by the employer is permitted only as expressly authorized by the terms of the covered employee's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug or alcohol test under this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee.)

(h) An employer shall release information regarding a covered employee's record as directed by the specific, written consent of the employee authorizing release of the information to an identified person.

(i) An employer may disclose drug and alcohol testing information required to be maintained under this part, pertaining to a covered employee, to the State oversight agency or grantee required to certify to FTA compliance with the drug and alcohol testing procedures of 49 CFR parts 40 and 655.

§655.74-655.80 [Reserved]

Subpart I—Certifying Compliance

§655.81 Grantee oversight responsibility.

A recipient shall ensure that a subrecipient or contractor who receives 49 U.S.C. 5307, 5309, or 5311 funds directly from the recipient complies with this part.

78 Fed. Reg. 37993, June 25, 2013

§655.82 Compliance as a condition of financial assistance.

(a) A recipient shall not be eligible for Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311, if a recipient fails to establish an anti-drug and alcohol misuse program in compliance with this part.

(b) If the Administrator determines that a recipient that receives Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311 is not in compliance with this part, the Administrator may bar the recipient from receiving Federal financial assistance in an amount the Administrator considers appropriate.

(c) A recipient is subject to criminal sanctions and fines for false statements or misrepresentations under 18 U.S.C. 1001.

(d) Notwithstanding §655.3, a recipient operating a ferryboat regulated by the USCG who fails to comply with the USCG chemical and alcohol testing requirements, shall be in noncompliance with this part and may be barred from receiving Federal financial assistance in an amount the Administrator considers appropriate.

78 Fed. Reg. 37993, June 25, 2013

§655.83 Requirement to certify compliance.

(a) A recipient of Federal financial assistance under section 5307, 5309, or 5311 shall annually certify compliance with this part to the applicable FTA Regional Office.

(b) A certification must be authorized by the organization's governing board or other authorizing official, and must be signed by a party specifically authorized to do so.

(c) Recipients, including a State, that administers 49 U.S.C. 5307, 5309, or 5311 Federal financial assistance to subrecipients and contractors, shall annually certify compliance with the requirements of this part, on behalf of its applicable subrecipient or contractor to the applicable FTA Regional Office. A recipient administering section 5307, 5309, or 5311 Federal funding may suspend a subrecipient or contractor from receiving Federal transit funds for noncompliance

with this part.
66 Fed. Reg. 42002, Aug. 9, 2001, as amended at 71 Fed. Reg. 69198, Nov. 30, 2006; 78 Fed. Reg. 37993, June 25, 2013

C:--PART 40--PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

This sets forth the procedures which must be followed in performing the alcohol and drug tests.

Subpart A--Administrative Provisions

§40.1 Who does this regulation cover?
§40.3 What do the terms used in this regulation mean?
§40.5 Who issues authoritative interpretations of this regulation?
§40.7 How can you get an exemption from a requirement in this regulation?

Subpart B--Employer Responsibilities

§40.11 What are the general responsibilities of employers under this regulation?
§40.13 How do DOT drug and alcohol tests relate to non-DOT tests?
§40.15 May an employer use a service agent to meet DOT drug and alcohol testing requirements?
§40.17 Is an employer responsible for obtaining information from its service agents?
§40.19 [Reserved]
§40.21 May an employer stand down an employee before the MRO has completed the verification process?
§40.23 What actions do employers take after receiving verified test results?
§40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?
§40.27 Where is other information on employer responsibilities found in this regulation?

Subpart C--Urine Collection Personnel

§40.31 Who may collect urine specimens for DOT drug testing?
§40.33 What training requirements must a collector meet?
§40.35 What information about the DER must employers provide to collectors?
§40.37 Where is other information on the role of collectors found in this regulation?

Subpart D--Collection Sites, Forms, Equipment and Supplies Used in DOT Urine Collections

§40.41 Where does a urine collection for a DOT drug test take place?
§40.43 What steps must operators of collection sites take to protect the security and integrity of urine collections?
§40.45 What form is used to document a DOT urine collection?

Subpart I--Problems in Drug Tests

Subpart J--Alcohol Testing Personnel

Subpart K--Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing

Subpart L--Alcohol Screening Tests

Subpart M--Alcohol Confirmation Tests

Subpart N--Problems in Alcohol Testing

Subpart O--Substance Abuse Professionals and the Return-to-Duty Process

Subpart A--Administrative Provisions

§40.1 -- Who does this regulation cover?

(a) This part tells all parties who conduct drug and alcohol tests required by Department of Transportation (DOT) agency regulations how to conduct these tests and what procedures to use.

(b) This part concerns the activities of transportation employers, safety-sensitive transportation employees (including self-employed individuals, contractors and volunteers as covered by DOT agency regulations), and service agents.

(c) Nothing in this part is intended to supersede or conflict with the implementation of the Federal Railroad Administration's post-accident testing program (*See,* 49 CFR 219.200).

§40.3 -- What do the terms used in this regulation mean?

In this part, the terms listed in this section have the following meanings:

Adulterated specimen. A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Affiliate. Persons are affiliates of one another if, directly or indirectly, one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to: interlocking management or ownership; shared interest among family members; shared facilities or equipment; or common use of employees. Following the issuance of a public interest exclusion, an organization having the same or similar management, ownership, or principal employees as the service agent concerning whom a public interest exclusion is in effect is regarded as an affiliate. This definition is used in connection with the public interest exclusion procedures of Subpart R of this part.

Air blank. In evidential breath testing devices (EBTs) using gas chromatography technology, a reading of the device's internal standard. In all other EBTs, a reading of ambient air containing no alcohol.

Alcohol. The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.

Alcohol concentration. The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this part.

Alcohol confirmation test. A subsequent test using an EBT, following a screening test with a result of 0.02 or greater, that provides quantitative data about the alcohol concentration.

Alcohol screening device (ASD). A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.
Alcohol screening test. An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.
Alcohol testing site. A place selected by the employer where employees present themselves for the purpose of providing breath or saliva for an alcohol test.
Alcohol use. The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.
Blind specimen or blind performance test specimen. A specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from an employee specimen.
Breath Alcohol Technician (BAT). A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.
Cancelled test. A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.
Chain of custody. The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed.
This procedure uses the Federal Drug Testing Custody and Control Form (CCF).
Collection container. A container into which the employee urinates to provide the specimen for a drug test.
Collection site. A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test.
Collector. A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the CCF.
Confirmation (or confirmatory) drug test. A second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.
Confirmation (or confirmatory) validity test. A second test performed on a urine specimen to further support a validity test result.
Confirmed drug test. A confirmation test result received by an MRO from a laboratory.
Consortium/Third-party administrator (C/TPA). A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members. C/TPAs are not "employers" for purposes of this part.
Continuing education. Training for medical review officers (MROs) and substance abuse professionals (SAPs) who have completed qualification training and are performing MRO or SAP functions, designed to keep MROs and SAPs current on changes and developments in the DOT drug and alcohol testing program.
Designated employer representative (DER). An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The DER also receives test results and other

communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs.

Dilute specimen. A specimen with creatinine and specific gravity values that are lower than expected for human urine.

DOT, The Department, DOT agency. These terms encompass all DOT agencies, including, but not limited to, the United States Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Material Safety Administration(PHMSA), and the Office of the Secretary (OST). These terms include any designee of a DOT agency.

Drugs. The drugs for which tests are required under this part and DOT agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

Employee. Any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to pre-employment testing. For purposes of drug testing under this part, the term employee has the same meaning as the term "donor" as found on CCF and related guidance materials produced by the Department of Health and Human Services.

Employer. A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with this part. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of this part.

Error Correction Training. Training provided to BATs, collectors, and screening test technicians (STTs) following an error that resulted in the cancellation of a drug or alcohol test. Error correction training must be provided in person or by a means that provides real-time observation and interaction between the instructor and trainee.

Evidential Breath Testing Device (EBT). A device approved by NHTSA for the evidential testing of breath at the.02 and.04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices" and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.

HHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

Initial drug test. The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial validity test. The first test used to determine if a specimen is adulterated, diluted, or substituted.

Laboratory. Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part. (The HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs are available on the internet at *http://www.health.org/workpl.htm* or from the Division of Workplace Programs, 5600 Fishers Lane, Rockwall II Building, Suite 815, Rockville, MD 20857.)

Medical Review Officer (MRO). A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.
Office of Drug and Alcohol Policy and Compliance (ODAPC). The office in the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department and providing information concerning the implementation of this part.
Primary specimen. In drug testing, the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing. The primary specimen is distinguished from the split specimen, defined in this section.
Qualification Training. The training required in order for a collector, BAT, MRO, SAP, or STT to be qualified to perform their functions in the DOT drug and alcohol testing program. Qualification training may be provided by any appropriate means (*e.g.,* classroom instruction, internet application, CD-ROM, video).
Refresher Training. The training required periodically for qualified collectors, BATs, and STTs to review basic requirements and provide instruction concerning changes in technology (*e.g.,* new testing methods that may be authorized) and amendments, interpretations, guidance, and issues concerning this part and DOT agency drug and alcohol testing regulations. Refresher training can be provided by any appropriate means (*e.g.,* classroom instruction, internet application, CD-ROM, video).
Screening Test Technician (STT). A person who instructs and assists employees in the alcohol testing process and operates an ASD.
Secretary. The Secretary of Transportation or the Secretary's designee.
Service agent. Any person or entity, other than an employee of the employer, who provides services specified under this part to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of this part. Service agents are not employers for purposes of this part.
Shipping container. A container that is used for transporting and protecting urine specimen bottles and associated documents from the collection site to the laboratory.
Specimen bottle. The bottle that, after being sealed and labeled according to the procedures in this part, is used to hold the urine specimen during transportation to the laboratory.
Split specimen. In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.
Stand-down. The practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.
Substance Abuse Professional (SAP). A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.
Substituted specimen. A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

Verified test. A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

§40.5 -- Who issues authoritative interpretations of this regulation?

ODAPC and the DOT Office of General Counsel (OGC) provide written interpretations of the provisions of this part. These written DOT interpretations are the only official and authoritative interpretations concerning the provisions of this part. DOT agencies may incorporate ODAPC/OGC interpretations in written guidance they issue concerning drug and alcohol testing matters. Only Part 40 interpretations issued after August 1, 2001, are considered valid.

§40.7 -- How can you get an exemption from a requirement in this regulation?

(a) If you want an exemption from any provision of this part, you must request it in writing from the Office of the Secretary of Transportation, under the provisions and standards of 49 CFR Part 5. You must send requests for an exemption to the following address: Department of Transportation, Deputy Assistant General Counsel for Regulation and Enforcement, 1200 New Jersey Ave., S.E., Washington, DC 20590.

(b) Under the standards of 49 CFR part 5, we will grant the request only if the request documents special or exceptional circumstances, not likely to be generally applicable and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impracticable.

(c) If we grant you an exemption, you must agree to take steps we specify to comply with the intent of the provision from which an exemption is granted.

(d) We will issue written responses to all exemption requests.

Subpart B--Employer Responsibilities

§40.11 -- What are the general responsibilities of employers under this regulation?

(a) As an employer, you are responsible for meeting all applicable requirements and procedures of this part.

(b) You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.

(c) All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug and alcohol testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.

§40.13 -- How do DOT drug and alcohol tests relate to non-DOT tests?

(a) DOT tests must be completely separate from non-DOT tests in all respects.

(b) DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. For example, you must discard any excess urine left over from a DOT test and collect a separate void for the subsequent non-DOT test.

(c) Except as provided in paragraph (d) of this section, you must not perform any tests on DOT urine or breath specimens other than those specifically authorized by this part or DOT agency regulations. For example, you may not test a DOT urine specimen for additional drugs, and a laboratory is prohibited from making a DOT urine specimen available for a DNA test or other types of specimen identity testing.

(d) The single exception to paragraph (c) of this section is when a DOT drug test collection is conducted as part of a physical examination required by DOT agency regulations. It is permissible to conduct required medical tests related to this physical examination (*e.g.,* for

glucose) on any urine remaining in the collection container after the drug test urine specimens have been sealed into the specimen bottles.

(e) No one is permitted to change or disregard the results of DOT tests based on the results of non-DOT tests. For example, as an employer you must not disregard a verified positive DOT drug test result because the employee presents a negative test result from a blood or urine specimen collected by the employee's physician or a DNA test result purporting to question the identity of the DOT specimen.

(f) As an employer, you must not use the CCF or the ATF in your non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. You also must always use the CCF and ATF for all your DOT-mandated drug and alcohol tests.

§40.15 -- May an employer use a service agent to meet DOT drug and alcohol testing requirements?

(a) As an employer, you may use a service agent to perform the tasks needed to comply with this part and DOT agency drug and alcohol testing regulations, consistent with the requirements of Subpart Q and other applicable provisions of this part.

(b) As an employer, you are responsible for ensuring that the service agents you use meet the qualifications set forth in this part (*e.g.,* §40.121 for MROs). You may require service agent to show you documentation that they meet the requirements of this part (*e.g.,* documentation of MRO qualifications required by §40.121(e)).

(c) You remain responsible for compliance with all applicable requirements of this part and other DOT drug and alcohol testing regulations, even when you use a service agent. If you violate this part or other DOT drug and alcohol testing regulations because a service agent has not provided services as our rules require, a DOT agency can subject you to sanctions. Your good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency in which your alleged noncompliance with this part or a DOT agency drug and alcohol regulation may have resulted from the service agent's conduct.

(d) As an employer, you must not permit a service agent to act as your DER.

§**40.17 -- Is an employer responsible for obtaining information from its service agents?**

Yes, as an employer, you are responsible for obtaining information required by this part from your service agents. This is true whether or not you choose to use a C/TPA as an intermediary in transmitting information to you. For example, suppose an applicant for a safety-sensitive job takes a pre-employment drug test, but there is a significant delay in your receipt of the test result from an MRO or C/TPA. You must not assume that "no news is good news" and permit the applicant to perform safety-sensitive duties before receiving the result. This is a violation of the Department's regulations.

§40.19 -- [Reserved]

§40.21 -- May an employer stand down an employee before the MRO has completed the verification process?

(a) As an employer, you are prohibited from standing employees down, except consistent with a waiver a DOT agency grants under this section.

(b) You may make a request to the concerned DOT agency for a waiver from the prohibition of paragraph (a) of this section. Such a waiver, if granted, permits you to stand an employee down following the MRO's receipt of a laboratory report of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test pertaining to the employee.

(1) For this purpose, the concerned DOT agency is the one whose drug and alcohol testing rules apply to the majority of the covered employees in your organization. The concerned DOT agency uses its applicable procedures for considering requests for waivers.

(2) Before taking action on a waiver request, the concerned DOT agency coordinates with other DOT agencies that regulate the employer's other covered employees.

(3) The concerned DOT agency provides a written response to each employer that petitions for a waiver, setting forth the reasons for the agency's decision on the waiver request.

(c) Your request for a waiver must include, as a minimum, the following elements:

(1) Information about your organization:

(i) Your determination that standing employees down is necessary for safety in your organization and a statement of your basis for it, including any data on safety problems or incidents that could have been prevented if a stand-down procedure had been in place;

(ii) Data showing the number of confirmed laboratory positive, adulterated, and substituted test results for your employees over the two calendar years preceding your waiver request, and the number and percentage of those test results that were verified positive, adulterated, or substituted by the MRO;

(iii) Information about the work situation of the employees subject to stand-down, including a description of the size and organization of the unit(s) in which the employees work, the process through which employees will be informed of the stand-down, whether there is an in-house MRO, and whether your organization has a medical disqualification or stand-down policy for employees in situations other than drug and alcohol testing; and

(iv) A statement of which DOT agencies regulate your employees.

(2) Your proposed written company policy concerning stand-down, which must include the following elements:

(i) Your assurance that you will distribute copies of your written policy to all employees that it covers;

(ii) Your means of ensuring that no information about the confirmed positive, adulterated, or substituted test result or the reason for the employee's temporary removal from performance of safety-sensitive functions becomes available, directly or indirectly, to anyone in your organization (or subsequently to another employer) other than the employee, the MRO and the DER;

(iii) Your means of ensuring that all covered employees in a particular job category in your organization are treated the same way with respect to stand-down;

(iv) Your means of ensuring that a covered employee will be subject to stand-down only with respect to the actual performance of safety-sensitive duties;

(v) Your means of ensuring that you will not take any action adversely affecting the employee's pay and benefits pending the completion of the MRO's verification process. This includes continuing to pay the employee during the period of the stand-down in the same way you would have paid him or her had he or she not been stood down;

(vi) Your means of ensuring that the verification process will commence no later than the time an employee is temporarily removed from the performance of safety-sensitive functions and that the period of stand-down for any employee will not exceed five days, unless you are informed in writing by the MRO that a longer period is needed to complete the verification process; and

(vii) Your means of ensuring that, in the event that the MRO verifies the test negative or cancels it-

(A) You return the employee immediately to the performance of safety-sensitive duties;

(B) The employee suffers no adverse personnel or financial consequences as a result; and

(C) You maintain no individually identifiable record that the employee had a confirmed laboratory positive, adulterated, or substituted test result (*i.e.*, you maintain a record of the test only as a negative or cancelled test).

(d) The Administrator of the concerned DOT agency, or his or her designee, may grant a waiver request only if he or she determines that, in the context of your organization, there is a high probability that the procedures you propose will effectively enhance safety and protect the interests of employees in fairness and confidentiality.

(1) The Administrator, or his or her designee, may impose any conditions he or she deems appropriate on the grant of a waiver.

(2) The Administrator, or his or her designee, may immediately suspend or revoke the waiver if he or she determines that you have failed to protect effectively the interests of employees in fairness and confidentiality, that you have failed to comply with the requirements of this section, or that you have failed to comply with any other conditions the DOT agency has attached to the waiver.

(e) You must not stand employees down in the absence of a waiver, or inconsistent with the terms of your waiver. If you do, you are in of this part and DOT agency drug testing regulations, and you are subject to enforcement action by the DOT agency just as you are for other violations of this part and DOT agency rules.

§40.23 -- What actions do employers take after receiving verified test results?

(a) As an employer who receives a verified positive drug test result, you must immediately remove the employee involved from performing safety-sensitive functions. You must take this action upon receiving the initial report of the verified positive test result. Do not wait to receive the written report or the result of a split specimen test.

(b) As an employer who receives a verified adulterated or substituted drug test result, you must consider this a refusal to test and immediately remove the employee involved from performing safety-sensitive functions. You must take this action on receiving the initial report of the verified adulterated or substituted test result. Do not wait to receive the written report or the result of a split specimen test.

(c) As an employer who receives an alcohol test result of 0.04 or higher, you must immediately remove the employee involved from performing safety-sensitive functions. If you receive an alcohol test result of 0.02-0.39, you must temporarily remove the employee involved from performing safety-sensitive functions, as provided in applicable DOT agency regulations. Do not wait to receive the written report of the result of the test.

(d) As an employer, when an employee has a verified positive, adulterated, or substituted test result, or has otherwise violated a DOT agency drug and alcohol regulation, you must not return the employee to the performance of safety-sensitive functions until or unless the employee successfully completes the return-to-duty process of Subpart O of this part.

(e) As an employer who receives a drug test result indicating that the employee's specimen was dilute, take action as provided in §40.197.

(f) As an employer who receives a drug test result indicating that the employee's specimen was invalid and that a second collection must take place under direct observation-

(1) You must immediately direct the employee to provide a new specimen under direct observation.

(2) You must not attach consequences to the finding that the test was invalid other than collecting a new specimen under direct observation.

(3) You must not give any advance notice of this test requirement to the employee.

(4) You must instruct the collector to note on the CCF the same reason (*e.g.* random test, post-accident test) as for the original collection.

(g) As an employer who receives a cancelled test result when a negative result is required (*e.g.*, pre-employment, return-to-duty, or follow-up test), you must direct the employee to provide another specimen immediately.

(h) As an employer, you may also be required to take additional actions required by DOT agency regulations (*e.g.*, FAA rules require some positive drug tests to be reported to the Federal Air Surgeon).

(i) As an employer, you must not alter a drug or alcohol test result transmitted to you by an MRO, BAT, or C/TPA.

§40.25 -- Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?

(a) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (*i.e.*, a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.

(b) You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

(1) Alcohol tests with a result of 0.04 or higher alcohol concentration;

(2) Verified positive drug tests;

(3) Refusals to be tested (including verified adulterated or substituted drug test results);

(4) Other violations of DOT agency drug and alcohol testing regulations; and

(5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-do-duty process (*e.g.*, an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.

(c) The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.

(d) If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.

(e) If you obtain information that the employee has violated a DOT agency drug and alcohol regulation, you must not use the employee to perform safety-sensitive functions unless you also obtain information that the employee has subsequently complied with the return-to-duty requirements of Subpart O of this part and DOT agency drug and alcohol regulations.

(f) You must provide to each of the employers from whom you request information under paragraph (b) of this section written consent for the release of the information cited in paragraph (a) of this section.

(g) The release of information under this section must be in any written form (*e.g.*, fax, e-mail, letter) that ensures confidentiality. As the previous employer, you must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.

(h) If you are an employer from whom information is requested under paragraph (b) of this section, you must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry.

(i) As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.

(j) As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (*See,* paragraphs (b)(5) and (e) of this section).

§40.27 -- Where is other information on employer responsibilities found in this regulation?

You can find other information on the responsibilities of employers in the following sections of this part:

§40.3-Definition; §40.35-Information about DERs that employers must provide collectors; §40.45-Modifying CCFs, Use of foreign-language CCFs; §40.47-Use of non-Federal forms for DOT tests or Federal CCFs for non-DOT tests; §40.67-Requirements for direct observation; §§40.103-40.105-Blind specimen requirements; §40.173-Responsibility to ensure test of split specimen; §40.193-Action in "shy bladder" situations; §40.197-Actions following report of a dilute specimen; §40.207-Actions following a report of a cancelled drug test; §40.209-Actions following and consequences of non-fatal flaws in drug tests; §40.215-Information about DERs that employers must provide BATs and STTs; §40.225-Modifying ATFs; use of foreign-language ATFs; §40.227-Use of non-DOT forms for DOT tests or DOT ATFs for non-DOT tests; §40.235 (c) and (d)-responsibility to follow instructions for ASDs; §40.255 (b)-receipt and storage of alcohol test information; §40.265 (c)-(e)-actions in "shy lung" situations; §40.267-Cancellation of alcohol tests; §40.271-Actions in "correctable flaw" situations in alcohol tests; §40.273-Actions following cancelled tests in alcohol tests; §40.275-Actions in "non-fatal flaw" situations in alcohol tests; §§40.287-40.289-Responsibilities concerning SAP services; §§40.295-40.297-Prohibition on seeking second SAP evaluation or changing SAP recommendation; §40.303-Responsibilities concerning aftercare recommendations; §40.305-Responsibilities concerning return-to-duty decision; §40.309-Responsibilities concerning follow-up tests; §40.321-General confidentiality requirement; §40.323-Release of confidential

information in litigation; §40.331-Other circumstances for the release of confidential information; §40.333-Record retention requirements; §40.345-Choice of who reports drug testing information to employers.

Subpart C--Urine Collection Personnel

§40.31 -- Who may collect urine specimens for DOT drug testing?

(a) Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing.

(b) A collector must meet training requirements of §40.33.

(c) As the immediate supervisor of an employee being tested, you may not act as the collector when that employee is tested, unless no other collector is available and you are permitted to do so under DOT agency drug and alcohol regulations.

(d) You must not act as the collector for the employee being tested if you work for a HHS-certified laboratory (*e.g.,* as a technician or accessioner) and could link the employee with a urine specimen, drug testing result, or laboratory report.

§40.33 -- What training requirements must a collector meet?

To be permitted to act as a collector in the DOT drug testing program, you must meet each of the requirements of this section:

(a) ***Basic information***. You must be knowledgeable about this part, the current "DOT Urine Specimen Collection Procedures Guidelines," and DOT agency regulations applicable to the employers for whom you perform collections, and you must keep current on any changes to these materials. The DOT Urine Specimen Collection Procedures Guidelines document is available from ODAPC (Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590, 202-366-3784, or on the ODAPC web site (http://www.dot.gov/ost/dapc).

(b) ***Qualification training***. You must receive qualification training meeting the requirements of this paragraph. Qualification training must provide instruction on the following subjects:

(1) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;

(2) "Problem" collections (*e.g.,* situations like "shy bladder" and attempts to tamper with a specimen);

(3) Fatal flaws, correctable flaws, and how to correct problems in collections; and

(4) The collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate;

(c) ***Initial Proficiency Demonstration***. Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections.

(1) The five mock collections must include two uneventful collection scenarios, one insufficient quantity of urine scenario, one temperature out of range scenario, and one scenario in which the employee refuses to sign the CCF and initial the specimen bottle tamper-evident seal.

(2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are "error-free." This person must be an individual who has demonstrated necessary knowledge, skills, and abilities by-

(i) Regularly conducting DOT drug test collections for a period of at least a year;
(ii) Conducting collector training under this part for a year; or
(iii) Successfully completing a "train the trainer" course.

(d) ***Schedule for qualification training and initial proficiency demonstration***. The following is the schedule for qualification training and the initial proficiency demonstration you must meet:

(1) If you became a collector before August 1, 2001, and you have already met the requirements of paragraphs (b) and (c) of this section, you do not have to meet them again.

(2) If you became a collector before August 1, 2001, and have yet to meet the requirements of paragraphs (b) and (c) of this section, you must do so no later than January 31, 2003.

(3) If you become a collector on or after August 1, 2001, you must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform collector functions.

(e) ***Refresher training***. No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.

(f) ***Error Correction Training***. If you make a mistake in the collection process that causes a test to be cancelled (*i.e.,* a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.

(i) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (c)(2) of this section.

(ii) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.

(iii) As part of the error correction training, you must demonstrate your proficiency in the collection procedures of this part by completing three consecutive error-free mock collections. The mock collections must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock collections were "error-free."

(g) ***Documentation***. You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

§40.35 -- What information about the DER must employers provide to collectors?As an employer, you must provide to collectors the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

§40.37 -- Where is other information on the role of collectors found in this regulation? You can find other information on the role and functions of collectors in the following sections of this part:

§40.3-Definition; §40.43-Steps to prepare and secure collection sites; §§40.45-40.47-Use of CCF; §§40.49-40.51-Use of collection kit and shipping materials; §§40.61-40.63-Preliminary steps in collections; §40.65-Role in checking specimens;
§40.67-Role in directly observed collections; §40.69-Role in monitored collections; §40.71-Role in split specimen collections; §40.73-Chain of custody completion and finishing the collection process; §40.103-Processing blind specimens; §40.191-Action in case of refusals to take test; §40.193-Action in "shy bladder" situations; §§40.199-40.205-Collector errors in tests, effects, and means of correction.

Subpart D--Collection Sites, Forms, Equipment and Supplies Used in DOT Urine Collections

§40.41 -- Where does a urine collection for a DOT drug test take place?

(a) A urine collection for a DOT drug test must take place in a collection site meeting the requirements of this section.

(b) If you are operating a collection site, you must ensure that it meets the security requirements of §40.43.

(c) If you are operating a collection site, you must have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, temporary storage, and shipping of urine specimens to a laboratory, and a suitable clean surface for writing.

(d) Your collection site must include a facility for urination described in either paragraph (e) or paragraph (f) of this section.

(e) The first, and preferred, type of facility for urination that a collection site may include is a single-toilet room, having a full-length privacy door, within which urination can occur.

(1) No one but the employee may be present in the room during the collection, except for the observer in the event of a directly observed collection.

(2) You must have a source of water for washing hands, that, if practicable, should be external to the closed room where urination occurs. If an external source is not available, you may meet this requirement by securing all sources of water and other substances that could be used for adulteration and substitution (*e.g.,* water faucets, soap dispensers) and providing moist towelettes outside the closed room.

(f) The second type of facility for urination that a collection site may include is a multistall restroom.

(1) Such a site must provide substantial visual privacy (*e.g.,* a toilet stall with a partial-length door) and meet all other applicable requirements of this section.

(2) If you use a multi-stall restroom, you must either-

(i) Secure all sources of water and other substances that could be used for adulteration and substitution (*e.g.*, water faucets, soap dispensers) and place bluing agent in all toilets or secure the toilets to prevent access; or

(ii) Conduct all collections in the facility as monitored collections (*See,* §40.69 for procedures). This is the only circumstance in which you may conduct a monitored collection.

(3) No one but the employee may be present in the multi-stall restroom during the collection, except for the monitor in the event of a monitored collection or the observer in the event of a directly observed collection.

(g) A collection site may be in a medical facility, a mobile facility (*e.g.*, a van), a dedicated collection facility, or any other location meeting the requirements of this section.

§40.43 -- What steps must operators of collection sites take to protect the security and integrity of urine collections?

(a) Collectors and operators of collection sites must take the steps listed in this section to prevent unauthorized access that could compromise the integrity of collections.

(b) As a collector, you must do the following before each collection to deter tampering with specimens:

(1) Secure any water sources or otherwise make them unavailable to employees (*e.g.*, turn off water inlet, tape handles to prevent opening faucets);

(2) Ensure that the water in the toilet is blue;

(3) Ensure that no soap, disinfectants, cleaning agents, or other possible adulterants are present;

(4) Inspect the site to ensure that no foreign or unauthorized substances are present;

(5) Tape or otherwise secure shut any movable toilet tank top, or put bluing in the tank;

(6) Ensure that undetected access (*e.g.*, through a door not in your view) is not possible;

(7) Secure areas and items (*e.g.*, ledges, trash receptacles, paper towel holders, under-sink areas) that appear suitable for concealing contaminants; and

(8) Recheck items in paragraphs (b)(1) through (7) of this section following each collection to ensure the site's continued integrity.

(c) If the collection site uses a facility normally used for other purposes, like a public rest room or hospital examining room, you must, as a collector, also ensure before the collection that:

(1) Access to collection materials and specimens is effectively restricted; and

(2) The facility is secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collector. Limited-access signs must be posted.

(d) As a collector, you must take the following additional steps to ensure security during the collection process:

(1) To avoid distraction that could compromise security, you are limited to conducting a collection for only one employee at a time. However, during the time one employee is in the period for drinking fluids in a "shy bladder" situation (*See,* §40.193(b)), you may conduct a collection for another employee.

(2) To the greatest extent you can, keep an employee's collection container within view of both you and the employee between the time the employee has urinated and the specimen is sealed.

(3) Ensure you are the only person in addition to the employee who handles the specimen before it is poured into the bottles and sealed with tamper-evident seals.

(4) In the time between when the employee gives you the specimen and when you seal the specimen, remain within the collection site.

(5) Maintain personal control over each specimen and CCF throughout the collection process.

(e) If you are operating a collection site, you must implement a policy and procedures to prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored.

(1) Only employees being tested, collectors and other collection site workers, DERs, employee and employer representatives authorized by the employer (*e.g.*, employer policy, collective bargaining agreement), and DOT agency representatives are authorized persons for purposes of this paragraph (e).

(2) Except for the observer in a directly observed collection or the monitor in the case of a monitored collection, you must not permit anyone to enter the urination facility in which employees provide specimens.

(3) You must ensure that all authorized persons are under the supervision of a collector at all times when permitted into the site.

(4) You or the collector may remove any person who obstructs, interferes with, or causes a delay in the collection process.

(f) If you are operating a collection site, you must minimize the number of persons handling specimens.

§40.45 -- What form is used to document a DOT urine collection?

(a) The Federal Drug Testing Custody and Control Form (CCF) must be used to document every urine collection required by the DOT drug testing program. The CCF must be a five-part carbonless manifold form. You may view this form on the Department's web site (http://www.dot.gov/ost/dapc) or the HHS web site (http://www.health.org/workpl.htm).

(b) As a participant in the DOT drug testing program, you are not permitted to modify or revise the CCF except as follows:

(1) You may include, in the area outside the border of the form, other information needed for billing or other purposes necessary to the collection process.

(2) The CCF must include the names, addresses, telephone numbers and fax numbers of the employer and the MRO, which may be preprinted, typed, or handwritten. The MRO information must include the specific physician's name and address, as opposed to only a generic clinic, health care organization, or company name. This information is required, and it is prohibited for an employer, collector, service agent or any other party to omit it. In addition, a C/TPA's name, address, fax number, and telephone number may be included, but is not required.

(3) As an employer, you may add the name of the DOT agency under whose authority the test occurred as part of the employer information.

(4) As a collector, you may use a CCF with your name, address, telephone number, and fax number preprinted, but under no circumstances may you sign the form before the collection event.

(c) Under no circumstances may the CCF transmit personal identifying information about an employee (other than a social security number (SSN) or other employee identification (ID) number) to a laboratory.

(d) As an employer, you may use an equivalent foreign-language version of the CCF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and collector understand and can use the form in that language.

§40.47 -- May employers use the CCF for non-DOT collections or non-Federal forms for DOT collections?

(a) No, as an employer, you are prohibited from using the CCF for non-DOT urine collections. You are also prohibited from using non-Federal forms for DOT urine collections. Doing either subjects you to enforcement action under DOT agency regulations.

(b) (1) In the rare case where the collector, either by mistake or as the only means to conduct a test under difficult circumstances (*e.g.*, post-accident or reasonable suspicion test with insufficient time to obtain the CCF), uses a non-Federal form for a DOT collection, the use of a non-Federal form does not present a reason for the laboratory to reject the specimen for testing or for an MRO to cancel the result.

(2) The use of the non-DOT form is a "correctable flaw." As an MRO, to correct the problem you must follow the procedures of §40.205(b)(2).

§40.49 -- What materials are used to collect urine specimens?

For each DOT drug test, you must use a collection kit meeting the requirements of **Appendix A** of this part.

§40.51 -- What materials are used to send urine specimens to the laboratory?

(a) Except as provided in paragraph (b) of this section, you must use a shipping container that adequately protects the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory.

(b) You are not required to use a shipping container if a laboratory courier hand-delivers the specimens from the collection site to the laboratory.

Subpart E--Urine Specimen Collections

§40.61 -- What are the preliminary steps in the collection process?

As the collector, you must take the following steps before actually beginning a collection:

(a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's work site, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test (*See,* §40.191(a)(1)).

(b) Ensure that, when the employee enters the collection site, you begin the testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or is unable to urinate or because an authorized employer or employee representative is delayed in arriving.

(1) If the employee is also going to take a DOT alcohol test, you must, to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins.

Example to Paragraph (b)(1): An employee enters the test site for both a drug and an alcohol test. Normally, the collector would wait until the BAT had completed the alcohol test process before beginning the drug test process. However, there are some situations in which an exception to this normal practice would be reasonable. One such situation might be if several people were waiting for the BAT to conduct alcohol tests, but a drug testing collector in the same facility were free. Someone waiting might be able to complete a drug test without unduly delaying his or her alcohol test. Collectors and BATs should work together, however, to ensure that post-accident and reasonable suspicion alcohol tests happen as soon as possible (*e.g.*, by moving the employee to the head of the line for alcohol tests).

(2) If the employee needs medical attention (*e.g.,* an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to collect a specimen.

(3) You must not collect, by catheterization or other means, urine from an unconscious employee to conduct a drug test under this part. Nor may you catheterize a conscious employee.

However, you must inform an employee who normally voids through self-catheterization that the employee is required to provide a specimen in that manner.

(4) If, as an employee, you normally void through self-catheterization, and decline to do so, this constitutes a refusal to test.

(c) Require the employee to provide positive identification. You must see a photo ID issued by the employer (other than in the case of an owner-operator or other self-employed individual) or a Federal, state, or local government (*e.g.,* a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.

(d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name, but does not have to include your picture, address, or telephone number.

(e) Explain the basic collection procedure to the employee, including showing the employee the instructions on the back of the CCF.

(f) Direct the employee to remove outer clothing (*e.g.,* coveralls, jacket, coat, hat) that could be used to conceal items or substances that could be used to tamper with a specimen. You must also direct the employee to leave these garments and any briefcase, purse, or other personal belongings with you or in a mutually agreeable location. You must advise the employee that failure to comply with your directions constitutes a refusal to test.

(1) If the employee asks for a receipt for any belongings left with you, you must provide one.

(2) You must allow the employee to keep his or her wallet.

(3) You must not ask the employee to remove other clothing (*e.g.,* shirts, pants, dresses, underwear), to remove all clothing, or to change into a hospital or examination gown (unless the urine collection is being accomplished simultaneously with a DOT agency-authorized medical examination).

(4) You must direct the employee to empty his or her pockets and display the items in them to ensure that no items are present which could be used to adulterate the specimen. If nothing is there that can be used to adulterate a specimen, the employee can place the items back into his or her pockets. As the employee, you must allow the collector to make this observation.

(5) If, in your duties under paragraph (f)(4) of this section, you find any material that could be used to tamper with a specimen, you must:

(i) Determine if the material appears to be brought to the collection site with the intent to alter the specimen, and, if it is, conduct a directly observed collection using direct observation procedures (*See,* §40.67); or

(ii) Determine if the material appears to be inadvertently brought to the collection site (*e.g.,* eye drops), secure and maintain it until the collection process is completed and conduct a normal (*i.e.,* unobserved) collection.

(g) You must instruct the employee not to list medications that he or she is currently taking on the CCF. (The employee may make notes of medications on the back of the employee copy of the form for his or her own convenience, but these notes must not be transmitted to anyone else.)

§40.63 -- What steps does the collector take in the collection process before the employee provides a urine specimen?

As the collector, you must take the following steps before the employee provides the urine specimen:

(a) Complete Step 1 of the CCF.

(b) Instruct the employee to wash and dry his or her hands at this time. You must tell the employee not to wash his or her hands again until after delivering the specimen to you. You must not give the employee any further access to water or other materials that could be used to adulterate or dilute a specimen.

(c) Select, or allow the employee to select, an individually wrapped or sealed collection container from collection kit materials. Either you or the employee, with both of you present, must unwrap or break the seal of the collection container. You must not unwrap or break the seal on any specimen bottle at this time. You must not allow the employee to take anything from the collection kit into the room used for urination except the collection container.

(d) Direct the employee to go into the room used for urination, provide a specimen of at least 45 mL, not flush the toilet, and return to you with the specimen as soon as the employee has completed the void.

(1) Except in the case of an observed or a monitored collection (*See,* §§40.67 and 40.69), neither you nor anyone else may go into the room with the employee.

(2) As the collector, you may set a reasonable time limit for voiding.

(e) You must pay careful attention to the employee during the entire collection process to note any conduct that clearly indicates an attempt to tamper with a specimen (*e.g.,* substitute urine in plain view or an attempt to bring into the collection site an adulterant or urine substitute). If you detect such conduct, you must require that a collection take place immediately under direct observation (*See,* §40.67) and note the conduct and the fact that the collection was observed in the "Remarks" line of the CCF (Step 2). You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

§40.65 -- What does the collector check for when the employee presents a specimen?

As a collector, you must check the following when the employee gives the collection container to you:

(a) ***Sufficiency of specimen***. You must check to ensure that the specimen contains at least 45 mL of urine.

(1) If it does not, you must follow "shy bladder" procedures (*See,* §40.193(b)).

(2) When you follow "shy bladder" procedures, you must discard the original specimen, unless another problem (*i.e.,* temperature out of range, signs of tampering) also exists.

(3) You are never permitted to combine urine collected from separate voids to create a specimen.

(4) You must discard any excess urine.

(b) ***Temperature***. You must check the temperature of the specimen no later than four minutes after the employee has given you the specimen.

(1) The acceptable temperature range is 32-38 [degrees] C/90-100 [degrees] F.

(2) You must determine the temperature of the specimen by reading the temperature strip attached to the collection container.

(3) If the specimen temperature is within the acceptable range, you must mark the "Yes" box on the CCF (Step 2).

(4) If the specimen temperature is outside the acceptable range, you must mark the "No" box and enter in the "Remarks" line (Step 2) your findings about the temperature.

(5) If the specimen temperature is outside the acceptable range, you must immediately conduct a new collection using direct observation procedures (*See,* §40.67).

(6) In a case where a specimen is collected under direct observation because of the temperature being out of range, you must process both the original specimen and the specimen collected using direct observation and send the two sets of specimens to the laboratory. This is true even in a case in which the original specimen has insufficient volume but the temperature is out of range. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

(7) In a case where the employee refuses to provide another specimen (*See,* §40.191(a)(3)) or refuses to provide another specimen under direct observation *See,* §40.191(a)(4)), you must notify the DER. As soon as you have notified the DER, you must discard any specimen the employee has provided previously during the collection procedure.

(c) ***Signs of tampering***. You must inspect the specimen for unusual color, presence of foreign objects or material, or other signs of tampering (*e.g.,* if you notice any unusual odor).

(1) If it is apparent from this inspection that the employee has tampered with the specimen (*e.g.,* blue dye in the specimen, excessive foaming when shaken, smell of bleach), you must immediately conduct a new collection using direct observation procedures *See,* §40.67).

(2) In a case where a specimen is collected under direct observation because of showing signs of tampering, you must process both the original specimen and the specimen collected using direct observation and send the two sets of specimens to the laboratory. This is true even in a case in which the original specimen has insufficient volume but it shows signs of tampering. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

(3) In a case where the employee refuses to provide another specimen (*See,* §40.191(a)(3)) or refuses to provide a specimen under direct observation (*See,* §40.193(a)(4)), you must notify the DER. As soon as you have notified the DER, you must discard any specimen the employee has provided previously during the collection procedure.

§40.67 -- When and how is a directly observed collection conducted?

(a) As an employer you must direct an immediate collection under direct observation with no advance notice to the employee, if:

(1) The laboratory reported to the MRO that a specimen is invalid, and the MRO reported to you that there was not an adequate medical explanation for the result; or

(2) The MRO reported to you that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed.

(b) As an employer, you may direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.

(c) As a collector, you must immediately conduct a collection under direct observation if:

(1) You are directed by the DER to do so (*See,* paragraphs (a) and (c) of this section); or

(2) You observed materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen (*See,* §§40.61(f)(5)(i) and 40.63(e)); or

(3) The temperature on the original specimen was out of range (*See,* §40.65(b)(5)); or (4) The original specimen appeared to have been tampered with (*See,* §40.65(c)(1)).

(d) (1) As the employer, you must explain to the employee the reason for a directly observed collection under paragraph (a) or (b) of this section.

(2) As the collector, you must explain to the employee the reason under this part for a directly observed collection under paragraphs (c)(2) through (4) of this section.

(e) As the collector, you must complete a new CCF for the directly observed collection.

(1) You must mark the "reason for test" block (Step 1) the same as for the first collection.

(2) You must check the "Observed, (Enter Remark)" box and enter the reason (*See,* §40.67(b)) in the "Remarks" line (Step 2).

(f) In a case where two sets of specimens are being sent to the laboratory because of suspected tampering with the specimen at the collection site, enter on the "Remarks" line of the CCF (Step 2) for each specimen a notation to this effect (*e.g.,* collection 1 of 2, or 2 of 2) and the specimen ID number of the other specimen.

(g) As the collector, you must ensure that the observer is the same gender as the employee. You must never permit an opposite gender person to act as the observer. The observer can be a different person from the collector and need not be a qualified collector.

(h) As the collector, if someone else is to observe the collection (*e.g.,* in order to ensure a same gender observer), you must verbally instruct that person to follow procedures at paragraphs (i) and (j) of this section. If you, the collector, are the observer, you too must follow these procedures.

(i) As the observer, you must watch the employee urinate into the collection container. Specifically, you are to watch the urine go from the employee's body into the collection container.

(j) As the observer but not the collector, you must not take the collection container from the employee, but you must observe the specimen as the employee takes it to the collector.

(k) As the collector, when someone else has acted as the observer, you must include the observer's name in the "Remarks" line of the CCF (Step 2).

(l) As the employee, if you decline to allow a directly observed collection required or permitted under this section to occur, this is a refusal to test.

§40.69 -- How is a monitored collection conducted?

(a) As the collector, you must secure the room being used for the monitored collection so that no one except the employee and the monitor can enter it until after the collection has been completed.

(b) As the collector, you must ensure that the monitor is the same gender as the employee, unless the monitor is a medical professional (*e.g.,* nurse, doctor, physician's assistant). The monitor can be a different person from the collector and need not be a qualified collector.

(c) As the collector, if someone else is to monitor the collection (*e.g.,* in order to ensure a same gender monitor), you must verbally instruct that person to follow procedures at paragraphs (d) and (e) of this section. If you, the collector, are the observer, you too must follow these procedures.

(d) As the monitor, you must not watch the employee urinate into the collection container. If you hear sounds or make other observations indicating an attempt to tamper with a specimen, there must be an additional collection under direct observation (*See,* §§40.63(e), 40.65(c), and 40.67(b)).

(e) As the monitor, you must ensure that the employee takes the collection container directly to the collector as soon as the employee has exited the enclosure.

(f) As the collector, when someone else has acted as the monitor, you must note that person's name in the "Remarks" line of the CCF (Step 2).

(g) As the employee being tested, if you decline to permit a collection authorized under this section to be monitored, it is a refusal to test.

§40.71 -- How does the collector prepare the specimens?

(a) All collections under DOT agency drug testing regulations must be split specimen collections.

(b) As the collector, you must take the following steps, in order, after the employee brings the urine specimen to you. You must take these steps in the presence of the employee.

(1) Check the box on the CCF (Step 2) indicating that this was a split specimen collection.

(2) You, not the employee, must first pour at least 30 mL of urine from the collection container into one specimen bottle, to be used for the primary specimen.

(3) You, not the employee, must then pour at least 15 mL of urine from the collection container into the second specimen bottle to be used for the split specimen.

(4) You, not the employee, must place and secure (*i.e.,* tighten or snap) the lids/caps on the bottles.

(5) You, not the employee, must seal the bottles by placing the tamper-evident bottle seals over the bottle caps/lids and down the sides of the bottles.

(6) You, not the employee, must then write the date on the tamper-evident bottle seals.

(7) You must then ensure that the employee initials the tamper-evident bottle seals for the purpose of certifying that the bottles contain the specimens he or she provided. If the employee fails or refuses to do so, you must note this in the "Remarks" line of the CCF (Step 2) and complete the collection process.

§40.73 -- How is the collection process completed?

(a) As the collector, you must do the following things to complete the collection process. You must complete the steps called for in paragraphs (a)(1) through (a)(7) of this section in the employee's presence.

(1) Direct the employee to read and sign the certification statement on Copy 2 (Step 5) of the CCF and provide date of birth, printed name, and day and evening contact telephone numbers. If the employee refuses to sign the CCF or to provide date of birth, printed name, or telephone numbers, you must note this in the "Remarks" line (Step 2) of the CCF, and complete the collection. If the employee refuses to fill out any information, you must, as a minimum, print the employee's name in the appropriate place.

(2) Complete the chain of custody on the CCF (Step 5) by printing your name (note: you may pre-print your name), recording the time and date of the collection, signing the statement, and entering the name of the delivery service transferring the specimen to the laboratory,

(3) Ensure that all copies of the CCF are legible and complete.

(4) Remove Copy 5 of the CCF and give it to the employee.

(5) Place the specimen bottles and Copy 1 of the CCF in the appropriate pouches of the plastic bag.

(6) Secure both pouches of the plastic bag.

(7) Advise the employee that he or she may leave the collection site.

(8) To prepare the sealed plastic bag containing the specimens and CCF for shipment you must:

(i) Place the sealed plastic bag in a shipping container (*e.g.,* standard courier box) designed to minimize the possibility of damage during shipment. (More than one sealed

plastic bag can be placed into a single shipping container if you are doing multiple collections.)

(ii) Seal the container as appropriate.

(iii) If a laboratory courier hand-delivers the specimens from the collection site to the laboratory, prepare the sealed plastic bag for shipment as directed by the courier service.

(9) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must fax or otherwise transmit these copies to the MRO and DER within 24 hours or during the next business day. Keep Copy 3 for at least 30 days, unless otherwise specified by applicable DOT agency regulations.

(b) As a collector or collection site, you must ensure that each specimen you collect is shipped to a laboratory as quickly as possible, but in any case within 24 hours or during the next business day.

Subpart F--Drug Testing Laboratories

§40.81 -- What laboratories may be used for DOT drug testing?

(a) As a drug testing laboratory located in the U.S., you are permitted to participate in DOT drug testing only if you are certified by HHS under the National Laboratory Certification Program (NLCP) for all testing required under this part.

(b) As a drug testing laboratory located in Canada or Mexico which is not certified by HHS under the NLCP, you are permitted to participate in DOT drug testing only if:

(1) The DOT, based on a written recommendation from HHS, has approved your laboratory as meeting HHS laboratory certification standards or deemed your laboratory fully equivalent to a laboratory meeting HHS laboratory certification standards for all testing required under this part; or

(2) The DOT, based on a written recommendation from HHS, has recognized a Canadian or Mexican certifying organization as having equivalent laboratory certification standards and procedures to those of HHS, and the Canadian or Mexican certifying organization has certified your laboratory under those equivalent standards and procedures.

(c) As a laboratory participating in the DOT drug testing program, you must comply with the requirements of this part. You must also comply with all applicable requirements of HHS in testing DOT specimens, whether or not the HHS requirements are explicitly stated in this part.

(d) If DOT determines that you are in noncompliance with this part, you could be subject to PIE proceedings under Subpart R of this part. If the Department issues a PIE with respect to you, you are ineligible to participate in the DOT drug testing program even if you continue to meet the requirements of paragraph (a) or (b) of this section.

§**40.83 -- How do laboratories process incoming specimens?**

As the laboratory, you must do the following when you receive a DOT specimen:

(a) You are authorized to receive only the laboratory copy of the CCF. You are not authorized to receive other copies of the CCF nor any copies of the alcohol testing form.

(b) You must comply with applicable provisions of the HHS Guidelines concerning accessioning and processing urine drug specimens.

(c) You must inspect each specimen and CCF for the following "fatal flaws:"

(1) The specimen ID numbers on the specimen bottle and the CCF do not match;

(2) The specimen bottle seal is broken or shows evidence of tampering, unless a split specimen can be re-designated (*See,* paragraph (g) of this section);

(3) The collector's printed name *and* signature are omitted from the CCF; and

(4) There is an insufficient amount of urine in the primary bottle for analysis, unless the specimens can be re-designated (*See,* paragraph (g) of this section).

(d) When you find a specimen meeting the criteria of paragraph (c) of this section, you must document your findings and stop the testing process. Report the result in accordance with §40.97(a)(3).

(e) You must inspect each specimen and CCF for the following "correctable flaws":

(1) The specimen temperature was not checked and the "Remarks" line did not contain an entry regarding the temperature being outside of range; and

(2) The collector's signature is omitted on the certification statement on the CCF.

(f) Upon finding that a specimen meets the criteria of paragraph (e) of this section, document the flaw and continue the testing process.

(1) In such a case, you must retain the specimen for a minimum of 5 business days from the date on which you initiated action to correct the flaw.

(2) You must then attempt to correct the flaw by following the procedures of §40.205(b).

(3) If the flaw is not corrected, report the result in accordance with §40. 97(a)(3).

(g) If the CCF is marked indicating that a split specimen collection was collected and if the split specimen does not accompany the primary, has leaked, or is otherwise unavailable for testing, you must still test the primary specimen and follow appropriate procedures outlined in §40.175(b) regarding the unavailability of the split specimen for testing.

(1) The primary specimen and the split specimen can be re-designated (*i.e.,* Bottle B is re-designated as Bottle A, and vice-versa) if:

(i) The primary specimen appears to have leaked out of its sealed bottle and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing; or

(ii) The primary specimen is labeled as Bottle B, and the split specimen as Bottle A; or

(iii) The laboratory opens the split specimen instead of the primary specimen, the primary specimen remains sealed, and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing; or

(iv) The primary specimen seal is broken but the split specimen remains sealed and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing.

(2) In situations outlined in paragraph (g)(1) of this section, the laboratory shall mark through the "A" and write "B," then initial and date the change. A corresponding change shall be made to the other bottle by marking through the "B" and writing "A," and initialing and dating the change.

(h) A notation shall be made on Copy 1 of the CCF (Step 5a) and on any laboratory internal chain of custody documents, as appropriate, for any fatal or correctable flaw.

§40.85 -- What drugs do laboratories test for?

As a laboratory, you must test for the following five drugs or classes of drugs in a DOT drug test. You must not test "DOT specimens" for any other drugs.

(a) Marijuana metabolites.

(b) Cocaine metabolites.

(c) Amphetamines.

(d) Opiate metabolites.

(e) Phencyclidine (PCP).

§40.87 -- What are the cutoff concentrations for initial and confirmation tests?

(a) As a laboratory, you must use the cutoff concentrations displayed in the following table for initial and confirmation drug tests. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

Type of drug or metabolite	Initial test	Confirmation test
(1) Marijuana metabolites	50	
(i) Delta-9-tetrahydrocanna-binol-9-carboxylic acid (THC)		15
(2) Cocaine metabolites (Benzoylecgonine)	300	150
(3) Phencyclidine (PCP)	25	25
(4) Amphetamines	1000	
(i) Amphetamine		500
(ii) Methamphetamine		500 (Specimen must also contain amphetamine at a concentration of greater than or equal to 200 ng/mL.)
(5) Opiate metabolites	2000	
(i) Codeine		2000
(ii) Morphine		2000
(iii) 6-acetylmorphine (6-AM)		10 (Test for 6-AM in the specimen. Conduct this test only when specimen contains morphine at a concentration greater than or equal to 2000 ng/mL.)

(b) On an initial drug test, you must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, you must conduct a confirmation test.

(c) On a confirmation drug test, you must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.

(d) You must report quantitative values for morphine or codeine at 15,000 ng/mL or above.

§40.89 -- What is validity testing, and are laboratories required to conduct it?

(a) Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

(b) As a laboratory, you must conduct validity testing.

§40.91 -- What validity tests must laboratories conduct on primary specimens?

As a laboratory, when you conduct validity testing under §40.89, you must conduct it in accordance with the requirements of this section.

(a) You must test each primary specimen for creatinine. You must also determine its specific gravity if you find that the creatinine concentration is less than 20 mg/dL.
(b) You must measure the pH of each primary specimen.
(c) You must test each primary specimen to determine if it contains substances that may be used to adulterate the specimen. Your tests must have the capability of determining whether any substance identified in current HHS requirements or specimen validity guidance is present in the specimen.
(d) If you suspect the presence of an interfering substance/adulterant that could make a test result invalid, but you are unable to identify it (*e.g.,* a new adulterant), you must, as the first laboratory, send the specimen to another HHS certified laboratory that has the capability of doing so.
(e) If you identify a substance in a specimen that appears to be an adulterant, but which is not listed in current HHS requirements or guidance, you must report the finding in writing to ODAPC and the Division of Workplace Programs, HHS, within three business days. You must also complete testing of the specimen for drugs, to the extent technically feasible.
(f) You must conserve as much as possible of the specimen for possible future testing.

§40.93 -- What criteria do laboratories use to establish that a specimen is dilute or substituted?

(a) As a laboratory you must consider the primary specimen to be dilute if the creatinine concentration is less than 20 mg/dL and the specific gravity is less than 1.003, unless the criteria for a substituted specimen are met.
(b) As a laboratory you must consider the primary specimen to be substituted if the creatinine concentration is less than or equal to 5 mg/dL *and* the specific gravity is less than or equal to 1.001 or greater than or equal to 1.020.

§40.95 -- What criteria do laboratories use to establish that a specimen is adulterated?

(a) As a laboratory, you must consider the primary specimen to be adulterated if you determine that-

(1) A substance that is not expected to be present in human urine is identified in the specimen;

(2) A substance that is expected to be present in human urine is identified at a concentration so high that it is not consistent with human urine; or

(3) The physical characteristics of the specimen are outside the normal expected range for human urine.

(b) In making your determination under paragraph (a) of this section, you must apply the criteria in current HHS requirements or specimen validity guidance.

§40.97 -- What do laboratories report and how do they report it?

(a) As a laboratory, you must report the results for each primary specimen tested as one of the following:

(1) Negative;
(2) Negative-dilute;
(3) Rejected for testing, with remark(s);
(4) Positive, with drug(s)/metabolite(s) noted;
(5) Positive, with drug(s)/metabolite(s) noted-dilute;
(6) Adulterated, with remark(s);
(7) Substituted, with remark(s); or
(8) Invalid result, with remark(s).

(b) As a laboratory, you must report laboratory results directly, and only, to the MRO at his or her place of business. You must not report results to or through the DER or a service agent (*e.g.,* C/TPA).

(1) Negative results: You must fax, courier, mail, or electronically transmit a legible image or copy of the fully-completed Copy 1 of the CCF which has been signed by the certifying scientist, or you may provide the laboratory results report electronically (*i.e.,* computer data file).

(i) If you elect to provide the laboratory results report, you must include the following elements, as a minimum, in the report format:

(A) Laboratory name;

(B) Employer's name (you may include I.D. or account number;

(C) Specimen I.D. number;

(D) Donor's SSN or employee I.D. number, if provided;

(E) Reason for test, if provided;

(F) Date of the collection;

(G) Date received at the laboratory;

(H) Date certifying scientist released the results;

(I) Results (*e.g.,* positive, adulterated) as listed in paragraph (a) of this section; and

(J) Remarks section, with an explanation of any situation in which a correctable flaw has been corrected.

(ii) The laboratory results report may be released only after review and approval by the certifying scientist and must reflect the same test result information as contained on the CCF signed by the certifying scientist.

(iii) The results report may be transmitted through any means that ensures accuracy and confidentiality. You, as the laboratory, together with the MRO, must ensure that the information is adequately protected from unauthorized access or release, both during transmission and in storage.

(2) Non-negative results: You must fax, courier, mail, or electronically transmit a legible image or copy of the fully-completed Copy 1 of the CCF that has been signed by the certifying scientist. In addition, you may provide the electronic laboratory results report following the format and procedures set forth in paragraphs (b)(1)(i) and (ii) of this section.

(c) In transmitting laboratory results to the MRO, you, as the laboratory, together with the MRO, must ensure that the information is adequately protected from unauthorized access or release, both during transmission and in storage. If the results are provided by fax, the fax connection must have a fixed telephone number accessible only to authorized individuals.

(d) You must transmit test results to the MRO in a timely manner, preferably the same day that review by the certifying scientist is completed.

(e) You must provide quantitative values for confirmed positive drug, adulterated, and substituted test results to the MRO when the MRO requests you to do so in writing. The MRO's request may either be a general request covering all such results you send to the MRO or a specific case-by-case request.

(f) You must provide quantitative values for confirmed opiate results for morphine or codeine at 15,000 ng/mL or above, even if the MRO has not requested quantitative values for the test result.

§40.99 -- How long does the laboratory retain specimens after testing?

(a) As a laboratory testing the primary specimen, you must retain a specimen that was reported with positive, adulterated, substituted, or invalid results for a minimum of one year.
(b) You must keep such a specimen in secure, long-term, frozen storage in accordance with HHS requirements.
(c) Within the one-year period, the MRO, the employee, the employer, or a DOT agency may request in writing that you retain a specimen for an additional period of time (*e.g.,* for the purpose of preserving evidence for litigation or a safety investigation). If you receive such a request, you must comply with it. If you do not receive such a request, you may discard the specimen at the end of the year.
(d) If you have not sent the split specimen to another laboratory for testing, you must retain the split specimen for an employee's test for the same period of time that you retain the primary specimen and under the same storage conditions.
(e) As the laboratory testing the split specimen, you must meet the requirements of paragraphs (a) through (d) of this section with respect to the split specimen.

§40.101 -- What relationship may a laboratory have with an MRO?

(a) As a laboratory, you may not enter into any relationship with an MRO that creates a conflict of interest or the appearance of a conflict of interest with the MRO's responsibilities for the employer. You may not derive any financial benefit by having an employer use a specific MRO.
(b) The following are examples of relationships between laboratories and MROs that the Department regards as creating conflicts of interest, or the appearance of such conflicts. This following list of examples is not intended to be exclusive or exhaustive:

(1) The laboratory employs an MRO who reviews test results produced by the laboratory;

(2) The laboratory has a contract or retainer with the MRO for the review of test results produced by the laboratory;

(3) The laboratory designates which MRO the employer is to use, gives the employer a slate of MROs from which to choose, or recommends certain MROs;

(4) The laboratory gives the employer a discount or other incentive to use a particular MRO;

(5) The laboratory has its place of business co-located with that of an MRO or MRO staff who review test results produced by the laboratory; or

(6) The laboratory permits an MRO, or an MRO's organization, to have a financial interest in the laboratory.

§40.103 -- What are the requirements for submitting blind specimens to a laboratory?

(a) As an employer or C/TPA with an aggregate of 2000 or more DOT-covered employees, you must send blind specimens to laboratories you use. If you have an aggregate of fewer than 2000 DOT-covered employees, you are not required to provide blind specimens.
(b) To each laboratory to which you send at least 100 specimens in a year, you must transmit a number of blind specimens equivalent to one percent of the specimens you send to that laboratory, up to a maximum of 50 blind specimens in each quarter (*i.e.,* January-March, April-June, July-September, October-December). As a C/TPA, you must apply this percentage to the total number of DOT-covered employees' specimens you send to the laboratory. Your blind specimen submissions must be evenly spread throughout the year. The following examples illustrate how this requirement works:

Example 1 to Paragraph (b). You send 2500 specimens to Lab X in Year 1. In this case, you would send 25 blind specimens to Lab X in Year 1. To meet the even distribution requirement, you would send 6 in each of three quarters and 7 in the other.
Example 2 to Paragraph (b). You send 2000 specimens to Lab X and 1000 specimens to Lab Y in Year 1. In this case, you would send 20 blind specimens to Lab X and 10 to Lab Y in Year 1. The even distribution requirement would apply in a similar way to that described in Example 1.
Example 3 to Paragraph (b). Same as Example 2, except that you also send 20 specimens to Lab Z. In this case, you would send blind specimens to Labs X and Y as in Example 2. You would not have to send any blind specimens to Lab Z, because you sent fewer than 100 specimens to Lab Z.
Example 4 to Paragraph (b). You are a C/TPA sending 2000 specimens to Lab X in Year 1. These 2000 specimens represent 200 small employers who have an average of 10 covered employees each. In this case you-not the individual employers-send 20 blind specimens to Lab X in Year 1, again ensuring even distribution. The individual employers you represent are not required to provide any blind specimens on their own.
Example 5 to Paragraph (b). You are a large C/TPA that sends 40,000 specimens to Lab Y in Year 1. One percent of that figure is 400. However, the 50 blind specimen per quarter "cap" means that you need send only 50 blind specimens per quarter, rather than the 100 per quarter you would have to send to meet the one percent rate. Your annual total would be 200, rather than 400, blind specimens.

(c) Approximately 75 percent of the specimens you submit must be blank (*i.e.,* containing no drugs, nor adulterated or substituted). Approximately 15 percent must be positive for one or more of the five drugs involved in DOT tests, and approximately 10 percent must either be adulterated with a substance cited in HHS guidance or substituted (*i.e.,* having specific gravity and creatinine meeting the criteria of §40.93(b)).

(1) The blind specimens that you submit that contain drugs, that are adulterated with a substance cited in HHS guidance, or that are substituted must be validated as to their contents by the supplier using initial and confirmatory tests.

(2) The supplier must provide information regarding the shelf life of the blind specimens.

(3) If the blind specimen is drug positive, the concentration of drug it contains must be between 1.5 and 2 times the initial drug test cutoff concentration.

(4) If the blind specimen is adulterated with nitrite, the concentration of nitrite it contains must be between 1.5 and 2 times the initial validity test cutoff concentration.

(5) If the blind specimen is adulterated by altering pH, the pH must be less than or equal to 2, or greater than or equal to 12.

(6) If the blind specimen is substituted, the creatinine must be less than or equal to 2, and the specific gravity must be 1.000.

(d) You must ensure that each blind specimen is indistinguishable to the laboratory from a normal specimen.

(1) You must submit blind specimens to the laboratory using the same channels (*e.g.,* via a regular collection site) through which employees' specimens are sent to the laboratory.

(2) You must ensure that the collector uses a CCF, places fictional initials on the specimen bottle label/seal, indicates for the MRO on Copy 2 that the specimen is a blind specimen, and discards Copies 4 and 5 (employer and employee copies).

(3) You must ensure that all blind specimens include split specimens.

§40.105 -- What happens if the laboratory reports a result different from that expected for a blind specimen?

(a) If you are an employer, MRO, or C/TPA who submits a blind specimen, and if the result reported to the MRO is different from the result expected, you must investigate the discrepancy.

(b) If the unexpected result is a false negative, you must provide the laboratory with the expected results (obtained from the supplier of the blind specimen), and direct the laboratory to determine the reason for the discrepancy.

(c) If the unexpected result is a false positive, you must provide the laboratory with the expected results (obtained from the supplier of the blind specimen), and direct the laboratory to determine the reason for the discrepancy. You must also notify ODAPC of the discrepancy by telephone (202-366-3784) or e-mail (addresses are listed on the ODAPC web site, http://www.dot.gov/ost/dapc). ODAPC will notify HHS who will take appropriate action.

§40.107 -- Who may inspect laboratories?

A laboratory must permit an inspection, with or without prior notice, by ODAPC, a DOT agency, or a DOT-regulated employer that contracts with the laboratory for drug testing under the DOT drug testing program, or the designee of such an employer.

§40.109 -- What documentation must the laboratory keep, and for how long?

(a) A laboratory must retain all records pertaining to each employee urine specimen for a minimum of two years.

(b) A laboratory must also keep for two years employer-specific data required in §40.111

(c) Within the two-year period, the MRO, the employee, the employer, or a DOT agency may request in writing that you retain the records for an additional period of time (*e.g.,* for the purpose of preserving evidence for litigation or a safety investigation). If you receive such a request, you must comply with it. If you do not receive such a request, you may discard the records at the end of the two-year period.

§**40.111 -- When and how must a laboratory disclose statistical summaries and other information it maintains?**

(a) As a laboratory, you must transmit an aggregate statistical summary, by employer, of the data listed in **Appendix B** to this part to the employer on a semi-annual basis.

(1) The summary must not reveal the identity of any employee.

(2) In order to avoid sending data from which it is likely that information about an employee's test result can be readily inferred, you must not send a summary if the employer has fewer than five aggregate tests results.

(3) The summary must be sent by January 20 of each year for July 1 through December 31 of the prior year.

(4) The summary must also be sent by July 20 of each year for January 1 through June 30 of the current year.

(b) When the employer requests a summary in response to an inspection, audit, or review by a DOT agency, you must provide it unless the employer had fewer than five aggregate test results. In that case, you must send the employer a report indicating that not enough testing was conducted to warrant a summary. You may transmit the summary or report by hard copy, fax, or other electronic means.

(c) You must also release information to appropriate parties as provided in §§40.329 and 40.331.

§40.113 -- Where is other information concerning laboratories found in this regulation?

You can find more information concerning laboratories in several sections of this part: §40.3-Definition; §40.13-Prohibition on making specimens available for other purposes; §40.31-Conflicts of interest concerning collectors; §40.47-Laboratory rejections of test for improper form; §40.125-Conflicts of interest concerning MROs; §40.175-Role of first laboratory in split specimen tests; §40.177-Role of second laboratory in split specimen tests (drugs); §40.179-Role of second laboratory in split specimen tests (adulterants); §40.181-Role of second laboratory in split specimen tests (substitution); §§40.183-40.185-Transmission of split specimen test results to MRO; §§40.201-40.205-Role in correcting errors; §40.329-Release of information to employees; §40.331-Limits on release of information; §40.355-Role with respect to other service agents.

Subpart G--Medical Review Officers and the Verification Process

§40.121 -- Who is qualified to act as an MRO?

To be qualified to act as an MRO in the DOT drug testing program, you must meet each of the requirements of this section:

(a) ***Credentials***. You must be a licensed physician (Doctor of Medicine or Osteopathy). If you are a licensed physician in any U.S., Canadian, or Mexican jurisdiction and meet the other requirements of this section, you are authorized to perform MRO services with respect to all covered employees, wherever they are located. For example, if you are licensed as an M.D. in one state or province in the U.S., Canada, or Mexico, you are not limited to performing MRO functions in that state or province, and you may perform MRO functions for employees in other states or provinces without becoming licensed to practice medicine in the other jurisdictions.

(b) ***Basic knowledge***. You must be knowledgeable in the following areas:

(1) You must be knowledgeable about and have clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed drug test results.

(2) You must be knowledgeable about issues relating to adulterated and substituted specimens as well as the possible medical causes of specimens having an invalid result.

(3) You must be knowledgeable about this part, the DOT MRO Guidelines, and the DOT agency regulations applicable to the employers for whom you evaluate drug test results, and you must keep current on any changes to these materials. The DOT MRO Guidelines document is available from ODAPC (Department of Transportation, 400 7th Street, SW., Room 10403, Washington, DC 20590, 202-366-3784, or on the ODAPC web site (http:// *www.dot.gov* / ost/dapc)).

(c) ***Qualification training***. You must receive qualification training meeting the requirements of this paragraph (c).

(1) Qualification training must provide instruction on the following subjects:

(i) Collection procedures for urine specimens;

(ii) Chain of custody, reporting, and recordkeeping;

(iii) Interpretation of drug and validity tests results;

(iv) The role and responsibilities of the MRO in the DOT drug testing program;

(v) The interaction with other participants in the program (*e.g.,* DERs, SAPs); and

(vi) Provisions of this part and DOT agency rules applying to employers for whom you review test results, including changes and updates to this part and DOT agency rules, guidance, interpretations, and policies affecting the performance of MRO

functions, as well as issues that MROs confront in carrying out their duties under this part and DOT agency rules.

(2) Following your completion of qualification training under paragraph (c)(1) of this section, you must satisfactorily complete an examination administered by a nationally-recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.

(3) The following is the schedule for qualification training you must meet:

(i) If you became an MRO before August 1, 2001, and have already met the qualification training requirement, you do not have to meet it again.

(ii) If you became an MRO before August 1, 2001, but have not yet met the qualification training requirement, you must do so no later than January 31, 2003.

(iii) If you become an MRO on or after August 1, 2001, you must meet the qualification training requirement before you begin to perform MRO functions.

(d) ***Continuing Education***. During each three-year period from the date on which you satisfactorily complete the examination under paragraph (c)(2) of this section, you must complete continuing education consisting of at least 12 professional development hours (*e.g.,* Continuing Education Medical Units) relevant to performing MRO functions.

(1) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in MRO practice, pertaining to the DOT program, since the time you met the qualification training requirements of this section.

(2) Your continuing education activities must include assessment tools to assist you in determining whether you have adequately learned the material.

(e) ***Documentation***. You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

§40.123 -- What are the MRO's responsibilities in the DOT drug testing program?

As an MRO, you have the following basic responsibilities:

(a) Acting as an independent and impartial "gatekeeper" and advocate for the accuracy and integrity of the drug testing process.

(b) Providing a quality assurance review of the drug testing process for the specimens under your purview. This includes, but is not limited to:

(1) Ensuring the review of the CCF on all specimen collections for the purposes of determining whether there is a problem that may cause a test to be cancelled (*See,* §§40.199-40.203). As an MRO, you are not required to review laboratory internal chain of custody documentation. No one is permitted to cancel a test because you have not reviewed this documentation;

(2) Providing feedback to employers, collection sites and laboratories regarding performance issues where necessary; and

(3) Reporting to and consulting with the ODAPC or a relevant DOT agency when you wish DOT assistance in resolving any program issue. As an employer or service agent, you are prohibited from limiting or attempting to limit the MRO's access to DOT for this purpose and from retaliating in any way against an MRO for discussing drug testing issues with DOT.

(c) You must determine whether there is a legitimate medical explanation for confirmed positive, adulterated, substituted, and invalid drug tests results from the laboratory.

(d) While you provide medical review of employees' test results, this part does not deem that you have established a doctor-patient relationship with the employees whose tests you review.

(e) You must act to investigate and correct problems where possible and notify appropriate parties (*e.g.,* HHS, DOT, employers, service agents) where assistance is needed, (*e.g.,* cancelled or problematic tests, incorrect results, problems with blind specimens).

(f) You must ensure the timely flow of test results and other information to employers.

(g) You must protect the confidentiality of the drug testing information.

(h) You must perform all your functions in compliance with this part and other DOT agency regulations.

§40.125 -- What relationship may an MRO have with a laboratory?

As an MRO, you may not enter into any relationship with an employer's laboratory that creates a conflict of interest or the appearance of a conflict of interest with your responsibilities to that employer. You may not derive any financial benefit by having an employer use a specific laboratory. For examples of relationships between laboratories and MROs that the Department views as creating a conflict of interest or the appearance of such a conflict, S*ee,* §40.101(b).

§40.127 -- What are the MRO's functions in reviewing negative test results?

As the MRO, you must do the following with respect to negative drug test results you receive from a laboratory, prior to verifying the result and releasing it to the DER:

(a) Review Copy 2 of the CCF to determine if there are any fatal or correctable errors that may require you to initiate corrective action or to cancel the test (*See,* §§40.199 and 40.203).

(b) Review the negative laboratory test result and ensure that it is consistent with the information contained on the CCF.

(c) Before you report a negative test result, you must have in your possession the following documents:

(1) Copy 2 of the CCF, a legible copy of it, or any other CCF copy containing the employee's signature; and

(2) A legible copy (fax, photocopy, image) of Copy 1 of the CCF or the electronic laboratory results report that conveys the negative laboratory test result.

(d) If the copy of the documentation provided to you by the collector or laboratory appears unclear, you must request that the collector or laboratory send you a legible copy.

(e) On Copy 2 of the CCF, place a check mark in the "Negative" box (Step 6), provide your name, and sign, initial, or stamp and date the verification statement.

(f) Report the result in a confidential manner (*See,* §§40.163-40.167).

(g) Staff under your direct, personal supervision may the administrative functions of this section for you, but only you can cancel a test.

(1) On specimen results that are reviewed by your staff, you are responsible for assuring the quality of their work.

(2) You are required to personally review at least 5 percent of all CCFs reviewed by your staff on a quarterly basis, including all results that required a corrective action. However, you need not review more than 500 negative results in any quarter.

(3) Your review must, as a minimum, include the CCF, negative laboratory test result, any accompanying corrective documents, and the report sent to the employer. You must correct

any errors that you discover. You must take action as necessary to ensure compliance by your staff with this part and document your corrective action. You must attest to the quality assurance review by initialing the CCFs that you review.

(4) You must make these CCFs easily identifiable and retrievable by you for review by DOT agencies.

§40.129 -- What are the MRO's functions in reviewing laboratory confirmed positive, adulterated, substituted, or invalid drug test results?

(a) As the MRO, you must do the following with respect to confirmed positive, adulterated, substituted, or invalid drug tests you receive from a laboratory, before you verify the result and release it to the DER:

(1) Review Copy 2 of the CCF to determine if there are any fatal or correctable errors that may require you to cancel the test (S*ee,* §§40.199 and 40.203). Staff under your direct, personal supervision may conduct this administrative review for you, but only you may verify or cancel a test.

(2) Review Copy 1 of the CCF and ensure that it is consistent with the information contained on Copy 2, that the test result is legible, and that the certifying scientist signed the form. You are not required to review any other documentation generated by the laboratory during their analysis or handling of the specimen (*e.g.,* the laboratory internal chain of custody).

(3) If the copy of the documentation provided to you by the collector or laboratory appears unclear, you must request that the collector or laboratory send you a legible copy.

(4) Except in the circumstances spelled out in §40.133, conduct a verification interview. This interview must include direct contact in person or by telephone between you and the employee. You may initiate the verification process based on the laboratory results report.

(5) Verify the test result as either negative, positive, test cancelled, or refusal to test because of adulteration or substitution, consistent with the requirements of §§40.135-40.145 and 40.159.

(b) Before you report a verified negative, positive, test cancelled, refusal to test because of adulteration or substitution, you must have in your possession the following documents:

(1) Copy 2 of the CCF, a legible copy of it, or any other CCF copy containing the employee's signature; and

(2) A legible copy (fax, photocopy, image) of Copy 1 of the CCF, containing the certifying scientist's signature.

(c) With respect to verified positive test results, place a check mark in the "Positive" box (Step 6) on Copy 2 of the CCF, indicate the drug(s)/ metabolite(s) detected on the "Remarks" line, sign and date the verification statement.

(d) Report the result in a confidential manner (S*ee,* §§40.163-40.167).

(e) With respect to adulteration or substitution test results, check the "refusal to test because:" box (Step 6) on Copy 2 of the CCF, check the "Adulterated" or "Substituted" box, as appropriate, make appropriate annotation in the "Remarks" line, sign and date the verification statement.

(f) As the MRO, your actions concerning reporting confirmed positive, adulterated, or substituted results to the employer before you have completed the verification process are also governed by the stand-down provisions of §40.21.

(1) If an employer has a stand-down policy that meets the requirements of §40.21, you may report to the DER that you have received an employee's laboratory confirmed positive,

adulterated, or substituted test result, consistent with the terms of the waiver the employer received. You must not provide any further details about the test result (*e.g.,* the name of the drug involved).

(2) If the employer does not have a stand-down policy that meets the requirements of §40.21, you must not inform the employer that you have received an employee's laboratory confirmed positive, adulterated, or substituted test result until you verify the test result. For example, as an MRO employed directly by a company, you must not tell anyone on the company's staff or management that you have received an employee's laboratory confirmed test result.

§40.131 -- How does the MRO or DER notify an employee of the verification process after a confirmed positive, adulterated, substituted, or invalid test result?

(a) When, as the MRO, you receive a confirmed positive, adulterated, substituted, or invalid test result from the laboratory, you must contact the employee directly (*i.e.,* actually talk to the employee), on a confidential basis, to determine whether the employee wants to discuss the test result. In making this contact, you must explain to the employee that, if he or she declines to discuss the result, you will verify the test as positive or as a refusal to test because of adulteration or substitution, as applicable.

(b) As the MRO, staff under your personal supervision may conduct this initial contact for you.

(1) This staff contact must be limited to scheduling the discussion between you and the employee and explaining the consequences of the employee's declining to speak with you (*i.e.,* that the MRO will verify the test without input from the employee). If the employee declines to speak with you, the staff person must document the employee's decision, including the date and time.

(2) A staff person must not gather any medical information or information concerning possible explanations for the test result.

(3) A staff person may advise an employee to have medical information (*e.g.,* prescriptions, information forming the basis of a legitimate medical explanation for a confirmed positive test result) ready to present at the interview with the MRO.

(4) Since you are required to speak personally with the employee, face-to-face or on the phone, your staff must not inquire if the employee wishes to speak with you.

(c) As the MRO, you or your staff must make reasonable efforts to reach the employee at the day and evening telephone numbers listed on the CCF. Reasonable efforts include, as a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the CCF. If you or your staff cannot reach the employee directly after making these efforts, you or your staff must take the following steps:

(1) Document the efforts you made to contact the employee, including dates and times. If both phone numbers are incorrect (*e.g.,* disconnected, wrong number), you may take the actions listed in paragraph (c)(2) of this section without waiting the full 24-hour period.

(2) Contact the DER, instructing the DER to contact the employee.

(i) You must simply direct the DER to inform the employee to contact you.

(ii) You must not inform the DER that the employee has a confirmed positive, adulterated, substituted, or invalid test result.

(iii) You must document the dates and times of your attempts to contact the DER, and you must document the name of the DER you contacted and the date and time of the contact.

(d) As the DER, you must attempt to contact the employee immediately, using procedures that protect, as much as possible, the confidentiality of the MRO's request that the employee contact the MRO. If you successfully contact the employee (*i.e.,* actually talk to the employee), you must document the date and time of the contact, and inform the MRO. You must inform the employee that he or she must contact the MRO within the next 72 hours and tell the employee the consequences of failing to do so (*See*, §40.133(a)(2)).

(1) As the DER, you must not inform anyone else working for the employer that you are seeking to contact the employee on behalf of the MRO.

(2) If, as the DER, you have made all reasonable efforts to contact the employee but failed to do so, you may place the employee on temporary medically unqualified status or medical leave. Reasonable efforts include, as a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the CCF.

(i) As the DER, you must document the dates and times of these efforts.

(ii) If, as the DER, you are unable to contact the employee within this 24-hour period, you must leave a message for the employee by any practicable means (*e.g.,* voice mail, e-mail, letter) to contact the MRO and inform the MRO of the date and time of this attempted contact.

§40.133 -- Under what circumstances may the MRO verify a test as positive, or as a refusal to test because of adulteration or substitution, without interviewing the employee?

(a) As the MRO, you normally may verify a confirmed positive test (for any drug or drug metabolite, including opiates), or as a refusal to test because of adulteration or substitution, only after interviewing the employee as provided in §§40.135-40.145. However, there are three circumstances in which you may verify such a result without an interview:

(1) You may verify a test result as a positive or refusal to test, as applicable, if the employee expressly declines the opportunity to discuss the test with you. You must maintain complete documentation of this occurrence, including notation of informing, or attempting to inform, the employee of the consequences of not exercising the option to speak with the you.

(2) You may verify a test result as a positive or refusal to test, as applicable, if the DER has successfully made and documented a contact with the employee and instructed the employee to contact you and more than 72 hours have passed since the time the DER contacted the employee.

(3) You may verify a test result as a positive or refusal to test, as applicable, if neither you nor the DER, after making and documenting all reasonable efforts, has been able to contact the employee within ten days of the date on which the MRO receives the confirmed test result from the laboratory.

(b) As the MRO, when you verify a test result as a positive or refusal to test under this section, you must document the date, time and reason, following the instructions in §40.163.

(c) As the MRO, after you have verified a test result as a positive or refusal to test under this section and reported the result to the DER, you must allow the employee to present information to you within 60 days of the verification documenting that serious illness, injury, or other circumstances unavoidably precluded contact with the MRO and/or DER in the times provided. On the basis of such information, you may reopen the verification, allowing the employee to present information concerning whether there is a legitimate medical explanation for the confirmed test result.

§40.135 -- What does the MRO tell the employee at the beginning of the verification

interview?

(a) As the MRO, you must tell the employee that the laboratory has determined that the employee's test result was positive, adulterated, substituted, or invalid, as applicable. You must also tell the employee of the drugs for which his or her specimen tested positive, or the basis for the finding of adulteration or substitution.

(b) You must explain the verification interview process to the employee and inform the employee that your decision will be based on information the employee provides in the interview.

(c) You must explain that, if further medical evaluation is needed for the verification process, the employee must comply with your request for this evaluation and that failure to do so is equivalent of expressly declining to discuss the test result.

(d) As the MRO, you must warn an employee who has a confirmed positive, adulterated, substituted or invalid test that you are required to provide to third parties drug test result information and medical information affecting the performance of safety-sensitive duties that the employee gives you in the verification process without the employee's consent (*See,* §40.327).

(1) You must give this warning to the employee before obtaining any medical information as part of the verification process.

(2) For purposes of this paragraph (d), medical information includes information on medications or other substances affecting the performance of safety-sensitive duties that the employee reports using or medical conditions the employee reports having.

(3) For purposes of this paragraph (d), the persons to whom this information may be provided include the employer, a SAP evaluating the employee as part of the return to duty process (*See,* §40.293(g)), DOT, another Federal safety agency (*e.g.*, the NTSB), or any state safety agency as required by state law.

(e) You must also advise the employee that, before informing any third party about any medication the employee is using pursuant to a legally valid prescription under the Controlled Substances Act, you will, if the employee consents, contact the prescribing physician to determine if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk.

§40.137 -- On what basis does the MRO verify test results involving marijuana, cocaine, amphetamines, or PCP?

(a) As the MRO, you must verify a confirmed positive test result for marijuana, cocaine, amphetamines, and/or PCP unless the employee presents a legitimate medical explanation for the presence of the drug(s)/metabolite(s) in his or her system.

(b) You must offer the employee an opportunity to present a legitimate medical explanation in all cases.

(c) The employee has the burden of proof that a legitimate medical explanation exists. The employee must present information meeting this burden at the time of the verification interview. As the MRO, you have discretion to extend the time available to the employee for this purpose for up to five days before verifying the test result, if you determine that there is a reasonable basis to believe that the employee will be able to produce relevant evidence concerning a legitimate medical explanation within that time.

(d) If you determine that there is a legitimate medical explanation, you must verify the test result as negative. Otherwise, you must verify the test result as positive.

(e) In determining whether a legitimate medical explanation exists, you may consider the employee's use of a medication from a foreign country. You must exercise your professional judgment consistently with the following principles:

(1) There can be a legitimate medical explanation only with respect to a substance that is obtained legally in a foreign country.

(2) There can be a legitimate medical explanation only with respect to a substance that has a legitimate medical use. Use of a drug of abuse (*e.g.*, heroin, PCP, marijuana) or any other substance (*See,* §40.151(f) and (g)) that cannot be viewed as having a legitimate medical use can never be the basis for a legitimate medical explanation, even if the substance is obtained legally in a foreign country.

(3) Use of the substance can form the basis of a legitimate medical explanation only if it is used consistently with its proper and intended medical purpose.

(4) Even if you find that there is a legitimate medical explanation under this paragraph (e) and verify a test negative, you may have a responsibility to raise fitness-for-duty considerations with the employer (*See,* §40.327).

§40.139 -- On what basis does the MRO verify test results involving opiates?

As the MRO, you must proceed as follows when you receive a laboratory confirmed positive opiate result:

(a) If the laboratory detects the presence of 6-acetylmorphine (6-AM) in the specimen, you must verify the test result positive.

(b) In the absence of 6-AM, if the laboratory detects the presence of either morphine or codeine at 15,000 ng/mL or above, you must verify the test result positive unless the employee presents a legitimate medical explanation for the presence of the drug or drug metabolite in his or her system, as in the case of other drugs (S*ee,* §40.137). Consumption of food products (*e.g.*, poppy seeds) must not be considered a legitimate medical explanation for the employee having morphine or codeine at these concentrations.

(c) For all other opiate positive results, you must verify a confirmed positive test result for opiates only if you determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative (i.e., morphine, heroin, or codeine).

(1) As an MRO, it is your responsibility to use your best professional and ethical judgement and discretion to determine whether there is clinical evidence of unauthorized use of opiates. Examples of information that you may consider in making this judgement include, but are not limited to, the following:

(i) Recent needle tracks;

(ii) Behavioral and psychological signs of acute opiate intoxication or withdrawal;

(iii) Clinical history of unauthorized use recent enough to have produced the laboratory test result;

(iv) Use of a medication from a foreign country. *See*, §40.137(e) for guidance on how to make this determination.

(2) In order to establish the clinical evidence referenced in paragraphs (c)(1)(i) and (ii) of this section, personal observation of the employee is essential.

(i) Therefore, you, as the MRO, must conduct, or cause another physician to conduct, a face-to-face examination of the employee.

(ii) No face-to-face examination is needed in establishing the clinical evidence referenced in paragraph (c)(1)(iii) or (iv) of this section.

(3) To be the basis of a verified positive result for opiates, the clinical evidence you find must concern a drug that the laboratory found in the specimen. (For example, if the test confirmed the presence of codeine, and the employee admits to unauthorized use of hydrocodone, you do not have grounds for verifying the test positive. The admission must be for the substance that was found).

(4) As the MRO, you have the burden of establishing that there is clinical evidence of unauthorized use of opiates referenced in this paragraph (c). If you cannot make this determination (*e.g.*, there is not sufficient clinical evidence or history), you must verify the test as negative. The employee does not need to show you that a legitimate medical explanation exists if no clinical evidence is established.

§40.141 -- How does the MRO obtain information for the verification decision?

As the MRO, you must do the following as you make the determinations needed for a verification decision:

(a) You must conduct a medical interview. You must review the employee's medical history and any other relevant biomedical factors presented to you by the employee. You may direct the employee to undergo further medical evaluation by you or another physician.

(b) If the employee asserts that the presence of a drug or drug metabolite in his or her specimen results from taking prescription medication, you must review and take all reasonable and necessary steps to verify the authenticity of all medical records the employee provides. You may contact the employee's physician or other relevant medical personnel for further information.

§40.143 -- [Reserved]

§40.145 -- On what basis does the MRO verify test results involving adulteration or substitution?

(a) As an MRO, when you receive a laboratory report that a specimen is adulterated or substituted, you must treat that report in the same way you treat the laboratory's report of a confirmed positive test for a drug or drug metabolite.

(b) You must follow the same procedures used for verification of a confirmed positive test for a drug or drug metabolite (*See,* §§40.129-40.135, 40.141, 40.151), except as otherwise provided in this section.

(c) In the verification interview, you must explain the laboratory findings to the employee and address technical questions or issues the employee may raise.

(d) You must offer the employee the opportunity to present a legitimate medical explanation for the laboratory findings with respect to presence of the adulterant in, or the creatinine and specific gravity findings for, the specimen.

(e) The employee has the burden of proof that there is a legitimate medical explanation.

(1) To meet this burden in the case of an adulterated specimen, the employee must demonstrate that the adulterant found by the laboratory entered the specimen through physiological means.

(2) To meet this burden in the case of a substituted specimen, the employee must demonstrate that he or she did produce or could have produced urine, through physiological means, meeting the creatinine and specific gravity criteria of §40.93(b).

(3) The employee must present information meeting this burden at the time of the verification interview. As the MRO, you have discretion to extend the time available to the employee for this purpose for up to five days before verifying the specimen, if you determine

that there is a reasonable basis to believe that the employee will be able to produce relevant evidence supporting a legitimate medical explanation within that time.

(f) As the MRO or the employer, you are not responsible for arranging, conducting, or paying for any studies, examinations or analyses to determine whether a legitimate medical explanation exists.

(g) As the MRO, you must exercise your best professional judgment in deciding whether the employee has established a legitimate medical explanation.

(1) If you determine that the employee's explanation does not present a reasonable basis for concluding that there may be a legitimate medical explanation, you must report the test to the DER as a verified refusal to test because of adulteration or substitution, as applicable.

(2) If you believe that the employee's explanation may present a reasonable basis for concluding that there is a legitimate medical explanation, you must direct the employee to obtain, within the five-day period set forth in paragraph (e)(3) of this section, a further medical evaluation. This evaluation must be performed by a licensed physician (the "referral physician"), acceptable to you, with expertise in the medical issues raised by the employee's explanation. (The MRO may perform this evaluation if the MRO has appropriate expertise.)

(i) As the MRO or employer, you are not responsible for finding or paying a referral physician. However, on request of the employee, you must provide reasonable assistance to the employee's efforts to find such a physician. The final choice of the referral physician is the employee's, as long as the physician is acceptable to you.

(ii) As the MRO, you must consult with the referral physician, providing guidance to him or her concerning his or her responsibilities under this section. As part of this consultation, you must provide the following information to the referral physician:

(A) That the employee was required to take a DOT drug test, but the laboratory reported that the specimen was adulterated or substituted, which is treated as a refusal to test;

(B) The consequences of the appropriate DOT agency regulation for refusing to take the required drug test;

(C) That the referral physician must agree to follow the requirements of paragraphs (g)(3) through (g)(4) of this section; and

(D) That the referral physician must provide you with a signed statement of his or her recommendations.

(3) As the referral physician, you must evaluate the employee and consider any evidence the employee presents concerning the employee's medical explanation. You may conduct additional tests to determine whether there is a legitimate medical explanation. Any additional urine tests must be performed in an HHS-certified laboratory.

(4) As the referral physician, you must then make a written recommendation to the MRO about whether the MRO should determine that there is a legitimate medical explanation. As the MRO, you must seriously consider and assess the referral physician's recommendation in deciding whether there is a legitimate medical explanation.

(5) As the MRO, if you determine that there is a legitimate medical explanation, you must cancel the test and inform ODAPC in writing of the determination and the basis for it (*e.g.*, referral physician's findings, evidence produced by the employee).

(6) As the MRO, if you determine that there is not a legitimate medical explanation, you must report the test to the DER as a verified refusal to test because of adulteration or substitution.

(h) The following are examples of types of evidence an employee could present to support an assertion of a legitimate medical explanation for a substituted result.

(1) Medically valid evidence demonstrating that the employee is capable of physiologically producing urine meeting the creatinine and specific gravity criteria of §40.93(b).

(i) To be regarded as medically valid, the evidence must have been gathered using appropriate methodology and controls to ensure its accuracy and reliability.

(ii) Assertion by the employee that his or her personal characteristics (*e.g.*, with respect to race, gender, weight, diet, working conditions) are responsible for the substituted result does not, in itself, constitute a legitimate medical explanation. To make a case that there is a legitimate medical explanation, the employee must present evidence showing that the cited personal characteristics actually result in the physiological production of urine meeting the creatinine and specific gravity criteria of §40.93(b).

(2) Information from a medical evaluation under paragraph (g) of this section that the individual has a medical condition that has been demonstrated to cause the employee to physiologically produce urine meeting the creatinine and specific gravity criteria of §40.93(b).

(i) A finding or diagnosis by the physician that an employee has a medical condition, in itself, does not constitute a legitimate medical explanation.

(ii) To establish there is a legitimate medical explanation, the employee must demonstrate that the cited medical condition actually results in the physiological production of urine meeting the creatinine and specific gravity criteria of §40.93(b).

§40.147 -- [Reserved]

§40.149 -- May the MRO change a verified positive drug test result or refusal to test?

(a) As the MRO, you may change a verified positive or refusal to test drug test result only in the following situations:

(1) When you have reopened a verification that was done without an interview with an employee (*See,* §40.133(c)).

(2) If you receive information, not available to you at the time of the original verification, demonstrating that the laboratory made an error in identifying (*e.g.,* a paperwork mistake) or testing (*e.g.,* a false positive or negative) the employee's primary or split specimen. For example, suppose the laboratory originally reported a positive test result for Employee X and a negative result for Employee Y. You verified the test results as reported to you. Then the laboratory notifies you that it mixed up the two test results, and X was really negative and Y was really positive. You would change X's test result from positive to negative and contact Y to conduct a verification interview.

(3) If, within 60 days of the original verification decision-

(i) You receive information that could not reasonably have been provided to you at the time of the decision demonstrating that there is a legitimate medical explanation for the presence of drug(s)/metabolite(s) in the employee's specimen; or

(ii) You receive credible new or additional evidence that a legitimate medical explanation for an adulterated or substituted result exists.

Example to Paragraph (a)(3): If the employee's physician provides you a valid prescription that he or she failed to find at the time of the original verification, you may change the test result from positive to negative if you conclude that the prescription provides a legitimate medical explanation for the drug(s)/ metabolite(s) in the employee's specimen.

(4) If you receive the information in paragraph (a)(3) of this section after the 60-day period, you must consult with ODAPC prior to changing the result.

(5) When you have made an administrative error and reported an incorrect result.

(b) If you change the result, you must immediately notify the DER in writing, as provided in §§40.163-40.165.

(c) You are the only person permitted to change a verified test result.

§40.151 -- What are MROs prohibited from doing as part of the verification process?

A MRO is prohibited from doing the following as part of the verification process:

(a) You must not consider any evidence from tests of urine samples or other body fluids or tissues (*e.g.,* blood or hair samples) that are not collected or tested in accordance with this part. For example, if an employee tells you he went to his own physician, provided a urine specimen, sent it to a laboratory, and received a negative test result or a DNA test result questioning the identity of his DOT specimen, you are required to ignore this test result.

(b) In reviewing the CCF, you must not consider evidence extrinsic to the CCF in determining whether the test is valid. For example, you must review only what is on the face of the CCF for this purpose, not assertions by the employee that the CCF does not accurately reflect what happened at the collection site.

(c) It is not your function to determine whether the employer should have directed that a test occur. For example, if an employee tells you that the employer misidentified her as the subject of a random test, or directed her to take a reasonable suspicion or post-accident test without proper grounds under a DOT agency drug or alcohol regulation, you must inform the employee that you cannot play a role in deciding these issues.

(d) It is not your function to consider explanations of confirmed positive, adulterated, or substituted test results that would not, even if true, constitute a legitimate medical explanation. For example, an employee may tell you that someone slipped amphetamines into her drink at a party, that she unknowingly ingested a marijuana brownie, or that she traveled in a closed car with several people smoking crack. MROs are unlikely to be able to verify the facts of such passive or unknowing ingestion stories. Even if true, such stories do not present a legitimate medical explanation. Consequently, you must not declare a test as negative based on an explanation of this kind.

(e) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (*e.g.,* under a state law that purports to authorize such recommendations, such as the "medical marijuana" laws that some states have adopted).

(f) You must not accept an assertion of consumption or other use of a hemp or other non-prescription marijuana-related product as a basis for verifying a marijuana test negative. You also must not accept such an explanation related to consumption of coca teas as a basis for verifying a cocaine test result as negative. Consuming or using such a product is not a legitimate medical explanation.

(g) You must not accept an assertion that there is a legitimate medical explanation for the presence of PCP or 6-AM in a specimen. There are no legitimate medical explanations for the presence of these substances.

(h) You must not accept, as a legitimate medical explanation for an adulterated specimen, an assertion that soap, bleach, or glutaraldehyde entered a specimen through physiological means. There are no physiological means through which these substances can enter a specimen.

(i) You must not accept, as a legitimate medical explanation for a substituted specimen, an assertion that an employee can produce urine with no detectable creatinine. There

are no physiological means through which a person can produce a urine specimen having this characteristic.

§40.153 -- How does the MRO notify employees of their right to a test of the split specimen?

(a) As the MRO, when you have verified a drug test as positive for a drug or drug metabolite, or as a refusal to test because of adulteration or substitution, you must notify the employee of his or her right to have the split specimen tested. You must also notify the employee of the procedures for requesting a test of the split specimen.

(b) You must inform the employee that he or she has 72 hours from the time you provide this notification to him or her to request a test of the split specimen.

(c) You must tell the employee how to contact you to make this request. You must provide telephone numbers or other information that will allow the employee to make this request. As the MRO, you must have the ability to receive the employee's calls at all times during the 72 hour period (*e.g.,* by use of an answering machine with a "time stamp" feature when there is no one in your office to answer the phone).

(d) You must tell the employee that if he or she makes this request within 72 hours, the employer must ensure that the test takes place, and that the employee is not required to pay for the test from his or her own funds before the test takes place. You must also tell the employee that the employer may seek reimbursement for the cost of the test (*See*, §40.173).

(e) You must tell the employee that additional tests of the specimen *e.g.,* DNA tests) are not authorized.

§40.155 -- What does the MRO do when a negative or positive test result is also dilute?

(a) When the laboratory reports that a specimen is dilute, you must, as the MRO, report to the DER that the specimen, in addition to being negative or positive, is dilute.

(b) You must check the "dilute" box (Step 6) on Copy 2 of the CCF.

(c) When you report a dilute specimen to the DER, you must explain to the DER the employer’s obligations and choices under §40.197, to include the requirement for an immediate recollection under direct observation if the creatinine concentration of a negative-dilute specimen was greater than or equal to 2mg/dL but less than or equal to 5 mg/dL.

(d) When you report a dilute specimen to the DER, you must explain to the DER the employer's obligations and choices under §40.197.

§40.157 -- [Reserved]

§40.159 -- What does the MRO do when a drug test result is invalid?

(a) As the MRO, when the laboratory reports that the test result is an invalid result, you must do the following:

(1) Discuss the laboratory results with a certifying scientist to obtain more specific information.

(2) Contact the employee and inform the employee that the specimen was invalid or contained an unexplained interfering substance. In contacting the employee, use the procedures set forth in §40.131.

(3) After explaining the limits of disclosure (*See,* §§40.135(d) and 40.327), you should inquire as to medications the employee may have taken that may interfere with some immunoassay tests.

(4) If the employee gives an explanation that is acceptable, you must:

(i) Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter "Invalid Result" and "direct observation collection not required" on the "Remarks" line.

(ii) Report to the DER that the test is cancelled, the reason for cancellation, and that no further action is required unless a negative test result is required (*i.e.,* pre-employment, return-to-duty, or follow-up tests).

(5) If the employee is unable to provide an explanation and/or a valid prescription for a medication that interfered with the immunoassay test but denies having adulterated the specimen, you must:

(i) Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter "Invalid Result" and "direct observation collection required" on the "Remarks" line.

(ii) Report to the DER that the test is cancelled, the reason for cancellation, and that a second collection must take place immediately under direct observation.

(iii) Instruct the employer to ensure that the employee has the minimum possible advance notice that he or she must go to the collection site.

(b) You may only report an invalid test result when you are in possession of a legible copy of Copy 1 of the CCF. In addition, you must have Copy 2 of the CCF, a legible copy of it, or any other copy of the CCF containing the employee's signature.

(c) If the employee admits to having adulterated or substituted the specimen, you must, on the same day, write and sign your own statement of what the employee told you. You must then report a refusal to test in accordance with §40.163.

§40.161 -- What does the MRO do when a drug test specimen is rejected for testing?

As the MRO, when the laboratory reports that the specimen is rejected for testing (*e.g.,* because of a fatal or uncorrected flaw), you must do the following:

(a) Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter the reason on the "Remarks" line.

(b) Report to the DER that the test is cancelled and the reason for cancellation, and that no further action is required unless a negative test is required (*e.g.,* in the case of a pre-employment, return-to-duty, or follow-up test).

(c) You may only report a test cancelled because of a rejected for testing test result when you are in possession of a legible copy of Copy 1 of the CCF. In addition, you must have Copy 2 of the CCF, a legible copy of it, or any other copy of the CCF containing the employee's signature.

§40.163 -- How does the MRO report drug test results?

(a) As the MRO, it is your responsibility to report the drug test results to the employer in writing.

(1) You or a staff member may rubber stamp a report of negative results. If you use a rubber stamp, you or your staff must also initial the stamp to identify who affixed the stamp to the report.

(2) You, as the MRO, must sign reports of all other results.

(b) You may use a signed or stamped and dated legible photocopy of Copy 2 of the CCF to report test results.

(c) If you do not report test results using Copy 2 of the CCF for this purpose, you must provide a written report (*e.g.,* a letter) for each test result. This report must, as a minimum, include the following information:

(1) Full name, as indicated on the CCF, of the employee tested;

(2) Specimen ID number from the CCF and the donor SSN or employee ID number;

(3) Reason for the test as indicated on the CCF (*e.g.,* random, post-accident);

(4) Date of the collection;

(5) Result of the test (*i.e.,* positive, negative, dilute, refusal to test, test cancelled) and the date the result was verified by the MRO;

(6) For verified positive tests, the drug(s)/metabolite(s) for which the test was positive;

(7) For cancelled tests, the reason for cancellation; and

(8) For refusals to test, the reason for the refusal determination (e.g., in the case of an adulterated test result, the name of the adulterant).

(d) You must retain a signed or stamped and dated copy of Copy 2 of the CCF in your records. If you do not use Copy 2 for reporting results, you must maintain a copy of the signed or stamped and dated letter in addition to the signed or stamped and dated Copy 2.

(e) You must not use Copy 1 of the CCF to report drug test results.

(f) You must not provide quantitative values to the DER or C/TPA for drug or validity test results. However, you must provide the test information in your possession to a SAP who consults with you (*See,*§40.293(g)).

§40.165 -- To whom does the MRO transmit reports of drug test results?

(a) As the MRO, you must report all drug test results to the DER, except in the circumstances provided for in §40.345.

(b) If the employer elects to receive reports of results through a C/TPA, acting as an intermediary as provided in §40.345, you must report the results through the designated C/TPA.

§40.167 -- How are MRO reports of drug results transmitted to the employer?

As the MRO or C/TPA who transmits drug test results to the employer, you must comply with the following requirements:

(a) You must report the results in a confidential manner.

(b) You must transmit to the DER on the same day the MRO verifies the result or the next business day all verified positive test results, results requiring an immediate collection under direct observation, adulterated or substituted specimen results, and other refusals to test.

(1) Direct telephone contact with the DER is the preferred method of immediate reporting. Follow up your phone call with appropriate documentation (*See,* §40.163).

(2) You are responsible for identifying yourself to the DER, and the DER must have a means to confirm your identification.

(3) The MRO's report that you transmit to the employer must contain all of the information required by §40.163.

(c) You must transmit the MRO's written report of verified test to the DER so that the DER receives them within two days of verification by the MRO.

(d) In transmitting test results, you or the C/TPA and the employer must ensure the security of the transmission and limit access to any transmission, storage, or retrieval systems.

§40.169 -- Where is other information concerning the role of MROs and the verification process found in this regulation?

You can find more information concerning the role of MROs in several sections of this part:

§40.3-Definition; §§40.47-40.49-Correction of form and kit errors; §40.67-Role in direct observation and other atypical test situations; §40.83-Laboratory handling of fatal and correctable flaws; §40.97-Laboratory handling of test results and quantitative values; §40.99-Authorization of longer laboratory retention of specimens; §40.101-Relationship with laboratories; avoidance of conflicts of interest; §40.105-Notification of discrepancies in blind specimen results; §40.171-Request for test of split specimen; §40.187-Action concerning split

specimen test results; §40.193-Role in "shy bladder" situations; §40.195-Role in canceling tests§§40.199-40.203-Documenting errors in tests; §40.327-Confidentiality and release of information; §40.347-Transfer of records; §40.353-Relationships with service agents.

Subpart H--Split Specimen Tests

§40.171 -- How does an employee request a test of a split specimen?

(a) As an employee, when the MRO has notified you that you have a verified positive drug test or refusal to test because of adulteration or substitution, you have 72 hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing. If you make this request to the MRO within 72 hours, you trigger the requirements of this section for a test of the split specimen.

(b) (1) If, as an employee, you have not requested a test of the split specimen within 72 hours, you may present to the MRO information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO (*e.g.*, there was no one in the MRO's office and the answering machine was not working), or other circumstances unavoidably prevented you from making a timely request.

(2) As the MRO, if you conclude from the employee's information that there was a legitimate reason for the employee's failure to contact you within 72 hours, you must direct that the test of the split specimen take place, just as you would when there is a timely request.

(c) When the employee makes a timely request for a test of the split specimen under paragraphs (a) and (b) of this section, you must, as the MRO, immediately provide written notice to the laboratory that tested the primary specimen, directing the laboratory to forward the split specimen to a second HHS-certified laboratory. You must also document the date and time of the employee's request.

§40.173 -- Who is responsible for paying for the test of a split specimen?

(a) As the employer, you are responsible for making sure (*e.g.*, by establishing appropriate accounts with laboratories for testing split specimens) that the MRO, first laboratory, and second laboratory perform the functions noted in §§40.175-40.185 in a timely manner, once the employee has made a timely request for a test of the split specimen.

(b) As the employer, you must not condition your compliance with these requirements on the employee's direct payment to the MRO or laboratory or the employee's agreement to reimburse you for the costs of testing. For example, if you ask the employee to pay for some or all of the cost of testing the split specimen, and the employee is unwilling or unable to do so, you must ensure that the test takes place in a timely manner, even though this means that you pay for it.

(c) As the employer, you may seek payment or reimbursement of all or part of the cost of the split specimen from the employee (*e.g.*, through your written company policy or a collective bargaining agreement). This part takes no position on who ultimately pays the cost of the test, so long as the employer ensures that the testing is conducted as required and the results released appropriately.

§40.175 -- What steps does the first laboratory take with a split specimen?

(a) As the laboratory at which the primary and split specimen first arrive, you must check to see whether the split specimen is available for testing.

(b) If the split specimen is unavailable or appears insufficient, you must then do the following:

(1) Continue the testing process for the primary specimen as you would normally. Report the results for the primary specimen without providing the MRO information regarding the unavailable split specimen.

(2) Upon receiving a letter from the MRO instructing you to forward the split specimen to another laboratory for testing, report to the MRO that the split specimen is unavailable for testing. Provide as much information as you can about the cause of the unavailability.

(c) As the laboratory that tested the primary specimen, you are not authorized to open the split specimen under any circumstances (except when the split specimen is re-designated as provided in §40.83).

(d) When you receive written notice from the MRO instructing you to send the split specimen to another HHS-certified laboratory, you must forward the following items to the second laboratory:

(1) The split specimen in its original specimen bottle, with the seal intact;

(2) A copy of the MRO's written request; and

(3) A copy of Copy 1 of the CCF, which identifies the drug(s)/metabolite(s) or the validity criteria to be tested for.

(e) You must not send to the second laboratory any information about the identity of the employee. Inadvertent disclosure does not, however, cause a fatal flaw.

(f) This subpart does not prescribe who gets to decide which HHS-certified laboratory is used to test the split specimen. That decision is left to the parties involved.

§40.177 -- What does the second laboratory do with the split specimen when it is tested to reconfirm the presence of a drug or drug metabolite?

(a) As the laboratory testing the split specimen, you must test the split specimen for the drug(s)/drug metabolite(s) detected in the primary specimen.

(b) You must conduct this test without regard to the cutoff concentrations of §40.87.

(c) If the test fails to reconfirm the presence of the drug(s)/drug metabolite(s) that were reported positive in the primary specimen, you must conduct validity tests in an attempt to determine the reason for being unable to reconfirm the presence of the drug(s)/metabolite(s). You should conduct the same validity tests as you would conduct on a primary specimen set forth in §40.91.

(d) In addition, if the test fails to reconfirm the presence of the drugs/drugs metabolites or validity criteria that were reported in the primary specimen, you may transmit the specimen or an aliquot of it to another HHS-certified laboratory that will conduct another reconfirmation test.

§40.179 -- What does the second laboratory do with the split specimen when it is tested to reconfirm an adulterated test result?

As the laboratory testing the split specimen, you must test the split specimen for the adulterant detected in the primary specimen, using the criteria of §40.95 just as you would do for a primary specimen. The result of the primary specimen is reconfirmed if the split specimen meets these criteria.

§40.181 -- What does the second laboratory do with the split specimen when it is tested to reconfirm a substituted test result?

As the laboratory testing the split specimen, you must test the split specimen using the criteria of §40.93(b), just as you would do for a primary specimen. The result of the primary specimen is reconfirmed if the split specimen meets these criteria.

§40.183 -- What information do laboratories report to MROs regarding split specimen results?

(a) As the laboratory responsible for testing the split specimen, you must report split specimen test results by checking the "Reconfirmed" box or the "Failed to Reconfirm" box (Step 5(b)) on Copy 1 of the CCF.

(b) If you check the "Failed to Reconfirm" box, one of the following statements must be included (as appropriate) on the "Reason" line (Step 5(b)):

(1) "Drug(s)/Drug Metabolite(s) Not Detected."

(2) "Adulterant not found within criteria."

(3) "Specimen not consistent with substitution criteria [specify creatinine, specific gravity, or both]"

(4) "Specimen not available for testing."

(c) As the laboratory certifying scientist, enter your name, sign, and date the CCF.

§40.185 -- Through what methods and to whom must a laboratory report split specimen results?

(a) As the laboratory testing the split specimen, you must report laboratory results directly, and only, to the MRO at his or her place of business. You must not report results to or through the DER or another service agent (*e.g.*, a C/TPA).

(b) You must fax, courier, mail, or electronically transmit a legible image or copy of the fully-completed Copy 1 of the CCF, which has been signed by the certifying scientist.

(c) You must transmit the laboratory result to the MRO immediately, preferably on the same day or next business day as the result is signed and released.

§40.187 -- What does the MRO do with split specimen laboratory results?

As an MRO, you must take the following actions when a laboratory reports the following results of split specimen tests:

(a) ***Reconfirmed***.

(1) In the case of a reconfirmed positive test for a drug or drug metabolite, report the reconfirmation to the DER and the employee.

(2) In the case of a reconfirmed adulterated or substituted result, report to the DER and the employee that the specimen was adulterated or substituted, either of which constitutes a refusal to test. Therefore, "refusal to test" is the final result.

(b) ***Failed to Reconfirm: Drug(s)/Drug Metabolite(s) Not Detected***.

(1) Report to the DER and the employee that both tests must be cancelled.

(2) Using the format in Appendix D to this part, inform ODAPC of the failure to reconfirm.

(c) ***Failed to Reconfirm: Adulteration or Substitution (as appropriate) Criteria Not Met***.

(1) Report to the DER and the employee that both tests must be cancelled.

(2) Using the format in Appendix D to this part, inform ODAPC of the failure to reconfirm.

(d) ***Failed to Reconfirm: Specimen not Available for Testing***.

(1) Report to the DER and the employee that both tests must be cancelled and the reason for cancellation.

(2) Direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection

(3) Using the format in Appendix D to this part, notify ODAPC of the failure to reconfirm.

(e) Enter your name, sign and date (Step 7) of Copy 2 of the CCF.

(f) Send a legible copy of Copy 2 of the CCF (or a signed and dated letter, *See,* §40.163) to the employer and keep a copy for your records. Transmit the document as provided in §40.167.

§40.189 -- Where is other information concerning split specimens found in this regulation?

You can find more information concerning split specimens in several sections of this part:

§40.3-Definition; §40.65-Quantity of split specimen; §40.67-Directly observed test when split specimen is unavailable; §§40.71-40.73-Collection process for split specimens; §40.83-Laboratory accessioning of split specimens; §40.99-Laboratory retention of split specimens; §40.103-Blind split specimens; §40.153-MRO notice to employees on tests of split specimen; §§40.193 and 40.201-MRO actions on insufficient or unavailable split specimens.

Appendix D to Part 40-Report format for split specimen failure to reconfirm.

Subpart I--Problems in Drug Tests

§40.191 -- What is a refusal to take a DOT drug test, and what are the consequences?

(a) As an employee, you have refused to take a drug test if you:

(1) Fail to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by C/TPA (*See,* §40.61(a));

(2) Fail to remain at the testing site until the testing process is complete;

(3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations;

(4) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (*See,* §§40.67(l) and 40.69(g));

(5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (*See,* §40.193(d)(2));

(6) Fail or decline to take a second test the employer or collector has directed you to take;

(7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" procedures of this part (*See,* §40.193(d)); or

(8) Fail to cooperate with any part of the testing process (*e.g.*, refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process).

(b) As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

(c) As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

(d) As a collector or an MRO, when an employee refuses to participate in the part of the testing process in which you are involved, you must terminate the portion of the testing process in which you are involved, document the refusal on the CCF (or in a separate document which you cause to be attached to the form), immediately notify the DER by any means (*e.g.*, telephone or secure fax machine) that ensures that the refusal notification is immediately received. As a referral physician (*e.g.*, physician evaluating a "shy bladder" condition or a claim of a legitimate medical explanation in a validity testing situation), you must notify the MRO, who in turn will notify the DER.

(1) As the collector, you must note the refusal in the "Remarks" line (Step 2), and sign and date the CCF.

(2) As the MRO, you must note the refusal by checking the "refused to test because" box (Step 6) on Copy 2 of the CCF, and add the reason on the "Remarks" line. You must then sign and date the CCF.

(e) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test.

§40.193 -- What happens when an employee does not provide a sufficient amount of urine for a drug test?

(a) This section prescribes procedures for situations in which an employee does not provide a sufficient amount of urine to permit a drug test (*i.e.,* 45 mL of urine).

(b) As the collector, you must do the following:

(1) Discard the insufficient specimen, except where the insufficient specimen was out of temperature range or showed evidence of adulteration or tampering (*See,*§40.65(b) and (c)).

(2) Urge the employee to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. It is not a refusal to test if the employee declines to drink.

(3) If the employee refuses to make the attempt to provide a new urine specimen, you must discontinue the collection, note the fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER. This is a refusal to test.

(4) If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, you must discontinue the collection, note the fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER.

(5) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must send or fax these copies to the MRO and DER within 24 hours or the next business day.

(c) As the DER, when the collector informs you that the employee has not provided a sufficient amount of urine (*See,* paragraph (b)(4) of this section), you must, after consulting with the MRO, direct the employee to obtain, within five working days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. (The MRO may perform this evaluation if the MRO has appropriate expertise.)

(1) As the MRO, if another physician will perform the evaluation, you must provide the other physician with the following information and instructions:

(i) That the employee was required to take a DOT drug test, but was unable to provide a sufficient amount of urine to complete the test;

(ii) The consequences of the appropriate DOT agency regulation for refusing to take the required drug test;

(iii) That the referral physician must agree to follow the requirements of paragraphs (d) through (g) of this section.

(d) As the referral physician conducting this evaluation, you must recommend that the MRO make one of the following determinations:

(1) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. As the MRO, if you accept this recommendation, you must:

(i) Check "Test Cancelled" (Step 6) on the CCF; and

(ii) Sign and date the CCF.

(2) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. As the MRO, if you accept this recommendation, you must:

(i) Check "Refusal to test because" (Step 6) on the CCF and enter reason in the remarks line; and

(ii) Sign and date the CCF.

(e) For purposes of this paragraph, a medical condition includes an ascertainable physiological condition (*e.g.,* a urinary system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or dehydration.

(f) As the referral physician making the evaluation, after completing your evaluation, you must provide a written statement of your recommendations and the basis for them to the MRO. You must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain your conclusion.

(g) If, as the referral physician making this evaluation in the case of a pre-employment test, you determine that the employee's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the employee from providing a sufficient amount of urine for a very long or indefinite period of time, you must set forth your determination and the reasons for it in your written statement to the MRO. As the MRO, upon receiving such a report, you must follow the requirements of §40.195, where applicable.

(h) As the MRO, you must seriously consider and assess the referral physician's recommendations in making your determination about whether the employee has a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. You must report your determination to the DER in writing as soon as you make it.

(i) As the employer, when you receive a report from the MRO indicating that a test is cancelled as provided in paragraph (d)(1) of this section, you take no further action with respect to the employee. The employee remains in the random testing pool.

§40.195 -- What happens when an individual is unable to provide a sufficient amount of urine for a pre-employment or return-to-duty test because of a permanent or long-term medical condition?

(a) This section concerns a situation in which an employee has a medical condition that precludes him or her from providing a sufficient specimen for a pre-employment or return-to-duty test and the condition involves a permanent or long-term disability. As the MRO in this situation, you must do the following:

(1) You must determine if there is clinical evidence that the individual is an illicit drug user. You must make this determination by personally conducting, or causing to be conducted, a medical evaluation and through consultation with the employee's physician and/or the physician who conducted the evaluation under §40.193(d).

(2) If you do not personally conduct the medical evaluation, you must ensure that one is conducted by a licensed physician acceptable to you.

(3) For purposes of this section, the MRO or the physician conducting the evaluation may conduct an alternative test (*e.g.,* blood) as part of the medically appropriate procedures in determining clinical evidence of drug use.

(b) If the medical evaluation reveals no clinical evidence of drug use, as the MRO, you must report the result to the employer as a negative test with written notations regarding results of both the evaluation conducted under §40.193(d) and any further medical examination. This report must state the basis for the determination that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and for the determination that no signs and symptoms of drug use exist.

(1) Check "Negative" (Step 6) on the CCF.

(2) Sign and date the CCF.

(c) If the medical evaluation reveals clinical evidence of drug use, as the MRO, you must report the result to the employer as a cancelled test with written notations regarding results of both the evaluation conducted under §40.193(d) and any further medical examination. This report must state that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and state the reason for the determination that signs and symptoms of drug use exist. Because this is a cancelled test, it does not serve the purposes of a negative test (*i.e.,* the employer is not authorized to allow the employee to begin or resume performing safety-sensitive functions, because a negative test is needed for that purpose).

(d) For purposes of this section, permanent or long-term medical conditions are those physiological, anatomic, or psychological abnormalities documented as being present prior to the attempted collection, and considered not amenable to correction or cure for an extended period of time, if ever.

(1) Examples would include destruction (any cause) of the glomerular filtration system leading to renal failure; unrepaired traumatic disruption of the urinary tract; or a severe psychiatric disorder focused on genito-urinary matters.

(2) Acute or temporary medical conditions, such as cystitis, urethritis or prostatitis, though they might interfere with collection for a limited period of time, cannot receive the same exceptional consideration as the permanent or long-term conditions discussed in paragraph (d)(1) of this section.

§40.197 -- What happens when an employer receives a report of a dilute specimen?

(a) As the employer, if the MRO informs you that a positive drug test was dilute, you simply treat the test as a verified positive test. You must not direct the employee to take another test based on the fact that the specimen was dilute.

(b) If the MRO informs you that a negative drug test was dilute, you may, but are not required to, direct the employee to take another test immediately. Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (*See,* §40.67(b) and (c)).

(c) You must treat all employees the same for this purpose. For example, you must not retest some employees and not others. You may, however, establish different policies for different types of tests (*e.g.,* conduct retests in pre-employment test situations, but not in random test situations). You must inform your employees in advance of your decisions on these matters.

(d) If you direct the employee to take another test, you must ensure that the employee is given the minimum possible advance notice that he or she must go to the collection site.

(e) If you direct the employee to take another test, the result of the second test-not that of the original test-becomes the test of record, on which you rely for purposes of this part.

(f) If you require employees to take another test, and the second test is also negative and dilute, you are not permitted to make the employee take a third test because the second test was dilute.

(g) If you direct the employee to take another test and the employee declines to do so, the employee has refused the test for purpose of this part and DOT agency regulations.

§40.199 -- What problems always cause a drug test to be cancelled?

(a) As the MRO, when the laboratory discovers a "fatal flaw" during its processing of incoming specimens (*See,* §40.83), the laboratory will report to you that the specimen has been "Rejected for Testing" (with the reason stated). You must always cancel such a test.

(b) The following are "fatal flaws":

(1) There is no printed collector's name *and* no collector's signature;

(2) The specimen ID numbers on the specimen bottle and the CCF do not match;

(3) The specimen bottle seal is broken or shows evidence of tampering (and a split specimen cannot be re-designated, *See,* §40.83(g)); and

(4) Because of leakage or other causes, there is an insufficient amount of urine in the primary specimen bottle for analysis and the specimens cannot be re-designated *(See,* §40.83(g)).

(c) You must report the result as provided in §40.161.

§40.201 -- What problems always cause a drug test to be cancelled and may result in a requirement for another collection?

As the MRO, you must cancel a drug test when a laboratory reports that any of the following problems have occurred. You must inform the DER that the test was cancelled. You must also direct the DER to ensure that an additional collection occurs immediately, if required by the applicable procedures specified in paragraphs (a) through (e) of this section.

(a) The laboratory reports an "Invalid Result." You must follow applicable procedures in §40.159 (recollection under direct observation may be required).

(b) The laboratory reports the result as "Rejected for Testing." You must follow applicable procedures in §40.161 (a recollection may be required).

(c) The laboratory's test of the primary specimen is positive and the split specimen is reported by the laboratory as "Failure to Reconfirm: Drug(s)/Drug Metabolite(s) Not Detected." You must follow applicable procedures in §40.187(b) (no recollection is required in this case).

(d) The laboratory's test result for the primary specimen is adulterated or substituted and the split specimen is reported by the laboratory as "Adulterant not found within criteria," or " specimen not consistent with substitution criteria, as applicable. You must follow applicable procedures in §40.187(c) (no recollection is required in this case).

(e) The laboratory's test of the primary specimen is positive, adulterated, or substituted and the split specimen is unavailable for testing. You must follow applicable procedures in §40.187(d) (recollection under direct observation is required in this case).

(f) The examining physician has determined that there is an acceptable medical explanation of the employee's failure to provide a sufficient amount of urine. You must follow applicable procedures in §40.193(d)(1) (no recollection is required in this case).

§40.203 -- What problems cause a drug test to be cancelled unless they are corrected?

(a) As the MRO, when a laboratory discovers a "correctable flaw" during its processing of incoming specimens (*See,* §40.83), the laboratory will attempt to correct it. If the laboratory is unsuccessful in this attempt, it will report to you that the specimen has been "Rejected for Testing" (with the reason stated).

(b) The following are "correctable flaws" that laboratories must attempt to correct:

(1) The collector's signature is omitted on the certification statement on the CCF.

(2) The specimen temperature was not checked and the "Remarks" line did not contain an entry regarding the temperature being out of range.

(c) As the MRO, when you discover a "correctable flaw" during your review of the CCF, you must cancel the test unless the flaw is corrected.

(d) The following are correctable flaws that you must attempt to correct:

(1) The employee's signature is omitted from the certification statement, unless the employee's failure or refusal to sign is noted on the "Remarks" line of the CCF.

(2) The certifying scientist's signature is omitted on the laboratory copy of the CCF for a positive, adulterated, substituted, or invalid test result.

(3) The collector uses a non-DOT form for the test, provided that the collection and testing process is conducted in accordance with DOT procedures in an HHS-certified laboratory following DOT initial and confirmation test criteria.

§40.205 -- How are drug test problems corrected?

(a) As a collector, you have the responsibility of trying to successfully complete a collection procedure for each employee.

(1) If, during or shortly after the collection process, you become aware of any event that prevents the completion of a valid test or collection (*e.g.,* a procedural or paperwork error), you must try to correct the problem promptly, if doing so is practicable. You may conduct another collection as part of this effort.

(2) If another collection is necessary, you must begin the new collection procedure as soon as possible, using a new CCF and a new collection kit.

(b) If, as a collector, laboratory, MRO, employer, or other person implementing these drug testing regulations, you become aware of a problem that can be corrected *(See,* §40.203), but which has not already been corrected under paragraph (a) of this section, you must take all practicable action to correct the problem so that the test is not cancelled.

(1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a statement that it is true and accurate. For example, suppose you are a collector, and you forgot to make a notation on the "Remarks" line of the CCF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification and that your statement is true and accurate. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.

(2) If the problem is the use of a non-Federal form, you must, as the person responsible for the use of the incorrect form, provide a signed statement that the incorrect form contains all the information needed for a valid DOT drug test, that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control. The statement must also list the steps you have taken to prevent future use of non-Federal forms for DOT tests. For this flaw to have been corrected, the test of the specimen must have occurred at a HHS-certified laboratory where it was tested using the testing protocol in this part. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.

(3) You must maintain the written documentation of a correction with the CCF.

(4) You must mark the CCF in such a way (*e.g.,* stamp noting correction) as to make it obvious on the face of the CCF that you corrected the flaw.

(c) If the correction does not take place, as the MRO you must cancel the test.

§40.207 -- What is the effect of a cancelled drug test?

(a) A cancelled drug test is neither positive nor negative.

(1) As an employer, you must not attach to a cancelled test the consequences of a positive test or other violation of a DOT drug testing regulation (*e.g.,* removal from a safety-sensitive position).

(2) As an employer, you must not use a cancelled test for the purposes of a negative test to authorize the employee to perform safety-sensitive functions (*i.e.,* in the case of a pre-employment, return-to-duty, or follow-up test).

(3) However, as an employer, you must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph (a)(2) of this section or other provisions of this part that require another test to be conducted (*e.g.,* §§40.159(a)(5) and 40.187(b)).

(b) A cancelled test does not count toward compliance with DOT requirements (*e.g.,* being applied toward the number of tests needed to meet the employer's minimum random testing rate).

(c) A cancelled DOT test does not provide a valid basis for an employer to conduct a non-DOT test (*i.e.,* a test under company authority).

§40.209 -- What is the effect of procedural problems that are not sufficient to cancel a drug test?

(a) As a collector, laboratory, MRO, employer or other person administering the drug testing process, you must document any errors in the testing process of which you become aware, even if they are not considered problems that will cause a test to be cancelled as listed in this subpart. Decisions about the ultimate impact of these errors will be determined by other administrative or legal proceedings, subject to the limitations of paragraph (b) of this section.

(b) No person concerned with the testing process may declare a test cancelled based on an error that does not have a significant adverse effect on the right of the employee to have a fair and accurate test. Matters that do not result in the cancellation of a test include, but are not limited to, the following:

(1) A minor administrative mistake (*e.g.,* the omission of the employee's middle initial, a transposition of numbers in the employee's social security number);

(2) An error that does not affect employee protections under this part (*e.g.,* the collector's failure to add bluing agent to the toilet bowl, which adversely affects only the ability of the collector to detect tampering with the specimen by the employee);

(3) The collection of a specimen by a collector who is required to have been trained (*See,* §40.33), but who has not met this requirement;

(4) A delay in the collection process (*See,* §40.61(a));

(5) Verification of a test result by an MRO who has the basic credentials to be qualified as an MRO (*See,* §40.121(a) through (b)) but who has not met training and/or documentation requirements (*See,* §40.121(c) through (e));

(6) The failure to directly observe or monitor a collection that the rule requires or permits to be directly observed or monitored, or the unauthorized use of direct observation or monitoring for a collection;

(7) The fact that a test was conducted in a facility that does not meet the requirements of §40.41;

(8) If the specific name of the courier on the CCF is omitted or erroneous;

(9) Personal identifying information is inadvertently contained on the CCF (*e.g.,* the employee signs his or her name on the laboratory copy); or

(10) Claims that the employee was improperly selected for testing.

(c) As an employer, these types of errors, even though not sufficient to cancel a drug test result, may subject you to enforcement action under DOT agency regulations.

Subpart J--Alcohol Testing Personnel

§40.211 -- Who conducts DOT alcohol tests?

(a) Screening test technicians (STTs) and breath alcohol technicians (BATs) meeting their respective requirements of this subpart are the only people authorized to conduct DOT alcohol tests.

(b) An STT can conduct only alcohol screening tests, but a BAT can conduct alcohol screening and confirmation tests.

(c) As a BAT- or STT-qualified immediate supervisor of a particular employee, you may not act as the STT or BAT when that employee is tested, unless no other STT or BAT is available and DOT agency regulations do not prohibit you from doing so.

§40.213 -- What training requirements must STTs and BATs meet?

To be permitted to act as a BAT or STT in the DOT alcohol testing program, you must meet each of the requirements of this section:

(a) ***Basic information***. You must be knowledgeable about the alcohol testing procedures in this part and the current DOT guidance. These documents and information are available from ODAPC (Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590, 202-366-3784, or on the ODAPC web site, http://www.dot.gov/ost/dapc)).

(b) ***Qualification training***. You must receive qualification training meeting the requirements of this paragraph (b).

(1) Qualification training must be in accordance with the DOT Model BAT or STT Course, as applicable. The DOT Model Courses are available from ODAPC (Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590, 202-366-3784, or on the ODAPC web site, http://www.dot.gov/ost/dapc). The training can also be provided using a course of instruction equivalent to the DOT Model Courses. On request, ODAPC will review BAT and STT instruction courses for equivalency.

(2) Qualification training must include training to proficiency in using the alcohol testing procedures of this part and in the operation of the particular alcohol testing device(s) (*i.e.,* the ASD(s) or EBT(s)) you will be using.

(3) The training must emphasize that you are responsible for maintaining the integrity of the testing process, ensuring the privacy of employees being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.

(4) The instructor must be an individual who has demonstrated necessary knowledge, skills, and abilities by regularly conducting DOT alcohol tests as an STT or BAT, as applicable, for a period of at least a year, who has conducted STT or BAT training, as applicable, under this part for a year, or who has successfully completed a "train the trainer" course.

(c) ***Initial Proficiency Demonstration***. Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in alcohol testing under this part by completing three consecutive error-free mock tests.

(1) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are "error-free." This person must be an individual who meets the requirements of paragraph (b)(4) of this section.

(2) These tests must use the alcohol testing devices (*e.g.,* EBT(s) or ASD(s)) that you will use as a BAT or STT.

(3) If you are an STT who will be using an ASD that indicates readings by changes, contrasts, or other readings in color, you must demonstrate as part of the mock test that you are able to discern changes, contrasts, or readings correctly.

(d) ***Schedule for qualification training and initial proficiency demonstration***. The following is the schedule for qualification training and the initial proficiency demonstration you must meet:

(1) If you became a BAT or STT before August 1, 2001, you were required to have met the requirements set forth in paragraphs (b) and (c) of this section, and you do not have to meet them again.

(2) If you become a BAT or STT on or after August 1, 2001, you must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform BAT or STT functions.

(e) ***Refresher training***. No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.

(f) ***Error Correction Training***. If you make a mistake in the alcohol testing process that causes a test to be cancelled (*i.e.,* a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.

(1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (b)(4) of this section.

(2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.

(3) As part of the error correction training, you must demonstrate your proficiency in the alcohol testing procedures of this part by completing three consecutive error-free mock tests. The mock tests must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock tests were error-free.

(g) ***Documentation***. You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are negotiating to use your services.

(h) ***Other persons who may serve as BATs or STTs***.

(1) Anyone meeting the requirements of this section to be a BAT may act as an STT, provided that the individual has demonstrated initial proficiency in the operation of the ASD that he or she is using, as provided in paragraph (c) of this section.

(2) Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as BATs. They are not required to also complete the training requirements of this section in order to act as BATs. In order for a test conducted by such an officer to be accepted under DOT alcohol testing requirements, the officer must have been certified by a state or local government to use the EBT or ASD that was used for the test.

§40.215 -- What information about the DER do employers have to provide to BATs and STTs?

As an employer, you must provide to the STTs and BATs the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

§40.217 -- Where is other information on the role of STTs and BATs found in this regulation?

You can find other information on the role and functions of STTs and BATs in the following sections of this part:

§40.3-Definitions; §40.223-Responsibility for supervising employees being tested; §§40.225-40.227-Use of the alcohol testing form; §§40.241-40.245-Screening test procedures with ASDs and EBTs; §§40.251-40.255-Confirmation test procedures; §40.261-Refusals to test; §§40.263-40.265-Insufficient saliva or breath; §40.267-Problems requiring cancellation of tests; §§40.269-40.271-Correcting problems in tests.

Subpart K--Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing

§40.221 -- Where does an alcohol test take place?

(a) A DOT alcohol test must take place at an alcohol testing site meeting the requirements of this section.

(b) If you are operating an alcohol testing site, you must ensure that it meets the security requirements of §40.223.

(c) If you are operating an alcohol testing site, you must ensure that it provides visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.

(d) If you are operating an alcohol testing site, you must ensure that it has all needed personnel, materials, equipment, and facilities to provide for the collection and analysis of breath and/or saliva samples, and a suitable clean surface for writing.

(e) If an alcohol testing site fully meeting all the visual and aural privacy requirements of paragraph (c) is not readily available, this part allows a reasonable suspicion or post-accident test to be conducted at a site that partially meets these requirements. In this case, the site must afford visual and aural privacy to the employee to the greatest extent practicable.

(f) An alcohol testing site can be in a medical facility, a mobile facility (*e.g.,* a van), a dedicated collection facility, or any other location meeting the requirements of this section.

§40.223 -- What steps must be taken to protect the security of alcohol testing sites?

(a) If you are a BAT, STT, or other person operating an alcohol testing site, you must prevent unauthorized personnel from entering the testing site.

(1) The only people you are to treat as authorized persons are employees being tested, BATs, STTs, and other alcohol testing site workers, DERs, employee representatives authorized by the employer (*e.g.,* on the basis of employer policy or labor-management agreement), and DOT agency representatives.

(2) You must ensure that all persons are under the supervision of a BAT or STT at all times when permitted into the site.

(3) You may remove any person who obstructs, interferes with, or causes unnecessary delay in the testing process.

(b) As the BAT or STT, you must not allow any person other than you, the employee, or a DOT agency representative to actually witness the testing process (*See,* §§40.241-40.255).

(c) If you are operating an alcohol testing site, you must ensure that when an EBT or ASD is not being used for testing, you store it in a secure place.

(d) If you are operating an alcohol testing site, you must ensure that no one other than BATs or other employees of the site have access to the site when an EBT is unsecured.

(e) As a BAT or STT, to avoid distraction that could compromise security, you are limited to conducting an alcohol test for only one employee at a time.

(1) When an EBT screening test on an employee indicates an alcohol concentration of 0.02 or higher, and the same EBT will be used for the confirmation test, you are not allowed to use the EBT for a test on another employee before completing the confirmation test on the first employee.

(2) As a BAT who will conduct both the screening and the confirmation test, you are to complete the entire screening and confirmation process on one employee before starting the screening process on another employee.

(3) You are not allowed to leave the alcohol testing site while the testing process for a given employee is in progress, except to notify a supervisor or contact a DER for assistance in the case an employee or other person who obstructs, interferes with, or unnecessarily delays the testing process.

§40.225 -- What form is used for an alcohol test?

(a) The DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test. The ATF must be a three-part carbonless manifold form. The ATF is found in **AppendixG** to this part. You may view this form on the ODAPC web site (http://www.dot.gov/ost/dapc).

(b) As an employer in the DOT alcohol testing program, you are not permitted to modify or revise the ATF except as follows:

(1) You may include other information needed for billing purposes, outside the boundaries of the form.

(2) You may use a ATF directly generated by an EBT which omits the space for affixing a separate printed result to the ATF, provided the EBT prints the result directly on the ATF.

(3) You may use an ATF that has the employer's name, address, and telephone number preprinted. In addition, a C/TPA's name, address, and telephone number may be included, to assist with negative results.

(4) You may use an ATF in which all pages are printed on white paper. The white pages must have either clearly discernible borders in the specified color for each page or designation statements for each copy in the specified color.

(5) As a BAT or STT, you may add, on the "Remarks" line of the ATF, the name of the DOT agency under whose authority the test occurred.

(6) As a BAT or STT, you may use a ATF that has your name, address, and telephone number preprinted, but under no circumstances can your signature be preprinted.

(c) As an employer, you may use an equivalent foreign-language version of the ATF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and BAT/STT understand and can use the form in that language.

§40.227 -- May employers use the ATF for non-DOT tests, or non-DOT forms for DOT tests?

(a) No, as an employer, BAT, or STT, you are prohibited from using the ATF for non-DOT alcohol tests. You are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either subjects you to enforcement action under DOT agency regulations.

(b) If the STT or BAT, either by mistake, or as the only means to conduct a test under difficult circumstances (*e.g.,* post-accident test with insufficient time to obtain the ATF), uses a non-DOT form for a DOT test, the use of a non-DOT form does not, in and of itself, require the

employer or service agent to cancel the test. However, in order for the test to be considered valid, a signed statement must be obtained from the STT or BAT in accordance with §40.271(b).

§40.229 -- What devices are used to conduct alcohol screening tests?

EBTs and ASDs on the NHTSA conforming products lists (CPL) for evidential and non-evidential devices are the only devices you are allowed to use to conduct alcohol screening tests under this part. An ASD can be used only for screening tests for alcohol, and may not be used for confirmation tests.

§40.231 -- What devices are used to conduct alcohol confirmation tests?

(a) EBTs on the NHTSA CPL for evidential devices that meet the requirements of paragraph (b) of this section are the only devices you may use to conduct alcohol confirmation tests under this part. Note that, among devices on the CPL for EBTs, only those devices listed without an asterisk (*) are authorized for use in confirmation testing in the DOT alcohol testing program.

(b) To conduct a confirmation test, you must use an EBT that has the following capabilities:

(1) Provides a printed triplicate result (or three consecutive identical copies of a result) of each breath test;

(2) Assigns a unique number to each completed test, which the BAT and employee can read before each test and which is printed on each copy of the result;

(3) Prints, on each copy of the result, the manufacturer's name for the device, its serial number, and the time of the test;

(4) Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;

(5) Tests an air blank; and

(6) Performs an external calibration check.

§40.233 -- What are the requirements for proper use and care of EBTs?

(a) As an EBT manufacturer, you must submit, for NHTSA approval, a quality assurance plan (QAP) for your EBT before NHTSA places the EBT on the CPL.

(1) Your QAP must specify the methods used to perform external calibration checks on the EBT, the tolerances within which the EBT is regarded as being in proper calibration, and the intervals at which these checks must be performed. In designating these intervals, your QAP must take into account factors like frequency of use, environmental conditions (*e.g.,* temperature, humidity, altitude) and type of operation (*e.g.,* stationary or mobile).

(2) Your QAP must also specify the inspection, maintenance, and calibration requirements and intervals for the EBT.

(b) As the manufacturer, you must include, with each EBT, instructions for its use and care consistent with the QAP.

(c) As the user of the EBT (*e.g.,* employer, service agent), you must do the following:

(1) You must follow the manufacturer's instructions *(See,* paragraph (b) of this section), including performance of external calibration checks at the intervals the instructions specify.

(2) In conducting external calibration checks, you must use only calibration devices appearing on NHTSA's CPL for "Calibrating Units for Breath Alcohol Tests."

(3) If an EBT fails an external check of calibration, you must take the EBT out of service. You may not use the EBT again for DOT alcohol testing until it is repaired and passes an external calibration check.

(4) You must maintain records of the inspection, maintenance, and calibration of EBTs as provided in §40.333(a)(2).

(5) You must ensure that inspection, maintenance, and calibration of the EBT are performed by its manufacturer or a maintenance representative certified either by the manufacturer or by a state health agency or other appropriate state agency.

§40.235 -- What are the requirements for proper use and care of ASDs?

(a) As an ASD manufacturer, you must submit, for NHTSA approval, a QAP for your ASD before NHTSA places the ASD on the CPL. Your QAP must specify the methods used for quality control checks, temperatures at which the ASD must be stored and used, the shelf life of the device, and environmental conditions (*e.g.,* temperature, altitude, humidity) that may affect the ASD's performance.

(b) As a manufacturer, you must include with each ASD instructions for its use and care consistent with the QAP. The instructions must include directions on the proper use of the ASD, and, where applicable the time within which the device must be read, and the manner in which the reading is made.

(c) As the user of the ADS (*e.g.,* employer, STT), you must follow the QAP instructions.

(d) You are not permitted to use an ASD that does not pass the specified quality control checks or that has passed its expiration date.

(e) As an employer, with respect to breath ASDs, you must also follow the device use and care requirements of §40.233.

Subpart L--Alcohol Screening Tests

§40.241 -- What are the first steps in any alcohol screening test?

As the BAT or STT you will take the following steps to begin all alcohol screening tests, regardless of the type of testing device you are using:

(a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's worksite, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test.

(b) Ensure that, when the employee enters the alcohol testing site, you begin the alcohol testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or because an authorized employer or employee representative is delayed in arriving.

(1) If the employee is also going to take a DOT drug test, you must, to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins.

(2) If the employee needs medical attention (*e.g.,* an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to conduct a test.

(c) Require the employee to provide positive identification. You must see a photo ID issued by the employer (other than in the case of an owner-operator or other self-employer individual) or a Federal, state, or local government (*e.g.,* a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.

(d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name but is not required to include your picture, address, or telephone number.
(e) Explain the testing procedure to the employee, including showing the employee the instructions on the back of the ATF.
(f) Complete Step 1 of the ATF.
(g) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

§40.243 -- What is the procedure for an alcohol screening test using an EBT or non-evidential breath ASD?

As the BAT or STT, you must take the following steps:
(a) Select, or allow the employee to select, an individually wrapped or sealed mouthpiece from the testing materials.
(b) Open the individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.
(c) Instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.
(d) Show the employee the displayed test result.
(e) If the device is one that prints the test number, testing device name and serial number, time, and result directly onto the ATF, you must check to ensure that the information has been printed correctly onto the ATF.
(f) If the device is one that prints the test number, testing device name and serial number, time and result, but on a separate printout rather than directly onto the ATF, you must affix the printout of the information to the designated space on the ATF with tamper-evident tape or use a self-adhesive label that is tamper-evident.

(g) If the device is one that does not print the test number, testing device name and serial number, time, and result, or it is a device not being used with a printer, you must record this information in Step 3 of the ATF.

§40.245 -- What is the procedure for an alcohol screening test using a saliva ASD?

As the STT, you must take the following steps:
(a) Check the expiration date on the device and show it to the employee. You may not use the device after its expiration date.
(b) Open an individually wrapped or sealed package containing the device in the presence of the employee.
(c) Offer the employee the opportunity to use the device. If the employee uses it, you must instruct the employee to insert it into his or her mouth and use it in a manner described by the device's manufacturer.
(d) If the employee chooses not to use the device, or in all cases in which a new test is necessary because the device did not activate (*See,* paragraph (g) of this section), you must insert the device into the employee's mouth and gather saliva in the manner described by the device's manufacturer. You must wear single-use examination or similar gloves while doing so and change them following each test.

(e) When the device is removed from the employee's mouth, you must follow the manufacturer's instructions regarding necessary next steps in ensuring that the device has activated.

(f) (1) If you were unable to successfully follow the procedures of paragraphs (c) through (e) of this section (*e.g.,* the device breaks, you drop the device on the floor), you must discard the device and conduct a new test using a new device.

(2) The new device you use must be one that has been under your control or that of the employer before the test.

(3) You must note on the "Remarks" line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test.)

(4) You must offer the employee the choice of using the device or having you use it unless the employee, in the opinion of the STT or BAT, was responsible (*e.g.,* the employee dropped the device) for the new test needing to be conducted.

(5) If you are unable to successfully follow the procedures of paragraphs (c)through (e) of this section on the new test, you must end the collection and put an explanation on the "Remarks" line of the ATF.

(6) You must then direct the employee to take a new test immediately, using an EBT for the screening test.

(g) If you are able to successfully follow the procedures of paragraphs (c)-(e) of this section, but the device does not activate, you must discard the device and conduct a new test, in the same manner as provided in paragraph (f) of this section. In this case, you must place the device into the employee's mouth to collect saliva for the new test.

(h) You must read the result displayed on the device no sooner than the device's manufacturer instructs. In all cases the result displayed must be read within 15 minutes of the test. You must then show the device and its reading to the employee and enter the result on the ATF.

(i) You must never re-use devices, swabs, gloves or other materials used in saliva testing.

(j) You must note the fact that you used a saliva ASD in Step 3 of the ATF.

§40.247 -- What procedures does the BAT or STT follow after a screening test result?

(a) If the test result is an alcohol concentration of less than 0.02, as the BAT or STT, you must do the following:

(1) Sign and date Step 3 of the ATF; and

(2) Transmit the result to the DER in a confidential manner, as provided in §40.255.

(b) If the test result is an alcohol concentration of 0.02 or higher, as the BAT or STT, you must direct the employee to take a confirmation test.

(1) If you are the BAT who will conduct the confirmation test, you must then conduct the test using the procedures beginning at §40.251.

(2) If you are not the BAT who will conduct the confirmation test, direct the employee to take a confirmation test, sign and date Step 3 of the ATF, and give the employee Copy 2 of the ATF.

(3) If the confirmation test will be performed at a different site from the screening test, you must take the following additional steps:

(i) Advise the employee not to eat, drink, put anything (*e.g.,* cigarette, chewing gum) into his or her mouth, or belch;

(ii) Tell the employee the reason for the waiting period required by §40.251(a) (*i.e.,* to prevent an accumulation of mouth alcohol from leading to an artificially high reading);

(iii) Explain that following your instructions concerning the waiting period is to the employee's benefit;

(iv) Explain that the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed;

(v) Note on the "Remarks" line of the ATF that the waiting period instructions were provided;

(vi) Instruct the person accompanying the employee to carry a copy of the ATF to the BAT who will perform the confirmation test; and

(vii) Ensure that you or another BAT, STT, or employer representative observe the employee as he or she is transported to the confirmation testing site. You must direct the employee not to attempt to drive a motor vehicle to the confirmation testing site.

(c) If the screening test is invalid, you must, as the BAT or STT, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, repeat the testing process (*See,* §40. 271).

Subpart M--Alcohol Confirmation Tests

§40.251 -- What are the first steps in an alcohol confirmation test?

As the BAT for an alcohol confirmation test, you must follow these steps to begin the confirmation test process:

(a) You must carry out a requirement for a waiting period before the confirmation test, by taking the following steps:

(1) You must ensure that the waiting period lasts at least 15 minutes, starting with the completion of the screening test. After the waiting period has elapsed, you should begin the confirmation test as soon as possible, but not more than 30 minutes after the completion of the screening test.

(i) If the confirmation test is taking place at a different location from the screening test (*See,* §40.247(b)(3)) the time of transit between sites counts toward the waiting period if the STT or BAT who conducted the screening test provided the waiting period instructions.

(ii) If you cannot verify, through review of the ATF, that waiting period instructions were provided, then you must carry out the waiting period requirement.

(iii) You or another BAT or STT, or an employer representative, must observe the employee during the waiting period.

(2) Concerning the waiting period, you must tell the employee:

(i) Not to eat, drink, put anything (*e.g.,* cigarette, chewing gum) into his or her mouth, or belch;

(ii) The reason for the waiting period (*i.e.,* to prevent an accumulation of mouth alcohol from leading to an artificially high reading);

(iii) That following your instructions concerning the waiting period is to the employee's benefit; and

(iv) That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.

(3) If you become aware that the employee has not followed the instructions, you must note this on the "Remarks" line of the ATF.

(b) If you did not conduct the screening test for the employee, you must require positive identification of the employee, explain the confirmation procedures, and use a new ATF. You must note on the "Remarks" line of the ATF that a different BAT or STT conducted the screening test.
(c) Complete Step 1 of the ATF.
(d) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.
(e) Even if more than 30 minutes have passed since the screening test result was obtained, you must begin the confirmation test procedures in §40.253, not another screening test.
(f) You must note on the "Remarks" line of the ATF the time that elapsed between the two events, and if the confirmation test could not begin within 30 minutes of the screening test, the reason why.
(g) Beginning the confirmation test procedures after the 30 minutes have elapsed does not invalidate the screening or confirmation tests, but it may constitute a regulatory violation subject to DOT agency sanction.

§40.253 -- What are the procedures for conducting an alcohol confirmation test?

As the BAT conducting an alcohol confirmation test, you must follow these steps in order to complete the confirmation test process:
(a) In the presence of the employee, you must conduct an air blank on the EBT you are using before beginning the confirmation test and show the reading to the employee.
(1) If the reading is 0.00, the test may proceed. If the reading is greater than 0.00, you must conduct another air blank.
(2) If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, you must take the EBT out of service.
(3) If you take an EBT out of service for this reason, no one may use it for testing until the EBT is found to be within tolerance limits on an external check of calibration.
(4) You must proceed with the test of the employee using another EBT, if one is available.
(b) You must open a new individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.
(c) You must ensure that you and the employee read the sequential test number displayed on the EBT.
(d) You must instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.
(e) You must show the employee the result displayed on the EBT.
(f) You must show the employee the result and unique test number that the EBT prints out either directly onto the ATF or onto a separate printout.
(g) If the EBT provides a separate printout of the result, you must attach the printout to the designated space on the ATF with tamper-evident tape, or use a self-adhesive label that is tamper-evident.

§40.255 -- What happens next after the alcohol confirmation test result?

(a) After the EBT has printed the result of an alcohol confirmation test, you must, as the BAT, take the following additional steps:
(1) Sign and date Step 3 of the ATF.

(2) If the alcohol confirmation test result is lower than 0.02, nothing further is required of the employee. As the BAT, you must sign and date Step 3 of the ATF.

(3) If the alcohol confirmation test result is 0.02 or higher, direct the employee to sign and date Step 4 of the ATF. If the employee does not do so, you must note this on the "Remarks" line of the ATF. However, this is not considered a refusal to test.

(4) If the test is invalid, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, conduct a re-test. (*See,* §40.271).

(5) Immediately transmit the result directly to the DER in a confidential manner.

(i) You may transmit the results using Copy 1 of the ATF, in person, by telephone, or by electronic means. In any case, you must immediately notify the DER of any result of 0.02 or greater by any means (*e.g.,* telephone or secure fax machine) that ensures the result is immediately received by the DER. You must not transmit these results through C/TPAs or other service agents.

(ii) If you do not make the initial transmission in writing, you must follow up the initial transmission with Copy 1 of the ATF.

(b) As an employer, you must take the following steps with respect to the receipt and storage of alcohol test result information:

(1) If you receive any test results that are not in writing (*e.g.,* by telephone or electronic means), you must establish a mechanism to establish the identity of the BAT sending you the results.

(2) You must store all test result information in a way that protects confidentiality.

Subpart N--Problems in Alcohol Testing

§40.261 -- What is a refusal to take an alcohol test, and what are the consequences?

(a) As an employee, you are considered to have refused to take an alcohol test if you:

(1) Fail to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by C/TPA (*See,* §40.241(b)(1));

(2) Fail to remain at the testing site until the testing process is complete;

(3) Fail to attempt to provide a saliva or breath specimen, as applicable, for any test required by this part or DOT agency regulations;

(4) Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (*See,* §40.265(c));

(5) Fail to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined at §40.265(c);

(6) Fail to sign the certification at Step 2 of the ATF (*See,* §40.241(b)(7)); or

(7) Fail to cooperate with any part of the testing process.

(b) As an employee, if you refuse to take an alcohol test, you incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

(c) As a BAT or an STT, or as the physician evaluating a "shy lung" situation, when an employee refuses to test as provided in paragraph (a) of this section, you must terminate the portion of the testing process in which you are involved, document the refusal on the ATF (or in a separate document which you cause to be attached to the form), immediately notify the DER by any means (*e.g.,* telephone or secure fax machine) that ensures the refusal notification is

immediately received. You must make this notification directly to the DER (not using a C/TPA as an intermediary).

(d) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for such a refusal.

§40.263 -- What happens when an employee is unable to provide a sufficient amount of saliva for an alcohol screening test?

(a) As the STT, you must take the following steps if an employee is unable to provide sufficient saliva to complete a test on a saliva screening device (*e.g.*, the employee does not provide sufficient saliva to activate the device).

(1) You must conduct a new screening test using a new screening device.

(2) If the employee refuses to make the attempt to complete the new test, you must discontinue testing, note the fact on the "Remarks" line of the ATF, and immediately notify the DER. This is a refusal to test.

(3) If the employee has not provided a sufficient amount of saliva to complete the new test, you must note the fact on the "Remarks" line of the ATF and immediately notify the DER.

(b) As the DER, when the STT informs you that the employee has not provided a sufficient amount of saliva (*See,* paragraph (a)(3) of this section), you must immediately arrange to administer an alcohol test to the employee using an EBT or other breath testing device.

§40.265 -- What happens when an employee is unable to provide a sufficient amount of breath for an alcohol test?

(a) If an employee does not provide a sufficient amount of breath to permit a valid breath test, you must take the steps listed in this section.

(b) As the BAT or STT, you must instruct the employee to attempt again to provide a sufficient amount of breath and about the proper way to do so.

(1) If the employee refuses to make the attempt, you must discontinue the test, note the fact on the "Remarks" line of the ATF, and immediately notify the DER. This is a refusal to test.

(2) If the employee again attempts and fails to provide a sufficient amount of breath, you may provide another opportunity to the employee to do so if you believe that there is a strong likelihood that it could result in providing a sufficient amount of breath.

(3) When the employee's attempts under paragraph (b)(2) of this section have failed to produce a sufficient amount of breath, you must note the fact on the "Remarks" line of the ATF and immediately notify the DER.

(4) If you are using an EBT that has the capability of operating manually, you may attempt to conduct the test in manual mode.

(5) If you are qualified to use a saliva ASD and you are in the screening test stage, you may change to a saliva ASD only to complete the screening test.

(c) As the employer, when the BAT or STT informs you that the employee has not provided a sufficient amount of breath, you must direct the employee to obtain, within five days, an evaluation from a licensed physician who is acceptable to you and who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.

(1) You are required to provide the physician who will conduct the evaluation with the following information and instructions:

(i) That the employee was required to take a DOT breath alcohol test, but was unable to provide a sufficient amount of breath to complete the test;

(ii) The consequences of the appropriate DOT agency regulation for refusing to take the required alcohol test;

(iii) That the physician must provide you with a signed statement of his or her conclusions; and

(iv) That the physician, in his or her reasonable medical judgment, must base those conclusions on one of the following determinations:

(A) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. The physician must not include in the signed statement detailed information on the employee's medical condition. In this case, the test is cancelled.

(B) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. This constitutes a refusal to test.

(C) For purposes of paragraphs (c)(1)(iv)(A) and (B) of this section, a medical condition includes an ascertainable physiological condition (*e.g.*, a respiratory system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or hyperventilation.

(2) As the physician making the evaluation, after making your determination, you must provide a written statement of your conclusions and the basis for them to the DER directly (and not through a C/TPA acting as an intermediary). You must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain your conclusion.

(3) Upon receipt of the report from the examining physician, as the DER you must immediately inform the employee and take appropriate action based upon your DOT agency regulations.

§40.267 -- What problems always cause an alcohol test to be cancelled?

As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." You must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are:

(a) In the case of a screening test conducted on a saliva ASD:

(1) The STT reads the result either sooner than or later than the time allotted by the manufacturer (*See,* §40.245(h));

(2) The device does not activate S*ee,* §40.245(g)); or

(3) The device is used for a test after the expiration date printed on its package (*See,* §40.245(a)).

(b) In the case of a screening or confirmation test conducted on an EBT, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result (*See,* §40.253(c), (e) and (f)).

(c) In the case of a confirmation test:

(1) The BAT conducts the confirmation test before the end of the minimum 15-minute waiting period (*See,* §40.251(a)(1));

(2) The BAT does not conduct an air blank before the confirmation test (*See,* §40.253(a));

(3) There is not a 0.00 result on the air blank conducted before the confirmation test (*See,* §40.253(a)(1) and (2));

(4) The EBT does not print the result (*See,* §40.253(f)); or

(5) The next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is cancelled (*See,* §40.233(a)(1) and (d)).

§40.269 -- What problems cause an alcohol test to be cancelled unless they are corrected?

As a BAT or STT, or employer, you must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are "correctable flaws." These problems are:

(a) The BAT or STT does not sign the ATF (*See,* §§40.247(a)(1) and 40.255(a)(1)).

(b) The BAT or STT fails to note on the "Remarks" line of the ATF that the employee has not signed the ATF after the result is obtained (*See,* §40.255(a)(2)).

(c) The BAT or STT uses a non-DOT form for the test (*See,* §40.225(a)).

§40.271 -- How are alcohol testing problems corrected?

(a) As a BAT or STT, you have the responsibility of trying to complete successfully an alcohol test for each employee.

(1) If, during or shortly after the testing process, you become aware of any event that will cause the test to be cancelled (*See,* §40.267), you must try to correct the problem promptly, if practicable. You may repeat the testing process as part of this effort.

(2) If repeating the testing process is necessary, you must begin a new test as soon as possible. You must use a new ATF, a new sequential test number, and, if needed, a new ASD and/or a new EBT. It is permissible to use additional technical capabilities of the EBT (*e.g.*, manual operation) if you have been trained to do so in accordance with §40.213(c).

(3) If repeating the testing process is necessary, you are not limited in the number of attempts to complete the test, provided that the employee is making a good faith effort to comply with the testing process.

(4) If another testing device is not available for the new test at the testing site, you must immediately notify the DER and advise the DER that the test could not be completed. As the DER who receives this information, you must make all reasonable efforts to ensure that the test is conducted at another testing site as soon as possible.

(b) If, as an STT, BAT, employer or other service agent administering the testing process, you become aware of a "correctable flaw" (*See,* §40.269) that has not already been corrected, you must take all practicable action to correct the problem so that the test is not cancelled.

(1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a signed statement that it is true and accurate. For example, suppose you are a BAT and you forgot to make a notation on the "Remarks" line of the ATF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification after the result was obtained, and that your signed statement is true and accurate.

(2) If the problem is the use of a non-DOT form, you must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. You must also provide a signed statement that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control, and the steps you have taken to prevent future use of non-

DOT forms for DOT tests. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.

(c) If you cannot correct the problem, you must cancel the test.

§40.273 -- What is the effect of a cancelled alcohol test?

(a) A cancelled alcohol test is neither positive nor negative.

(1) As an employer, you must not attach to a cancelled test the consequences of a test result that is 0.02 or greater (*e.g.*, removal from a safety-sensitive position).

(2) As an employer, you must not use a cancelled test in a situation where an employee needs a test result that is below 0.02 (*e.g.*, in the case of a return-to-duty or follow-up test to authorize the employee to perform safety-sensitive functions).

(3) As an employer, you must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph (a)(2) of this section or other provisions of this part.

(b) A cancelled test does not count toward compliance with DOT requirements, such as a minimum random testing rate.

(c) When a test must be cancelled, if you are the BAT, STT, or other person who determines that the cancellation is necessary, you must inform the affected DER within 48 hours of the cancellation.

(d) A cancelled DOT test does not provide a valid basis for an employer to conduct a non-DOT test (*i.e.*, a test under company authority).

§40.275 -- What is the effect of procedural problems that are not sufficient to cancel an alcohol test?

(a) As an STT, BAT, employer, or a service agent administering the testing process, you must document any errors in the testing process of which you become aware, even if they are not "fatal flaws" or "correctable flaws" listed in this subpart. Decisions about the ultimate impact of these errors will be determined by administrative or legal proceedings, subject to the limitation of paragraph (b) of this section.

(b) No person concerned with the testing process may declare a test cancelled based on a mistake in the process that does not have a significant adverse effect on the right of the employee to a fair and accurate test. For example, it is inconsistent with this part to cancel a test based on a minor administrative mistake (*e.g.*, the omission of the employee's middle initial) or an error that does not affect employee protections under this part. Nor does the failure of an employee to sign in Step 4 of the ATF result in the cancellation of the test. Nor is a test to be cancelled on the basis of a claim by an employee that he or she was improperly selected for testing.

(c) As an employer, these errors, even though not sufficient to cancel an alcohol test result, may subject you to enforcement action under DOT agency regulations.

§40.277 -- Are alcohol tests other than saliva or breath permitted under these regulations?

No, other types of alcohol tests (*e.g.,* blood and urine) are not authorized for testing done under this part. Only saliva or breath for screening tests and breath for confirmation tests using approved devices are permitted.

Subpart O--Substance Abuse Professionals and the Return-to-Duty Process

§40.281 -- Who is qualified to act as a SAP?

To be permitted to act as a SAP in the DOT drug testing program, you must meet each of the requirements of this section:

(a) ***Credentials***. You must have one of the following credentials:

(1) You are a licensed physician (Doctor of Medicine or Osteopathy);

(2) You are a licensed or certified social worker;

(3) You are a licensed or certified psychologist;

(4) You are a licensed or certified employee assistance professional; or

(5) You are a drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC).

b) ***Basic knowledge***. You must be knowledgeable in the following areas:

(1) You must be knowledgeable about and have clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

(2) You must be knowledgeable about the SAP function as it relates to employer interests in safety-sensitive duties.

(3) You must be knowledgeable about this part, the DOT agency regulations applicable to the employers for whom you evaluate employees, and the DOT SAP Guidelines, and you keep current on any changes to these materials. These documents are available from ODAPC (Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590 (202-366-3784), or on the ODAPC web site (http://www.dot.gov/ost/dapc).

(c) ***Qualification training***. You must receive qualification training meeting the requirements of this paragraph (c).

(1) Qualification training must provide instruction on the following subjects:

(i) Background, rationale, and coverage of the Department's drug and alcohol testing program;

(ii) 49 CFR Part 40 and DOT agency drug and alcohol testing rules;

(iii) Key DOT drug testing requirements, including collections, laboratory testing, MRO review, and problems in drug testing;

(iv) Key DOT alcohol testing requirements, including the testing process, the role of BATs and STTs, and problems in alcohol tests;

(v) SAP qualifications and prohibitions;

(vi) The role of the SAP in the return-to-duty process, including the initial employee evaluation, referrals for education and/or treatment, the follow-up evaluation, continuing treatment recommendations, and the follow-up testing plan;

(vii) SAP consultation and communication with employers, MROs, and treatment providers;

(viii) Reporting and recordkeeping requirements;

(ix) Issues that SAPs confront in carrying out their duties under the program.

(2) Following your completion of qualification training under paragraph (c)(1) of this section, you must satisfactorily complete an examination administered by a nationally-recognized professional or training organization. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.

(3) The following is the schedule for qualification training you must meet

(i) If you became a SAP before August 1, 2001, you must meet the qualification training requirement no later than December 31, 2003.

(ii) If you become a SAP between August 1, 2001, and December 31, 2003, you must meet the qualification training requirement no later than December 31, 2003.

(iii) If you become a SAP on or after January 1, 2004, you must meet the qualification training requirement before you begin to perform SAP functions.

(d) ***Continuing education***. During each three-year period from the date on which you satisfactorily complete the examination under paragraph (c)(2) of this section, you must complete continuing education consisting of at least 12 professional development hours (*e.g.*, CEUs) relevant to performing SAP functions.

(1) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in SAP practice, pertaining to the DOT program, since the time you met the qualification training requirements of this section.

(2) Your continuing education activities must include documentable assessment tools to assist you in determining whether you have adequately learned the material.

(e) ***Documentation***. You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or contemplating using your services.

§40.283 -- How does a certification organization obtain recognition for its members as SAPs?

(a) If you represent a certification organization that wants DOT to authorize its certified drug and alcohol counselors to be added to §40.281(a)(5), you may submit a written petition to DOT requesting a review of your petition for inclusion.

(b) You must obtain the National Commission for Certifying Agencies (NCCA) accreditation before DOT will act on your petition.

(c) You must also meet the minimum requirements of Appendix E to this part before DOT will act on your petition.

§40.285 -- When is a SAP evaluation required?

(a) As an employee, when you have violated DOT drug and alcohol regulations, you cannot again perform any DOT safety-sensitive duties for any employer until and unless you complete the SAP evaluation, referral, and education/treatment process set forth in this subpart and in applicable DOT agency regulations. The first step in this process is a SAP evaluation.

(b) For purposes of this subpart, a verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including by adulterating or substituting a urine specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation constitutes a DOT drug and alcohol regulation violation.

§40.287 -- What information is an employer required to provide concerning SAP services to an employee who has a DOT drug and alcohol regulation violation?

As an employer, you must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to you, with names, addresses, and telephone numbers. You cannot charge the employee any fee for compiling or providing this list. You may provide this list yourself or through a C/TPA or other service agent.

§40.289 -- Are employers required to provide SAP and treatment services to employees?

(a) As an employer, you are not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.

(b) However, if you offer that employee an opportunity to return to a DOT safety-sensitive duty following a violation, you must, before the employee again performs that duty,

ensure that the employee receives an evaluation by a SAP meeting the requirements of §40.281 and that the employee successfully complies with the SAP's evaluation recommendations.

(c) Payment for SAP evaluations and services is left for employers and employees to decide and may be governed by existing management-labor agreements and health care benefits.

§40.291 -- What is the role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT agency drug and alcohol testing regulations?

(a) As a SAP, you are charged with:

(1) Making a face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use;

(2) Referring the employee to an appropriate education and/or treatment program;

(3) Conducting a face-to-face follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations;

(4) Providing the DER with a follow-up drug and/or alcohol testing plan for the employee; and

(5) Providing the employee and employer with recommendations for continuing education and/or treatment.

(b) As a SAP, you are not an advocate for the employer or employee. Your function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/treatment, follow-up tests, and aftercare.

§40.293 -- What is the SAP's function in conducting the initial evaluation of an employee?

As a SAP, for every employee who comes to you following a DOT drug and alcohol regulation violation, you must accomplish the following:

(a) Provide a comprehensive face-to-face assessment and clinical evaluation.

(b) Recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.

(1) You must make such a recommendation for every individual who has violated a DOT drug and alcohol regulation.

(2) You must make a recommendation for education and/or treatment that will, to the greatest extent possible, protect public safety in the event that the employee returns to the performance of safety-sensitive functions.

(c) Appropriate education may include, but is not limited to, self-help groups (*e.g.,* Alcoholics Anonymous) and community lectures, where attendance can be independently verified, and bona fide drug and alcohol education courses.

(d) Appropriate treatment may include, but is not limited to, in-patient hospitalization, partial in-patient treatment, out-patient counseling programs, and aftercare.

(e) You must provide a written report directly to the DER highlighting your specific recommendations for assistance (*See,* §40.311(c)).

(f) For purposes of your role in the evaluation process, you must assume that a verified positive test result has conclusively established that the employee committed a DOT drug and alcohol regulation violation. You must not take into consideration in any way, as a factor in determining what your recommendation will be, any of the following:

(1) A claim by the employee that the test was unjustified or inaccurate;

(2) Statements by the employee that attempt to mitigate the seriousness of a violation of a DOT drug or alcohol regulation (*e.g.,* related to assertions of use of hemp oil, "medical marijuana" use, "contact positives," poppy seed ingestion, job stress); or

(3) Personal opinions you may have about the justification or rationale for drug and alcohol testing.

(g) In the course of gathering information for purposes of your evaluation in the case of a drug-related violation, you may consult with the MRO. As the MRO, you are required to cooperate with the SAP and provide available information the SAP requests. It is not necessary to obtain the consent of the employee to provide this information.

§40.295 -- May employees or employers seek a second SAP evaluation if they disagree with the first SAP's recommendations?

(a) As an employee with a DOT drug and alcohol regulation violation, when you have been evaluated by a SAP, you must not seek a second SAP's evaluation in order to obtain another recommendation.

(b) As an employer, you must not seek a second SAP's evaluation if the employee has already been evaluated by a qualified SAP. If the employee, contrary to paragraph (a) of this section, has obtained a second SAP evaluation, as an employer you may not rely on it for any purpose under this part.

§40.297 -- Does anyone have the authority to change a SAP's initial evaluation?

(a) Except as provided in paragraph (b) of this section, no one (*e.g.,* an employer, employee, a managed-care provider, any service agent) may change in any way the SAP's evaluation or recommendations for assistance. For example, a third party is not permitted to make more or less stringent a SAP's recommendation by changing the SAP's evaluation or seeking another SAP's evaluation.

(b) The SAP who made the initial evaluation may modify his or her initial evaluation and recommendations based on new or additional information (*e.g.,* from an education or treatment program).

§40.299 -- What is the SAP's role and what are the limits on a SAP's discretion in referring employees for education and treatment?

(a) As a SAP, upon your determination of the best recommendation for assistance, you will serve as a referral source to assist the employee's entry into a education and/or treatment program.

(b) To prevent the appearance of a conflict of interest, you must not refer an employee requiring assistance to your private practice or to a person or organization from which you receive payment or to a person or organization in which you have a financial interest. You are precluded from making referrals to entities with which you are financially associated.

(c) There are four exceptions to the prohibitions contained in paragraph (b) of this section. You may refer an employee to any of the following providers of assistance, regardless of your relationship with them:

(1) A public agency (*e.g.,* treatment facility) operated by a state, county, or municipality;

(2) The employer or a person or organization under contract to the employer to provide alcohol or drug treatment and/or education services (*e.g.,* the employer's contracted treatment provider);

(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program (*e.g.,* the single substance abuse in-patient treatment program made available by the employee's insurance coverage plan); or

(4) The sole source of therapeutically appropriate treatment reasonably available to the employee (*e.g.,* the only treatment facility or education program reasonably located within the general commuting area).

§40.301 -- What is the SAP's function in the follow-up evaluation of an employee?

(a) As a SAP, after you have prescribed assistance under §40.293, you must re-evaluate the employee to determine if the employee has successfully carried out your education and/or treatment recommendations.

(1) This is your way to gauge for the employer the employee's ability to demonstrate successful compliance with the education and/or treatment plan.

(2) Your evaluation may serve as one of the reasons the employer decides to return the employee to safety-sensitive duty.

(b) As the SAP making the follow-up evaluation determination, you must:

(1) Confer with or obtain appropriate documentation from the appropriate education and/or treatment program professionals where the employee was referred; and

(2) Conduct a face-to-face clinical interview with the employee to determine if the employee demonstrates successful compliance with your initial evaluation recommendations.

(c) (1) If the employee has demonstrated successful compliance, you must provide a written report directly to the DER highlighting your clinical determination that the employee has done so with your initial evaluation recommendation (*See,* §40.311(d)).

(2) You may determine that an employee has successfully demonstrated compliance even though the employee has not yet completed the full regimen of education and/or treatment you recommended or needs additional assistance. For example, if the employee has successfully completed the 30-day in-patient program you prescribed, you may make a "successful compliance" determination even though you conclude that the employee has not yet completed the out-patient counseling you recommended or should continue in an aftercare program.

(d) (1) As the SAP, if you believe, as a result of the follow-up evaluation, that the employee has not demonstrated successful compliance with your recommendations, you must provide written notice directly to the DER (*See,* §40.311(e)).

(2) As an employer who receives the SAP's written notice that the employee has not successfully complied with the SAP's recommendations, you must not return the employee to the performance of safety-sensitive duties.

(3) As the SAP, you may conduct additional follow-up evaluation(s) if the employer determines that doing so is consistent with the employee's progress as you have reported it and with the employer's policy and/or labor-management agreements.

(4) As the employer, following a SAP report that the employee has not demonstrated successful compliance, you may take personnel action consistent with your policy and/or labor-management agreements.

§40.303 -- What happens if the SAP believes the employee needs additional treatment, aftercare, or support group services even after the employee returns to safety-sensitive duties?

(a) As a SAP, if you believe that ongoing services (in addition to follow-up tests) are needed to assist an employee to maintain sobriety or abstinence from drug use after the employee resumes the performance of safety-sensitive duties, you must provide recommendations for these services in your follow-up evaluation report (*See,,* §40.311(d)(10)).

(b) As an employer receiving a recommendation for these services from a SAP, you may, as part of a return-to-duty agreement with the employee, require the employee to participate in the recommended services. You may monitor and document the employee's participation in the recommended services. You may also make use of SAP and employee assistance program (EAP) services in assisting and monitoring employees' compliance with SAP recommendations.

Nothing in this section permits an employer to fail to carry out its obligations with respect to follow-up testing (*See,* §40.309).

(c) As an employee, you are obligated to comply with the SAP's recommendations for these services. If you fail or refuse to do so, you may be subject to disciplinary action by your employer.

§40.305 -- How does the return-to-duty process conclude?

(a) As the employer, if you decide that you want to permit the employee to return to the performance of safety-sensitive functions, you must ensure that the employee takes a return-to-duty test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.

(b) As an employer, you must not return an employee to safety-sensitive duties until the employee meets the conditions of paragraph (a) of this section. However, you are not required to return an employee to safety-sensitive duties because the employee has met these conditions. That is a personnel decision that you have the discretion to make, subject to collective bargaining agreements or other legal requirements.

(c) As a SAP or MRO, you must not make a "fitness for duty" determination as part of this re-evaluation unless required to do so under an applicable DOT agency regulation. It is the employer, rather than you, who must decide whether to put the employee back to work in a safety-sensitive position.

§40.307 -- What is the SAP's function in prescribing the employee's follow-up tests?

(a) As a SAP, for each employee who has committed a DOT drug or alcohol regulation violation, and who seeks to resume the performance of safety-sensitive functions, you must establish a written follow-up testing plan. You do not establish this plan until after you determine that the employee has successfully complied with your recommendations for education and/or treatment.

(b) You must present a copy of this plan directly to the DER (*See,* §40.311(d)(9)).

(c) You are the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulation. For example, if the employee had a positive drug test, but your evaluation or the treatment program professionals determined that the employee had an alcohol problem as well, you should require that the employee have follow-up tests for both drugs and alcohol.

(d) However, you must, at a minimum, direct that the employee be subject to six unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to safety-sensitive functions.

(1) You may require a greater number of follow-up tests during the first 12-month period of safety-sensitive duty (*e.g.*, you may require one test a month during the 12-month period; you may require two tests per month during the first 6-month period and one test per month during the final 6-month period).

(2) You may also require follow-up tests during the 48 months of safety-sensitive duty following this first 12-month period.

(3) You are not to establish the actual dates for the follow-up tests you prescribe. The decision on specific dates to test is the employer's.

(4) As the employer, you must not impose additional testing requirements (*e.g.*, under company authority) on the employee that go beyond the SAP's follow-up testing plan.

(e) The requirements of the SAP's follow-up testing plan "follow the employee" to subsequent employers or through breaks in service.

Example 1 to Paragraph (e): The employee returns to duty with Employer A. Two months afterward, after completing the first two of six follow-up tests required by the SAP's plan, the employee quits his job with Employer A and begins to work in a similar position for Employer B. The employee remains obligated to complete the four additional tests during the next 10 months of safety-sensitive duty, and Employer B is responsible for ensuring that the employee does so. Employer B learns of this obligation through the inquiry it makes under §40.25.

Example 2 to Paragraph (e): The employee returns to duty with Employer A. Three months later, after the employee completes the first two of six follow-up tests required by the SAP's plan, Employer A lays the employee off for economic or seasonal employment reasons. Four months later, Employer A recalls the employee. Employer A must ensure that the employee completes the remaining four follow-up tests during the next nine months.

(f) As the SAP, you may modify the determinations you have made concerning follow-up tests. For example, even if you recommended follow-up testing beyond the first 12-months, you can terminate the testing requirement at any time after the first year of testing. You must not, however, modify the requirement that the employee take at least six follow-up tests within the first 12 months after returning to the performance of safety-sensitive functions.

§40.309 -- What are the employer's responsibilities with respect to the SAP's directions for follow-up tests?

(a) As the employer, you must carry out the SAP's follow-up testing requirements. You may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP.

(b) You should schedule follow-up tests on dates of your own choosing, but you must ensure that the tests are unannounced with no discernable pattern as to their timing, and that the employee is given no advance notice.

(c) You cannot substitute any other tests (*e.g.*, those carried out under the random testing program) conducted on the employee for this follow-up testing requirement.

(d) You cannot count a follow-up test that has been cancelled as a completed test. A cancelled follow-up test must be recollected.

§40.311 -- What are the requirements concerning SAP reports?

(a) As the SAP conducting the required evaluations, you must send the written reports required by this section in writing directly to the DER and not to a third party or entity for forwarding to the DER (except as provided in §40.355(e)). You may, however, forward the document simultaneously to the DER and to a C/TPA.

(b) As an employer, you must ensure that you receive SAP written reports directly from the SAP performing the evaluation and that no third party or entity changed the SAP's report in any way.

(c) The SAP's written report, following an initial evaluation that determines what level of assistance is needed to address the employee's drug and/or alcohol problems, must be on the SAP's own letterhead (and not the letterhead of another service agent) signed and dated by the SAP, and must contain the following delineated items:

(1) Employee's name and SSN;

(2) Employer's name and address;

(3) Reason for the assessment (specific violation of DOT regulations and violation date);
(4) Date(s) of the assessment;
(5) SAP's education and/or treatment recommendation; and
(6) SAP's telephone number.

(d) The SAP's written report concerning a follow-up evaluation that determines the employee has demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:

(1) Employee's name and SSN;
(2) Employer's name and address;
(3) Reason for the initial assessment (specific violation of DOT regulations and violation date);
(4) Date(s) of the initial assessment and synopsis of the treatment plan;
(5) Name of practice(s) or service(s) providing the recommended education and/or treatment;
(6) Inclusive dates of employee's program participation;
(7) Clinical characterization of employee's program participation;
(8) SAP's clinical determination as to whether the employee has demonstrated successful compliance;
(9) Follow-up testing plan;
(10) Employee's continuing care needs with specific treatment, aftercare, and/or support group services recommendations; and
(11) SAP's telephone number.

(e) The SAP's written report concerning a follow-up evaluation that determines the employee has not demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:

(1) Employee's name and SSN;
(2) Employer's name and address;
(3) Reason for the initial assessment (specific DOT violation and date);
(4) Date(s) of initial assessment and synopsis of treatment plan;
(5) Name of practice(s) or service(s) providing the recommended education and/or treatment;
(6) Inclusive dates of employee's program participation;
(7) Clinical characterization of employee's program participation;
(8) Date(s) of the first follow-up evaluation;
(9) Date(s) of any further follow-up evaluation the SAP has scheduled;
(10) SAP's clinical reasons for determining that the employee has not demonstrated successful compliance; and
(11) SAP's telephone number.

(f) As a SAP, you must also provide these written reports directly to the employee if the employee has no current employer and to the gaining DOT regulated employer in the event the employee obtains another transportation industry safety-sensitive position.

(g) As a SAP, you are to maintain copies of your reports to employers for 5 years, and your employee clinical records in accordance with Federal, state, and local laws regarding record maintenance, confidentiality, and release of information. You must make these records available,

on request, to DOT agency representatives (*e.g.*, inspectors conducting an audit or safety investigation) and representatives of the NTSB in an accident investigation.

(h) As an employer, you must maintain your reports from SAPs for 5 years from the date you received them.

§40.313 -- Where is other information on SAP functions and the return-to-duty process found in this regulation?

You can find other information on the role and functions of SAPs in the following sections of this part:

§40.3-Definition; §40.347-Service agent assistance with SAP-required follow-up testing; §40.355-Transmission of SAP reports; §40.329(c)-Making SAP reports available to employees on request.

Appendix E to Part 40--SAP Equivalency Requirements for Certification Organizations.

Subpart P--Confidentiality and Release of Information

§40.321 -- What is the general confidentiality rule for drug and alcohol test information?

Except as otherwise provided in this subpart, as a service agent or employer participating in the DOT drug or alcohol testing process, you are prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent.

(a) A "third party" is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.

(b) "Specific written consent" means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. "Blanket releases," in which an employee agrees to a release of a category of information (*e.g.,* all test results) or to release information to a category of parties (*e.g.,* other employers who are members of a C/TPA, companies to which the employee may apply for employment), are prohibited under this part.

§40.323 -- May program participants release drug or alcohol test information in connection with legal proceedings?

(a) As an employer, you may release information pertaining to an employee's drug or alcohol test without the employee's consent in certain legal proceedings.

(1) These proceedings include a lawsuit (*e.g.,* a wrongful discharge action), grievance (*e.g.,* an arbitration concerning disciplinary action taken by the employer), or administrative proceeding (*e.g.,* an unemployment compensation hearing) brought by, or on behalf of, an employee and resulting from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results).

(2) These proceedings also include a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case and issues an order directing the employer to produce the information. For example, in personal injury litigation following a truck or bus collision, the court could determine that a post-accident drug test result of an employee is relevant to determining whether the driver or the driver's employer was negligent. The employer is authorized to respond to the court's order to produce the records.

(b) In such a proceeding, you may release the information to the decision maker in the proceeding (*e.g.,* the court in a lawsuit). You may release the information only with a binding

stipulation that the decision maker to whom it is released will make it available only to parties to the proceeding.

(c) If you are a service agent, and the employer requests its employee's drug or alcohol testing information from you to use in a legal proceeding as authorized in paragraph (a) of this section (*e.g.,* the laboratory's data package), you must provide the requested information to the employer.

(d) As an employer or service agent, you must immediately notify the employee in writing of any information you release under this section.

§40.325 -- [Reserved]

§40.327 -- When must the MRO report medical information gathered in the verification process?

(a) As the MRO, you must, except as provided in paragraph (c) of this section, report drug test results and medical information you learned as part of the verification process to third parties without the employee's consent if you determine, in your reasonable medical judgment, that:

(1) The information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; or

(2) The information indicates that continued performance by the employee of his or her safety-sensitive function is likely to pose a significant safety risk.

(b) The third parties to whom you are authorized to provide information by this section include the employer, a physician or other health care provider responsible for determining the medical qualifications of the employee under an applicable DOT agency safety regulation, a SAP evaluating the employee as part of the return to duty process (*See,* §40.293(g)), a DOT agency, or the National Transportation Safety Board in the course of an accident investigation.

(c) If the law of a foreign country (*e.g.,* Canada) prohibits you from providing medical information to the employer, you may comply with that prohibition.

§40.329 -- What information must laboratories, MROs, and other service agents release to employees?

(a) As an MRO or service agent you must provide, within 10 business days of receiving a written request from an employee, copies of any records pertaining to the employee's use of alcohol and/or drugs, including records of the employee's DOT-mandated drug and/or alcohol tests. You may charge no more than the cost of preparation and reproduction for copies of these records.

(b) As a laboratory, you must provide, within 10 business days of receiving a written request from an employee, and made through the MRO, the records relating to the results of the employee's drug test (*i.e.,* laboratory report and data package). You may charge no more than the cost of preparation and reproduction for copies of these records.

(c) As a SAP, you must make available to an employee, on request, a copy of all SAP reports (*See,* §40.311).

§40.331 -- To what additional parties must employers and service agents release information?

As an employer or service agent you must release information under the following circumstances:

(a) If you receive a specific, written consent from an employee authorizing the release of information about that employee's drug or alcohol tests to an identified person, you must

provide the information to the identified person. For example, as an employer, when you receive a written request from a former employee to provide information to a subsequent employer, you must do so. In providing the information, you must comply with the terms of the employee's consent.

(b) If you are an employer, you must, upon request of DOT agency representatives, provide the following:

(1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.

(2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations.

(c) If you are a service agent, you must, upon request of DOT agency representatives, provide the following:

(1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.

(2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations.

(d) If requested by the National Transportation Safety Board as part of an accident investigation, you must provide information concerning post-accident tests administered after the accident.

(e) If requested by a Federal, state or local safety agency with regulatory authority over you or the employee, you must provide drug and alcohol test records concerning the employee.

(f) Except as otherwise provided in this part, as a laboratory you must not release or provide a specimen or a part of a specimen to a requesting party, without first obtaining written consent from ODAPC. If a party seeks a court order directing you to release a specimen or part of a specimen contrary to any provision of this part, you must take necessary legal steps to contest the issuance of the order (*e.g.,* seek to quash a subpoena, citing the requirements of §40.13). This part does not require you to disobey a court order, however.

§40.333 -- What records must employers keep?

(a) As an employer, you must keep the following records for the following periods of time:

(1) You must keep the following records for five years:

(i) Records of employee alcohol test results indicating an alcohol concentration of 0.02 or greater;

(ii) Records of employee verified positive drug test results;

(iii) Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results);

(iv) SAP reports; and

(v) All follow-up tests and schedules for follow-up tests.

(2) You must keep records for three years of information obtained from previous employers under §40.25 concerning drug and alcohol test results of employees.

(3) You must keep records of the inspection, maintenance, and calibration of EBTs, for two years.

(4) You must keep records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one year.

(b) You do not have to keep records related to a program requirement that does not apply to you (*e.g.*, a maritime employer who does not have a DOT-mandated random alcohol testing program need not maintain random alcohol testing records).

(c) You must maintain the records in a location with controlled access.

(d) A service agent may maintain these records for you. However, you must ensure that you can produce these records at your principal place of business in the time required by the DOT agency. For example, as a motor carrier, when an FMCSA inspector requests your records, you must ensure that you can provide them within two working days.

Subpart Q--Roles and Responsibilities of Service Agents

§40.341 -- Must service agents comply with DOT drug and alcohol testing requirements?

(a) As a service agent, the services you provide to transportation employers must meet the requirements of this part and the DOT agency drug and alcohol testing regulations.

(b) If you do not comply, DOT may take action under the Public Interest Exclusions procedures of this part (*See,* Subpart R of this part) or applicable provisions of other DOT agency regulations.

§40.343 -- What tasks may a service agent perform for an employer?

As a service agent, you may perform for employers the tasks needed to comply with DOT agency drug and alcohol testing regulations, subject to the requirements and limitations of this part.

§40.345 -- In what circumstances may a C/TPA act as an intermediary in the transmission of drug and alcohol testing information to employers?

(a) As a C/TPA or other service agent, you may act as an intermediary in the transmission of drug and alcohol testing information in the circumstances specified in this section only if the employer chooses to have you do so. Each employer makes the decision about whether to receive some or all of this information from you, acting as an intermediary, rather than directly from the service agent who originates the information (*e.g.*, an MRO or BAT).

(b) The specific provisions of this part concerning which you may act as an intermediary are listed in Appendix F to this part. These are the only situations in which you may act as an intermediary. You are prohibited from doing so in all other situations.

(c) In every case, you must ensure that, in transmitting information to employers, you meet all requirements (*e.g.*, concerning confidentiality and timing) that would apply if the service agent originating the information (*e.g.*, an MRO or collector) sent the information directly to the employer. For example, if you transmit drug testing results from MROs to DERs, you must transmit each drug test result to the DER in compliance with the MRO requirements set forth in §40.167.

§40.347 -- What functions may C/TPAs perform with respect to administering testing?

As a C/TPA, except as otherwise specified in this part, you may perform the following functions for employers concerning random selection and other selections for testing:

(a) You may operate random testing programs for employers and may assist (*i.e.*, through contracting with laboratories or collection sites, conducting collections) employers with other types of testing (*e.g.*, pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up).

(b) You may combine employees from more than one employer or one transportation industry in a random pool if permitted by all the DOT agency drug and alcohol testing regulations involved.

(1) If you combine employees from more than one transportation industry, you must ensure that the random testing rate is at least equal to the highest rate required by each DOT agency.

(2) Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees.

(c) You may assist employers in ensuring that follow-up testing is conducted in accordance with the plan established by the SAP. However, neither you nor the employer are permitted to randomly select employees from a "follow-up pool" for follow-up testing.

§40.349 -- What records may a service agent receive and maintain?

(a) Except where otherwise specified in this part, as a service agent you may receive and maintain all records concerning DOT drug and alcohol testing programs, including positive, negative, and refusal to test individual test results. You do not need the employee's consent to receive and maintain these records.

(b) You may maintain all information needed for operating a drug/alcohol program (*e.g.*, CCFs, ATFs, names of employees in random pools, random selection lists, copies of notices to employers of selected employees) on behalf of an employer.

(c) If a service agent originating drug or alcohol testing information, such as an MRO or BAT, sends the information directly to the DER, he or she may also provide the information simultaneously to you, as a C/TPA or other service agent who maintains this information for the employer.

(d) If you are serving as an intermediary in transmitting information that is required to be provided to the employer, you must ensure that it reaches the employer in the same time periods required elsewhere in this part.

(e) You must ensure that you can make available to the employer within two days any information the employer is asked to produce by a DOT agency representative.

(f) On request of an employer, you must, at any time on the request of an employer, transfer immediately all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it. You are not required to obtain employee consent for this transfer. You must not charge more than your reasonable administrative costs for conducting this transfer. You may not charge a fee for the release of these records.

(g) If you are planning to go out of business or your organization will be bought by or merged with another organization, you must immediately notify all employers and offer to transfer all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it. You are not required to obtain employee consent for this transfer. You must not charge more than your reasonable administrative costs for conducting this transfer. You may not charge a fee for the release of these records.

§40.351 -- What confidentiality requirements apply to service agents?

Except where otherwise specified in this part, as a service agent the following confidentiality requirements apply to you:

(a) When you receive or maintain confidential information about employees (*e.g.*, individual test results), you must follow the same confidentiality regulations as the employer with respect to the use and release of this information.
(b) You must follow all confidentiality and records retention requirements applicable to employers.
(c) You may not provide individual test results or other confidential information to another employer without a specific, written consent from the employee. For example, suppose you are a C/TPA that has employers X and Y as clients. Employee Jones works for X, and you maintain Jones' drug and alcohol test for X. Jones wants to change jobs and work for Y. You may not inform Y of the result of a test conducted for X without having a specific, written consent from Jones. Likewise, you may not provide this information to employer Z, who is not a C/TPA member, without this consent.
(d) You must not use blanket consent forms authorizing the release of employee testing information.
(e) You must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic data bases.

§40.353 -- What principles govern the interaction between MROs and other service agents?

As a service agent other than an MRO (*e.g.,* a C/TPA), the following principles govern your interaction with MROs:
(a) You may provide MRO services to employers, directly or through contract, if you meet all applicable provisions of this part.
(b) If you employ or contract for an MRO, the MRO must perform duties independently and confidentially. When you have a relationship with an MRO, you must structure the relationship to ensure that this independence and confidentiality are not compromised. Specific means (including both physical and operational measures, as appropriate) to separate MRO functions and other service agent functions are essential.
(c) Only your staff who are actually under the day-to-day supervision and control of an MRO with respect to MRO functions may perform these functions. This does not mean that those staff may not perform other functions at other times. However, the designation of your staff to perform MRO functions under MRO supervision must be limited and not used as a subterfuge to circumvent confidentiality and other requirements of this part and DOT agency regulations. You must ensure that MRO staff operate under controls sufficient to ensure that the independence and confidentiality of the MRO process are not compromised.
(d) Like other MROs, an MRO you employ or contract with must personally conduct verification interviews with employees and must personally make all verification decisions. Consequently, your staff cannot perform these functions.

§40.355 -- What limitations apply to the activities of service agents?

As a service agent, you are subject to the following limitations concerning your activities in the DOT drug and alcohol testing program:
(a) You must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO, and SAP services).

(b) You must not act as an intermediary in the transmission of drug test results from the laboratory to the MRO. That is, the laboratory may not send results to you, with you in turn sending them to the MRO for verification. For example, a practice in which the laboratory transmits results to your computer system, and you then assign the results to a particular MRO, is not permitted.

(c) You must not transmit drug test results directly from the laboratory to the employer (by electronic or other means) or to a service agent who forwards them to the employer. All confirmed laboratory results must be processed by the MRO before they are released to any other party.

(d) You must not act as an intermediary in the transmission of alcohol test results of 0.02 or higher from the STT or BAT to the DER.

(e) Except as provided in paragraph (f) of this section, you must not act as an intermediary in the transmission of individual SAP reports to the actual employer. That is, the SAP may not send such reports to you, with you in turn sending them to the actual employer. However, you may maintain individual SAP summary reports and follow-up testing plans after they are sent to the DER, and the SAP may transmit such reports to you simultaneously with sending them to the DER.

(f) As an exception to paragraph (e) of this section, you may act as an intermediary in the transmission of SAP report from the SAP to an owner-operator or other self-employed individual.

(g) Except as provided in paragraph (h) of this section, you must not make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria. These are duties the actual employer cannot delegate to a C/TPA. You may, however, provide advice and information to employers regarding these testing issues and how the employer should schedule required testing.

(h) As an exception to paragraph (g) of this section, you may make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria with respect to an owner-operator or other self-employed individual.

(i) Except as provided in paragraph (j) of this section, you must not make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of the actual employer. You may, however, provide advice and information to employers regarding refusal-to-test issues.

(j) As an exception to paragraph (i) of this section, you may make a determination that an employee has refused a drug or alcohol test, if:

(1) You are authorized by a DOT agency regulation to do so, you schedule a required test for an owner-operator or other self-employed individual, and the individual fails to appear for the test without a legitimate reason; or

(2) As an MRO, you determine that an individual has refused to test on the basis of adulteration or substitution.

(k) You must not act as a DER. For example, while you may be responsible for transmitting information to the employer about test results, you must not act on behalf of the employer in actions to remove employees from safety-sensitive duties.

(l) In transmitting documents to laboratories, you must ensure that you send to the laboratory that conducts testing only the laboratory copy of the CCF. You must not transmit other copies of the CCF or any ATFs to the laboratory.

(m) You must not impose conditions or requirements on employers that DOT regulations do not authorize. For example, as a C/TPA serving employers in the pipeline or motor carrier industry, you must not require employers to have provisions in their DOT plans that PHMSA or FMCSA regulations do not require.

(n) You must not intentionally delay the transmission of drug or alcohol testing-related documents concerning actions you have performed, because of a payment dispute or other reasons.

Example 1 to Paragraph (n): A laboratory that has tested a specimen must not delay transmitting the documentation of the test result to an MRO because of a billing or payment dispute with the MRO or a C/TPA.

Example 2 to Paragraph (n): An MRO or SAP who has interviewed an employee must not delay sending a verified test result or SAP report to the employer because of such a dispute with the employer or employee.

Example 3 to Paragraph (n): A collector who has performed a urine specimen collection must not delay sending the drug specimen and CCF to the laboratory because of a payment or other dispute with the laboratory or a C/TPA.

Example 4 to Paragraph (n): A BAT who has conducted an alcohol test must not delay sending test result information to an employer or C/TPA because of a payment or other dispute with the employer or C/TPA.

(o) While you must follow the DOT agency regulations, the actual employer remains accountable to DOT for compliance, and your failure to implement any aspect of the program as required in this part and other applicable DOT agency regulations makes the employer subject to enforcement action by the Department.

Subpart R--Public Interest Exclusions

§40.361 -- What is the purpose of a public interest exclusion (PIE)?

(a) To protect the public interest, including protecting transportation employers and employees from serious noncompliance with DOT drug and alcohol testing rules, the Department's policy is to ensure that employers conduct business only with responsible service agents.

(b) The Department therefore uses PIEs to exclude from participation in DOT's drug and alcohol testing program any service agent who, by serious noncompliance with this part or other DOT agency drug and alcohol testing regulations, has shown that it is not currently acting in a responsible manner.

(c) A PIE is a serious action that the Department takes only to protect the public interest. We intend to use PIEs only to remedy situations of serious noncompliance. PIEs are not used for the purpose of punishment.

(d) Nothing in this subpart precludes a DOT agency or the Inspector General from taking other action authorized by its regulations with respect to service agents or employers that violate its regulations.

§40.363 -- On what basis may the Department issue a PIE?

(a) If you are a service agent, the Department may issue a PIE concerning you if we determine that you have failed or refused to provide drug or alcohol testing services consistent with the requirements of this part or a DOT agency drug and alcohol regulation.

(b) The Department also may issue a PIE if you have failed to cooperate with DOT agency representatives concerning inspections, complaint investigations, compliance and

enforcement reviews, or requests for documents and other information about compliance with this part or DOT agency drug and alcohol regulations.

§40.365 -- What is the Department's policy concerning starting a PIE proceeding?

(a) It is the Department's policy to start a PIE proceeding only in cases of serious, uncorrected noncompliance with the provisions of this part, affecting such matters as safety, the outcomes of test results, privacy and confidentiality, due process and fairness for employees, the honesty and integrity of the testing program, and cooperation with or provision of information to DOT agency representatives.

(b) The following are examples of the kinds of serious noncompliance that, as a matter of policy, the Department views as appropriate grounds for starting a PIE proceeding. These examples are not intended to be an exhaustive or exclusive list of the grounds for starting a PIE proceeding. We intend them to illustrate the level of seriousness that the Department believes supports starting a PIE proceeding. The examples follow:

(1) For an MRO, verifying tests positive without interviewing the employees as required by this part or providing MRO services without meeting the qualifications for an MRO required by this part;

(2) For a laboratory, refusing to provide information to the Department, an employer, or an employee as required by this part; failing or refusing to conduct a validity testing program when required by this part; or a pattern or practice of testing errors that result in the cancellation of tests. (As a general matter of policy, the Department does not intend to initiate a PIE proceeding concerning a laboratory with respect to matters on which HHS initiates certification actions under its laboratory guidelines.);

(3) For a collector, a pattern or practice of directly observing collections when doing so is unauthorized, or failing or refusing to directly observe collections when doing so is mandatory;

(4) For collectors, BATs, or STTs, a pattern or practice of using forms, testing equipment, or collection kits that do not meet the standards in this part;

(5) For a collector, BAT, or STT, a pattern or practice of "fatal flaws" or other significant uncorrected errors in the collection process;

(6) For a laboratory, MRO or C/TPA, failing or refusing to report tests results as required by this part or DOT agency regulations;

(7) For a laboratory, falsifying, concealing, or destroying documentation concerning any part of the drug testing process, including, but not limited to, documents in a "litigation package";

(8) For SAPs, providing SAP services while not meeting SAP qualifications required by this part or performing evaluations without face-to-face interviews;

(9) For any service agent, maintaining a relationship with another party that constitutes a conflict of interest under this part (*e.g.,* a laboratory that derives a financial benefit from having an employer use a specific MRO);

(10) For any service agent, representing falsely that the service agent or its activities is approved or certified by the Department or a DOT agency;

(11) For any service agent, disclosing an employee's test result information to any party this part or a DOT agency regulation does not authorize, including by obtaining a "blanket" consent from employees or by creating a data base from which employers or others can retrieve an employee's DOT test results without the specific consent of the employee;

(12) For any service agent, interfering or attempting to interfere with the ability of an MRO to communicate with the Department, or retaliating against an MRO for communicating with the Department;

(13) For any service agent, directing or recommending that an employer fail or refuse to implement any provision of this part; or

(14) With respect to noncompliance with a DOT agency regulation, conduct that affects important provisions of Department-wide concern (*e.g.,* failure to properly conduct the selection process for random testing).

§40.367 -- Who initiates a PIE proceeding?

The following DOT officials may initiate a PIE proceeding:

(a) The drug and alcohol program manager of a DOT agency;

(b) An official of ODAPC, other than the Director; or

(c) The designee of any of these officials.

§40.369 -- What is the discretion of an initiating official in starting a PIE proceeding?

(a) Initiating officials have broad discretion in deciding whether to start a PIE proceeding.

(b) In exercising this discretion, the initiating official must consider the Department's policy regarding the seriousness of the service agent's conduct (*See,* §40.365) and all information he or she has obtained to this point concerning the facts of the case. The initiating official may also consider the availability of the resources needed to pursue a PIE proceeding.

(c) A decision not to initiate a PIE proceeding does not necessarily mean that the Department regards a service agent as being in compliance or that the Department may not use other applicable remedies in a situation of noncompliance.

§40.371 -- On what information does an initiating official rely in deciding whether to start a PIE proceeding?

(a) An initiating official may rely on credible information from any source as the basis for starting a PIE proceeding.

(b) Before sending a correction notice (*See,* §40.373), the initiating official informally contacts the service agent to determine if there is any information that may affect the initiating official's determination about whether it is necessary to send a correction notice. The initiating official may take any information resulting from this contact into account in determining whether to proceed under this subpart.

§40.373 -- Before starting a PIE proceeding, does the initiating official give the service agent an opportunity to correct problems?

(a) If you are a service agent, the initiating official must send you a correction notice before starting a PIE proceeding.

(b) The correction notice identifies the specific areas in which you must come into compliance in order to avoid being subject to a PIE proceeding.

(c) If you make and document changes needed to come into compliance in the areas listed in the correction notice to the satisfaction of the initiating official within 60 days of the date you receive the notice, the initiating official does not start a PIE proceeding. The initiating official may conduct appropriate fact finding to verify that you have made and maintained satisfactory corrections. When he or she is satisfied that you are in compliance, the initiating official sends you a notice that the matter is concluded.

§40.375 -- How does the initiating official start a PIE proceeding?

(a) As a service agent, if your compliance matter is not correctable (*See,* §40.373(a)), or if have not resolved compliance matters as provided in §40.373(c), the initiating official starts a PIE proceeding by sending you a notice of proposed exclusion (NOPE). The NOPE contains the initiating official's recommendations concerning the issuance of a PIE, but it is not a decision by the Department to issue a PIE.

(b) The NOPE includes the following information:

(1) A statement that the initiating official is recommending that the Department issue a PIE concerning you;

(2) The factual basis for the initiating official's belief that you are not providing drug and/or alcohol testing services to DOT-regulated employers consistent with the requirements of this part or are in serious noncompliance with a DOT agency drug and alcohol regulation;

(3) The factual basis for the initiating official's belief that your noncompliance has not been or cannot be corrected;

(4) The initiating official's recommendation for the scope of the PIE;

(5) The initiating official's recommendation for the duration of the PIE; and

(6) A statement that you may contest the issuance of the proposed PIE, as provided in §40.379.

(c) The initiating official sends a copy of the NOPE to the ODAPC Director at the same time he or she sends the NOPE to you.

§40.377 -- Who decides whether to issue a PIE?

(a) The ODAPC Director, or his or her designee, decides whether to issue a PIE. If a designee is acting as the decision maker, all references in this subpart to the Director refer to the designee.

(b) To ensure his or her impartiality, the Director plays no role in the initiating official's determination about whether to start a PIE proceeding.

(c) There is a "firewall" between the initiating official and the Director. This means that the initiating official and the Director are prohibited from having any discussion, contact, or exchange of information with one another about the matter, except for documents and discussions that are part of the record of the proceeding.

§40.379 -- How do you contest the issuance of a PIE?

(a) If you receive a NOPE, you may contest the issuance of the PIE.

(b) If you want to contest the proposed PIE, you must provide the Director information and argument in opposition to the proposed PIE in writing, in person, and/or through a representative. To contest the proposed PIE, you must take one or more of the steps listed in this paragraph (b) within 30 days after you receive the NOPE.

(1) You may request that the Director dismiss the proposed PIE without further proceedings, on the basis that it does not concern serious noncompliance with this part or DOT agency regulations, consistent with the Department's policy as stated in §40.365.

(2) You may present written information and arguments, consistent with the provisions of §40.381, contesting the proposed PIE.

(3) You may arrange with the Director for an informal meeting to present your information and arguments.

(c) If you do not take any of the actions listed in paragraph (b) of this section within 30 days after you receive the NOPE, the matter proceeds as an uncontested case. In this event, the Director makes his or her decision based on the record provided by the initiating official (*i.e.,*

the NOPE and any supporting information or testimony) and any additional information the Director obtains.

§40.381 -- What information do you present to contest the proposed issuance of a PIE?

(a) As a service agent who wants to contest a proposed PIE, you must present at least the following information to the Director:

(1) Specific facts that contradict the statements contained in the NOPE (*See,* §40.375(b)(2) and (3)). A general denial is insufficient to raise a genuine dispute over facts material to the issuance of a PIE;

(2) Identification of any existing, proposed or prior PIE; and

(3) Identification of your affiliates, if any.

(b) You may provide any information and arguments you wish concerning the proposed issuance, scope and duration of the PIE (*See,* §40.375(b)(4) and (5)).

(c) You may provide any additional relevant information or arguments concerning any of the issues in the matter.

§40.383 -- What procedures apply if you contest the issuance of a PIE?

(a) DOT conducts PIE proceedings in a fair and informal manner. The Director may use flexible procedures to allow you to present matters in opposition. The Director is not required to follow formal rules of evidence or procedure in creating the record of the proceeding.

(b) The Director will consider any information or argument he or she determines to be relevant to the decision on the matter.

(c) You may submit any documentary evidence you want the Director to consider. In addition, if you have arranged an informal meeting with the Director, you may present witnesses and confront any person the initiating official presents as a witness against you.

(d) In cases where there are material factual issues in dispute, the Director or his or her designee may conduct additional fact-finding.

(e) If you have arranged a meeting with the Director, the Director will make a transcribed record of the meeting available to you on your request. You must pay the cost of transcribing and copying the meeting record.

§40.385 -- Who bears the burden of proof in a PIE proceeding?

(a) As the proponent of issuing a PIE, the initiating official bears the burden of proof.

(b) This burden is to demonstrate, by a preponderance of the evidence, that the service agent was in serious noncompliance with the requirements of this part for drug and/or alcohol testing-related services or with the requirements of another DOT agency drug and alcohol testing regulation.

§40.387 -- What matters does the Director decide concerning a proposed PIE?

(a) Following the service agent's response (*See,* §40.379(b)) or, if no response is received, after 30 days have passed from the date on which the service agent received the NOPE, the Director may take one of the following steps:

(1) In response to a request from the service agent (*See,* §40.379(b)(1)) or on his or her own motion, the Director may dismiss a PIE proceeding if he or she determines that it does not concern serious noncompliance with this part or DOT agency regulations, consistent with the Department's policy as stated in §40.365.

(i) If the Director dismisses a proposed PIE under this paragraph (a), the action is closed with respect to the noncompliance alleged in the NOPE.

(ii) The Department may initiate a new PIE proceeding against you on the basis of different or subsequent conduct that is in noncompliance with this part or other DOT drug and alcohol testing rules.

(2) If the Director determines that the initiating official's submission does not have complete information needed for a decision, the Director may remand the matter to the initiating official. The initiating official may resubmit the matter to the Director when the needed information is complete. If the basis for the proposed PIE has changed, the initiating official must send an amended NOPE to the service agent.

(b) The Director makes determinations concerning the following matters in any PIE proceeding that he or she decides on the merits:

(1) Any material facts that are in dispute;

(2) Whether the facts support issuing a PIE;

(3) The scope of any PIE that is issued; and

(4) The duration of any PIE that is issued.

§40.389 -- What factors may the Director consider?

This section lists examples of the kind of mitigating and aggravating factors that the Director may consider in determining whether to issue a PIE concerning you, as well as the scope and duration of a PIE. This list is not exhaustive or exclusive. The Director may consider other factors if appropriate in the circumstances of a particular case. The list of examples follows:

(a) The actual or potential harm that results or may result from your noncompliance;

(b) The frequency of incidents and/or duration of the noncompliance;

(c) Whether there is a pattern or prior history of noncompliance;

(d) Whether the noncompliance was pervasive within your organization, including such factors as the following:

(1) Whether and to what extent your organization planned, initiated, or carried out the noncompliance;

(2) The positions held by individuals involved in the noncompliance, and whether your principals tolerated their noncompliance; and

(3) Whether you had effective standards of conduct and control systems (both with respect to your own organization and any contractors or affiliates) at the time the noncompliance occurred;

(e) Whether you have demonstrated an appropriate compliance disposition, including such factors as the following:

(1) Whether you have accepted responsibility for the noncompliance and recognize the seriousness of the conduct that led to the cause for issuance of the PIE;

(2) Whether you have cooperated fully with the Department during the investigation. The Director may consider when the cooperation began and whether you disclosed all pertinent information known to you;

(3) Whether you have fully investigated the circumstances of the noncompliance forming the basis for the PIE and, if so, have made the result of the investigation available to the Director;

(4) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity that constitutes the grounds for issuance of the PIE; and

(5) Whether your organization has taken appropriate corrective actions or remedial measures, including implementing actions to prevent recurrence;

(f) With respect to noncompliance with a DOT agency regulation, the degree to which the noncompliance affects matters common to the DOT drug and alcohol testing program;
(g) Other factors appropriate to the circumstances of the case.

§40.391 -- What is the scope of a PIE?

(a) The scope of a PIE is the Department's determination about the divisions, organizational elements, types of services, affiliates, and/or individuals (including direct employees of a service agent and its contractors) to which a PIE applies.
(b) If, as a service agent, the Department issues a PIE concerning you, the PIE applies to all your divisions, organizational elements, and types of services that are involved with or affected by the noncompliance that forms the factual basis for issuing the PIE.
(c) In the NOTE (*See,* §40.375(b)(4)), the initiating official sets forth his or her recommendation for the scope of the PIE. The proposed scope of the PIE is one of the elements of the proceeding that the service agent may contest (*See,* §40.381(b)) and about which the Director makes a decision (*See,* §40.387(b)(3)).
(d) In recommending and deciding the scope of the PIE, the initiating official and Director, respectively, must take into account the provisions of paragraphs (e) through (j) of this section.
(e) The pervasiveness of the noncompliance within a service agent's organization (*See,* §40.389(d)) is an important consideration in determining the scope of a PIE. The appropriate scope of a PIE grows broader as the pervasiveness of the noncompliance increases.
(f) The application of a PIE is not limited to the specific location or employer at which the conduct that forms the factual basis for issuing the PIE was discovered.
(g) A PIE applies to your affiliates, if the affiliate is involved with or affected by the conduct that forms the factual basis for issuing the PIE.
(h) A PIE applies to individuals who are officers, employees, directors, shareholders, partners, or other individuals associated with your organization in the following circumstances:

(1) Conduct forming any part of the factual basis of the PIE occurred in connection with the individual's performance of duties by or on behalf of your organization; or

(2) The individual knew of, had reason to know of, approved, or acquiesced in such conduct. The individual's acceptance of benefits derived from such conduct is evidence of such knowledge, acquiescence, or approval.

(i) If a contractor to your organization is solely responsible for the conduct that forms the factual basis for a PIE, the PIE does not apply to the service agent itself unless the service agent knew or should have known about the conduct and did not take action to correct it.
(j) PIEs do not apply to drug and alcohol testing that DOT does not regulate.
(k) The following examples illustrate how the Department intends the provisions of this section to work:

Example 1 to §40.391. Service Agent P provides a variety of drug testing services. P's SAP services are involved in a serious violation of this Part 40. However, P's other services fully comply with this part, and P's overall management did not plan or concur in the noncompliance, which in fact was contrary to P's articulated standards. Because the noncompliance was isolated in one area of the organization's activities, and did not pervade the entire organization, the scope of the PIE could be limited to SAP services.

Example 2 to §40.391. Service Agent Q provides a similar variety of services. The conduct forming the factual basis for a PIE concerns collections for a transit authority. As in Example 1, the noncompliance is not pervasive throughout Q's organization. The PIE would apply to

collections at all locations served by Q, not just the particular transit authority or not just in the state in which the transit authority is located.
Example 3 to §40.391. Service Agent R provides a similar array of services. One or more of the following problems exists: R's activities in several areas-collections, MROs, SAPs, protecting the confidentiality of information-are involved in serious noncompliance; DOT determines that R's management knew or should have known about serious noncompliance in one or more areas, but management did not take timely corrective action; or, in response to an inquiry from DOT personnel, R's management refuses to provide information about its operations. In each of these three cases, the scope of the PIE would include all aspects of R's services.
Example 4 to §40.391. Service Agent W provides only one kind of service (*e.g.,* laboratory or MRO services). The Department issues a PIE concerning these services. Because W only provides this one kind of service, the PIE necessarily applies to all its operations.
Example 5 to §40.391. Service Agent X, by exercising reasonably prudent oversight of its collection contractor, should have known that the contractor was making numerous "fatal flaws" in tests. Alternatively, X received a correction notice pointing out these problems in its contractor's collections. In neither case did X take action to correct the problem. X, as well as the contractor, would be subject to a PIE with respect to collections.
Example 6 to §40.391. Service Agent Y could not reasonably have known that one of its MROs was regularly failing to interview employees before verifying tests positive. When it received a correction notice, Y immediately dismissed the erring MRO. In this case, the MRO would be subject to a PIE but Y would not.
Example 7 to §40.391. The Department issues a PIE with respect to Service Agent Z. Z provides services for DOT-regulated transportation employers, a Federal agency under the HHS-regulated Federal employee testing program, and various private businesses and public agencies that DOT does not regulate. The PIE applies only to the DOT-regulated transportation employers with respect to their DOT-mandated testing, not to the Federal agency or the other public agencies and private businesses. The PIE does not prevent the non-DOT regulated entities from continuing to use Z's services.

§40.393 -- How long does a PIE stay in effect?

(a) In the NOPE (*See,* §40.375(b)(5)), the initiating official proposes the duration of the PIE. The duration of the PIE is one of the elements of the proceeding that the service agent may contest (*See,* §40.381(b)) and about which the Director makes a decision (*See,* §40.387(b)(4)).

(b) In deciding upon the duration of the PIE, the Director considers the seriousness of the conduct on which the PIE is based and the continued need to protect employers and employees from the service agent's noncompliance. The Director considers factors such as those listed in §40.389 in making this decision.

(c) The duration of a PIE will be between one and five years, unless the Director reduces its duration under §40.407.

§40.395 -- Can you settle a PIE proceeding?

At any time before the Director's decision, you and the initiating official can, with the Director's concurrence, settle a PIE proceeding.

§40.397 -- When does the Director make a PIE decision?

The Director makes his or her decision within 60 days of the date when the record of a PIE proceeding is complete (including any meeting with the Director and any additional fact-

finding that is necessary). The Director may extend this period for good cause for additional periods of up to 30 days.

§40.399 -- How does the Department notify service agents of its decision?

If you are a service agent involved in a PIE proceeding, the Director provides you written notice as soon as he or she makes a PIE decision. The notice includes the following elements:

(a) If the decision is not to issue a PIE, a statement of the reasons for the decision, including findings of fact with respect to any material factual issues that were in dispute.

(b) If the decision is to issue a PIE-

(1) A reference to the NOPE;

(2) A statement of the reasons for the decision, including findings of fact with respect to any material factual issues that were in dispute;

(3) A statement of the scope of the PIE; and

(4) A statement of the duration of the PIE.

§40.401 -- How does the Department notify employers and the public about a PIE?

(a) The Department maintains a document called the "List of Excluded Drug and Alcohol Service Agents." This document may be found on the Department's web site (http://www.dot.gov/ost/dapc). You may also request a copy of the document from ODAPC.

(b) When the Director issues a PIE, he or she adds to the List the name and address of the service agent, and any other persons or organizations, to whom the PIE applies and information about the scope and duration of the PIE.

(c) When a service agent ceases to be subject to a PIE, the Director removes this information from the List.

(d) The Department also publishes a Federal Register notice to inform the public on any occasion on which a service agent is added to or taken off the List.

§40.403 -- Must a service agent notify its clients when the Department issues a PIE?

(a) As a service agent, if the Department issues a PIE concerning you, you must notify each of your DOT-regulated employer clients, in writing, about the issuance, scope, duration, and effect of the PIE. You may meet this requirement by sending a copy of the Director's PIE decision or by a separate notice. You must send this notice to each client within three working days of receiving from the Department the notice provided for in §40.399(b).

(b) As part of the notice you send under paragraph (a) of this section, you must offer to transfer immediately all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it.

§40.405 -- May the Federal courts review PIE decisions?

The Director's decision is a final administrative action of the Department. Like all final administrative actions of Federal agencies, the Director's decision is subject to judicial review under the Administrative Procedure Act (5 U.S.C. 551 *et. seq*).

§40.407 -- May a service agent ask to have a PIE reduced or terminated?

(a) Yes, as a service agent concerning whom the Department has issued a PIE, you may request that the Director terminate a PIE or reduce its duration and/or scope. This process is limited to the issues of duration and scope. It is not an appeal or reconsideration of the decision to issue the PIE.

(b) Your request must be in writing and supported with documentation.

(c) You must wait at least nine months from the date on which the Director issued the PIE to make this request.

(d) The initiating official who was the proponent of the PIE may provide information and arguments concerning your request to the Director.
(e) If the Director verifies that the sources of your noncompliance have been eliminated and that all drug or alcohol testing-related services you would provide to DOT-regulated employers will be consistent with the requirements of this part, the Director may issue a notice terminating or reducing the PIE.

§40.409 -- What does the issuance of a PIE mean to transportation employers?

(a) As an employer, you are deemed to have notice of the issuance of a PIE when it appears on the List mentioned in §40.401(a) or the notice of the PIE appears in the **Federal Register** as provided in §40.401(d). You should check this List to ensure that any service agents you are using or planning to use are not subject to a PIE.
(b) As an employer who is using a service agent concerning whom a PIE is issued, you must stop using the services of the service agent no later than 90 days after the Department has published the decision in the Federal Register or posted it on its web site. You may apply to the ODAPC Director for an extension of 30 days if you demonstrate that you cannot find a substitute service agent within 90 days.
(c) Except during the period provided in paragraph (b) of this section, you must not, as an employer, use the services of a service agent that are covered by a PIE that the Director has issued under this subpart. If you do so, you are in violation of the Department's regulations and subject to applicable DOT agency sanctions (*e.g.,* civil penalties, withholding of Federal financial assistance).
(d) You also must not obtain drug or alcohol testing services through a contractor or affiliate of the service agent to whom the PIE applies.
Example to Paragraph (d): Service Agent R was subject to a PIE with respect to SAP services. As an employer, not only must you not use R's own SAP services, but you also must not use SAP services you arrange through R, such as services provided by a subcontractor or affiliate of R or a person or organization that receives financial gain from its relationship with R.
(e) This section's prohibition on using the services of a service agent concerning which the Director has issued a PIE applies to employers in all industries subject to DOT drug and alcohol testing regulations.
Example to Paragraph (e): The initiating official for a PIE was the FAA drug and alcohol program manager, and the conduct forming the basis of the PIE pertained to the aviation industry. As a motor carrier, transit authority, pipeline, railroad, or maritime employer, you are also prohibited from using the services of the service agent involved in connection with the DOT drug and alcohol testing program.
(f) The issuance of a PIE does not result in the cancellation of drug or alcohol tests conducted using the service agent involved before the issuance of the Director's decision or up to 90 days following its publication in the Federal Register or posting on the Department's web site, unless otherwise specified in the Director's PIE decision or the Director grants an extension as provided in paragraph (b) of this section.
Example to Paragraph (f): The Department issues a PIE concerning Service Agent N on September 1. All tests conducted using N's services before September 1, and through November 30, are valid for all purposes under DOT drug and alcohol testing regulations, assuming they meet all other regulatory requirements.

§40.411 -- What is the role of the DOT Inspector General's office?

(a) Any person may bring concerns about waste, fraud, or abuse on the part of a service agent to the attention of the DOT Office of Inspector General.

(b) In appropriate cases, the Office of Inspector General may pursue criminal or civil remedies against a service agent.

(c) The Office of Inspector General may provide factual information to other DOT officials for use in a PIE proceeding.

§40.413 -- How are notices sent to service agents?

(a) If you are a service agent, DOT sends notices to you, including correction notices, notices of proposed exclusion, decision notices, and other notices, in any of the ways mentioned in paragraph (b) or (c) of this section.

(b) DOT may send a notice to you, your identified counsel, your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers to the last known street address, fax number, or e-mail address. DOT deems the notice to have been received by you if sent to any of these persons.

(c) DOT considers notices to be received by you-

(1) When delivered, if DOT mails the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if DOT sends the notice by fax or five days after we send it if the fax is undeliverable; or

(3) When delivered, if DOT sends the notice by e-mail or five days after DOT sends it if the e-mail is undeliverable.

The initial and confirmation cutoff levels for all testing **except post accident** tests are as follows:

	Initial Test Cutoff Level (NG/ML)	Confirmation Test Cutoff Level (NG/ML)	
Marijuana metabolites	50		15
Cocaine metabolites	300		150
Opiate metabolites	2000	Morphine Codeine	2000 2000
Phenocyclidine (PCP)	25		25
Amphetamines	1000	Amphetamine Methampheta-mine	200 200

The cut off levels for **post accident** testing are different as shown below:

The following summarizes the procedure for analysis of blood and urine specimens submitted under the FRA post-accident program:

This information in italics is not published in the Federal regulations. Rather, FRA has set these levels with the designated laboratory for post accident tests. Informational sheets displaying these cutoffs are included with all test results.

***Urine Integrity Test**: Urine is tested for pH, specific gravity, and/or creatinine. If the pH or temperature is out of range, specific gravity is less then 1.003 and/or creatinine less than 20 mg/dL, or the sample appears adulterated, both the urine and the blood specimen may be tested*

for drugs.

***Analysis of Drugs/Initial Testing**: Initial testing is performed on urine by KIMS(kinetic interaction of microparticles in solution), or blood if urine is not available, by radioimmunoassay for the drug groups shown. If the tests are negative (that is, the results are below the cutoff), routinely no further analysis is performed.*

	Initial Tests Cutoffs(ng/mL)[b/]	
Drug or Metabolite[a/]	***Urine***	***Blood***
Cannabinoids	20	10
Cocaine	300	20
Opiates	300	50
Amphetamines/Metamphetamine	300	50
Phencyclidine	25	2.5
Barbiturates	200	100
Benzodiazepines	100	50

***Analysis of Other Drugs/Confirmation:** If the initial test is presumptively positive, the urine and/or the blood specimens are analyzed using gas chromatography-mass spectrometry. Except as noted, only confirmed positive findings are reported; they are reported as quantitative results based on the confirmatory analysis.*

	Confirmation Test Cutoffs(ng/mL)[b/]	
Specific Drug or Metabolite	***Urine***	***Blood***
Cannabinoids		
Delta-9-Tetrahydrocannabinol (THC)[c/]	--	1
THCA (a metabolite of THC)	15	5
Cocaine		
Cocaine	50	10
Benzoylecgonine (metabolite of cocaine)	50	10

** *a. Metabolites and/or analogs of these compounds may also be detected.*

* *b. These methods and cutoffs are subject to periodic review and update.*

c. THC is the active constituent of marijuana or hashish preparations.

Opioids		
Morphine (total)	300	--
Morphine (unconjugated)	--	20
Codeine (total)	300	--
Codeine (unconjugated)	--	20
6-MonoAcetylmorphine	LOQ[5]	LOQ
Phencyclidine	25	2.5
Amphetamines		
Amphetamine	100	20
Methamphetamine	100	20
Barbiturates		
Pentobarbital	200	100
Secobarbital	200	100
Amobarbital	200	100
Butalbital	200	100
Phenobarbital	1000	1000
Benzodiazepines		
Nordiazepam	LOQ**d/**	20
Oxazepam	LOQ	20
Temazepam	LOQ	20
N-Desalkylflurazepam	LOQ	20
Alpha-Hydrxylatprazolam	LOQ	
Alpha-Hydrxytriazolam	LOQ	
Diazepam	--	20
Flurazepam	--	20
Chlordiazepoxide	--	20
Alprazolam	--	10
Triazolam	--	10

Urine benzodiazepine concentrations are reported if above the LOQ and only if the concentrations are above the cutoff. If a blood specimen is not received and the urine benzodiazepine concentration is greater than the LOQ, the urine specimen may be reported.
Note: If a drug included in a drug group is detected below the cutoff and another drug in that group is present above the cutoff, the first drug may be reported.

Analysis of Alcohol: *The blood specimen (or urine if no blood is available) is analyzed for ethyl alcohol by gas chromatography. If the blood specimen is positive, the analysis is repeated using a separate portion of the specimen and the urine is also analyzed by gas chromatography.*

	Initial Test	***Confirmation***
Substance	***Cutoff (g/100mL)***	***Cutoff (g/100mL)***
Ethyl alcohol	*0.01*	*0.01*

Analysis in the case of a fatality: If urine or blood is not available, or as directed by the FRA**,**

[5] Limit of quantitation.

other body fluids and/or tissue may be analyzed.

***Special Assays**: On direction from the FRA, the designated laboratory may perform tests for additional controlled substances and/or metabolites. If such tests are performed, they are specifically described on each individual report.*
d. LOQ: Limit of quantitation.
e. A confirmed urine positive for amphetamine or metamphetamine will result in a d & l isomer analysis and is reported as the % of each isomer present.

Appendix A- DOT Standards for Urine Collection Kits
Appendix B-DOT Drug Testing Semi-Annual Lab Report
Appendix C- (Reserved)
Appendix D-Report Format: Split Specimen Failure to Reconfirm
Appendix E- SAP Equivalency Requirements For Certification Organizations
Appendix F-Testing Information that C/TPAs May Transmit to Employees
Appendix G-Alcohol Testing Form (ATF)

HOURS OF SERVICE[6]

Note: Only the Guidance Questions and Answers applicable to bus drivers are set forth below.

Section §395.1: Scope of rules in this part.
Below are the interpretations for this section.

Guidance Q&A

Question 1: What hours-of-service regulations apply to drivers operating between the United States and Mexico or between the United States and Canada?

Guidance:

When operating Commercial Motor Vehicle (CMV)s, as defined in §390.5 in the United States, all hours-of-service provisions apply to all drivers of Commercial Motor Vehicle (CMV)s, regardless of nationality, point of origin, or where the driving time or on-duty time was accrued.

Question 2: If a driver invokes the exception for adverse driving conditions, does a supervisor need to sign the driver's record of duty status when he/she arrives at the destination?

6 On May 9, 2019, the FMCSA published a notice seeking comments regarding a petition by the American Bus Association to preempt the California meal and rest break rules. The state's rules provide bus drivers with a meal break of not less than 30 minutes and permit rest periods in the middle of each work period at the rate of 10 minutes per 4 hours. 84 Fed.Reg. 20463, May 9, 2019.

Guidance:

No.

Question 3: May a driver use the adverse driving conditions exception if he/she has accumulated driving time and on-duty (not driving) time, that would put the driver over 15 hours or over 70 hours in 8 consecutive days?

Guidance:

No. The adverse driving conditions exception applies only to the 10-hour rule.

Question 4: Are there allowances made in the Federal Motor Carrier Safety Regulations (FMCSRs) for delays caused by loading and unloading?

Guidance:

No. Although the regulations do make some allowances for unforeseen contingencies such as in §395.1(b), adverse driving conditions, and §395.1(b)(2), emergency conditions, loading and unloading delays are not covered by these sections.

Question 5: How may a driver utilize the adverse driving conditions exception or the emergency conditions exception as found in §395.1(b), to preclude an hours of service violation?

Guidance:

An absolute prerequisite for any such claim must be that the trip involved is one which could normally and reasonably have been completed without a violation and that the unforeseen event occurred after the driver began the trip.

Drivers who are dispatched after the motor carrier has been notified or should have known of adverse driving conditions are not eligible for the two hours additional driving time provided for under §395.1(b), adverse driving conditions. The term "in any emergency" shall not be construed as encompassing such situations as a driver's desire to get home, shippers' demands, market declines, shortage of drivers, or mechanical failures.

Question 6: ….

Question 7: ….

Question 8: ….

Question 9: ….

Question 10: ….

Question 11: ….

Question 12: What constitutes the 100-air-mile radius exemption?

Guidance:

The term "air mile" is internationally defined as a "nautical mile" which is equivalent to 6,076 feet or 1,852 meters. Thus, the 100 air miles are equivalent to 115.08 statute miles or 185.2 kilometers.

Question 13: What documentation must a driver claiming the 100-air-mile radius exemption (§395.1(e)) have in his/her possession?

Guidance:

None.

Question 14: Must a motor carrier retain 100-air-mile driver time records at its principal place of business?

Guidance:

No. However, upon request by an authorized representative of the Federal Highway Administration (FHA) or State official, the records must be produced within a reasonable period of time (2 working days) at the location where the review takes place.

Question 15: May an operation that changes its normal work-reporting location on an intermittent basis utilize the 100-air-mile radius exemption?

Guidance:

Yes. However, when the motor carrier changes the normal reporting location to a new reporting location, that trip (from the old location to the new location) must be recorded on the record of duty status because the driver has not returned to his/her normal work reporting location.

Question 16: May a driver use a record of duty status form as a time record to meet the requirement contained in the 100-air-mile radius exemption?

Guidance:

Yes, provided the form contains the mandatory information.

Question 17: Is the "mandatory information" referred to in the previous guidance that required of a normal RODS under section 395.8(d) that of the 100-air-mile radius exemption under section 395.1(e)(5)?

Guidance:

The "mandatory information" referred to is the time records specified by §395.1(e)(5) which must show: (1) the time the driver reports for duty each day; (2) the total number of hours the driver is on duty each day; (3) the time the driver is released from duty each day; and (4) the total time for the preceding 7 days in accordance with §395.8(j)(2) for drivers used for the first time or intermittently.

Using the RODS to comply with §395.1(e)(5) is not prohibited as long as the RODS contains driver identification, the date, the time the driver began work, the time the driver ended work, and the total hours on duty.

Question 18: Must the driver's name and each date worked appear on the time record prepared to comply with §395.1(e), 100-air-mile radius driver?

Guidance:

Yes. The driver's name or other identification and date worked must be shown on the time record.

Question 19: May drivers who work split shifts take advantage of the 100-air-mile radius exemption found at §395.1(e)?

Guidance:

Yes. Drivers who work split shifts may take advantage of the100-air-mile radius exemption if:1. The drivers operate within a 100-air-mile radius of their normal work-reporting locations; 2. The drivers return to their work-reporting locations and are released from work at the end of each shift and each shift is less than 12 consecutive hours; 3. The drivers are off-duty for more than 8 consecutive hours before reporting for their first shift of the day and spend less than 12 hours, in the aggregate, on-duty each day; 4. The drivers do not exceed a total of 10 hours driving time and are afforded 8 or more consecutive hours off-duty prior to their first shift of the day; and 5. The employing motor carriers maintain and retain the time records required by 395.1(e)(5) .

Question 20: May a driver who is taking advantage of the 100-air-mile radius exemption in §395.1(e) be intermittently off-duty during the period away from the work-reporting location?

Guidance:

Yes, a driver may be intermittently off-duty during the period away from the work-reporting location provided the driver meets all requirements for being off-duty. If the driver's period away from the work-reporting location includes periods of off-duty time, the time record must show both total on-duty time and total off-duty time during his/her tour of duty. In any

event, the driver must return to the work-reporting location and be released from work within 12 consecutive hours.

Question 21: When a driver fails to meet the provisions of the 100 air-mile radius exemption (section 395.1(e)), is the driver required to have copies of his/her records of duty status for the previous seven days? Must the driver prepare daily records of duty status for the next seven days?

Guidance:

The driver must only have in his/her possession a record of duty status for the day he/she does not qualify for the exemption. A driver must begin to prepare the record of duty status for the day immediately after he/she becomes aware that the terms of the exemption cannot be met The record of duty status must cover the entire day, even if the driver has to record retroactively changes in status that occurred between the time that the driver reported for duty and the time in which he/she no longer qualified for the 100 air-mile radius exemption. This is the only way to ensure that a driver does not claim the right to drive 10 hours after leaving his/her exempt status, in addition to the hours already driven under the 100 air-mile exemption.

Question 22: A driver returns to his/her normal work reporting location from a location beyond the 100-air-mile radius and goes off duty for 7 hours. May the driver return to duty after being off-duty for 7 hours and utilize the 100-air-mile radius exemption?

Guidance:

No. The 7-hour off-duty period has not met the requirement of 8 consecutive hours separating each 12-hour on-duty period. The driver must first accumulate 8 consecutive hours off-duty before operating under the 100 air-mile radius exemption.

Question 23:….

.

Question 24: ….

Question 25: May sleeper berth time and off-duty periods be combined to meet the 8-hour off-duty requirement?

Guidance:

Yes, as long as the 8-hour period is consecutive and not broken by on-duty or driving activities.

Question 26: ….

Question 27: ….

Question 28: Does the emergency conditions exception in 49 CFR 395.1(b)(2) apply to a driver who planned on arriving at a specific rest area to complete his 10 hours driving and found the rest area full, forcing the driver to continue past the ten hours driving looking for another safe parking area?

Guidance:

No. The emergency conditions exception does not apply to the driver. It is general knowledge that rest areas have become increasingly crowded for commercial motor vehicle parking, thus, it is incumbent on drivers to look for a parking spot before the last few minutes of a 10 hour driving period. The driver should provide the reason for exceeding the 10 hours driving in the Remarks section of the record of duty status.

Question 29: Must a motor carrier that uses a 100-air-mile radius driver write zero (0) hours on the time record for each day the driver is off duty (not working for the motor carrier)?

Guidance:

No. Section 395.1(e)(5) requires a motor carrier to maintain "accurate and true time records" for each driver. These records must show the time the driver goes on and off duty, as well as the total number of hours on duty, each day. The lack of a time record for a 100-air-mile radius driver on any given day is therefore a statement by the motor carrier that the driver was not on duty that day. If an investigator discovers that the driver was in fact on duty, despite the absence of a time record, the motor carrier has violated §395.1(e)(5) because it has not maintained "true and accurate time records." Appropriate enforcement action may then be taken.

Question 30: [Removed temporarily pending formal action to do so]

Guidance:

Question 31: ….

Question 32: ….

Appendix A to Subpart B of Part 395— Functional Specifications for All Electronic Logging Devices (ELDs

53 Fed. Reg. 38670, Sept. 30, 1988, as amended at 60 Fed. Reg. 38748, July 28, 1995; 68 Fed. Reg. 22516, Apr. 28, 2003; 70 Fed. Reg. 50073, Aug. 25, 2005; 75 Fed. Reg. 17245, Apr. 5, 2010; 77 Fed. Reg. 28451, May 14, 2012; 80 Fed. Reg. 78291, Dec. 16, 2015

Regulatory Guidance

FMCSA has revised its requirements concerning records of duty status. It has removed the requirement that drivers print and sign paper copies of the RODS generated through logging

software, provided the driver can sign the RODS electronically at the end of each workday and display the record at roadside.

§395.2 Definitions.

As used in this part, the following words and terms are construed to mean:

Adverse driving conditions means snow, sleet, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun.

Agricultural commodity means any agricultural commodity, non-processed food, feed, fiber, or livestock (including livestock as defined in sec. 602 of the

Emergency Livestock Feed Assistance Act of 1988[7 U.S.C. 1471] and inserts).

Automatic on-board recording device means an electric, electronic, electromechanical, or mechanical device capable of recording driver's duty status information accurately and automatically as required by §395.15. The device must be integrally synchronized with specific operations of the commercial motor vehicle in which it is installed. At a minimum, the device must record engine use, road speed, miles driven, the date, and time of day.

Driving time means all time spent at the driving controls of a commercial motor vehicle in operation.

Eight consecutive days means the period of 8 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

Electronic logging device (ELD) means a device or technology that automatically records a driver's driving time and facilitates the accurate recording of the driver's hours of service, and that meets the requirements of subpart B of this part.

ELD record means a record of duty status, recorded on an ELD, that reflects the data elements that an ELD must capture.

Multiple stops means all stops made in any one village, town, or city may be computed as one.

On-duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. On-duty time shall include:

(1) All time at a plant, terminal, facility, or other property of a motor carrier or shipper, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;

(2) All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All driving time as defined in the term driving time;

(4) All time in or on a commercial motor vehicle, other than:

(i) Time spent resting in or on a parked vehicle, except as otherwise provided in §397.5 of this subchapter;

(ii) Time spent resting in a sleeper berth; or

(iii) Up to 2 hours riding in the passenger seat of a property-carrying vehicle moving on the highway immediately before or after a period of at least 8 consecutive hours in the sleeper berth;

(5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded;

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle;

(7) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, to comply with the random, reasonable suspicion, post-crash, or follow-up testing required by part 382 of this subchapter when directed by a motor carrier;

(8) Performing any other work in the capacity, employ, or service of, a motor carrier; and

(9) Performing any compensated work for a person who is not a motor carrier.

Seven consecutive days means the period of 7 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

Supporting document means a document, in any medium, generated or received by a motor carrier in the normal course of business as described in §395.11 that can be used, as produced or with additional identifying information, by the motor carrier and enforcement officials to verify the accuracy of a driver's record of duty status.

Twenty-four-hour period means any 24-consecutive-hour period beginning at the time designated by the motor carrier for the terminal from which the driver is normally dispatched.

57 Fed. Reg. 33648, July 30, 1992, as amended at 59 Fed. Reg. 7515, Feb. 15, 1994; 59 Fed. Reg. 60324, Nov. 23, 1994; 60 Fed. Reg. 38748, July 28, 1995; 61 Fed. Reg. 14679, Apr. 3, 1996; 63 Fed. Reg. 33279, June 18, 1998; 72 Fed. Reg. 36790, July 5, 2007; 75 Fed. Reg. 17245,

Apr. 5, 2010; 76 Fed. Reg. 25590, May 5, 2011; 76 Fed. Reg. 81187, Dec. 27, 2011; 77 Fed. Reg. 28451, May 14, 2012; 80 Fed. Reg. 78383, Dec. 16, 2015; 81 Fed. Reg. 47721, July 22, 2016]

§395.5 Maximum driving time for passenger-carrying vehicles.

Subject to the exceptions and exemptions in §395.1:

(a) No motor carrier shall permit or require any driver used by it to drive a passenger-carrying commercial motor vehicle, nor shall any such driver drive a passenger-carrying commercial motor vehicle:

(1) More than 10 hours following 8 consecutive hours off duty; or

(2) For any period after having been on duty 15 hours following 8 consecutive hours off duty.

(b) No motor carrier shall permit or require a driver of a passenger-carrying commercial motor vehicle to drive, nor shall any driver drive a passenger-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after—

(1) Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

§395.8 Driver's record of duty status.

(a) (1) Except for a private motor carrier of passengers (nonbusiness), as defined in §390.5 of this subchapter, a motor carrier subject to the requirements of this part must require each driver used by the motor carrier to record the driver's duty status for each 24-hour period using the method prescribed in paragraphs (a)(1)(i) through (iv) of this section, as applicable.

(i) Subject to paragraphs (a)(1)(ii) and (iii) of this section, a motor carrier operating commercial motor vehicles must install and require each of its drivers to use an ELD to record the driver's duty status in accordance with subpart B of this part no later than December 18, 2017.

(ii) A motor carrier that installs and requires a driver to use an automatic on- board recording device in accordance with §395.15 before December 18, 2017 may continue to use the compliant automatic on-board recording device no later than December 16, 2019.

(iii)(A) A motor carrier may require a driver to record the driver's duty status manually in accordance with this section, rather than require the use of an ELD, if the driver is operating a commercial motor vehicle:

(1) In a manner requiring completion of a record of duty status on not more than 8 days within any 30-day period;

(2) In a driveaway-towaway operation in which the vehicle being driven is part of the shipment being delivered; or

(3) That was manufactured before model year 2000.

(B) The record of duty status must be recorded in duplicate for each 24-hour period for which recording is required. The duty status shall be recorded on a specified grid, as shown in paragraph (g) of this section. The grid and the requirements of paragraph (d) of this section may be combined with any company form.

(iv) Subject to paragraphs (a)(1)(i) through (iii) of this section, until December 18, 2017, a motor carrier operating commercial motor vehicles shall require each of its drivers to record the driver's record of duty status:

(A) Using an ELD that meets the requirements of subpart B of this part;

(B) Using an automatic on-board recording device that meets the requirements of §395.15; or

(C) Manually, recorded on a specified grid as shown in paragraph (g) of this section. The grid and the requirements of paragraph (d) of this section may be combined with any company form. The record of duty status must be recorded in duplicate for each 24-hour period for which recording is required.

(2) A driver operating a commercial motor vehicle must:

(i) Record the driver's duty status using one of the methods under paragraph (a)(1) of this section; and

(ii) Submit the driver's record of duty status to the motor carrier within 13 days of the 24-hour period to which the record pertains.

(j) *Drivers used by more than one motor carrier.* (1) When the services of a driver are used by more than one motor carrier during any 24-hour period in effect at the driver's home terminal, the driver shall submit a copy of the record of duty status to each motor carrier. The record shall include: (i) All duty time for the entire 24-hour period;(ii) The name of each motor carrier served by the driver during that period; and(iii) The beginning and finishing time, including a.m. or p.m., worked for each carrier.

(2) Motor carriers, when using a driver for the first time or intermittently, shall obtain from the driver a signed statement giving the total time on duty during the immediately preceding 7 days and the time at which the driver was last relieved from duty prior to beginning work for the motor carriers.

(b) The duty status shall be recorded as follows:

(1) ''Off duty'' or ''OFF.''

(2) ''Sleeper berth'' or ''SB'' (only if a sleeper berth used).

(3) ''Driving'' or ''D.''

(4) ''On-duty not driving'' or ''ON.''

(c) For each change of duty status (e.g., the place of reporting for work, starting to drive, on-duty not driving and where released from work), the name of the city, town, or village, with State abbreviation, shall be recorded.

NOTE

If a change of duty status occurs at a location other than a city, town, or village, show one of the following: (1) The highway number and nearest milepost followed by the name of the nearest city, town, or village and State abbreviation, (2) the highway number and the name of the service plaza followed by the name of the nearest city, town, or village and State abbreviation, or (3) the highway numbers of the nearest two intersecting roadways followed by the name of the nearest city, town, or village and State abbreviation.

(d) The following information must be included on the form in addition to the grid:

(1) Date;

(2) Total miles driving today;

(3) ….

(4) Name of carrier;

(5) Driver's signature/certification;

(6) 24-hour period starting time (e.g. midnight, 9:00 a.m., noon, 3:00 p.m.);
(7) Main office address;
(8) Remarks;
(9) Name of co-driver;
(10) Total hours (far right edge of grid);
(11) ….

(e)(1) No driver or motor carrier may make a false report in connection with a duty status.

(2) No driver or motor carrier may disable, deactivate, disengage, jam, or otherwise block or degrade a signal transmission or reception, or reengineer, reprogram, or otherwise tamper with an automatic on-board recording device or ELD so that the device does not accurately record and retain required data.

(3) No driver or motor carrier may permit or require another person to disable, deactivate, disengage, jam, or otherwise block or degrade a signal transmission or reception, or reengineer, reprogram, or otherwise tamper with an automatic on-board recording device or ELD so that the device does not accurately record and retain required data.

(f) The driver's activities shall be recorded in accordance with the following provisions:

(1) Entries to be current.

Drivers shall keep their records of duty status current to the time shown for the last change of duty status.

(2) Entries made by driver only.

All entries relating to driver's duty status must be legible and in the driver's own handwriting.

(3) Date.

The month, day and year for the beginning of each 24-hour period shall be shown on the form containing the driver's duty status record.

(4) Total miles driving today.

Total mileage driven during the 24-hour period shall be recorded on the form con-taining the driver's duty status record.

(5) Commercial motor vehicle identification.

The driver shall show the number assigned by the motor carrier, or the license number and licensing State of each commercial motor vehicle operated during each 24-hour period on his/her record of duty status. The driver of an articulated (combination) commercial motor vehicle shall show the number assigned by the motor carrier, or the license number and licensing State of each motor vehicle used in each commercial motor vehicle combination operated during that 24-hour period on his/her record of duty status.

(6) Name of motor carrier.

The name(s) of the motor carrier(s) for which work is performed shall be shown on the form containing the driver's record of duty status. When work is performed for more than one motor carrier during the same 24-hour period, the beginning and finishing time, showing a.m. or p.m., worked for each motor carrier

shall be shown after each motor carrier's name. Drivers of leased commercial motor vehicles shall show the name of the motor carrier performing the transportation.

(7) Signature/certification.

The driver shall certify to the correctness of all entries by signing the form containing the driver's duty status record with his/her legal name or name of record. The driver's signature certifies that all entries required by this section made by the driver are true and correct.

(8) Time base to be used.

(i) The driver's duty status record shall be prepared, maintained, and submitted using the time standard in effect at the driver's home terminal, for a 24-hour period beginning with the time specified by the motor carrier for that driver's home terminal.

(ii) The term ''7 or 8 consecutive days'' means the 7 or 8 consecutive 24- hour periods as designated by the carrier for the driver's home terminal.

(iii) The 24-hour period starting time must be identified on the driver's duty status record. One-hour increments must appear on the graph, be identified, and preprinted. The words ''Mid-night'' and ''Noon'' must appear above or beside the appropriate one-hour increment.

(9) Main office address.

The motor carrier's main office address shall be shown on the form containing the driver's duty status record.

(10) Recording days off duty.

Two or more consecutive 24-hour periods off duty may be recorded on one duty status record.

(11) Total hours.

The total hours in each duty status: driving, and on duty not driving, shall be entered to the right of the grid, the total of such entries shall equal 24 hours.

(12) Shipping document number(s) or name of shipper and commodity

shall be shown on the driver's record of duty status.

(g) Graph grid.

The following graph grid must be incorporated into a motor carrier recordkeeping system which must also contain the information required in paragraph (d) of this section.

(d) The following information must be included on the form in addition to the grid:

(1) Date;

(2) Total miles driving today;

(3) ….

(4) Name of carrier;

(5) Driver's signature/certification;

(6) 24-hour period starting time (e.g. midnight, 9:00 a.m., noon, 3:00 p.m.);

(7) Main office address;

(8) Remarks;

(9) Name of co-driver;

(10) Total hours (far right edge of grid);

(11) ….

(e) Failure to complete the record of duty activities of this section or §395.15, failure to preserve a record of such duty activities, or making of false reports in connection with such duty activities shall make the driver and/or the carrier liable for prosecution.

(f) The driver's activities shall be recorded in accordance with the following provisions:

(1) *Entries to be current.* Drivers shall keep their records of duty status current to the time shown for the last change of duty status.

(2) *Entries made by driver only.* All entries relating to driver's duty status must be legible and in the driver's own handwriting.

(3) *Date.* The month, day and year for the beginning of each 24-hour period shall be shown on the form containing the driver's duty status record.

(4) *Total miles driving today.* Total mileage driven during the 24-hour period shall be recorded on the form containing the driver's duty status record.

(5) *Commercial motor vehicle identification.* The driver shall show the number assigned by the motor carrier, or the license number and licensing State of each commercial motor vehicle operated during each 24-hour period on his/her record of duty status. The driver of an articulated (combination) commercial motor vehicle shall show the number assigned by the motor carrier, or the license number and licensing State of each motor vehicle used in each commercial motor vehicle combination operated during that 24-hour period on his/her record of duty status.

(6) *Name of motor carrier.* The name(s) of the motor carrier(s) for which work is performed shall be shown on the form containing the driver's record of duty status. When work is performed for more than one motor carrier during the same 24-hour period, the beginning and finishing time, showing a.m. or p.m., worked for each motor carrier shall be shown after each motor carrier's name. Drivers of leased commercial motor vehicles shall show the name of the motor carrier performing the transportation.

(7) *Signature/certification.* The driver shall certify to the correctness of all entries by signing the form containing the driver's duty status record with his/her legal name or name of record. The driver's signature certifies that all entries required by this section made by the driver are true and correct.

(8) *Time base to be used.*

(i) The driver's duty status record shall be prepared, maintained, and submitted using the time standard in effect at the driver's home terminal, for a 24-hour period beginning with the time specified by the motor carrier for that driver's home terminal.

(ii) The term “7 or 8 consecutive days” means the 7 or 8 consecutive 24-hour periods as designated by the carrier for the driver's home terminal.

(iii) The 24-hour period starting time must be identified on the driver's duty status record. One-hour increments must appear on the graph, be identified, and preprinted. The words “Midnight” and “Noon” must appear above or beside the appropriate one-hour increment.

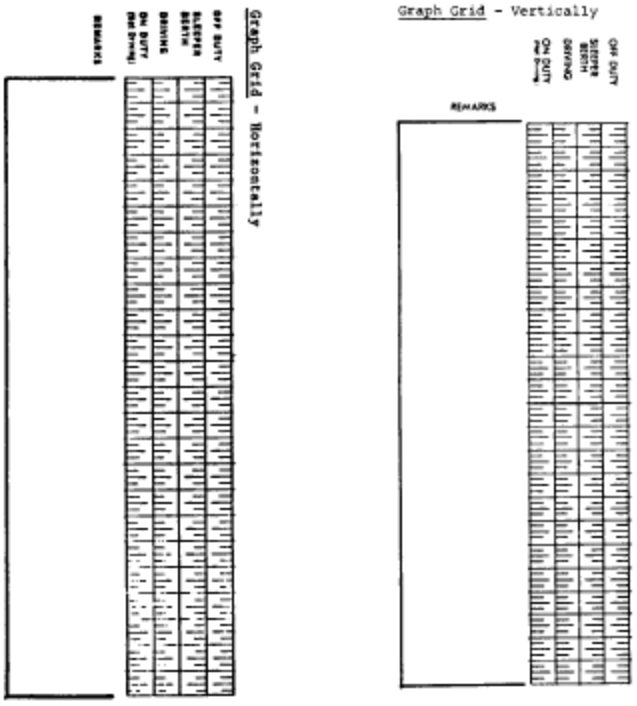
(9) *Main office address.* The motor carrier's main office address shall be shown on the form containing the driver's duty status record.

(10) *Recording days off duty.* Two or more consecutive 24-hour periods off duty may be recorded on one duty status record.

(11) *Total hours.* The total hours in each duty status: ff duty other than in a sleeper berth; off duty in a sleeper berth; driving, and on duty not driving, shall be entered to the right of the grid, the total of such entries shall equal 24 hours.

(12) ….

(g) *Graph grid.* The following graph grid must be incorporated into a motor carrier recordkeeping system which must also contain the information required in paragraph (d) of this section.



(h) *Graph grid preparation.* The graph grid may be used horizontally or vertically and shall be completed as follows:

(1) *Off duty.* Except for time spent resting in a sleeper berth, a continuous line shall be drawn between the appropriate time markers to record the period(s) of time when the driver is not on duty, is not required to be in readiness to work, or is not under any responsibility for performing work.

(2) ….

(3) *Driving.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of driving time, as defined in §395.2.

(4) *On duty not driving.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of time on duty not driving specified in §395.2.

(5) *Location—remarks.* The name of the city, town, or village, with State abbreviation where each change of duty status occurs shall be recorded.

Note:

If a change of duty status occurs at a location other than a city, town, or village, show one of the following:

(1) The highway number and nearest milepost followed by the name of the nearest city, town, or village and State abbreviation,

(2) the highway number and the name of the service plaza followed by the name of the nearest city, town, or village and State abbreviation, or

(3) the highway numbers of the nearest two intersecting roadways followed by the name of the nearest city, town, or village and State abbreviation.

(i) *Filing driver's record of duty status.* The driver shall submit or forward by mail the original driver's record of duty status to the regular employing motor carrier within 13 days following the completion of the form.

(j) *Drivers used by more than one motor carrier.*

(1) When the services of a driver are used by more than one motor carrier during any 24-hour period in effect at the driver's home terminal, the driver shall submit a copy of the record of duty status to each motor carrier. The record shall include:

(i) All duty time for the entire 24-hour period;

(ii) The name of each motor carrier served by the driver during that period; and

(iii) The beginning and finishing time, including a.m. or p.m., worked for each carrier.

(2) Motor carriers, when using a driver for the first time or intermittently, shall obtain from the driver a signed statement giving the total time on duty during the immediately preceding 7 days and the time at which the driver was last relieved from duty prior to beginning work for the motor carriers.

(k) *Retention of driver's record of duty status.*

(1) Each motor carrier shall maintain records of duty status and all supporting documents for each driver it employs for a period of six months from the date of receipt.

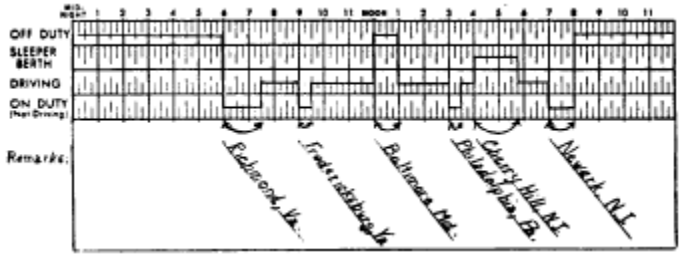
(2) The driver shall retain a copy of each record of duty status for the previous 7 consecutive days which shall be in his/her possession and available for inspection while on duty.

Note:

Driver's Record of Duty Status.

The graph grid, when incorporated as part of any form used by a motor carrier, must be of sufficient size to be legible.

The following executed specimen grid illustrates how a driver's duty status should be recorded for a trip from Richmond, Virginia, to Newark, New Jersey. The grid reflects the midnight to midnight 24 hour period.



Graph Grid (Midnight to Midnight Operation)

The driver in this instance reported for duty at the motor carrier's terminal. The driver reported for work at 6 a.m., helped load, checked with dispatch, made a pretrip inspection, and performed other duties until 7:30 a.m. when the driver began driving. At 9 a.m. the driver had a minor accident in Fredericksburg, Virginia, and spent one half hour handling details with the local police. The driver arrived at the company's Baltimore, Maryland, terminal at noon and went to lunch while minor repairs were made to the tractor. At 1 p.m. the driver resumed the trip and made a delivery in Philadelphia, Pennsylvania, between 3 p.m. and 3:30 p.m. at which time the driver started driving again. Upon arrival at Cherry Hill, New Jersey, at 4 p.m., the driver entered the sleeper berth for a rest break until 5:45 p.m. at which time the driver resumed driving again. At 7 p.m. the driver arrived at the company's terminal in Newark, New Jersey. Between 7 p.m. and 8 p.m. the driver prepared the required paperwork including completing the driver's record of duty status, driver vehicle inspection report, insurance report for the Fredericksburg, Virginia accident, checked for the next day's dispatch, etc. At 8 p.m., the driver went off duty.

(i) Reserved.

(k) Retention of driver's record of duty status and supporting documents.

(1) A motor carrier shall retain records of duty status and supporting documents required under this part for each of its drivers for a period of not less than 6 months from the date of receipt.

47 Fed. Reg. 53389, Nov. 26, 1982, as amended at 49 Fed. Reg. 38290, Sept. 28, 1984; 49 Fed. Reg. 46147, Nov. 23, 1984; 51 Fed. Reg. 12622, Apr. 14, 1986; 52 Fed. Reg. 41721, Oct. 30, 1987; 53 Fed. Reg. 18058, May 19, 1988; 53 Fed. Reg. 38670, Sept. 30, 1988; 57 Fed. Reg. 33649, July 30, 1992; 58 Fed. Reg. 33777, June 21, 1993; 59 Fed. Reg. 8753, Feb. 23, 1994; 60 Fed. Reg. 38748, July 28, 1995; 62 Fed. Reg. 16709, Apr. 8, 1997; 63 Fed. Reg. 33279, June 18, 1998; 75 Fed. Reg. 17245, Apr. 5, 2010; 77 Fed. Reg. 28451, 28454, May 14, 2012; 77 Fed. Reg. 59828, Oct. 1, 2012; 80 Fed. Reg. 78291, December 16, 2015

§395.11 Supporting documents.

(a) Effective date.

This section takes effect December 18, 2017.

(b) Submission of supporting documents to motor carrier.

Except drivers for a private motor carrier of passengers (nonbusiness), a driver must submit to the driver's employer the driver's supporting documents within 13 days of either the 24-hour period to which the documents pertain or the day the document comes into the driver's possession, whichever is later.

(c) Supporting document retention.

(1) Subject to paragraph (d) of this section, a motor carrier must retain each supporting document generated or received in the normal course of business in the following categories for each of its drivers for every 24-hour period to verify on-duty not driving time in accordance with §395.8(k):

(i) Each bill of lading, itinerary, schedule, or equivalent document that indicates the origin and destination of each trip;

(ii) Each dispatch record, trip record, or equivalent document;

(iii) Each expense receipt related to any on-duty not driving time;

(iv) Each electronic mobile communication record, reflecting communications transmitted through a fleet management system; and

(v) Each payroll record, settlement sheet, or equivalent document that indicates payment to a driver.

(2)(i) A supporting document must include each of the following data elements:

(A) On the document or on another document that enables the carrier to link the document to the driver, the driver's name or personal identification number (PIN) or a unit (vehicle) number if the unit number can be associated with the driver operating the unit;

(B) The date, which must be the date at the location where the date is recorded;

(C) The location, which must include the name of the nearest city, town, or village to enable Federal, State, or local enforcement personnel to quickly determine a vehicle's location on a standard map or road atlas; and

(D) Subject to paragraph (c)(2)(ii) of this section, the time, which must be convertible to the local time at the location where it is recorded.

(ii) If a driver has fewer than eight supporting documents containing the four data elements under paragraph (c)(2)(i) of this section for a 24-hour period, a document containing the data elements under paragraphs (c)(2)(i)(A) through (C) of this section is considered a supporting document for purposes of paragraph (d) of this section.

(d) Maximum number of supporting documents.

(1) Subject to paragraphs (d)(3) and (4) of this section, a motor carrier need not retain more than eight supporting documents for an individual driver's 24-hour period under paragraph (c) of this section.

(2) In applying the limit on the number of documents required under paragraph (d)(1) of this section, each electronic mobile communication record applicable to an individual driver's 24-hour period shall be counted as a single document.

(3) If a motor carrier has more than eight supporting documents for a driver's 24 hour period, the motor carrier must retain the supporting documents containing the earliest and the latest time indications among the eight supporting documents retained.

(4) In addition to other supporting documents required under this section, and notwithstanding the maximum number of documents under paragraph (d)(1) of this section, a motor carrier that requires a driver to complete a paper record of duty status under §395.8(a)(1)(iii) must maintain toll receipts for any period when the driver kept paper records of duty status.

(e) Link to driver's record of duty status.

A motor carrier must retain supporting documents in such a manner that they may be effectively matched to the corresponding driver's record of duty status.

(f) Prohibition of destruction.

No motor carrier or driver may obscure, deface, destroy, mutilate, or alter existing information contained in a supporting document.

(g) Supporting documents at roadside.

(1) Upon request during a roadside inspection, a driver must make available to an authorized Federal, State, or local official for the official's review any supporting document in the driver's possession.

(2) A driver need not produce a supporting document under paragraph (g)(1) of this section in a format other than the format in which the driver possesses it.

(h) Self-compliance systems.

(1) FMCSA may authorize on a case-by-case basis motor carrier self-compliance systems.

(2) Requests for use of a supporting document self-compliance system may be submitted to FMCSA under the procedures described in 49 CFR part 381, subpart C (Procedures for Applying for Exemptions).

(3) FMCSA will consider requests concerning types of supporting documents retained by a motor carrier under §395.8(k)(1) and the method by which a driver retains a copy of the record of duty status for the previous 7 days and makes it available for inspection while on duty in accordance with §395.8.

§395.13 Drivers declared out of service.

(a) *Authority to declare drivers out of service.* Every special agent of the Federal Motor Carrier Safety Administration (as defined in appendix B to this subchapter) is authorized to declare a driver out of service and to notify the motor carrier of that declaration, upon finding at

the time and place of examination that the driver has violated the out of service criteria as set forth in paragraph (b) of this section.

(b) *Out of service criteria.*

(1) No driver shall drive after being on duty in excess of the maximum periods permitted by this part.

(2) No driver required to maintain a record of duty status under §395.8 or §395.15 of this part shall fail to have a record of duty status current on the day of examination and for the prior seven consecutive days.

(3) *Exception.* A driver failing only to have possession of a record of duty status current on the day of examination and the prior day, but has completed records of duty status up to that time (previous 6 days), will be given the opportunity to make the duty status record current.

(c) *Responsibilities of motor carriers.*

(1) No motor carrier shall:

(i) Require or permit a driver who has been declared out of service to operate a commercial motor vehicle until that driver may lawfully do so under the rules in this part.

(ii) Require a driver who has been declared out of service for failure to prepare a record of duty status to operate a commercial motor vehicle until that driver has been off duty for the appropriate number of consecutive hours required by this part and is in compliance with this section. The appropriate consecutive hours off-duty may include sleeper berth time.

(2) A motor carrier shall complete the "Motor Carrier Certification of Action Taken" portion of the form MCS-63 (Driver-Vehicle Examination Report) and deliver the copy of the form either personally or by mail to the Division Administrator or State Director Federal Motor Carrier Safety Administration, at the address specified upon the form within 15 days following the date of examination. If the motor carrier mails the form, delivery is made on the date it is postmarked.

(d) *Responsibilities of the driver.*

(1) No driver who has been declared out of service shall operate a commercial motor vehicle until that driver may lawfully do so under the rules of this part.

(2) No driver who has been declared out of service, for failing to prepare a record of duty status, shall operate a commercial motor vehicle until the driver has been off duty for the appropriate number of consecutive hours required by this part and is in compliance with this section.

(3) A driver to whom a form has been tendered declaring the driver out of service shall within 24 hours thereafter deliver or mail the copy to a person or place designated by motor carrier to receive it.

(4) Section 395.13 does not alter the hazardous materials requirements prescribed in §397.5 pertaining to attendance and surveillance of commercial motor vehicles.

§395.15 Automatic on-board recording devices.

(a) Authority to use.

(1) A motor carrier that installs and requires a driver to use an automatic on-board recording device in accordance with this section
before December 18, 2017 may continue to use the compliant automatic on-board recording device no later than December 16, 2019. Otherwise, the authority to use automatic on-board recording devices under this section ends on December 18, 2017.

(2) In accordance with paragraph (a)(1) of this section, a motor carrier may

require a driver to use an automatic on- board recording device to record the driver's hours of service.

(3) Every driver required by a motor carrier to use an automatic on-board recording device shall use such device to record the driver's hours of service.

(4) The driver shall have in his/her possession records of duty status for the previous 7 consecutive days available for inspection while on duty. These records shall consist of information stored in and retrievable from the automatic on-board recording device, handwitten records, computer generated records, or any combination thereof.

(5) All hard copies of the driver's record of duty status must be signed by the driver. The driver's signature certifies that the information contained thereon is true and correct.

(c) The duty status and additional information shall be recorded as follows:

(1) "Off duty" or "OFF", or by an identifiable code or character;

(2) "Sleeper berth" or "SB" or by an identifiable code or character (only if the sleeper berth is used);

(3) "Driving" or "D", or by an identifiable code or character; and

(4) "On-duty not driving" or "ON", or by an identifiable code or character.

(5) Date;

(6) Total miles driving today;

(7) Truck or tractor and trailer number;

(8) Name of carrier;

(9) Main office address;

(10) 24-hour period starting time (e.g., midnight, 9:00 a.m., noon, 3:00 p.m.)

(11) Name of co-driver;

(12) Total hours; and

(13) Shipping document number(s), or name of shipper and commodity.

(d) *Location of duty status change.*

(1) For each change of duty status (e.g., the place and time of reporting for work, starting to drive, on-duty not driving and where released from work), the name of the city, town, or village, with State abbreviation, shall be recorded.

(2) Motor carriers are permitted to use location codes in lieu of the requirements of paragraph (d)(1) of this section. A list of such codes showing all possible location identifiers shall be carried in the cab of the commercial motor vehicle and available at the motor carrier's principal place of business. Such lists shall be made available to an enforcement official on request.

(e) *Entries made by driver only.* If a driver is required to make written entries relating to the driver's duty status, such entries must be legible and in the driver's own handwriting.

(f) *Reconstruction of records of duty status.* Drivers are required to note any failure of automatic on-board recording devices, and to reconstruct the driver's record of duty status for the current day, and the past 7 days, less any days for which the drivers have records, and to continue to prepare a handwritten record of all subsequent duty status until the device is again operational.

(g) *On-board information.* Each commercial motor vehicle must have on-board the commercial motor vehicle an information packet containing the following items:

(1) An instruction sheet describing in detail how data may be stored and retrieved from an automatic on-board recording system; and

(2) A supply of blank driver's records of duty status graph-grids sufficient to record the driver's duty status and other related information for the duration of the current trip.

(h) *Submission of driver's record of duty status.*

(1) The driver shall submit, electronically or by mail, to the employing motor carrier, each record of the driver's duty status within 13 days following the completion of each record;

(2) The driver shall review and verify that all entries are accurate prior to submission to the employing motor carrier; and

(3) The submission of the record of duty status certifies that all entries made by the driver are true and correct.

(i) *Performance of recorders.* Motor carriers that use automatic on-board recording devices for recording their drivers' records of duty status in lieu of the handwritten record shall ensure that:

(1) A certificate is obtained from the manufacturer certifying that the design of the automatic on-board recorder has been sufficiently tested to meet the requirements of this section and under the conditions it will be used;

(2) The automatic on-board recording device permits duty status to be updated only when the commercial motor vehicle is at rest, except when registering the time a commercial motor vehicle crosses a State boundary;

(3) The automatic on-board recording device and associated support systems are, to the maximum extent practicable, tamperproof and do not permit altering of the information collected concerning the driver's hours of service;

(4) The automatic on-board recording device warns the driver visually and/or audibly that the device has ceased to function. Devices installed and operational as of October 31, 1988, and authorized to be used in lieu of the handwritten record of duty status by the FMCSA are exempted from this requirement.

(5) Automatic on-board recording devices with electronic displays shall have the capability of displaying the following:

(i) Driver's total hours of driving today;

(ii) The total hours on duty today;

(iii) Total miles driving today;

(iv) Total hours on duty for the 7 consecutive day period, including today;

(v) Total hours on duty for the prior 8 consecutive day period, including the present day; and

(vi) The sequential changes in duty status and the times the changes occurred for each driver using the device.

(6) The on-board recorder is capable of recording separately each driver's duty status when there is a multiple-driver operation;

(7) The on-board recording device/system identifies sensor failures and edited data when reproduced in printed form. Devices installed and operational as of October 31, 1988, and authorized to be used in lieu of the handwritten record of duty status by the FMCSA are exempted from this requirement.

(8) The on-board recording device is maintained and recalibrated in accordance with the manufacturer's specifications;

(9) The motor carrier's drivers are adequately trained regarding the proper operation of the device; and

(10) The motor carrier must maintain a second copy (back-up copy) of the electronic hours-of-service files, by month, in a different physical location than where the original data is stored.

(j) *Rescission of authority.*

(1) The FMCSA may, after notice and opportunity to reply, order any motor carrier or driver to comply with the requirements of §395.8 of this part.

(2) The FMCSA may issue such an order if the FMCSA has determined that—

(i) The motor carrier has been issued a conditional or unsatisfactory safety rating by the FMCSA;

(ii) The motor carrier has required or permitted a driver to establish, or the driver has established, a pattern of exceeding the hours of service limitations of this part;

(iii) The motor carrier has required or permitted a driver to fail, or the driver has failed, to accurately and completely record the driver's hours of service as required in this section; or

(iv) The motor carrier or driver has tampered with or otherwise abused the automatic on-board recording device on any commercial motor vehicle.

Subpart B—Electronic Logging Devices

(ELDs)

Subpart B—Electronic Logging

Devices (ELDs)

§395.20 ELD applicability and scope.

(a) Scope.

This subpart applies to ELDs used to record a driver’s hours of service under §395.8(a).

(b) Applicability.

An ELD used after December 18, 2017 must meet the requirements of this subpart.

§395.22 Motor carrier responsibilities—In general.

(a) Registered ELD required.

A motor carrier required to use an ELD must use only an ELD that is listed on the Federal Motor Carrier Safety Administration's registered ELDs list, accessible through the Agency's Web site, www.fmcsa.dot.gov/devices

. (b) User rights management.

(1) This paragraph applies to a motor carrier whose drivers use ELDs and to the motor carrier's support personnel who have been authorized by the motor carrier to access ELD records and make or suggest authorized edits.

(2) A motor carrier must:

(i) Manage ELD accounts, including creating, deactivating, and updating accounts, and ensure that properly authenticated individuals have ELD accounts with appropriate rights;

(ii) Assign a unique ELD username to each user account with the required user identification data;

(iii) Ensure that a driver's license used in the creation of an ELD driver account is valid and corresponds to the driver using the ELD account; and

(iv) Ensure that information entered to create a new account is accurate.

(c) Driver identification data.

(1) The ELD user account assigned by the motor carrier to a driver requires the following data elements:

(i) A driver's first and last name, as reflected on the driver's license;

(ii) A unique ELD username selected by the motor carrier;

(iii) The driver's valid driver's license number; and

(iv) The State or jurisdiction that issued the driver's license.

(2) The driver's license number or Social Security number must not be used as, or as part of, the username for the account created on an ELD.

(d) Motor carrier support personnel identification data.

The ELD user account assigned by a motor carrier to support personnel requires the following data elements:

(1) The individual's first and last name, as reflected on a government issued identification; and

(2) A unique ELD username selected by the motor carrier.

(e) Proper log-in required.

The motor carrier must require that its drivers and support personnel log into the ELD system using their proper identification data.

(f) Calibration.

A motor carrier must ensure that an ELD is calibrated and maintained in accordance with the provider's specifications.

(g) Portable ELDs.

If a driver uses a portable ELD, the motor carrier shall ensure that the ELD is mounted in a fixed position during the operation of the commercial motor vehicle and visible to the driver when the driver is seated in the normal driving position.

(h) In-vehicle information.

A motor carrier must ensure that its drivers possess onboard a commercial motor vehicle an ELD information packet containing the following items:

(1) A user's manual for the driver describing how to operate the ELD;

(2) An instruction sheet for the driver describing the data transfer mechanisms supported by the ELD and step-by-step instructions for the driver to produce and transfer the driver's hours-of-service records to an authorized safety official;

(3) An instruction sheet for the driver describing ELD malfunction reporting requirements and recordkeeping procedures during ELD malfunctions; and

(4) A supply of blank driver's records of duty status graph-grids sufficient to record the driver's duty status and other related information for a minimum of 8 days.

(i) Record backup and security.

(1) A motor carrier must retain for 6 months a back-up copy of the ELD records on a device separate from that on which the original data are stored.

(2) A motor carrier must retain a driver's ELD records so as to protect a driver's privacy in a manner consistent with sound business practices.

(j) Record production.

When requested by an authorized safety official, a motor carrier must produce ELD records in an electronic format either at the time of the request or, if the motor carrier has multiple offices or terminals, within the time permitted under §390.29 of this subchapter.

§395.24 Driver responsibilities—In general.

(a) In general.

A driver must provide the information the ELD requires as prompted by the ELD and required by the motor carrier.

(b) Driver's duty status.

A driver must input the driver's duty status by selecting among the following categories available on the ELD:

(1) ''Off duty'' or ''OFF'' or ''1'';

(2) ''Sleeper berth'' or ''SB'' or ''2'', to be used only if sleeper berth is used;

(3) ''Driving'' or ''D'' or ''3''; or

(4) ''On-duty not driving'' or ''ON'' or ''4''.

(c) Miscellaneous data.

(1) A driver must manually input the following information in the ELD:

(i) Annotations, when applicable;

(ii) Driver's location description, when prompted by the ELD; and

(iii) Output file comment, when directed by an authorized safety officer.

(2) A driver must manually input or verify the following information on the ELD:

(i) Commercial motor vehicle power unit number;

(ii) ….

(iii) ….

(d) Driver use of ELD.

On request by an authorized safety official, a driver must produce and transfer from an ELD the driver's hours-of-service records in accordance with the instruction sheet provided by the motor carrier.

§395.26 ELD data automatically recorded.

(a) In general.

An ELD provides the following functions and automatically records the data elements listed in this section in accordance with the requirements contained in appendix A to subpart B of this part.

(b) Data automatically recorded.

The ELD automatically records the following data elements:

(1) Date;

(2) Time;

(3) CMV geographic location information;

(4) Engine hours;

(5) Vehicle miles;

(6) Driver or authenticated user identification data;

(7) Vehicle identification data; and

(8) Motor carrier identification data.

(c) Change of duty status.

When a driver indicates a change of duty status under §395.24(b), the ELD records the data elements in paragraphs (b)(1) through (8) of this section.

(d) Intermediate recording.

(1) When a commercial motor vehicle is in motion and there has not been a duty status change or another intermediate recording in the previous 1 hour, the ELD automatically records an intermediate recording that includes the data elements in paragraphs (b)(1) through (8) of this section.

(2) If the intermediate recording is created during a period when the driver indicates authorized personal use of a commercial motor vehicle, the data elements in paragraphs (b)(4) and (5) of this section (engine hours and vehicle miles) will be left blank and paragraph (b)(3) of this section (location) will be recorded with a single decimal point resolution (approximately within a 10- mile radius).

(e) Change in special driving category.

If a driver indicates a change in status under §395.28(a)(2), the ELD records the data elements in paragraphs (b)(1) through (8) of this section.

(f) Certification of the driver's daily record.

The ELD provides a function for recording the driver's certification of the driver's records for every 24-hour period. When a driver certifies or recertifies the driver's records for a given 24-hour period under §395.30(b)(2), the ELD records the date, time and driver identification data elements in paragraphs (b)(1), (2), and (6) of this section.

(g) Log in/log out.

When an authorized user logs into or out of an ELD, the ELD records the data elements in paragraphs (b)(1) and (2) and (b)(4) through (8) of this section.

(h) Engine power up/shut down.

When a commercial motor vehicle's engine is powered up or powered down, the ELD records the data elements in paragraphs (b)(1) through (8) of this section.

(i) Authorized personal use.

If the record is created during a period when the driver has indicated authorized personal use of a commercial motor vehicle, the data element in paragraph (b)(3) of this section is logged with a single decimal point resolution (approximately within a 10-mile radius).

(j) Malfunction and data diagnostic event.

When an ELD detects or clears a malfunction or data diagnostic event, the ELD records the data elements in paragraphs (b)(1) and (2) and (b)(4) through (8) of this section.

§395.28 Special driving categories; other driving statuses.

(a) Special driving categories.

(1) Motor carrier options.

A motor carrier may configure an ELD to authorize a driver to indicate that the driver is operating a commercial motor vehicle under any of the following special driving categories:

(i) Authorized personal use; and

(ii) Yard moves.

(2) Driver's responsibilities.

A driver operating a commercial motor vehicle under one of the authorized categories listed in paragraph (a)(1) of this section:

(i) Must select on the ELD the applicable special driving category before the start of the status and deselect when the indicated status ends; and

(ii) When prompted by the ELD, annotate the driver's ELD record describing the driver's activity.

(b) Drivers exempt from ELD use.

A motor carrier may configure an ELD to designate a driver as exempt from ELD use.

(c) Other driving statuses.

A driver operating a commercial motor vehicle under any exception under §390.3(f) of this subchapter or §395.1 who is not covered under paragraph (a) or (b) of this section must annotate the driver's ELD record to explain the applicable exemption.

§395.30 ELD record submissions, edits, annotations, and data retention.

(a) Accurate record keeping.

A driver and the motor carrier must ensure that the driver's ELD records are accurate.

(b) Review of records and certification by driver.

(1) A driver must review the driver's ELD records, edit and correct inaccurate records, enter any missing information, and certify the accuracy of the information.

(2) Using the certification function of the ELD, the driver must certify the driver's records by affirmatively selecting ''Agree'' immediately following a statement that reads, ''I hereby certify that my data entries and my record of duty status for this 24-hour period are true and correct.'' The driver must certify the record immediately after the final required entry has been made or corrected for the 24-hour period.

(3) The driver must submit the driver's certified ELD records to the motor carrier in accordance with §395.8(a)(2).

(4) If any edits are necessary after the driver submits the records to the motor carrier, the driver must recertify the record after the edits are made.

(c) Edits, entries, and annotations.

(1) Subject to the edit limitations of an ELD, a driver may edit, enter missing information, and annotate ELD recorded events. When edits, additions, or annotations are necessary, a driver must use the ELD and respond to the ELD's prompts.

(2) The driver or support personnel must annotate each change or addition to a record.

(3) In the case of team drivers, if there were a mistake resulting in the wrong driver being assigned driving-time hours by the ELD, and if the team drivers were both indicated in each other's records for that period as co-drivers, driving time may be edited and reassigned between the team drivers following the procedure supported by the ELD.

(d) Motor carrier-proposed edits.

(1) On review of a driver's submitted records, the motor carrier may request edits to a driver's records of duty status to ensure accuracy. A driver must confirm or reject any proposed change, implement the appropriate edits on the driver's record of duty status, and recertify and resubmit the records in order for any motor carrier-proposed changes to take effect.

(2) A motor carrier may not request edits to the driver's electronic records before the records have been submitted by the driver.

(3) Edits requested by any system or by any person other than the driver must require the driver's electronic confirmation or rejection.

(e) Coercion prohibited.

A motor carrier may not coerce a driver to make a false certification of the driver's data entries or record of duty status.

(f) Motor carrier data retention requirements.

A motor carrier must not alter or erase, or permit or require alteration or erasure of, the original information collected concerning the driver's hours of service, the source data streams used to provide that information, or information contained in any ELD that uses the original information and HOS source data.

§395.32 Non-authenticated driver logs.

(a) Tracking non-authenticated operation.

The ELD must associate the non-authenticated operation of a commercial motor vehicle with a single account labeled ''Unidentified Driver'' as soon as the vehicle is in motion, if no driver has logged into the ELD.

(b) Driver.

When a driver logs into an ELD, the driver must review any unassigned driving time when prompted by the ELD and must:

(1) Assume any records that belong to the driver under the driver's account; or

(2) Indicate that the records are not attributable to the driver.

(c) Motor carrier.

(1) A motor carrier must ensure that records of unidentified driving are reviewed and must:

(i) Annotate the record, explaining why the time is unassigned; or

(ii) Assign the record to the appropriate driver to correctly reflect the driver's hours of service.

(2) A motor carrier must retain unidentified driving records for each ELD for a minimum of 6 months from the date of receipt.

(3) During a safety inspection, audit or investigation by an authorized safety official, a motor carrier must make available unidentified driving records from the ELD corresponding to the time period for which ELD records are required.

§395.34 ELD malfunctions and data diagnostic events.

(a) Recordkeeping during ELD malfunctions.

In case of an ELD malfunction, a driver must do the following:

(1) Note the malfunction of the ELD and provide written notice of the malfunction to the motor carrier within 24 hours;

(2) Reconstruct the record of duty status for the current 24-hour period and the previous 7 consecutive days, and record the records of duty status on graph-grid paper logs that comply with §395.8, unless the driver already possesses the records or the records are retrievable from the ELD; and

(3) Continue to manually prepare a record of duty status in accordance with §395.8 until the ELD is serviced and brought back into compliance with this subpart.

(b) Inspections during malfunctions.

When a driver is inspected for hours of service compliance during an ELD malfunction, the driver must provide the authorized safety official the driver's records of duty status manually kept as specified under paragraphs (a)(2) and (3) of this section.

(c) Driver requirements during ELD data diagnostic events.

If an ELD indicates that there is a data inconsistency that generates a data diagnostic event, the driver must follow the motor carrier's and ELD provider's recommendations in resolving the data inconsistency.

(d) Motor carrier requirements for repair, replacement, or service.

(1) If a motor carrier receives or discovers information concerning the malfunction of an ELD, the motor carrier must take actions to correct the malfunction of the ELD within 8 days of discovery of the condition or a driver's notification to the motor carrier, whichever occurs first.

(2) A motor carrier seeking to extend the period of time permitted for repair, replacement, or service of one or more ELDs shall notify the FMCSA Division Administrator for the State of the motor carrier's principal place of business within 5 days after a driver notifies the motor carrier under paragraph (a)(1) of this section. Each request for an extension under this section must be signed by the motor carrier and must contain:

(i) The name, address, and telephone number of the motor carrier representative who files the request;

(ii) The make, model, and serial number of each ELD;

(iii) The date and location of each ELD malfunction as reported by the driver to the carrier; and

(iv) A concise statement describing actions taken by the motor carrier to make a good faith effort to repair, replace, or service the ELD units, including why the carrier needs additional time beyond the 8 days provided by this section.

(3) If FMCSA determines that the motor carrier is continuing to make a good faith effort to ensure repair, replacement, or service to address the malfunction of each ELD, FMCSA may allow an additional period.

(4) FMCSA will provide written notice to the motor carrier of its determination. The determination may include any conditions that FMCSA considers necessary to ensure hours-of-service compliance. The determination shall constitute a final agency action.

(5) A motor carrier providing a request for extension that meets the requirements of paragraph (d)(2) of this section is deemed in compliance with §395.8(a)(1)(i) and (a)(2) until FMCSA makes an extension determination under this section, provided the motor carrier and driver continue to comply with the other requirements of this section.

§395.36 Driver access to records.

(a) Records on ELD.

Drivers must be able to access their own ELD records. A motor carrier must not introduce a process that would require a driver to go through the motor carrier to obtain copies of the driver's own ELD records if such records exist on or are automatically retrievable through the ELD operated by the driver.

(b) Records in motor carrier's possession.

On request, a motor carrier must provide a driver with access to and copies of the driver's own ELD records unavailable under paragraph (a) of this section during the period a motor carrier is required to retain the records under §395.8(k).

§395.38 Incorporation by reference.

(a) Incorporation by reference.

Certain materials are incorporated by reference in part 395, with the approval of the Director of the Office of the Federal Register under 5 U.S.C. 552(a), and 1 C part 51. To enforce any edition other than that specified in this section, the Federal Motor Carrier Safety Administration must publish notice of the change in the Federal Register, and the material must be available to the public. All approved material is available for inspection at the Federal Motor Carrier Safety Administration, Office of Analysis, Research and Technology, (800) 832–5660, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to http://www.archives.gov/ federal register/ code of federal regulations/ ibr_locations.html

.

(b) American National Standards Institute (ANSI). 11 West 42nd Street, New York, New York 10036, http:// webstore.ansi.org, (212) 642–4900.

(1) ANSI INCITS 4–1986 (R2012), American National Standard for Information Systems—Coded Character Sets—7-Bit American National Standard Code for Information Interchange (7-Bit ASCII), approved June 14, 2007, IBR in section 4.8.2.1, Appendix A to subpart B.

(2) ANSI INCITS 446–2008 (R2013), American National Standard for Information Technology—Identifying Attributes for Named Physical and Cultural Geographic Features (Except Roads and Highways) of the United States, Territories, Outlying Areas, and Freely Associated Areas, and the Waters of the Same to the Limit of the Twelve- Mile Statutory Zone, approved October 28, 2008, IBR in section 4.4.2, Appendix A to subpart B.

(c) Bluetooth SIG, Inc. 5209 Lake Washington Blvd. NE., Suite 350, Kirkland, WA 98033, https:// www.bluetooth.org/Technical/ Specifications/adopted.htm, (425) 691– 3535.

(1) Bluetooth SIG, Inc., Specification of the Bluetooth System: Wireless Connections Made Easy, Covered Core Package version 2.1 + EDR, volumes 0 through 4, approved July 26, 2007, IBR in sections 4.9.1, 4.9.2, 4.10.1.4, 4.10.2, Appendix A to subpart B.

(2) [Reserved]

(d) Institute of Electrical and Electronic Engineers (IEEE) Standards Association. 445 Hoes Lane, Piscataway, NJ 08854–4141, http:// standards.ieee.org/index.html, (732) 981–0060.

(1) IEEE Std 1667–2009, IEEE Standard for Authentication in Host Attachments of Transient Storage Devices, approved 11 November 2009, IBR in section 4.10.1.3, Appendix A to subpart B.

(2) [Reserved]

(e) Internet Engineering Task Force (IETF). C/o Association Management Solutions, LLC (AMS) 48377 Freemont Blvd., Suite 117, Freemont, CA 94538, (510) 492–4080.

(1) IETF RFC 3565, Use of the Advanced Encryption Standard (AES) Encryption Algorithm in Cryptographic Message Syntax (CMS), approved July 2003, IBR in section 4.10.1.2, Appendix A to subpart B.

(2) IETF RFC 4056, Use of the RSASSA–PSS Signature Algorithm in Cryptographic Message Syntax (CMS), approved June 2005, IBR in section 4.10.1.2, Appendix A to subpart B.

(3) IETF RFC 5246, The Transport Layer Security (TLS) Protocol Version 1.2, approved August 2008, IBR in section 4.10.1.1, Appendix A to subpart B.

(4) IETF RFC 5321, Simple Mail Transfer Protocol, approved October 2008, IBR in section 4.10.1.2, Appendix A to subpart B.

(5) IETF RFC 5322, Internet Message Format, approved October 2008, IBR in section 4.10.1.2, Appendix A to subpart B.

(6) IETF RFC 5751, Secure/ Multipurpose Internet Mail Extensions (S/MIME) Version 3.2, Message Specification, approved January 2010, IBR in section 4.10.1.2, Appendix A to subpart B.

(7) IETF RFC 7230, Hypertext Transfer Protocol (HTTP/1.1): Message Syntax and Routing, approved June 2014, IBR in section 4.10.1.1, Appendix A to subpart B.

(8) IETF RFC 7231, Hypertext Transfer Protocol (HTTP/1.1): Semantics and Content, approved June 2014, IBR in section 4.10.1.1, Appendix A to subpart B.

(f) National Institute of Standards and Technology (NIST). 100 Bureau Drive, Stop 1070, Gaithersburg, MD 20899– 1070, http://www.nist.gov, (301) 975– 6478.

(1) Federal Information Processing Standards Publication (FIPS PUB) 197, Advanced Encryption Standard (AES), approved November 26, 2001, IBR in sections 4.10.1.2 and 4.10.1.3, Appendix A to subpart B.

(2) SP 800–32, Introduction to Public Key Technology and the Federal PKI Infrastructure, approved February 26, 2001, IBR in section 4.10.1.2, Appendix A to subpart B.

(g) Universal Serial Bus Implementers Forum (USBIF). 3855 SW. 153rd Drive Beaverton, Oregon 97006, http:// www.usb.org, (503) 619–0426.

(1) USB Implementers Forum, Inc., Universal Serial Bus Specification, Revision 2.0, approved April 27, 2000, as revised through April 3, 2015, IBR in sections 4.9.1, 4.9.2, 4.10.1.3, and 4.10.2, Appendix A to subpart B.

(2) [Reserved]

Regulatory Guidance re: Hours of Service for Commercial Motor Vehicle Drivers; Regulatory Guidance Concerning Records of Duty Status Generated by Logging Software Programs

FMCSA revised its regulatory guidance concerning records of duty status (RODS) generated by logging software programs on laptop computers, tablets, and smart phones. These logging software programs are used by certain drivers to help them prepare RODS, but the computers, tablets, and smart phones with such software do not meet FMCSA's requirements for automatic on-board recording devices (AOBRDs). The revision of the guidance clarifies the

relationship between FMCSA's policy concerning the use of logging software programs and the Agency's January 4, 2011, regulatory guidance concerning electronic signatures by removing the requirement that drivers print and sign paper copies of RODS generated through such logging software, provided the driver is able to sign the RODS electronically at the end of each work day and display the electronic record at the roadside. This guidance provides the motor carrier industry, and Federal, State, and local motor carrier enforcement officials with uniform information regarding computer software and devices used by drivers to assist them with hours-of-service (HOS) recordkeeping. All prior FMCSA interpretations and regulatory guidance, including memoranda and letters, are rescinded to the extent they are inconsistent with this guidance.
79 Fed. Reg. 39342

PART 303—CIVIL RIGHTS

§303.1 Purpose.
The purpose of this part is to provide guidelines and procedures for implementing the Federal Motor Carrier Safety Administration's (FMCSA) Title VI program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations. For FMCSA-only programs or activities, Federal financial assistance recipients or grantees will continue to apply and use the Departmental Title VI provisions at 49 CFR part 21. For joint and multi-agency programs/projects, FMCSA Federal assistance recipients or grantees must use the Title VI requirements at 49 CFR part 21, unless agreement is reached by the Federal funding agencies for the recipients to use the Title VI procedures of another agency.
§303. 3 Application of this part.
The provisions of this part are applicable to all elements of the FMCSA and to any program or activity for which Federal financial assistance is authorized under a law administered by the FMCSA. This part provides Title VI guidelines for State Departments of Transportation and local State agencies, including their sub-recipients, to implement Title VI. It also applies to money paid, property transferred, or other Federal financial assistance extended under any program of the FMCSA after the date of this part.
Authority:
Pub. L. 105-159, Title I, sections 107(a) and 106 (Dec. 9, 1999) (49 U.S.C. 113); 42 U.S.C. 2000d *et seq*.; and 49 CFR 1.73.
70 Fed. Reg. 7414, Feb. 14, 2005, unless otherwise noted.

Title 49 CFR Part 21 sets forth the specific civil rights protections. The purpose and table of contents are set forth below.

§21.1 Purpose.
The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation.

21.3 Application of this part.

Authority: Sec. 602, 42 U.S.C. 2000d-1.

35 Fed. Reg. 10080, June 18, 1970, unless otherwise noted.

Part 350--COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

This regulation covers a Federal grant program that provides financial assistance to States to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMV). The goal of the program is to reduce CMV-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. Investing grant monies in appropriate safety programs will increase the likelihood that safety defects, driver deficiencies, and unsafe motor carrier practices will be detected and corrected before they become contributing factors to accidents. The rule also sets forth the conditions for participation by States and local jurisdictions and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Federal Hazardous Material Regulations (HMRs) for both interstate and intrastate motor carriers and drivers.
NOTE: Because this regulation dos not directly affect bus drivers, only the table of contents is listed.

Subpart A—General

Subpart B—Requirements for Participation

§350.201 What conditions must a State meet to qualify for Basic Program Funds?
§350.203 [Reserved]
§350.205 How and when does a State apply for MCSAP funding?
§350.207 What response does a State receive to its CVSP submission?
§350.209 .How does a State demonstrate that it satisfies the conditions for Basic Program funding?
§350.211 What is the format of the certification required by §350.209?
§350.213 What must a State CVSP include?
§350.215 What are the consequences for a State that fails to perform according to an approved CVSP or otherwise fails to meet the conditions of this part?

Subpart C—Funding

§350.301 What level of effort must a State maintain to qualify for MCSAP funding?
§350.303 What are the State and Federal shares of expenses incurred under an approved CVSP?
§350.305 Are U.S. Territories subject to the matching funds requirement?
§350.307 How long are MCSAP funds available to a State?
§350.309 What activities are eligible for reimbursement under the MCSAP?
§350.311 What specific items are eligible for reimbursement under the MCSAP?
§350.313 How are MCSAP funds allocated?
§350.315 How may Basic Program Funds be used?
§350.317 What are Incentive Funds and how may they be used?
§350.319 What are permissible uses of High Priority Activity Funds?
§350.321 How may a State or local agency qualify for High Priority or New Entrant Funds?
§350.323 What criteria are used in the Basic Program Funds allocation?
§350.325 [Reserved]
§350.327 How may States qualify for Incentive Funds?
§350.329 How may a State or local agency qualify for High Priority or Border Activity Funds?
§350.331 How does a State ensure its laws and regulations are compatible with the FMCSRs and HMRs?
§350.333 What are the guidelines for the compatibility review?
§350.335 What are the consequences if my State has laws or regulations incompatible with the Federal regulations?
§350.337 How may State laws and regulations governing motor carriers, CMV drivers, and CMVs in interstate commerce differ from the FMCSRs and still be considered compatible?[7]
§350.339 What are tolerance guidelines?

[7] Recently, the FMCSA ruled that states are preempted from issuing meal and rest breaks.

§350.341 What specific variances from the FMCSRs are allowed for State laws and regulations governing motor carriers, CMV drivers, and CMVs engaged in intrastate commerce and not subject to Federal jurisdiction?
§350.343 How may a State obtain a new exemption for State laws and regulations for a specific industry involved in intrastate commerce?
§350.345 How does a State apply for additional variances from the FMCSRs?

Authority:
49 U.S.C. 13902, 31101-31104, 31108, 31136, 31140-31141, 31161, 31310-31311, 31502; and 49 CFR 1.73.
65 Fed. Reg. 15102, Mar. 21, 2000

PART 380--ENTRY LEVEL TRAINING REQUIREMENTS

NOTE: The specific provisions for the training requirements are summarized in 49 CFR part 380 at sections 700 through 725.

In 2016, the FMCSA established new minimum training standards for certain individuals applying for their commercial driver's license (CDL) for the first time; an upgrade of their CDL (e.g., a Class B CDL holder seeking a Class A CDL); or a hazardous materials (H), passenger (P), or school bus (S) endorsement for the first time. These individuals are subject to the entry-level driver training (ELDT) requirements and must complete a prescribed program of instruction provided by an entity that is listed on FMCSA's Training Provider Registry (TPR). FMCSA will submit training certification information to State driver licensing agencies (SDLAs), who may only administer CDL skills tests to applicants for the Class A and B CDL, and/or the P or S endorsements, or knowledge test for the H endorsement, after verifying the certification information is present in the driver's record.
The rule primarily revises 49 CFR part 380, Special Training Requirements. It requires an individual who must complete certain CDL skills test requirements, defined as an “Entry-Level Driver,” to receive mandatory training. The rule applies to persons who drive, or intend to drive, CMVs in either interstate or intrastate commerce. Military drivers, farmers, and firefighters who are generally excepted from the CDL requirements in part 383 are also excepted from this rule. The rule establishes Class A and Class B CDL core curricula and training curricula including passenger (P); school bus (S); and hazardous materials (H) endorsements. The core and endorsement curricula generally are subdivided into theory (knowledge) and behind-the-wheel (BTW) (range and public road) segments. There is no minimum number of hours that driver-trainees must spend on the theory portions of any of the individual curricula. However, training providers must provide instruction in all elements of the applicable theory curriculum and driver-trainees must receive an overall score of at least 80 percent on the theory assessment.
The BTW curricula for the Class A and Class B CDL, comprised of range and public road segments, include discrete maneuvers which each driver-trainee must proficiently demonstrate to the satisfaction of the training instructor. There is no minimum number of hours that driver-trainees must spend on the BTW elements of the core or endorsement curricula. The training provider must not issue the training certificate unless the driver-trainee demonstrates proficiency in performing all required BTW skills. Providers must submit electronic notification to FMCSA

that an individual completed the required training; the Agency will provide that information to the SDLAs through the Commercial Driver's License Information System (CDLIS).
This rule applies to entities that train entry-level drivers, also referred to herein as driver-trainees. Training providers must, at a minimum, provide instruction in a training curriculum that meets all the standards established in today's rule and must also meet other eligibility requirements in order to be listed on FMCSA's TPR. Training providers must also attest that they meet the specified requirements, and in the event of an FMCSA audit or investigation of the provider, must supply documentation to verify their compliance. The final rule also makes conforming changes to parts 383 and 384 of the FMCSRs.
The compliance date for this rule is three years after the effective date of the final rule. This three-year period provides the States with sufficient time to pass necessary implementing legislation and to modify their information systems to begin recording the CDL applicant's compliance with ELDT requirements. This phase-in period also allows time for CMV driver training entities to develop and begin offering training programs that meet the eligibility requirements for listing on the TPR.
81 Fed. Reg. 88732 (Dec. 8, 2016)

Subpart E—Entry-Level Driver Training Requirements[8]

§380.501 Applicability.

All entry-level drivers who drive in interstate commerce and are subject to the CDL requirements of part 383 of this chapter must comply with the rules of this subpart, except drivers who are subject to the jurisdiction of the Federal Transit Administration or who are otherwise exempt under §390.3(f) of this subchapter.

§380.502 Definitions.

(a) The definitions in part 383 of this chapter apply to this part, except where otherwise specifically noted.

(b) As used in this subpart:

Entry-level driver is a driver with less than one year of experience operating a CMV with a CDL in interstate commerce.

Entry-level driver training is training the CDL driver receives in driver qualification requirements, hours of service of drivers, driver wellness, and whistle blower protection as appropriate to the entry-level driver's current position in addition to passing the CDL test.

§380.503 Entry-level driver training requirements.6/

6/ FMCSA intends to collect information (via a driver survey) on the relationship of CDL entry-level driver training as influenced by subsequent employer training, to the safety performance of drivers.

Entry-level driver training must include instruction addressing the following four areas:

(a) Driver qualification requirements. The Federal rules on medical certification, medical examination procedures, general qualifications, responsibilities, and disqualifications based on various offenses, orders, and loss of driving privileges (part 391, subparts B and E of this subchapter).

[8] In December, FMCSA issued a notice soliciting persons for membership to an advisory committee charged with negotiating a proposed rule to establish entry-level driver training requirements for CDL drivers operating commercial motor vehicles.

(b) Hours of service of drivers. The limitations on driving hours, the requirement to be off-duty for certain periods of time, record of duty status preparation, and exceptions (part 395 of this subchapter). Fatigue countermeasures as a means to avoid crashes. 237

PART 383: COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

This regulation requires a CMV driver to have a single driver's license, and there are qualification requirements and disqualification procedures for unsafe drivers.[9],[10]

Subpart A—General

§383.1 Purpose and scope.
383.3 Applicability.
§383.5 Definitions.
§383.7 Validity of CDL issued by decertified State.

Subpart B—Single License Requirement

§383.21 Number of drivers' licenses.
§383.23 Commercial driver's license.
§383.25 Commercial learner's permit (CLP).

Subpart C—Notification Requirements and Employer Responsibilities

§383.31 Notification of convictions for driver violations.
§383.33 Notification of driver's license suspensions.
§383.35 Notification of previous employment.
§383.37 Employer responsibilities.

Subpart D—Driver Disqualifications and Penalties

§383.51 Disqualification of drivers.
§383.52 Disqualification of drivers determined to constitute an imminent hazard.
§383.5 Penalties.

Subpart E—Testing and Licensing Procedures

§383.71 Driver application and certification procedures.
§383.72 Implied consent to alcohol testing.

---

[9] 49 CFR Part 380 sets forth entry level driver training regulations. Various courses ae required to be passed before receiving a CDL. App. A contains the specific course requirements.

[10] The FMCSA, on March 8, 2019, issued a notice proposing to delete 47 guidance documents under Part 383 it claims are not needed, unclear, duplicative, or obsolete. *See,* 84 Fed. Reg. 8464.

Authority:

49 U.S.C. 521, 31136, 31301 et seq., and 31502; secs. 214 and 215 of Pub. L. 106-159; sec. 1012(b) of Pub. L. 107-56;; sec. 4140 of Pub. L. 109-59,

Source: 52 Fed. Reg. 20587, June 1, 1987, unless otherwise noted.

Editorial Note: Nomenclature changes to part 383 appear at 66 FR 49872, Oct. 1, 2001.

Subpart A—General

§383.1. Purpose and scope.

(a) The purpose of this part is to help reduce or prevent bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner.

(b) This part:

(1) Prohibits a commercial motor vehicle driver from having more than one commercial motor vehicle driver's license;

(2) Requires a driver to notify the driver's current employer and the driver's State of domicile of certain convictions;

(3) Requires that a driver provide previous employment information when applying for employment as an operator of a commercial motor vehicle;

(4) Prohibits an employer from allowing a person with a suspended license to operate a commercial motor vehicle;

(5) Establishes periods of disqualification and penalties for those persons convicted of certain criminal and other offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges;

(6) Establishes testing and licensing requirements for commercial motor vehicle operators;

(7) Requires States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard;

(8) Sets forth commercial motor vehicle groups and endorsements;

(9) Sets forth the knowledge and skills test requirements for the motor vehicle groups and endorsements;

(10) Sets forth the Federal standards for procedures, methods, and minimum passing scores for States and others to use in testing and licensing commercial motor vehicle operators; and

(11) Establishes requirements for the State issued commercial license documentation.

52 FR 20587, June 1, 1987, as amended at 53 FR 27648, July 21, 1988; 54 FR 40787, Oct. 3, 1989

§383.3 Applicability.

(a) The rules in this part apply to every person who operates a commercial motor vehicle (CMV) in interstate, foreign, or intrastate commerce, to all employers of such persons, and to all States.

(b) The exceptions contained in §390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in §390.3(f) must comply with the requirements of this part, unless otherwise provided in this section.

(c)….

(d) ….

(e) ….

(f) ….

(g) ….

§383.5 Definitions.

As used in this part:

Administrator means the Federal Motor Carrier Safety Administrator, the chief executive of the Federal Motor Carrier Safety Administration, an agency within the Department of Transportation.

Alcohol or alcoholic beverage means: (a) Beer as defined in 26 U.S.C. 5052(a), of the Internal Revenue Code of 1954, (b) wine of not less than one-half of one per centum of alcohol by volume, or (c) distilled spirits as defined in section 5002(a)(8), of such Code.

Alcohol concentration (AC) means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

Alien means any person not a citizen or national of the United States.

CDL downgrade means either:

(1) A State allows the driver to change his or her self-certification to interstate, but operating exclusively in transportation or operation excepted from part 391, as provided in §§390.3(f), 391.2, 391.68 or 398.3 of this chapter;

(2) A State allows the driver to change his or her self-certification to intrastate only, if the driver qualifies under that State's physical qualification requirements for intrastate only;

(3) A State allows the driver to change his or her certification to intrastate, but operating exclusively in transportation or operations excepted from all or part of the State driver qualification requirements, or

(4) A State removes the CDL privilege from the driver license.

CDL driver means a person holding a CDL or a person required to hold a CDL.

CDLIS driver record means the electronic record of the individual CDL driver's status and history stored by the State-of-Record as part of the Commercial Driver's License Information System (CDLIS) established under 49 U.S.C. 31309.

Commerce means (a) any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and (b) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (a) of this definition.

Commercial driver's license (CDL) means a license issued to an individual by a State or other jurisdiction of domicile, in accordance with the standards contained in this part, which authorizes the individual to operate a class of a commercial motor vehicle.

Commercial driver's license information system (CDLIS) means the CDLIS established by FMCSA pursuant to section 12007 of the Commercial Motor Vehicle Safety Act of 1986.

Commercial learner's permit (CLP) means a permit issued to an individual by a State or other jurisdiction of domicile, in accordance with the standards contained in this part, which, when carried with a valid driver's license issued by the same State or jurisdiction, authorizes the individual to operate a class of a commercial motor vehicle when accompanied by a holder of a valid CDL for purposes of behind-the-wheel training. When issued to a CDL holder, a CLP serves as authorization for accompanied behind-the-wheel training in a CMV for which the holder's current CDL is not valid.

Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or

(2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4)….

Controlled substance has the meaning such term has under 21 U.S.C. 802(6) and includes all substances listed on schedules I through V of 21 CFR 1308 (§§1308.11 through 1308.15), as they may be amended by the United States Department of Justice.

Conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated."

Disqualification means any of the following three actions:

(1) The suspension, revocation, or cancellation of a CLP or CDL by the State or jurisdiction of issuance.

(2) Any withdrawal of a person's privileges to drive a CMV by a State or other jurisdiction as the result of a violation of State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

(3) A determination by the FMCSA that a person is not qualified to operate a commercial motor vehicle under part 391 of this subchapter.

Driver applicant means an individual who applies to a State or other jurisdiction to obtain, transfer, upgrade, or renew a CDL or to obtain or renew a CLP.

Driver's license means a license issued by a State or other jurisdiction, to an individual which authorizes the individual to operate a motor vehicle on the highways.

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV—

(a) Driving a CMV while the person's alcohol concentration is 0.04 or more;

(b) Driving under the influence of alcohol, as prescribed by State law; or

(c) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of §383.51(b) or §392.5(a)(2) of this subchapter.

Electronic device includes, but is not limited to, a cellular telephone; personal digital assistant; pager; computer; or any other device used to input, write, send, receive, or read text.

Eligible unit of local government means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law which has a total population of 3,000 individuals or less.

Employee means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly employed by or under lease to an employer.

Employer means any person (including the United States, a State, District of Columbia or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns employees to operate such a vehicle.

Endorsement means an authorization to an individual's CLP or CDL required to permit the individual to operate certain types of commercial motor vehicles.

Fatality means the death of a person as a result of a motor vehicle accident.

Felony means an offense under State or Federal law that is punishable by death or imprisonment for a term exceeding 1 year.

Foreign means outside the fifty United States and the District of Columbia.

Foreign commercial driver means an individual licensed to operate a commercial motor vehicle by an authority outside the United States, or a citizen of a foreign country who operates a commercial motor vehicle in the United States.

Gross combination weight rating (GCWR) means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle.

Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

Imminent hazard means the existence of any condition of vehicle, employee, or commercial motor vehicle operations that substantially increases the likelihood of serious injury or death if not discontinued immediately; or a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

Manual transmission (also known as a stick shift, stick, straight drive or standard transmission) means a transmission utilizing a driver-operated clutch that is activated by a pedal or lever and a gear-shift mechanism operated either by hand or foot. All other transmissions, whether semi-automatic or automatic, will be considered automatic for the purposes of the standardized restriction code.

Motor vehicle means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, except that such term does not include a vehicle, machine, tractor, trailer, semitrailer operated exclusively on a rail.

Non-CDL means any other type of motor vehicle license, such as an automobile driver's license, a chauffeur's license, or a motorcycle license.

Non-CMV means a motor vehicle or combination of motor vehicles not defined by the term “commercial motor vehicle (CMV)” in this section.

Non-domiciled CLP or Non-domiciled CDL means a CLP or CDL, respectively, issued by a State or other jurisdiction under either of the following two conditions:

(1) To an individual domiciled in a foreign country meeting the requirements of §383.23(b)(1).

(2) To an individual domiciled in another State meeting the requirements of §383.23(b)(2).

Out-of-service order means a declaration by an authorized enforcement officer of a Federal, State, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation, is out-of-service pursuant to §§386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American Uniform Out-of-Service Criteria.

Representative vehicle means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate.

School bus means a CMV used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

State means a State of the United States and the District of Columbia.

State of domicile means that State where a person has his/her true, fixed, and permanent home and principal residence and to which he/she has the intention of returning whenever he/she is absent.

Texting means manually entering alphanumeric text into, or reading text from, an electronic device.

(1) This action includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page, or engaging in any other form of electronic text retrieval or entry, for present or future communication.

(2) Texting does not include:

(i) Reading, selecting, or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call or using voice commands to initiate or receive a telephone call;

(ii) Inputting, selecting, or reading information on a global positioning system or navigation system; or

(iii) Using a device capable of performing multiple functions (e.g., fleet management systems, dispatching devices, smart phones, citizens band radios,

Third party skills test examiner means a person employed by a third party tester who is authorized by the State to administer the CDL skills tests specified in subparts G and H of this part.

Third party tester means a person (including, but not limited to, another State, a motor carrier, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government) authorized by the State to employ skills test examiners to administer the CDL skills tests specified in subparts G and H of this part.

Vehicle means a motor vehicle unless otherwise specified.

Vehicle group means a class or type of vehicle with certain operating characteristics.

52 Fed. Reg. 20587, June 1, 1987, as amended at 53 Fed. Reg. 27648, July 21, 1988; 53 Fed. Reg. 39050, Oct. 4, 1988; 54 Fed. Reg. 40787, Oct. 3, 1989; 59 Fed. Reg. 26028, May 18, 1994; 61 Fed. Reg. 9566, Mar. 8, 1996; 61 Fed. Reg. 14679, Apr. 3, 1996; 62 Fed. Reg. 37151, July 11, 1997; 67 Fed. Reg. 49756, July 31, 2002; 68 Fed. Reg. 23849, May 5, 2003; 73 Fed. Reg. 73123, Dec. 1, 2008; 75 Fed. Reg. 59134, Sept. 27, 2010; 76 Fed. Reg. 26878, May 9, 2011

§383.7 Validity of CDL issued by decertified State.

A CDL issued by a State prior to the date the State is notified by the Administrator, in accordance with the provisions of §384.405 of this subchapter, that the State is prohibited from issuing CDLs, will remain valid until its stated expiration date.

67 Fed. Reg. 49756, July 31, 2002

Subpart B—Single License Requirement

§383.21 Number of drivers' licenses.

No person who operates a commercial motor vehicle shall at any time have more than one driver's license.

64 Fed. Reg. 48110, Sept. 2, 1999

§383.23 Commercial driver's license.

(a) General rule. (1) No person shall operate a commercial motor vehicle unless such person has taken and passed written and driving tests for a CLP or CDL that meet the Federal standards contained in subparts F, G, and H of this part for the commercial motor vehicle that person operates or expects to operate.

(2) Except as provided in paragraph (b) of this section, no person may legally operate a CMV unless such person possesses a CDL which meets the standards contained in subpart J of this part, issued by his/her State or jurisdiction of domicile.

(b) Exception. (1) If a CMV operator is not domiciled in a foreign jurisdiction that the Administrator has determined tests drivers and issues CDLs in accordance with, or under standards similar to, the standards contained in subparts F, G, and H of this part,1/ the person may obtain a Non-domiciled CLP or Non-domiciled CDL from a State that does comply with the testing and licensing standards contained in such subparts F, G, and H of this part, so long as that person meets the requirements of §383.71(f).

Footnote(s):

1 Effective December 29, 1988, the Administrator determined that commercial driver's licenses issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code are in accordance with the standards of this part. Effective November 21, 1991, the Administrator determined that the new Licencias Federales de Conductor issued by the United Mexican States are in accordance with the standards of this part. Therefore, under the single license provision of §383.21, a driver holding a commercial driver's license issued under the Canadian National Safety Code or a new Licencia Federal de Conductor issued by Mexico is prohibited from obtaining a non-domiciled CDL, or any other type of driver's license, from a State or other jurisdiction in the United States.

(2) If an individual is domiciled in a State while that State is prohibited from issuing CDLs in accordance with §384.405 of this subchapter, that individual is eligible to obtain a Non-domiciled CLP or Non-domiciled CDL from any State that elects to issue a Non-domiciled CDL and which complies with the testing and licensing standards contained in subparts F, G, and H of this part, so long as that person meets the requirements of §383.71(f).

(3) If an individual possesses a CLP, as defined in §383.5, the individual is authorized to operate a class of CMV as provided by the CLP in accordance with §383.25.

76 Fed. Reg. 26878, May 9, 2011

§383.25 Commercial learner's permit (CLP).

(a) A CLP is considered a valid CDL for purposes of behind-the-wheel training on public roads or highways, if all of the following minimum conditions are met:

(1) The CLP holder is at all times accompanied by the holder of a valid CDL who has the proper CDL group and endorsement(s) necessary to operate the CMV. The CDL holder must at all times be physically present in the front seat of the vehicle next to the CLP holder or, in the case of a passenger vehicle, directly behind or in the first row behind the driver and must have the CLP holder under observation and direct supervision.

(2) The CLP holder holds a valid driver's license issued by the same jurisdiction that issued the CLP.

(3) The CLP holder must have taken and passed a general knowledge test that meets the Federal standards contained in subparts F, G, and H of this part for the commercial motor vehicle that person operates or expects to operate.

(4) The CLP holder must be 18 years of age or older.

(5) Endorsements:

(i) A CLP holder with a passenger (P) endorsement must have taken and passed the P endorsement knowledge test. A CLP holder with a P endorsement is prohibited from operating a CMV carrying passengers, other than Federal/State auditors and inspectors, test examiners, other

trainees, and the CDL holder accompanying the CLP holder as prescribed by paragraph (a)(1) of this section. The P endorsement must be class specific.

(ii) A CLP holder with a school bus (S) endorsement must have taken and passed the S endorsement knowledge test. A CLP holder with an S endorsement is prohibited from operating a school bus with passengers other than Federal/State auditors and inspectors, test examiners, other trainees, and the CDL holder accompanying the CLP holder as prescribed by paragraph (a)(1) of this section.

(iii) A CLP holder with a tank vehicle (N) endorsement must have taken and passed the N endorsement knowledge test. A CLP holder with an N endorsement may only operate an empty tank vehicle and is prohibited from operating any tank vehicle that previously contained hazardous materials that has not been purged of any residue.

(iv) All other Federal endorsements are prohibited on a CLP.

(6) The CLP holder does not operate a commercial motor vehicle transporting hazardous materials as defined in §383.5.

(b) The CLP must be a separate document from the CDL or non-CDL.

(c) The CLP must be valid for no more than 180 days from the date of issuance. The State may renew the CLP for an additional 180 days without requiring the CLP holder to retake the general and endorsement knowledge tests.

(d) The issuance of a CLP is a precondition to the initial issuance of a CDL. The issuance of a CLP is also a precondition to the upgrade of a CDL if the upgrade requires a skills test.

(e) The CLP holder is not eligible to take the CDL skills test in the first 14 days after initial issuance of the CLP.

76 Fed. Reg. 26879, May 9, 2011

Subpart C—Notification Requirements and Employer Responsibilities

§383.31 Notification of convictions for driver violations.

(a) Each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a State or jurisdiction, and who is convicted of violating, in any type of motor vehicle, a State or local law relating to motor vehicle traffic control (other than a parking violation) in a State or jurisdiction other than the one which issued his/her license, shall notify an official designated by the State or jurisdiction which issued such license, of such conviction. The notification must be made within 30 days after the date that the person has been convicted.

(b) Each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a State or jurisdiction, and who is convicted of violating, in any type of motor vehicle, a State or local law relating to motor vehicle traffic control (other than a parking violation), shall notify his/her current employer of such conviction. The notification must be made within 30 days after the date that the person has been convicted. If the driver is not currently employed, he/she must notify the State or jurisdiction which issued the license according to §383.31(a).

(c) Notification. The notification to the State official and employer must be made in writing and contain the following information:

(1) Driver's full name;

(2) Driver's license number;

(3) Date of conviction;

(4) The specific criminal or other offense(s), serious traffic violation(s), and other violation(s) of State or local law relating to motor vehicle traffic control, for which the person

was convicted and any suspension, revocation, or cancellation of certain driving privileges which resulted from such conviction(s);

(5) Indication whether the violation was in a commercial motor vehicle;

(6) Location of offense; and

(7) Driver's signature.

52 Fed. Reg. 20587, June 1, 1987, as amended at 54 Fed. Reg. 40787, Oct. 3, 1989

§383.33 Notification of driver's license suspensions.

Each employee who has a driver's license suspended, revoked, or canceled by a State or jurisdiction, who loses the right to operate a commercial motor vehicle in a State or jurisdiction for any period, or who is disqualified from operating a commercial motor vehicle for any period, shall notify his/her current employer of such suspension, revocation, cancellation, lost privilege, or disqualification. The notification must be made before the end of the business day following the day the employee received notice of the suspension, revocation, cancellation, lost privilege, or disqualification.

54 Fed. Reg. 40788, Oct. 3, 1989

§383.35 Notification of previous employment.

(a) Any person applying for employment as an operator of a commercial motor vehicle shall provide at the time of application for employment, the information specified in paragraph (c) of this section.

(b) All employers shall request the information specified in paragraph (c) of this section from all persons applying for employment as a commercial motor vehicle operator. The request shall be made at the time of application for employment.

(c) The following employment history information for the 10 years preceding the date the application is submitted shall be presented to the prospective employer by the applicant:

(1) A list of the names and addresses of the applicant's previous employers for which the applicant was an operator of a commercial motor vehicle;

(2) The dates the applicant was employed by these employers; and

(3) The reason for leaving such employment.

(d) The applicant shall certify that all information furnished is true and complete.

(e) An employer may require an applicant to provide additional information.

(f) Before an application is submitted, the employer shall inform the applicant that the information he/she provides in accordance with paragraph (c) of this section may be used, and the applicant's previous employers may be contacted for the purpose of investigating the applicant's work history.

§383.37 Employer responsibilities.

No employer may allow, require, permit, or authorize a driver to operate a CMV in the United States if he or she knows or should reasonably know that any of the following circumstances exist:

No employer may knowingly allow, require, permit, or authorize a driver to operate a CMV in the United States in any of the following circumstances:

(a) During any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver to operate a CMV who violates any restriction on the driver's CLP or CDL.

(b) During any period in which the driver has a CLP or CDL disqualified by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV.

(c) During any period in which the driver has more than one CLP or CDL.

(d) During any period in which the driver, or the CMV he/she is driving, or the motor carrier operation, is subject to an out-of-service order.

(e) In violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings.

76 Fed. Reg. 26879, May 9, 2011

Subpart D—Driver Disqualifications and Penalties

§383.51 Disqualification of drivers.

(a) General. (1) A person required to have a CLP or CDL who is disqualified must not drive a CMV.

(2) An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.

(3) A holder of a CLP or CDL is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder drives a CMV or non-CMV and is convicted of the violations listed in those paragraphs.

(4) Determining first and subsequent violations. For purposes of determining first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.

(5) The disqualification period must be in addition to any other previous periods of disqualification.

(6) Reinstatement after lifetime disqualification. A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (8) of this section (Table 1 to §383.51) after 10 years, if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (8) of this section (Table 1 to §383.51) must not be reinstated.

(7) A foreign commercial driver is subject to disqualification under this Subpart.

(b) Disqualification for major offenses. Table 1 to §383.51 contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 1 TO § 383.51

driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a first conviction or refusal to be tested while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for * * *
Being under the influence of alcohol as prescribed by State law * * *.	1 year	1 year	3 years	Life	Life.
Being under the influence of a controlled substance * * *.	1 year	1 year	3 years	Life	Life.
Having an alcohol concentration of 0.04 or greater while operating a CMV * * *.	1 year	Not applicable ...	3 years	Life	Not applicable.
Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in § 383.72 of this part * *.	1 year	1 year	3 years	Life	Life.

driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a first conviction or refusal to be tested while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for * * *
Leaving the scene of an accident * * *.	1 year	1 year	3 years	Life	Life.
Using the vehicle to commit felony, other than a felony described in paragraph (b)(9) of this table * * *.	1 year	1 year	3 years	Life	Life.
Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV.	1 year	Not applicable ...	3 years	Life	Not applicable.
Causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.	1 year	Not applicable ...	3 years	Life	Not applicable.
Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance * * *.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement

(c) *Disqualification for serious traffic violations.* Table 2 contains a list of the offenses and the periods for which a person who is required to have a CLP or CDL is disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 2 TO § 383.51

If the driver operates a motor vehicle and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CLP or CDL holder's license or non-CMV driving privileges, for * * *	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CLP or CDL holder's license or non-CMV driving privileges, for * * *
(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit.	60 days	60 days	120 days	120 days.
(2) Driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property.	60 days	60 days	120 days	120 days.
(3) Making improper or erratic traffic lane changes.	60 days	60 days	120 days	120 days.
(4) Following the vehicle ahead too closely.	60 days	60 days	120 days	120 days.
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident.	60 days	60 days	120 days	120 days.
(6) Driving a CMV without obtaining a CDL.	60 days	Not applicable	120 days	Not applicable.
(7) Driving a CMV without a CDL in the driver's possession [1].	60 days	Not applicable	120 days	Not applicable.
(8) Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.	60 days	Not applicable	120 days	Not applicable.
(9) Violating a State or local law or ordinance on motor vehicle traffic control prohibiting texting while driving.[2].	60 days	Not applicable	120 days	Not applicable.

[1] Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense.

[2] Driving, for the purpose of this disqualification, means operating a commercial motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver has moved the vehicle to the side of, or off, a highway, as defined in 49 CFR 390.5, and has halted in a location where the vehicle can safely remain stationary.

(d) *Disqualification for railroad-highway grade crossing offenses.* Table 3 contains a list of the offenses and the periods for which a person who is required to have a CLP or CDL is disqualified, when the driver is operating a CMV at the time of the violation, as follows:

TABLE 3 TO § 383.51

If the driver is convicted of operating a CMV in violation of a Federal, State or local law because * * *.	For a first conviction a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *
(1) The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(2) The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(3) The driver is always required to stop, but fails to stop before driving onto the crossing * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(4) The driver fails to have sufficient space to drive completely through the crossing without stopping * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(5) The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(6) The driver fails to negotiate a crossing because of insufficient undercarriage clearance * * *.	No less than 60 days	No less than 120 days	No less than 1 year.

(e) *Disqualification for violating out-of-service orders.* Table 4 contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is disqualified when the driver is operating a CMV at the time of the violation, as follows:

TABLE 4 TO § 383.51

If the driver operates a CMV and is convicted of * * *	For a first conviction while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *
(1) Violating a driver or vehicle out-of-service order while transporting nonhazardous materials.	No less than 180 days or more than 1 year.	No less than 2 years or more than 5 years.	No less than 3 years or more than 5 years.
(2) Violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under part 172, subpart F of this title, or while operating a vehicle designed to transport 16 or more passengers, including the driver.	No less than 180 days or more than 2 years.	No less than 3 years or more than 5 years.	No less than 3 years or more than 5 years.

§383.52 Disqualification of drivers determined to constitute an imminent hazard.

(a) The Assistant Administrator or his/her designee must disqualify from operating a CMV any driver whose driving is determined to constitute an imminent hazard, as defined in §383.5.

(b) The period of the disqualification may not exceed 30 days unless the FMCSA complies with the provisions of paragraph (c) of this section.

(c) The Assistant Administrator or his/her delegate may provide the driver an opportunity for a hearing after issuing a disqualification for a period of 30 days or less. The Assistant Administrator or his/her delegate must provide the driver notice of a proposed disqualification period of more than 30 days and an opportunity for a hearing to present a defense to the proposed disqualification. A disqualification imposed under this paragraph may not exceed one year in duration. The driver, or a representative on his/her behalf, may file an appeal of the disqualification issued by the Assistant Administrator's delegate with the Assistant Administrator, Adjudications Counsel (MC-CC), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(d) Any disqualification imposed in accordance with the provisions of this section must be transmitted by the FMCSA to the jurisdiction where the driver is licensed and must become a part of the driver's record maintained by that jurisdiction.

(e) A driver who is simultaneously disqualified under this section and under other provisions of this subpart, or under State law or regulation, shall serve those disqualification periods concurrently.

67 Fed. Reg. 49759, July 31, 2002, as amended at 72 Fed. Reg. 55700, Oct. 1, 2007

§383.53 Penalties.

(a) General rule. Any person who violates the rules set forth in subparts B and C of this part may be subject to civil or criminal penalties as provided for in 49 U.S.C. 521(b).

(b) Special penalties pertaining to violation of out-of-service orders—(1) Driver violations. A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than $2,500 for a first conviction and not less than $5,000 for a second or subsequent conviction, in addition to disqualification under §383.51(e).

(2) Employer violations. An employer who is convicted of a violation of §383.37(c) shall be subject to a civil penalty of not less than $2,750 nor more than $25,000.

(c) Special penalties pertaining to railroad-highway grade crossing violations. An employer who is convicted of a violation of §383.37(d) must be subject to a civil penalty of not more than $10,000.

59 Fed. Reg. 26028, May 18, 1994, as amended at 64 Fed. Reg. 48111, Sept. 2, 1999; 67 Fed. Reg. 49759, July 31, 2002; 72 Fed. Reg. 36788, July 5, 2007

Subpart E—Testing and Licensing Procedures

Source:

53 Fed. Reg. 27649, July 21, 1988, unless otherwise noted.

§383.71 Driver application and certification procedures.

(a) Commercial Learner's Permit. Prior to obtaining a CLP, a person must meet the following requirements:

(1) Commercial learner's permit applications submitted prior to July 8, 2014. CLPs issued prior to July 8, 2014 for limited time periods according to State requirements, shall be considered valid commercial drivers' licenses for purposes of behind-the-wheel training on public roads or highways, if the following minimum conditions are met:

(i) The learner's permit holder is at all times accompanied by the holder of a valid CDL;

(ii) He/she either holds a valid automobile driver's license, or has passed such vision, sign/symbol, and knowledge tests as the State issuing the learner's permit ordinarily administers to applicants for automotive drivers' licenses; and

(iii) He/she does not operate a commercial motor vehicle transporting hazardous materials as defined in §383.5.

(2) Commercial learner's permit applications submitted on or after July 8, 2014. Any person applying for a CLP on or after July 8, 2014 must meet the following conditions:

(i) The person must be 18 years of age or older and provide proof of his/her age.

(ii) The person must have taken and passed a general knowledge test that meets the Federal standards contained in subparts F, G, and H of this part for the commercial motor vehicle group that person operates or expects to operate.

(iii) The person must certify that he/she is not subject to any disqualification under §383.51, or any license disqualification under State law, and that he/she does not have a driver's license from more than one State or jurisdiction.

(iv) The person must provide to the State of issuance the information required to be included on the CLP as specified in subpart J of this part.

(v) The person must provide to the State proof of citizenship or lawful permanent residency as specified in Table 1 of this section or obtain a Non-domiciled CLP as specified in paragraph (f) of this section.

(vi) The person must provide proof that the State to which application is made is his/her State of domicile, as the term is defined in §383.5. Acceptable proof of domicile is a document with the person's name and residential address within the State, such as a government issued tax form.

(vii) The person must provide the names of all States where the applicant has been licensed to drive any type of motor vehicle during the previous 10 years.

(viii) A person seeking a passenger (P), school bus (S) or tank vehicle (N) endorsement must have taken and passed the endorsement knowledge test for the specific endorsement.

(ix) The person must provide the State the certification contained in paragraph (b)(1) of this section.

(b) Initial Commercial Driver's License. Prior to obtaining a CDL, a person must meet all of the following requirements:

(1)(i) Initial Commercial Driver's License applications submitted prior to January 30, 2012. Any person applying for a CDL prior to January 30, 2012, must meet the requirements set forth in paragraphs (b)(2) through (10) of this section, and make the following applicable certification in paragraph (b)(1)(i)(A), (B), or (C) of this section:

(A) A person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to 49 CFR part 391, must certify that he/she meets the qualification requirements contained in part 391 of this title; or

(B) A person who operates or expects to operate in interstate commerce, but is not subject to part 391 due to an exception under §390.3(f) or an exemption under §391.2, must certify that he/she is not subject to part 391.

(C) A person who operates or expects to operate entirely in intrastate commerce and is not subject to part 391, is subject to State driver qualification requirements and must certify that he/she is not subject to part 391.

(ii) Initial Commercial Driver's License applications submitted on or after January 30, 2012. Any person applying for a CDL on or after January 30, 2012, must meet the requirements set

forth in paragraphs (b)(2) through (10), and (h) of this section, and make one of the following applicable certifications in paragraph (b)(1)(ii)(A), (B), (C), or (D) of this section:

(A) Non-excepted interstate. A person must certify that he/she operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR part 391, and is required to obtain a medical examiner's certificate by §391.45 of this chapter;

(B) Excepted interstate. A person must certify that he/she operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 CFR 390.3(f), 391.2, 391.68, or 398.3 from all or parts of the qualification requirements of 49 CFR part 391, and is therefore not required to obtain a medical examiner's certificate by 49 CFR 391.45 of this chapter;

(C) Non-excepted intrastate. A person must certify that he/she operates only in intrastate commerce and therefore is subject to State driver qualification requirements; or

(D) Excepted intrastate. A person must certify that he/she operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the State driver qualification requirements.

(2) The person must pass a driving or skills test in accordance with the standards contained in subparts F, G, and H of this part taken in a motor vehicle that is representative of the type of motor vehicle the person operates or expects to operate; or provide evidence that he/she has successfully passed a driving test administered by an authorized third party.

(3) The person must certify that the motor vehicle in which the person takes the driving skills test is representative of the type of motor vehicle that person operates or expects to operate.

(4) The person must provide the State the information required to be included on the CDL as specified in subpart J of this part.

(5) The person must certify that he/she is not subject to any disqualification under §383.51, or any license disqualification under State law, and that he/she does not have a driver's license from more than one State or jurisdiction.

(6) The person must surrender his/her non-CDL driver's licenses and CLP to the State.

(7) The person must provide the names of all States where he/she has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(8) If the person is applying for a hazardous materials endorsement, he/she must comply with Transportation Security Administration requirements codified in 49 CFR part 1572. A lawful permanent resident of the United States requesting a hazardous materials endorsement must additionally provide his/her U.S. Citizenship and Immigration Services (USCIS) Alien registration number.

(9) The person must provide proof of citizenship or lawful permanent residency as specified in Table 1 of this section, or be registered under paragraph (f) of this section.

Table 1 to §383.71—List of Acceptable Proofs of Citizenship or Lawful Permanent Residency

Status Proof of status

U.S. Citizen

Valid, unexpired U.S. Passport.

Certified copy of a birth certificate filed with a State Office of Vital Statistics or equivalent agency in the individual's State of birth, Puerto Rico, the Virgin Islands, Guam, American Samoa or the Commonwealth of the Northern Mariana Islands.

Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State.

Certificate of Naturalization issued by the U.S. Department of Homeland Security (DHS).
Certificate of Citizenship issued by DHS.
Lawful Permanent Resident
Valid, unexpired Permanent Resident Card, issued by USCIS or INS.

(10) The person must provide proof that the State to which application is made is his/her State of domicile, as the term is defined in §383.5. Acceptable proof of domicile is a document with the person's name and residential address within the State, such as a government issued tax form.

(c) License transfer. When applying to transfer a CDL from one State of domicile to a new State of domicile, an applicant must apply for a CDL from the new State of domicile within no more than 30 days after establishing his/her new domicile. The applicant must:

(1) Provide to the new State of domicile the certifications contained in paragraphs (b)(1) and (5) of this section;

(2) Provide to the new State of domicile updated information as specified in subpart J of this part;

(3) If the applicant wishes to retain a hazardous materials endorsement, he/she must comply with the requirements specified in paragraph (b)(8) of this section and State requirements as specified in §383.73(c)(4);

(4) Surrender the CDL from the old State of domicile to the new State of domicile; and

(5) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(6) Provide to the State proof of citizenship or lawful permanent residency as specified in Table 1 of this section, or be registered under paragraph (f) of this section.

(7) Provide proof to the State that this is his/her State of domicile, as the term is defined in §383.5. Acceptable proof of domicile is a document with the person's name and residential address within the State, such as a government issued tax form.

(d) License renewal. When applying for a renewal of a CDL, all applicants must:

(1) Provide to the State certifications contained in paragraphs (b)(1) and (5) of this section;

(2) Provide to the State updated information as specified in subpart J of this part; and

(3) If a person wishes to retain a hazardous materials endorsement, he/she must comply with the requirements specified in paragraph (b)(8) of this section and pass the test specified in §383.121 for such endorsement.

(4) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(5) Provide to the State proof of citizenship or lawful permanent residency as specified in Table 1 of this section, or be registered under paragraph (f) of this section.

(6) Provide proof to the State that this is his/her State of domicile, as the term is defined in §383.5. Acceptable proof of domicile is a document, such as a government issued tax form, with the person's name and residential address within the State.

(e) License upgrades. When applying for a CDL or an endorsement authorizing the operation of a CMV not covered by the current CDL, all applicants must:

(1) Provide the certifications specified in paragraph (b) of this section;

(2) Pass all the knowledge tests in accordance with the standards contained in subparts F, G, and H of this part and all the skills tests specified in paragraph (b)(2) of this section for the new vehicle group and/or different endorsements;

(3) Comply with the requirements specified in paragraph (b)(8) of this section to obtain a hazardous materials endorsement; and

(4) Surrender the previous CDL.

(f) Non-domiciled CLP and CDL. (1) A person must obtain a Non-domiciled CLP or CDL:

(i) If the applicant is domiciled in a foreign jurisdiction, as defined in §383.5, and the Administrator has not determined that the commercial motor vehicle operator testing and licensing standards of that jurisdiction meet the standards contained in subparts G and H of this part.

(ii) If the applicant is domiciled in a State that is prohibited from issuing CLPs and CDLs in accordance with §384.405 of this subchapter. That person is eligible to obtain a Non-domiciled CLP or CDL from any State that elects to issue a Non-domiciled CLP or CDL and that complies with the testing and licensing standards contained in subparts F, G, and H of this part.

(2) An applicant for a Non-domiciled CLP and CDL must do both of the following:

(i) Complete the requirements to obtain a CLP contained in paragraph (a) of this section or a CDL contained in paragraph (b) of this section. Exception: An applicant domiciled in a foreign jurisdiction must provide an unexpired employment authorization document (EAD) issued by USCIS or an unexpired foreign passport accompanied by an approved I-94 form documenting the applicant's most recent admittance into the United States. No proof of domicile is required.

(ii) After receipt of the Non-domiciled CLP or CDL, and for as long as it is valid, notify the State which issued the Non-domiciled CLP or CDL of any adverse action taken by any jurisdiction or governmental agency, foreign or domestic, against his/her driving privileges. Such adverse actions include, but are not be limited to, license disqualification or disqualification from operating a commercial motor vehicle for the convictions described in §383.51. Notifications must be made within the time periods specified in §383.33.

(3) An applicant for a Non-domiciled CLP or CDL is not required to surrender his/her foreign license.

(g) Existing CLP and CDL Holder's Self-Certification. Every person who holds a CLP or CDL must provide to the State the certification contained in §383.71(b)(1)(ii).

(h) Medical Certification Documentation Required by the State. An applicant or CLP or CDL holder who certifies to non-excepted, interstate driving operations according to §383.71(b)(1)(ii)(A) must comply with applicable requirements in paragraphs (h)(1) through (3) of this section:

(1) New CLP and CDL applicants. After January 30, 2012, a new CLP or CDL applicant who certifies that he/she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of a medical examiner's certificate prepared by a medical examiner, as defined in §390.5 of this chapter, and the State will post a certification status of “certified” on the Commercial Driver's License Information System (CDLIS) driver record for the driver;

(2) Existing CLP and CDL holders shall provide the State with an original or copy (as required by the State) of a current medical examiner's certificate prepared by a medical examiner, as defined in 49 CFR 390.5, and the State will post a certification status of “certified” on CDLIS driver record for the driver. If the non-excepted, interstate CLP or CDL holder fails to provide the State with a current medical examiner's certificate, the State will post a certification status of “not-certified” in the CDLIS driver record for the driver, and initiate a CLP or CDL downgrade following State procedures in accordance with section 383.73(j)(4); and

(3) Maintaining the medical certification status of "certified." In order to maintain a medical certification status of "certified," a CLP or CDL holder who certifies that he/she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of each subsequently issued medical examiner's certificate.

76 Fed. Reg. 26881, May 9, 2011

§383.72 Implied consent to alcohol testing.

Any person who holds a CLP or CDL or is required to hold a CLP or CDL is considered to have consented to such testing as is required by any State or jurisdiction in the enforcement of §§383.51(b), Table 1, item (4) and 392.5(a)(2) of this subchapter. Consent is implied by driving a commercial motor vehicle.

76 Fed. Reg. 26883, May 9, 2011

§383.73 State procedures.

(a) Commercial Learner's Permit. (1) Prior to July 8, 2014, when issuing a CLP to a person prior to July 8, 2014, a State must meet the requirements in §383.71(a)(1):

(2) On or after July 8, 2014. Prior to issuing a CLP to a person on or after July 8, 2014, a State must:

(i) Require the applicant to make the certifications, pass the tests, and provide the information as described in §383.71(a)(2);

(ii) Initiate and complete a check of the applicant's driving record as described in paragraph (b)(3) of this section.

(iii) Make the CLP valid for no more than one year from the date of issuance without requiring the CLP holder to retake the general and endorsement knowledge tests. CLPs issued for a period of less than one year may be renewed provided the CLP is not valid for more than one year from the date of initial issuance.

(iv) Allow only a group-specific passenger (P) and school bus (S) endorsement and tank vehicle (N) endorsement on a CLP, provided the applicant has taken and passed the knowledge test for the specified endorsement. All other Federal endorsements are prohibited on a CLP; and

(v) Complete the Social Security Number verification required by paragraph (g) of this section.

(vi) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in §383.71(b)(9) and proof of State of domicile specified in §383.71(a)(2)(vi).

(vii) Beginning January 30, 2012, for drivers who certified their type of driving according to §383.71(b)(1)(ii)(A) (non-excepted interstate) and, if the CLP applicant submits a current medical examiner's certificate, date-stamp the medical examiner's certificate, and post all required information from the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

(b) Initial CDL. Prior to issuing a CDL to a person, a State must:

(1) Require the driver applicant to certify, pass tests, and provide information as described in §383.71(b);

(2) Check that the vehicle in which the applicant takes his/her test is representative of the vehicle group the applicant has certified that he/she operates or expects to operate;

(3) Initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification under §383.51, or any license disqualification under State law, and that the person does not have a driver's license from more than one State or jurisdiction. The record check must include, but is not limited to, the following:

(i) A check of the applicant's driving record as maintained by his/her current State of licensure, if any;

(ii) A check with the CDLIS to determine whether the driver applicant already has been issued a CDL, whether the applicant's license has been disqualified, or if the applicant has been disqualified from operating a commercial motor vehicle;

(iii) A check with the Problem Driver Pointer System (PDPS) to determine whether the driver applicant has:

(A) Been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) Had a license (other than CDL) disqualified for cause in the 3-year period ending on the date of application; or

(C) Been convicted of any offenses contained in 49 U.S.C. 30304(a)(3);

(iv) A request for the applicant's complete driving record from all States where the applicant was previously licensed over the last 10 years to drive any type of motor vehicle. Exception: A State is only required to make the request for the complete driving record specified in this paragraph for initial issuance of a CLP, transfer of CDL from another State or for drivers renewing a CDL for the first time after September 30, 2002, provided a notation is made on the driver's record confirming that the driver record check required by this paragraph has been made and noting the date it was done;

(v) A check that the medical certification status of a driver that self-certified according to §383.71(b)(1)(ii)(A) of this chapter (non-excepted interstate) is “certified;”

(4) Require the driver applicant to surrender his/her non-CDL driver's license and CLP;

(5) For drivers who certified their type of driving according to §383.71(b)(1)(ii)(A) (non-excepted interstate) and, if the CDL driver submits a current medical examiner's certificate, date-stamp the medical examiner's certificate, and post all required information from the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

(6) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in §383.71(b)(9) and proof of State of domicile specified in §383.71(b)(10). Exception: A State is only required to check the proof of citizenship or legal presence specified in this paragraph for initial issuance of a CLP or Non-domiciled CDL, transfer of CDL from another State or for drivers renewing a CDL or Non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

(7) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section;

(8) For persons applying for a hazardous materials endorsement, require compliance with the standards for such endorsement specified in §§383.71(b)(8) and 383.141; and

(9) Make the CDL valid for no more than 8 years from the date of issuance.

(c) License transfers. Prior to issuing a CDL to a person who has a CDL from another State, a State must:

(1) Require the driver applicant to make the certifications contained in §383.71(b)(1) and (5);

(2) Complete a check of the driver applicant's record as contained in paragraph (b)(3) of this section;

(3) Request and receive updates of information specified in subpart J of this part;

(4) If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§383.71(b)(8) and 383.141 and ensure that the driver has, within the 2 years preceding the transfer, either:

(i) Passed the test for such endorsement specified in §383.121; or

(ii) Successfully completed a hazardous materials test or training that is given by a third party and that is deemed by the State to substantially cover the same knowledge base as that described in §383.121;

(5) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section;

(6) Require the applicant to surrender the CDL issued by the applicant's previous State of domicile;

(7) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in §383.71(b)(9) and proof of State of domicile specified in §383.71(b)(10). Exception: A State is only required to check the proof of citizenship or legal presence specified in this paragraph for initial issuance of a CLP or Non-domiciled CDL, transfer of CDL from another State or for drivers renewing a CDL or Non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

(8) Verify from the CDLIS driver record that the medical certification status of driver is "certified" for those who certified according to §383.71(b)(1)(ii)(A). The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (o) of this section and:

(9) Make the CDL valid for no more than 8 years from the date of issuance.

(d) License Renewals. Prior to renewing any CDL a State must:

(1) Require the driver applicant to make the certifications contained in §383.71(b);

(2) Complete a check of the driver applicant's record as contained in paragraph (b)(3) of this section;

(3) Request and receive updates of information specified in subpart J of this part;

(4) If such applicant wishes to retain a hazardous materials endorsement, require the driver to pass the test specified in §383.121 and comply with the standards specified in §§383.71(b)(8) and 383.141 for such endorsement;

(5) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section;

(6) Make the renewal of the CDL valid for no more than 8 years from the date of issuance;

(7) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in §383.71(b)(9) and proof of State of domicile specified in §383.71(b)(10); and

(8) Verify from the CDLIS driver record that the medical certification status is "certified" for drivers who self-certified according to §383.71(b)(1)(ii)(A). Exception: The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (o) of this section.

(e) License upgrades. Prior to issuing an upgrade of a CDL, a State must:

(1) Require such driver applicant to provide certifications, pass tests, and meet applicable hazardous materials standards specified in §383.71(e);

(2) Complete a check of the driver applicant's record as described in paragraph (b)(3) of this section;

(3) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section;

(4) Require the driver applicant to surrender his/her previous CDL;

(5) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in §383.71(b)(9) and proof of State of domicile specified in §383.71(b)(10);

(6) Verify from the CDLIS driver record that the medical certification status is "certified" for drivers who self-certified according to §383.71(b)(1)(ii)(A). The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (o) of this section and:

(7) Make the CDL valid for no more than 8 years from the date of issuance.

(f) Non-domiciled CLP and CDL. (1) A State may only issue a Non-domiciled CLP or CDL to a person who meets one of the circumstances described in §383.71(f)(1).

(2) State procedures for the issuance of a non-domiciled CLP and CDL, for any modifications thereto, and for notifications to the CDLIS must at a minimum be identical to those pertaining to any other CLP or CDL, with the following exceptions:

(i) If the applicant is requesting a transfer of his/her Non-domiciled CDL, the State must obtain the Non-domiciled CDL currently held by the applicant and issued by another State;

(ii) The State must add the word "non-domiciled" to the face of the CLP or CDL, in accordance with §383.153(b); and

(iii) The State must have established, prior to issuing any Non-domiciled CLP or CDL, the practical capability of disqualifying the holder of any Non-domiciled CLP or CDL, by withdrawing or disqualifying his/her Non-domiciled CLP or CDL as if the Non-domiciled CLP or CDL were a CLP or CDL issued to a person domiciled in the State.

(3) The State must require compliance with the standards for providing proof of legal presence specified in §383.71(b)(9) and §383.71(f)(2)(i).

(g) Social Security Number verification. (1) Prior to issuing a CLP or a CDL to a person the State must verify the name, date of birth, and Social Security Number provided by the applicant with the information on file with the Social Security Administration. The State is prohibited from issuing, renewing, upgrading, or transferring a CLP or CDL if the Social Security Administration database does not match the applicant-provided data.

(2) Exception. A State is only required to perform the Social Security Number verification specified in this paragraph for initial issuance of a CLP, transfer of CDL from another State or for drivers renewing a CDL for the first time after July 8, 2011 who have not previously had their Social Security Number information verified, provided a notation is made on the driver's record confirming that the verification required by this paragraph has been made and noting the date it was done.

(h) License issuance. After the State has completed the procedures described in paragraphs (a) through (g) of this section, as applicable, it may issue a CLP or CDL to the driver applicant. The State must notify the operator of the CDLIS of such issuance, transfer, renewal, or upgrade within the 10-day period beginning on the date of license issuance.

(i) Surrender procedure. A State may return a surrendered license to a driver after physically marking it so that it cannot be mistaken for a valid document. Simply punching a hole in the expiration date of the document is insufficient. A document perforated with the word “VOID” is considered invalidated.

(j) Penalties for false information. If a State determines, in its check of an applicant's license status and record prior to issuing a CLP or CDL, or at any time after the CLP or CDL is issued, that the applicant has falsified information contained in subpart J of this part, in any of the certifications required in
§383.71(b) or (g), or in any of the documents required to be submitted by
§383.71(h), the State must at a minimum disqualify the person's CLP or CDL or his/her pending application, or disqualify the person from operating a commercial motor vehicle for a period of at least 60 consecutive days.

(k) Drivers convicted of fraud related to the testing and issuance of a CLP or CDL. (1) The State must have policies in effect that result, at a minimum, in the disqualification of the CLP or CDL of a person who has been convicted of fraud related to the issuance of that CLP or CDL. The application of a person so convicted who seeks to renew, transfer, or upgrade the fraudulently obtained CLP or CDL must also, at a minimum, be disqualified. The State must record any such withdrawal in the person's driving record. The person may not reapply for a new CDL for at least 1 year.

(2) If a State receives credible information that a CLP- or CDL-holder is suspected, but has not been convicted, of fraud related to the issuance of his/her CLP or CDL, the State must require the driver to re-take the skills and/or knowledge tests. Within 30 days of receiving notification from the State that re-testing is necessary, the affected CLP- or CDL-holder must make an appointment or otherwise schedule to take the next available test. If the CLP- or CDL-holder fails to make an appointment within 30 days, the State must disqualify his/her CLP or CDL. If the driver fails either the knowledge or skills test or does not take the test, the State must disqualify his/her CLP or CDL. Once a CLP- or CDL-holder's CLP or CDL has been disqualified, he/she must reapply for a CLP or CDL under State procedures applicable to all CLP and CDL applicants.

(l) Reciprocity. A State must allow any person who has a valid CLP, CDL, Non-domiciled CLP, or Non-domiciled CDL and who is not disqualified from operating a CMV, to operate a CMV in the State.

(m) Document verification. The State must require at least two persons within the driver licensing agency to check and verify all documents involved in the licensing process for the initial issuance, renewal, upgrade, or transfer of a CLP or CDL. The documents being checked and verified must include, at a minimum, those provided by the applicant to prove legal presence and domicile, the information filled out on the application form, and knowledge and skills test scores. Exception: For offices with only one staff member, the documents must be checked and verified by a supervisor before issuance or, when a supervisor is not available, copies must be made of the documents used to prove legal presence and domicile and a supervisor must verify the documents and the filled out application form and test scores within one business day of issuance of the CLP or CDL.

(n) Computer system controls. The State must establish computer system controls that will:

(1) Prevent the issuance of an initial, renewed, upgraded, or transferred CLP or CDL when the results of transactions indicate the applicant is unqualified. These controls, at a minimum,

must be established for the following transactions: State, CDLIS, and PDPS driver record checks; Social Security Number verification; and knowledge and skills test scores verification.

(2) Suspend the issuance process whenever State, CDLIS, and/or PDPS driver record checks return suspect results. The State must demonstrate that it has a system to detect and prevent fraud when a driver record check returns suspect results. At a minimum, the system must ensure that:

(i) The results are not connected to a violation of any State or local law relating to motor vehicle traffic control (other than parking, vehicle weight, or vehicle defect violations);

(ii) The name of the persons performing the record check and authorizing the issuance, and the justification for the authorization are documented by the State; and

(iii) The person performing the record check and the person authorizing the issuance are not the same.

(o) Medical recordkeeping—(1) Status of CDL holder. For each operator of a commercial motor vehicle required to have a CLP or CDL, the current licensing State must:

(i) Post the driver's self-certification of type of driving under §383.71(b)(1)(ii),

(ii) Retain the original or a copy of the medical certificate of any driver required to provide documentation of physical qualification for 3 years beyond the date the certificate was issued, and

(iii) Post the information from the medical examiner's certificate within 10 calendar days to the CDLIS driver record, including:

(A) Medical examiner's name;

(B) Medical examiner's telephone number;

(C) Date of medical examiner's certificate issuance;

(D) Medical examiner's license number and the State that issued it;

(E) Medical examiner's National Registry identification number (if the National Registry of Medical Examiners, mandated by 49 U.S.C. 31149(d), requires one);

(F) The indicator of medical certification status, i.e., “certified” or “not-certified”;

(G) Expiration date of the medical examiner's certificate;

(H) Existence of any medical variance on the medical certificate, such as an exemption, Skill Performance Evaluation (SPE) certification, or grandfather provisions;

(I) Any restrictions (e.g., corrective lenses, hearing aid, required to have possession of an exemption letter or SPE certificate while on-duty, etc.); and

(J) Date the medical examiner's certificate information was posted to the CDLIS driver record.

(2) Status update. The State must, within 10 calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, update the medical certification status of that driver as “not-certified.”

(3) Variance update. Within 10 calendar days of receiving information from FMCSA regarding issuance or renewal of a medical variance for a driver, the State must update the CDLIS driver record to include the medical variance information provided by FMCSA.

(4) Downgrade. (i) If a driver's medical certification or medical variance expires, or FMCSA notifies the State that a medical variance was removed or rescinded, the State must:

(A) Notify the CLP or CDL holder of his/her CLP or CDL “not-certified” medical certification status and that the CMV privileges will be removed from the CLP or CDL unless the driver submits a current medical certificate and/or medical variance, or changes his/her self-certification to driving only in excepted or intrastate commerce (if permitted by the State);

(B) Initiate established State procedures for downgrading the CLP or CDL. The CLP or CDL downgrade must be completed and recorded within 60 days of the driver's medical certification status becoming “not-certified” to operate a CMV.

(ii) Beginning January 30, 2014, if a driver fails to provide the State with the certification contained in §383.71(b)(1)(ii), or a current medical examiner's certificate if the driver self-certifies according to §383.71(b)(1)(ii)(A) that he/she is operating in non-excepted interstate commerce as required by §383.71(h), the State must mark that CDLIS driver record as “not-certified” and initiate a CLP or CDL downgrade following State procedures in accordance with paragraph (o)(4)(i)(B) of this section.

(5) FMCSA Medical Programs is designated as the keeper of the list of State contacts for receiving medical variance information from FMCSA. States are responsible for insuring their medical variance contact information is always up-to-date with FMCSA's Medical Programs.

76 Fed. Reg. 26883, May 9, 2011

§383.75 Third party testing.

(a) Third party tests. A State may authorize a third party tester to administer the skills tests as specified in subparts G and H of this part, if the following conditions are met:

(1) The skills tests given by the third party are the same as those that would otherwise be given by the State using the same version of the skills tests, the same written instructions for test applicants, and the same scoring sheets as those prescribed in subparts G and H of this part;

(2) The State must conduct an on-site inspection of each third party tester at least once every 2 years, with a focus on examiners with irregular results such as unusually high or low pass/fail rates;

(3) The State must issue the third party tester a CDL skills testing certificate upon the execution of a third party skills testing agreement.

(4) The State must issue each third party CDL skills test examiner a skills testing certificate upon successful completion of a formal skills test examiner training course prescribed in §384.228.

(5) The State must, at least once every 2 years, do one of the following for each third party examiner:

(i) Have State employees covertly take the tests administered by the third party as if the State employee were a test applicant;

(ii) Have State employees co-score along with the third party examiner during CDL skills tests to compare pass/fail results; or

(iii) Re-test a sample of drivers who were examined by the third party to compare pass/fail results;

(6) The State must take prompt and appropriate remedial action against a third party tester that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third party contract;

(7) A skills tester that is also a driver training school is prohibited from administering a skills test to an applicant who was trained by that training school. Exception: When the nearest alternative third party tester or State skills testing facility is over 50 miles from the training school, the SDLA may allow the training school to skills test the applicant it trained provided the individual skills test examiner did not train the applicant; and

(8) The State has an agreement with the third party containing, at a minimum, provisions that:

(i) Allow the FMCSA, or its representative, and the State to conduct random examinations, inspections, and audits of its records, facilities, and operations without prior notice;

(ii) Require that all third party skills test examiners meet the qualification and training standards of §384.228;

(iii) Allow the State to do any of the following:

(A) Have State employees covertly take the tests administered by the third party as if the State employee were a test applicant;

(B) Have State employees co-score along with the third party examiner during CDL skills tests to compare pass/fail results; or

(C) Have the State re-test a sample of drivers who were examined by the third party;

(iv) Reserve unto the State the right to take prompt and appropriate remedial action against a third party tester that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third party contract;

(v) Require the third party tester to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing for applicants for a CDL.

(vi) Require the third party tester to use only CDL skills examiners who have successfully completed a formal CDL skills test examiner training course as prescribed by the State and have been certified by the State as a CDL skills examiner qualified to administer CDL skills tests;

(vii) Require the third party tester to use designated road test routes that have been approved by the State;

(viii) Require the third party tester to submit a schedule of CDL skills testing appointments to the State no later than two business days prior to each test; and

(ix) Require the third party tester to maintain copies of the following records at its principal place of business:

(A) A copy of the State certificate authorizing the third party tester to administer a CDL skills testing program for the classes and types of commercial motor vehicles listed;

(B) A copy of each third party examiner's State certificate authorizing the third party examiner to administer CDL skills tests for the classes and types of commercial motor vehicles listed;

(C) A copy of the current third party agreement;

(D) A copy of each completed CDL skills test scoring sheet for the current year and the past two calendar years;

(E) A copy of the third party tester's State-approved road test route(s); and

(F) A copy of each third party examiner's training record.

(b) Proof of testing by a third party. The third party tester must notify the State driver licensing agency through secure electronic means when a driver applicant passes skills tests administered by the third party tester.

(c) Minimum number of tests conducted.

The State must revoke the skills testing certification of any examiner who does not conduct skills test examinations of at least 10 different applicants per calendar year. Exception: Examiners who do not meet the 10-test minimum must either take the refresher training specified in §384.228 of this chapter or have a State examiner ride along to observe the third party examiner successfully administer at least one skills test.

76 Fed. Reg. 26886, May 9, 2011

§383.77 Substitute for driving skills tests for drivers with military CMV experience.

At the discretion of a State, the driving skills test as specified in §383.113 may be waived for a CMV driver with military CMV experience who is currently licensed at the time of his/her application for a CDL, and substituted with an applicant's driving record in combination with certain driving experience. The State shall impose conditions and limitations to restrict the applicants from whom a State may accept alternative requirements for the skills test described in §383.113. Such conditions must require at least the following:

(a) An applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she:

(1) Has not had more than one license (except for a military license);

(2) Has not had any license suspended, revoked, or cancelled;

(3) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in §383.51(b);

(4) Has not had more than one conviction for any type of motor vehicle for serious traffic violations contained in §383.51(c); and

(5) Has not had had any conviction for a violation of military, State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault; and

(b) An applicant must provide evidence and certify that he/she:

(1) Is regularly employed or was regularly employed within the last 90 days in a military position requiring operation of a CMV;

(2) Was exempted from the CDL requirements in §383.3(c); and

(3) Was operating a vehicle representative of the CMV the driver applicant operates or expects to operate, for at least the 2 years immediately preceding discharge from the military.

76 Fed. Reg. 26887, May 9, 2011

§383.79 Skills testing of out-of-State students.

(a) A State may administer its skills test, in accordance with subparts F, G, and H of this part, to a person who has taken training in that State and is to be licensed in another United States jurisdiction (i.e., his/her State of domicile). Such test results must be transmitted electronically directly from the testing State to the licensing State in an efficient and secure manner.

(b) The State of domicile of a CDL applicant must accept the results of a skills test administered to the applicant by any other State, in accordance with subparts F, G, and H of this part, in fulfillment of the applicant's testing requirements under §383.71, and the State's test administration requirements under §383.73.

76 Fed. Reg. 26887, May 9, 2011

Subpart F—Vehicle Groups and Endorsements

53 Fed. Reg. 27651, July 21, 1988, unless otherwise noted.

§383.91 Commercial motor vehicle groups.

(a) Vehicle group descriptions. Each driver applicant must possess and be tested on his/her knowledge and skills, described in subpart G of this part, for the commercial motor vehicle group(s) for which he/she desires a CDL. The commercial motor vehicle groups are as follows:

(1) Combination vehicle (Group A)—Any combination of vehicles with a gross combination weight rating (GCWR) 26,001 pounds or more provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds.

(2) Heavy Straight Vehicle (Group B)—Any single vehicle with a GVWR of 26,001 pounds or more, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR.

(3) Small Vehicle (Group C)—Any single vehicle, or combination of vehicles, that meets neither the definition of Group A nor that of Group B as contained in this section, but that either is designed to transport 16 or more passengers including the driver, or is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

(b) Representative vehicle. For purposes of taking the driving test in accordance with §383.113, a representative vehicle for a given vehicle group contained in §383.91(a), is any commercial motor vehicle which meets the definition of that vehicle group.

(c) Relation between vehicle groups. Each driver applicant who desires to operate in a different commercial motor vehicle group from the one which his/her CDL authorizes shall be required to retake and pass all related tests, except the following:

(1) A driver who has passed the knowledge and skills tests for a combination vehicle (Group A) may operate a heavy straight vehicle (Group B) or a small vehicle (Group C), provided that he/she possesses the requisite endorsement(s); and

(2) A driver who has passed the knowledge and skills tests for a heavy straight vehicle (Group B) may operate any small vehicle (Group C), provided that he/she possesses the requisite endorsement(s).

(d) Vehicle group illustration. Figure 1 illustrates typical vehicles within each of the vehicle groups defined in this section.

53 Fed. Reg. 27651, July 21, 1988, as amended at 54 Fed. Reg. 47989, Nov. 20, 1989; 61 Fed. Reg. 9566, Mar. 8, 1996

§383.93 Endorsements.

(a) General. (1) In addition to passing the knowledge and skills tests described in subpart G of this part, all persons who operate or expect to operate the type(s) of motor vehicles described in paragraph (b) of this section must pass specialized tests to obtain each endorsement. The State shall issue CDL endorsements only to drivers who successfully complete the tests.

(2) The only endorsements allowed on a CLP are the following:

(i) Passenger (P);

(ii) School bus (S); and

(iii) Tank vehicle (N).

(3) The State must use the codes listed in §383.153 when placing endorsements on a CLP or CDL.

(b) Endorsement descriptions. An operator must obtain State-issued endorsements to his/her CDL to operate commercial motor vehicles which are:

(1) Double/triple trailers;

(2) Passenger vehicles;

(3) Tank vehicles;

(4) Used to transport hazardous materials as defined in §383.5, or

(5) School buses.

(c) Endorsement testing requirements. The following tests are required for the endorsements contained in paragraph (b) of this section:

(1) Double/Triple Trailers—a knowledge test;

(2) Passenger—a knowledge and a skills test;

(3) Tank vehicle—a knowledge test;

(4) Hazardous Materials—a knowledge test; and

(5) School bus—a knowledge and a skills test.

53 Fed. Reg. 27651, July 21, 1988, as amended at 67 Fed. Reg. 49760, July 31, 2002; 68 Fed. Reg. 23850, May 5, 2003; 76 Fed. Reg. 26887, May 9, 2011

§383.95 Restrictions.

(a) Air brake. (1) If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the State must indicate on the CLP or CDL, if issued, that the person is restricted from operating a CMV equipped with any type of air brakes.

(2) For the purposes of the skills test and the restriction, air brakes include any braking system operating fully or partially on the air brake principle.

(b) Full air brake. (1) If an applicant performs the skills test in a vehicle equipped with air over hydraulic brakes, the State must indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with any braking system operating fully on the air brake principle.

(2) For the purposes of the skills test and the restriction, air over hydraulic brakes includes any braking system operating partially on the air brake and partially on the hydraulic brake principle.

(c) Manual transmission. (1) If an applicant performs the skills test in a vehicle equipped with an automatic transmission, the State must indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with a manual transmission.

(2) For the purposes of the skills test and the restriction, an automatic transmission includes any transmission other than a manual transmission as defined in §383.5.

(d) Tractor-trailer. If an applicant performs the skills test in a combination vehicle for a Group A CDL with the power unit and towed unit connected with a pintle hook or other non-fifth wheel connection, the State must indicate on the CDL, if issued, that the person is restricted from operating a tractor-trailer combination connected by a fifth wheel that requires a Group A CDL.

(e) Group A passenger vehicle. If an applicant applying for a passenger endorsement performs the skills test in a passenger vehicle requiring a Group B CDL, the State must indicate on the CDL, if issued, that the person is restricted from operating a passenger vehicle requiring a Group A CDL.

(f) Group A and B passenger vehicle. If an applicant applying for a passenger endorsement performs the skills test in a passenger vehicle requiring a Group C CDL, the State must indicate on the CDL, if issued, that the person is restricted from operating a passenger vehicle requiring a Group A or B CDL.

(g) Medical variance restrictions. If the State is notified according to §383.73(o)(3) that the driver has been issued a medical variance, the State must indicate the existence of such a medical variance on the CDLIS driver record and the CDL document, if issued, using the restriction code "V" to indicate there is information about a medical variance on the CDLIS driver record. Note: In accordance with the agreement between Canada and the United States (see footnote to §391.41 of this chapter), drivers with a medical variance restriction code on their CDL are restricted from operating a CMV in the other country.

76 Fed. Reg. 26887, May 9, 2011

Subpart G—Required Knowledge and Skills

53 Fed. Reg. 27654, July 21, 1988, unless otherwise noted.

§383.110 General requirement.

All drivers of CMVs must have the knowledge and skills necessary to operate a CMV safely as contained in this subpart. The specific types of items that a State must include in the knowledge and skills tests that it administers to CDL applicants are included in this subpart.

76 Fed. Reg. 26888, May 9, 2011

§383.111 Required knowledge.

(a) All CMV operators must have knowledge of the following 20 general areas:

(1) Safe operations regulations. Driver-related elements of the regulations contained in parts 391, 392, 393, 395, 396, and 397 of this subchapter, such as:

(i) Motor vehicle inspection, repair, and maintenance requirements;

(ii) Procedures for safe vehicle operations;

(iii) The effects of fatigue, poor vision, hearing impairment, and general health upon safe commercial motor vehicle operation;

(iv) The types of motor vehicles and cargoes subject to the requirements contained in part 397 of this subchapter; and

(v) The effects of alcohol and drug use upon safe commercial motor vehicle operations.

(2) Safe vehicle control systems. The purpose and function of the controls and instruments commonly found on CMVs.

(3) CMV safety control systems. (i) Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions.

(ii) CMV drivers must have knowledge of the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.

(4) Basic control. The proper procedures for performing various basic maneuvers, including:

(i) Starting, warming up, and shutting down the engine;

(ii) Putting the vehicle in motion and stopping;

(iii) Backing in a straight line; and

(iv) Turning the vehicle, e.g., basic rules, off tracking, right/left turns and right curves.

(5) Shifting. The basic shifting rules and terms for common transmissions, including:

(i) Key elements of shifting, e.g., controls, when to shift, and double clutching;

(ii) Shift patterns and procedures; and

(iii) Consequences of improper shifting.

(6) Backing. The procedures and rules for various backing maneuvers, including:

(i) Backing principles and rules; and

(ii) Basic backing maneuvers, e.g., straight-line backing, and backing on a curved path.

(7) Visual search. The importance of proper visual search, and proper visual search methods, including:

(i) Seeing ahead and to the sides;

(ii) Use of mirrors; and

(iii) Seeing to the rear.

(8) Communication. The principles and procedures for proper communications and the hazards of failure to signal properly, including:

(i) Signaling intent, e.g., signaling when changing direction in traffic;
(ii) Communicating presence, e.g., using horn or lights to signal presence; and
(iii) Misuse of communications.
(9) Speed management. The importance of understanding the effects of speed, including:
(i) Speed and stopping distance;
(ii) Speed and surface conditions;
(iii) Speed and the shape of the road;
(iv) Speed and visibility; and
(v) Speed and traffic flow.
(10) Space management. The procedures and techniques for controlling the space around the vehicle, including:
(i) The importance of space management;
(ii) Space cushions, e.g., controlling space ahead/to the rear;
(iii) Space to the sides; and
(iv) Space for traffic gaps.
(11) Night operation. Preparations and procedures for night driving, including:
(i) Night driving factors, e.g., driver factors (vision, glare, fatigue, inexperience);
(ii) Roadway factors (low illumination, variation in illumination, unfamiliarity with roads, other road users, especially drivers exhibiting erratic or improper driving); and
(iii) Vehicle factors (headlights, auxiliary lights, turn signals, windshields and mirrors).
(12) Extreme driving conditions. The basic information on operating in extreme driving conditions and the hazards encountered in such conditions, including:
(i) Bad weather, e.g., snow, ice, sleet, high wind;
(ii) Hot weather; and
(iii) Mountain driving.
(13) Hazard perceptions. The basic information on hazard perception and clues for recognition of hazards, including:
(i) Road characteristics; and
(ii) Road user activities.
(14) Emergency maneuvers. The basic information concerning when and how to make emergency maneuvers, including:
(i) Evasive steering;
(ii) Emergency stop;
(iii) Off road recovery;
(iv) Brake failure; and
(v) Blowouts.
(15) Skid control and recovery. The information on the causes and major types of skids, as well as the procedures for recovering from skids.
(16) Relationship of cargo to vehicle control. The principles and procedures for the proper handling of cargo, including:
(i) Consequences of improperly secured cargo, drivers' responsibilities, and Federal/State and local regulations;
(ii) Principles of weight distribution; and
(iii) Principles and methods of cargo securement.
(17) Vehicle inspections. The objectives and proper procedures for performing vehicle safety inspections, as follows:

(i) The importance of periodic inspection and repair to vehicle safety.

(ii) The effect of undiscovered malfunctions upon safety.

(iii) What safety-related parts to look for when inspecting vehicles, e.g., fluid leaks, interference with visibility, bad tires, wheel and rim defects, braking system defects, steering system defects, suspension system defects, exhaust system defects, coupling system defects, and cargo problems.

(iv) Pre-trip/enroute/post-trip inspection procedures.

(v) Reporting findings.

(18) Hazardous materials. Knowledge of the following:

(i) What constitutes hazardous material requiring an endorsement to transport;

(ii) Classes of hazardous materials;

(iii) Labeling/placarding requirements; and

(iv) Need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes.

(19) Mountain driving. Practices that are important when driving upgrade and downgrade, including:

(i) Selecting a safe speed;

(ii) Selecting the right gear; and

(iii) Proper braking techniques.

(20) Fatigue and awareness. Practices that are important to staying alert and safe while driving, including;

(i) Being prepared to drive;

(ii) What to do when driving to avoid fatigue;

(iii) What to do when sleepy while driving; and

(iv) What to do when becoming ill while driving.

(b) Air brakes. All CMV drivers operating vehicles equipped with air brakes must have knowledge of the following 7 areas:

(1) General air brake system nomenclature;

(2) The dangers of contaminated air supply (dirt, moisture, and oil);

(3) Implications of severed or disconnected air lines between the power unit and the trailer(s);

(4) Implications of low air pressure readings;

(5) Procedures to conduct safe and accurate pre-trip inspections, including knowledge about:

(i) Automatic fail-safe devices;

(ii) System monitoring devices; and

(iii) Low pressure warning alarms.

(6) Procedures for conducting en route and post-trip inspections of air-actuated brake systems, including:

(i) Ability to detect defects that may cause the system to fail;

(ii) Tests that indicate the amount of air loss from the braking system within a specified period, with and without the engine running; and

(iii) Tests that indicate the pressure levels at which the low air pressure warning devices and the tractor protection valve should activate.

(7) General operating practices and procedures, including:

(i) Proper braking techniques;

(ii) Antilock brakes;
(iii) Emergency stops; and
(iv) Parking brake.
(c) ….

§383.113 Required skills.

(a) Pre-trip vehicle inspection skills. Applicants for a CDL must possess the following basic pre-trip vehicle inspection skills for the vehicle class that the driver operates or expects to operate:

(1) All test vehicles. Applicants must be able to identify each safety-related part on the vehicle and explain what needs to be inspected to ensure a safe operating condition of each part, including:

(i) Engine compartment;
(ii) Cab/engine start;
(iii) Steering;
(iv) Suspension;
(v) Brakes;
(vi) Wheels;
(vii) Side of vehicle;
(viii) Rear of vehicle; and
(ix) Special features of tractor trailer, school bus, or coach/transit bus, if this type of vehicle is being used for the test.

(2) Air brake equipped test vehicles. Applicants must demonstrate the following skills with respect to inspection and operation of air brakes:

(i) Locate and verbally identify air brake operating controls and monitoring devices;
(ii) Determine the motor vehicle's brake system condition for proper adjustments and that air system connections between motor vehicles have been properly made and secured;
(iii) Inspect the low pressure warning device(s) to ensure that they will activate in emergency situations;
(iv) With the engine running, make sure that the system maintains an adequate supply of compressed air;
(v) Determine that required minimum air pressure build up time is within acceptable limits and that required alarms and emergency devices automatically deactivate at the proper pressure level; and
(vi) Operationally check the brake system for proper performance.

(b) Basic vehicle control skills. All applicants for a CDL must possess and demonstrate the following basic motor vehicle control skills for the vehicle class that the driver operates or expects to operate:

(1) Ability to start, warm up, and shut down the engine;
(2) Ability to put the motor vehicle in motion and accelerate smoothly, forward and backward;
(3) Ability to bring the motor vehicle to a smooth stop;
(4) Ability to back the motor vehicle in a straight line, and check path and clearance while backing;
(5) Ability to position the motor vehicle to negotiate safely and then make left and right turns;

(6) Ability to shift as required and select appropriate gear for speed and highway conditions; and

(7) Ability to back along a curved path.

(c) Safe on-road driving skills. All applicants for a CDL must possess and demonstrate the following safe on-road driving skills for their vehicle class:

(1) Ability to use proper visual search methods;

(2) Ability to signal appropriately when changing direction in traffic;

(3) Ability to adjust speed to the configuration and condition of the roadway, weather and visibility conditions, traffic conditions, and motor vehicle, cargo and driver conditions;

(4) Ability to choose a safe gap for changing lanes, passing other vehicles, as well as for crossing or entering traffic;

(5) Ability to position the motor vehicle correctly before and during a turn to prevent other vehicles from passing on the wrong side, as well as to prevent problems caused by off-tracking;

(6) Ability to maintain a safe following distance depending on the condition of the road, visibility, and vehicle weight;

(7) Ability to adjust operation of the motor vehicle to prevailing weather conditions including speed selection, braking, direction changes, and following distance to maintain control; and

(8) Ability to observe the road and the behavior of other motor vehicles, particularly before changing speed and direction.

(d) Test area. Skills tests shall be conducted in on-street conditions or under a combination of on-street and off-street conditions.

(e) Simulation technology. A State may utilize simulators to perform skills testing, but under no circumstances as a substitute for the required testing in on-street conditions.

76 Fed. Reg. 26889, May 9, 2011

§383.115 ….

§383.117 Requirements for passenger endorsement.

An applicant for the passenger endorsement must satisfy both of the following additional knowledge and skills test requirements.

(a) Knowledge test. All applicants for the passenger endorsement must have knowledge covering the following topics:

(1) Proper procedures for loading/unloading passengers;

(2) Proper use of emergency exits, including push-out windows;

(3) Proper responses to such emergency situations as fires and unruly passengers;

(4) Proper procedures at railroad-highway grade crossings and drawbridges;

(5) Proper braking procedures; and

(6) Operating practices and procedures not otherwise specified.

(b) Skills test. To obtain a passenger endorsement applicable to a specific vehicle class, an applicant must take his/her skills test in a passenger vehicle satisfying the requirements of that vehicle group as defined in §383.91.

76 Fed. Reg. 26890, May 9, 2011

§383.119….

§383.121….

§383.123 Requirements for a school bus endorsement.

(a) An applicant for the school bus endorsement must satisfy the following three requirements:

(1) Qualify for passenger vehicle endorsement. Pass the knowledge and skills test for obtaining a passenger vehicle endorsement.

(2) Knowledge test. Must have knowledge covering the following topics:

(i) Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights, and other warning and passenger safety devices required for school buses by State or Federal law or regulation.

(ii) Emergency exits and procedures for safely evacuating passengers in an emergency.

(iii) State and Federal laws and regulations related to safely traversing railroad-highway grade crossings; and

(iv) Operating practices and procedures not otherwise specified.

(3) Skills test. Must take a driving skills test in a school bus of the same vehicle group (see §383.91(a)) as the school bus applicant will drive.

(b) Exception. Knowledge and skills tests administered before September 30, 2002 and approved by FMCSA as meeting the requirements of this section, meet the requirements of paragraphs (a)(2) and (3) of this section

76 Fed. Reg. 26891, May 9, 2011 **Subpart H—Tests**

Source:

53 Fed. Reg. 27657, July 21, 1988, unless otherwise noted.

§383.131 Test manuals.

(a) Driver information manual. (1) A State must provide an FMCSA pre-approved driver information manual to a CLP or CDL applicant. The manual must be comparable to the American Association of Motor Vehicle Administrators' (AAMVA's) “2005 CDL Test System (July 2010 Version) Model Commercial Driver Manual”, which FMCSA has approved and provides to all State Driver Licensing Agencies. The driver information manual must include:

(i) Information on how to obtain a CDL and endorsements;

(ii) Information on the requirements described in §383.71, the implied consent to alcohol testing described in §383.72, the procedures and penalties contained in §383.51(b) to which a CLP or CDL holder is exposed for refusal to comply with such alcohol testing, State procedures described in §383.73, and other appropriate driver information contained in subpart E of this part;

(iii) Information on vehicle groups and endorsements as specified in subpart F of this part;

(iv) The substance of the knowledge and skills that drivers must have, as outlined in subpart G of this part for the different vehicle groups and endorsements; and

(v) Details of testing procedures, including the purpose of the tests, how to respond, and directions for taking the tests.

(2) A State may include any additional State-specific information related to the CDL testing and licensing process.

(b) Examiner information manual. (1) A State must provide an FMCSA pre-approved examiner information manual that conforms to model requirements in paragraphs (b)(1)(i-xi) of this section to all knowledge and skills test examiners. To be pre-approved by FMCSA, the examiner information manual must be comparable to AAMVA's “2005 CDL Test System (July 2010 Version) Model CDL Examiner's Manual,” which FMCSA has approved and provides to all State Driver Licensing Agencies. The examiner information manual must include:

(i) Information on driver application procedures contained in §383.71, State procedures described in §383.73, and other appropriate driver information contained in subpart E of this part;

(ii) Details on information that must be given to the applicant;

(iii) Details on how to conduct the knowledge and skills tests;

(iv) Scoring procedures and minimum passing scores for the knowledge and skills tests;

(v) Information for selecting driving test routes for the skills tests;

(vi) List of the skills to be tested;

(vii) Instructions on where and how the skills will be tested;

(viii) How performance of the skills will be scored;

(ix) Causes for automatic failure of skills tests;

(x) Standardized scoring sheets for the skills tests; and

(xi) Standardized driving instructions for the applicants.

(2) A State may include any additional State-specific information related to the CDL testing process.

76 Fed. Reg. 26891, May 9, 2011

§383.133 Test methods.

(a) All tests must be constructed in such a way as to determine if the applicant possesses the required knowledge and skills contained in subpart G of this part for the type of motor vehicle or endorsement the applicant wishes to obtain.

(b) Knowledge tests:

(1) States must use the FMCSA pre-approved pool of test questions to develop knowledge tests for each vehicle group and endorsement. The pool of questions must be comparable to those in AAMVA's “2005 CDL Test System (July 2010 Version) 2005 Test Item Summary Forms,” which FMCSA has approved and provides to all State Driver Licensing Agencies.

(2) The State method of generating knowledge tests must conform to the requirements in paragraphs (b)(2)(i) through (iv) of this section and be pre-approved by FMCSA. The State method of generating knowledge tests must be comparable to the requirements outlined in AAMVA's “2005 CDL Test System (July 2010 Version) 2005 Requirements Document For Use In Developing Computer-Generated Multiple-Choice CDL Knowledge Tests”, which FMCSA has approved and provides to all State Driver Licensing Agencies to develop knowledge tests for each vehicle group and endorsement. These requirements include:

(i) The total difficulty level of the questions used in each version of a test must fall within a set range;

(ii) Twenty-five percent of the questions on a test must be new questions that were not contained in the previous version of the test;

(iii) Identical questions from the previous version of the test must be in a different location on the test and the three possible responses to the questions must be in a different order; and

(iv) Each test must contain a set number of questions with a prescribed number of questions from each of the knowledge areas.

(3) Each knowledge test must be valid and reliable so as to ensure that driver applicants possess the knowledge required under §383.111. The knowledge tests may be administered in written form, verbally, or in automated format and can be administered in a foreign language, provided no interpreter is used in administering the test.

(4) A State must use a different version of the test when an applicant retakes a previously failed test.

(c) Skills tests:

(1) A State must develop, administer and score the skills tests based solely on the information and standards contained in the driver and examiner manuals referred to in §383.131(a) and (b).

(2) A State must use the standardized scores and instructions for administering the tests contained in the examiner manual referred to in §383.131(b).

(3) An applicant must complete the skills tests in a representative vehicle to ensure that the applicant possess the skills required under §383.113. In determining whether the vehicle is a representative vehicle for the skills test and the group of CDL for which the applicant is applying, the vehicle's gross vehicle weight rating or gross combination weight rating must be used, not the vehicle's actual gross vehicle weight or gross combination weight.

(4) Skills tests must be conducted in on-street conditions or under a combination of on-street and off-street conditions.

(5) Interpreters are prohibited during the administration of skills tests. Applicants must be able to understand and respond to verbal commands and instructions in English by a skills test examiner. Neither the applicant nor the examiner may communicate in a language other than English during the skills test.

(6) The skills test must be administered and successfully completed in the following order: Pre-trip inspection, basic vehicle control skills, on-road skills. If an applicant fails one segment of the skills test:

(i) The applicant cannot continue to the next segment of the test; and

(ii) Scores for the passed segments of the test are only valid during initial issuance of the CLP. If the CLP is renewed, all three segments of the skills test must be retaken.

(d) Passing scores for the knowledge and skills tests must meet the standards contained in §383.135.

76 Fed. Reg. 26891, May 9, 2011

§383.135 Passing knowledge and skills tests.

(a) Knowledge tests. (1) To achieve a passing score on each of the knowledge tests, a driver applicant must correctly answer at least 80 percent of the questions.

(2) If a driver applicant who fails the air brake portion of the knowledge test (scores less than 80 percent correct) is issued a CLP or CDL, an air brake restriction must be indicated on the CLP or CDL as required in §383.95(a).

(3) A driver applicant who fails the combination vehicle portion of the knowledge test (scores less than 80 percent correct) must not be issued a Group A CLP or CDL.

(b) Skills Tests. (1) To achieve a passing score on each segment of the skills test, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in §383.113 and attain the scores listed in Appendix A of the examiner manual referred to in §383.131(b) for the type of vehicle being used in the test.

(2) A driver applicant who does not obey traffic laws, causes an accident during the test, or commits any other offense listed as a reason for automatic failure in the standards contained in the driver and examiner manuals referred to in §§383.131(a) and (b), must automatically fail the test.

(3) If a driver applicant who performs the skills test in a vehicle not equipped with any type of air brake system is issued a CDL, an air brake restriction must be indicated on the license as required in §383.95(a).

(4) If a driver applicant who performs the skills test in a vehicle equipped with air over hydraulic brakes is issued a CDL, a full air brake restriction must be indicated on the license as required in §383.95(b).

(5) If a driver applicant who performs the skills test in a vehicle equipped with an automatic transmission is issued a CDL, a manual transmission restriction must be indicated on the license as required in §383.95(c).

(6) If a driver applicant who performs the skills test in a combination vehicle requiring a Group A CDL equipped with any non-fifth wheel connection is issued a CDL, a tractor-trailer restriction must be indicated on the license as required in §383.95(d).

(7) If a driver applicant wants to remove any of the restrictions in paragraphs (b)(3) through (5) of this section, the applicant does not have to retake the complete skills test. The State may administer a modified skills test that demonstrates that the applicant can safely and effectively operate the vehicle's full air brakes, air over hydraulic brakes, and/or manual transmission. In addition, to remove the air brake or full air brake restriction, the applicant must successfully perform the air brake pre-trip inspection and pass the air brake knowledge test.

(8) If a driver applicant wants to remove the tractor-trailer restriction in paragraph (b)(6) of this section, the applicant must retake all three skills tests in a representative tractor-trailer.

(c) State recordkeeping. States must record and retain the knowledge and skills test scores of tests taken by driver applicants. The test scores must either be made part of the driver history record or be linked to the driver history record in a separate file.

76 Fed. Reg. 26892, May 9, 2011

Subpart I—….

Subpart J—Commercial Learner's Permit and Commercial Driver's License Documents

53 Fed. Reg. 27657, July 21, 1988, unless otherwise noted.

§383.151 General.

(a) The CDL must be a document that is easy to recognize as a CDL.

(b) The CLP must be a separate document from the CDL or non-CDL.

(c) At a minimum, the CDL and the CLP must contain the information specified in §383.153.

76 Fed. Reg. 26892, May 9, 2011

§383.153 Information on the CLP and CDL documents and applications.

(a) Commercial Driver's License. All CDLs must contain all of the following information:

(1) The prominent statement that the license is a “Commercial Driver's License” or “CDL,” except as specified in paragraph (c) of this section.

(2) The full name, signature, and mailing or residential address in the licensing State of the person to whom such license is issued.

(3) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height.

(4) Color photograph, digitized color image, or black and white laser engraved photograph of the driver. The State may issue a temporary CDL without a photo or image, if it is valid for no more than 60 days.

(5) The driver's State license number.

(6) The name of the State which issued the license.

(7) The date of issuance and the date of expiration of the license.

(8) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:

(i) A for Combination Vehicle;
(ii) B for Heavy Straight Vehicle; and
(iii) C for Small Vehicle.
(9) The endorsement(s) for which the driver has qualified, if any, indicated as follows:
(i) T for double/triple trailers;
(ii) P for passenger;
(iii) N for tank vehicle;
(iv) H for hazardous materials;
(v) X for a combination of tank vehicle and hazardous materials endorsements;
(vi) S for school bus; and
(vii) At the discretion of the State, additional codes for additional groupings of endorsements, as long as each such discretionary code is fully explained on the front or back of the CDL document.
(10) The restriction(s) placed on the driver from operating certain equipment or vehicles, if any, indicated as follows:
(i) L for No Air brake equipped CMV;
(ii) Z for No Full air brake equipped CMV;
(iii) E for No Manual transmission equipped CMV;
(iv) ….
(v) M for No Class A passenger vehicle;
(vi) N for No Class A and B passenger vehicle;
(vii) K for Intrastate only;
(viii) V for medical variance; and
(ix) At the discretion of the State, additional codes for additional restrictions, as long as each such restriction code is fully explained on the front or back of the CDL document.
(b) Commercial Learner's Permit. (1) A CLP must not contain a photograph, digitized image or other visual representation of the driver.
(2) All CLPs must contain all of the following information:
(i) The prominent statement that the permit is a “Commercial Learner's Permit” or “CLP,” except as specified in paragraph (c) of this section, and that it is invalid unless accompanied by the underlying driver's license issued by the same jurisdiction.
(ii) The full name, signature, and mailing or residential address in the permitting State of the person to whom the permit is issued.
(iii) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height.
(iv) The driver's State license number.
(v) The name of the State which issued the permit.
(vi) The date of issuance and the date of expiration of the permit.
(vii) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:
(A) A for Combination Vehicle;
(B) B for Heavy Straight Vehicle; and
(C) C for Small Vehicle.
(viii) The endorsement(s) for which the driver has qualified, if any, indicated as follows:
(A) P for passenger endorsement. A CLP holder with a P endorsement is prohibited from operating a CMV carrying passengers, other than Federal/State auditors and inspectors, test

examiners, other trainees, and the CDL holder accompanying the CLP holder as prescribed by C.F.R. 383.25(a)(1) of this part;

(B) S for school bus endorsement. A CLP holder with an S endorsement is prohibited from operating a school bus with passengers other than Federal/State auditors and inspectors, test examiners, other trainees, and the CDL holder accompanying the CLP holder as prescribed by §383.25(a)(1) of this part; and

(C) N for tank vehicle endorsement. A CLP holder with an N endorsement may only operate an empty tank vehicle and is prohibited from operating any tank vehicle that previously contained hazardous materials that has not been purged of any residue.

(ix) The restriction(s) placed on the driver, if any, indicated as follows:

(A) P for No passengers in CMV bus;

(B) X for No cargo in CMV tank vehicle;

(C) L for No Air brake equipped CMV;

(D) V for medical variance;

(E) M for No Class A passenger vehicle;

(F) N for No Class A and B passenger vehicle;

(G) K for Intrastate only.

(H) Any additional jurisdictional restrictions that apply to the CLP driving privilege.

(c) If the CLP or CDL is a Non-domiciled CLP or CDL, it must contain the prominent statement that the license or permit is a "Non-domiciled Commercial Driver's License," "Non-domiciled CDL," "Non-domiciled Commercial Learner's Permit," or "Non-domiciled CLP," as appropriate. The word "Non-domiciled" must be conspicuously and unmistakably displayed, but may be noncontiguous with the words "Commercial Driver's License," "CDL," "Commercial Learner's Permit," or "CLP."

(d) If the State has issued the applicant an air brake restriction as specified in §383.95, that restriction must be indicated on the CLP or CDL.

(e) Except in the case of a Non-domiciled CLP or CDL holder who is domiciled in a foreign jurisdiction:

(1) A driver applicant must provide his/her Social Security Number on the application of a CLP or CDL.

(2) The State must provide the Social Security Number to the CDLIS.

(3) The State must not display the Social Security Number on the CLP or CDL.

(f) The State may issue a multipart CDL provided that:

(1) Each document is explicitly tied to the other document(s) and to a single driver's record.

(2) The multipart license document includes all of the data elements specified in this section.

(g) Current CDL holders are not required to be retested to determine whether they need any of the new restrictions for no full air brakes, no manual transmission and no tractor-trailer. These new restrictions only apply to CDL applicants who take skills tests on or after July 8, 2014 (including those applicants who previously held a CDL before the new restrictions went into effect).

(h) On or after July 8, 2014 current CLP and CDL holders who do not have the standardized endorsement and restriction codes and applicants for a CLP or CDL are to be issued CLPs and CDLs with the standardized codes upon initial issuance, renewal, upgrade or transfer.

76 Fed. Reg. 26892, May 9, 2011; 76 Fed. Reg. 39018, July 5, 2011

§383.155 Tamper proofing requirements.

States must make the CLP and CDL tamperproof to the maximum extent practicable. At a minimum, a State must use the same tamperproof method used for noncommercial drivers' licenses.

76 Fed. Reg. 26893, May 9, 2011

(c) Driver wellness. Basic health maintenance including diet and exercise. The importance of avoiding excessive use of alcohol.

(d) Whistleblower protection. The right of an employee to question the safety practices of an employer without the employee's risk of losing a job or being subject to reprisals simply for stating a safety concern (29 CFR part 1978).

§380.505 Proof of training.

An employer who uses an entry-level driver must ensure the driver has received a training certificate containing all the information contained in §380.513 from the training provider.

§380.507 Driver responsibilities.

Each entry-level driver must receive training required by §380.503**.**

§380.509 Employer responsibilities.

(a) Each employer must ensure each entry-level driver who first began operating a CMV requiring a CDL in interstate commerce after July 20, 2003, receives training required by §380.503.

(b) Each employer must place a copy of the driver's training certificate in the driver's personnel or qualification file.

(c) All records required by this subpart shall be maintained as required by §390.31 of this subchapter and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Motor Carrier Safety Administration**.**

§380.511 Employer recordkeeping responsibilities.

The employer must keep the records specified in §380.505 for as long as the employer employs the driver and for one year thereafter.

§380.513 Required information on the training certificate.

The training provider must provide a training certificate or diploma to the entry-level driver. If an employer is the training provider, the employer must provide a training certificate or diploma to the entry-level driver. The certificate or diploma must contain the following seven items of information:

(a) Date of certificate issuance.

(b) Name of training provider.

(c) Mailing address of training provider.

(d) Name of driver.

(e) A statement that the driver has completed training in driver qualification requirements, hours of service of drivers, driver wellness, and whistle blower protection requirements substantially in accordance with the following sentence:

I certify _____has completed training requirements set forth in the Federal Motor Carrier Safety Regulations for entry-level driver training in accordance with 49 CFR 380.503.

(f) The printed name of the person attesting that the driver has received the required training.

(g) The signature of the person attesting that the driver has received the required training.

PART 385—SAFETY FITNESS PROCEDURES

Subpart A—General

Subpart B—Safety Monitoring System for Mexico-Domiciled Carriers

Subpart C—Certification of Safety Auditors, Safety Investigators, and Safety Inspectors

Subpart D—New Entrant Safety Assurance Program

Subpart E—Hazardous Materials Safety Permits

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901-13905, 13908, 31136, 31144, 31148, 31151, 31502; sec. 350, Pub. L. 107-87, 115 Stat. 833, 864; and 49 CFR 1.87.

Source: 53 Fed. Reg. 50968, Dec. 19, 1988, unless otherwise noted.

Editorial Note: Nomenclature changes to part 385 appear at 66 Fed. Reg. 49872, Oct. 1, 2001.

Effective Date Note: At 82 Fed. Reg. 5304, Jan. 17, 2017, §§385.301-385.305 were suspended, effective Jan. 14, 2017.

Subpart A—General

§385.1 Purpose and scope.

(a) This part establishes the FMCSA's procedures to determine the safety fitness of motor carriers, to assign safety ratings, to direct motor carriers to take remedial action when required, and to prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a CMV.

(b) This part establishes the safety assurance program for a new entrant motor carrier initially seeking to register with FMCSA to conduct interstate operations. It also describes the consequences that will occur if the new entrant fails to maintain adequate basic safety management controls.

(c) This part establishes the safety permit program for a motor carrier to transport the types and quantities of hazardous materials listed in §385.403.

(d) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter, except non-business private motor carriers of passengers.

(e) Subpart F of this part establishes procedures to perform a roadability review of intermodal equipment providers to determine their compliance with the applicable Federal Motor Carrier Safety Regulations (FMCSRs).

65 Fed. Reg. 50934, Aug. 22, 2000, as amended at 67 Fed. Reg. 31982, May 13, 2002; 69 Fed. Reg. 39366, June 30, 2004; 73 Fed. Reg. 76818, Dec. 17, 2008; 75 Fed. Reg. 17240, Apr. 5, 2010; 77 Fed. Reg. 28450, May 14, 2012

§385.3 Definitions and acronyms.

Applicable safety regulations or requirements means 49 CFR chapter III, subchapter B—Federal Motor Carrier Safety Regulations or, if the carrier is an intrastate motor carrier subject to the hazardous materials safety permit requirements in subpart E of this part, the equivalent State standards; and 49 CFR chapter I, subchapter C—Hazardous Materials Regulations.

CMV means a commercial motor vehicle as defined in **§390.5** of this subchapter.

Commercial motor vehicle shall have the same meaning as described in §390.5 of this subchapter, except that this definition will also apply to intrastate motor vehicles subject to the hazardous materials safety permit requirements of subpart E of this part.

FMCSA means the Federal Motor Carrier Safety Administration.

FMCSRs mean Federal Motor Carrier Safety Regulations (49 CFR parts 350-399).

HMRs means the Hazardous Materials Regulations (49 CFR parts 171-180).

Motor carrier operations in commerce means commercial motor vehicle transportation operations either—

(1) In interstate commerce, or

(2) Affecting interstate commerce.

New entrant is a motor carrier not domiciled in Mexico that applies for a United States Department of Transportation (DOT) identification number in order to initiate operations in interstate commerce.

New entrant registration is the registration (US DOT number) granted a new entrant before it can begin interstate operations in an 18-month monitoring period. A safety audit must be performed on a new entrant's operations within 12 months after receipt of its US DOT number for motor carriers of property and 120 days for motor carriers of passengers, and it must be found to have adequate basic safety management controls to continue operating in interstate commerce at the end of the 18-month period.

PHMSA means Pipeline and Hazardous Materials Safety Administration.

Preventable accident on the part of a motor carrier means an accident (1) that involved a commercial motor vehicle, and (2) that could have been averted but for an act, or failure to act, by the motor carrier or the driver.

Reviews. For the purposes of this part:

(1) Compliance review means an on-site examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action.

(2) Safety audit means an examination of a motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of the FMCSRs and applicable HMRs and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings.

(3) Safety management controls means the systems, policies programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage.

(4) Roadability review means an on-site examination of the intermodal equipment provider's compliance with the applicable FMCSRs.

Safety ratings.

(1) Satisfactory safety rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in §385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(2) Conditional safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in §385.5 (a) through (k).

(3) Unsatisfactory safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in §385.5 (a) through (k).

(4) Unrated carrier means that a safety rating has not been assigned to the motor carrier by the FMCSA.

53 Fed. Reg. 50968, Dec. 19, 1988, as amended at 56 Fed. Reg. 40805, Aug. 16, 1991; 62 Fed. Reg. 60042, Nov. 6, 1997; 67 Fed. Reg. 12779, Mar. 19, 2002; 67 Fed. Reg. 31983, May 13, 2002; 69 Fed. Reg. 39367, June 30, 2004; 72 Fed. Reg. 36788, July 5, 2007; 73 Fed. Reg. 76818, Dec. 17, 2008; 75 Fed. Reg. 17240, Apr. 5, 2010; 77 Fed. Reg. 28450, May 14, 2012; 78 Fed. Reg. 58481, Sept. 24, 2013; 78 Fed. Reg. 60232, Oct. 1, 2013; 80 Fed. Reg. 59073, Oct. 1, 2015

§385.4 Matter incorporated by reference.

(a) Incorporation by reference. Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, FMCSA must publish notice of change in the Federal Register and the material must be available to the public. All approved material is available for inspection at Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave. SE., Washington, DC 20590-0001; Attention: Chief, Compliance Division at 202-366-1812, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403,” April 1, 2016; incorporation by reference approved for §385.415(b).

77 Fed. Reg. 59825, Oct. 1, 2012, as amended at 78 Fed. Reg. 56620, Sept. 13, 2013; 78 Fed. Reg. 58481, Sept. 24, 2013; 79 Fed. Reg. 27768, May 15, 2014; 80 Fed. Reg. 34841, June 18, 2015; 81 Fed. Reg. 39590, June 17, 2016

§385.5 Safety fitness standard.

The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. For intrastate motor carriers subject to the hazardous materials safety permit requirements of subpart E of this part, the motor carrier must meet the equivalent State requirements. To meet the safety fitness standard, the motor carrier must demonstrate it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

(a) Commercial driver's license standard violations (part 383 of this chapter),

(b) Inadequate levels of financial responsibility (part 387 of this chapter),

(c) The use of unqualified drivers (part 391 of this chapter),

(d) Improper use and driving of motor vehicles (part 392 of this chapter),

(e) Unsafe vehicles operating on the highways (part 393 of this chapter),

(f) Failure to maintain accident registers and copies of accident reports (part 390 of this chapter),

(g) The use of fatigued drivers (part 395 of this chapter),

(h) Inadequate inspection, repair, and maintenance of vehicles (part 396 of this chapter),

(i) Transportation of hazardous materials, driving and parking rule violations (part 397 of this chapter),

(j) Violation of hazardous materials regulations (parts 170-177 of this title), and

(k) Motor vehicle accidents and hazardous materials incidents.

77 Fed. Reg. 28454, May 14, 2012

§385.7 Factors to be considered in determining a safety rating.

The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following:

(a) Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization, automation, etc., is found to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly.

(b) Frequency and severity of regulatory violations.

(c) Frequency and severity of driver/vehicle regulatory violations identified during roadside inspections of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(d) Number and frequency of out-of-service driver/vehicle violations of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(e) Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews.

(f) For motor carrier operations in commerce and (if the motor carrier operates in the United States) in Canada and Mexico: Frequency of accidents; hazardous materials incidents; accident rate per million miles; indicators of preventable accidents; and whether such accidents, hazardous materials incidents, and preventable accident indicators have increased or declined over time.

(g) Number and severity of violations of CMV and motor carrier safety rules, regulations, standards, and orders that are both issued by a State, Canada, or Mexico and compatible with Federal rules, regulations, standards, and orders.

53 Fed. Reg. 50968, Dec. 19, 1988, as amended at 58 Fed. Reg. 33776, June 21, 1993; 72 Fed. Reg. 36788, July 5, 2007

§385.9 Determination of a safety rating.

(a) Following a compliance review of a motor carrier operation, the FMCSA, using the factors prescribed in §385.7 as computed under the Safety Fitness Rating Methodology set forth in appendix B of this part, shall determine whether the present operations of the motor carrier are consistent with the safety fitness standard set forth in §385.5, and assign a safety rating accordingly.

(b) Unless otherwise specifically provided in this part, a safety rating will be issued to a motor carrier within 30 days following the completion of a compliance review.

62 Fed. Reg. 60042, Nov. 6, 1997, as amended at 75 Fed. Reg. 17241, Apr. 5, 2010; 77 Fed. Reg. 28450, May 14, 2012

§385.11 Notification of safety fitness determination.

(a) The FMCSA will provide a motor carrier written notice of any safety rating resulting from a compliance review as soon as practicable, but not later than 30 days after the review. The notice will take the form of a letter issued from the FMCSA's headquarters office and will include a list of FMCSR and HMR compliance deficiencies which the motor carrier must correct.

(b) If the safety rating is "satisfactory" or improves a previous "unsatisfactory" safety rating, it is final and becomes effective on the date of the notice.

(c) In all other cases, a notice of a proposed safety rating will be issued. It becomes the final safety rating after the following time periods:

(1) For motor carriers transporting hazardous materials in quantities requiring placarding or transporting passengers by CMV—45 days after the date of the notice.

(2) For all other motor carriers operating CMVs—60 days after the date of the notice.

(d) A proposed safety rating of "unsatisfactory" is a notice to the motor carrier that the FMCSA has made a preliminary determination that the motor carrier is "unfit" to continue operating in interstate commerce, and that the prohibitions in §385.13 will be imposed after 45 or 60 days if necessary safety improvements are not made.

(e) A motor carrier may request the FMCSA to perform an administrative review of a proposed or final safety rating. The process and the time limits are described in §385.15.

(f) A motor carrier may request a change to a proposed or final safety rating based upon its corrective actions. The process and the time limits are described in §385.17.

65 Fed. Reg. 50934, Aug. 22, 2000, as amended at 75 Fed. Reg. 17241, Apr. 5, 2010; 77 Fed. Reg. 28450, May 14, 2012

§385.13 Unsatisfactory rated motor carriers; prohibition on transportation; ineligibility for Federal contracts.

(a) Generally, a motor carrier rated "unsatisfactory" is prohibited from operating a CMV. Information on motor carriers, including their most current safety rating, is available from the FMCSA on the Internet at http://www.safersys.org, or by telephone at (800) 832-5660.

(1) Motor carriers transporting hazardous materials in quantities requiring placarding, and motor carriers transporting passengers in a CMV, are prohibited from operating a CMV in motor carrier operations in commerce beginning on the 46th day after the date of the FMCSA notice of proposed "unsatisfactory" rating.

(2) All other motor carriers rated as a result of reviews completed on or after November 20, 2000, are prohibited from operating a CMV in motor carrier operations in commerce beginning on the 61st day after the date of the FMCSA notice of proposed "unsatisfactory" rating. If FMCSA determines that the motor carrier is making a good-faith effort to improve its safety fitness, FMCSA may allow the motor carrier to operate for up to 60 additional days.

(b) A Federal agency must not use a motor carrier that holds an "unsatisfactory" rating to transport passengers in a CMV or to transport hazardous materials in quantities requiring placarding.

(c) A Federal agency must not use a motor carrier for other CMV transportation if that carrier holds an "unsatisfactory" rating which became effective on or after January 22, 2001.

(d) Penalties. (1) If a proposed "unsatisfactory" safety rating becomes final, FMCSA will issue an order placing out of service the motor carrier's operations in commerce. The out-of-service order shall apply both to the motor carrier's operations in interstate commerce and to its operations affecting interstate commerce.

(2) If a motor carrier's intrastate operations are declared out of service by a State, FMCSA must issue an order placing out of service the carrier's operations in interstate commerce. The following conditions apply:

(i) The State that issued the intrastate out-of-service order participates in the Motor Carrier Safety Assistance Program and uses the FMCSA safety rating methodology provided in this part; and

(ii) The motor carrier has its principal place of business in the State that issued the out-of-service order.

(iii) The order prohibiting the motor carrier from operating a CMV in interstate commerce shall remain in effect until the State determines that the carrier is fit.

(3) Any motor carrier that operates CMVs in violation of this section is subject to the penalty provisions of 49 U.S.C. 521(b) and appendix B to part 386 of the FMCSRs.

(e) Revocation of operating authority. If a proposed "unsatisfactory" safety rating or a proposed determination of unfitness becomes final, FMCSA will, following notice, issue an order revoking the operating authority of the owner or operator. For purposes of this section, the term "operating authority" means the registration required under 49 U.S.C. 13902 and §392.9a of this subchapter. Any motor carrier that operates CMVs after revocation of its operating authority will be subject to the penalty provisions listed in 49 U.S.C. 14901.

65 Fed. Reg. 50934, Aug. 22, 2000, as amended at 72 Fed. Reg. 36788, July 5, 2007; 72 Fed. Reg. 55700, Oct. 1, 2007; 75 Fed. Reg. 17241, Apr. 5, 2010; 77 Fed. Reg. 28450, 28454, May 14, 2012

§385.14 Motor carriers, brokers, and freight forwarders delinquent in paying civil penalties: prohibition on transportation.

(a) A CMV owner or operator that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating CMVs in interstate commerce under 49 CFR 386.83.

(b) A broker, freight forwarder, or for-hire motor carrier that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating in interstate commerce, and its registration may be suspended under the provisions of 49 CFR 386.84.

65 Fed. Reg. 78427, Dec. 15, 2000

§385.15 Administrative review.

(a) A motor carrier may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in assigning its proposed or final safety rating in accordance with §385.11.

(b) The motor carrier's request must explain the error it believes the FMCSA committed in issuing the safety rating. The motor carrier must include a list of all factual and procedural issues in dispute, and any information or documents that support its argument.

(c) The motor carrier must submit its request in writing to the Chief Safety Officer, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(1) If a motor carrier has received a notice of a proposed “unsatisfactory” safety rating, it should submit its request within 15 days from the date of the notice. This time frame will allow the FMCSA to issue a written decision before the prohibitions outlined in §385.13 (a)(1) and (2) take effect. Failure to petition within this 15-day period may prevent the FMCSA from issuing a final decision before such prohibitions take effect.

(2) A motor carrier must make a request for an administrative review within 90 days of the date of the proposed safety rating issued under §385.11 (c) or a final safety rating issued under §385.11 (b), or within 90 days after denial of a request for a change in rating under §385.17(i).

(d) The FMCSA may ask the motor carrier to submit additional data and attend a conference to discuss the safety rating. If the motor carrier does not provide the information requested, or does not attend the conference, the FMCSA may dismiss its request for review.

(e) The FMCSA will notify the motor carrier in writing of its decision following the administrative review. The FMCSA will complete its review:

(1) Within 30 days after receiving a request from a hazardous materials or passenger motor carrier that has received a proposed or final "unsatisfactory" safety rating.

(2) Within 45 days after receiving a request from any other motor carrier that has received a proposed or final "unsatisfactory" safety rating.

(f) The decision constitutes final agency action.

(g) Any motor carrier may request a rating change under the provisions of §385.17.

65 Fed. Reg. 50935, Aug. 22, 2000, as amended at 72 Fed. Reg. 55701, Oct. 1, 2007; 75 Fed. Reg. 17241, Apr. 5, 2010; 77 Fed. Reg. 28450, 28454, May 14, 2012

§385.17 Change to safety rating based upon corrective actions.

(a) A motor carrier that has taken action to correct the deficiencies that resulted in a proposed or final rating of "conditional" or "unsatisfactory" may request a rating change at any time.

(b) A motor carrier must make this request in writing to the FMCSA Service Center for the geographic area where the carrier maintains its principal place of business. The addresses and geographical boundaries of the Service Centers are listed in §390.27 of this chapter.

(c) The motor carrier must base its request upon evidence that it has taken corrective actions and that its operations currently meet the safety standard and factors specified in §§385.5 and 385.7. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the FMCSA to consider.

(d) The FMCSA will make a final determination on the request for change based upon the documentation the motor carrier submits, and any additional relevant information.

(e) The FMCSA will perform reviews of requests made by motor carriers with a proposed or final "unsatisfactory" safety rating in the following time periods after the motor carrier's request:

(1) Within 30 days for motor carriers transporting passengers in CMVs or placardable quantities of hazardous materials.

(2) Within 45 days for all other motor carriers.

(f) The filing of a request for change to a proposed or final safety rating under this section does not stay the 45-day period specified in §385.13(a)(1) for motor carriers transporting passengers or hazardous materials in quantities requiring placarding.

(g) FMCSA may allow a motor carrier (except a motor carrier transporting passengers or a motor carrier transporting hazardous materials in quantities requiring placarding) with a

proposed rating of "unsatisfactory" to continue its motor carrier operations in commerce for up to 60 days beyond the 60 days specified in the proposed rating, if FMCSA determines that the motor carrier is making a good faith effort to improve its safety status. This additional period would begin on the 61st day after the date of the notice of proposed "unsatisfactory" rating.

(h) If the FMCSA determines that the motor carrier has taken the corrective actions required and that its operations currently meet the safety standard and factors specified in §§385.5 and 385.7, the agency will notify the motor carrier in writing of its upgraded safety rating.

(i) If the FMCSA determines that the motor carrier has not taken all the corrective actions required, or that its operations still fail to meet the safety standard and factors specified in §§385.5 and 385.7, the agency will notify the motor carrier in writing.

(j) Any motor carrier whose request for change is denied in accordance with paragraph (i) of this section may request administrative review under the procedures of §385.15. The motor carrier must make the request within 90 days of the denial of the request for a rating change. If the proposed rating has become final, it shall remain in effect during the period of any administrative review.

65 Fed. Reg. 50935, Aug. 22, 2000, as amended at 72 Fed. Reg. 36788, July 5, 2007; 75 Fed. Reg. 17241, Apr. 5, 2010; 77 Fed. Reg. 28450, May 14, 2012; 77 Fed. Reg. 64762, Oct. 23, 2012

§385.19 Safety fitness information.

(a) Final ratings will be made available to other Federal and State agencies in writing, telephonically or by remote computer access.

(b) The final safety rating assigned to a motor carrier will be made available to the public upon request. Any person requesting the assigned rating of a motor carrier shall provide the FMCSA with the motor carrier's name, principal office address, and, if known, the USDOT number or the docket number, if any.

(c) Requests should be addressed to the Federal Motor Carrier Safety Administration, Office of Information Technology (MC-RI), 1200 New Jersey Ave., SE., Washington, DC 20590-0001. The information can also be found at the SAFER website: http://www.safersys.org.

(d) Oral requests by telephone to (800) 832-5660 will be given an oral response.

62 Fed. Reg. 60043, Nov. 6, 1997, as amended at 66 Fed. Reg. 49872, Oct. 1, 2001; 72 Fed. Reg. 55701, Oct. 1, 2007; 75 Fed. Reg. 17241, Apr. 5, 2010; 77 Fed. Reg. 28450, May 14, 2012; 77 Fed. Reg. 59826, Oct. 1, 2012

Subpart B—Safety Monitoring System for Mexico-Domiciled Carriers

Source: 67 Fed. Reg. 12771, Mar. 19, 2002, unless otherwise noted.

§385.101 Definitions

Compliance review means a compliance review as defined in §385.3 of this part.

Provisional certificate of registration means the registration under §368.6 of this subchapter that the FMCSA grants to a Mexico-domiciled motor carrier to provide interstate transportation of property within the United States solely within the municipalities along the United States-Mexico border and the commercial zones of such municipalities. It is provisional because it will be revoked if the registrant does not demonstrate that it is exercising basic safety management controls during the safety monitoring period established in this subpart.

Provisional operating authority means the registration under §365.507 of this subchapter that the FMCSA grants to a Mexico-domiciled motor carrier to provide interstate transportation within the United States beyond the municipalities along the United States-Mexico border and the commercial zones of such municipalities. It is provisional because it will be revoked if the registrant is not assigned a Satisfactory safety rating following a compliance review conducted during the safety monitoring period established in this subpart.

Safety audit means an examination of a motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of the FMCSRs and applicable HMRs and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings.

§385.103 Safety monitoring system.

(a) **General**. Each Mexico-domiciled carrier operating in the United States will be subject to an oversight program to monitor its compliance with applicable Federal Motor Carrier Safety Regulations (FMCSRs), Federal Motor Vehicle Safety Standards (FMVSSs), and Hazardous Materials Regulations (HMRs).

(b) **Roadside monitoring**. Each Mexico-domiciled carrier that receives provisional operating authority or a provisional Certificate of Registration will be subject to intensified monitoring through frequent roadside inspections.

(c) **CVSA decal**. Each Mexico-domiciled carrier granted provisional operating authority under part 365 of this subchapter must have on every commercial motor vehicle it operates in the United States a current decal attesting to a satisfactory inspection by a Commercial Vehicle Safety Alliance (CVSA) inspector.

(d) **Safety audit**. The FMCSA will conduct a safety audit on a Mexico-domiciled carrier within 18 months after the FMCSA issues the carrier a provisional Certificate of Registration under part 368 of this subchapter.

(e) **Compliance review**. The FMCSA will conduct a compliance review on a Mexico-domiciled carrier within 18 months after the FMCSA issues the carrier provisional operating authority under part 365 of this subchapter.

§385.105 Expedited action.

(a) A Mexico-domiciled motor carrier committing any of the following violations identified through roadside inspections, or by any other means, may be subjected to an expedited safety audit or compliance review, or may be required to submit a written response demonstrating corrective action:

(1) Using drivers not possessing, or operating without, a valid Licencia Federal de Conductor. An invalid Licencia Federal de Conductor includes one that is falsified, revoked, expired, or missing a required endorsement.

(2) Operating vehicles that have been placed out of service for violations of the Commercial Vehicle Safety Alliance (CVSA) North American Standard Out-of-Service Criteria, without making the required repairs.

(3) Involvement in, due to carrier act or omission, a hazardous materials incident within the United States involving:

(i) A highway route controlled quantity of a Class 7 (radioactive) material as defined in §173.403 of this title;

(ii) Any quantity of a Class 1, Division 1.1, 1.2, or 1.3 explosive as defined in §173.50 of this title; or

(iii) Any quantity of a poison inhalation hazard Zone A or B material as defined in §173.115, §173.132, or §173.133 of this title.

(4) Involvement in, due to carrier act or omission, two or more hazardous material incidents occurring within the United States and involving any hazardous material not listed in paragraph (a)(3) of this section and defined in chapter I of this title.

(5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.

(6) Operating within the United States a motor vehicle that is not insured as required by part 387 of this chapter.

(7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

(b) Failure to respond to an agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's provisional

operating authority or provisional Certificate of Registration until the required showing of corrective action is submitted to the FMCSA.

(c) A satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a safety audit or compliance review, as appropriate, during the provisional registration period.

§385.107 The safety audit.

(a) The criteria used in a safety audit to determine whether a Mexico-domiciled carrier exercises the necessary basic safety management controls are specified in appendix A to this part.

(b) If the FMCSA determines, based on the safety audit, that the Mexico-domiciled carrier has adequate basic safety management controls, the FMCSA will provide the carrier written notice of this finding as soon as practicable, but not later than 45 days after the completion of the safety audit. The carrier's Certificate of Registration will remain provisional and the carrier's on-highway performance will continue to be closely monitored for the remainder of the 18-month provisional registration period.

(c) If the FMCSA determines, based on the safety audit, that the Mexico-domiciled carrier's basic safety management controls are inadequate, it will initiate a suspension and revocation proceeding in accordance with §385.111 of this subpart.

(d) The safety audit is also used to assess the basic safety management controls of Mexico-domiciled applicants for provisional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border under §365.507 of this subchapter.

§385.109 The compliance review.

(a) The criteria used in a compliance review to determine whether a Mexico-domiciled carrier granted provisional operating authority under §365.507 of this subchapter exercises the necessary basic safety management controls are specified in Appendix B to this part.

(b) Satisfactory rating. If the FMCSA assigns a Mexico-domiciled carrier a Satisfactory rating following a compliance review conducted under this subpart, the FMCSA will provide the carrier written notice as soon as practicable, but not later than 45 days after the completion of the compliance review. The carrier's operating authority will remain in provisional status and its on-highway performance will continue to be closely monitored for the remainder of the 18-month provisional registration period.

(c) Conditional rating. If the FMCSA assigns a Mexico-domiciled carrier a Conditional rating following a compliance review conducted under this subpart, it will initiate a revocation proceeding in accordance with §385.111 of this subpart. The carrier's provisional operating authority will not be suspended prior to the conclusion of the revocation proceeding.

(d) Unsatisfactory rating. If the FMCSA assigns a Mexico-domiciled carrier an Unsatisfactory rating following a compliance review conducted under this subpart, it will initiate a suspension and revocation proceeding in accordance with §385.111 of this subpart.

§385.111 Suspension and revocation of Mexico-domiciled carrier registration.

(a) If a carrier is assigned an "Unsatisfactory" safety rating following a compliance review conducted under this subpart, or a safety audit conducted under this subpart determines that a carrier does not exercise the basic safety management controls necessary to ensure safe operations, the FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the compliance review or safety audit contains material error.

(b) For purposes of this section, material error is a mistake or series of mistakes that resulted in an erroneous safety rating or an erroneous determination that the carrier does not exercise the necessary basic safety management controls.

(c) If the carrier demonstrates that the compliance review or safety audit contained material error, its registration will not be suspended. If the carrier fails to show a material error in the safety audit, the FMCSA will issue an Order:

(1) Suspending the carrier's provisional operating authority or provisional Certificate of Registration and requiring it to immediately cease all further operations in the United States; and

(2) Notifying the carrier that its provisional operating authority or provisional Certificate of Registration will be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order.

(d) If a carrier is assigned a "Conditional" rating following a compliance review conducted under this subpart, the provisions of subparagraphs (a) through (c) of this section will apply, except that its provisional registration will not be suspended under paragraph (c)(1) of this section.

(e) If a carrier subject to this subpart fails to provide the necessary documents for a safety audit or compliance review upon reasonable request, or fails to submit evidence of the necessary corrective action as required by §385.105 of this subpart, the FMCSA will provide the carrier with written notice, as soon as practicable, that its registration will be suspended 15 days from the service date of the notice unless it provides all necessary documents or information. This suspension will remain in effect until the necessary documents or information are produced and:

(1) A safety audit determines that the carrier exercises basic safety management controls necessary for safe operations;

(2) The carrier is rated Satisfactory or Conditional after a compliance review; or

(3) The FMCSA determines, following review of the carrier's response to a demand for corrective action under §385.105, that the carrier has taken the necessary corrective action.

(f) If a carrier commits any of the violations specified in §385.105(a) of this subpart after the removal of a suspension issued under this section, the suspension will be automatically reinstated. The FMCSA will issue an Order requiring the carrier to cease further operations in the United States and demonstrate, within 15 days from the service date of the Order, that it did not commit the alleged violation(s). If the carrier fails to demonstrate that it did not commit the violation(s), the FMCSA will issue an Order revoking its provisional operating authority or provisional Certificate of Registration.

(g) If the FMCSA receives credible evidence that a carrier has operated in violation of a suspension order issued under this section, it will issue an Order requiring the carrier to show cause, within 10 days of the service date of the Order, why its provisional operating authority or provisional Certificate of Registration should not be revoked. If the carrier fails to make the necessary showing, the FMCSA will revoke its registration.

(h) If a Mexico-domiciled motor carrier operates a commercial motor vehicle in violation of a suspension or out-of-service order, it shall be subject to the penalty provisions in 49 U.S.C. 521(b) and the amount as stated in part 386, appendix B, of this chapter.

(i) Notwithstanding any provision of this subpart, a carrier subject to this subpart is also subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repeated violations of DOT regulations governing its motor carrier operations.

53 Fed. Reg. 50968, Dec. 19, 1988, as amended at 80 Fed. Reg. 18155, Apr. 3, 2015

§385.113 Administrative review.

(a) A Mexico-domiciled motor carrier may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in assigning a safety rating or suspending or revoking the carrier's provisional operating authority or provisional Certificate of Registration under this subpart.

(b) The carrier must submit its request in writing, in English, to the Associate Administrator for Enforcement and Program Delivery (MC-E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(c) The carrier's request must explain the error it believes the FMCSA committed in assigning the safety rating or suspending or revoking the carrier's provisional operating authority or provisional Certificate of Registration and include any information or documents that support its argument.

(d) The FMCSA will complete its administrative review no later than 10 days after the carrier submits its request for review. The Associate Administrator's decision will constitute the final agency action.

67 Fed. Reg. 12771, Mar. 19, 2002, as amended at 72 Fed. Reg. 55701, Oct. 1, 2007

§385.115 Reapplying for provisional registration.

(a) A Mexico-domiciled motor carrier whose provisional operating authority or provisional Certificate of Registration has been revoked may reapply under part 365 or 368 of this subchapter, as appropriate, no sooner than 30 days after the date of revocation.

(b) The Mexico-domiciled motor carrier will be required to initiate the application process from the beginning. The carrier will be required to demonstrate how it has corrected the deficiencies that resulted in revocation of its registration and how it will ensure that it will have adequate basic safety management controls. It will also have to undergo a pre-authorization safety audit if it applies for provisional operating authority under part 365 of this subchapter.

§385.117 Duration of safety monitoring system.

(a) Each Mexico-domiciled carrier subject to this subpart will remain in the safety monitoring system for at least 18 months from the date FMCSA issues its provisional Certificate of Registration or provisional operating authority, except as provided in paragraphs (c) and (d) of this section.

(b) If, at the end of this 18-month period, the carrier's most recent safety audit or safety rating was Satisfactory and no additional enforcement or safety improvement actions are pending under this subpart, the Mexico-domiciled carrier's provisional operating authority or provisional Certificate of Registration will become permanent.

(c) If, at the end of this 18-month period, the FMCSA has not been able to conduct a safety audit or compliance review, the carrier will remain in the safety monitoring system until a safety audit or compliance review is conducted. If the results of the safety audit or compliance review are satisfactory, the carrier's provisional operating authority or provisional Certificate of Registration will become permanent.

(d) If, at the end of this 18-month period, the carrier's provisional operating authority or provisional Certificate of Registration is suspended under §385.111(a) of this subpart, the carrier will remain in the safety monitoring system until the FMCSA either:

(1) Determines that the carrier has taken corrective action; or

(2) Completes measures to revoke the carrier's provisional operating authority or provisional Certificate of Registration under §385.111(c) of this subpart.

§385.119 Applicability of safety fitness and enforcement procedures.

At all times during which a Mexico-domiciled motor carrier is subject to the safety monitoring system in this subpart, it is also subject to the general safety fitness procedures

established in subpart A of this part and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

Subpart C—Certification of Safety Auditors, Safety Investigators, and Safety Inspectors

Source: 67 Fed. Reg. 12779, Mar. 19, 2002, unless otherwise noted.

§385.201 Who is qualified to perform a review of a motor carrier or an intermodal equipment provider?

(a) An FMCSA employee, or a State or local government employee funded through the Motor Carrier Safety Assistance Program (MCSAP), who was qualified to perform a compliance review before June 17, 2002, may perform a compliance review, safety audit, roadability review, or roadside inspection if he or she complies with §385.203(b).

(b) A person who was not qualified to perform a compliance review before June 17, 2002, may perform a compliance review, safety audit, roadability review, or roadside inspection after complying with the requirements of §385.203(a).

73 Fed. Reg. 76818, Dec. 17, 2008

§385.203 What are the requirements to obtain and maintain certification?

(a) After June 17, 2002, a person who is not qualified under §385.201(a) may not perform a compliance review, safety audit, roadability review, or roadside inspection unless he or she has been certified by FMCSA or a State or local agency applying the FMCSA standards after successfully completing classroom training and examinations on the FMCSRs and HMRs as described in detail on the FMCSA website (www.fmcsa.dot.gov). These employees must also comply with the maintenance of certification/qualification requirements of paragraph (b) of this section.

(b) Maintenance of certification/qualification. A person may not perform a compliance review, safety audit, roadability review, or roadside inspection unless he or she meets the quality-control and periodic re-training requirements adopted by the FMCSA to ensure the maintenance of high standards and familiarity with amendments to the FMCSRs and HMRs. These maintenance of certification/qualification requirements are described in detail on the FMCSA website (www.fmcsa.dot.gov).

(c) The requirements of paragraphs (a) and (b) of this section for training, performance and maintenance of certification/qualification, which are described on the FMCSA website (www.fmcsa.dot.gov), are also available in hard copy from the Federal Motor Carrier Safety Administration, Professional Development and Training Division (MC-MHT), 1310 N. Courthouse Road, Suite 600, Arlington, VA 22201.

67 Fed. Reg. 12779, Mar. 19, 2002, as amended at 72 Fed. Reg. 55701, Oct. 1, 2007; 73 Fed. Reg. 76819, Dec. 17, 2008; 83 Fed. Reg. 22876, May 17, 2018

§385.205 How can a person who has lost his or her certification be re-certified?

He or she must successfully complete the requirements of §385.203(a) and (b).

Subpart D—New Entrant Safety Assurance Program

Source: 67 Fed. Reg. 31983, May 13, 2002, unless otherwise noted.

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

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

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

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

80 Fed. Reg. 63707, Oct. 21, 2015

Effective Date Note: At 82 Fed. Reg. 5304, Jan. 17, 2017, §385.301 was suspended, effective Jan. 14, 2017.

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

(a) Before a motor carrier of property or passengers begins interstate operations, it must register with the FMCSA and receive a USDOT number. In addition, for-hire motor carriers must obtain operating authority from FMCSA following the registration procedures described in 49 CFed. Reg. part 365, unless providing transportation exempt from 49 CFR part 365 registration requirements.

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

(c) A Mexico-domiciled motor carrier of property or passengers must register with the FMCSA by following the registration procedures described in 49 CFR part 365 or 368, as appropriate. The regulations in this subpart do not apply to Mexico-domiciled carriers.

82 Fed. Reg. 5304, Jan. 17, 2017

§385.302 [Reserved]

Effective Date Note: At 82 Fed. Reg. 5304, Jan. 17, 2017, §385.302 was suspended, effective Jan. 14, 2017.

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

A motor carrier registers with FMCSA by completing Form MCSA-1, the URS online application which is available at http://www.fmcsa.dot.gov/urs. Complete instructions for the Form MCSA-1 also are available at the same location.

80 Fed. Reg. 63707, Oct. 21, 2015

Effective Date Note: At 82 Fed. Reg. 5304, Jan. 17, 2017, §385.303 was suspended, effective Jan. 14, 2017.

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

A motor carrier may contact the FMCSA by internet (www.fmcsa.dot.gov); or Washington, DC headquarters by mail at, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590-0001; fax 202-366-3477; or telephone 1-800-832-5660, and request the application materials for a new entrant motor carrier. Forms can also be downloaded from https://www.fmcsa.dot.gov/registration/registration-forms. A motor carrier which does not already have a USDOT number must apply online via the Unified Registration System (URS) at www.fmcsa.dot.gov/urs.

82 Fed. Reg. 5304, Jan. 17, 2017

§385.304 [Reserved]

Effective Date Note: At 82 Fed. Reg. 5304, Jan. 17, 2017, §385.304 was suspended, effective Jan. 14, 2017.

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

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

(b) The application package will include the following:

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

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

(c) Upon completion of the application form, the new entrant will be issued an inactive USDOT Number. An applicant may not begin operations nor mark a commercial motor vehicle with the USDOT Number until after the date of the Agency's written notice that the USDOT Number has been activated. Violations of this section may be subject to the penalties under §392.9b(b) of this chapter.

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

67 Fed. Reg. 31983, May 13, 2002, as amended by 80 Fed. Reg. 63707, Oct. 21, 2015

Effective Date Note: At 82 Fed. Reg. 5304, Jan. 17, 2017, §385.305 was suspended, effective Jan. 14, 2017.

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

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

(b) The application package will contain the following:

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

(2) The Form MCS-150, The Motor Carrier Identification Report.

(3) Application forms to obtain operating authority under 49 CFed. Reg. part 365, as appropriate.

(c) Upon completion of the application forms, the new entrant will be issued a USDOT number.

(d) For-hire motor carriers, unless providing transportation exempt from 49 CFR part 365 registration requirements, must also comply with the procedures established in 49 CFR part 365 to obtain operating authority before operating in interstate commerce.82 Fed. Reg. 5304, Jan. 17, 2017

§385.306 What are the consequences of furnishing misleading information or making a false statement in connection with the registration process?

A carrier that furnishes false or misleading information, or conceals material information in connection with the registration process, is subject to the following actions:

(a) Revocation of registration.

(b) Assessment of the civil and/or criminal penalties prescribed in 49 U.S.C. 521 and 49 U.S.C. chapter 149.

73 Fed. Reg. 76488, Dec. 16, 2008

§385.307 What happens after a motor carrier begins operations as a new entrant?

After a new entrant satisfies all applicable pre-operational requirements, it will be subject to the new entrant safety monitoring procedures for a period of 18 months. During this 18-month period:

(a) The new entrant's roadside safety performance will be closely monitored to ensure the new entrant has basic safety management controls that are operating effectively.

(b) A safety audit will be conducted on the new entrant, once it has been in operation for enough time to have sufficient records to allow the agency to evaluate the adequacy of its basic safety management controls. This period will generally be at least 3 months.

(c) All records and documents required for the safety audit shall be made available for inspection upon request by an individual certified under FMCSA regulations to perform safety audits.

67 Fed. Reg. 31983, May 13, 2002, as amended at 73 Fed. Reg. 76488, Dec. 16, 2008

§385.308 What may cause an expedited action?

(a) A new entrant that commits any of the following actions, identified through roadside inspections or by any other means, may be subjected to an expedited safety audit or a compliance review or may be required to submit a written response demonstrating corrective action:

(1) Using a driver not possessing a valid commercial driver's license to operate a commercial motor vehicle as defined under §383.5 of this chapter. An invalid commercial driver's license includes one that is falsified, revoked, expired, or missing a required endorsement.

(2) Operating a vehicle placed out of service for violations of the Federal Motor Carrier Safety Regulations or compatible State laws and regulations without taking necessary corrective action.

(3) Being involved in, through action or omission, a hazardous materials reportable incident, as described under 49 CFR 171.15 or 171.16, involving—

(i) A highway route controlled quantity of certain radioactive materials (Class 7).

(ii) Any quantity of certain explosives (Class 1, Division 1.1, 1.2, or 1.3).

(iii) Any quantity of certain poison inhalation hazard materials (Zone A or B).

(4) Being involved in, through action or omission, two or more hazardous materials reportable incidents as described under 49 CFR 171.15 or 171.16, involving hazardous materials other than those listed above.

(5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.

(6) Operating a commercial motor vehicle without the levels of financial responsibility required under part 387 of this subchapter.

(7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

(b) If a new entrant that commits any of the actions listed in paragraph (a) of this section:

(1) Has not had a safety audit or compliance review, FMCSA will schedule the new entrant for a safety audit as soon as practicable.

(2) Has had a safety audit or compliance review, FMCSA will send the new entrant a notice advising it to submit evidence of corrective action within 30 days of the service date of the notice.

(c) FMCSA may schedule a compliance review of a new entrant that commits any of the actions listed in paragraph (a) of this section at any time if it determines the violation warrants a thorough review of the new entrant's operation.

(d) Failure to respond within 30 days of the notice to an Agency demand for a written response demonstrating corrective action will result in the revocation of the new entrant's registration.

73 Fed. Reg. 76488, Dec. 16, 2008, as amended at 80 Fed. Reg. 59457, Oct. 2, 2015

§385.309 What is the purpose of the safety audit?

The purpose of a safety audit is to:

(a) Provide educational and technical assistance to the new entrant; and

(b) Gather safety data needed to make an assessment of the new entrant's safety performance and adequacy of its basic safety management controls.

§385.311 What will the safety audit consist of?

The safety audit will consist of a review of the new entrant's safety management systems and a sample of required records to assess compliance with the FMCSRs, applicable HMRs and related record-keeping requirements as specified in appendix A of this part. The areas for review include, but are not limited to, the following:

(a) Driver qualification;

(b) Driver duty status;

(c) Vehicle maintenance;

(d) Accident register; and

(e) Controlled substances and alcohol use and testing requirements.

§385.313 Who will conduct the safety audit?

An individual certified under the FMCSA regulations to perform safety audits will conduct the safety audit.

§385.315 Where will the safety audit be conducted?

The safety audit will generally be conducted at the new entrant's business premises.

§385.317 Will a safety audit result in a safety fitness determination by the FMCSA?

A safety audit will not result in a safety fitness determination. Safety fitness determinations follow completion of a compliance review.

§385.319 What happens after completion of the safety audit?

(a) Upon completion of the safety audit, the auditor will review the findings with the new entrant.

(b) Pass. If FMCSA determines the safety audit discloses the new entrant has adequate basic safety management controls, the Agency will provide the new entrant written notice as soon as practicable, but not later than 45 days after completion of the safety audit, that it has adequate basic safety management controls. The new entrant's safety performance will continue to be closely monitored for the remainder of the 18-month period of new entrant registration.

(c) Fail. If FMCSA determines the safety audit discloses the new entrant's basic safety management controls are inadequate, the Agency will provide the new entrant written notice, as soon as practicable, but not later than 45 days after the completion of the safety audit, that its USDOT new entrant registration will be revoked and its operations placed out-of-service unless it takes the actions specified in the notice to remedy its safety management practices.

(1) 60-day corrective action requirement. All new entrants, except those specified in paragraph (c)(2) of this section, must take the specified actions to remedy inadequate safety management practices within 60 days of the date of the notice.

(2) 45-day corrective action requirement. The new entrants listed below must take the specified actions to remedy inadequate safety management practices within 45 days of the date of the notice:

(i) A new entrant that transports passengers in a CMV designed or used to transport between 9 and 15 passengers (including the driver) for direct compensation.

(ii) A new entrant that transports passengers in a CMV designed or used to transport more than 15 passengers (including the driver).

(iii) A new entrant that transports hazardous materials in a CMV as defined in paragraph (4) of the definition of a "Commercial Motor Vehicle" in §390.5 of this subchapter.

73 Fed. Reg. 76489, Dec. 16, 2008

§385.321 What failures of safety management practices disclosed by the safety audit will result in a notice to a new entrant that its USDOT new entrant registration will be revoked?

(a) General. The failures of safety management practices consist of a lack of basic safety management controls as described in Appendix A of this part or failure to comply with one or more of the regulations set forth in paragraph (b) of this section and will result in a notice to a new entrant that its USDOT new entrant registration will be revoked.

(b) Automatic failure of the audit. A new entrant will automatically fail a safety audit if found in violation of any one of the following 16 regulations:

Table to §385.321—Violations That Will Result in Automatic Failure of the New Entrant Safety Audit

Violation	Guidelines for determining automatic failure of the safety audit
1. §382.115(a)/§382.115(b)—Failing to implement an alcohol and/or controlled substances testing program (domestic and foreign motor carriers, respectively)	Single occurrence.
2. §382.201—Using a driver known to have an alcohol content of 0.04 or greater to perform a safety-sensitive function	Single occurrence.
3. §382.211—Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382	Single occurrence.

4. §382.215—Using a driver known to have tested positive for a controlled substance	Single occurrence.
5. §382.305—Failing to implement a random controlled substances and/or alcohol testing program	Single occurrence.
6. §383.3(a)/§383.23(a)—Knowingly using a driver who does not possess a valid CDL	Single occurrence.
7. §383.37(b)-Knowingly allowing, requiring, permitting, or authorizing an employee to operate a commercial motor vehicle with a commercial learner's permit or commercial driver's license which is disqualified by a State, has lost the right to operate a CMV in a State or who is disqualified to operate a commercial motor vehicle	Single occurrence.
8. §383.51(a)—Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle	Single occurrence. This violation refers to a driver operating a CMV as defined under §383.5.
9. §387.7(a)—Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage	Single occurrence.
10. §387.31(a)—Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility	Single occurrence.
11. §391.15(a)—Knowingly using a disqualified driver	Single occurrence.
12. §391.11(b)(4)—Knowingly using a physically unqualified driver	Single occurrence. This violation refers to a driver operating a CMV as defined under §390.5.
13. §395.8(a)—Failing to require a driver to make a record of duty status	Requires a violation threshold (51% or more of examined records) to trigger automatic failure.
14. §396.9(c)(2)—Requiring or permitting the operation of a commercial motor vehicle declared “out-of-service” before repairs are made	Single occurrence.
15. §396.11(a)(3)—Failing to correct out-of-service defects listed by driver in a driver vehicle inspection report before the vehicle is operated	Single occurrence.
16. §396.17(a)—Using a commercial motor vehicle not periodically inspected	Requires a violation threshold (51% or more of examined records) to trigger automatic failure.

73 Fed. Reg. 76489, Dec. 16, 2008, as amended at 77 Fed. Reg. 26989, May 8, 2012; 80 Fed. Reg. 59073, Oct. 1, 2015

§385.323 May FMCSA extend the period under §385.319(c) for a new entrant to take corrective action to remedy its safety management practices?

(a) FMCSA may extend the 60-day period in §385.319(c)(1) for up to an additional 60 days provided FMCSA determines the new entrant is making a good faith effort to remedy its safety management practices.

(b) FMCSA may extend the 45-day period in §385.319(c)(2) for up to an additional 10 days if the new entrant has submitted evidence that corrective actions have been taken pursuant to §385.319(c) and the Agency needs additional time to determine the adequacy of the corrective action.

73 Fed. Reg. 76490, Dec. 16, 2008

§385.325 What happens after a new entrant has been notified under §385.319(c) to take corrective action to remedy its safety management practices?

(a) If the new entrant provides evidence of corrective action acceptable to the FMCSA within the time period provided in §385.319(c), including any extension of that period authorized under §385.323, the FMCSA will provide written notification to the new entrant that its DOT new entrant registration will not be revoked and it may continue operations.

(b) If a new entrant, after being notified that it is required to take corrective action to improve its safety management practices, fails to submit a written response demonstrating corrective action acceptable to FMCSA within the time specified in §385.319, and any extension of that period authorized under §385.323, FMCSA will revoke its new entrant registration and issue an out-of-service order effective on:

(1) Day 61 from the notice date for new entrants subject to §385.319(c)(1).

(2) Day 46 from the notice date for new entrants subject to §385.319(c)(2).

(3) If an extension has been granted under §385.323, the day following the expiration of the extension date.

(c) The new entrant may not operate in interstate commerce on or after the effective date of the out-of-service order.

67 Fed. Reg. 31983, May 13, 2002, as amended at 73 Fed. Reg. 76490, Dec. 16, 2008

§385.327 May a new entrant request an administrative review of a determination of a failed safety audit?

(a) If a new entrant receives a notice under §385.319(c) that its new entrant registration will be revoked, it may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in determining that its basic safety management controls are inadequate. The request must:

(1) Be made to the Field Administrator of the appropriate FMCSA Service Center.

(2) Explain the error the new entrant believes FMCSA committed in its determination.

(3) Include a list of all factual and procedural issues in dispute and any information or documents that support the new entrant's argument.

(b) FMCSA may request that the new entrant submit additional data and attend a conference to discuss the issues(s) in dispute. If the new entrant does not attend the conference or does not submit the requested data, FMCSA may dismiss the new entrant's request for review.

(c) A new entrant must submit a request for an administrative review within one of the following time periods:

(1) If it does not submit evidence of corrective action under §385.319(c), within 90 days after the date it is notified that its basic safety management controls are inadequate.

(2) If it submits evidence of corrective action under §385.319(c), within 90 days after the date it is notified that its corrective action is insufficient and its basic safety management controls remain inadequate.

(d) If a new entrant wants to assure that FMCSA will be able to issue a final written decision before the prohibitions outlined in §385.325(c) take effect, the new entrant must submit its request no later than 15 days from the date of the notice that its basic safety management controls are inadequate. Failure to submit the request within this 15-day period may result in revocation of new entrant registration and issuance of an out-of-service order before completion of administrative review.

(e) FMCSA will complete its review and notify the new entrant in writing of its decision within:

(1) 45 days after receiving a request for review from a new entrant that is subject to §385.319(c)(1).

(2) 30 days after receiving a request for review from a new entrant that is subject to §385.319(c)(2).

(f) The Field Administrator's decision constitutes the final Agency action.

(g) Notwithstanding this subpart, a new entrant is subject to the suspension and revocation provisions of 49 U.S.C. 13905 for violations of DOT regulations governing motor carrier operations.73 Fed. Reg. 76490, Dec. 16, 2008

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

(a) A new entrant whose USDOT new entrant registration has been revoked, and whose operations have been placed out of service by FMCSA, may reapply for new entrant registration no sooner than 30 days after the date of revocation.

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

(1) Submit an updated Form MCSA-1, the URS online application.

(2) Submit evidence that it has corrected the deficiencies that resulted in revocation of its registration and will otherwise ensure that it will have basic safety management controls in effect.

(3) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(c) If the USDOT new entrant registration was revoked because FMCSA found that the new entrant had failed to submit to a safety audit, it must do all of the following:

(1) Submit an updated Form MCSA-1, the URS online application.

(2) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(3) Submit to a safety audit.

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

73 Fed. Reg. 76490, Dec. 16, 2008, as amended at 80 Fed. Reg. 63707, Oct. 21, 2015

Effective Date Note: At 82 Fed. Reg. 5304, Jan. 17, 2017, §385.329 was suspended, effective Jan. 14, 2017.

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

(a) A new entrant whose USDOT new entrant registration has been revoked, and whose operations have been placed out of service by FMCSA, may reapply for new entrant registration no sooner than 30 days after the date of revocation.

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

(1) Submit an updated MCS-150.

(2) Submit evidence that it has corrected the deficiencies that resulted in revocation of its registration and will otherwise ensure that it will have basic safety management controls in effect.

(3) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(c) If the USDOT new entrant registration was revoked because FMCSA found that the new entrant had failed to submit to a safety audit, it must do all of the following:

(1) Submit an updated MCS-150.

(2) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(3) Submit to a safety audit.

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

82 Fed. Reg. 5304, Jan. 17, 2017

§385.331 What happens if a new entrant operates a CMV after having been issued an order placing its interstate operations out of service?

A new entrant that operates a CMV in violation of an out-of-service order is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A) for each offense as adjusted for inflation by 49 CFR part 386, appendix B.

73 Fed. Reg. 76491, Dec. 16, 2008

§385.333 What happens at the end of the 18-month safety monitoring period?

(a) If a safety audit has been performed within the 18-month period, and the new entrant is not currently subject to an order placing its operations out-of-service under §385.325(b) or under a notice ordering it to take specified actions to remedy its safety management controls

under §385.319(c), the FMCSA will remove the new entrant designation and notify the new entrant in writing that its registration has become permanent. Thereafter, the FMCSA will evaluate the motor carrier on the same basis as any other carrier.

(b) If a new entrant is determined to be "unfit" after a compliance review its new entrant registration will be revoked. (See §385.13)

(c) A new entrant that has reached the conclusion of the 18-month period but is under an order to correct its safety management practices under §385.319(c) will have its new entrant registration removed following FMCSA's determination that the specified actions have been taken to remedy its safety management practices. The motor carrier will be notified in writing that its new entrant designation is removed and that its registration has become permanent. Thereafter, the FMCSA will evaluate the motor carrier on the same basis as any other carrier.

(d) If a safety audit or compliance review has not been performed by the end of the 18-month monitoring period through no fault of the motor carrier, the carrier will be permitted to continue operating as a new entrant until a safety audit or compliance review is performed and a final determination is made regarding the adequacy of its safety management controls. Based on the results of the safety audit or compliance review, the FMCSA will either:

(1) Remove the new entrant designation and notify the new entrant in writing that its registration has become permanent; or

(2) Revoke the new entrant registration in accordance with §385.319(c).

§385.335 If the FMCSA conducts a compliance review on a new entrant, will the new entrant also be subject to a safety audit?

If the FMCSA conducts a compliance review on a new entrant that has not previously been subject to a safety audit and issues a safety fitness determination, the new entrant will not have to undergo a safety audit under this subpart. However, the new entrant will continue to be subject to the 18-month safety-monitoring period prior to removal of the new entrant designation.

§385.337 What happens if a new entrant refuses to permit a safety audit to be performed on its operations?

(a) If a new entrant refuses to permit a safety audit to be performed on its operations, FMCSA will provide the carrier with written notice that its registration will be revoked and its operations placed out of service unless the new entrant agrees in writing, within 10 days from the service date of the notice, to permit the safety audit to be performed. The refusal to permit a safety audit to be performed may subject the new entrant to the penalty provisions of 49 U.S.C. 521(b)(2)(A), as adjusted for inflation by 49 CFR part 386, appendix B.

(b) If the new entrant does not agree to undergo a safety audit as specified in paragraph (a) of this section, its registration will be revoked and its interstate operations placed out of

service effective on the 11th day from the service date of the notice issued under paragraph (a) of this section.

67 Fed. Reg. 31983, May 13, 2002, as amended at 73 Fed. Reg. 76491, Dec. 16, 2008

Subpart E—Hazardous Materials Safety Permits

Source: 69 Fed. Reg. 39367, June 30, 2004, unless otherwise noted.

§385.401 What is the purpose and scope of this subpart?

(a) This subpart contains the requirements for obtaining and maintaining a safety permit to transport certain hazardous materials. No one may transport the materials listed in §385.403 without a safety permit required by this subpart.

(b) This subpart includes:

(1) Definitions of terms used in this subpart;

(2) The list of hazardous materials that require a safety permit if transported in commerce;

(3) The requirements and procedures a carrier must follow in order to be issued a safety permit and maintain a safety permit;

(4) The procedures for a motor carrier to follow to initiate an administrative review of a denial, suspension, or revocation of a safety permit.

§385.402 What definitions are used in this subpart?

(a) The definitions in parts 390 and 385 of this chapter apply to this subpart, except where otherwise specifically noted.

(b) As used in this part,

Hazardous material has the same meaning as under §171.8 of this title: A substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under Sec. 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see §172.101 of this title), and materials that meet the defining criteria for hazard classes and divisions in part 173 of this title.

Hazmat employee has the same meaning as under §171.8 of this title: A person who is employed by a hazmat employer as defined under §171.8 of this title, and who in the course of

employment directly affects hazardous materials transportation safety. This term includes an owner-operator of a motor vehicle that transports hazardous materials in commerce. This term includes an individual who, during the course of employment:

(1) Loads, unloads, or handles hazardous materials;

(2) Manufactures, tests, reconditions, repairs, modifies, marks, or otherwise represents containers, drums, or packaging as qualified for use in the transportation of hazardous materials;

(3) Prepares hazardous materials for transportation;

(4) Is responsible for the safe transportation of hazardous materials; or

(5) Operates a vehicle used to transport hazardous materials.

Liquefied natural gas (LNG) means a Division 2.1 liquefied natural gas material that is transported in a liquid state with a methane content of 85 percent or more.

Safety permit means a document issued by FMCSA that contains a permit number and confers authority to transport in commerce the hazardous materials listed in §385.403.

Shipment means the offering or loading of hazardous materials at one loading facility using one transport vehicle, or the transport of that transport vehicle.

§385.403 Who must hold a safety permit?

After the date following January 1, 2005, that a motor carrier is required to file a Motor Carrier Identification Report Form (MCS-150) according to the schedule set forth in §390.19(a) of this chapter, the motor carrier may not transport in interstate or intrastate commerce any of the following hazardous materials, in the quantity indicated for each, unless the motor carrier holds a safety permit:

(a) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in §173.403 of this title;

(b) More than 25 kg (55 pounds) net weight of a Division 1.1, 1.2, or 1.3 (explosive) material or articles or an amount of a Division 1.5 (explosive) material requiring placarding under part 172 of this title;

(c) More than one liter (1.08 quarts) per package of a “material poisonous by inhalation,” as defined in §171.8 of this title, that meets the criteria for “hazard zone A,” as specified in §173.116(a) or §173.133(a) of this title;

(d) A “material poisonous by inhalation,” in a “bulk packaging,” both as defined in §171.8 of this title, that meets the criteria for “hazard zone B,” as specified in §173.116(a) or §173.133(a);

(e) A "material poisonous by inhalation," as defined in §171.8 of this title, that meets the criteria for "hazard zone C," or "hazard zone D," as specified in §173.116(a) of this title, in a packaging having a capacity equal to or greater than 13,248 L (3,500) gallons; or

(f) A shipment of methane (compressed or refrigerated liquid), natural gas (compressed or refrigerated liquid), or any other compressed or refrigerated liquefied gas with a methane content of at least 85 percent, in bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

69 Fed. Reg. 39367, June 30, 2004, as amended at 77 Fed. Reg. 59826, Oct. 1, 2012; 80 Fed. Reg. 59073, Oct. 1, 2015

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

(a) Application form. (1) To apply for a new safety permit or renewal of the safety permit, a motor carrier must complete and submit Form MCSA-1, the URS online application and meet the requirements under 49 CFR part 390, subpart E.

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

(b) Where to get forms and instructions. Form MCSA-1, the URS online application, is available, including complete instructions, at http://www.fmcsa.dot.gov/urs.

(c) Signature and certification. An official of the motor carrier must sign and certify that the information is correct on each form the motor carrier submits.

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

80 Fed. Reg. 63707, Oct. 21, 2015

Effective Date Note: At 82 Fed. Reg. 5304, Jan. 17, 2017, §385.405 was suspended, effective Jan. 14, 2017.

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

(a) Application form(s). (1) To apply for a new safety permit or renewal of the safety permit, a motor carrier must complete and submit Form MCS-150B, Combined Motor Carrier Identification Report and HM Permit Application.

(2) The Form MCS-150B will also satisfy the requirements for obtaining and renewing a USDOT Number; there is no need to complete Form MCS-150, Motor Carrier Identification Report.

(b) Where to get forms and instructions. The forms listed in paragraph (a) of this section, and instructions for completing the forms, may be obtained on the Internet at http://www.fmcsa.dot.gov, or by contacting FMCSA at Federal Motor Carrier Safety Administration, Office of Information Technology (MC-RI), 1200 New Jersey Ave. SE., Washington, DC 20590-0001, Telephone: 1-800-832-5660.

(c) Registration with the Pipeline and Hazardous Materials Safety Administration (PHMSA). The motor carrier must be registered with PHMSA in accordance with part 107, subpart G, of this title.

(d) Updating information on Form MCS-150B. A motor carrier holding a safety permit must report to FMCSA any change in the information on its Form MCS-150B within 30 days of the change. The motor carrier must use Form MCS-150B to report the new information (contact information in paragraph (b) of this section).

82 Fed. Reg. 5304, Jan. 17, 2017

§385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

(a) Motor carrier safety performance. (1) The motor carrier must have a "Satisfactory" safety rating assigned by either FMCSA, pursuant to the Safety Fitness Procedures of this part, or the State in which the motor carrier has its principal place of business, if the State has adopted and implemented safety fitness procedures that are equivalent to the procedures in subpart A of this part; and

(2) FMCSA will not issue a safety permit to a motor carrier that:

(i) Does not certify that it has a satisfactory security program as required in §385.407(b);

(ii) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA Motor Carrier Management Information System (MCMIS); or

(iii) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS.

(b) Satisfactory security program. The motor carrier must certify that it has a satisfactory security program, including:

(1) A security plan meeting the requirements of part 172, subpart I of this title, and addressing how the carrier will ensure the security of the written route plan required by this part;

(2) A communications plan that allows for contact between the commercial motor vehicle operator and the motor carrier to meet the periodic contact requirements in §385.415(c)(1); and

(3) Successful completion by all hazmat employees of the security training required in §172.704(a)(4) and (a)(5) of this title.

(c) Registration with the Pipeline and Hazardous Materials Safety Administration (PHMSA). The motor carrier must be registered with the PHMSA in accordance with part 107, subpart G of this title.

69 Fed. Reg. 39367, June 30, 2004, as amended at 75 Fed. Reg. 17241, Apr. 5, 2010; 77 Fed. Reg. 28450, May 14, 2012; 78 Fed. Reg. 58481, Sept. 24, 2013

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

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

(b) FMCSA will not issue a temporary safety permit to a motor carrier that:

(1) Does not certify that it has a satisfactory security program as required in §385.407(b);

(2) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA's MCMIS; or

(3) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS.

(c) A temporary safety permit shall be valid for 180 days after the date of issuance or until the motor carrier is assigned a new safety rating, whichever occurs first.

(1) A motor carrier that receives a Satisfactory safety rating will be issued a safety permit (see §385.421).

(2) A motor carrier that receives a less than Satisfactory safety rating is ineligible for a safety permit and will be subject to revocation of its temporary safety permit.

(d) If a motor carrier has not received a safety rating within the 180-day time period, FMCSA will extend the effective date of the temporary safety permit for an additional 60 days, provided the motor carrier demonstrates that it is continuing to operate in full compliance with the FMCSRs and HMRs.

69 Fed. Reg. 39367, June 30, 2004, as amended at 80 Fed. Reg. 63708, Oct. 21, 2015

Effective Date Note: At 82 Fed. Reg. 5305, Jan. 17, 2017, §385.409 was suspended, effective Jan. 14, 2017.

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

(a) Temporary safety permit. If a motor carrier does not meet the criteria in §385.407(a), FMCSA may issue it a temporary safety permit. To obtain a temporary safety permit a motor carrier must certify on Form MCS-150B that it is operating in full compliance with the HMRs; with the FMCSRs, and/or comparable State regulations, whichever is applicable; and with the minimum financial responsibility requirements in part 387 of this chapter or in State regulations, whichever is applicable.

(b) FMCSA will not issue a temporary safety permit to a motor carrier that:

(1) Does not certify that it has a satisfactory security program as required in §385.407(b);

(2) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA's Motor Carrier Management Information System (MCMIS); or

(3) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS.

(c) A temporary safety permit shall be valid for 180 days after the date of issuance or until the motor carrier is assigned a new safety rating, whichever occurs first.

(1) A motor carrier that receives a Satisfactory safety rating will be issued a safety permit (see §385.421T).

(2) A motor carrier that receives a less than Satisfactory safety rating is ineligible for a safety permit and will be subject to revocation of its temporary safety permit.

(d) If a motor carrier has not received a safety rating within the 180-day time period, FMCSA will extend the effective date of the temporary safety permit for an additional 60 days, provided the motor carrier demonstrates that it is continuing to operate in full compliance with the FMCSRs and HMRs.

82 Fed. Reg. 5305, Jan. 17, 2017

§385.411 Must a motor carrier obtain a safety permit if it has a State permit?

Yes. However, if FMCSA is able to verify that a motor carrier has a safety permit issued by a State under a program that FMCSA has determined to be equivalent to the provisions of this subpart, FMCSA will immediately issue a safety permit to the motor carrier upon receipt of an application in accordance with §385.405, without further inspection or investigation.

§385.413 What happens if a motor carrier receives a proposed safety rating that is less than Satisfactory?

(a) If a motor carrier does not already have a safety permit, it will not be issued a safety permit (including a temporary safety permit) unless and until a Satisfactory safety rating is issued to the motor carrier.

(b) If a motor carrier holds a safety permit (including a temporary safety permit), the safety permit will be subject to revocation or suspension (see §385.421).

§385.415 What operational requirements apply to the transportation of a hazardous material for which a permit is required?

(a) Information that must be carried in the vehicle. During transportation, the following must be maintained in each commercial motor vehicle that transports a hazardous material listed in §385.403 and must be made available to an authorized official of a Federal, State, or local government agency upon request.

(1) A copy of the safety permit or another document showing the permit number, provided that document clearly indicates the number is the FMCSA Safety Permit number;

(2) A written route plan that meets the requirements of §397.101 of this chapter for highway route-controlled Class 7 (radioactive) materials or §397.67 of this chapter for Division 1.1, 1.2, and 1.3 (explosive) materials; and

(3) The telephone number, including area code or country code, of an employee of the motor carrier or representative of the motor carrier who is familiar with the routing of the permitted material. The motor carrier employee or representative must be able to verify that the shipment is within the general area for the expected route for the permitted material. The telephone number, when called, must be answered directly by the motor carrier or its representative at all times while the permitted material is in transportation including storage incidental to transportation. Answering machines are not sufficient to meet this requirement.

(b)(1) Inspection of vehicle transporting Class 7 (radioactive) materials. Before a motor carrier may transport a highway route controlled quantity of a Class 7 (radioactive) material, the motor carrier must have a pre-trip inspection performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of the "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403", (incorporated by reference, see §385.4).

(2) All materials incorporated by reference are available for inspection at the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001; and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202)

741-6030, or go to:
http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(c) Additional requirements. A motor carrier transporting hazardous materials requiring a permit under this part must also meet the following requirements:

(1) The operator of a motor vehicle used to transport a hazardous material listed in §385.403 must follow the communications plan required in §385.407(b)(2) to make contact with the carrier at the beginning and end of each duty tour, and at the pickup and delivery of each permitted load. Contact may be by telephone, radio or via an electronic tracking or monitoring system. The motor carrier or driver must maintain a record of communications for 6 months after the initial acceptance of a shipment of hazardous material for which a safety permit is required. The record of communications must contain the name of the driver, identification of the vehicle, permitted material(s) being transported, and the date, location, and time of each contact required under this section.

(2) The motor carrier should contact the Transportation Security Administration's Transportation Security Coordination Center (703-563-3236 or 703-563-3237) at any time the motor carrier suspects its shipment of a hazardous material listed in §385.403 is lost, stolen or otherwise unaccounted for.

69 Fed. Reg. 39367, June 30, 2004, as amended at 72 Fed. Reg. 55701, Oct. 1, 2007; 77 Fed. Reg. 59826, Oct. 1, 2012

§385.417 Is a motor carrier's safety permit number available to others?

Upon request, a motor carrier must provide the number of its safety permit to a person who offers a hazardous material listed in §385.403 for transportation in commerce. A motor carrier's permit number will also be available to the public on the FMCSA Safety and Fitness Electronic Records System at http://www.safersys.org.

§385.419 How long is a safety permit effective?

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

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

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

80 Fed. Reg. 63708, Oct. 21, 2015

Effective Date Note: At 82 Fed. Reg. 5305, Jan. 17, 2017, §385.419 was suspended, effective Jan. 14, 2017.

§385.419T How long is a safety permit effective?

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

(a) A safety permit will be subject to revocation if a motor carrier fails to submit a renewal application (Form MCS-150B) in accordance with the schedule set forth for filing Form MCS-150 in §390.19T(a) of this chapter; and

(b) An existing safety permit will remain in effect pending FMCSA's processing of an application for renewal if a motor carrier submits the required application (Form MS-150B) in accordance with the schedule set forth in §390.19T(a)(2) and (3) of this chapter.

82 Fed. Reg. 5305, Jan. 17, 2017

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

(a) Grounds. A safety permit will be subject to revocation or suspension by FMCSA for the following reasons:

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

(2) A motor carrier provides any false or misleading information on its application form (Form MCSA-1) or as part of updated information it is providing on Form MCSA-1 (see §385.405(d)).

(3) A motor carrier is issued a final safety rating that is less than Satisfactory;

(4) A motor carrier fails to maintain a satisfactory security plan as set forth in §385.407(b);

(5) A motor carrier fails to comply with applicable requirements in the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner showing that the motor carrier is not fit to transport the hazardous materials listed in §385.403;

(6) A motor carrier fails to comply with an out-of-service order;

(7) A motor carrier fails to comply with any other order issued under the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in

a manner showing that the motor carrier is not fit to transport the hazardous materials listed in §385.403;

(8) A motor carrier fails to maintain the minimum financial responsibility required by §387.9 of this chapter or an applicable State requirement;

(9) A motor carrier fails to maintain current hazardous materials registration with the Pipeline and Hazardous Materials Safety Administration; or

(10) A motor carrier loses its operating rights or has its registration suspended in accordance with §386.83 or §386.84 of this chapter for failure to pay a civil penalty or abide by a payment plan.

(b) Determining whether a safety permit is revoked or suspended. A motor carrier's safety permit will be suspended the first time any of the conditions specified in paragraph (a) of this section are found to apply to the motor carrier. A motor carrier's safety permit will be revoked if any of the conditions specified in paragraph (a) of this section are found to apply to the motor carrier and the carrier's safety permit has been suspended in the past for any of the reasons specified in paragraph (a) of this section.

(c) Effective date of suspension or revocation. A suspension or revocation of a safety permit is effective:

(1) Immediately after FMCSA determines that an imminent hazard exists, after FMCSA issues a final safety rating that is less than Satisfactory, or after a motor carrier loses its operating rights or has its registration suspended for failure to pay a civil penalty or abide by a payment plan;

(2) Thirty (30) days after service of a written notification that FMCSA proposes to suspend or revoke a safety permit, if the motor carrier does not submit a written request for administrative review within that time period; or

(3) As specified in §385.423(c), when the motor carrier submits a written request for administrative review of FMCSA's proposal to suspend or revoke a safety permit.

(4) A motor carrier whose safety permit has been revoked will not be issued a replacement safety permit or temporary safety permit for 365 days from the time of revocation.

69 Fed. Reg. 39367, June 30, 2004, as amended at 78 Fed. Reg. 58481, Sept. 24, 2013; 80 Fed. Reg. 63708, Oct. 21, 2015

Effective Date Note: At 82 Fed. Reg. 5305, Jan. 17, 2017, §385.421 was suspended, effective Jan. 14, 2017.

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

(a) Grounds. A safety permit will be subject to revocation or suspension by FMCSA for the following reasons:

(1) A motor carrier fails to submit a renewal application (Form MCS-150B) in accordance with the schedule set forth in §390.19T(a)(2) and (3) of this chapter;

(2) A motor carrier provides any false or misleading information on its application (Form MCS-150B) or as part of updated information it is providing on Form MCS-150B (see §385.405T(d)).

(3) A motor carrier is issued a final safety rating that is less than Satisfactory;

(4) A motor carrier fails to maintain a satisfactory security plan as set forth in §385.407(b);

(5) A motor carrier fails to comply with applicable requirements in the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner showing that the motor carrier is not fit to transport the hazardous materials listed in §385.403;

(6) A motor carrier fails to comply with an out-of-service order;

(7) A motor carrier fails to comply with any other order issued under the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner showing that the motor carrier is not fit to transport the hazardous materials listed in §385.403;

(8) A motor carrier fails to maintain the minimum financial responsibility required by §387.9 of this chapter or an applicable State requirement;

(9) A motor carrier fails to maintain current hazardous materials registration with the Pipeline and Hazardous Materials Safety Administration; or

(10) A motor carrier loses its operating rights or has its registration suspended in accordance with §386.83 or §386.84 of this chapter for failure to pay a civil penalty or abide by a payment plan.

(b) Determining whether a safety permit is revoked or suspended. A motor carrier's safety permit will be suspended the first time any of the conditions specified in paragraph (a) of this section are found to apply to the motor carrier. A motor carrier's safety permit will be revoked if any of the conditions specified in paragraph (a) of this section are found to apply to the motor carrier and the carrier's safety permit has been suspended in the past for any of the reasons specified in paragraph (a) of this section.

(c) Effective date of suspension or revocation. A suspension or revocation of a safety permit is effective:

(1) Immediately after FMCSA determines that an imminent hazard exists, after FMCSA issues a final safety rating that is less than Satisfactory, or after a motor carrier loses its operating rights or has its registration suspended for failure to pay a civil penalty or abide by a payment plan;

(2) Thirty (30) days after service of a written notification that FMCSA proposes to suspend or revoke a safety permit, if the motor carrier does not submit a written request for administrative review within that time period; or

(3) As specified in §385.423(c), when the motor carrier submits a written request for administrative review of FMCSA's proposal to suspend or revoke a safety permit.

(4) A motor carrier whose safety permit has been revoked will not be issued a replacement safety permit or temporary safety permit for 365 days from the time of revocation.

82 Fed. Reg. 5305, Jan. 17, 2017

§385.423 Does a motor carrier have a right to an administrative review of a denial, suspension, or revocation of a safety permit?

A motor carrier has a right to an administrative review pursuant to the following procedures and conditions:

(a) Less than Satisfactory safety rating. If a motor carrier is issued a proposed safety rating that is less than Satisfactory, it has the right to request (1) an administrative review of a proposed safety rating, as set forth in §385.15, and (2) a change to a proposed safety rating based on corrective action, as set forth in §385.17. After a motor carrier has had an opportunity for administrative review of, or change to, a proposed safety rating, FMCSA's issuance of a final safety rating constitutes final agency action, and a motor carrier has no right to further administrative review of FMCSA's denial, suspension, or revocation of a safety permit when the motor carrier has been issued a final safety rating that is less than Satisfactory.

(b) Failure to pay civil penalty or abide by payment plan. If a motor carrier is notified that failure to pay a civil penalty will result in suspension or termination of its operating rights, it has the right to an administrative review of that proposed action in a show cause proceeding, as set forth in §386.83(b) or §386.84(b) of this chapter. The decision by FMCSA's Chief Safety Officer in the show cause proceeding constitutes final agency action, and a motor carrier has no right to further administrative review of FMCSA's denial, suspension, or revocation of a safety permit when the motor carrier has lost its operating rights or had its registration suspended for failure to pay a civil penalty or abide by a payment plan.

(c) Other grounds. Under circumstances other than those set forth in paragraphs (a) and (b) of this section, a motor carrier may submit a written request for administrative review within 30 days after service of a written notification that FMCSA has denied a safety permit, that FMCSA has immediately suspended or revoked a safety permit, or that FMCSA has proposed to suspend or revoke a safety permit. The rules for computing time limits for service and requests

for extension of time in §§386.5, 386.6, and 386.8 of this chapter apply to the proceedings on a request for administrative review under this section.

(1) The motor carrier must send or deliver its written request for administrative review to FMCSA Chief Safety Officer, with a copy to FMCSA Chief Counsel, at the following addresses:

(i) Chief Safety Officer, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001 Attention: Adjudications Counsel (MC-CC).

(ii) Chief Counsel (MC-CC), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(2) A request for administrative review must state the specific grounds for review and include all information, evidence, and arguments upon which the motor carrier relies to support its request for administrative review.

(3) Within 30 days after service of a written request for administrative review, the Office of the Chief Counsel shall submit to the Chief Safety Officer a written response to the request for administrative review. The Office of the Chief Counsel must serve a copy of its written response on the motor carrier requesting administrative review.

(4) The Chief Safety Officer may decide a motor carrier's request for administrative review on the written submissions, hold a hearing personally, or refer the request to an administrative law judge for a hearing and recommended decision. The Chief Safety Officer or administrative law judge is authorized to specify, and must notify the parties of, specific procedural rules to be followed in the proceeding (which may include the procedural rules in part 386 of this chapter that are considered appropriate).

(5) If a request for administrative review is referred to an administrative law judge, the recommended decision of the administrative law judge becomes the final decision of the Chief Safety Officer 45 days after service of the recommended decision is served, unless either the motor carrier or the Office of the Chief Counsel submits a petition for review to the Chief Safety Officer (and serves a copy of its petition on the other party) within 15 days after service of the recommended decision. In response to a petition for review of a recommended decision of an administrative law judge:

(i) The other party may submit a written reply within 15 days of service of the petition for review.

(ii) The Chief Safety Officer may adopt, modify, or set aside the recommended decision of an administrative law judge, and may also remand the petition for review to the administrative law judge for further proceedings.

(6) The Chief Safety Officer will issue a final decision on any request for administrative review when:

(i) The request for administrative review has not been referred to an administrative law judge;

(ii) A petition for review of a recommended decision by an administrative law judge has not been remanded to the administrative law judge for further proceedings; or

(iii) An administrative law judge has held further proceedings on a petition for review and issued a supplementary recommended decision.

(7) The decision of the Chief Safety Officer (including a recommended decision of an administrative law judge that becomes the decision of the Chief Safety Officer under paragraph (c)(5) of this section) constitutes final agency action, and there is no right to further administrative reconsideration or review.

(8) Any appeal of a final agency action under this section must be taken to an appropriate United States Court of Appeals. Unless the Court of Appeals issues a stay pending appeal, the final agency action shall not be suspended while the appeal is pending.

69 Fed. Reg. 39367, June 30, 2004, as amended at 72 Fed. Reg. 55701, Oct. 1, 2007

Subpart F—Intermodal Equipment Providers

Source: 73 Fed. Reg. 76819, Dec. 17, 2008, unless otherwise noted.

§385.501 Roadability review.

(a) FMCSA will perform roadability reviews of intermodal equipment providers, as defined in §390.5 of this chapter.

(b) FMCSA will evaluate the results of the roadability review using the criteria in appendix A to this part as they relate to compliance with parts 390, 393, and 396 of this chapter.

§385.503 Results of roadability review.

(a) FMCSA will not assign a safety rating to an intermodal equipment provider based on the results of a roadability review. However, FMCSA may cite the intermodal equipment provider for violations of parts 390, 393, and 396 of this chapter and may impose civil penalties resulting from the roadability review.

(b) FMCSA may prohibit the intermodal equipment provider from tendering specific items of intermodal equipment determined to constitute an "imminent hazard" (See §386.72(b)(1) of this chapter).

(c) FMCSA may prohibit an intermodal equipment provider from tendering any intermodal equipment from a particular location or multiple locations if the agency determines

the intermodal equipment provider's failure to comply with the FMCSRs constitutes an imminent hazard under §386.72(b)(1).

Subpart G [Reserved]

Subpart H—Special Rules for New Entrant Non-North America-Domiciled Carriers

Source: 73 Fed. Reg. 76491, Dec. 16, 2008, unless otherwise noted.

§385.601 Scope of rules.

The rules in this subpart govern the application by a non-North America-domiciled motor carrier to provide transportation of property and passengers in interstate commerce in the United States.

§385.603 Application.

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

(1) Form MCSA-1, the URS online application; and

(2) A notification of the means used to designate process agents, either by submission in the application package of Form BOC-3, Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, or a letter stating that the applicant will use a process agent service that will submit the Form BOC-3 electronically.

(b) The FMCSA will process an application only if it meets the following conditions:

(1) The application must be completed in English.

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

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

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

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

(d) Form MCSA-1 is the URS online application and is available, including complete instructions, at http://www.fmcsa.dot.gov/urs.

80 Fed. Reg. 63708, Oct. 21, 2015

Effective Date Note: At 82 Fed. Reg. 5305, Jan. 17, 2017, §385.603 was suspended, effective Jan. 14, 2017.

§385.603T Application.

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

(1) Form OP-1(NNA)—Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers;

(2) Form MCS-150—Motor Carrier Identification Report; and

(3) A notification of the means used to designate process agents, either by submission in the application package of Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders or a letter stating that the applicant will use a process agent service that will submit the Form BOC-3 electronically.

(b) FMCSA will only process an application if it meets the following conditions:

(1) The application must be completed in English;

(2) The information supplied must be accurate, complete, and include all required supporting documents and applicable certifications in accordance with the instructions to Form OP-1(NNA), Form MCS-150 and Form BOC-3;

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

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

(c) An applicant must submit the application to the address provided in Form OP-1(NNA).

(d) An applicant may obtain the application forms from any FMCSA Division Office or download them from the FMCSA Web site at: http://www.fmcsa.dot.gov/forms/forms.htm.

82 Fed. Reg. 5305, Jan. 17, 2017

§385.605 New entrant registration driver's license and drug and alcohol testing requirements.

(a) A non-North America-domiciled motor carrier must use only drivers who possess a valid commercial driver's license—a CDL, Canadian Commercial Driver's License, or Mexican Licencia de Federal de Conductor—to operate its vehicles in the United States.

(b) A non-North America-domiciled motor carrier must subject each of the drivers described in paragraph (a) of this section to drug and alcohol testing as prescribed under part 382 of this subchapter.

§385.607 FMCSA action on the application.

(a) FMCSA will review and act on each application submitted under this subpart in accordance with the procedures set out in this part.

(b) FMCSA will validate the accuracy of information and certifications provided in the application by checking, to the extent available, data maintained in databases of the governments of the country where the carrier's principal place of business is located and the United States.

(c) Pre-authorization safety audit. Every non-North America-domiciled motor carrier that applies under this part must satisfactorily complete an FMCSA-administered safety audit before FMCSA will grant new entrant registration to operate in the United States. The safety audit is a review by FMCSA of the carrier's written procedures and records to validate the accuracy of information and certifications provided in the application and determine whether the carrier has established or exercises the basic safety management controls necessary to ensure safe operations. FMCSA will evaluate the results of the safety audit using the criteria in the Appendix to this subpart.

(d) An application of a non-North America-domiciled motor carrier requesting for-hire operating authority under part 365 of this subchapter may be protested under §365.109(b). Such a carrier will be granted new entrant registration after successful completion of the pre-authorization safety audit and the expiration of the protest period, provided the application is not protested. If a protest to the application is filed with FMCSA, new entrant registration will be granted only if FMCSA denies or rejects the protest.

(e) If FMCSA grants new entrant registration to the applicant, it will assign a distinctive USDOT Number that identifies the motor carrier as authorized to operate in the United States. In order to initiate operations in the United States, a non-North America-domiciled motor carrier with new entrant registration must:

(1) Have its surety or insurance provider file proof of financial responsibility in the form of certificates of insurance, surety bonds, and endorsements, as required by §387.7(e)(2), §387.31(e)(2), and §387.301 of this subchapter, as applicable; and

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

(f) A non-North America-domiciled motor carrier must comply with all provisions of the safety monitoring system in part 385, subpart I of this subchapter, including successfully passing North American Standard commercial motor vehicle inspections at least every 90 days and

having safety decals affixed to each commercial motor vehicle operated in the United States as required by §385.703(c) of this subchapter.

(g) FMCSA may not re-designate a non-North America-domiciled carrier's registration from new entrant to permanent prior to 18 months after the date its USDOT Number is issued and subject to successful completion of the safety monitoring system for non-North America-domiciled carriers set out in part 385, subpart I of this subchapter. Successful completion includes obtaining a Satisfactory safety rating as the result of a compliance review.

73 Fed. Reg. 76491, Dec. 16, 2008, as amended at 80 Fed. Reg. 63708, Oct. 21, 2015

Effective Date Note: At 82 Fed. Reg. 5306, Jan. 17, 2017, §385.607 was suspended, effective Jan. 14, 2017.

§385.607T FMCSA action on the application.

(a) FMCSA will review and act on each application submitted under this subpart in accordance with the procedures set out in this part.

(b) FMCSA will validate the accuracy of information and certifications provided in the application by checking, to the extent available, data maintained in databases of the governments of the country where the carrier's principal place of business is located and the United States.

(c) Pre-authorization safety audit. Every non-North America-domiciled motor carrier that applies under this part must satisfactorily complete an FMCSA-administered safety audit before FMCSA will grant new entrant registration to operate in the United States. The safety audit is a review by FMCSA of the carrier's written procedures and records to validate the accuracy of information and certifications provided in the application and determine whether the carrier has established or exercises the basic safety management controls necessary to ensure safe operations. FMCSA will evaluate the results of the safety audit using the criteria in the appendix to this subpart.

(d) An application of a non-North America-domiciled motor carrier requesting for-hire operating authority under part 365 of this subchapter may be protested under §365.109T(b). Such a carrier will be granted new entrant registration after successful completion of the pre-authorization safety audit and the expiration of the protest period, provided the application is not protested. If a protest to the application is filed with FMCSA, new entrant registration will be granted only if FMCSA denies or rejects the protest.

(e) If FMCSA grants new entrant registration to the applicant, it will assign a distinctive USDOT Number that identifies the motor carrier as authorized to operate in the United States. In order to initiate operations in the United States, a non-North America-domiciled motor carrier with new entrant registration must:

(1) Have its surety or insurance provider file proof of financial responsibility in the form of certificates of insurance, surety bonds, and endorsements, as required by §§387.7(e)(2), 387.31(e)(2), and 387.301T of this subchapter, as applicable; and

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

(f) A non-North America-domiciled motor carrier must comply with all provisions of the safety monitoring system in subpart I of this part, including successfully passing North American Standard commercial motor vehicle inspections at least every 90 days and having safety decals affixed to each commercial motor vehicle operated in the United States as required by §385.703(c).

(g) FMCSA may not re-designate a non-North America-domiciled carrier's registration from new entrant to permanent prior to 18 months after the date its USDOT Number is issued and subject to successful completion of the safety monitoring system for non-North America-domiciled carriers set out in subpart I of this part. Successful completion includes obtaining a Satisfactory safety rating as the result of a compliance review.

82 Fed. Reg. 5306, Jan. 17, 2017

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

(a)(1) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information the Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders that occur during the application process or after having been granted new entrant registration.

(2) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information in Section A of Form MCSA-1 that occur during the application process or after the motor carrier has been granted new entrant registration. The motor carrier must report the changes or corrections within 30 days of the change. The motor carrier must use Form MCSA-1, the URS online application, to report the new information.

(3) A motor carrier must notify FMCSA in writing within 45 days of the change or correction to information under paragraphs (a)(1) or (a)(2) of this section.

(b) If a motor carrier fails to comply with paragraph (a) of this section, FMCSA may suspend or revoke its new entrant registration until it meets those requirements.

73 Fed. Reg. 76491, Dec. 16, 2008, as amended at 78 Fed. Reg. 52650, Aug. 23, 2013; 80 Fed. Reg. 63708, Oct. 21, 2015

Effective Date Note: At 82 Fed. Reg. 5306, Jan. 17, 2017, §385.609 was suspended, effective Jan. 14, 2017.

§385.609T Requirement to notify FMCSA of change in applicant information.

(a)(1) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information the Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders that occur during the application process or after having been granted new entrant registration.

(2) A motor carrier subject to this subpart must notify FMCSA of any changes or corrections to the information in Section I, IA or II of Form OP-1(NNA)—Application for U.S. Department of Transportation (USDOT) Registration by Non-North America-Domiciled Motor Carriers that occurs during the application process or after having been granted new entrant registration.

(3) A motor carrier must notify FMCSA in writing within 45 days of the change or correction to information under paragraph (a)(1) or (2) of this section.

(b) If a motor carrier fails to comply with paragraph (a) of this section, FMCSA may suspend or revoke its new entrant registration until it meets those requirements.

82 Fed. Reg. 5306, Jan. 17, 2017

Appendix to Subpart H of Part 385—Explanation of Pre-Authorization Safety Audit Evaluation Criteria for Non-North America-Domiciled Motor Carriers

I. General

(a) FMCSA will perform a safety audit of each non-North America-domiciled motor carrier before granting the carrier new entrant registration to operate within the United States.

(b) FMCSA will conduct the safety audit at a location specified by the FMCSA. All records and documents must be made available for examination within 48 hours after a request is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period.

(c) The safety audit will include:

(1) Verification of available performance data and safety management programs;

(2) Verification of a controlled substances and alcohol testing program consistent with part 40 of this title;

(3) Verification of the carrier's system of compliance with hours-of-service rules in part 395 of this subchapter, including recordkeeping and retention;

(4) Verification of proof of financial responsibility;

(5) Review of available data concerning the carrier's safety history, and other information necessary to determine the carrier's preparedness to comply with the Federal Motor Carrier Safety Regulations, parts 382 through 399 of this subchapter, and the Federal Hazardous Material Regulations, parts 171 through 180 of this title;

(6) Inspection of available commercial motor vehicles to be used under new entrant registration, if any of these vehicles have not received a decal required by §385.703(c) of this subchapter;

(7) Evaluation of the carrier's safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections;

(8) Verification of drivers' qualifications, including confirmation of the validity of the CDL, Canadian Commercial Driver's License, or Mexican Licencia de Federal de Conductor, as applicable, of each driver the carrier intends to assign to operate under its new entrant registration; and

(9) An interview of carrier officials to review safety management controls and evaluate any written safety oversight policies and practices.

(d) To successfully complete the safety audit, a non-North America-domiciled motor carrier must demonstrate to FMCSA that it has the required elements in paragraphs I (c)(2), (3), (4), (7), and (8) of this appendix and other basic safety management controls in place which function adequately to ensure minimum acceptable compliance with the applicable safety requirements. FMCSA developed “safety audit evaluation criteria,” which uses data from the safety audit and roadside inspections to determine that each applicant for new entrant registration has basic safety management controls in place.

(e) The safety audit evaluation process developed by FMCSA is used to:

(1) Evaluate basic safety management controls and determine if each non-North America-domiciled carrier and each driver is able to operate safely in the United States; and

(2) Identify motor carriers and drivers who are having safety problems and need improvement in their compliance with the FMCSRs and the HMRs, before FMCSA issues new entrant registration to operate within the United States.

II. Source of the Data for the Safety Audit Evaluation Criteria

(a) The FMCSA's evaluation criteria are built upon the operational tool known as the safety audit. FMCSA developed this tool to assist auditors, inspectors, and investigators in assessing the adequacy of a non-North America-domiciled carrier's basic safety management controls.

(b) The safety audit is a review of a non-North America-domiciled motor carrier's operation and is used to:

(1) Determine if a carrier has the basic safety management controls required by 49 U.S.C. 31144; and

(2) In the event that a carrier is found not to be in compliance with applicable FMCSRs and HMRs, educate the carrier on how to comply with U.S. safety rules.

(c) Documents such as those contained in driver qualification files, records of duty status, vehicle maintenance records, drug and alcohol testing records, and other records are reviewed for compliance with the FMCSRs and HMRs. Violations are cited on the safety audit. Performance-based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable accident information is also collected.

III. Overall Determination of the Carrier's Basic Safety Management Controls

(a) The carrier will not receive new entrant registration if FMCSA cannot:

(1) Verify a controlled substances and alcohol testing program consistent with part 40 of this title;

(2) Verify a system of compliance with the hours-of-service rules of this subchapter, including recordkeeping and retention;

(3) Verify proof of financial responsibility;

(4) Verify records of periodic vehicle inspections; and

(5) Verify the qualifications of each driver the carrier intends to assign to operate commercial motor vehicles in the United States, as required by parts 383 and 391 of this subchapter, including confirming the validity of each driver's CDL, Canadian Commercial Driver's License, or Mexican Licencia de Federal de Conductor, as appropriate.

(b) If FMCSA confirms each item under paragraphs III (a)(1) through (5) of this appendix, the carrier will receive new entrant registration, unless FMCSA finds the carrier has inadequate basic safety management controls in at least three separate factors described in part IV of this appendix. If FMCSA makes such a determination, the carrier's application for new entrant registration will be denied.

IV. Evaluation of Regulatory Compliance

(a) During the safety audit, FMCSA gathers information by reviewing a motor carrier's compliance with “acute” and “critical” regulations of the FMCSRs and HMRs.

(b) Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier.

(c) Critical regulations are those where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls.

(d) The list of the acute and critical regulations, which are used in determining if a carrier has basic safety management controls in place, is included in Appendix B, VII, List of Acute and Critical Regulations to part 385 of this subchapter.

(e) Noncompliance with acute and critical regulations are indicators of inadequate safety management controls and usually higher than average accident rates.

(f) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into six regulatory areas called “factors.” The regulatory factors, evaluated on the adequacy of the carrier's safety management controls, are:

(1) Factor 1—General: Parts 387 and 390;

(2) Factor 2—Driver: Parts 382, 383, and 391;

(3) Factor 3—Operational: Parts 392 and 395;

(4) Factor 4—Vehicle; Parts 393, 396 and inspection data for the last 12 months;

(5) Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397; and

(6) Factor 6—Accident: Recordable Accident Rate per Million Miles.

(g) For each instance of noncompliance with an acute regulation, 1.5 points will be assessed.

(h) For each instance of noncompliance with a critical regulation, 1 point will be assessed.

(i) Vehicle Factor. (1) When at least three vehicle inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months before the safety audit or performed at the time of the review, the Vehicle Factor (part 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute and critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor as follows:

(i) If the motor carrier has had at least three roadside inspections in the twelve months before the safety audit, and the vehicle OOS rate is 34 percent or higher, one point will be assessed against the carrier. That point will be added to any other points assessed for discovered noncompliance with acute and critical regulations of part 396 of this chapter to determine the carrier's level of safety management control for that factor.

(ii) If the motor carrier's vehicle OOS rate is less than 34 percent, or if there are less than three inspections, the determination of the carrier's level of safety management controls will only

be based on discovered noncompliance with the acute and critical regulations of part 396 of this chapter.

(2) Roadside inspection information is retained in the MCMIS and is integral to evaluating a motor carrier's ability to successfully maintain its vehicles, thus preventing being placed OOS during a roadside inspection. Each safety audit will continue to have the requirements of part 396 of this chapter, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

(j) Accident Factor. (1) In addition to the five regulatory factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate, which the carrier has experienced during the past 12 months. Recordable accident, as defined in 49 CFR 390.5, means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(2) [Reserved]

(3) The recordable accident rate will be used in determining the carrier's basic safety management controls in Factor 6, Accident. It will be used only when a carrier incurs two or more recordable accidents within the 12 months before the safety audit. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.5 will be deemed to have inadequate basic safety management controls for the accident factor. The rates are the result of roughly doubling the United States national average accident rate in Fiscal Years 1994, 1995, and 1996.

(4) FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: “If a driver, who exercises normal judgment and foresight, could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.”

(k) Factor Ratings. (1) The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor. Each carrier's level of basic safety management controls with each factor is determined as follows:

(i) Factor 1—General: Parts 390 and 387;

(ii) Factor 2—Driver: Parts 382, 383, and 391;

(iii) Factor 3—Operational: Parts 392 and 395;

(iv) Factor 4—Vehicle: Parts 393, 396 and the Out of Service Rate;

(v) Factor 5—Hazardous Materials: Part 171, 177, 180 and 397; and

(vi) Factor 6—Accident: Recordable Accident Rate per Million Miles;

(2) For paragraphs IV (k)(1)(i) through (v) of this appendix (Factors 1 through 5), if the combined violations of acute and/or critical regulations for each factor is equal to three or more points, the carrier is determined not to have basic safety management controls for that individual factor.

(3) For paragraph IV (k)(1)(vi) of this appendix, if the recordable accident rate is greater than 1.7 recordable accidents per million miles for an urban carrier (1.5 for all other carriers), the carrier is determined to have inadequate basic safety management controls.

(l) Notwithstanding FMCSA verification of the items listed in paragraphs III (a)(1) through (5) of this appendix, if the safety audit determines the carrier has inadequate basic safety management controls in at least three separate factors described in paragraph III of this appendix, the carrier's application for new entrant registration will be denied. For example, FMCSA evaluates a carrier finding:

(1) One instance of noncompliance with a critical regulation in part 387 scoring one point for Factor 1;

(2) Two instances of noncompliance with acute regulations in part 382 scoring three points for Factor 2;

(3) Three instances of noncompliance with critical regulations in part 396 scoring three points for Factor 4; and

(4) Three instances of noncompliance with acute regulations in parts 171 and 397 scoring four and one-half (4.5) points for Factor 5.

Under this example, the carrier will not receive new entrant registration because it scored three or more points for Factors 2, 4, and 5 and FMCSA determined the carrier had inadequate basic safety management controls in at least three separate factors.

Subpart I—Safety Monitoring System for Non-North American Carriers

Source: 73 Fed. Reg. 76494, Dec. 16, 2008, unless otherwise noted.

§385.701 Definitions.

The following definitions apply to this subpart:

Compliance review means a compliance review as defined in §385.3 of this part.

New entrant registration means the provisional registration under subpart H of this part that FMCSA grants to a non-North America-domiciled motor carrier to provide interstate transportation within the United States. It will be revoked if the registrant is not assigned a Satisfactory safety rating following a compliance review conducted during the safety monitoring period established in this subpart.

Non-North America-domiciled motor carrier means a motor carrier of property or passengers whose principal place of business is located in a country other than the United States, Canada or Mexico.

Back to Top

§385.703 Safety monitoring system.

(a) General. Each non-North America-domiciled carrier new entrant will be subject to an oversight program to monitor its compliance with applicable Federal Motor Carrier Safety Regulations (FMCSRs), Federal Motor Vehicle Safety Standards (FMVSSs), and Hazardous Materials Regulations (HMRs).

(b) Roadside monitoring. Each non-North America-domiciled carrier new entrant will be subject to intensified monitoring through frequent roadside inspections.

(c) Safety decal. Each non-North America-domiciled carrier must have on every commercial motor vehicle it operates in the United States a current decal attesting to a satisfactory North American Standard Commercial Vehicle inspection by a certified FMCSA or State inspector pursuant to 49 CFR 350.201(k). This requirement applies during the new entrant operating period and for three years after the carrier's registration becomes permanent following removal of its new entrant designation.

(d) Compliance review. FMCSA will conduct a compliance review on a non-North America-domiciled carrier within 18 months after FMCSA issues the carrier a USDOT Number.

§385.705 Expedited action.

(a) A non-North America-domiciled motor carrier committing any of the following actions identified through roadside inspections, or by any other means, may be subjected to an expedited compliance review, or may be required to submit a written response demonstrating corrective action:

(1) Using a driver not possessing, or operating without, a valid CDL, Canadian Commercial Driver's License, or Mexican Licencia Federal de Conductor. An invalid commercial driver's license includes one that is falsified, revoked, expired, or missing a required endorsement.

(2) Operating a vehicle placed out of service for violations of the Federal Motor Carrier Safety Regulations without taking the necessary corrective action.

(3) Being involved in, through action or omission, a hazardous materials reportable incident, as described under 49 CFR 171.15 or 171.16, within the United States involving—

(i) A highway route controlled quantity of certain radioactive materials (Class 7).

(ii) Any quantity of certain explosives (Class 1, Division 1.1, 1.2, or 1.3).

(iii) Any quantity of certain poison inhalation hazard materials (Zone A or B).

(4) Being involved in, through action or omission, two or more hazardous materials reportable incidents, as described under 49 CFR 171.15 or 171.16, occurring within the United States and involving any hazardous material not listed in paragraph (a)(3) of this section.

(5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.

(6) Operating within the United States a commercial motor vehicle without the levels of financial responsibility required under part 387 of this subchapter.

(7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

(b) Failure to respond to an Agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's new entrant registration until the required showing of corrective action is submitted to the FMCSA.

(c) A satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a compliance review during the new entrant registration period.

§385.707 The compliance review.

(a) The criteria used in a compliance review to determine whether a non-North America-domiciled new entrant exercises the necessary basic safety management controls are specified in appendix B to this part.

(b) Satisfactory Rating. If FMCSA assigns a non-North America-domiciled carrier a Satisfactory rating following a compliance review conducted under this subpart, FMCSA will provide the carrier written notice as soon as practicable, but not later than 45 days after the completion of the compliance review. The carrier's registration will remain in provisional status and its on-highway performance will continue to be closely monitored for the remainder of the 18-month new entrant registration period.

(c) Conditional Rating. If FMCSA assigns a non-North America-domiciled carrier a Conditional rating following a compliance review conducted under this subpart, it will initiate a revocation proceeding in accordance with §385.709 of this subpart. The carrier's new entrant registration will not be suspended prior to the conclusion of the revocation proceeding.

(d) Unsatisfactory Rating. If FMCSA assigns a non-North America-domiciled carrier an Unsatisfactory rating following a compliance review conducted under this subpart, it will initiate a suspension and revocation proceeding in accordance with §385.709 of this subpart.

§385.709 Suspension and revocation of non-North America-domiciled carrier registration.

(a) If a carrier is assigned an "Unsatisfactory" safety rating following a compliance review conducted under this subpart, FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the compliance review contains material error.

(b) For purposes of this section, material error is a mistake or series of mistakes that resulted in an erroneous safety rating.

(c) If the carrier demonstrates that the compliance review contained material error, its new entrant registration will not be suspended. If the carrier fails to show a material error in the compliance review, FMCSA will issue an Order:

(1) Suspending the carrier's new entrant registration and requiring it to immediately cease all further operations in the United States; and

(2) Notifying the carrier that its new entrant registration will be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order.

(d) If a carrier is assigned a "Conditional" rating following a compliance review conducted under this subpart, the provisions of paragraphs (a) through (c) of this section will apply, except that its new entrant registration will not be suspended under paragraph (c)(1) of this section.

(e) If a carrier subject to this subpart fails to provide the necessary documents for a compliance review upon reasonable request, or fails to submit evidence of the necessary corrective action as required by §385.705 of this subpart, FMCSA will provide the carrier with written notice, as soon as practicable, that its new entrant registration will be suspended 15 days from the service date of the notice unless it provides all necessary documents or information. This suspension will remain in effect until the necessary documents or information is produced and:

(1) The carrier is rated Satisfactory after a compliance review; or

(2) FMCSA determines, following review of the carrier's response to a demand for corrective action under §385.705, that the carrier has taken the necessary corrective action.

(f) If a carrier commits any of the actions specified in §385.705(a) of this subpart after the removal of a suspension issued under this section, the suspension will be automatically reinstated. FMCSA will issue an Order requiring the carrier to cease further operations in the United States and demonstrate, within 15 days from the service date of the Order, that it did not commit the alleged action(s). If the carrier fails to demonstrate that it did not commit the action(s), FMCSA will issue an Order revoking its new entrant registration.

(g) If FMCSA receives credible evidence that a carrier has operated in violation of a suspension order issued under this section, it will issue an Order requiring the carrier to show cause, within 10 days of the service date of the Order, why its new entrant registration should not be revoked. If the carrier fails to make the necessary showing, FMCSA will revoke its registration.

(h) If a non-North America-domiciled motor carrier operates a commercial motor vehicle in violation of a suspension or out-of-service order, it is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A), as adjusted by inflation, not to exceed amounts for each offense under part 386, Appendix B of this subchapter.

(i) Notwithstanding any provision of this subpart, a carrier subject to this subpart is also subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repeated violations of DOT regulations governing its motor carrier operations.

§385.711 Administrative review.

(a) A non-North America-domiciled motor carrier may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in assigning a safety rating or suspending or revoking the carrier's new entrant registration under this subpart.

(b) The carrier must submit its request in writing, in English, to the Associate Administrator for Enforcement and Program Delivery, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington DC 20590.

(c) The carrier's request must explain the error it believes FMCSA committed in assigning the safety rating or suspending or revoking the carrier's new entrant registration and include any information or documents that support its argument.

(d) FMCSA will complete its administrative review no later than 10 days after the carrier submits its request for review. The Associate Administrator's decision will constitute the final Agency action.

§385.713 Reapplying for new entrant registration.

(a) A non-North America-domiciled motor carrier whose provisional new entrant registration has been revoked may reapply for new entrant registration no sooner than 30 days after the date of revocation.

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

(1) Submit an updated Form MCSA-1, the URS online application;

(2) Submit evidence that it has corrected the deficiencies that resulted in revocation of its registration and will otherwise ensure that it will have basic safety management controls in effect.

(3) Successfully complete a pre-authorization safety audit in accordance with §385.607(c) of this part.

(4) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

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

(1) Submit an updated Form MCSA-1, the URS online application;

(2) Successfully complete a pre-authorization safety audit in accordance with §385.607(c) of this part.

(3) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(4) Submit to a compliance review upon request.

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

73 Fed. Reg. 76494, Dec. 16, 2008, as amended at 80 Fed. Reg. 63708, Oct. 21, 2015

Effective Date Note: At 82 Fed. Reg. 5306, Jan. 17, 2017, §385.713 was suspended, effective Jan. 14, 2017.

§385.713T Reapplying for new entrant registration.

(a) A non-North America-domiciled motor carrier whose provisional new entrant registration has been revoked may reapply for new entrant registration no sooner than 30 days after the date of revocation.

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

(1) Submit an updated MCS-150.

(2) Submit evidence that it has corrected the deficiencies that resulted in revocation of its registration and will otherwise ensure that it will have basic safety management controls in effect.

(3) Successfully complete a pre-authorization safety audit in accordance with §385.607T(c).

(4) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

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

(1) Submit an updated MCS-150.

(2) Successfully complete a pre-authorization safety audit in accordance with §385.607T(c).

(3) Begin the 18-month new entrant monitoring cycle again as of the date the re-filed application is approved.

(4) Submit to a compliance review upon request.

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

82 Fed. Reg. 5306, Jan. 17, 2017

§385.715 Duration of safety monitoring system.

(a) Each non-North America-domiciled carrier subject to this subpart will remain in the safety monitoring system for at least 18 months from the date FMCSA issues its new entrant registration, except as provided in paragraphs (c) and (d) of this section.

(b) If, at the end of this 18-month period, the carrier's most recent safety rating was Satisfactory and no additional enforcement or safety improvement actions are pending under this subpart, the non-North America-domiciled carrier's new entrant registration will become permanent.

(c) If, at the end of this 18-month period, FMCSA has not been able to conduct a compliance review, the carrier will remain in the safety monitoring system until a compliance review is conducted. If the results of the compliance review are satisfactory, the carrier's new entrant registration will become permanent.

(d) If, at the end of this 18-month period, the carrier's new entrant registration is suspended under §385.709(a) of this subpart, the carrier will remain in the safety monitoring system until FMCSA either:

(1) Determines that the carrier has taken corrective action; or

(2) Completes measures to revoke the carrier's new entrant registration under §385.709(c) of this subpart.

§385.717 Applicability of safety fitness and enforcement procedures.

At all times during which a non-North America-domiciled motor carrier is subject to the safety monitoring system in this subpart, it is also subject to the general safety fitness procedures established in subpart A of this part and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

Subpart J [Reserved]

Subpart K—Pattern or Practice of Safety Violations by Motor Carrier Management

Source: 79 Fed. Reg. 3537, Jan. 22, 2014, unless otherwise noted.

§385.901 Applicability.

The requirements in this subpart apply to for-hire motor carriers, employers, officers and persons registered or required to be registered under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368. When used in this subpart, the term “motor carrier” includes all for-hire motor carriers, employers, officers and other persons, however designated, that are registered or required to be registered under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368.

§385.903 Definitions.

As used in this subpart:

Agency Official means the Director of FMCSA's Office of Enforcement and Compliance or his or her designee.

Controlling Influence means having or exercising authority, whether by act or omission, to direct some or all of a motor carrier's operational policy and/or safety management controls.

Officer means an owner, director, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of the title attached to those functions, and any person, however designated, exercising controlling influence over the operations of a motor carrier.

Registration means the registration required under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368.

§385.905 Suspension or revocation of registration.

(a) General. (1) If a motor carrier engages or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations on commercial motor vehicle safety under 49 U.S.C. Chapter 311, subchapter III, FMCSA may suspend or revoke the motor carrier's registration.

(2) If a motor carrier permits any person to exercise controlling influence over the motor carrier's operations and that person engages in or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations on commercial motor vehicle safety 49 U.S.C. Chapter 311, subchapter III while acting on behalf of any motor carrier, FMCSA may suspend or revoke the motor carrier's registration.

(b) Determination. (1) The Agency Official may issue an order to revoke or suspend a motor carrier's registration, or require compliance with an order issued to redress violations of a statutory or regulatory requirement prescribed under 49 U.S.C. Chapter 311, subchapter III, upon a determination that the motor carrier engages or has engaged in a pattern or practice of avoiding regulatory compliance or masking or otherwise concealing regulatory noncompliance.

(2) The Agency Official may issue an order to revoke or suspend a motor carrier's registration, or require compliance with an order issued to redress violations of a statutory or regulatory requirement prescribed under 49 U.S.C. Chapter 311, subchapter III, upon a determination that the motor carrier permitted a person to exercise controlling influence over the motor carrier's operations if that person engages in or has engaged in a pattern or practice of avoiding regulatory compliance or masking or otherwise concealing regulatory noncompliance.

§385.907 Regulatory noncompliance.

A motor carrier or person acting on behalf of a motor carrier avoids regulatory compliance or masks or otherwise conceals regulatory noncompliance by, independently or on behalf of another motor carrier, failing to or concealing failure to:

(a) Comply with statutory or regulatory requirements prescribed under 49 U.S.C., Chapter 311, subchapter III;

(b) Comply with an FMCSA or State order issued to redress violations of a statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III;

(c) Pay a civil penalty assessed for a violation of a statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III; or

(d) Respond to an enforcement action for a violation of a statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III.

§385.909 Pattern or practice.

The Agency Official may determine that a motor carrier or person acting on behalf of a motor carrier engages or has engaged in a pattern or practice of avoiding regulatory compliance, or masking or otherwise concealing regulatory noncompliance for purposes of this subpart, by considering, among other things, the following factors, which, in the case of persons acting on behalf of a motor carrier, may be related to conduct undertaken on behalf of any motor carrier:

(a) The frequency, remoteness in time, or continuing nature of the conduct;

(b) The extent to which the regulatory violations caused by the conduct create a risk to safety;

(c) The degree to which the conduct has affected the safety of operations, including taking into account any crashes, deaths, or injuries associated with the conduct;

(d) Whether the motor carrier or person acting on a motor carrier's behalf knew or should have known that the conduct violated applicable statutory or regulatory requirements;

(e) Safety performance history, including pending or closed enforcement actions, if any;

(f) Whether the motor carrier or person acting on a motor carrier's behalf engaged in the conduct for the purpose of avoiding compliance or masking or otherwise concealing noncompliance; and

(g) In the case of a person acting on a motor carrier's behalf, the extent to which the person exercises a controlling influence on the motor carrier's operations.

§385.911 Suspension proceedings.

(a) General. The Agency Official may issue an order to suspend a motor carrier's registration based on a determination made in accordance with §385.905(b).

(b) Commencement of proceedings. The Agency Official commences a proceeding under this section by serving an order to show cause to the motor carrier and, if the proceeding is based on the conduct of another person, by also serving a copy on the person alleged to have engaged in the pattern or practice that resulted in a proceeding instituted under this section, which:

(1) Provides notice that the Agency is considering whether to suspend the motor carrier's registration;

(2) Provides notice of the factual and legal basis for the order;

(3) Directs the motor carrier to show good cause within 30 days of service of the order to show cause why its registration should not be suspended;

(4) Informs the motor carrier that its response to the order to show cause must be in writing, state the factual and legal basis for its response, and include all documentation, if any, the motor carrier wants considered;

(5) Informs the motor carrier of the address and name of the person to whom the response should be directed and served;

(6) Provides notice to the person(s) alleged to have engaged in the pattern or practice that resulted in the proceeding instituted under this section, if any, of their right to intervene in the proceeding; and

(7) Informs the motor carrier that its registration will be suspended on the 35th day after service of the order, if the motor carrier or an intervening person does not respond to the order.

(c) Right of individual person(s) to intervene. A person(s) alleged to have engaged in the pattern or practice that resulted in a proceeding under this section may intervene in the proceeding. The person(s) may—but are not required to—serve a separate response and supporting documentation to an order served under paragraph (b) of this section, within 30 days of being served with the order. Failure to timely serve a response constitutes waiver of the right to intervene.

(d) Review of response. The Agency Official will review the responses to the order to show cause and determine whether the motor carrier's registration should be suspended.

(1) The Agency Official may take the following actions:

(i) If the Agency Official determines that the motor carrier's registration should be suspended, he or she will enter an order suspending the registration;

(ii) If the Agency Official determines that it is not appropriate to suspend the motor carrier's registration, he or she may enter an order directing the motor carrier to correct compliance deficiencies; or

(iii) If the Agency Official determines the motor carrier's registration should not be suspended and a compliance order is not warranted, he or she will enter an order terminating the proceeding.

(2) If the Agency Official issues an order to suspend the motor carrier's registration, the order will:

(i) Provide notice to the motor carrier and any intervening person(s) of the right to petition for administrative review of the order within 15 days of service of the order suspending registration, and provide notice of the procedures in paragraph (e) of this section;

(ii) Provide notice that a timely petition for administrative review will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(iii) Provide notice that failure to timely serve a petition for administrative review constitutes waiver of the right to contest the order suspending the registration and will result in the order becoming a Final Agency Order 20 days after it is served.

(e) Administrative review. The motor carrier or the intervening person(s) may petition the Assistant Administrator for review of an order issued under paragraph (d)(1)(i) of this section. The petition must be in writing and served on the Assistant Administrator. Service on the Assistant Administrator is effected by delivering a copy to USDOT Dockets, Docket Operations, 1200 New Jersey Avenue, West Building Ground Floor, Room 12-140, SE., Washington, DC 20590-0001 or by submitting the documents electronically to www.regulations.gov. The petition must also be served on all parties to the proceedings and on Adjudications Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590-0001.

(1) A petition for review must be served within 15 days of the service date of the order for which review is requested. Failure to timely serve a request for review waives the right to request review.

(2) A petition for review must include:

(i) A copy of the order in dispute;

(ii) A copy of the petitioner's response to the order in dispute, with supporting documents if any;

(iii) A statement of all legal, factual and procedural issues in dispute; and

(iv) Written argument in support of the petitioner's position regarding the legal, factual or procedural issues in dispute.

(3) The Agency Official must serve a response to the petition for review no later than 15 days following receipt of the petition. The Agency Official must address each assignment of error by producing evidence or legal argument which supports the Agency Official's determination on that issue. The Agency Official's determination may be supported by circumstantial or direct evidence and the reasonable inferences drawn therefrom.

(4) The Assistant Administrator's review is limited to the legal, factual and procedural issues identified in the petition for review. The Assistant Administrator may, however, ask the parties to submit additional information. If the petitioner does not provide the information requested, the Assistant Administrator may dismiss the petition for review.

(5) The Assistant Administrator will serve a written decision on the petition for review within 60 days of the close of the time period for serving a response to the petition for review or the date of service of the response served under paragraph (e)(3), whichever is later.

(6) If a petition for review is timely served in accordance with this section, the disputed order is stayed, pending the Assistant Administrator's review. The Assistant Administrator may enter an order vacating the automatic stay in accordance with the following procedures:

(i) The Agency Official may file a motion to vacate the automatic stay demonstrating good cause why the order should not be stayed. The Agency Official's motion must be in writing, state the factual and legal basis for the motion, be accompanied by affidavits or other evidence relied on, and be served on all parties.

(ii) Within 10 days of service of the motion to vacate the automatic stay, the petitioner may serve an answer in opposition, accompanied by affidavits or other evidence relied on.

(iii) The Assistant Administrator will issue a decision on the motion to vacate within 10 days of the close of the time period for serving the answer to the motion. The 60-day period for a decision on the petition for review in paragraph (e)(5) of this section does not begin until the Assistant Administrator issues a decision on the motion to vacate the stay.

(7) The Assistant Administrator's decision on a petition for review of an order issued under this section constitutes the Final Agency Order.

§385.913 Revocation proceedings.

(a) General. The Agency Official may issue an order to revoke a motor carrier's registration, if he or she:

(1) Makes a determination in accordance with §385.905(b), and

(2) Determines that the motor carrier has willfully violated any order directing compliance with any statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III for a period of at least 30 days.

(b) Commencement of proceedings. The Agency Official commences a proceeding under this section by serving an order to show cause to the motor carrier and, if the proceeding is based on the conduct of another person, by also serving a copy on the person alleged to have engaged in the pattern or practice that resulted in a proceeding instituted under this section, which:

(1) Provides notice that the Agency is considering whether to revoke the motor carrier's registration;

(2) Provides notice of the factual and legal basis for the order;

(3) Directs the motor carrier to comply with a statute, regulation or condition of its registration;

(4) Informs the motor carrier that the response to the order to show cause must be in writing, state the factual and legal basis for its response and include all documentation, if any, the motor carrier wants considered;

(5) Informs the motor carrier of the address and name of the person to whom the response should be directed and served;

(6) Provides notice to the person, if any, of his or her right to intervene in the proceeding within 30 days of service of the order; and

(7) Informs the motor carrier that its registration may be revoked on the 35th day after service of the order issued under this section if the motor carrier or intervening person has not demonstrated, in writing, compliance with the order, or otherwise shown good cause why compliance is not required or the registration should not be revoked.

(c) Right of individual person(s) to intervene. A person(s) alleged to have engaged in the pattern or practice that resulted in a proceeding instituted under this section may intervene in the proceeding. The person(s) may—but are not required to—serve a separate response and supporting documentation to an order served under paragraph (b) of this section, within 30 days of being served with the order. Failure to timely serve a response constitutes waiver of the right to intervene. If the Agency Official previously issued an order under §385.911 based on the same conduct, a person who was given the opportunity to but did not intervene under §385.911(c) may not intervene under this section.

(d) Review of response. The Agency Official will review the response(s) to the order and determine whether the motor carrier's registration should be revoked.

(1) The Agency Official will take one of the following actions:

(i) If the Agency Official determines the motor carrier's registration should be revoked, he or she will enter an order revoking the motor carrier's registration; or

(ii) If the Agency Official determines the motor carrier's registration should not be revoked, he or she will enter an order terminating the proceeding.

(2) If the Agency Official issues an order to revoke the motor carrier's registration, the order will:

(i) Provide notice to the motor carrier and any intervening person(s) of the right to petition for administrative review of the order within 15 days of service of the order revoking the motor carrier's registration, and provide notice of the procedures in §385.911(e);

(ii) Provide notice that a timely petition for review will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(iii) Provide notice that failure to timely serve a petition for review constitutes waiver of the right to contest the order revoking the motor carrier's registration and will result in the order becoming a Final Agency Order 20 days after it is served.

(iv) Provide notice that a Final Agency Order revoking the motor carrier's registration will remain in effect and bar approval of any subsequent application for registration until rescinded by the Agency Official pursuant to §385.915.

(e) Administrative review. The motor carrier or intervening person may petition the Assistant Administrator for review of an order issued under paragraph (d)(1)(i) of this section by following the procedures set forth in §385.911(e).

§385.915 Petitions for rescission.

(a) A motor carrier or intervening person may submit a petition for rescission of an order suspending or revoking registration under this subpart based on action taken to correct the deficiencies that resulted in the suspension or revocation.

(b) A petition for rescission must be made in writing to the Agency Official.

(c) A petition for rescission must include a copy of the order suspending or revoking the motor carrier's registration, a factual statement identifying all corrective action taken, and copies of supporting documentation.

(d) The Agency Official will issue a written decision on the petition within 60 days of service of the petition. The decision will state the factual and legal basis for the decision.

(e) If the Agency Official grants the petition, the written decision under paragraph (d) is the Final Agency Order. Rescinding an order suspending a motor carrier's registration permits that motor carrier to resume operations so long as it is in compliance with all other statutory and regulatory requirements. Rescinding an order revoking a motor carrier's registration does not have the effect of reinstating the revoked registration. In order to resume operations in interstate commerce, the motor carrier whose registration was revoked must reapply for registration. If registration is granted, the motor carrier would also become subject to the new entrant regulations at 49 CFR part 385.

(f) If the Agency Official denies the petition, the petitioner may petition the Assistant Administrator for review of the denial. The petition must be in writing and served on the Assistant Administrator. Service on the Assistant Administrator is effected by delivering a copy

to USDOT Dockets, Docket Operations, 1200 New Jersey Avenue, West Building Ground Floor, Room 12-140 SE., Washington, DC 20590-0001 or by submitting the documents electronically to www.regulations.gov. The petition must also be served on all parties to the proceedings and on Adjudications Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590-0001. The petition for review of the denial must be served within 15 days of the service of the decision denying the petition for rescission. The petition for review must identify the legal, factual or procedural issues in dispute with respect to the denial of the petition for rescission. The petition for review may not, however, challenge the basis of the underlying suspension or revocation order.

(g) The Agency Official may file a written response within 15 days of receipt of the petition for review.

(h) The Assistant Administrator will issue a written decision on the petition for review within 60 days of service of the petition for review or a timely served response, whichever is later. The Assistant Administrator's decision constitutes the Final Agency Order.

§385.917 Other orders unaffected; not exclusive remedy.

If a motor carrier subject to an order issued under this subpart is or becomes subject to any other order, prohibition, or requirement of the FMCSA, an order issued under this subpart is in addition to, and does not amend or supersede the other order, prohibition, or requirement. Nothing in this subpart precludes FMCSA from taking action against any motor carrier under 49 U.S.C. 13905 or 49 U.S.C. 31134 for other conduct amounting to willful failure to comply with an applicable statute, regulation or FMCSA order.

§385.919 Penalties.

(a) Any motor carrier that the Agency determines engages or has engaged in a pattern or practice of avoiding regulatory compliance or masking noncompliance or violates an order issued under this subpart shall be subject to the civil or criminal penalty provisions of 49 U.S.C. 521(b) and applicable regulations.

(b) Any motor carrier who permits the exercise of controlling influence over its operations by any person that the Agency determines, under this subpart, engages in or has engaged in a pattern or practice of avoiding regulatory compliance or masking noncompliance while acting on behalf of any motor carrier, shall be subject to the civil or criminal penalty provisions of 49 U.S.C. 521(b) and applicable regulations.

§385.921 Service and computation of time.

Service of documents and computations of time will be made in accordance with §§386.6 and 386.8 of this subchapter. All documents that are required to be served or filed must be served or filed with a certificate of service.

Subpart L—Reincarnated Carriers

Source: 79 Fed. Reg. 3540, Jan. 22, 2014, unless otherwise noted.

§385.1001 Applicability.

The requirements in this subpart apply to for-hire motor carriers registered or required to be registered under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368.

§385.1003 Definitions.

As used in this subpart:

Agency Official means the Director of FMCSA's Office of Enforcement and Compliance or his or her designee.

Registration means the registration required under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368.

Reincarnated or affiliated motor carriers means motor carriers with common ownership, common management, common control or common familial relationship.

§385.1005 Prohibition.

Two or more motor carriers shall not use common ownership, common management, common control, or common familial relationship to enable any or all such motor carriers to avoid compliance, or mask or otherwise conceal non-compliance, or a history of non-compliance, with statutory or regulatory requirements prescribed under 49 U.S.C. Chapter 311, subchapter III, or with an order issued under such requirements.

§385.1007 Determination of violation.

(a) General. The Agency Official may issue an order to suspend or revoke the registration of one or more motor carriers if he or she determines that the motor carrier or motor carriers have reincarnated or affiliated to avoid regulatory compliance or mask or otherwise conceal regulatory noncompliance, or a history of noncompliance.

(b) Reincarnation or affiliation. The Agency Official may determine that one or more motor carriers are reincarnated if there is substantial continuity between entities such that one is merely a continuation of the other. The Agency Official may determine that motor carriers are affiliates if business operations are under common ownership, common management, common control or common familial relationship. To make these determinations, the Agency Official may consider, among other things, the factors in 49 CFR 386.73(c) and examine, among other things, the records identified in 49 CFR 386.73(d).

(c) Regulatory noncompliance. The Agency Official may determine that a motor carrier or its officer, employee, agent, or authorized representative, avoids regulatory compliance or

masks or otherwise conceals regulatory noncompliance, or a history of noncompliance by operating or attempting to operate a motor carrier as a reincarnated or affiliated entity to:

(1) Avoid complying with an FMCSA order;

(2) Avoid complying with a statutory or regulatory requirement;

(3) Avoid paying a civil penalty;

(4) Avoid responding to an enforcement action; or

(5) Avoid being linked with a negative compliance history.

§385.1009 Suspension proceedings.

(a) General. The Agency Official may issue an order to suspend a motor carrier's registration based on a determination made in accordance with §385.1007.

(b) Commencement of proceedings. The Agency Official may commence a proceeding under this section by serving an order to one or more motor carriers which:

(1) Provides notice that the Agency is considering whether to suspend the motor carrier's registration;

(2) Provides notice of the factual and legal basis for the order;

(3) Directs the motor carrier to comply with a regulation or condition of its registration;

(4) Informs the motor carrier that the response to the order must be in writing, state the factual or legal basis for its response, and include all documentation, if any, the motor carrier wants considered;

(5) Informs the motor carrier of the address and name of the person to whom the response should be directed and served;

(6) Informs the motor carrier that its registration may be suspended on the 35th day after service of the order issued under this section if the motor carrier has not demonstrated, in writing, compliance with any compliance directive issued, or otherwise shown good cause why compliance is not required or the registration should not be suspended.

(c) Review of response. The Agency Official will review the responses to the order and determine whether the motor carrier's registration should be suspended.

(1) The Agency Official will take one of the following actions:

(i) If the Agency Official determines the motor carrier's registration should be suspended, he or she will enter an order suspending the motor carrier's registration; or

(ii) If the Agency Official determines the motor carrier's registration should not be suspended, he or she will enter an order terminating the proceeding.

(2) If the Agency Official issues an order to suspend the motor carrier's registration, the order will:

(i) Provide notice to the motor carrier of the right to petition the Assistant Administrator for review of the order within 15 days of service of the order suspending the registration, and provide notice of the procedures in §385.911(e);

(ii) Provide notice that a timely petition for review will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(iii) Provide notice that failure to timely serve a petition for review constitutes waiver of the right to contest the order suspending the motor carrier's registration and will result in the order becoming a Final Agency Order 20 days after it is served.

(iv) Provide notice that a Final Agency Order suspending the motor carrier's registration will remain in effect and bar approval of any subsequent application for registration until rescinded by the Agency Official pursuant to §385.1013.

(d) Administrative Review. The motor carrier may petition the Assistant Administrator for review of an order issued under paragraph (c)(1)(i) of this section by following the procedures set forth in §385.911(e).

§385.1011 Revocation proceedings.

(a) General. The Agency Official may issue an order to revoke a motor carrier's registration, if he or she:

(1) Makes a determination in accordance with §385.1007, and

(2) Determines that the motor carrier has willfully violated an order directing compliance for a period of at least 30 days.

(b) Commencement of proceedings. The Agency Official commences a proceeding under this section by serving an order to one or more motor carriers, which:

(1) Provides notice that the Agency is considering whether to revoke the motor carrier's registration;

(2) Provides notice of the factual and legal basis for the order;

(3) Directs the motor carrier to comply with a statute, regulation or condition of its registration;

(4) Informs the motor carrier that the response to the show cause order must be in writing, state the factual or legal basis for its response, and include all documentation, if any, the motor carrier wants considered;

(5) Informs the motor carrier of the address and name of the person to whom the response should be directed and served; and

(6) Informs the motor carrier that its registration may be revoked on the 35th day after service of the order issued under this section if the motor carrier has not demonstrated, in writing, compliance with any order directing compliance, or otherwise shown good cause why compliance is not required or the registration should not be revoked.

(c) Review of response. The Agency Official will review the response(s) to the order and determine whether the motor carrier's registration should be revoked.

(1) The Agency Official will take one of the following actions:

(i) If the Agency Official determines the motor carrier's registration should be revoked, he or she will enter an order revoking the motor carrier's registration; or

(ii) If the Agency Official determines the motor carrier's registration should not be revoked, he or she will enter an order terminating the proceeding.

(2) If the Agency Official issues an order to revoke the motor carrier's registration, the order will:

(i) Provide notice to the motor carrier and any intervening person(s) of the right to petition the Assistant Administrator for review of the order within 15 days of service of the order revoking the motor carrier's registration, and provide notice of the procedures in §385.911(e);

(ii) Provide notice that a timely petition for review will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(iii) Provide notice that failure to timely serve a petition for review constitutes waiver of the right to contest the order revoking the motor carrier's registration and will result in the order becoming a Final Agency Order 20 days after it is served.

(iv) Provide notice that a Final Agency Order revoking the motor carrier's registration will remain in effect and bar approval of any subsequent application for registration until rescinded by the Agency Official pursuant to §385.1013.

(d) Administrative review. The motor carrier or intervening person may petition the Assistant Administrator for review of an order issued under paragraph (c)(1)(i) of this section by following the procedures set forth in §385.911(e).

§385.1013 Petitions for rescission.

A motor carrier may submit a petition for rescission of an order suspending or revoking registration under this subpart by following the procedures set forth in §385.915.

§385.1015 Other orders unaffected; not exclusive remedy.

If a motor carrier subject to an order issued under this subpart is or becomes subject to any other order, prohibition, or requirement of the FMCSA, an order issued under this subpart is in addition to, and does not amend or supersede the other order, prohibition, or requirement. Nothing in this subpart precludes FMCSA from taking action against any motor carrier under 49 U.S.C. 13905 for other conduct amounting to willful failure to comply with an applicable statute, regulation or FMCSA order.

§385.1017 Penalties.

Any motor carrier that the Agency determines to be in violation of this subpart shall be subject to the civil or criminal penalty provisions of 49 U.S.C. 521(b) and applicable regulations.

§385.1019 Service and computation of time.

Service of documents and computations of time will be made in accordance with §§386.6 and 386.8 of this subchapter. All documents that are required to be served or filed must be served or filed with a certificate of service.

Appendix A to Part 385—Explanation of Safety Audit Evaluation Criteria

I. General

(a) Section 210 of the Motor Carrier Safety Improvement Act (49 U.S.C. 31144) directed the Secretary to establish a procedure whereby each owner and each operator granted new authority must undergo a safety review within 12 months after receipt of its US DOT number for motor carriers of property and 120 days for motor carriers of passengers. The Secretary was also required to establish the elements of this safety review, including basic safety management controls. The Secretary, in turn, delegated this to the FMCSA.

(b) To meet the safety standard, a motor carrier must demonstrate to the FMCSA that it has basic safety management controls in place which function adequately to ensure minimum acceptable compliance with the applicable safety requirements. A “safety audit evaluation criteria” was developed by the FMCSA, which uses data from the safety audit and roadside inspections to determine that each owner and each operator applicant for new entrant registration, provisional operating authority, or provisional Certificate of Registration has basic

safety management controls in place. The term “safety audit” is the equivalent to the “safety review” required by Sec. 210. Using “safety audit” avoids any possible confusion with the safety reviews previously conducted by the agency that were discontinued on September 30, 1994.

(c) The safety audit evaluation process developed by the FMCSA is used to:

1. Evaluate basic safety management controls and determine if each owner and each operator is able to operate safely in interstate commerce; and

2. Identify owners and operators who are having safety problems and need improvement in their compliance with the FMCSRs and the HMRs, before they are granted permanent registration.

II. Source of the Data for the Safety Audit Evaluation Criteria

(a) The FMCSA's evaluation criteria are built upon the operational tool known as the safety audit. This tool was developed to assist auditors and investigators in assessing the adequacy of a new entrant's basic safety management controls.

(b) The safety audit is a review of a Mexico-domiciled or new entrant motor carrier's operation and is used to:

1. Determine if a carrier has the basic safety management controls required by 49 U.S.C. 31144;

2. Meet the requirements of Section 350 of the DOT Appropriations Act; and

3. In the event that a carrier is found not to be in compliance with applicable FMCSRs and HMRs, the safety audit can be used to educate the carrier on how to comply with U.S. safety rules.

(c) Documents such as those contained in the driver qualification files, records of duty status, vehicle maintenance records, and other records are reviewed for compliance with the FMCSRs and HMRs. Violations are cited on the safety audit. Performance-based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable accident information is also collected.

III. Determining if the Carrier Has Basic Safety Management Controls

(a) During the safety audit, the FMCSA gathers information by reviewing a motor carrier's compliance with “acute” and “critical” regulations of the FMCSRs and HMRs.

(b) Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier.

(c) Critical regulations are those where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls.

(d) The list of the acute and critical regulations, which are used in determining if a carrier has basic safety management controls in place, is included in Appendix B, VII. List of Acute and Critical Regulations.

(e) Noncompliance with acute and critical regulations are indicators of inadequate safety management controls and usually higher than average accident rates.

(f) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into six regulatory areas called “factors.” The regulatory factors, evaluated on the basis of the adequacy of the carrier's safety management controls, are:

1. Factor 1—General: Parts 387 and 390;

2. Factor 2—Driver: Parts 382, 383 and 391;

3. Factor 3—Operational: Parts 392 and 395;

4. Factor 4—Vehicle: Part 393, 396 and inspection data for the last 12 months;

5. Factor 5—Hazardous Materials: Parts 171, 177, 180 and 397; and

6. Factor 6—Accident: Recordable Accident Rate per Million Miles.

(g) For each instance of noncompliance with an acute regulation, 1.5 points will be assessed.

(h) For each instance of noncompliance with a critical regulation, 1 point will be assessed.

(i) FMCSA also gathers information on compliance with applicable household goods and Americans with Disabilities Act of 1990 requirements, but failure to comply with these requirements does not affect the determination of the adequacy of basic safety management controls.

A. Vehicle Factor

(a) When at least three vehicle inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months before the safety audit or performed at the time of the review, the Vehicle Factor (Part 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute and critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor as follows:

1. If the motor carrier has had at least three roadside inspections in the twelve months before the safety audit, and the vehicle OOS rate is 34 percent or higher, one point will be assessed against the carrier. That point will be added to any other points assessed for discovered noncompliance with acute and critical regulations of part 396 to determine the carrier's level of safety management control for that factor; and

2. If the motor carrier's vehicle OOS rate is less than 34 percent, or if there are less than three inspections, the determination of the carrier's level of safety management controls will only be based on discovered noncompliance with the acute and critical regulations of part 396.

(b) Over two million inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Each safety audit will continue to have the requirements of part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

B. The Accident Factor

(a) In addition to the five regulatory factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate, which the carrier has experienced during the past 12 months. Recordable accident, as defined in 49 CFR 390.5, means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) Experience has shown that urban carriers, those motor carriers operating entirely within a radius of less than 100 air miles (normally urban areas), have a higher exposure to accident situations because of their environment and normally have higher accident rates.

(c) The recordable accident rate will be used in determining the carrier's basic safety management controls in Factor 6, Accident. It will be used only when a carrier incurs two or more recordable accidents within the 12 months before the safety audit. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.5 will be deemed to have inadequate basic safety management controls for the accident factor. The rates are the result of roughly doubling the national average accident rate in Fiscal Years 1994, 1995, and 1996.

(d) The FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: “If a driver, who exercises normal judgment and foresight, could have

foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable."

C. Factor Ratings

For Factors 1 through 5, if the combined violations of acute and or critical regulations for each factor is equal to three or more points, the carrier is determined not to have basic safety management controls for that individual factor.

If the recordable accident rate is greater than 1.7 recordable accidents per million miles for an urban carrier (1.5 for all other carriers), the carrier is determined to have inadequate basic safety management controls.

IV. Overall Determination of the Carrier's Basic Safety Management Controls

(a) If the carrier is evaluated as having inadequate basic safety management controls in at least three separate factors, the carrier will be considered to have inadequate safety management controls in place and corrective action will be necessary in order to avoid having its new entrant registration, provisional operating authority, or provisional Certificate of Registration revoked.

(b) For example, FMCSA evaluates a carrier finding:

(1) One instance of noncompliance with a critical regulation in part 387 scoring one point for Factor 1;

(2) Two instances of noncompliance with acute regulations in part 382 scoring three points for Factor 2;

(3) Three instances of noncompliance with critical regulations in part 396 scoring three points for Factor 4; and

(4) Three instances of noncompliance with acute regulations in parts 171 and 397 scoring four and one-half (4.5) points for Factor 5.

(c) In this example, the carrier scored three or more points for Factors 2, 4 and 5 and FMCSA determined the carrier had inadequate basic safety management controls in at least three separate factors. FMCSA will require corrective action in order to avoid having the carrier's new entrant registration revoked, or having the provisional operating authority or provisional Certificate of Registration suspended and possibly revoked.

67 Fed. Reg. 12773, Mar. 19, 2002, as amended a6 67 Fed. Reg. 31985, May 13, 2002; 73 Fed. Reg. 76496, Dec. 16, 2008; 78 Fed. Reg. 60232, Oct. 1, 2013

Appendix B to Part 385—Explanation of Safety Rating Process

(a) Section 215 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31144) directed the Secretary of Transportation to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles operating in interstate or foreign commerce. The Secretary, in turn, delegated this responsibility to the Federal Motor Carrier Safety Administration (FMCSA).

(b) As directed, FMCSA promulgated a safety fitness regulation, entitled "Safety Fitness Procedures," which established a procedure to determine the safety fitness of motor carriers through the assignment of safety ratings and established a "safety fitness standard" which a motor carrier must meet to obtain a satisfactory safety rating.

(c) To meet the safety fitness standard, a motor carrier must demonstrate to the FMCSA that it has adequate safety management controls in place which function effectively to ensure acceptable compliance with the applicable safety requirements. A "safety fitness methodology" (SFRM) was developed by the FMCSA, which uses data from compliance reviews (CRs) and roadside inspections to rate motor carriers.

(d) The safety rating process developed by FMCSA is used to:

1. Evaluate safety fitness and assign one of three safety ratings (satisfactory, conditional, or unsatisfactory) to motor carriers operating in interstate commerce. This process conforms to 49 CFR 385.5, Safety fitness standard, and §385.7, Factors to be considered in determining a safety rating.

2. Identify motor carriers needing improvement in their compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs). These are carriers rated unsatisfactory or conditional.

2. Identify motor carriers needing improvement in their compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs). These are carriers rated Unsatisfactory or Conditional.

(e) The hazardous materials safety permit requirements of part 385, subpart E apply to intrastate motor carriers. Intrastate motor carriers that are subject to the hazardous materials safety permit requirements in subpart E will be rated using equivalent State requirements whenever the FMCSRs are referenced in this appendix.

(f) The safety rating will be determined by applying the SFRM equally to all of a company's motor carrier operations in commerce, including if applicable its operations in Canada and/or Mexico.

I. Source of Data for Rating Methodology

(a) The FMCSA's rating process is built upon the operational tool known as the CR. This tool was developed to assist Federal and State safety specialists in gathering pertinent motor carrier compliance and accident information.

(b) The CR is an in-depth examination of a motor carrier's operations and is used (1) to rate unrated motor carriers, (2) to conduct a follow-up investigation on motor carriers rated unsatisfactory or conditional as a result of a previous review, (3) to investigate complaints, or (4) in response to a request by a motor carrier to reevaluate its safety rating. Documents such as those contained in driver qualification files, records of duty status, vehicle maintenance records, and other records are thoroughly examined for compliance with the FMCSRs and HMRs. Violations are cited on the CR document. Performance-based information, when available, is utilized to evaluate the carrier's compliance with the vehicle regulations. Recordable accident information is also collected.

II. Converting CR Information Into a Safety Rating

(a) The FMCSA gathers information through an in-depth examination of the motor carrier's compliance with identified “acute” or “critical” regulations of the FMCSRs and HMRs.

(b) Acute regulations are those identified as such where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall safety posture of the motor carrier. An example of an acute regulation is §383.37(b), allowing, requiring, permitting, or authorizing an employee with more than one Commercial Driver's License (CDL) to operate a commercial motor vehicle. Noncompliance with §383.37(b) is usually discovered when the motor carrier's driver qualification file reflects that the motor carrier had knowledge of a driver with more than one CDL, and still permitted the driver to operate a commercial motor vehicle. If the motor carrier did not have such knowledge or could not reasonably be expected to have such knowledge, then a violation would not be cited.

(c) Critical regulations are those identified as such where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls. An example of a critical regulation is §395.3(a)(1), requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

(d) The list of the acute and critical regulations which are used in determining safety ratings is included at the end of this document.

(e) Noncompliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher than average accident rates. The FMCSA has used noncompliance with acute regulations and patterns of noncompliance with critical regulations since 1989 to determine motor carriers' adherence to the Safety fitness standard in §385.5.

(f) The regulatory factors, evaluated on the basis of the adequacy of the carrier's safety management controls, are: (1) Parts 172 and 173; (2) Parts 387 and 390; (3) Parts 382, 383, and 391; (4) Parts 392 and 395; (5) Parts 393 and 396 when there are less than three vehicle inspections in the last 12 months to evaluate; and (6) Parts 397, 171, 177 and 180.

(g) For each instance of noncompliance with an acute regulation or each pattern of noncompliance with a critical regulation during the CR, one point will be assessed. A pattern is more than one violation. When a number of documents are reviewed, the number of violations required to meet a pattern is equal to at least 10 percent of those examined.

(h) However, each pattern of noncompliance with a critical regulation relative to Part 395, Hours of Service of Drivers, will be assessed two points.

A. Vehicle Factor

(a) When a total of three or more inspections are recorded in the Motor Carrier Management Information System (MCMIS) during the twelve months prior to the CR or performed at the time of the review, the Vehicle Factor (Parts 393 and 396) will be evaluated on the basis of the Out-of-Service (OOS) rates and noncompliance with acute regulations and/or a pattern of noncompliance with critical regulations. The results of the review of the OOS rate will affect the Vehicle Factor rating as follows:

1. If a motor carrier has three or more roadside vehicle inspections in the twelve months prior to the carrier review, or three vehicles inspected at the time of the review, or a combination of the two totaling three or more, and the vehicle OOS rate is 34 percent or greater, the initial factor rating will be conditional. The requirements of Part 396, Inspection, Repair, and Maintenance, will be examined during each review. The results of the examination could lower the factor rating to unsatisfactory if noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered. If the examination of the Part 396 requirements reveals no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains conditional.

2. If a carrier's vehicle OOS rate is less than 34 percent, the initial factor rating will be satisfactory. If noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered during the examination of Part 396 requirements, the factor rating will be lowered to conditional. If the examination of Part 396 requirements discovers no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains satisfactory.

(b) Nearly two million vehicle inspections occur on the roadside each year. This vehicle inspection information is retained in the MCMIS and is integral to evaluating motor carriers' ability to successfully maintain their vehicles, thus preventing them from being placed OOS during roadside inspections. Since many of the roadside inspections are targeted to visibly defective vehicles and since there are a limited number of inspections for many motor carriers, the use of that data is limited. Each CR will continue to have the requirements of Part 396, Inspection, Repair, and Maintenance, reviewed as indicated by the above explanation.

B. Accident Factor

(a) In addition to the five regulatory rating factors, a sixth factor is included in the process to address the accident history of the motor carrier. This factor is the recordable accident rate for the past 12 months. A recordable accident, consistent with the definition for "accident" in 49 CFR 390.5, means an occurrence involving a commercial motor vehicle on a highway in motor carrier operations in commerce or within Canada or Mexico (if the motor carrier also operates in the United States) that results in a fatality; in bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or in one or more motor vehicles incurring disabling damage that requires the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) Recordable accidents per million miles were computed for each CR performed in Fiscal Years 1994,1995 and 1996. The national average for all carriers rated was 0.747, and .839 for carriers operating entirely within the 100 air mile radius.

(c) Experience has shown that urban carriers, those motor carriers operating primarily within a radius of less than 100 air miles (normally in urban areas) have a higher exposure to accident situations because of their environment and normally have higher accident rates.

(d) The recordable accident rate will be used to rate Factor 6, Accident. It will be used only when a motor carrier incurs two or more recordable accidents occurred within the 12 months prior to the CR. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable accident rate greater than 1.7 will receive an unsatisfactory rating for the accident factor. All other carriers with a recordable accident rate greater than 1.5 will receive an unsatisfactory factor rating. The rates are a result of roughly doubling the national average accident rate for each type of carrier rated in Fiscal Years 1994, 1995 and 1996.

(e) The FMCSA will continue to consider preventability when a motor carrier contests a rating by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: "If a driver, who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable."

C. Factor Ratings

(a) Parts of the FMCSRs and the HMRs having similar characteristics are combined together into five regulatory areas called "factors."

(b) The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor. Factor Ratings are determined as follows:

Factors

Factor 1 General = Parts 387 and 390

Factor 2 Driver = Parts 382, 383 and 391

Factor 3 Operational = Parts 392 and 395

Factor 4 Vehicle = Parts 393 and 396

Factor 5 Haz. Mat. = Parts 397, 171, 177 and 180

Factor 6 Accident Factor = Recordable Rate

"Satisfactory"—if the acute and/or critical = 0 points

"Conditional"—if the acute and/or critical = 1 point

"Unsatisfactory"—if the acute and/or critical = 2 or more points

III. Safety Rating

A. Rating Table

(a) The ratings for the six factors are then entered into a rating table which establishes the motor carrier's safety rating.

(b) The FMCSA has developed a computerized rating formula for assessing the information obtained from the CR document and is using that formula in assigning a safety rating.

Motor Carrier Safety Rating Table

Factor ratings		Overall Safety rating
Unsatisfactory	Conditional	
0	2 or fewer	Satisfactory
0	more than 2	Conditional
1	2 or fewer	Conditional
1	more than 2	Unsatisfactory
2 or more	0 or more	Unsatisfactory

B. Proposed Safety Rating

(a) The proposed safety rating will appear on the CR. The following appropriate information will appear after the last entry on the CR, MCS-151, part B.

"Your proposed safety rating is SATISFACTORY."

OR

"Your proposed safety rating is CONDITIONAL." The proposed safety rating will become the final safety rating 45 days after you receive this notice.

OR

"Your proposed safety rating is UNSATISFACTORY." The proposed safety rating will become the final safety rating 45 days after you receive this notice

(b) Proposed safety ratings of conditional or unsatisfactory will list the deficiencies discovered during the CR for which corrective actions must be taken.

(c) Proposed unsatisfactory safety ratings will indicate that, if the unsatisfactory rating becomes final, the motor carrier will be subject to the provision of §385.13, which prohibits motor carriers rated unsatisfactory from transporting hazardous materials requiring placarding or more than 15 passengers, including the driver.

IV. Assignment of Final Rating/Motor Carrier Notification

When the official rating is determined in Washington, D.C., the FMCSA notifies the motor carrier in writing of its safety rating as prescribed in §385.11. A proposed conditional safety rating (which is an improvement of an existing unsatisfactory rating) becomes effective as soon as the official safety rating from Washington, D.C. is issued, and the carrier may also avail itself of relief under the §385.15, Administrative Review and §385.17, Change to safety rating based on corrective actions.

V. Motor Carrier Rights to a Change in the Safety Rating

Under §§385.15 and 385.17, motor carriers have the right to petition for a review of their ratings if there are factual or procedural disputes, and to request another review after corrective actions have been taken. They are the procedural avenues a motor carrier which believes its safety rating to be in error may exercise, and the means to request another review after corrective action has been taken.

VI. Conclusion

(a) The FMCSA believes this "safety fitness rating methodology" is a reasonable approach for assigning a safety rating which best describes the current safety fitness posture of a motor carrier as required by the safety fitness regulations (§385.9). This methodology has the capability to incorporate regulatory changes as they occur.

(b) Improved compliance with the regulations leads to an improved rating, which in turn increases safety. This increased safety is our regulatory goal.

VII. List of Acute and Critical Regulations.

§382.115(a) Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier) (acute).

§382.115(b) Failing to implement an alcohol and/or controlled substances testing program (foreign motor carrier) (acute).

§382.201 Using a driver known to have an alcohol concentration of 0.04 or greater (acute).

§382.211 Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382 (acute).

§382.213(b) Using a driver known to have used a controlled substance (acute).

§382.215 Using a driver known to have tested positive for a controlled substance (acute).

§382.301(a) Using a driver before the motor carrier has received a negative pre-employment controlled substance test result (critical).

§382.303(a) Failing to conduct post accident testing on driver for alcohol (critical).

§382.303(b) Failing to conduct post accident testing on driver for controlled substances (critical).

§382.305 Failing to implement a random controlled substances and/or an alcohol testing program (acute).

§382.305(b)(1) Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical).

§382.305(b)(2) Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions (critical).

§382.309 Using a driver who has not undergone return-to-duty testing with a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 in accordance with 49 CFR 40.305 (acute).

§382.503 Allowing a driver to perform safety sensitive function, after engaging in conduct prohibited by subpart B, without being evaluated by substance abuse professional, as required by §382.605 (critical).

§382.505(a) Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04 (acute).

§382.605 Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up drug and/or alcohol tests in the first 12 months following the driver's return-to-duty in accordance with 49 CFR 40.307 (critical).

§383.23(a) Operating a commercial motor vehicle without a valid commercial driver's license (critical).

§383.37(a) Knowingly allowing, requiring, permitting, or authorizing an employee who does not have a current CLP or CDL, who does not have a CLP or CDL with the proper class or endorsements, or who operates a CMV in violation of any restriction on the CLP or CDL to operate a CMV (acute).

§383.37(b) Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle (acute).

§383.37(c) Knowingly allowing, requiring, permitting, or authorizing an employee with more than one commercial driver's license to operate a commercial motor vehicle (acute).

§383.51(a) Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle (acute).

§387.7(a) Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage (acute).

§387.7(d) Failing to maintain at principal place of business required proof of financial responsibility (critical).

§387.31(a) Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility (acute).

§387.31(d) Failing to maintain at principal place of business required proof of financial responsibility for passenger carrying vehicles (critical).

§390.15(b)(2) Failing to maintain copies of all accident reports required by State or other governmental entities or insurers (critical).

§390.35 Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records (acute).

§391.11(b)(4) Using a physically unqualified driver (acute).

§391.15(a) Using a disqualified driver (acute).

§391.45(a) Using a driver not medically examined and certified (critical).

§391.45(b)(1) Using a driver not medically examined and certified during the preceding 24 months (critical).

§391.51(a) Failing to maintain driver qualification file on each driver employed (critical).

§391.51(b)(2) Failing to maintain inquiries into driver's driving record in driver's qualification file (critical).

§391.51(b)(7) Failing to maintain medical examiner's certificate in driver's qualification file (critical).

§392.2 Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated (critical).

§392.4(b) Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle (acute).

§392.5(b)(1) Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage (acute).

§392.5(b)(2) Requiring or permitting a driver who shows evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle (acute).

§392.6 Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed (critical).

§392.9(a)(1) Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured (critical).

§395.1(h)(1)(i) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska) (critical).

§395.1(h)(1)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska) (critical).

§395.1(h)(1)(iii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (critical).

§395.1(h)(1)(iv) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (critical).

§395.1(h)(2)(i) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 15 hours (Driving in Alaska) (critical).

§395.1(h)(2)(ii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 20 hours (Driving in Alaska) (critical).

§395.1(h)(2)(iii) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska) (critical).

§395.1(h)(2)(iv) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska) (critical).

§395.1(o) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty 16 consecutive hours (critical).

§395.3(a)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive without taking an off-duty period of at least 10 consecutive hours prior to driving (critical).

§395.3(a)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty (critical).

§395.3(a)(3)(i) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours (critical).

§395.3(a)(3)(ii) Requiring or permitting a property-carrying commercial motor vehicle driver to drive if more than 8 hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes (critical).

§395.3(b)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical).

§395.3(b)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical).

§395.5(a)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive more than 10 hours (critical).

§395.5(a)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty 15 hours (critical).

§395.5(b)(1) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 60 hours in 7 consecutive days (critical).

§395.5(b)(2) Requiring or permitting a passenger-carrying commercial motor vehicle driver to drive after having been on duty more than 70 hours in 8 consecutive days (critical).

§395.8(a)(1) Failing to require a driver to prepare a record of duty status using appropriate method (critical).

§395.8(a)(2)(ii) Failure to require a driver to submit record of duty status (critical).

§395.8(e)(1) Making, or permitting a driver to make, a false report regarding duty status (critical).

§395.8(e)(2) or (3) Disabling, deactivating, disengaging, jamming, or otherwise blocking or degrading a signal transmission or reception; tampering with an automatic on-board recording device or ELD; or permitting or requiring another person to engage in such activity (acute).

§395.8(k)(1) Failing to preserve a driver's record of duty status or supporting documents for 6 months (critical).

§395.11(b) Failing to require a driver to submit supporting documents (critical).

§395.11(c) Failing to retain types of supporting documents as required by §395.11(c) (critical).

§395.11(e) Failing to retain supporting documents in a manner that permits the effective matching of the documents to the driver's record of duty status (critical).

§395.11(f) Altering, defacing, destroying, mutilating, or obscuring a supporting document (critical).

§395.30(f) Failing to retain ELD information (acute).

§396.3(b) Failing to keep minimum records of inspection and vehicle maintenance (critical).

§396.9(c)(2) Requiring or permitting the operation of a motor vehicle declared “out-of-service” before repairs were made (acute).

§396.11(a) Failing to require driver to prepare driver vehicle inspection report (critical).

§396.11(a)(3) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute)

§396.17(a) Using a commercial motor vehicle not periodically inspected (critical).

§396.17(g) Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards (acute).

§397.5(a) Failing to ensure a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material is attended at all times by its driver or a qualified representative (acute).

§397.7(a)(1) Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).

§397.7(b) Parking a motor vehicle containing hazardous material(s) other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street (critical).

§397.13(a) Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2 (critical).

§397.19(a) Failing to furnish driver of motor vehicle transporting Division 1.1, 1.2, or 1.3 (explosive) materials with a copy of the rules of part 397 and/or emergency response instructions (critical).

§397.67(d) Requiring or permitting the operation of a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, or 1.3 that is not accompanied by a written route plan (critical).

§171.15 Carrier failing to give immediate telephone notice of an incident involving hazardous materials (critical).

§171.16 Carrier failing to make a written report of an incident involving hazardous materials (critical).

§172.313(a) Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words “Inhalation Hazard” (acute).

§172.704(a)(4) Failing to provide security awareness training (critical).

§172.704(a)(5) Failing to provide in-depth security awareness training (critical).

§172.800(b) Transporting HM without a security plan (acute).

§172.800(b) Transporting HM without a security plan that conforms to Subpart I requirements (acute).

§172.800(b) Failure to adhere to a required security plan (acute).

§173.24(b)(1) Accepting for transportation or transporting a package that has an identifiable release of a hazardous material to the environment (acute).

§173.421 Accepting for transportation or transporting a Class 7 (radioactive) material described, marked, and packaged as a limited quantity when the radiation level on the surface of the package exceeds 0.005mSv/hour (0.5 mrem/hour) (acute).

§173.431(a) Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).

§173.431(b) Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).

§173.441(a) Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits (acute).

§173.442(b) Accepting for transportation or transporting a package containing Class 7 (radioactive) material when the temperature of the accessible external surface of the loaded package exceeds 50 °C (122 °F) in other than an exclusive use shipment, or 85 °C (185 °F) in an exclusive use shipment (acute).

§173.443(a) Accepting for transportation or transporting a package containing Class 7 (radioactive) material with removable contamination on the external surfaces of the package in excess of permissible limits (acute).

§177.800(c) Failing to instruct a category of employees in hazardous materials regulations (critical).

§177.801 Accepting for transportation or transporting a forbidden material (acute).

§177.835(a) Loading or unloading a Class 1 (explosive) material with the engine running (acute).

§177.835(c) Accepting for transportation or transporting Division 1.1 or 1.2 (explosive) materials in a motor vehicle or combination of vehicles that is not permitted (acute).

§177.835(j) Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted (acute).

§177.817(a) Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper (critical).

§177.817(e) Failing to maintain proper accessibility of shipping papers (critical).

§177.823(a) Moving a transport vehicle containing hazardous material that is not properly marked or placarded (critical).

§177.841(e) Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals unless an exception in §177.841(e)(i) or (ii) is met (acute).

§180.407(a) Transporting a shipment of hazardous material in cargo tank that has not been inspected or retested in accordance with §180.407 (critical).

§180.407(c) Failing to periodically test and inspect a cargo tank (critical).

§180.415 Failing to mark a cargo tank which passed an inspection or test required by §180.407 (critical).

§180.417(a)(1) Failing to retain cargo tank manufacturer's data report certificate and related papers, as required (critical).

§180.417(a)(2) Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required (critical).

62 Fed. Reg. 60043, Nov. 6, 1997

Editorial Note: For Federal Register citations affecting appendix B to part 385, see the List of CFR Sections Affected, which appears at www.govinfo.gov.

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER SAFETY

These regulations set out the rules which must be followed by bus companies and bus drivers having business with FMCSA.

Authority:

49 U.S.C. 104(c)(2), 501 et seq., Chapter 51, 31131-31133, 31135-31139, 31142-31147, Chapter 313, 31501 et seq., Pub. L. 104-34, title III, chapter 10, Sec. 31001, par. (s), 110 Stat. 1321-373, and 49 CFR 1.45 and 1.48.

Source: 50 FR 40306, Oct. 2, 1985, unless otherwise noted.

Subpart A—Scope of Rules; Definitions

§386.1 Scope of rules in this part.

(a) Except as provided in paragraph (c) of this section, the rules in this part govern proceedings before the Assistant Administrator, who also acts as the Chief Safety Officer of the Federal Motor Carrier Safety Administration, under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379), and the Hazardous Materials Regulations (49 CFR parts 171–180).

(c) of this section, the rules in this part govern proceedings before the Assistant Administrator, who also acts as the Chief Safety Officer of the Federal Motor Carrier Safety Administration, under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379), and the Hazardous Materials Regulations (49 CFR parts 171–180).

§386.2 Definitions.

Abate or abatement means to discontinue regulatory violations by refraining from or taking actions identified in a notice to correct noncompliance.

Administration means the Federal Highway Administration.

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Associate Administrator means the Associate Administrator for Motor Carriers of the Federal Highway Administration or his/her authorized delegate.

Civil forfeiture proceedings means proceedings to collect civil penalties for violations under the Commercial Motor Vehicle Safety Act of 1986, title XII of Pub. L. 99-570 (49 U.S.C. 2701 et seq.); the Hazardous Materials Transportation Act, 49 U.S.C. 1809; 49 U.S.C. 3102; the Motor Carrier Safety Act of 1984, 49 U.S.C. 2501 et seq.; section 30 of the Motor Carrier Act of 1980, 49 U.S.C. 10927, note; or section 18 of the Bus Regulatory Reform Act of 1982, 49 U.S.C. 10927, note.

Claimant means the representative of the Federal Highway Administration authorized to make claims.

Compliance Order means a written direction to a respondent under this part requiring the performance of certain acts which, based upon the findings in the proceeding, are considered necessary to bring respondent into compliance with the regulations found to have been violated.

Consent Order means a compliance order which has been agreed to by respondent in the settlement of a civil forfeiture proceeding.

Driver qualification proceeding means a proceeding commenced under 49 CFR 391.47 or by issuance of a letter of disqualification.

Motor carrier means a motor carrier, motor contract carrier, motor private carrier, or motor carrier of migrant workers as defined in 49 U.S.C. 3101 and 10102.

Petitioner means a party petitioning to overturn a determination in a driver qualification proceeding.

Respondent means a party against whom relief is sought or claim is made.

50 Fed. Reg. 40306, Oct. 2, 1985, as amended at 53 Fed. Reg. 2036, Jan. 26, 1988; 56 Fed. Reg. 10182, Mar. 11, 1991

Subpart B—Commencement of Proceedings, Pleadings

§386.11 Commencement of proceedings.

(a) Driver qualification proceedings. These proceedings are commenced by the issuance of a determination by the Director, Office of Motor Carrier Standards, in a case arising under §391.47 of this chapter or by the issuance of a letter of disqualification.

(1) Such determination and letters must be accompanied by the following:

(i) A citation of the regulation under which the action is being taken;

(ii) A copy of all documentary evidence relied on or considered in taking such action, or in the case of voluminous evidence a summary of such evidence;

(iii) Notice to the driver and motor carrier involved in the case that they may petition for review of the action;

(iv) Notice that a hearing will be granted if the Associate Administrator determines there are material factual issues in dispute;

(v) Notice that failure to petition for review will constitute a waiver of the right to contest the action; and

(vi) Notice that the burden or proof will be on the petitioner in cases arising under §391.47 of this chapter.

(2) At any time before the close of hearing, upon application of a party, the letter or determination may be amended at the discretion of the administrative law judge upon such terms as he/she approves.

(b) Civil forfeitures. These proceedings are commenced by the issuance of a Claim Letter or a Notice of Investigation.

(1) Each claim letter must contain the following:

(i) A statement of the provisions of law alleged to have been violated;

(ii) A brief statement of the facts constituting each violation;

(iii) Notice of the amount being claimed, and notice of the maximum amount authorized to be claimed under the statute;

(iv) The form in which and the place where the respondent may pay the claim; and

(v) Notice that the respondent may, within 15 days of service, notify the claimant that the respondent intends to contest the notice, and that if the notice is contested the respondent will be afforded an opportunity for a hearing.

(2) In addition to the information required by paragraph (b)(1) of this section, the letter may contain such other matters as the FHWA deems appropriate, including a notice to abate.

(3) In proceedings for collection of civil penalties for violations of the motor carrier safety regulations under the Motor Carrier Safety Act of 1984, the claimant may require the respondent to post a copy of the claim letter in such place or places and for such duration as the claimant may determine appropriate to aid in the enforcement of the law and regulations.

(c) Notice of investigation. This is a notice to respondent that FHWA has discovered violations of the Federal Motor Carrier Safety regulations or Hazardous Materials Regulations under circumstances which may require a compliance order and/or monetary penalty. The proposed form of the compliance order will be included in the notice. The Associate Administrator may issue a Notice of Investigation in his or her own discretion or upon a complaint filed pursuant to §386.12.

(1) Each notice of investigation must include the following:

(i) A statement of the legal authority and jurisdiction for the institution of the proceedings;

(ii) The name and address of each motor carrier against whom relief is sought;

(iii) One or more clear, concise, and separately numbered paragraphs stating the facts alleged to constitute a violation of the law;

(iv) The relief demanded which, where practical, should be in the form of an order for the Associate Administrator's signature, and which shall fix a reasonable time for abatement of the violations and may specify actions to be taken in order to abate the violations;

(v) A statement that the rules in this part require a reply to be filed within 30 days of service of the notice of investigation, and

(vi) A certificate that the notice of investigation was served in accordance with §386.31.

(2) At any time before the close of hearing or upon application of a party, the notice of investigation may be amended at the discretion of the administrative law judge upon such terms as he/she deems appropriate.

(3) A Claim Letter may be combined with a Notice of Investigation in a single proceeding. In such proceeding, the 30-day reply period in paragraph (c)(1) of this section shall apply.

(4) A notice to abate contained in a Claim Letter or Notice of Investigation shall specify what must be done by the respondent, a reasonable time within which abatement must be achieved, and that failure to abate subjects the respondent to additional penalties as prescribed in subpart G of this part.

50 Fed. Reg. 40306, Oct. 2, 1985, as amended at 53 Fed. Reg. 2036, Jan. 26, 1988; 56 Fed. Reg. 10182, Mar. 11, 1991

§386.12 Complaint.

(a) **Complaint of substantial violation**.

(1) Any person alleging that a substantial violation of any regulation issued under the Motor Carrier Safety Act of 1984 is occurring or has occurred must file a written complaint with FMCSA stating the substance of the alleged substantial violation no later than 90 days after the event. The written complaint, including the information below, must be filed with the National Consumer Complaint Database at http:// nccdb.fmcsa.dot.gov or any FMCSA Division Administrator. The Agency will refer the complaint to the Division Administrator who the Agency believes is best able to handle the complaint. Information on filing a written complaint may be obtained by calling 1–800–DOT–SAFT (1–800–368–7238). A substantial violation is one which could reasonably lead to, or has resulted in, serious personal injury or death. Each complaint must be signed by the complainant and must contain:

(i) The name, address, and telephone number of the person who files it;

(ii) The name and address of the alleged violator and, with respect to each alleged violator, the specific provisions of the regulations that the complainant believes were violated; and

(iii) A concise but complete statement of the facts relied upon to substantiate each allegation, including the date of each alleged violation.

(2) Upon the filing of a complaint of a substantial violation under paragraph (a)(1) of this section, the Division Administrator shall determine whether the complaint is non-frivolous and meets the requirements of paragraph (a)(1) of this section. If the Division Administrator determines the complaint is non-frivolous and meets the requirements of paragraph (a)(1), the Division Administrator shall investigate the complaint. The complainant shall be timely notified of findings resulting from the investigation. The Division Administrator shall not be required to conduct separate investigations of duplicative complaints. If the Division Administrator determines the complaint

is frivolous or does not meet the requirements of paragraph (a)(1), the Division Administrator shall dismiss the complaint and notify the complainant in writing of the reasons for the dismissal.

(3) Notwithstanding the provisions of 5 U.S.C. 552, the Division Administrator shall not disclose the identity of complainants unless it is determined that such disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Division Administrator shall take every practical means within the Division Administrator's authority to ensure that the complainant is not subject to coercion, harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of such disclosure.

(b) **Complaint of harassment.**

(1) A driver alleging a violation of §390.36(b)(1) of this subchapter (harassment) must file a written complaint with FMCSA stating the substance of the alleged harassment by a motor carrier no later than 90 days after the event. The written complaint, including the information described below, must be filed with the National Consumer Complaint Database at http:// nccdb.fmcsa.dot.gov or the FMCSA Division Administrator for the State where the driver is employed. The Agency may refer a complaint to another Division Administrator who the Agency believes is best able to handle the complaint. Information on filing a written complaint may be obtained by calling 1–800–DOT–SAFT (1–800–368–7238). Each complaint must be signed by the driver and must contain:

(i) The driver's name, address, and telephone number;

(ii) The name and address of the motor carrier allegedly harassing the driver; and

(iii) A concise but complete statement of the facts relied upon to substantiate each allegation of harassment, including:

(A) How the ELD or other technology used in combination with and not separable from the ELD was used to contribute to harassment;

(B) The date of the alleged action; and

(C) How the motor carrier's action violated either §392.3 or part 395.

Each complaint may include any supporting evidence that will assist the Division Administrator in determining the merits of the complaint.

(2) Upon the filing of a complaint of a violation under paragraph (b)(1) of this section, the appropriate Division Administrator shall determine whether the complaint is non-frivolous and meets the requirements of paragraph

(b)(1) of this section.

(i) If the Division Administrator determines the complaint is non- frivolous and meets the requirements of paragraph (b)(1) of this section, the Division Administrator shall investigate the complaint. The complaining driver shall be timely notified of findings resulting from the investigation. The Division Administrator shall not be required to conduct separate investigations of duplicative complaints.

(ii) If the Division Administrator determines the complaint is frivolous or does not meet the requirements of paragraph (b)(1) of this section, the Division Administrator shall dismiss the complaint and notify the complainant in writing of the reasons for the dismissal.

(3) Because prosecution of harassment in violation of §390.36(b)(1) of this subchapter will require disclosure of the driver's identity, the Agency shall take every practical means within its authority to ensure that the driver is not subject to coercion, harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of the disclosure. This will include notification that 49 U.S.C. 31105 includes broad employee protections and that retaliation for filing a harassment complaint may subject the motor carrier to enforcement action by the Occupational Safety and Health Administration.

(c) **Complaint of coercion.**

(1) A driver alleging a violation of §390.6(a)(1) or (2) of this subchapter must file a written complaint with FMCSA stating the substance of the alleged coercion no later than 90 days after the event. The written complaint, including the information described below, must be filed with the National Consumer Complaint Database at http://nccdb.fmcsa.dot.gov or the FMCSA Division Administrator for the State where the driver is employed. The Agency may refer a complaint to another Division Administrator who the Agency believes is best able to handle the complaint. Information on filing a written complaint may be obtained by calling 1–800–DOT–SAFT (1–800–368– 7238). Each complaint must be signed by the driver and must contain:

(i) The driver's name, address, and telephone number;

(ii) The name and address of the person allegedly coercing the driver;

(iii) The provisions of the regulations that the driver alleges he or she was coerced to violate; and

(iv) A concise but complete statement of the facts relied upon to substantiate each allegation of coercion, including the date of each alleged violation.

(2) **Action on complaint of coercion.**

Upon the filing of a complaint of coercion under paragraph (c)(1) of this section, the appropriate Division Administrator shall determine whether the complaint is non-frivolous and meets the requirements of paragraph (c)(1).

(i) If the Division Administrator determines that the complaint is non-frivolous and meets the requirements of paragraph (c)(1) of this section, the Division Administrator shall investigate the complaint. The complaining driver shall be timely notified of findings resulting from such investigation. The Division Administrator shall not be required to conduct separate investigations of duplicative complaints.

(ii) If the Division Administrator determines the complaint is frivolous or does not meet the requirements of paragraph (c)(1) of this section, the Division Administrator shall dismiss the complaint and notify the driver in writing of the reasons for the dismissal.

(3) **Protection of complainants.**

Because prosecution of coercion in violation of §390.6 of this subchapter will require disclosure of the driver's identity, the Agency shall take every

practical means within its authority to ensure that the driver is not subject to coercion, harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of the disclosure. This will include notification that 49 U.S.C. 31105 includes broad employee protections and that retaliation for filing a coercion complaint may subject the alleged coercer to enforcement action by the Occupational Safety and Health Administration.

(d) **Action on complaint of substantial violation**. Upon the filing of a complaint of a substantial violation under paragraph (c) of this section, the Associate Administrator shall determine whether it is non-frivolous and meets the requirements of paragraph (c) of this section. If the Associate Administrator determines that the complaint is non-frivolous and meets the requirements of paragraph (c), he/she shall investigate the complaint. The complainant shall be timely notified of findings resulting from such investigation. The Associate Administrator shall not be required to conduct separate investigations of duplicative complaints. If the Associate Administrator determines that the complaint is frivolous or does not meet the requirements of paragraph (c), he/she shall dismiss the complaint and notify the complainant in writing of the reasons for such dismissal.

(e) Notwithstanding the provisions of section 552 of title 5, United States Code, the Associate Administrator shall not disclose the identity of complainants unless it is determined that such disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Associate Administrator shall take every practical means within the Associate Administrator's authority to assure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of such disclosure.

§386.13 Petitions to review and request for hearing: Driver qualification proceedings.

(a) Within 60 days after service of the determination under §391.47 of this chapter or the letter of disqualification, the driver or carrier may petition to review such action. Such petitions must be submitted to the Associate Administrator and must contain the following:

(1) Identification of what action the petitioner wants overturned;

(2) Copies of all evidence upon which petitioner relies in the form set out in §386.49;

(3) All legal and other arguments which the petitioner wishes to make in support of his/her position;

(4) A request for oral hearing, if one is desired, which must set forth material factual issues believed to be in dispute;

(5) Certification that the reply has been filed in accordance with §386.31; and

(6) Any other pertinent material.

(b) Failure to submit a petition as specified in paragraph (a) of this section shall constitute a waiver of the right to petition for review of the determination or letter of disqualification. In these cases, the determination or disqualification issued automatically becomes the final decision of the Associate Administrator 30 days after the time to submit the reply or petition to review has expired, unless the Associate Administrator orders otherwise.

(c) If the petition does not request a hearing, the Associate Administrator may issue a final decision and order based on the evidence and arguments submitted.

§386.14 Replies and request for hearing: Civil forfeiture proceedings.

(a) Time for reply. The respondent must reply within 15 days after a Claim Letter is served, or 30 days after a Notice of Investigation is received.

(b) Contents of reply. The reply must contain the following:

(1) An admission or denial of each allegation of the claim or notice and a concise statement of facts constituting each defense;

(2) If the respondent contests the claim or notice, a request for an oral hearing or notice of intent to submit evidence without an oral hearing must be contained in the reply. A request for a hearing must list all material facts believed to be in dispute. Failure to request a hearing within 15 days after the Claim Letter is served, or 30 days in the case of a Notice of Investigation, shall constitute a waiver of any right to a hearing;

(3) A statement of whether the respondent wishes to negotiate the terms of payment or settlement of the amount claimed, or the terms and conditions of the order; and

(4) Certification that the reply has been served in accordance with §386.31.

(c) Submission of evidence. If a notice of intent to submit evidence without oral hearing is filed, or if no hearing is requested under paragraph (b)(2) of this section, and the respondent contests the claim or the contents of the notice, all evidence must be served in written form no later than the 40th day following service of the Claim Letter or Notice of Investigation. Evidence must be served in the form specified in §386.49.

(d) Complainant's request for a hearing. If the respondent files a notice of intent to submit evidence without formal hearing, the complainant may, within 15 days after that reply is filed, submit a request for a formal hearing. The request must include a listing of all factual issues believed to be in dispute.

(e) Failure to reply or request a hearing. If the respondent does not reply to a Claim Letter within the time prescribed in this section, the Claim Letter becomes the final agency order in the proceeding 25 days after it is served. When no reply to the Notice of Investigation is received, the Associate Administrator may, on motion of any party, issue a final order in the proceeding.

(f) Non-compliance with final order. Failure to pay the civil penalty as directed in a final order constitutes a violation of that order subjecting the respondent to an additional penalty as prescribed in subpart G of this part.

50 FR 40306, Oct. 2, 1985, as amended at 56 FR 10183, Mar. 11, 1991

§386.15 [Reserved]

§386.16 Action on petitions or replies.

(a) Replies not requesting an oral hearing. If the reply submitted does not request an oral hearing, the Associate Administrator may issue a final decision and order based on the evidence and arguments submitted.

(b) Request for oral hearing. If a request for an oral hearing has been filed, the Associate Administrator shall determine whether there are any material factual issues in dispute. If there are, he/she shall call the matter for a hearing. If there are none, he/she shall issue an order to that effect and set a time for submission of argument by the parties. Upon the submission of argument he/she shall decide the case.

(c) Settlement of civil forfeitures. (1) When negotiations produce an agreement as to the amount or terms of payment of a civil penalty or the terms and conditions of an order, a settlement agreement shall be drawn and signed by the respondent and the Associate Administrator. Such settlement agreement must contain the following:

(i) The statutory basis of the claim;

(ii) A brief statement of the violations;

(iii) The amount claimed and the amount paid;

(iv) The date, time, and place and form of payment;

(v) A statement that the agreement is not binding on the agency until executed by the Associate Administrator; and

(vi) A statement that failure to pay in accordance with the terms of the agreement which has been adopted as a Final Order will result in the loss of any reductions in penalties for claims found to be valid, and the original amount claimed will be due immediately.

(2) Any settlement agreement may contain a consent order.

(3) An executed settlement agreement is binding on the respondent and the claimant according to its terms. The respondent's consent to a settlement agreement that has not been executed by the Associate Administrator may not be withdrawn for a period of 30 days after it is executed by the respondent.

50 Fed. Reg. 40306, Oct. 2, 1985, as amended at 56 FR 10183, Mar. 11, 1991

§386.17 Intervention.

After the matter is called for hearing and before the date set for the hearing to begin, any person may petition for leave to intervene. The petition is to be served on the administrative law judge. The petition must set forth the reasons why the petitioner alleges he/she is entitled to intervene. The petition must be served on all parties in accordance with §386.31. Any party may file a response within 10 days of service of the petition. The administrative law judge shall then determine whether to permit or deny the petition. The petition will be allowed if the administrative law judge determines that the final decision could directly and adversely affect the petitioner or the class he/she represents, and if the petitioner may contribute materially to the disposition of the proceedings and his/her interest is not adequately represented by existing parties. Once admitted, a petitioner is a party for the purpose of all subsequent proceedings.

Subpart C—Compliance and Consent Orders

§386.21 Compliance order.

(a) When a respondent contests a Notice of Investigation or fails to reply to such notice, the final order disposing of the proceeding may contain a compliance order.

(b) A compliance order shall be executed by the Associate Administrator and shall contain the following:

(1) A statement of jurisdictional facts;

(2) Findings of facts, or reference thereto in an accompanying decision, as determined by a hearing officer or by the Associate Administrator upon respondent's failure to reply to the notice, which establish the violations charged;

(3) A specific direction to the respondent to comply with the regulations violated within time limits provided;

(4) Other directions to the respondent to take reasonable measures, in the time and manner specified, to assure future compliance;

(5) A statement of the consequences for failure to meet the terms of the order;

(6) Provision that the Notice of Investigation and the final decision of the hearing officer or Associate Administrator may be used to construe the terms of the order; and

(7) A statement that the order constitutes final agency action, subject to review as provided in 49 U.S.C. 521(b)(8) for violations of regulations issued under the authority of 49 U.S.C. 3102, the Motor Carrier Safety Act of 1984 or 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986; or as provided in 5 U.S.C. 701 et seq., for violations of regulations issued under the authority of 49 U.S.C. App. 1804 (hazardous materials proceedings) or 49 U.S.C. 10947 note (financial responsibility proceedings).

(c) Notice of imminent hazard. A compliance order may also contain notice that further violations of the same regulations may constitute an imminent hazard subjecting respondent to an order under subpart F of this part.

56 Fed. Reg. 10183, Mar. 11, 1991

§386.22 Consent order.

When a respondent has filed an election not to contest under §386.15(a), or has agreed to settlement of a civil forfeiture, and at any time before the hearing is concluded, the parties may execute an appropriate agreement for disposing of the case by consent for the consideration of the Associate Administrator. The agreement is filed with the Associate Administrator who may (a) accept it, (b) reject it and direct that proceedings in the case continue, or (c) take such other action as he/she deems appropriate. If the Associate Administrator accepts the agreement, he/she shall enter an order in accordance with its terms.

50 Fed. Reg. 40306, Oct. 2, 1985. Re-designated at 56 Fed. Reg. 10183, Mar. 11, 1991

§386.23 Content of consent order.

(a) Every agreement filed with the Associate Administrator under §386.22 must contain:

(1) An order for the disposition of the case in a form suitable for the Associate Administrator's signature that has been signed by the respondent;

(2) An admission of all jurisdictional facts;

(3) A waiver of further procedural steps, of the requirement that the decision or order must contain findings of fact and conclusions of law, and of all right to seek judicial review or otherwise challenge or contest the validity of the order;

(4) Provisions that the notice of investigation or settlement agreement may be used to construe the terms of the order;

(5) Provisions that the order has the same force and effect, becomes final, and may be modified, altered, or set aside in the same manner as other orders issued under 49 U.S.C. 501 et seq., 2501 et seq., 3101 et seq., and 10927, note; and

(6) Provisions that the agreement will not be part of the record in the proceeding unless and until the Associate Administrator executes it.

(b) A consent order may also contain any of the provisions enumerated in §386.21—Compliance Order.

50 Fed. Reg. 40306, Oct. 2, 1985. Re-designated and amended at 56 Fed. Reg. 10183, Mar. 11, 1991

Subpart D—General Rules and Hearings

§386.30 Enforcement proceedings under part 395.

(a) General.

A motor carrier is liable for any act or failure to act by an employee, as defined in §390.5 of this subchapter, that violates any provision of part 395 of this subchapter if the act or failure to act is within the course of the motor carrier’s operations. The fact that an employee may be liable for a violation in a proceeding under this subchapter, based on the employee’s act or failure to act, does not affect the liability of the motor carrier.

(b) Burden of proof.

Notwithstanding any other provision of this subchapter, the burden is on a motor carrier to prove that the employee was acting outside the scope of the motor carrier’s operations when committing an act or failing to act in a manner that violates any provision of part 395 of this subchapter.

(c) Imputed knowledge of documents**.**

A motor carrier shall be deemed to have knowledge of any document in its possession and any document that is available to the motor carrier and that the motor carrier could use in ensuring the motor carrier could use in ensuring compliance with part 395 of this subchapter. ‘‘Knowledge of any document’’ means knowledge of the fact that a document exists and the contents of the document.

§386.31 Service.

(a) All service required by these rules shall be by mail or by personal delivery. Service by mail is complete upon mailing.

(b) A certificate of service shall accompany all pleadings, motions, and documents when they are tendered for filing, and shall consist of a certificate of personal delivery or a certificate of mailing, executed by the person making the personal delivery or mailing the document. The first pleading of the Government in a proceeding initiated under this part shall have attached to it a service list of persons to be served. This list shall be updated as necessary.

(c) Copies of all pleadings, motions, and documents must be served on the docket clerk and upon all parties to the proceedings by the person filing them, in the number of copies indicated on the Government's initial service list.

§386.32 Computation of time.

(a) Generally, in computing any time period set out in these rules or in an order issued hereunder, the time computation begins with the day following the act, event, or default. The last day of the period is included unless it is a Saturday, Sunday, or legal Federal holiday in which case the time period shall run to the end of the next day that is not a Saturday, Sunday, or legal Federal holiday. All Saturdays, Sundays, and legal Federal holidays except those falling on the last day of the period shall be computed.

(b) Date of entry of orders. In computing any period of time involving the date of the entry of an order, the date of entry shall be the date the order is served.

(c) Computation of time for delivery by mail. (1) Documents are not deemed filed until received by the docket clerk. However, when documents are filed by mail, 5 days shall be added to the prescribed period.

(2) Service of all documents is deemed effected at the time of mailing.

(3) Whenever a party has the right or is required to take some action within a prescribed period after the service of a pleading, notice, or other document upon said party, and the pleading, notice, or document is served upon said party by mail, 5 days shall be added to the prescribed period.

§386.33 Extension of time.

All requests for extensions of time shall be filed with the Associate Administrator or, if the matter has been called for a hearing, with the administrative law judge. All requests must state the reasons for the request. Only those requests showing good cause will be granted. No motion for continuance or postponement of a hearing date filed within 7 days of the date set for a hearing will be granted unless it is accompanied by an affidavit showing that extraordinary circumstances warrant a continuance.

§**386.34 Official notice.**

The Associate Administrator or administrative law judge may take official notice of any fact not appearing in evidence if he/she notifies all parties he/she intends to do so. Any party objecting to the official notice shall file an objection within 10 days after service of the notice.

§386.35 Motions.

(a) General. An application for an order or ruling not otherwise covered by these rules shall be by motion. All motions filed prior to the calling of the matter for a hearing shall be to the Associate Administrator. All motions filed after the matter is called for hearing shall be to the administrative law judge.

(b) Form. Unless made during hearing, motions shall be made in writing, shall state with particularity the grounds for relief sought, and shall be accompanied by affidavits or other evidence relied upon.

(c) Answers. Except when a motion is filed during a hearing, any party may file an answer in support or opposition to a motion, accompanied by affidavits or other evidence relied upon. Such answers shall be served within 7 days after the motion is served or within such other time as the Associate Administrator or administrative law judge may set.

(d) Argument. Oral argument or briefs on a motion may be ordered by the Associate Administrator or the administrative law judge.

(e) Disposition. Motions may be ruled on immediately or at any other time specified by the administrative law judge or the Associate Administrator.

(f) Suspension of time. The pendency of a motion shall not affect any time limits set in these rules unless expressly ordered by the Associate Administrator or administrative law judge.

§**386.36 Motions to dismiss and motions for a more definite statement.**

(a) Motions to dismiss must be made within the time set for reply or petition to review, except motions to dismiss for lack of jurisdiction, which may be made at any time.

(b) Motions for a more definite statement may be made in lieu of a reply. The motion must point out the defects complained of and the details desired. If the motion is granted, the pleading complained of must be remedied within 15 days of the granting of the motion or it will be stricken. If the motion is denied, the party who requested the more definite statement must file his/her pleading within 10 days after the denial.

§**386.37 Discovery methods.**

Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or other evidence for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the Associate Administrator or, in cases that have been called for a hearing, the administrative law judge orders otherwise, the frequency or sequence of these methods is not limited.

§386.38 Scope of discovery.

(a) Unless otherwise limited by order of the Associate Administrator or, in cases that have been called for a hearing, the administrative law judge, in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(b) It is not ground for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor,

insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Associate Administrator or the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

§**386.39 Protective orders.**

Upon motion by a party or other person from whom discovery is sought, and for good cause shown, the Associate Administrator or the administrative law judge, if one has been appointed, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) The discovery not be had;

(b) The discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(d) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters;

(e) Discovery be conducted with no one present except persons designated by the Associate Administrator or the administrative law judge; or

(f) A trade secret or other confidential research, development, or commercial information may not be disclosed or be disclosed only in a designated way.

§**386.40 Supplementation of responses.**

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his/her response to include information thereafter acquired, except as follows:

(a) A party is under a duty to supplement timely his/her response with respect to any question directly addressed to:

(1) The identity and location of persons having knowledge of discoverable matters; and

(2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he or she is expected to testify and the substance of his or her testimony.

(b) A party is under a duty to amend timely a prior response if he or she later obtains information upon the basis of which:

(1) he or she knows the response was incorrect when made; or

(2) he or she knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the Associate Administrator or the administrative law judge or agreement of the parties.

§386.41 Stipulations regarding discovery.

Unless otherwise ordered, a written stipulation entered into by all the parties and filed with the Associate Administrator or the administrative law judge, if one has been appointed, may:

(a) Provide that depositions be taken before any person, at any time or place, upon sufficient notice, and in any manner, and when so taken may be used like other depositions, and

(b) Modify the procedures provided by these rules for other methods of discovery.

§386.42 Written interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any authorized officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings shall be served on the Associate Administrator or, in cases that have been called to a hearing, on the administrative law judge, and upon all parties to the proceeding.

(b) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answer and objections upon all parties to the proceeding within 30 days after service of the interrogatories, or within such shortened or longer period as the Associate Administrator or the administrative law judge may allow.

(c) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Associate Administrator or administrative law judge may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

§**386.43 Production of documents and other evidence; entry upon land for inspection and other purposes; and physical and mental examination.**

(a) Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on his or her behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the request is served; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, photographing, testing, or for other purposes as stated in paragraph (a)(1) of this section.

(3) Submit to a physical or mental examination by a physician.

(b) The request may be served on any party without leave of the Associate Administrator or administrative law judge.

(c) The request shall:

(1) Set forth the items to be inspected either by individual item or category;

(2) Describe each item or category with reasonable particularity;

(3) Specify a reasonable time, place, and manner of making the inspection and performing the related acts;

(4) Specify the time, place, manner, conditions, and scope of the physical or mental examination and the person or persons by whom it is to be made. A report of examining physician shall be made in accordance with Rule 35(b) of the Federal Rules of Civil Procedure, title 28, U.S. Code, as amended.

(d) The party upon whom the request is served shall serve on the party submitting the request a written response within 30 days after service of the request.

(e) The response shall state, with respect to each item or category:

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made in whole or in part, in which case the reasons for objection shall be stated.

(f) A copy of each request for production and each written response shall be served on all parties and filed with the Associate Administrator or the administrative law judge, if one has been appointed.

§**386.44 Request for admissions.**

(a) Request for admission. (1) Any party may serve upon any other party a request for admission of any relevant matter or the authenticity of any relevant document. Copies of any document about which an admission is requested must accompany the request.

(2) Each matter for which an admission is requested shall be separately set forth and numbered. The matter is admitted unless within 15 days after service of the request, the party to whom the request is directed serves upon the party requesting the admission a written answer signed by the party or his/her attorney.

(3) Each answer must specify whether the party admits or denies the matter. If the matter cannot be admitted or denied, the party shall set out in detail the reasons.

(4) A party may not issue a denial or fail to answer on the ground that he/she lacks knowledge unless he/she has made reasonable inquiry to ascertain information sufficient to allow him/her to admit or deny.

(5) A party may file an objection to a request for admission within 10 days after service. Such motion shall be filed with the administrative law judge if one has been appointed, otherwise it shall be filed with the Associate Administrator. An objection must explain in detail the reasons the party should not answer. A reply to the objection may be served by the party requesting the admission within 10 days after service of the objection. It is not sufficient ground for objection to claim that the matter about which an admission is requested presents an issue of fact for hearing.

(b) Effect of admission. Any matter admitted is conclusively established unless the Associate Administrator or administrative law judge permits withdrawal or amendment. Any admission under this rule is for the purpose of the pending action only and may not be used in any other proceeding.

(c) If a party refuses to admit a matter or the authenticity of a document which is later proved, the party requesting the admission may move for an award of expenses incurred in making the proof. Such a motion shall be granted unless there was a good reason for failure to admit.

§**386.45 Motion to compel discovery.**

(a) If a deponent fails to answer a question propounded or a party upon whom a request is made pursuant to §§386.42 through 386.44, or a party upon whom interrogatories are served fails to respond adequately or objects to the request, or any part thereof, or fails to permit inspection as requested, the discovering party may move the Associate Administrator or the administrative law judge, if one has been appointed, for an order compelling a response or inspection in accordance with the request.

(b) The motion shall set forth:

(1) The nature of the questions or request;

(2) The response or objections of the party upon whom the request was served; and

(3) Arguments in support of the motion.

(c) For purposes of this section, an evasive answer or incomplete answer or response shall be treated as a failure to answer or respond.

(d) In ruling on a motion made pursuant to this section, the Associate Administrator or the administrative law judge, if one has been appointed, may make and enter a protective order such as he or she is authorized to enter on a motion made pursuant to §386.39(a).

§386.46 Depositions.

(a) When, how, and by whom taken. The deposition of any witness may be taken at any stage of the proceeding at reasonable times. Depositions may be taken by oral examination or upon written interrogatories before any person having power to administer oaths.

(b) Application. Any party desiring to take the deposition of a witness shall indicate to the witness and all other parties the time when, the place where, and the name and post office address of the person before whom the deposition is to be taken; the name and address of each witness; and the subject matter concerning which each such witness is expected to testify.

(c) Notice. Notice shall be given for the taking of a deposition, which shall be not less than 5 days written notice when the deposition is to be taken within the continental United States and not less than 20 days written notice when the deposition is to be taken elsewhere.

(d) Taking and receiving in evidence. Each witness testifying upon deposition shall be sworn, and any other party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing; read by or to, and subscribed by the witness; and certified by the person administering the oath. Thereafter, such officer shall seal the deposition in an envelope and mail the same by certified mail to the Associate Administrator or the administrative law judge, if one has been appointed. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and which would have been valid if the witness were personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof.

(e) Motion to terminate or limit examination. During the taking of a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party or improper questions propounded. The deposition will then be adjourned. However, the objecting party or deponent must immediately move the Associate Administrator or administrative law judge for a ruling on his or her objections to the deposition conduct or proceedings. The Associate Administrator or administrative law judge may then limit the scope or manner of the taking of the deposition.

§**386.47 Use of deposition at hearings.**

(a) Generally. At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of expert witnesses, particularly the deposition of physicians, may be used by any party for any purpose, unless the Associate Administrator or administrative law judge rules that such use would be unfair or a violation of due process.

(3) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private organization, partnership, or association which is a party, may be used by any other party for any purpose.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds:

(i) That the witness is dead; or

(ii) That the witness is out of the United States or more than 100 miles from the place of hearing unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(5) If only part of a deposition is offered in evidence by a party, any other party may require him or her to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

(b) Objections to admissibility. Except as provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form or written interrogatories are waived unless served in writing upon the party propounding them.

(c) Effect of taking using depositions. A party shall not be deemed to make a person his or her own witness for any purpose by taking his or her deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by any other party of a deposition as described in paragraph (a)(2) of this section. At the hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or her or by any other party.

§386.48 Medical records and physicians' reports.

In cases involving the physical qualifications of drivers, copies of all physicians' reports, test results, and other medical records that a party intends to rely upon shall be served on all other parties at least 30 days prior to the date set for a hearing. Except as waived by the Director, Office of Motor Carrier Standards, reports, test results and medical records not served under this rule shall be excluded from evidence at any hearing.

50 Fed. Reg. 40306, Oct. 2, 1985, as amended at 53 Fed. Reg. 2036, Jan. 26, 1988

§386.49 Form of written evidence.

All written evidence shall be submitted in the following forms:

(a) An affidavit of a person having personal knowledge of the facts alleged, or

(b) Documentary evidence in the form of exhibits attached to an affidavit identifying the exhibit and giving its source.

§**386.50 Appearances and rights of witnesses.**

(a) Any party to a proceeding may appear and be heard in person or by attorney. A regular employee of a party who appears on behalf of the party may be required by the administrative law judge to show his or her authority to so appear.

(b) Any person submits data or evidence in a proceeding governed by this part may, upon timely request and payment of costs, procure a copy of any document submitted by him/her or of any transcript. Original documents, data or evidence may be retained upon permission of the administrative law judge or Associate Administrator upon substitution of copy therefor.

§386.51 Amendment and withdrawal of pleadings.

(a) Except in instances covered by other rules, anytime more than 15 days prior to the hearing, a party may amend his/her pleadings by serving the amended pleading on the Associate Administrator or the administrative law judge, if one has been appointed, and on all parties. Within 15 days prior to the hearing, an amendment shall be allowed only at the discretion of the Administrative law judge. When an amended pleading is filed, other parties may file a response and objection within 10 days.

(b) A party may withdraw his/her pleading only on approval of the administrative law judge or Associate Administrator.

§**386.52 Appeals from interlocutory rulings.**

Rulings of the administrative law judge may not be appealed to the Associate Administrator prior to his/her consideration of the entire proceeding except under exceptional circumstances and with the consent of the administrative law judge. In deciding whether to allow appeals, the administrative law judge shall determine whether the appeal is necessary to prevent undue prejudice to a party or to prevent substantial detriment to the public interest.

§386.53 Subpoenas, witness fees.

(a) Applications for the issuance of subpoenas must be submitted to the Associate Administrator, or in cases that have been called for a hearing, to the administrative law judge. The application must show the general relevance and reasonable scope of the evidence sought. Any person served with a subpoena may, within 7 days after service, file a motion to quash or modify. The motion must be filed with the official who approved the subpoena. The filing of a motion shall stay the effect of the subpoena until a decision is reached.

(b) Witnesses shall be entitled to the same fees and mileage as are paid witnesses in the courts of the United States. The fees shall be paid by the party at whose instance the witness is subpoenaed or appears.

(c) Paragraph (a) of this section shall not apply to the Administrator or employees of the FHWA or to the production of documents in their custody. Applications for the attendance of such persons or the production of such documents at a hearing shall be made to the Associate Administrator or administrative law judge, if one is appointed, and shall set forth the need for such evidence and its relevancy.

§**386.54 Administrative law judge.**

(a) Appointment. After the matter is called for hearing, the Associate Administrator shall appoint an administrative law judge.

(b) Power and duties. Except as provided in paragraph (c) of this section, the administrative law judge has power to take any action and to make all needful rules and regulations to govern the conduct of the proceedings to ensure a fair and impartial hearing, and to avoid delay in the disposition of the proceedings. his/her powers include the following:

(1) To administer oaths and affirmations;

(2) To issue orders permitting inspection and examination of lands, buildings, equipment, and any other physical thing and the copying of any document;

(3) To issue subpoenas for the attendance of witnesses and the production of evidence as authorized by law;

(4) To rule on offers of proof and receive evidence;

(5) To regulate the course of the hearing and the conduct of participants in it;

(6) To consider and rule upon all procedural and other motions, including motions to dismiss, except motions which, under this part, are made directly to the Associate Administrator;

(7) To hold conferences for settlement, simplification of issues, or any other proper purpose;

(8) To make and file decisions; and

(9) To take any other action authorized by these rules and permitted by law.

50 Fed. Reg. 40306, Oct. 2, 1985, as amended at 53 Fed. Reg. 2036, Jan. 26, 1988

§386.55 Prehearing conferences.

(a) Convening. At any time before the hearing begins, the administrative law judge, on his/her own motion or on motion by a party, may direct the parties or their counsel to participate with him/her in a prehearing conference to consider the following:

(1) Simplification and clarification of the issues;

(2) Necessity or desirability of amending pleadings;

(3) Stipulations as to the facts and the contents and authenticity of documents;

(4) Issuance of and responses to subpoenas;

(5) Taking of depositions and the use of depositions in the proceedings;

(6) Orders for discovery, inspection and examination of premises, production of documents and other physical objects, and responses to such orders;

(7) Disclosure of the names and addresses of witnesses and the exchange of documents intended to be offered in evidence; and

(8) Any other matter that will tend to simplify the issues or expedite the proceedings.

(b) Order. The administrative law judge shall issue an order which recites the matters discussed, the agreements reached, and the rulings made at the prehearing conference. The order shall be served on the parties and filed in the record of the proceedings.

§386.56 Hearings.

(a) As soon as practicable after his/her appointment, the administrative law judge shall issue an order setting the date, time, and place for the hearing. The order shall be served on the parties and become a part of the record of the proceedings. The order may be amended for good cause shown.

(b) Conduct of hearing. The administrative law judge presides over the hearing. Hearings are open to the public unless the administrative law judge orders otherwise.

(c) Evidence. Except as otherwise provided in these rules and the Administrative Procedure Act, 5 U.S.C. 551 et seq., the Federal Rules of Evidence shall be followed.

(d) Information obtained by investigation. Any document, physical exhibit, or other material obtained by the Administration in an investigation under its statutory authority may be disclosed by the Administration during the proceeding and may be offered in evidence by counsel for the Administration.

(e) Record. The hearing shall be stenographically transcribed and reported. The transcript, exhibits, and other documents filed in the proceedings shall constitute the official record of the

proceedings. A copy of the transcript and exhibits will be made available to any person upon payment of prescribed costs.

§**386.57 Proposed findings of fact, conclusions of law.**

The administrative law judge shall afford the parties reasonable opportunity to submit proposed findings of fact, conclusions of law, and supportng reasons therefor. If the administrative law judge orders written proposals and arguments, each proposed finding must include a citation to the specific portion of the record relied on to support it. Written submissions, if any, must be served within the time period set by the administrative law judge.

§386.58 Burden of proof.

(a) Enforcement cases. The burden of proof shall be on the Administration in enforcement cases.

(b) Conflict of medical opinion. The burden of proof in cases arising under §391.47 of this chapter shall be on the party petitioning for review under §386.13(a).

Subpart E—Decision

§386.61 Decision.

After receiving the proposed findings of fact, conclusions of law, and arguments of the parties, the administrative law judge shall issue a decision. If the proposed findings of fact, conclusions of law, and arguments were oral, he/she may issue an oral decision. The decision of the administrative law judge becomes the final decision of the Associate Administrator 45 days after it is served unless a petition or motion for review is filed under §386.62. The decision shall be served on all parties and on the Associate Administrator.

§386.62 Review of administrative law judge's decision.

(a) All petitions to review must be accompanied by exceptions and briefs. Each petition must set out in detail objections to the initial decision and shall state whether such objections are related to alleged errors of law or fact. It shall also state the relief requested. Failure to object to any error in the initial decision shall waive the right to allege such error in subsequent proceedings.

(b) Reply briefs may be filed within 30 days after service of the appeal brief.

(c) No other briefs shall be permitted except upon request of the Associate Administrator.

(d) Copies of all briefs must be served on all parties.

(e) No oral argument will be permitted except on order of the Associate Administrator.

§**386.63 Decision on review.**

Upon review of a decision, the Associate Administrator may adopt, modify, or set aside the administrative law judge's findings of fact and conclusions of law. He/she may also remand proceedings to the administrative law judge with instructions for such further proceedings as he/she deems appropriate. If not remanded, the Associate Administrator shall issue a final order disposing of the proceedings, and serve it on all parties.

§386.64 Reconsideration.

Within 20 days after the Associate Administrator's final order is issued, any party may petition the Associate Administrator for reconsideration of his/her findings of fact, conclusions of law, or final order. The filing of a petition for reconsideration does not stay the effectiveness of the final order unless the Associate Administrator so orders.

§**386.65 Failure to comply with final order.**

If, within 30 days of receipt of a final agency order issued under this part, the respondent does not submit in writing his/her acceptance of the terms of an order directing compliance, or, where appropriate, pay a civil penalty, or file an appeal under §386.67, the case may be referred

to the Attorney General with a request that an action be brought in the appropriate United States District Court to enforce the terms of a compliance order or collect the civil penalty.

§386.66 Motions for rehearing or for modification.

(a) No motion for rehearing or for modification of an order shall be entertained for 1 year following the date the Associate Administrator's order goes into effect. After 1 year, any party may file a motion with the Associate Administrator requesting a rehearing or modification of the order. The motion must contain the following:

(1) A copy of the order about which the change is requested;

(2) A statement of the changed circumstances justifying the request; and

(3) Copies of all evidence intended to be relied on by the party submitting the motion.

(b) Upon receipt of the motion, the Associate Administrator may make a decision denying the motion or modifying the order in whole or in part. He/she may also, prior to making his/her decision, order such other proceedings under these rules as he/she deems necessary and may request additional information from the party making the motion.

§386.67 Appeal.

Any aggrieved person, who, after a hearing, is adversely affected by a final order issued under 49 U.S.C. 521 may, within 30 days, petition for review of the order in the United States Court of Appeals in the circuit wherein the violation is alleged to have occurred or where the violator has his/her principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit. Review of the order shall be based on a determination of whether the Associate Administrator's findings and conclusions were supported by substantial evidence, or were otherwise not in accordance with law. No objection that has not been urged before the Associate Administrator shall be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceedings under this section shall not, unless ordered by the court, operate as a stay of the order of the Associate Administrator.

Subpart F—Injunctions and Imminent Hazards

§386.71 Injunctions.

Whenever it is determined that a person has engaged, or is about to engage, in any act or practice constituting a violation of section 3102 of title 49, United States Code, or the Motor Carrier Safety Act of 1984, or the Hazardous Materials Transportation Act, or any regulation or order issued under that section or those Acts for which the Federal Highway Administrator exercises enforcement responsibility, the Chief Counsel or the Assistant Chief Counsel for Motor Carrier and Highway Safety Law may request the United States Attorney General to bring an action in the appropriate United States District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages, as provided by section 213(c) of the Motor Carrier Safety Act of 1984 and section 111(a) of the Hazardous Materials Transportation Act (49 U.S.C. 507(c), 1810).

§386.72 Imminent hazard.

(a) Whenever it is determined that there is substantial likelihood that death, serious illness, or severe personal injury, will result from the transportation by motor vehicle of a particular hazardous material before a notice of investigation proceeding, or other administrative hearing or formal proceeding to abate the risk of harm can be completed, the Chief Counsel or the Assistant Chief Counsel for Motor Carrier and Highway Safety Law may bring, or request the United States Attorney General to bring, an action in the appropriate United States District Court for an order suspending or restricting the transportation by motor vehicle of the hazardous material or

for such other order as is necessary to eliminate or ameliorate the imminent hazard, as provided by section 111(b) of the Hazardous Materials Transportation Act (49 U.S.C. 1810).

(b)(1) Whenever it is determined that a violation of 49 U.S.C. 3102 or the Motor Carrier Safety Act of 1984 or the Commercial Motor Vehicle Safety Act of 1986 or a regulation issued under such section or Acts, or combination of such violations, poses an imminent hazard to safety, the Director, Motor Carrier Safety Field Operations or the Regional Director of Motor Carriers, or his or her delegate, shall order a vehicle or employee operating such vehicle out of service, or order an employer to cease all or part of the employer's commercial motor vehicle operations as provided by section 213(b) of the Motor Carrier Safety Act of 1984 and section 12012(d) of the Commercial Motor Vehicle Safety Act of 1986. (49 U.S.C. 521(b)(5)). In making any such order, no restrictions shall be imposed on any employee or employer beyond that required to abate the hazard. In this paragraph, "imminent hazard" means any condition of vehicle, employee, or commercial motor vehicle operations which is likely to result in serious injury or death if not discontinued immediately.

(2) Upon the issuance of an order under paragraph (b)(1) of this section, the motor carrier employer or driver employee shall comply immediately with such order. Opportunity for review shall be provided in accordance with 5 U.S.C. 554, except that such review shall occur not later than 10 days after issuance of such order, as provided by section 213(b) of the Motor Carrier Safety Act of 1984 (49 U.S.C. 521(b)(5)). An order to an employer to cease all or part of its operations shall not prevent vehicles in transit at the time the order is served from proceeding to their immediate destinations, unless any such vehicle or its driver is specifically ordered out of service forthwith. However, vehicles and drivers proceeding to their immediate destination shall be subject to compliance upon arrival.

(3) For purposes of this section the term "immediate destination" is the next scheduled stop of the vehicle already in motion where the cargo on board can be safely secured.

(4) Failure to comply immediately with an order issued under this section shall subject the motor carrier employer or driver to penalties prescribed in subpart G of this part.

50 Fed. Reg. 40306, Oct. 2, 1985, as amended at 53 Fed. Reg. 2036, Jan. 26, 1988; 53 Fed. Reg. 50970, Dec. 19, 1988; 56 Fed. Reg. 10184, Mar. 11, 1991

Subpart G—Penalties

56 Fed. Reg. 10184, Mar. 11, 1991, unless otherwise noted.

§386.81 General.

(a) The maximum amounts of civil penalties that can be imposed for regulatory violations subject to the civil forfeiture proceedings in this part are set in the statutes authorizing the regulations. The determination of the actual civil penalties assessed in each proceeding is based on those defined limits and consideration of information available at the time the claim is made concerning the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, history of prior offenses, effect on ability to continue to do business, and such other matters as justice and public safety may require. In adjudicating the claims and notices under the administrative procedures herein, additional information may be developed regarding those factors that may affect the final amount of the claim.

(b) When assessing penalties for violations of notices and orders or settling claims based on these assessments, consideration will be given to good faith efforts to achieve compliance with the terms of the notices and orders.

§386.82 Civil penalties for violations of notices and orders.

(a) Additional civil penalties are chargeable for violations of notices and orders which are issued under civil forfeiture proceedings pursuant to 49 U.S.C. 521(b). These notices and orders are as follows:

(1) Notice to abate—§386.11 (b)(2) and (c)(1)(iv);

(2) Notice to post—§386.11(b)(3);

(3) Final order—§386.14(f); and

(4) Out-of-service order—§386.72(b)(3).

(b) A schedule of these additional penalties is provided in the appendix A to this part. All the penalties are maximums, and discretion will be retained to meet special circumstances by setting penalties for violations of notices and orders, in some cases, at less than the maximum.

(c) Claims for penalties provided in this section and in the appendix A to this part shall be made through the civil forfeiture proceedings contained in this part. The issues to be decided in such proceedings will be limited to whether violations of notices and orders occurred as claimed and the appropriate penalty for such violations. Nothing contained herein shall be construed to authorize the reopening of a matter already finally adjudicated under this part.

§386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited.

(a)

(1) General rule.

(i) A CMV owner or operator that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA's final agency order, is prohibited from operating in interstate commerce starting on the next (i.e., the 91st) day. The prohibition continues until the FMCSA has received full payment of the penalty.

(ii) An intermodal equipment provider that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA's final agency order, is prohibited from tendering intermodal equipment to motor carriers for operation in interstate commerce starting on the next (i.e., the 91st) day. The prohibition continues until the FMCSA has received full payment of the penalty.

(2) Civil penalties paid in installments. The FMCSA Service Center may allow a CMV owner or operator, or an intermodal equipment provider, to pay a civil penalty in installments. If the CMV owner or operator, or intermodal equipment provider, fails to make an installment payment on schedule, the payment plan is void and the entire debt is payable immediately. A CMV owner or operator, or intermodal equipment provider, that fails to pay the full outstanding balance of its civil penalty within 90 days after the date of the missed installment payment, is prohibited from operating in interstate commerce on the next (i.e., the 91st) day. The prohibition continues until the FMCSA has received full payment of the entire penalty.

(3) Appeals to Federal Court. If the CMV owner or operator, or intermodal equipment provider, appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so directs.

(b) Show cause proceeding.

(1) FMCSA will notify a CMV owner or operator, or intermodal equipment provider, in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in the CMV owner or operator, or an intermodal equipment provider, being prohibited from operating in interstate commerce.

(2) The notice will order the CMV owner or operator, or intermodal equipment provider, to show cause why it should not be prohibited from operating in interstate commerce on the 91st day after the date specified for payment. The prohibition may be avoided only by submitting to the Chief Safety Officer:

(i) Evidence that the respondent has paid the entire amount due; or

(ii) Evidence that the respondent has filed for bankruptcy under chapter 11, title 11, United States Code. Respondents in bankruptcy must also submit the information required by paragraph (d) of this section.

(3) The notice will be delivered by certified mail or commercial express service. If the principal place of business of a CMV owner or operator, or an intermodal equipment provider, is in a foreign country, the notice will be delivered to the designated agent of the CMV owner or operator or intermodal equipment provider.

(c) A CMV owner or operator, or intermodal equipment provider, that continues to operate in interstate commerce in violation of this section may be subject to additional sanctions under paragraph IV(h) of appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor in a case under 11 U.S.C. chapter 11. CMV owners or operators, or intermodal equipment providers, in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (i.e., chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

§386.84….

Appendix A to Part 386—Penalty Schedule; Violations of Notices and Orders

I. Notice to Abate

a. Violation—failure to cease violations of the regulations in the time prescribed in the notice.

(The time within which to comply with a notice to abate shall not begin to run with respect to contested violations, i.e., where there are material issues in dispute under §386.14, until such time as the violation has been established.)

Penalty—reinstatement of any deferred assessment or payment of a penalty or portion thereof.

b. Violation—failure to comply with specific actions prescribed in a notice of investigation, compliance order or consent order, other than cessation of violations of the regulations, which were determined to be essential to abatement of future violations.

Penalty—$1,100 per violation per day.

Maximum—$11,000.

II. Subpoena

Violation—Failure to respond to Agency subpoena to appear and testify or produce records.

Penalty--$minimum of $1,000 but not more than $10,000 per violation.

III. Final Order

Violation— Failure to comply with final agency order, i.e., failure to pay the penalty assessed therein after notice and opportunity for hearing within time prescribed in the order.

Penalty— Automatic waiver of any reduction in the original claim found to be valid, and immediate restoration to the full amount assessed in the Claim Letter or Notice of Investigation.

IV. Out-of-Service Order

a. Violation— Operation of a commercial vehicle by a driver during the period the driver was placed out of service.

Penalty— Up to $1,100 per violation.

(For purposes of this violation, the term "driver" means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. Violation—Requiring or permitting a driver to operate a commercial vehicle during the period the driver was placed out of service.

Penalty— Up to $11,000 per violation.

(This violation applies to motor carriers, including an independent contractor who is not a "driver," as defined under paragraph IVa above.)

c. Violation— Operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made.

Penalty—$1,100 each time the vehicle is so operated.

(This violation applies to drivers as defined in IVa above.)

d. Violation— Requiring or permitting the operation of a commercial motor vehicle placed out of service before the required repairs are made.

Penalty— Up to $11,000 each time the vehicle is so operated after notice of the defect is received.

(This violation applies to motor carriers, including an independent owner-operator who is not a "driver," as defined in IVa above.)

e. Violation— Failure to return written certification of correction as required by the out-of-service order.

Penalty— Up to $550 per violation.

f. Violation— Knowingly falsifies written certification of correction required by the out-of-service order.

Penalty— Considered the same as the violations described in paragraphs IVc and IVd above, and subject to the same penalties.

Note:

Falsification of certification may also result in criminal prosecution under 18 U.S.C. 1001.

g. Violation— Operating in violation of an order issued under §386.72(b) to cease all or part of the employer's commercial motor vehicle operations…, i.e., failure to cease operations as ordered.

Penalty— Up to $25,000 per day the operation continues after the effective date and time of the order to cease.

56 FR 10184, Mar. 11, 1991, as amended at 63 FR 12414, Mar. 13, 1998

Pt. 386, App. B

Appendix B to Part 386—Penalty Schedule; Violations and Maximum Monetary Penalties

The Debt Collection Improvement Act of 1996 [Public Law 104-134, title III, chapter 10, Sec. 31001, par. (s), 110 Stat. 1321-373] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust for inflation "each civil monetary penalty provided by law within the jurisdiction of the Federal agency * * *" and to publish that regulation in the Federal Register. Pursuant to that authority, the inflation-adjusted civil penalties listed below supersede the corresponding civil penalty amounts listed in title 49, United States Code.

What are the types of violations and maximum monetary penalties?

(a) Violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

(1) Recordkeeping. A person or entity that fails to prepare or maintain a record required by Parts 385 and 390-399 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of $550 for each day the violation continues, up to $2,750.

(2) Serious Pattern of safety violations. These violations of Parts 385 and 390-399 of this subchapter constitute a middle range of violations. They do not include noncompliance with recordkeeping requirements, while substantial health or safety violations are subject to heavier civil penalties. Serious patterns of safety violations are subject to a maximum civil penalty of $1,100 for each violation in a pattern, up to a maximum of $11,000 for each pattern.

(3) Substantial Health or Safety Violations. These are violations of Parts 385 and 390-399 of this subchapter which could reasonably lead to, or have resulted in, serious personal injury or death. Substantial health or safety violations are subject to a maximum civil penalty of $11,000, provided the driver's actions constituted gross negligence or reckless disregard for safety.

(4) Non-recordkeeping violations by drivers. A driver who violates Parts 385 or 390-399 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed $1,100, provided the driver's actions constituted gross negligence or reckless disregard for safety.

(5) Violation of 49 CFR 392.5. A driver placed out of service for 24 hours for violating the alcohol prohibitions of 49 CFR 392.5(a) or (b) who drives during that period is subject to a civil penalty not to exceed $2,750 for each violation.

(6) Egregious violations of driving-time limits in 49 CFR part 395. A driver who exceeds, and a motor carrier that requires or permits a driver to exceed, by more than 3 hours the driving-time limit in 49 CFR 395.3(a) or 395.5(a), as applicable, shall be deemed to have committed an egregious driving-time limit violation. In instances of an egregious driving-time violation, the Agency will consider the "gravity of the violation," for purposes of 49 U.S.C. 521(b)(2)(D), sufficient to warrant imposition of penalties up to the maximum permitted by law.

(7) Harassment. In instances of a violation of §390.36(b)(1) of this subchapter the Agency may consider the ''gravity of the violation,'' for purposes of 49 U.S.C. 521(b)(2)(D), sufficient to warrant imposition of penalties up to the maximum permitted by law.

(b) Commercial driver's license (CDL) violations. Any person who violates 49 CFR Subparts B, C, E, F, G, or H is subject to a civil penalty of $2,750.

(c) Special penalties pertaining to violations of out-of-service orders by CDL-holders. A CDL-holder who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than $1,100 nor more than $2,750. An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes that employee to operate a CMV during any period in which the CDL-holder is subject to an out-of-service order, is subject to a civil penalty of not less than $2,750 or more than $11,000.

(d) Financial responsibility violations. A motor carrier that fails to maintain the levels of financial responsibility prescribed by Part 387 of this subchapter is subject to a maximum penalty of $11,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(e) Violations of the Hazardous Materials Regulations (HMRs). This paragraph applies to violations by motor carriers, drivers, shippers and other persons who transport hazardous materials on the highway in commercial motor vehicles or cause hazardous materials to be so transported.

(1) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than $250 and not more than $27,500 for each violation. Each day of a continuing violation constitutes a separate offense.

(2) All knowing violations of 49 U.S.C. chapter 51 or orders, regulations, or exemptions issued under the authority of that chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair or testing of a packaging or container which is represented, marked, certified or sold as being qualified for use in the transportation or shipment of hazardous materials by commercial motor vehicle on highways, are subject to a civil penalty of not less than $250 and not more than $27,500 for each violation.

(3) Whenever regulations issued under the authority of 49 U.S.C. chapter 51 require compliance with the FMCSRs while transporting hazardous materials, any violations of the FMCSRs will be considered a violation of the HMRs and subject to a civil penalty of not less than $250 and not more than $27,500.

(f) Operating after being declared unfit by assignment of a final “unsatisfactory” safety rating. (1) A motor carrier operating a commercial motor vehicle in interstate commerce (except owners or operators of commercial motor vehicles designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51) is subject, after being placed out of service because of receiving a final “unsatisfactory” safety rating, to a civil penalty of not more than $11,000 (49 CFR 385.13). Each day the transportation continues in violation of a final “unsatisfactory” safety rating constitutes a separate offense.

(2) A motor carrier operating a commercial motor vehicle designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51 is subject, after being placed out of service because of receiving a final “unsatisfactory” safety rating, to a civil penalty of not less than $250 and not more than $50,000 for each offense. If the violation results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than $105,000 for each offense. Each day the transportation continues in violation of a final “unsatisfactory” safety rating constitutes a separate offense.

(g) Violations of the commercial regulations (CRs). Penalties for violations of the CRs are specified in 49 U.S.C. Chapter 149. These penalties relate to transportation subject to the Secretary's jurisdiction under 49 U.S.C. Chapter 135. Unless otherwise noted, a separate violation occurs for each day the violation continues.

(1) A person who fails to make a report, to specifically, completely, and truthfully answer a question, or to make, prepare, or preserve a record in the form and manner prescribed is liable for a minimum penalty of $1,000 per violation.

(2) A person who operates as a carrier or broker for the transportation of property in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of $10,000 per violation.

(3) A person who operates as a motor carrier of passengers in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of $25,000 per violation.

(4) A person who operates as a foreign motor carrier or foreign motor private carrier in violation of the provisions of 49 U.S.C. 13902 (c) is liable for a minimum penalty of $650 per violation.

(5) A person who operates as a foreign motor carrier or foreign motor private carrier without authority, before the implementation of the land transportation provisions of the North American Free Trade Agreement, outside the boundaries of a commercial zone along the United States-Mexico border is liable for a maximum penalty of $11,000 for an intentional violation and a maximum penalty of $32,500 for a pattern of intentional violations.

(6) A person who operates as a motor carrier or broker for the transportation of hazardous wastes in violation of the registration provisions of 49 U.S.C. 13901 is liable for a maximum penalty of $40,000 per violation.

(7) A motor carrier or freight forwarder of household goods, or their receiver or trustee, that does not comply with any regulation relating to the protection of individual shippers is liable for a minimum penalty of $1,100 per violation.

(8) A person—

(i) Who falsifies, or authorizes an agent or other person to falsify, documents used in the transportation of household goods by motor carrier or freight forwarder to evidence the weight of a shipment or

(ii) Who charges for services which are not performed or are not reasonably necessary in the safe and adequate movement of the shipment is liable for a minimum penalty of $2,200 for the first violation and $6,500 for each subsequent violation.

(9) A person who knowingly accepts or receives from a carrier a rebate or offset against the rate specified in a tariff required under 49 U.S.C. 13702 for the transportation of property delivered to the carrier commits a violation for which the penalty is equal to three times the amount accepted as a rebate or offset and three times the value of other consideration accepted or received as a rebate or offset for the six-year period before the action is begun.

(10) A person who offers, gives, solicits, or receives transportation of property by a carrier at a different rate than the rate in effect under 49 U.S.C. 13702 is liable for a maximum penalty of $110,000 per violation. When acting in the scope of his/her employment, the acts or omissions of a person acting for or employed by a carrier or shipper are considered to be the acts and omissions of that carrier or shipper, as well as that person.

(11) Any person who offers, gives, solicits, or receives a rebate or concession related to motor carrier transportation subject to jurisdiction under subchapter I of 49 U.S.C. Chapter 135, or who assists or permits another person to get that transportation at less than the rate in effect under 49 U.S.C. 13702, commits a violation for which the penalty is $200 for the first violation and $275 for each subsequent violation.

(12) A freight forwarder, its officer, agent, or employee, that assists or willingly permits a person to get service under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702

commits a violation for which the penalty is up to $650 for the first violation and up to $2,200 for each subsequent violation.

(13) A person who gets or attempts to get service from a freight forwarder under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to $650 for the first violation and up to $2,200 for each subsequent violation.

(14) A person who knowingly authorizes, consents to, or permits a violation of 49 U.S.C. 14103 relating to loading and unloading motor vehicles or who knowingly violates subsection (a) of 49 U.S.C. 14103 is liable for a penalty of not more than $11,000 per violation.

(15) A person, or an officer, employee, or agent of that person, who tries to evade regulation under Part B of Subtitle IV, Title 49, U.S.C., for carriers or brokers is liable for a penalty of $220 for the first violation and at least $275 for a subsequent violation.

(16) A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under Part B of Subtitle IV, Title 49, U.S.C., or an officer, agent, or employee of that person, is liable for a maximum penalty of $6,500 per violation if it does not make the report, does not completely and truthfully answer the question within 30 days from the date the Secretary requires the answer, does not make or preserve the record in the form and manner prescribed, falsifies, destroys, or changes the report or record, files a false report or record, makes a false or incomplete entry in the record about a business related fact, or prepares or preserves a record in violation of a regulation or order of the Secretary.

(17) A motor carrier, water carrier, freight forwarder, or broker, or their officer, receiver, trustee, lessee, employee, or other person authorized to receive information from them, who discloses information identified in 49 U.S.C. 14908 without the permission of the shipper or consignee is liable for a maximum penalty of $2,200.

(18) A person who violates a provision of Part B, Subtitle IV, Title 49, U.S.C., or a regulation or order under Part B, or who violates a condition of registration related to transportation that is subject to jurisdiction under subchapter I or III or Chapter 135, or who violates a condition of registration of a foreign motor carrier or foreign motor private carrier under section 13902, is liable for a penalty of $650 for each violation if another penalty is not provided in 49 U.S.C. Chapter 149.

(19) A violation of Part B, Subtitle IV, Title 49, U.S.C., committed by a director, officer, receiver, trustee, lessee, agent, or employee of a carrier that is a corporation is also a violation by the corporation to which the penalties of Chapter 149 apply. Acts and omissions of individuals acting in the scope of their employment with a carrier are considered to be the actions and omissions of the carrier as well as the individual.

(20) In a proceeding begun under 49 U.S.C. 14902 or 14903, the rate that a carrier publishes, files, or participates in under section 13702 is conclusive proof against the carrier, its officers, and agents that it is the legal rate for the transportation or service. Departing, or offering to depart, from that published or filed rate is a violation of 49 U.S.C. 14902 and 14903.

(21) A person—

(i) Who knowingly and willfully fails, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods in interstate commerce for which charges have been estimated by the motor carrier transporting such goods, and for which the shipper has tendered a payment in accordance with part 375, subpart G of this chapter, is liable for a civil penalty of not less than $10,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(ii) Who is a carrier or broker and is found to be subject to the civil penalties in paragraph (i) of this appendix may also have his or her carrier and/or broker registration suspended for not less than 12 months and not more than 36 months under 49 U.S.C. chapter 139. Such suspension of a carrier or broker shall extend to and include any carrier or broker having the same ownership or operational control as the suspended carrier or broker.

(22) A broker for transportation of household goods who makes an estimate of the cost of transporting any such goods before entering into an agreement with a motor carrier to provide transportation of household goods subject to FMCSA jurisdiction is liable to the United States for a civil penalty of not less than $10,000 for each violation.

(23) A person who provides transportation of household goods subject to jurisdiction under 49 U.S.C. chapter 135, subchapter I, or provides broker services for such transportation, without being registered under 49 U.S.C. chapter 139 to provide such transportation or services as a motor carrier or broker, as the case may be, is liable to the United States for a civil penalty of not less than $25,000 for each violation.

(h) Copying of records and access to equipment, lands, and buildings.

A person subject to 49 U.S.C. chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI of title 49 U.S.C. who fails to allow promptly, upon demand in person or in writing, the Federal Motor Carrier Safety Administration, an employee designated by the Federal Motor Carrier Safety Administration, or an employee of a MCSAP grant recipient to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property, in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b), is subject to a civil penalty of not more than $1,000 for each offense. Each day of a continuing violation constitutes a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed $10,000.

(i) A person, or an officer, employee, or agent of that person, that by any means tries to evade regulation of motor carriers under Title 49, United States Code chapter 5, chapter 51, subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502, or a regulation issued under any of those provisions, shall be fined at least $2,000 but not more than $5,000 for the first violation and at least $2,500 but not more than $7,500 for a subsequent violation.

63 Fed. Reg. 12414, Mar. 13, 1998, as amended at 65 Fed. Reg. 7756, Feb. 16,, 2000; 67 Fed. Reg. 61821, Oct. 2, 2002; 68 Fed. Reg. 15383, Mar. 31, 2003; 69 Fed. Reg. 39371, June 30, 2004; 70 Fed. Reg. 28486, May 18, 2005; 72 Fed. Reg. 36789, July 5, 2007; 72 Fed. Reg. 55102, Sept. 28, 2007; 75 Fed. Reg. 72998, Nov. 29, 2010; 76 Fed, Reg. 81186, Dec. 27, 2011;78 Fed. Reg. 60226,Oct. 1, 2013.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

Authority:
49 U.S.C. 508, 13301, 13902, 31132, 31133, 31136, 31144, 31151, 31502, 31504; sec. 204, Pub. L. 104-88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 212, 217, 229, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767, 1773; sec. 4136, Pub. L. 109-59, 119 Stat. 1144, 1745 and 49 CFR 1.73.

Source: 53 FR 18052, May 19, 1988, unless otherwise noted.

Editorial Note: Nomenclature changes to part 390 appear at 66 FR 49873, Oct. 1, 2001.

Subpart A—General Applicability and Definitions

§390.1 Purpose.

This part establishes general applicability, definitions, general requirements and information as they pertain to persons subject to this chapter.

§390.3 General applicability.

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

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

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

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

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

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

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

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

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

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States;

(3) The occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise;

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

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

(6) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle except for the texting provisions of §§391.15(e) and 392.80, and except that motor carriers operating such vehicles are required to comply with §§390.15, 390.19, and 390.21(a) and (b)(2).

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

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

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

(2) Part 386, Rules of practice for motor carrier, broker, freight forwarder, and hazardous materials proceedings, of this chapter.

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

(4) Section 390.19, Motor carrier identification report, and §390.21, Marking of CMVs, for carriers subject to the requirements of §385.403 of this chapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from §390.19(a)(1).

(h) ….

53 Fed. Reg. 18052, May 19, 1988, as amended at 54 Fed. Reg. 12202, Mar. 24, 1989; 58 Fed. Reg. 33776, June 21, 1993; 59 Fed. Reg. 8752, Feb. 23, 1994; 59 Fed. Reg.67554, Dec. 29, 1994; 62 Fed. Reg. 1296, Jan. 9, 1997; 63 Fed. Reg. 33276, June 18, 1998; 64 Fed. Reg. 48516, Sept. 3, 1999; 66 Fed. Reg. 2766, Jan. 11, 2001; 68 Fed. Reg. 47875, Aug. 12, 2003; 69 Fed. Reg. 39372, June 30, 2004; 72 Fed. Reg. 36790, July 5, 2007; 73 Fed. Reg. 76820, Dec. 17, 2008; 75 Fed. Reg. 5002, Feb. 1, 2010; 75 Fed. Reg. 59135, Sept. 27, 2010

§**390.5 Definitions.**

Unless specifically defined elsewhere, in this subchapter:

Accident means—

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

(2) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo.

Alcohol concentration (AC) means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

Bus means any motor vehicle designed, constructed, and or used for the transportation of passengers, including taxicabs.

Business district means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

Charter transportation of passengers means transportation, using a bus, of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin.

Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

(2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

(3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

Conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

Direct assistance means transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (such as, electricity, medial care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

Direct compensation means payment made to the motor carrier by the passengers or a person acting on behalf of the passengers for the transportation services provided, and not included in a total package charge or other assessment for highway transportation services.

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) Inclusions. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) Exclusions. (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

Driveaway-towaway operation means an operation in which an empty or unladen motor vehicle with one or more sets of wheels on the surface of the roadway is being transported:

(1) Between vehicle manufacturer's facilities;

(2) Between a vehicle manufacturer and a dealership or purchaser;

(3) Between a dealership, or other entity selling or leasing the vehicle, and a purchaser or lessee;

(4) To a motor carrier's terminal or repair facility for the repair of disabling damage (as defined in §390.5) following a crash; or

(5) To a motor carrier's terminal or repair facility for repairs associated with the failure of a vehicle component or system; or

(6) By means of a saddle-mount or tow-bar.

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV: Driving a CMV while the person's alcohol concentration is 0.04 or more; driving under the influence of alcohol, as prescribed by

State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of Table 1 to §383.51 or §392.5(a)(2) of this subchapter.

Electronic device includes, but is not limited to, a cellular telephone; personal digital assistant; pager; computer; or any other device used to input, write, send, receive, or read text.

Emergency means any hurricane, tornado, storm (e.g. thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout or other occurrence, natural or man-made, which interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in:

(1) A declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the FMCSA Field Administrator for the geographical area in which the occurrence happens; or by other Federal, State or local government officials having authority to declare emergencies, or

(2) A request by a police officer for tow trucks to move wrecked or disabled motor vehicles.

Emergency condition requiring immediate response means any condition that, if left unattended, is reasonably likely to result in immediate serious bodily harm, death, or substantial damage to property. In the case of transportation of propane winter heating fuel, such conditions shall include (but are not limited to) the detection of gas odor, the activation of carbon monoxide alarms, the detection of carbon monoxide poisoning, and any real or suspected damage to a propane gas system following a severe storm or flooding. An "emergency condition requiring immediate response" does not include requests to refill empty gas tanks. In the case of a pipeline emergency, such conditions include (but are not limited to) indication of an abnormal pressure event, leak, release or rupture.

Emergency relief means an operation in which a motor carrier or driver of a commercial motor vehicle is providing direct assistance to supplement State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section.

Employee means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle), a mechanic, and a freight handler. Such term does not include an employee of the United States, any State, any political subdivision of a State, or any agency established under a compact between States and approved by the Congress of the United States who is acting within the course of such employment.

Employer means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it, but such terms does not include the United States, any State, any political subdivision of a State, or an agency established under a compact between States approved by the Congress of the United States.

Exempt intracity zone means the geographic area of a municipality or the commercial zone of that municipality described in appendix F to subchapter B of this chapter. The term "exempt intracity zone" does not include any municipality or commercial zone in the State of Hawaii. For purposes of §391.62, a driver may be considered to operate a commercial motor

vehicle wholly within an exempt intracity zone notwithstanding any common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone.

Exempt motor carrier means a person engaged in transportation exempt from economic regulation by the Federal Motor Carrier Safety Administration (FMCSA) under 49 U.S.C. 13506. "Exempt motor carriers" are subject to the safety regulations set forth in this subchapter.

Fatality means any injury which results in the death of a person at the time of the motor vehicle accident or within 30 days of the accident.

Federal Motor Carrier Safety Administrator means the chief executive of the Federal Motor Carrier Safety Administration, an agency within the Department of Transportation.

For-hire motor carrier means a person engaged in the transportation of goods or passengers for compensation.

Gross combination weight rating (GCWR) means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

Highway means any road, street, or way, whether on public or private property, open to public travel. "Open to public travel" means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

Interstate commerce means trade, traffic, or transportation in the United States—

(1) Between a place in a State and a place outside of such State (including a place outside of the United States);

(2) Between two places in a State through another State or a place outside of the United States; or

(3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

Intrastate commerce means any trade, traffic, or transportation in any State which is not described in the term "interstate commerce."

Medical examiner means an individual certified by FMCSA and listed on the National Registry of Certified Medical Examiners in accordance with subpart D of this part.

Medical variance means a driver has received one of the following from FMCSA that allows the driver to be issued a medical certificate:

(1) An exemption letter permitting operation of a commercial motor vehicle pursuant to part 381, subpart C, of this chapter or §391.64 of this chapter;

(2) A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to §391.49 of this chapter.

Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of subchapter B, this definition includes the terms employer, and exempt motor carrier.

Motor vehicle means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Federal Motor Carrier Safety Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

Motor vehicle record means the report of the driving status and history of a driver generated from the driver record, provided to users, such as, drivers or employers, and subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721-2725.

Multiple-employer driver means a driver, who in any period of 7 consecutive days, is employed or used as a driver by more than one motor carrier.

Operating authority means the registration required by 49 U.S.C. 13902, 49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a.

Operator—See driver.

Other terms—Any other term used in this subchapter is used in its commonly accepted meaning, except where such other term has been defined elsewhere in this subchapter. In that event, the definition therein given shall apply.

Out-of-service order means a declaration by an authorized enforcement officer of a Federal, State, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 CFR 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible laws, or the North American Standard Out-of-Service Criteria.

Person means any individual, partnership, association, corporation, business

Previous employer means any DOT regulated person who employed the driver in the preceding 3 years, including any possible current employer.

Principal place of business means the single location designated by the motor carrier, normally its headquarters, for purposes of identification under this subchapter. The motor carrier must make records required by parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter available for inspection at this location within 48 hours (Saturdays, Sundays, and Federal holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Motor Carrier Safety Administration.

Private motor carrier means a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier.

Private motor carrier of passengers (business) means a private motor carrier engaged in the interstate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large.

Radar detector means any device or mechanism to detect the emission of radio microwaves, laser beams or any other future speed measurement technology employed by enforcement personnel to measure the speed of commercial motor vehicles upon public roads and highways for enforcement purposes. Excluded from this definition are radar detection devices that meet both of the following requirements:

(1) Transported outside the driver's compartment of the commercial motor vehicle. For this purpose, the driver's compartment of a passenger-carrying CMV shall include all space designed to accommodate both the driver and the passengers; and

(2) Completely inaccessible to, inoperable by, and imperceptible to the driver while operating the commercial motor vehicle.

Regional Director of Motor Carriers means the Field Administrator, Federal Motor Carrier Safety Administration, for a given geographical area of the

Residential district means the territory adjacent to and including a highway which is not a business district and for a distance of 300 feet or more along the highway is primarily improved with residences.

School bus means a passenger motor vehicle which is designed or used to carry more than 10 passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting preprimary, primary, or secondary school students to such schools from home or from such schools to home.

School bus operation means the use of a school bus to transport only school children and/or school personnel from home to school and from school to home.

Secretary means the Secretary of Transportation.

Single-employer driver means a driver who, in any period of 7 consecutive days, is employed or used as a driver solely by a single motor carrier. This term includes a driver who operates a commercial motor vehicle on an intermittent, casual, or occasional basis.

Special agent See appendix B to subchapter B—Special agents.

State means a State of the United States and the District of Columbia and includes a political subdivision of a State.

Texting means manually entering alphanumeric text into, or reading text from, an electronic device.

(1) This action includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page, or engaging in any other form of electronic text retrieval or electronic text entry for present or future communication.

(2) Texting does not include:

(i) Reading, selecting, or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call or using voice commands to initiate or receive a telephone call;

(ii) Inputting, selecting or reading information on a global positioning system or navigation system; or

(iii) Using a device capable of performing multiple functions (e.g., fleet management systems, dispatching devices, smart phones, citizens band radios, music players, etc.) for a purpose that is not otherwise prohibited in part 392.

53 Fed. Reg. 18052, May 19, 1988

Subpart **A-General Applicability and Definitions**

§390.1 Purpose.

This part establishes general applicability, definitions, general requirements and information as they pertain to persons subject to this chapter.

§**390.3 General applicability.**

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

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

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

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

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

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

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

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

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

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States;

(3) The occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise;

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

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

(6) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle except for the texting provisions of §§391.15(e) and 392.80, and except that motor carriers operating such vehicles are required to comply with §§390.15, 390.19, and 390.21(a) and (b)(2).

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

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

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

(2) Part 386, Rules of practice for motor carrier, broker, freight forwarder, and hazardous materials proceedings, of this chapter.

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

(4) Section 390.19, Motor carrier identification report, and §390.21, Marking of CMVs, for carriers subject to the requirements of §385.403 of this chapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from §390.19(a)(1).

(h) ….

53 Fed. Reg. 18052, May 19, 1988, as amended at 54 Fed. Reg. 12202, Mar. 24, 1989; 58 Fed. Reg. 33776, June 21, 1993; 59 Fed. Reg. 8752, Feb. 23, 1994; 59 Fed. Reg. 67554, Dec. 29, 1994; 62 Fed. Reg. 1296, Jan. 9, 1997; 63 Fed. Reg. 33276, June 18, 1998; 64 Fed. Reg. 48516, Sept. 3, 1999; 66 Fed. Reg. 2766, Jan. 11, 2001; 68 Fed. Reg. 47875, Aug. 12, 2003; 69 Fed. Reg. 39372, June 30, 2004; 72 Fed. Reg. 36790, July 5, 2007; 73 Fed. Reg. 76820, Dec. 17, 2008; 75 Fed. Reg. 5002, Feb. 1, 2010; 75 Fed. Reg. 59135, Sept.27, 2010

§390.7 Rules of construction.

(a) In part 325 of subchapter A and in this subchapter, unless the context requires otherwise:

(1) Words imparting the singular include the plural;

(2) Words imparting the plural include the singular;

(3) Words imparting the present tense include the future tense.

(b) In this subchapter the word—

(1) Officer includes any person authorized by law to perform the duties of the office;

(2) Writing includes printing and typewriting;

(3) Shall is used in an imperative sense;

(4) Must is used in an imperative sense;

(5) Should is used in a recommendatory sense;

(6) May is used in a permissive sense; and

(7) Includes is used as a word of inclusion, not limitation.

53 Fed. Reg. 18052, May 19, 1988, as amended at 60 Fed. Reg. 38744, July 28, 1995

Subpart B—General Requirements and Information

§390.9 State and local laws, effect on.

Except as otherwise specifically indicated, subchapter B of this chapter is not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto.

§390.11 Motor carrier to require observance of driver regulations.

Whenever in part 325 of subchapter A or in this subchapter a duty is prescribed for a driver or a prohibition is imposed upon the driver, it shall be the duty of the motor carrier to require observance of such duty or prohibition. If the motor carrier is a driver, the driver shall likewise be bound.

§390.13 Aiding or abetting violations.

No person shall aid, abet, encourage, or require a motor carrier or its employees to violate the rules of this chapter.

§390.15 Assistance in investigations and special studies.

(a) Each motor carrier must do the following:

(1) Make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative, or authorized third party representative within such time as the request or investigation may specify.

(2) Give an authorized representative all reasonable assistance in the investigation of any accident, including providing a full, true, and correct response to any question of the inquiry.

(b) For accidents that occur after April 29, 2003, motor carriers must maintain an accident register for three years after the date of each accident. For accidents that occurred on or prior to April 29, 2003, motor carriers must maintain an accident register for a period of one year after

the date of each accident. Information placed in the accident register must contain at least the following:

(1) A list of accidents as defined at §390.5 of this chapter containing for each accident:

(i) Date of accident.

(ii) City or town, or most near, where the accident occurred and the State where the accident occurred.

(iii) Driver Name.

(iv) Number of injuries.

(v) Number of fatalities.

(vi) Whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicle involved in the accident, were released.

(2) Copies of all accident reports required by State or other governmental entities or insurers.

69 FR 16719, Mar. 30, 2004, as amended at 73 FR 76821, Dec. 17, 2008

§390.16 [Reserved]

§390.17 Additional equipment and accessories.

Nothing in this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this subchapter, provided such equipment and accessories do not decrease the safety of operation of the commercial motor vehicles on which they are used.

53 Fed. Reg. 18052, May 19, 1988, as amended at 60 Fed. Reg. 38744, July 28, 1995. Re-designated at 65 Fed. Reg. 35296, June 2, 2000

§390.19 Motor carrier identification reports.

(a) Applicability. Each motor carrier must file Form MCS-150, Form MCS-150B or Form MCS-150C with FMCSA as follows:

(1) A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce must file a Motor Carrier Identification Report, Form MCS-150.

(2) A motor carrier conducting operations in intrastate commerce and requiring a Safety Permit under 49 CFR part 385, subpart E of this chapter must file the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS-150B.

(3) ….

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

(1) Before it begins operations; and

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

USDOT number ending in	Must file by last day of
1	January.
2	February.
3	March.
4	April.
5	May.
6	June.
7	July.
8	August.
9	September.
0	October.

(3) If the next-to-last digit of its USDOT Number is odd, the motor carrier shall file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT Number is even, the motor carrier shall file its update in every even-numbered calendar year.

(c) Availability of forms. The forms described under paragraph (a) of this section and complete instructions are available from the FMCSA Web site at http://www.fmcsa.dot.gov (Keyword "MCS-150," or "MCS-150B," or "MCS-150C"); from all FMCSA Service Centers and Division offices nationwide; or by calling 1-800-832-5660.

(d) Where to file. The required form under paragraph (a) of this section must be filed with FMCSA Office of Information Management. The form may be filed electronically according to the instructions at the Agency's Web site, or it may be sent to Federal Motor Carrier Safety Administration, Office of Information Management, MC-RIO, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(e) Special instructions for for-hire motor carriers. A for-hire motor carrier should submit the Form MCS-150, or Form MCS-150B, along with its application for operating authority (Form OP-1, OP-1(MX), OP-1(NNA) or OP-2), to the appropriate address referenced on that form, or may submit it electronically or by mail separately to the address mentioned in paragraph (d) of this section.

(f) Only the legal name or a single trade name of the motor carrier may be used on the forms under paragraph (a) of this section (Form MCS-150, MCS-150B, or MCS-150C).

(g) A motor carrier that fails to file the form required under paragraph (a) of this section, or furnishes misleading information or makes false statements upon the form, is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B).

(h)(1) Upon receipt and processing of the form described in paragraph (a) of this section, FMCSA will issue the motor carrier an identification number (USDOT Number).

(2) ….

(3) The motor carrier must display the number on each self-propelled CMV, as defined in §390.5, along with the additional information required by §390.21.

(4) ….

(i) A motor carrier that registers its vehicles in a State that participates in the Performance and Registration Information Systems Management (PRISM) program (authorized under section 4004 of the Transportation Equity Act for the 21st Century [(Public Law 105-178, 112 Stat. 107]) is exempt from the requirements of this section, provided it files all the required information with the appropriate State office.

73 Fed. Reg. 76821, Dec. 17, 2008

§390.21….

§**390.23 Relief from regulations.**

(a) Parts 390 through 399 of this chapter shall not apply to any motor carrier or driver operating a commercial motor vehicle to provide emergency relief during an emergency, subject to the following time limits:

(1) Regional emergencies. (i) The exemption provided by paragraph (a)(1) of this section is effective only when:

(A) An emergency has been declared by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; or

(B) The FMCSA Field Administrator has declared that a regional emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) Except as provided in §390.25, this exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 30 days from the date of the initial declaration of the emergency or the exemption from the regulations by the FMCSA Field Administrator, whichever is less.

(2) Local emergencies. (i) The exemption provided by paragraph (a)(2) of this section is effective only when:

(A) An emergency has been declared by a Federal, State or local government official having authority to declare an emergency; or

(B) The FMCSA Field Administrator has declared that a local emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) This exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 5 days from the date of the initial declaration of the emergency or the exemption from the regulations by the FMCSA Field Administrator, whichever is less.

(3) Tow trucks responding to emergencies. (i) The exemption provided by paragraph (a)(3) of this section is effective only when a request has been made by a Federal, State or local police officer for tow trucks to move wrecked or disabled motor vehicles.

(ii) This exemption shall not exceed the length of the motor carrier's or driver's direct assistance in providing emergency relief, or 24 hours from the time of the initial request for assistance by the Federal, State or local police officer, whichever is less.

(b) Upon termination of direct assistance to the regional or local emergency relief effort, the motor carrier or driver is subject to the requirements of parts 390 through 399 of this chapter, with the following exception: A driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with parts 390 through 399 of this chapter. However, a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least 10 consecutive hours off duty before the driver is required to return to such terminal or location. Having returned to the terminal or other location, the driver must be relieved of all duty and responsibilities. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches such driver or commercial motor vehicle to another location to begin operations in commerce.

(c) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to a regional or local emergency relief effort, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive in commerce until:

(1) The driver has met the requirements of §§395.3(a) and 395.5(a) of this chapter; and

(2) The driver has had at least 34 consecutive hours off-duty when:

(i) The driver has been on duty for more than 60 hours in any 7 consecutive days at the time the driver is relieved of all duty if the employing motor carrier does not operate every day in the week, or

(ii) The driver has been on duty for more than 70 hours in any 8 consecutive days at the time the driver is relieved of all duty if the employing motor carrier operates every day in the week.

57 Fed. Reg. 33647, July 30, 1992, as amended at 60 Fed. Reg. 38744, July 28, 1995; 68 Fed. Reg. 22514, Apr. 28, 2003; 70 Fed. Reg. 50070, Aug. 25, 2005

§**390.25 Extension of relief from regulations—emergencies.**

The FMCSA Field Administrator may extend the 30-day time period of the exemption contained in §390.23(a)(1), but not the 5-day time period contained in §390.23(a)(2) or the 24-hour period contained in §390.23(a)(3). Any motor carrier or driver seeking to extend the 30-day limit shall obtain approval from the FMCSA Field Administrator in the region in which the motor carrier's principal place of business is located before the expiration of the 30-day period.

The motor carrier or driver shall give full details of the additional relief requested. The FMCSA Field Administrator shall determine if such relief is necessary taking into account both the severity of the ongoing emergency and the nature of the relief services to be provided by the carrier or driver. If the FMCSA Field Administrator approves an extension of the exemption, he or she shall establish a new time limit and place on the motor carrier or driver any other restrictions deemed necessary.

57 Fed. Reg. 33647, July 30, 1992

§390.27 Locations of motor carrier safety service centers.

Service center	Territory included	Location of office
Eastern	CT, DC, DE, MA, MD, ME, NJ, NH, NY, PA, PR, RI, VA, VT, Virgin Islands, WV.	802 Cromwell Park Drive, Suite N, Glen Burnie, MD 21061.
Midwestern	IA, IL, IN, KS, MI, MO, MN, NE, OH, WI	19900 Governors Drive, Suite 210, Olympia Fields, IL 60461–1021.
Southern	AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX	1800 Century Boulevard, Suite 1700, Atlanta, GA 30345–3220.
Western	American Samoa, AK, AZ, CA, CO, Guam, HI, ID, Mariana Islands, MT, ND, NM, NV, OR, SD, UT, WA, WY.	Golden Hills Office Centre, 12600 West Colfax Avenue, Suite B–300, Lakewood, CO 80215.

NOTE 1: Canadian carriers, for information regarding proper service center, contact a FMCSA division (State) office in AK, ME, MI, MT, NY, ND, VT, or WA.

NOTE 2: Mexican carriers, for information regarding proper service center, contact a FMCSA division (State) office in AZ, CA, NM, or TX.

[65 FR 35297, June 2, 2000, as amended at 67 FR 61824, Oct. 2, 2002; 67 FR 63019, Oct. 9, 2002; 72 FR 55702, Oct. 1, 2007]

72 Fed. Reg. 55702, Oct. 1, 2007

§390.29 Location of records or documents.

(a) A motor carrier with multiple offices or terminals may maintain the records and documents required by this subchapter at its principal place of business, a regional office, or driver work-reporting location unless otherwise specified in this subchapter.

(b) All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location shall be made available for inspection upon request by a special agent or authorized representative of the Federal Motor Carrier Safety Administration at the motor carrier's principal place of business or other location specified by the agent or representative within 48 hours after a request is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period of time.

63 Fed. Reg. 33276, June 18, 1998

§390.31 Copies of records or documents.

(a) All records and documents required to be maintained under this subchapter must be preserved in their original form for the periods specified, unless the records and documents are suitably photographed and the microfilm is retained in lieu of the original record for the required retention period.

(b) To be acceptable in lieu of original records, photographic copies of records must meet the following minimum requirements:

(1) Photographic copies shall be no less readily accessible than the original record or document as normally filed or preserved would be and suitable means or facilities shall be available to locate, identify, read, and reproduce such photographic copies.

(2) Any significant characteristic, feature or other attribute of the original record or document, which photography in black and white will not preserve, shall be clearly indicated before the photograph is made.

(3) The reverse side of printed forms need not be copied if nothing has been added to the printed matter common to all such forms, but an identified specimen of each form shall be on the film for reference.

(4) Film used for photographing copies shall be of permanent record-type meeting in all respects the minimum specifications of the National Bureau of Standards, and all processes recommended by the manufacturer shall be observed to protect it from deterioration or accidental destruction.

(5) Each roll of film shall include a microfilm of a certificate or certificates stating that the photographs are direct or facsimile reproductions of the original records. Such certificate(s) shall be executed by a person or persons having personal knowledge of the material covered thereby.

(c) All records and documents required to be maintained under this subchapter may be destroyed after they have been suitably photographed for preservation.

(d) Exception. All records except those requiring a signature may be maintained through the use of computer technology provided the motor carrier can produce, upon demand, a computer printout of the required data.

§**390.33 Commercial motor vehicles used for purposes other than defined.**

Whenever a commercial motor vehicle of one type is used to perform the functions normally performed by a commercial motor vehicle of another type, the requirements of this subchapter and part 325 of subchapter A shall apply to the commercial motor vehicle and to its operation in the same manner as though the commercial motor vehicle were actually a commercial motor vehicle of the latter type. Example: If a commercial motor vehicle other than a bus is used to perform the functions normally performed by a bus, the regulations pertaining to buses and to the transportation of passengers shall apply to that commercial motor vehicle.

53 Fed. Reg. 18052, May 19, 1988, as amended at 60 Fed. Reg. 38744, July 28, 1995

§**390.35 Certificates, reports, and records: Falsification, reproduction, or alteration.**

No motor carrier, its agents, officers, representatives, or employees shall make or cause to make—

(a) A fraudulent or intentionally false statement on any application, certificate, report, or record required by part 325 of subchapter A or this subchapter;

(b) A fraudulent or intentionally false entry on any application, certificate, report, or record required to be used, completed, or retained, to comply with any requirement of this subchapter or part 325 of subchapter A; or

(c) A reproduction, for fraudulent purposes, of any application, certificate, report, or record required by this subchapter or part 325 of subchapter A.

§**390.37 Violation and penalty.**

Any person who violates the rules set forth in this subchapter or part 325 of subchapter A may be subject to civil or criminal penalties.

PART 391—QUALIFICATIONS OF DRIVERS

Contents

AUTHORITY: 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. 102-240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106-159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114-94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115-105, 131 Stat. 2263; and 49 CFR 1.87.

35 Fed. Reg. 6460, Apr. 22, 1970, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 391 appear at 66 Fed. Reg. 49873, Oct. 1, 2001.

Subpart A—General

§391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.

(a) The rules in this part establish minimum qualifications for persons who drive commercial motor vehicles as, for, or on behalf of motor carriers. The rules in this part also establish minimum duties of motor carriers with respect to the qualifications of their drivers.

(b) An individual who meets the definition of both a motor carrier and a driver employed by that motor carrier must comply with both the rules in this part that apply to motor carriers and the rules in this part that apply to drivers.

35 Fed. Reg. 6460, Apr. 22, 1970, as amended at 53 Fed. Reg. 18057, May 19, 1988; 60 Fed. Reg. 38744, July 28, 1995; 80 Fed. Reg. 59074, Oct. 1, 2015

§391.2 General exceptions.

(a) *Farm custom operation.* The rules in this part, except for §391.15(e) and (f), do not apply to a driver who drives a commercial motor vehicle controlled and operated by a person engaged in custom-harvesting operations, if the commercial motor vehicle is used to—

(1) Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or

(2) Transport custom-harvested crops to storage or market.

(b) *Apiarian industries.* The rules in this part, except for §391.15(e) and (f), do not apply to a driver who is operating a commercial motor vehicle controlled and operated by a beekeeper engaged in the seasonal transportation of bees.

(c) *Certain farm vehicle drivers.* The rules in this part, except for §391.15(e) and (f), do not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) commercial motor vehicle, as defined in §390.5 of this chapter. For limited exemptions for farm vehicle drivers of articulated commercial motor vehicles, see §391.67.

(d) *Covered farm vehicles.* The rules in part 391, Subpart E—Physical Qualifications and Examinations—do not apply to drivers of "covered farm vehicles," as defined in 49 CFR 390.5.

(e) *Pipeline welding trucks.* The rules in this part do not apply to drivers of "pipeline welding trucks" as defined in 49 CFR 390.38(b).

76 Fed. Reg. 75487, Dec. 2, 2011, as amended at 78 Fed. Reg. 16195, Mar. 14, 2013; 78 Fed. Reg. 58483, Sept. 24, 2013; 81 Fed. Reg. 47720, July 22, 2016

Subpart B—Qualification and Disqualification of Drivers

§391.11 General qualifications of drivers.

(a) A person shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle. Except as provided in §391.63, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle.

(b) Except as provided in subpart G of this part, a person is qualified to drive a motor vehicle if he/she—

(1) Is at least 21 years old;

(2) Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;

(3) Can, by reason of experience, training, or both, safely operate the type of commercial motor vehicle he/she drives;

(4) Is physically qualified to drive a commercial motor vehicle in accordance with subpart E—Physical Qualifications and Examinations of this part;

(5) Has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction;

(6) Has prepared and furnished the motor carrier that employs him/her with the list of violations or the certificate as required by §391.27;

(7) Is not disqualified to drive a commercial motor vehicle under the rules in §391.15; and

(8) Has successfully completed a driver's road test and has been issued a certificate of driver's road test in accordance with §391.31, or has presented an operator's license or a certificate of road test which the motor carrier that employs him/her has accepted as equivalent to a road test in accordance with §391.33.

35 Fed. Reg. 6460, Apr. 22, 1970, as amended at 35 Fed. Reg. 17420, Nov. 13, 1970; 35 Fed. Reg. 19181, Dec. 18, 1970; 36 Fed. Reg. 222, Jan. 7, 1971, 36 Fed. Reg. 24220, Dec. 22, 1971; 45 Fed. Reg. 46424, July 10, 1980; 52 Fed. Reg. 20589, June 1, 1987; 59 Fed. Reg. 60323, Nov. 23, 1994; 60 Fed. Reg. 38744, 38745, July 28, 1995; 63 Fed. Reg. 33276, June 18, 1998]

§391.13 Responsibilities of drivers.

In order to comply with the requirements of §§392.9(a) and 383.111(a)(16) of this subchapter, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless the person—

(a) Can, by reason of experience, training, or both, determine whether the cargo he/she transports (including baggage in a passenger-carrying commercial motor vehicle) has been properly located, distributed, and secured in or on the commercial motor vehicle he/she drives;

(b) Is familiar with methods and procedures for securing cargo in or on the commercial motor vehicle he/she drives.

63 Fed. Reg. 33277, June 18, 1998, as amended at 80 Fed. Reg. 59074, Oct. 1, 2015

§391.15 Disqualification of drivers.

(a) *General.* A driver who is disqualified shall not drive a commercial motor vehicle. A motor carrier shall not require or permit a driver who is disqualified to drive a commercial motor vehicle.

(b) *Disqualification for loss of driving privileges.* (1) A driver is disqualified for the duration of the driver's loss of his/her privilege to operate a commercial motor vehicle on public highways, either temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege, until that operator's license, permit, or privilege is restored by the authority that revoked, suspended, withdrew, or denied it.

(2) A driver who receives a notice that his/her license, permit, or privilege to operate a commercial motor vehicle has been revoked, suspended, or withdrawn shall notify the motor carrier that employs him/her of the contents of the notice before the end of the business day following the day the driver received it.

(c) *Disqualification for criminal and other offenses*—(1) *General rule.* A driver who is convicted of (or forfeits bond or collateral upon a charge of) a disqualifying offense specified in paragraph (c)(2) of this section is disqualified for the period of time specified in paragraph (c)(3) of this section, if—

(i) The offense was committed during on-duty time as defined in §395.2 of this subchapter or as otherwise specified; and

(ii) The driver is employed by a motor carrier or is engaged in activities that are in furtherance of a commercial enterprise in interstate, intrastate, or foreign commerce.

(2) *Disqualifying offenses.* The following offenses are disqualifying offenses:

(i) Driving a commercial motor vehicle while under the influence of alcohol. This shall include:

(A) Driving a commercial motor vehicle while the person's alcohol concentration is 0.04 percent or more;

(B) Driving under the influence of alcohol, as prescribed by State law; or

(C) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of §391.15(c)(2)(i) (A) or (B), or §392.5(a)(2).

(ii) Driving a commercial motor vehicle under the influence of a 21 CFR 1308.11 *Schedule I* identified controlled substance, an amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug;

(iii) Transportation, possession, or unlawful use of a 21 CFR 1308.11 *Schedule I* identified controlled substance, amphetamines, narcotic drugs, formulations of an amphetamine, or derivatives of narcotic drugs while the driver is on duty, as the term on-duty time is defined in §395.2 of this subchapter;

(iv) Leaving the scene of an accident while operating a commercial motor vehicle; or

(v) A felony involving the use of a commercial motor vehicle.

(3) *Duration of disqualification—*

(i) *First offenders.* A driver is disqualified for 1 year after the date of conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, the driver was not convicted of, or did not forfeit bond or collateral upon a charge of an offense that would disqualify the driver under the rules of this section. Exemption. The period of disqualification is 6 months if the conviction or forfeiture of bond or collateral soley concerned the transportation or possession of substances named in paragraph (c)(2)(iii) of this section.

(ii) *Subsequent offenders.* A driver is disqualified for 3 years after the date of his/her conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, he/she was convicted of, or forfeited bond or collateral upon a charge of, an offense that would disqualify him/her under the rules in this section.

(d) *Disqualification for violation of out-of-service orders*—(1) *General rule.* A driver who is convicted of violating an out-of-service order is disqualified for the period of time specified in paragraph (d)(2) of this section.

(2) *Duration of disqualification for violation of out-of-service orders—*

(i) *First violation.* A driver is disqualified for not less than 90 days nor more than one year if the driver is convicted of a first violation of an out-of-service order.

(ii) *Second violation.* A driver is disqualified for not less than one year nor more than five years if, during any 10-year period, the driver is convicted of two violations of out-of-service orders in separate incidents.

(iii) *Third or subsequent violation.* A driver is disqualified for not less than three years nor more than five years if, during any 10-year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents.

(iv) *Special rule for hazardous materials and passenger offenses.* A driver is disqualified for a period of not less than 180 days nor more than two years if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et seq.*), or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver. A driver is disqualified for a period of not less than three years nor more than five years if, during any 10-year period, the driver is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver.

(e) Disqualification for violation of prohibition of texting while driving a commercial motor vehicle—

(1) *General rule.* A driver who is convicted of violating the prohibition of texting in §392.80(a) of this chapter is disqualified for the period of time specified in paragraph (e)(2) of this section.

(2) *Duration.* Disqualification for violation of prohibition of texting while driving a commercial motor vehicle—

(i) *Second violation.* A driver is disqualified for 60 days if the driver is convicted of two violations of §392.80(a) of this chapter in separate incidents during any 3-year period.

(ii) *Third or subsequent violation.* A driver is disqualified for 120 days if the driver is convicted of three or more violations of §392.80(a) of this chapter in separate incidents during any 3-year period.

(f) Disqualification for violation of a restriction on using a hand-held mobile telephone while driving a commercial motor vehicle—

(1) *General rule.* A driver who is convicted of violating the restriction on using a hand-held mobile telephone in §392.82(a) of this chapter is disqualified from driving a commercial motor vehicle for the period of time specified in paragraph (f)(2) of this section.

(2) *Duration.* Disqualification for violation of a restriction on using a hand-held mobile telephone while driving a commercial motor vehicle—

(i) *Second violation.* A driver is disqualified for 60 days if the driver is convicted of two violations of §392.82(a) of this chapter in separate incidents committed during any 3-year period.

(ii) *Third or subsequent violation.* A driver is disqualified for 120 days if the driver is convicted of three or more violations of §392.82(a) of this chapter in separate incidents committed during any 3-year period.

37 Fed. Reg. 24902, Nov. 23, 1972, as amended at 49 Fed. Reg. 44215, Nov. 5, 1984; 51 Fed. Reg. 8200, Mar. 10, 1986; 53 Fed. Reg. 18057, May 19, 1988; 53 Fed. Reg. 39051, Oct. 4, 1988; 54 Fed. Reg. 40788, Oct. 3, 1989; 59 Fed. Reg. 26028, May 18, 1994; 60 Fed. Reg. 38744, 38745, July 28, 1995; 62 Fed. Reg. 37152, July 11, 1997; 63 Fed. Reg. 33277, June 18, 1998; 75 Fed. Reg. 59136, Sept. 27, 2010; 76 Fed. Reg. 75487, Dec. 2, 2011; 77 Fed. Reg. 1891, Jan. 12, 2012; 78 Fed. Reg. 58483, Sept. 24, 2013; 80 Fed. Reg. 59074, Oct. 1, 2015

Subpart C—Background and Character

§391.21 Application for employment.

(a) Except as provided in subpart G of this part, a person shall not drive a commercial motor vehicle unless he/she has completed and furnished the motor carrier that employs him/her with an application for employment that meets the requirements of paragraph (b) of this section.

(b) The application for employment shall be made on a form furnished by the motor carrier. Each application form must be completed by the applicant, must be signed by him/her, and must contain the following information:

(1) The name and address of the employing motor carrier;

(2) The applicant's name, address, date of birth, and social security number;

(3) The addresses at which the applicant has resided during the 3 years preceding the date on which the application is submitted;

(4) The date on which the application is submitted;

(5) The issuing State, number, and expiration date of each unexpired commercial motor vehicle operator's license or permit that has been issued to the applicant;

(6) The nature and extent of the applicant's experience in the operation of motor vehicles, including the type of equipment (such as buses, trucks, truck tractors, semitrailers, full trailers, and pole trailers) which he/she has operated;

(7) A list of all motor vehicle accidents in which the applicant was involved during the 3 years preceding the date the application is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused;

(8) A list of all violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the 3 years preceding the date the application is submitted;

(9) A statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to the applicant, or a statement that no such denial, revocation, or suspension has occurred;

(10)(i) A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted,

(ii) The dates he or she was employed by that employer,

(iii) The reason for leaving the employ of that employer,

(iv) After October 29, 2004, whether the (A) Applicant was subject to the FMCSRs while employed by that previous employer,

(B) Job was designated as a safety sensitive function in any DOT regulated mode subject to alcohol and controlled substances testing requirements as required by 49 CFR part 40;

(11) For those drivers applying to operate a commercial motor vehicle as defined by part 383 of this subchapter, a list of the names and addresses of the applicant's employers during the 7-year period preceding the 3 years contained in paragraph (b)(10) of this section for which the applicant was an operator of a commercial motor vehicle, together with the dates of employment and the reasons for leaving such employment; and

(12) The following certification and signature line, which must appear at the end of the application form and be signed by the applicant:

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.

(Date)

(Applicant's signature)

(c) A motor carrier may require an applicant to provide information in addition to the information required by paragraph (b) of this section on the application form.

(d) Before an application is submitted, the motor carrier must inform the applicant that the information he/she provides in accordance with paragraph (b)(10) of this section may be used, and the applicant's previous employers will be contacted, for the purpose of investigating the applicant's safety performance history information as required by paragraphs (d) and (e) of §391.23. The prospective employer must also notify the driver in writing of his/her due process rights as specified in §391.23(i) regarding information received as a result of these investigations.

35 Fed. Reg. 6460, Apr. 22, 1970, as amended at 35 Fed. Reg. 17420, Nov. 13, 1970; 52 Fed. Reg. 20589, June 1, 1987; 60 Fed. Reg. 38744, July 28, 1995; 69 Fed. Reg. 16719, Mar. 30, 2004

§391.23 Investigation and inquiries.

(a) Except as provided in subpart G of this part, each motor carrier shall make the following investigations and inquiries with respect to each driver it employs, other than a person who has been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971:

(1) An inquiry, within 30 days of the date the driver's employment begins, to each State where the driver held or holds a motor vehicle operator's license or permit during the preceding 3 years to obtain that driver's motor vehicle record.

(2) An investigation of the driver's safety performance history with Department of Transportation regulated employers during the preceding three years.

(b) A copy of the motor vehicle record(s) obtained in response to the inquiry or inquiries to each State required by paragraph (a)(1) of this section must be placed in the driver qualification file within 30 days of the date the driver's employment begins and be retained in compliance with §391.51. If no motor vehicle record is received from the State or States required to submit this response, the motor carrier must document a good faith effort to obtain such information, and certify that no record exists for that driver in that State or States. The inquiry to the State driver licensing agency or agencies must be made in the form and manner each agency prescribes.

(c)(1) Replies to the investigations of the driver's safety performance history required by paragraph (a)(2) of this section, or documentation of good faith efforts to obtain the investigation data, must be placed in the driver investigation history file, after October 29, 2004, within 30

days of the date the driver's employment begins. Any period of time required to exercise the driver's due process rights to review the information received, request a previous employer to correct or include a rebuttal, is separate and apart from this 30-day requirement to document investigation of the driver safety performance history data.

(2) The investigation may consist of personal interviews, telephone interviews, letters, or any other method for investigating that the carrier deems appropriate. Each motor carrier must make a written record with respect to each previous employer contacted, or good faith efforts to do so. The record must include the previous employer's name and address, the date the previous employer was contacted, or the attempts made, and the information received about the driver from the previous employer. Failures to contact a previous employer, or of them to provide the required safety performance history information, must be documented. The record must be maintained pursuant to §391.53.

(3) Prospective employers should report failures of previous employers to respond to an investigation to the FMCSA and use the complaint procedures specified at §386.12 of this subchapter. Keep a copy of the reports in the driver investigation history file as part of documenting a good faith effort to obtain the required information.

(4) *Exception.* For drivers with no previous employment experience working for a DOT-regulated employer during the preceding three years, documentation that no investigation was possible must be placed in the driver investigation history file, after October 29, 2004, within the required 30 days of the date the driver's employment begins.

(d) The prospective motor carrier must investigate, at a minimum, the information listed in this paragraph from all previous employers of the applicant that employed the driver to operate a CMV within the previous three years. The investigation request must contain specific contact information on where the previous motor carrier employers should send the information requested.

(1) General driver identification and employment verification information.

(2) The data elements as specified in §390.15(b)(1) of this chapter for accidents involving the driver that occurred in the three-year period preceding the date of the employment application.

(i) Any accidents as defined by §390.5 of this chapter.

(ii) Any accidents the previous employer may wish to provide that are retained pursuant to §390.15(b)(2), or pursuant to the employer's internal policies for retaining more detailed minor accident information.

(e) In addition to the investigations required by paragraph (d) of this section, the prospective motor carrier employers must investigate the information listed below in this paragraph from all previous DOT regulated employers that employed the driver within the previous three years from the date of the employment application, in a safety-sensitive function that required alcohol and controlled substance testing specified by 49 CFR part 40.

(1) Whether, within the previous three years, the driver had violated the alcohol and controlled substances prohibitions under subpart B of part 382 of this chapter, or 49 CFR part 40.

(2) Whether the driver failed to undertake or complete a rehabilitation program prescribed by a substance abuse professional (SAP) pursuant to §382.605 of this chapter, or 49 CFR part 40, subpart O. If the previous employer does not know this information (*e.g.,* an employer that terminated an employee who tested positive on a drug test), the prospective motor carrier must obtain documentation of the driver's successful completion of the SAP's referral directly from the driver.

(3) For a driver who had successfully completed a SAP's rehabilitation referral, and remained in the employ of the referring employer, information on whether the driver had the following testing violations subsequent to completion of a §382.605 or 49 CFR part 40, subpart O referral:

(i) Alcohol tests with a result of 0.04 or higher alcohol concentration;

(ii) Verified positive drug tests;

(iii) Refusals to be tested (including verified adulterated or substituted drug test results).

(4) As of January 6, 2023, employers subject to §382.701(a) of this chapter must use the Drug and Alcohol Clearinghouse to comply with the requirements of this section with respect to FMCSA-regulated employers.

(i) *Exceptions.* (A) If an applicant who is subject to follow-up testing has not successfully completed all follow-up tests, the employer must request the applicant's follow-up testing plan directly from the previous employer in accordance with §40.25(b)(5) of this title.

(B) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT mode other than FMCSA, the employer must request alcohol and controlled substances information required under this section directly from those employers regulated by a DOT mode other than FMCSA.

(f)(1) A prospective motor carrier employer must provide to the previous employer the driver's consent meeting the requirements of §40.321(b) of this title for the release of the information in paragraph (e) of this section. If the driver refuses to provide this consent, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle for that motor carrier.

(2) If a driver refuses to grant consent for the prospective motor carrier employer to query the Drug and Alcohol Clearinghouse in accordance with paragraph (e)(4) of this section, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle.

(g) After October 29, 2004, previous employers must:

(1) Respond to each request for the DOT defined information in paragraphs (d) and (e) of this section within 30 days after the request is received. If there is no safety performance history information to report for that driver, previous motor carrier employers are nonetheless required to send a response confirming the non-existence of any such data, including the driver identification information and dates of employment.

(2) Take all precautions reasonably necessary to ensure the accuracy of the records.

(3) Provide specific contact information in case a driver chooses to contact the previous employer regarding correction or rebuttal of the data.

(4) Keep a record of each request and the response for one year, including the date, the party to whom it was released, and a summary identifying what was provided.

(5) *Exception.* Until May 1, 2006, carriers need only provide information for accidents that occurred after April 29, 2003.

(h) The release of information under this section may take any form that reasonably ensures confidentiality, including letter, facsimile, or e-mail. The previous employer and its agents and insurers must take all precautions reasonably necessary to protect the driver safety performance history records from disclosure to any person not directly involved in forwarding the records, except the previous employer's insurer, except that the previous employer may not provide any alcohol or controlled substances information to the previous employer's insurer.

(i)(1) The prospective employer must expressly notify drivers with Department of

Transportation regulated employment during the preceding three years—via the application form or other written document prior to any hiring decision—that he or she has the following rights regarding the investigative information that will be provided to the prospective employer pursuant to paragraphs (d) and (e) of this section:

(i) The right to review information provided by previous employers;

(ii) The right to have errors in the information corrected by the previous employer and for that previous employer to re-send the corrected information to the prospective employer;

(iii) The right to have a rebuttal statement attached to the alleged erroneous information, if the previous employer and the driver cannot agree on the accuracy of the information.

(2) Drivers who have previous Department of Transportation regulated employment history in the preceding three years, and wish to review previous employer-provided investigative information must submit a written request to the prospective employer, which may be done at any time, including when applying, or as late as 30 days after being employed or being notified of denial of employment. The prospective employer must provide this information to the applicant within five (5) business days of receiving the written request. If the prospective employer has not yet received the requested information from the previous employer(s), then the five-business days deadline will begin when the prospective employer receives the requested safety performance history information. If the driver has not arranged to pick up or receive the requested records within thirty (30) days of the prospective employer making them available, the prospective motor carrier may consider the driver to have waived his/her request to review the records.

(j)(1) Drivers wishing to request correction of erroneous information in records received pursuant to paragraph (i) of this section must send the request for the correction to the previous employer that provided the records to the prospective employer.

(2) After October 29, 2004, the previous employer must either correct and forward the information to the prospective motor carrier employer, or notify the driver within 15 days of receiving a driver's request to correct the data that it does not agree to correct the data. If the previous employer corrects and forwards the data as requested, that employer must also retain the corrected information as part of the driver's safety performance history record and provide it to subsequent prospective employers when requests for this information are received. If the previous employer corrects the data and forwards it to the prospective motor carrier employer, there is no need to notify the driver.

(3) Drivers wishing to rebut information in records received pursuant to paragraph (i) of this section must send the rebuttal to the previous employer with instructions to include the rebuttal in that driver's safety performance history.

(4) After October 29, 2004, within five business days of receiving a rebuttal from a driver, the previous employer must:

(i) Forward a copy of the rebuttal to the prospective motor carrier employer;

(ii) Append the rebuttal to the driver's information in the carrier's appropriate file, to be included as part of the response for any subsequent investigating prospective employers for the duration of the three-year data retention requirement.

(5) The driver may submit a rebuttal initially without a request for correction, or subsequent to a request for correction.

(6) The driver may report failures of previous employers to correct information or include the driver's rebuttal as part of the safety performance information, to the FMCSA following procedures specified at §386.12.

(k)(1) The prospective motor carrier employer must use the information described in paragraphs (d) and (e) of this section only as part of deciding whether to hire the driver.

(2) The prospective motor carrier employer, its agents and insurers must take all precautions reasonably necessary to protect the records from disclosure to any person not directly involved in deciding whether to hire the driver. The prospective motor carrier employer may not provide any alcohol or controlled substances information to the prospective motor carrier employer's insurer.

(l)(1) No action or proceeding for defamation, invasion of privacy, or interference with a contract that is based on the furnishing or use of information in accordance with this section may be brought against—

(i) A motor carrier investigating the information, described in paragraphs (d) and (e) of this section, of an individual under consideration for employment as a commercial motor vehicle driver,

(ii) A person who has provided such information; or

(iii) The agents or insurers of a person described in paragraph (l)(1)(i) or (ii) of this section, except insurers are not granted a limitation on liability for any alcohol and controlled substance information.

(2) The protections in paragraph (l)(1) of this section do not apply to persons who knowingly furnish false information, or who are not in compliance with the procedures specified for these investigations.

(m)(1) The motor carrier must obtain an original or copy of the medical examiner's certificate issued in accordance with §391.43, and any medical variance on which the certification is based, and, beginning on or after May 21, 2014, verify the driver was certified by a medical examiner listed on the National Registry of Certified Medical Examiners as of the date of issuance of the medical examiner's certificate, and place the records in the driver qualification file, before allowing the driver to operate a CMV.

(2) *Exception.* For drivers required to have a commercial driver's license under part 383 of this chapter:

(i) Beginning January 30, 2015, using the CDLIS motor vehicle record obtained from the current licensing State, the motor carrier must verify and document in the driver qualification file the following information before allowing the driver to operate a CMV:

(A) The type of operation the driver self-certified that he or she will perform in accordance with §383.71(b)(1) of this chapter.

(B)(1) Beginning on May 21, 2014, and through June 21, 2021, that the driver was certified by a medical examiner listed on the National Registry of Certified Medical Examiners as of the date of medical examiner's certificate issuance.

(2) If the driver has certified under paragraph (m)(2)(i)(A) of this section that he or she expects to operate in interstate commerce, that the driver has a valid medical examiner's certificate and any required medical variances.

(C) *Exception.* Beginning on January 30, 2015, and through June 21, 2021, if the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with §383.73(b)(5) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

(3) *Exception.* For drivers required to have a commercial learner's permit under part 383 of this chapter:

(i) Beginning July 8, 2015, using the CDLIS motor vehicle record obtained from the current licensing State, the motor carrier must verify and document in the driver qualification file the following information before allowing the driver to operate a CMV:

(A) The type of operation the driver self-certified that he or she will perform in accordance with §383.71(b)(1) and (g) of this chapter.

(B)(1) Through June 21, 2021, that the driver was certified by a medical examiner listed on the National Registry of Certified Medical Examiners as of the date of medical examiner's certificate issuance.

(2) If the driver has a commercial learner's permit and has certified under paragraph (m)(3)(i)(A) of this section that he or she expects to operate in interstate commerce, that the driver has a valid medical examiner's certificate and any required medical variances.

(C) Through June 21, 2021, if the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with §383.73(a)(2)(vii) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

(ii) Until July 8, 2015, if a driver operating in non-excepted, interstate commerce has no medical certification status information on the CDLIS MVR obtained from the current State driver licensing agency, the employing motor carrier may accept a medical examiner's certificate issued to that driver, and place a copy of it in the driver qualification file before allowing the driver to operate a CMV in interstate commerce.

(4) In the event of a conflict between the medical certification information provided electronically by FMCSA and a paper copy of the medical examiner's certificate, the medical certification information provided electronically by FMCSA shall control.

35 Fed. Reg. 6460, Apr. 22, 1970, as amended at 35 Fed. Reg. 17420, Nov. 13, 1970; 69 Fed. Reg. 16720, Mar. 30, 2004; 72 Fed. Reg. 55703, Oct. 1, 2007; 73 Fed. Reg. 73126, Dec. 1, 2008; 75 Fed. Reg. 28502, May 21, 2010; 76 Fed. Reg. 70663, Nov. 15, 2011; 77 Fed. Reg. 24130, Apr. 20, 2012; 79 Fed. Reg. 2379, Jan. 14, 2014; 80 Fed. Reg. 22812, Apr. 23, 2015; 80 Fed. Reg. 35578, June 22, 2015; 80 Fed. Reg. 59074, Oct. 1, 2015; 81 Fed. Reg. 87730, Dec. 5, 2016; 83 Fed. Reg. 28782, June 21, 2018; 83 Fed. Reg. 48726, Sept. 27, 2018

§391.25 Annual inquiry and review of driving record.

(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, make an inquiry to obtain the motor vehicle record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.

(b) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, review the motor vehicle record of each driver it employs to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive a commercial motor vehicle pursuant to §391.15.

(1) The motor carrier must consider any evidence that the driver has violated any applicable Federal Motor Carrier Safety Regulations in this subchapter or Hazardous Materials Regulations (49 CFR chapter I, subchapter C).

(2) The motor carrier must consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and must give great weight to violations, such as speeding, reckless driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public.

(c) *Recordkeeping.* (1) A copy of the motor vehicle record required by paragraph (a) of this section shall be maintained in the driver's qualification file.

(2) A note, including the name of the person who performed the review of the driving record required by paragraph (b) of this section and the date of such review, shall be maintained in the driver's qualification file.

63 Fed. Reg. 33277, June 18, 1998, as amended at 73 Fed. Reg. 73127, Dec. 1, 2008]

§391.27 Record of violations.

(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, require each driver it employs to prepare and furnish it with a list of all violations of motor vehicle traffic laws and ordinances (other than violations involving only parking) of which the driver has been convicted or on account of which he/she has forfeited bond or collateral during the preceding 12 months.

(b) Each driver shall furnish the list required in accordance with paragraph (a) of this section. If the driver has not been convicted of, or forfeited bond or collateral on account of, any violation which must be listed, he/she shall so certify.

(c) The form of the driver's list or certification shall be prescribed by the motor carrier. The following form may be used to comply with this section:

Driver's Certification

I certify that the following is a true and complete list of traffic violations (other than parking violations) for which I have been convicted or forfeited bond or collateral during the past 12 months.

Date of conviction Offense

Location Type of motor vehicle operated

If no violations are listed above, I certify that I have not been convicted or forfeited bond or collateral on account of any violation required to be listed during the past 12 months.

(Date of certification) (Driver's signature)

(Motor carrier's name)

(Motor carrier's address)

(Reviewed by: Signature) (Title)

(d) The motor carrier shall retain the list or certificate required by this section, or a copy of it, in its files as part of the driver's qualification file.

(e) Drivers who have provided information required by §383.31 of this subchapter need not repeat that information in the annual list of violations required by this section.

35 Fed. Reg. 6460, Apr. 22, 1970, as amended at 35 Fed. Reg. 17420, Nov. 13, 1970; 52 Fed. Reg. 20589, June 1, 1987; 60 Fed. Reg. 38745, July 28, 1995

Subpart D—Tests

§391.31 Road test.

(a) Except as provided in subpart G, a person shall not drive a commercial motor vehicle unless he/she has first successfully completed a road test and has been issued a certificate of driver's road test in accordance with this section.

(b) The road test shall be given by the motor carrier or a person designated by it. However, a driver who is a motor carrier must be given the test by a person other than himself/herself. The test shall be given by a person who is competent to evaluate and determine whether the person who takes the test has demonstrated that he/she is capable of operating the commercial motor vehicle, and associated equipment, that the motor carrier intends to assign him/her.

(c) The road test must be of sufficient duration to enable the person who gives it to evaluate the skill of the person who takes it at handling the commercial motor vehicle, and associated equipment, that the motor carriers intends to assign to him/her. As a minimum, the person who takes the test must be tested, while operating the type of commercial motor vehicle the motor carrier intends to assign him/her, on his/her skill at performing each of the following operations:

(1) The pre-trip inspection required by §392.7 of this subchapter;

(2) Coupling and uncoupling of combination units, if the equipment he/she may drive includes combination units;

(3) Placing the commercial motor vehicle in operation;

(4) Use of the commercial motor vehicle's controls and emergency equipment;

(5) Operating the commercial motor vehicle in traffic and while passing other motor vehicles;

(6) Turning the commercial motor vehicle;

(7) Braking, and slowing the commercial motor vehicle by means other than braking; and

(8) Backing and parking the commercial motor vehicle.

(d) The motor carrier shall provide a road test form on which the person who gives the test shall rate the performance of the person who takes it at each operation or activity which is a part of the test. After he/she completes the form, the person who gave the test shall sign it.

(e) If the road test is successfully completed, the person who gave it shall complete a certificate of driver's road test in substantially the form prescribed in paragraph (f) of this section.

(f) The form for the certificate of driver's road test is substantially as follows:

Certification of Road Test

Driver's name
Social Security No
Operator's or Chauffeur's License No
State
Type of power unit _____ Type of trailer(s)
If passenger carrier, type of bus _____

This is to certify that the above-named driver was given a road test under my supervision on _____, 20__, consisting of approximately ___ miles of driving.

It is my considered opinion that this driver possesses sufficient driving skill to operate safely the type of commercial motor vehicle listed above.

(Signature of examiner)

(Title)

(Organization and address of examiner)

(g) A copy of the certificate required by paragraph (e) of this section shall be given to the person who was examined. The motor carrier shall retain in the driver qualification file of the person who was examined—

(1) The original of the signed road test form required by paragraph (d) of this section; and

(2) The original, or a copy of, the certificate required by paragraph (e) of this section.

35 Fed. Reg. 6460, Apr. 22, 1970, as amended at 36 Fed. Reg. 223, Jan. 7, 1971; 59 Fed. Reg. 8752, Feb. 23, 1994; 60 Fed. Reg. 38744, July 28, 1995

§391.33 Equivalent of road test.

(a) In place of, and as equivalent to, the road test required by §391.31, a person who seeks to drive a commercial motor vehicle may present, and a motor carrier may accept—

(1) A valid Commercial Driver's License as defined in §383.5 of this subchapter, but not including double/triple trailer or tank vehicle endorsements, which has been issued to him/her to operate specific categories of commercial motor vehicles and which, under the laws of that State, licenses him/her after successful completion of a road test in a commercial motor vehicle of the type the motor carrier intends to assign to him/her; or

(2) A copy of a valid certificate of driver's road test issued to him/her pursuant to §391.31 within the preceding 3 years.

(b) If a driver presents, and a motor carrier accepts, a license or certificate as equivalent to the road test, the motor carrier shall retain a legible copy of the license or certificate in its files as part of the driver's qualification file.

(c) A motor carrier may require any person who presents a license or certificate as equivalent to the road test to take a road test or any other test of his/her driving skill as a condition to his/her employment as a driver.

35 Fed. Reg. 6460, Apr. 22, 1970, as amended at 60 Fed. Reg. 38744, July 28, 1995; 63 Fed. Reg. 33277, June 18, 1998]

Subpart E—Physical Qualifications and Examinations

§391.41 Physical qualifications for drivers.

(a)(1)(i) A person subject to this part must not operate a commercial motor vehicle unless he or she is medically certified as physically qualified to do so, and, except as provided in paragraph (a)(2) of this section, when on-duty has on his or her person the original, or a copy, of a current medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle. NOTE: Effective December 29, 1991, the FMCSA Administrator determined that the new Licencia Federal de Conductor issued by the United Mexican States is recognized as proof of medical fitness to drive a CMV. The United States and Canada entered into a Reciprocity Agreement, effective March 30, 1999, recognizing that a Canadian commercial driver's license is proof of medical fitness to drive a CMV. Therefore, Canadian and Mexican CMV drivers are not required to have in their possession a medical examiner's

certificate if the driver has been issued, and possesses, a valid commercial driver license issued by the United Mexican States, or a Canadian Province or Territory and whose license and medical status, including any waiver or exemption, can be electronically verified. Drivers from any of the countries who have received a medical authorization that deviates from the mutually accepted compatible medical standards of the resident country are not qualified to drive a CMV in the other countries. For example, Canadian drivers who do not meet the medical fitness provisions of the Canadian National Safety Code for Motor Carriers, but are issued a waiver by one of the Canadian Provinces or Territories, are not qualified to drive a CMV in the United States. In addition, U.S. drivers who received a medical variance from FMCSA are not qualified to drive a CMV in Canada.

(ii) A person who qualifies for the medical examiner's certificate by virtue of having obtained a medical variance from FMCSA, in the form of an exemption letter or a skill performance evaluation certificate, must have on his or her person a copy of the variance documentation when on-duty.

(2) *CDL/CLP exception.* (i)(A) Beginning on January 30, 2015 and through June 21, 2021, a driver required to have a commercial driver's license under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with 49 CFR 383.71(h) documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at §391.43(h), or a copy, for more than 15 days after the date it was issued as valid proof of medical certification.

(B) On or after June 22, 2021, a driver required to have a commercial driver's license or a commercial learner's permit under 49 CFR part 383, and who has a current medical examiner's certificate documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at §391.43(h).

(ii) Beginning on July 8, 2015, and through June 21, 2021, a driver required to have a commercial learner's permit under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with §383.71(h) of this chapter documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at §391.43(h), or a copy for more than 15 days after the date it was issued as valid proof of medical certification.

(iii) A CDL or CLP holder required by §383.71(h) of this chapter to obtain a medical examiner's certificate, who obtained such by virtue of having obtained a medical variance from FMCSA, must continue to have in his or her possession the original or copy of that medical variance documentation at all times when on-duty.

(iv) In the event of a conflict between the medical certification information provided electronically by FMCSA and a paper copy of the medical examiner's certificate, the medical certification information provided electronically by FMCSA shall control.

(3) A person is physically qualified to drive a commercial motor vehicle if:

(i) That person meets the physical qualification standards in paragraph (b) of this section and has complied with the medical examination requirements in §391.43; or

(ii) That person obtained from FMCSA a medical variance from the physical qualification standards in paragraph (b) of this section and has complied with the medical examination requirement in §391.43.

(b) A person is physically qualified to drive a commercial motor vehicle if that person—

(1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a skill performance evaluation certificate pursuant to §391.49;

(2) Has no impairment of:

(i) A hand or finger which interferes with prehension or power grasping; or

(ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a skill performance evaluation certificate pursuant to §391.49.

(3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(4) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

(5) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his/her ability to control and drive a commercial motor vehicle safely;

(6) Has no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a commercial motor vehicle safely;

(7) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his/her ability to control and operate a commercial motor vehicle safely;

(8) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle;

(9) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his/her ability to drive a commercial motor vehicle safely;

(10) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber;

(11) First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

(12)(i) Does not use any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or other habit-forming drug.

(ii) Does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in §382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(13) Has no current clinical diagnosis of alcoholism.

35 Fed. Reg. 6460, Apr. 22, 1970

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §391.41, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov.*

§391.43 Medical examination; certificate of physical examination.

(a) Except as provided by paragraph (b) of this section, the medical examination must be performed by a medical examiner listed on the National Registry of Certified Medical Examiners under subpart D of part 390 of this chapter.

(b) Exceptions:

(1) A licensed optometrist may perform so much of the medical examination as pertains to visual acuity, field of vision, and the ability to recognize colors as specified in paragraph (10) of §391.41(b).

(2) A certified VA medical examiner must only perform medical examinations of veteran operators.

(c) Medical examiners shall:

(1) Be knowledgeable of the specific physical and mental demands associated with operating a commercial motor vehicle and the requirements of this subpart, including the medical advisory criteria prepared by the FMCSA as guidelines to aid the medical examiner in making the qualification determination; and

(2) Be proficient in the use of and use the medical protocols necessary to adequately perform the medical examination required by this section.

(d) Any driver authorized to operate a commercial motor vehicle within an exempt intracity zone pursuant to §391.62 of this part shall furnish the examining medical examiner with a copy of the medical findings that led to the issuance of the first certificate of medical examination which allowed the driver to operate a commercial motor vehicle wholly within an exempt intracity zone.

(e) Any driver operating under a limited exemption authorized by §391.64 shall furnish the medical examiner with a copy of the annual medical findings of the endocrinologist, ophthalmologist or optometrist, as required under that section. If the medical examiner finds the driver qualified under the limited exemption in §391.64, such fact shall be noted on the Medical Examiner's Certificate.

(f) The medical examination shall be performed, and its results shall be recorded on the Medical Examination Report Form, MCSA-5875.

(g) Upon completion of the medical examination required by this subpart:

(1) The medical examiner must date and sign the Medical Examination Report and provide his or her full name, office address, and telephone number on the Report.

(2)(i) Before June 22, 2021, if the medical examiner finds that the person examined is physically qualified to operate a commercial motor vehicle in accordance with §391.41(b), he or she must complete a certificate in the form prescribed in paragraph (h) of this section and furnish the original to the person who was examined. The examiner must provide a copy to a prospective or current employing motor carrier who requests it.

(ii) On or after June 22, 2021, if the medical examiner identifies that the person examined will not be operating a commercial motor vehicle that requires a commercial driver's license or a commercial learner's permit and finds that the driver is physically qualified to operate a commercial motor vehicle in accordance with §391.41(b), he or she must complete a certificate in the form prescribed in paragraph (h) of this section and furnish the original to the person who was examined. The examiner must provide a copy to a prospective or current employing motor

carrier who requests it.

(3) On or after June 22, 2021, if the medical examiner finds that the person examined is not physically qualified to operate a commercial motor vehicle in accordance with §391.41(b), he or she must inform the person examined that he or she is not physically qualified, and that this information will be reported to FMCSA. All medical examiner's certificates previously issued to the person are not valid and no longer satisfy the requirements of §391.41(a).

(4) Beginning December 22, 2015, if the medical examiner finds that the determination of whether the person examined is physically qualified to operate a commercial motor vehicle in accordance with §391.41(b) should be delayed pending the receipt of additional information or the conduct of further examination in order for the medical examiner to make such determination, he or she must inform the person examined that the additional information must be provided or the further examination completed within 45 days, and that the pending status of the examination will be reported to FMCSA.

(5)(i)(A) Once every calendar month, beginning May 21, 2014 and ending on June 22, 2018, the medical examiner must electronically transmit to the Director, Office of Carrier, Driver and Vehicle Safety Standards, via a secure Web account on the National Registry, a completed CMV Driver Medical Examination Results Form, MCSA-5850. The Form must include all information specified for each medical examination conducted during the previous month for any driver who is required to be examined by a medical examiner listed on the National Registry of Certified Medical Examiners.

(B) Beginning June 22, 2018 by midnight (local time) of the next calendar day after the medical examiner completes a medical examination for any driver who is required to be examined by a medical examiner listed on the National Registry of Certified Medical Examiners, the medical examiner must electronically transmit to the Director, Office of Carrier, Driver and Vehicle Safety Standards, via a secure FMCSA-designated Web site, a completed CMV Driver Medical Examination Results Form, MCSA-5850. The Form must include all information specified for each medical examination conducted for each driver who is required to be examined by a medical examiner listed on the National Registry of Certified Medical Examiners in accordance with the provisions of this subpart E, and should also include information for each driver who is required by a State to be examined by a medical examiner listed on the National Registry of Certified Medical Examiners in accordance with the provisions of this subpart E and any variances from those provisions adopted by such State.

(ii) Beginning on June 22, 2015, if the medical examiner does not perform a medical examination of any driver who is required to be examined by a medical examiner listed on the National Registry of Certified Medical Examiners during any calendar month, the medical examiner must report that fact to FMCSA, via a secure FMCSA-designated Web site, by the close of business on the last day of such month.

(h) The medical examiner's certificate shall be completed in accordance with the Form MCSA-5876, Medical Examiner's Certificate.

(i) Each original (paper or electronic) completed Medical Examination Report and a copy or electronic version of each medical examiner's certificate must be retained on file at the office of the medical examiner for at least 3 years from the date of examination. The medical examiner must make all records and information in these files available to an authorized representative of FMCSA or an authorized Federal, State, or local enforcement agency representative, within 48 hours after the request is made.

35 Fed. Reg. 6460, Apr. 22, 1970

§391.45 Persons who must be medically examined and certified.

The following persons must be medically examined and certified in accordance with §391.43 of this subpart as physically qualified to operate a commercial motor vehicle:

(a) Any person who has not been medically examined and certified as physically qualified to operate a commercial motor vehicle;

(b)(1) Any driver who has not been medically examined and certified as qualified to operate a commercial motor vehicle during the preceding 24 months; or

(2) Any driver authorized to operate a commercial motor vehicle only with an exempt intracity zone pursuant to §391.62, or only by operation of the exemption in §391.64, if such driver has not been medically examined and certified as qualified to drive in such zone during the preceding 12 months;

(c) Any driver whose ability to perform his/her normal duties has been impaired by a physical or mental injury or disease; and

(d) On or after June 22, 2021, any person found by a medical examiner not to be physically qualified to operate a commercial motor vehicle under the provisions of paragraph (g)(3) of §391.43.

35 Fed. Reg. 6460, Apr. 22, 1970, as amended at 36 Fed. Reg. 223, Jan. 7, 1971; 54 Fed. Reg. 12202, Mar. 24, 1989; 61 Fed. Reg. 13347, Mar. 26, 1996; 80 Fed. Reg. 22821, Apr. 23, 2015; 80 Fed. Reg. 59075, Oct. 1, 2015; 83 Fed. Reg. 28782, June 21, 2018]

§391.46 xxx

§391.47 Resolution of conflicts of medical evaluation.

(a) *Applications.* Applications for determination of a driver's medical qualifications under standards in this part will only be accepted if they conform to the requirements of this section.

(b) *Content.* Applications will be accepted for consideration only if the following conditions are met.

(1) The application must contain the name and address of the driver, motor carrier, and all physicians involved in the proceeding.

(2) The applicant must submit proof that there is a disagreement between the physician for the driver and the physician for the motor carrier concerning the driver's qualifications.

(3) The applicant must submit a copy of an opinion and report including results of all tests of an impartial medical specialist in the field in which the medical conflict arose. The specialist should be one agreed to by the motor carrier and the driver.

(i) In cases where the driver refuses to agree on a specialist and the applicant is the motor carrier, the applicant must submit a statement of his/her agreement to submit the matter to an impartial medical specialist in the field, proof that he/she has requested the driver to submit to the medical specialist, and the response, if any, of the driver to his/her request.

(ii) In cases where the motor carrier refuses to agree on a medical specialist, the driver must submit an opinion and test results of an impartial medical specialist, proof that he/she has requested the motor carrier to agree to submit the matter to the medical specialist and the response, if any, of the motor carrier to his/her request.

(4) The applicant must include a statement explaining in detail why the decision of the medical specialist identified in paragraph (b)(3) of this section, is unacceptable.

(5) The applicant must submit proof that the medical specialist mentioned in paragraph (b)(3) of this section was provided, prior to his/her determination, the medical history of the driver and an agreed-upon statement of the work the driver performs.

(6) The applicant must submit the medical history and statement of work provided to the

medical specialist under paragraph (b)(5) of this section.

(7) The applicant must submit all medical records and statements of the physicians who have given opinions on the driver's qualifications.

(8) The applicant must submit a description and a copy of all written and documentary evidence upon which the party making application relies in the form set out in 49 CFR 386.37.

(9) The application must be accompanied by a statement of the driver that he/she intends to drive in interstate commerce not subject to the commercial zone exemption or a statement of the carrier that he/she has used or intends to use the driver for such work.

(10) The applicant must submit three copies of the application and all records.

(c) *Information.* The Director, Office of Carrier, Driver and Vehicle Safety Standards (MC-PS) may request further information from the applicant if he/she determines that a decision cannot be made on the evidence submitted. If the applicant fails to submit the information requested, the Director may refuse to issue a determination.

(d)(1) *Action.* Upon receiving a satisfactory application the Director, Office of Carrier, Driver and Vehicle Safety Standards (MC-PS) shall notify the parties (the driver, motor carrier, or any other interested party) that the application has been accepted and that a determination will be made. A copy of all evidence received shall be attached to the notice.

(2) *Reply.* Any party may submit a reply to the notification within 15 days after service. Such reply must be accompanied by all evidence the party wants the Director, Office of Carrier, Driver and Vehicle Safety Standards (MC-PS) to consider in making his/her determination. Evidence submitted should include all medical records and test results upon which the party relies.

(3) *Parties.* A party for the purposes of this section includes the motor carrier and the driver, or anyone else submitting an application.

(e) *Petitions to review, burden of proof.* The driver or motor carrier may petition to review the Director's determination. Such petition must be submitted in accordance with §386.13(a) of this chapter. The burden of proof in such a proceeding is on the petitioner.

(f) *Status of driver.* Once an application is submitted to the Director, Office of Carrier, Driver and Vehicle Safety Standards (MC-PS), the driver shall be deemed disqualified until such time as the Director, Office of Carrier, Driver and Vehicle Safety Standards (MC-PS) makes a determination, or until the Director, Office of Carrier, Driver and Vehicle Safety Standards (MC-PS) orders otherwise.

42 Fed. Reg. 18081, Apr. 5, 1977, as amended at 42 Fed. Reg. 53966, Oct. 4, 1977; 60 Fed. Reg. 38746, July 28, 1995; 78 Fed. Reg. 58483, Sept. 24, 2013; 80 Fed. Reg. 59075, Oct. 1, 2015]

§391.49 Alternative physical qualification standards for the loss or impairment of limbs.

(a) A person who is not physically qualified to drive under §391.41(b)(1) or (b)(2) and who is otherwise qualified to drive a commercial motor vehicle, may drive a commercial motor vehicle, if the Division Administrator, FMCSA, has granted a Skill Performance Evaluation (SPE) Certificate to that person.

(b) *SPE certificate*—(1) *Application.* A letter of application for an SPE certificate may be submitted jointly by the person (driver applicant) who seeks an SPE certificate and by the motor carrier that will employ the driver applicant, if the application is accepted.

(2) *Application address.* The application must be addressed to the applicable field service center, FMCSA, for the State in which the co-applicant motor carrier's principal place of business is located. The address of each, and the States serviced, are listed in §390.27 of this chapter.

(3) *Exception.* A letter of application for an SPE certificate may be submitted unilaterally by a driver applicant. The application must be addressed to the field service center, FMCSA, for the State in which the driver has legal residence. The driver applicant must comply with all the requirements of paragraph (c) of this section except those in (c)(1)(i) and (iii). The driver applicant shall respond to the requirements of paragraphs (c)(2)(i) to (v) of this section, if the information is known.

(c) A letter of application for an SPE certificate shall contain:

(1) Identification of the applicant(s):

(i) Name and complete address of the motor carrier coapplicant;

(ii) Name and complete address of the driver applicant;

(iii) The U.S. DOT Motor Carrier Identification Number, if known; and

(iv) A description of the driver applicant's limb impairment for which SPE certificate is requested.

(2) Description of the type of operation the driver will be employed to perform:

(i) State(s) in which the driver will operate for the motor carrier coapplicant (if more than 10 States, designate general geographic area only);

(ii) Average period of time the driver will be driving and/or on duty, per day;

(iii) Type of commodities or cargo to be transported;

(iv) Type of driver operation (*i.e.,* sleeper team, relay, owner operator, etc.); and

(v) Number of years experience operating the type of commercial motor vehicle(s) requested in the letter of application and total years of experience operating all types of commercial motor vehicles.

(3) Description of the commercial motor vehicle(s) the driver applicant intends to drive:

(i) Truck, truck tractor, or bus make, model, and year (if known);

(ii) Drive train;

(A) Transmission type (automatic or manual—if manual, designate number of forward speeds);

(B) Auxiliary transmission (if any) and number of forward speeds; and

(C) Rear axle (designate single speed, 2 speed, or 3 speed).

(iii) Type of brake system;

(iv) Steering, manual or power assisted;

(v) Description of type of trailer(s) (*i.e.,* van, flatbed, cargo tank, drop frame, lowboy, or pole);

(vi) Number of semitrailers or full trailers to be towed at one time;

(vii) For commercial motor vehicles designed to transport passengers, indicate the seating capacity of commercial motor vehicle; and

(viii) Description of any modification(s) made to the commercial motor vehicle for the driver applicant; attach photograph(s) where applicable.

(4) Otherwise qualified:

(i) The co-applicant motor carrier must certify that the driver applicant is otherwise qualified under the regulations of this part;

(ii) In the case of a unilateral application, the driver applicant must certify that he/she is otherwise qualified under the regulations of this part.

(5) Signature of applicant(s):

(i) Driver applicant's signature and date signed;

(ii) Motor carrier official's signature (if application has a coapplicant), title, and date

signed. Depending upon the motor carrier's organizational structure (corporation, partnership, or proprietorship), the signer of the application shall be an officer, partner, or the proprietor.

(d) The letter of application for an SPE certificate shall be accompanied by:

(1) A copy of the results of the medical examination performed pursuant to §391.43;

(2) A copy of the medical certificate completed pursuant to §391.43(h);

(3) A medical evaluation summary completed by either a board qualified or board certified physiatrist (doctor of physical medicine) or orthopedic surgeon. The co-applicant motor carrier or the driver applicant shall provide the physiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant will be required to perform;

(i) The medical evaluation summary for a driver applicant disqualified under §391.41(b)(1) shall include:

(A) An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle; and

(B) A statement by the examiner that the applicant is capable of demonstrating precision prehension (*e.g.,* manipulating knobs and switches) and power grasp prehension (*e.g.,* holding and maneuvering the steering wheel) with each upper limb separately. This requirement does not apply to an individual who was granted a waiver, absent a prosthetic device, prior to the publication of this amendment.

(ii) The medical evaluation summary for a driver applicant disqualified under §391.41(b)(2) shall include:

(A) An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;

(B) An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and

(C) A statement by the examiner that the applicant is capable of demonstrating precision prehension (*e.g.,* manipulating knobs and switches) and power grasp prehension (*e.g.,* holding and maneuvering the steering wheel) with each upper limb separately. This requirement does not apply to an individual who was granted an SPE certificate, absent an orthotic device, prior to the publication of this amendment.

(4) A description of the driver applicant's prosthetic or orthotic device worn, if any;

(5) Road test:

(i) A copy of the driver applicant's road test administered by the motor carrier co-applicant and the certificate issued pursuant to §391.31(b) through (g); or

(ii) A unilateral applicant shall be responsible for having a road test administered by a motor carrier or a person who is competent to administer the test and evaluate its results.

(6) Application for employment:

(i) A copy of the driver applicant's application for employment completed pursuant to §391.21; or

(ii) A unilateral applicant shall be responsible for submitting a copy of the last commercial driving position's employment application he/she held. If not previously employed as a commercial driver, so state.

(7) A copy of the driver applicant's SPE certificate of certain physical defects issued by the individual State(s), where applicable; and

(8) A copy of the driver applicant's State Motor Vehicle Driving Record for the past 3 years from each State in which a motor vehicle driver's license or permit has been obtained.

(e) *Agreement.* A motor carrier that employs a driver with an SPE certificate agrees to:

(1) File promptly (within 30 days of the involved incident) with the Medical Program Specialist, FMCSA service center, such documents and information as may be required about driving activities, accidents, arrests, license suspensions, revocations, or withdrawals, and convictions which involve the driver applicant. This applies whether the driver's SPE certificate is a unilateral one or has a co-applicant motor carrier;

(i) A motor carrier who is a co-applicant must file the required documents with the Medical Program Specialist, FMCSA for the State in which the carrier's principal place of business is located; or

(ii) A motor carrier who employs a driver who has been issued a unilateral SPE certificate must file the required documents with the Medical Program Specialist, FMCSA service center, for the State in which the driver has legal residence.

(2) Evaluate the driver with a road test using the trailer the motor carrier intends the driver to transport or, in lieu of, accept a certificate of a trailer road test from another motor carrier if the trailer type(s) is similar, or accept the trailer road test done during the Skill Performance Evaluation if it is a similar trailer type(s) to that of the prospective motor carrier. Job tasks, as stated in paragraph (e)(3) of this section, are not evaluated in the Skill Performance Evaluation;

(3) Evaluate the driver for those nondriving safety related job tasks associated with whatever type of trailer(s) will be used and any other nondriving safety related or job related tasks unique to the operations of the employing motor carrier; and

(4) Use the driver to operate the type of commercial motor vehicle defined in the SPE certificate only when the driver is in compliance with the conditions and limitations of the SPE certificate.

(f) The driver shall supply each employing motor carrier with a copy of the SPE certificate.

(g) The Division Administrator/State Director, FMCSA, may require the driver applicant to demonstrate his or her ability to safely operate the commercial motor vehicle(s) the driver intends to drive to an agent of the Division Administrator/State Director, FMCSA. The SPE certificate form will identify the power unit (bus, truck, truck tractor) for which the SPE certificate has been granted. The SPE certificate forms will also identify the trailer type used in the Skill Performance Evaluation; however, the SPE certificate is not limited to that specific trailer type. A driver may use the SPE certificate with other trailer types if a successful trailer road test is completed in accordance with paragraph (e)(2) of this section. Job tasks, as stated in paragraph (e)(3) of this section, are not evaluated during the Skill Performance Evaluation.

(h) The Division Administrator/State Director, FMCSA, may deny the application for SPE certificate or may grant it totally or in part and issue the SPE certificate subject to such terms, conditions, and limitations as deemed consistent with the public interest. The SPE certificate is valid for a period not to exceed 2 years from date of issue, and may be renewed 30 days prior to the expiration date.

(i) The SPE certificate renewal application shall be submitted to the Medical Program Specialist, FMCSA service center, for the State in which the driver has legal residence, if the SPE certificate was issued unilaterally. If the SPE certificate has a co-applicant, then the renewal application is submitted to the Medical Program Specialist, FMCSA field service center, for the State in which the capplicant motor carrier's principal place of business is located. The SPE certificate renewal application shall contain the following:

(1) Name and complete address of motor carrier currently employing the applicant;
(2) Name and complete address of the driver;
(3) Effective date of the current SPE certificate;
(4) Expiration date of the current SPE certificate;
(5) Total miles driven under the current SPE certificate;
(6) Number of accidents incurred while driving under the current SPE certificate, including date of the accident(s), number of fatalities, number of injuries, and the estimated dollar amount of property damage;
(7) A current medical examination report;
(8) A medical evaluation summary pursuant to paragraph (d)(3) of this section, if an unstable medical condition exists. All handicapped conditions classified under §391.41(b)(1) are considered unstable. Refer to paragraph (d)(3)(ii) of this section for the condition under §391.41(b)(2) which may be considered medically stable.
(9) A copy of driver's current State motor vehicle driving record for the period of time the current SPE certificate has been in effect;
(10) Notification of any change in the type of tractor the driver will operate;
(11) Driver's signature and date signed; and
(12) Motor carrier co-applicant's signature and date signed.
(j)(1) Upon granting an SPE certificate, the Division Administrator/State Director, FMCSA, will notify the driver applicant and co-applicant motor carrier (if applicable) by letter. The terms, conditions, and limitations of the SPE certificate will be set forth. A motor carrier shall maintain a copy of the SPE certificate in its driver qualification file. A copy of the SPE certificate shall be retained in the motor carrier's file for a period of 3 years after the driver's employment is terminated. The driver applicant shall have the SPE certificate (or a legible copy) in his/her possession whenever on duty.
(2) Upon successful completion of the skill performance evaluation, the Division Administrator/State Director, FMCSA, for the State where the driver applicant has legal residence, must notify the driver by letter and enclose an SPE certificate substantially in the following form:

Skill Performance Evaluation Certificate

Name of Issuing Agency:
Agency Address:
Telephone Number: ( )

Issued Under 49 CFR 391.49, subchapter B of the Federal Motor Carrier Safety Regulations

Driver's Name:
Effective Date:
SSN:
DOB:
Expiration Date:
Address:

Driver Disability:

Check One:_New_Renewal

Driver's License:_____

(State) (Number)

In accordance with 49 CFR 391.49, subchapter B of the Federal Motor Carrier Safety Regulations (FMCSRs), the driver application for a skill performance evaluation (SPE) certificate is hereby granted authorizing the above-named driver to operate in interstate or foreign commerce under the provisions set forth below. This certificate is granted for the period shown above, not to exceed 2 years, subject to periodic review as may be found necessary. This certificate may be renewed upon submission of a renewal application. Continuation of this certificate is dependent upon strict adherence by the above-named driver to the provisions set forth below and compliance with the FMCSRs. Any failure to comply with provisions herein may be cause for cancellation.

CONDITIONS: As a condition of this certificate, reports of all accidents, arrests, suspensions, revocations, withdrawals of driver licenses or permits, and convictions involving the above-named driver shall be reported in writing to the Issuing Agency by the EMPLOYING MOTOR CARRIER within 30 days after occurrence.

LIMITATIONS:

1. Vehicle Type (power unit):*
2. Vehicle modification(s):

3. Prosthetic or Orthotic device(s) (Required to be Worn While Driving):

4. Additional Provision(s):

NOTICE: To all MOTOR CARRIERS employing a driver with an SPE certificate. This certificate is granted for the operation of the *power unit only.* It is the responsibility of the employing motor carrier to evaluate the driver with a road test using the trailer type(s) the motor carrier intends the driver to transport, or in lieu of, accept the trailer road test done during the SPE if it is a similar trailer type(s) to that of the prospective motor carrier. Also, it is the responsibility of the employing motor carrier to evaluate the driver for those non-driving safety-related job tasks associated with the type of trailer(s) utilized, as well as, any other non-driving safety-related or job-related tasks unique to the operations of the employing motor carrier.

The SPE of the above named driver was given by a Skill Performance Evaluation Program Specialist. It was successfully completed utilizing the above named power unit and _____ (trailer, if applicable)

The tractor or truck had a _____ transmission.

Please read the *NOTICE* paragraph above.

Name:
Signature:
Title:
Date:

(k) The Division Administrator/State Director, FMCSA, may revoke an SPE certificate after the person to whom it was issued is given notice of the proposed revocation and has been allowed a reasonable opportunity to appeal.

(l) Falsifying information in the letter of application, the renewal application, or falsifying information required by this section by either the applicant or motor carrier is prohibited.

65 Fed. Reg. 25287, May 1, 2000, as amended at 65 Fed. Reg. 59380, Oct. 5, 2000; 67 Fed. Reg. 61824, Oct. 2, 2002; 78 Fed. Reg. 58483, Sept. 24, 2013

Subpart F—Files and Records

§391.51 General requirements for driver qualification files.

(a) Each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with his/her personnel file.

(b) The qualification file for a driver must include:

(1) The driver's application for employment completed in accordance with §391.21;

(2) A copy of the motor vehicle record received from each State record pursuant to §391.23(a)(1);

(3) The certificate of driver's road test issued to the driver pursuant to §391.31(e), or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to §391.33;

(4) The motor vehicle record received from each State driver licensing agency to the annual driver record inquiry required by §391.25(a);

(5) A note relating to the annual review of the driver's driving record as required by §391.25(c)(2);

(6) A list or certificate relating to violations of motor vehicle laws and ordinances required by §391.27;

(7)(i) The medical examiner's certificate as required by §391.43(g) or a legible copy of the certificate.

(ii) *Exception.* For CDL holders, beginning January 30, 2012, if the CDLIS motor vehicle record contains medical certification status information, the motor carrier employer must meet this requirement by obtaining the CDLIS motor vehicle record defined at §384.105 of this chapter. That record must be obtained from the current licensing State and placed in the driver qualification file. After January 30, 2015, a non-excepted, interstate CDL holder without medical certification status information on the CDLIS motor vehicle record is designated “not-certified” to operate a CMV in interstate commerce. After January 30, 2015 and through June 21, 2021, a

motor carrier may use a copy of the driver's current medical examiner's certificate that was submitted to the State for up to 15 days from the date it was issued as proof of medical certification.

(iii) If that driver obtained the medical certification based on having obtained a medical variance from FMCSA, the motor carrier must also include a copy of the medical variance documentation in the driver qualification file in accordance with §391.51(b)(8);

(8) A Skill Performance Evaluation Certificate obtained from a Field Administrator, Division Administrator, or State Director issued in accordance with §391.49; or the Medical Exemption document, issued by a Federal medical program in accordance with part 381 of this chapter; and

(9)(i) For drivers not required to have a CDL, a note relating to verification of medical examiner listing on the National Registry of Certified Medical Examiners required by §391.23(m)(1).

(ii) Through June 21, 2021, for drivers required to have a CDL, a note relating to verification of medical examiner listing on the National Registry of Certified Medical Examiners required by §391.23(m)(2).

(c) Except as provided in paragraph (d) of this section, each driver's qualification file shall be retained for as long as a driver is employed by that motor carrier and for three years thereafter.

(d) The following records may be removed from a driver's qualification file three years after the date of execution:

(1) The motor vehicle record received from each State driver licensing agency to the annual driver record inquiry required by §391.25(a);

(2) The note relating to the annual review of the driver's driving record as required by §391.25(c)(2);

(3) The list or certificate relating to violations of motor vehicle laws and ordinances required by §391.27;

(4) The medical examiner's certificate required by §391.43(g), a legible copy of the certificate, or for CDL drivers any CDLIS MVR obtained as required by §391.51(b)(7)(ii);

(5) Any medical variance issued by FMCSA, including a Skill Performance Evaluation Certificate issued in accordance with §391.49; or the Medical Exemption letter issued by a Federal medical program in accordance with part 381 of this chapter; and

(6) The note relating to verification of medical examiner listing on the National Registry of Certified Medical Examiners required by §391.23(m).

(Approved by the Office of Management and Budget under control number 2126-004)

63 Fed. Reg. 33277, June 18, 1998, as amended at 69 Fed. Reg. 16721, Mar. 30, 2004; 73 Fed. Reg. 73127, Dec. 1, 2008; 75 Fed. Reg. 28502, May 21, 2010; 77 Fed. Reg. 24133, Apr. 20, 2012; 79 Fed. Reg. 2380, Jan. 14, 2014; 80 Fed. Reg. 22822, Apr. 23, 2015; 83 Fed. Reg. 28782, June 21, 2018]

§391.53 Driver investigation history file.

(a) After October 29, 2004, each motor carrier must maintain records relating to the investigation into the safety performance history of a new or prospective driver pursuant to paragraphs (d) and (e) of §391.23. This file must be maintained in a secure location with controlled access.

(1) The motor carrier must ensure that access to this data is limited to those who are involved in the hiring decision or who control access to the data. In addition, the motor carrier's insurer may have access to the data, except the alcohol and controlled substances data.

(2) This data must only be used for the hiring decision.

(b) The file must include:

(1) A copy of the driver's written authorization for the motor carrier to seek information about a driver's alcohol and controlled substances history as required under §391.23(d).

(2) A copy of the response(s) received for investigations required by paragraphs (d) and (e) of §391.23 from each previous employer, or documentation of good faith efforts to contact them. The record must include the previous employer's name and address, the date the previous employer was contacted, and the information received about the driver from the previous employer. Failures to contact a previous employer, or of them to provide the required safety performance history information, must be documented.

(c) The safety performance histories received from previous employers for a driver who is hired must be retained for as long as the driver is employed by that motor carrier and for three years thereafter.

(d) A motor carrier must make all records and information in this file available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative, or an authorized third party, upon request or as part of any inquiry within the time period specified by the requesting representative. (Approved by the Office of Management and Budget under control number 2126-004)

69 Fed. Reg. 16721, Mar. 30, 2004

§391.55 LCV Driver-Instructor qualification files.

(a) Each motor carrier must maintain a qualification file for each LCV driver-instructor it employs or uses. The LCV driver-instructor qualification file may be combined with his/her personnel file.

(b) The LCV driver-instructor qualification file must include the information in paragraphs (b)(1) and (b)(2) of this section for a skills instructor or the information in paragraph (b)(1) of this section for a classroom instructor, as follows:

(1) Evidence that the instructor has met the requirements of 49 CFR 380.301 or 380.303;

(2) A copy of the individual's currently valid CDL with the appropriate endorsements.

69 Fed. Reg. 16738, Mar. 30, 2004; 69 Fed. Reg. 28846, May 19, 2004; 83 Fed. Reg. 16227, Apr. 16, 2018

Subpart G—Limited Exemptions

§391.61 Drivers who were regularly employed before January 1, 1971.

The provisions of §391.21 (relating to applications for employment), §391.23 (relating to investigations and inquiries), and §391.33 (relating to road tests) do not apply to a driver who has been a single-employer driver (as defined in §390.5 of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he/she continues to be a single-employer driver of that motor carrier.

63 FR 33278, June 18, 1998

§391.62 Limited exemptions for intra-city zone drivers.

The provisions of §§391.11(b)(1) and 391.41(b)(1) through (b)(11) do not apply to a person who:

(a) Was otherwise qualified to operate and operated a commercial motor vehicle in a municipality or exempt intracity zone thereof throughout the one-year period ending November 18, 1988;

(b) Meets all the other requirements of this section;

(c) Operates wholly within the exempt intracity zone (as defined in 49 CFR 390.5);

(d) Does not operate a vehicle used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under 49 U.S.C. chapter 51.; and

(e) Has a medical or physical condition which:

(1) Would have prevented such person from operating a commercial motor vehicle under the Federal Motor Carrier Safety Regulations contained in this subchapter;

(2) Existed on July 1, 1988, or at the time of the first required physical examination after that date; and

(3) The examining physician has determined this condition has not substantially worsened since July 1, 1988, or at the time of the first required physical examination after that date.

61 Fed. Reg. 13346, Mar. 26, 1996; 61 Fed. Reg. 17253, Apr. 19, 1996

§391.63 Multiple-employer drivers.

(a) If a motor carrier employs a person as a multiple-employer driver (as defined in §390.5 of this subchapter), the motor carrier shall comply with all requirements of this part, except that the motor carrier need not—

(1) Require the person to furnish an application for employment in accordance with §391.21;

(2) Make the investigations and inquiries specified in §391.23 with respect to that person;

(3) Perform the annual driving record inquiry required by §391.25(a);

(4) Perform the annual review of the person's driving record required by §391.25(b); or

(5) Require the person to furnish a record of violations or a certificate in accordance with §391.27.

(b) Before a motor carrier permits a multiple-employer driver to drive a commercial motor vehicle, the motor carrier must obtain his/her name, his/her social security number, and the identification number, type and issuing State of his/her commercial motor vehicle operator's license. The motor carrier must maintain this information for three years after employment of the multiple-employer driver ceases.

63 Fed. Reg. 33278, June 18, 1998, as amended at 79 Fed. Reg. 59457, Oct. 2, 2014

§391.64 Grandfathering for certain drivers participating in vision and diabetes waiver study programs.

(a) The provisions of §391.41(b)(3) do not apply to a driver who was a participant in good standing on March 31, 1996, in a waiver study program concerning the operation of commercial motor vehicles by insulin-controlled diabetic drivers; *provided:*

(1) The driver is physically examined every year, including an examination by a board-certified/eligible endocrinologist attesting to the fact that the driver is:

(i) Otherwise qualified under §391.41;

(ii) Free of insulin reactions (an individual is free of insulin reactions if that individual does not have severe hypoglycemia or hypoglycemia unawareness, and has less than one documented, symptomatic hypoglycemic reaction per month);

(iii) Able to and has demonstrated willingness to properly monitor and manage his/her diabetes; and

(iv) Not likely to suffer any diminution in driving ability due to his/her diabetic condition.

(2) The driver agrees to and complies with the following conditions:

(i) A source of rapidly absorbable glucose shall be carried at all times while driving;

(ii) Blood glucose levels shall be self-monitored one hour prior to driving and at least once every four hours while driving or on duty prior to driving using a portable glucose monitoring device equipped with a computerized memory;

(iii) Submit blood glucose logs to the endocrinologist or medical examiner at the annual examination or when otherwise directed by an authorized agent of the FMCSA;

(iv) Provide a copy of the endocrinologist's report to the medical examiner at the time of the annual medical examination; and

(v) Provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State or local enforcement official.

(b) The provisions of §391.41(b)(10) do not apply to a driver who was a participant in good standing on March 31, 1996, in a waiver study program concerning the operation of commercial motor vehicles by drivers with visual impairment in one eye; *provided:*

(1) The driver is physically examined every year, including an examination by an ophthalmologist or optometrist attesting to the fact that the driver:

(i) Is otherwise qualified under §391.41; and

(ii) Continues to measure at least 20/40 (Snellen) in the better eye.

(2) The driver provides a copy of the ophthalmologist or optometrist report to the medical examiner at the time of the annual medical examination.

(3) The driver provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized federal, state or local enforcement official.

61 Fed. Reg. 13346, Mar. 26, 1996

§391.65 Drivers furnished by other motor carriers.

(a) A motor carrier may employ a driver who is not a single-employer driver, as defined in §390.5, of that motor carrier without complying with the generally applicable driver qualification file requirements in this part, if—

(1) The driver is a single-employer driver for another motor carrier; and

(2) That other motor carrier certifies that the driver is fully qualified to drive a commercial motor vehicle in a written statement which—

(i) Is signed and dated by an officer or authorized employee of the motor carrier that employs the single-employer driver;

(ii) Contains the driver's name and signature;

(iii) Certifies that the driver has been employed as a single-employer driver.

(iv) Certifies that the driver is fully qualified to drive a commercial motor vehicle under the rules in part 391 of the Federal Motor Carrier Safety Regulations;

(v) States the expiration date of the driver's medical examiner's certificate;

(vi) Specifies an expiration date for the certificate, which shall be not longer than 2 years or, if earlier, the expiration date of the driver's current medical examiner's certificate; and

(vii) Is substantially in accordance with the following form:

_____(Name of driver)

_____(SS No.)

_____(Signature of driver)

I certify that the above-named driver, as defined in §390.5, is a single-employer driver driving a commercial motor vehicle operated by the below named carrier and is fully qualified under part 391, Federal Motor Carrier Safety Regulations. His/her current medical examiner's certificate expires on ___(Date).

This certificate expires:

(Date not later than expiration date of medical certificate)

Issued on___(date)

Issued by_____

(Name of carrier)

(Address)

(Signature)

(Title)

(b) A motor carrier that obtains a certificate in accordance with paragraph (a)(2) of this section shall:

(1) Contact the motor carrier which certified the driver's qualifications under this section to verify the validity of the certificate. This contact may be made in person, by telephone, or by letter.

(2) Retain a copy of that certificate in its files for three years.

(c) A motor carrier which certifies a driver's qualifications under this section shall be responsible for the accuracy of the certificate. The certificate is no longer valid if the driver leaves the employment of the motor carrier which issued the certificate or is no longer qualified under the rules in this part.

41 Fed. Reg. 36656, Aug. 31, 1976, as amended at 53 Fed. Reg. 18057, May 19, 1988; 60 Fed. Reg. 38745, July 28, 1995; 63 Fed. Reg. 33278, June 18, 1998; 67 Fed. Reg. 61824, Oct. 2, 2002; 78 Fed. Reg. 58483, Sept. 24, 2013

§391.67 Farm vehicle drivers of articulated commercial motor vehicles.

The following rules in this part do not apply to a farm vehicle driver (as defined in §390.5 of this subchapter) who is 18 years of age or older and who drives an articulated commercial motor vehicle:

(a) Section 391.11(b)(1), (b)(6) and (b)(8) (relating to general qualifications of drivers);

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of drivers);

(c) Subpart D (relating to road tests); and

(d) Subpart F (relating to maintenance of files and records).

63 Fed. Reg. 33278, June 18, 1998

§391.68 Private motor carrier of passengers (nonbusiness).

The following rules in this part do not apply to a private motor carrier of passengers (nonbusiness) and its drivers:

(a) Section 391.11(b)(1), (b)(6) and (b)(8) (relating to general qualifications of drivers);

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers);

(c) So much of §§391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his/her person; and

(d) Subpart F (relating to maintenance of files and records).

63 Fed. Reg. 33278, June 18, 1998

§391.69 Private motor carrier of passengers (business).

The provisions of §391.21 (relating to applications for employment), §391.23 (relating to investigations and inquiries), and §391.31 (relating to road tests) do not apply to a driver who was a single-employer driver (as defined in §390.5 of this subchapter) of a private motor carrier of passengers (business) as of July 1, 1994, so long as the driver continues to be a single-employer driver of that motor carrier.

63 Fed. Reg. 33278, June 18, 1998

§391.71 [Reserved]

Appendix A to Part 391—Medical Advisory Criteria.

I. Introduction

This appendix contains the Agency's guidelines in the form of Medical Advisory Criteria to help medical examiners assess a driver's physical qualification. These guidelines are strictly advisory and were established after consultation with physicians, States, and industry representatives, and, in some areas, after consideration of recommendations from the Federal Motor Carrier Safety Administration's Medical Review Board and Medical Expert Panels.

II. Interpretation of Medical Standards

Since the issuance of the regulations for physical qualifications of commercial motor vehicle drivers, the Federal Motor Carrier Safety Administration has published recommendations called Advisory Criteria to help medical examiners in determining whether a driver meets the physical qualifications for commercial driving. These recommendations have been condensed to provide information to medical examiners that is directly relevant to the physical examination and is not already included in the Medical Examination Report Form.

A. Loss of Limb: §391.41(b)(1)

A person is physically qualified to drive a commercial motor vehicle if that person: Has no loss of a foot, leg, hand or an arm, or has been granted a Skills Performance Evaluation certificate pursuant to §391.49.

B. Limb Impairment: §391.41(b)(2)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no impairment of:

(i) A hand or finger which interferes with prehension or power grasping; or

(ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or

(iii) Any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or

(iv) Has been granted a Skills Performance Evaluation certificate pursuant to §391.49.

2. A person who suffers loss of a foot, leg, hand or arm or whose limb impairment in any way interferes with the safe performance of normal tasks associated with operating a commercial motor vehicle is subject to the Skills Performance Evaluation Certificate Program pursuant to §391.49, assuming the person is otherwise qualified.

3. With the advancement of technology, medical aids and equipment modifications have been developed to compensate for certain disabilities. The Skills Performance Evaluation Certificate Program (formerly the Limb Waiver Program) was designed to allow persons with the loss of a foot or limb or with functional impairment to qualify under the Federal Motor Carrier Safety Regulations by use of prosthetic devices or equipment modifications which enable them to safely operate a commercial motor vehicle. Since there are no medical aids equivalent to the original body or limb, certain risks are still present, and thus restrictions may be included on individual Skills Performance Evaluation certificates when a State Director for the Federal Motor Carrier Safety Administration determines they are necessary to be consistent with safety and public interest.

4. If the driver is found otherwise medically qualified (§391.41(b)(3) through (13)), the medical examiner must check on the Medical Examiner's Certificate that the driver is qualified only if accompanied by a Skills Performance Evaluation certificate. The driver and the employing motor carrier are subject to appropriate penalty if the driver operates a motor vehicle in interstate or foreign commerce without a current Skill Performance Evaluation certificate for his/her physical disability.

C. Diabetes: §391.41(b)(3)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

2. Diabetes mellitus is a disease which, on occasion, can result in a loss of consciousness or disorientation in time and space. Individuals who require insulin for control have conditions which can get out of control by the use of too much or too little insulin, or food intake not consistent with the insulin dosage. Incapacitation may occur from symptoms of hyperglycemic or hypoglycemic reactions (drowsiness, semi consciousness, diabetic coma or insulin shock).

3. The administration of insulin is, within itself, a complicated process requiring insulin, syringe, needle, alcohol sponge and a sterile technique. Factors related to long-haul commercial motor vehicle operations, such as fatigue, lack of sleep, poor diet, emotional conditions, stress, and concomitant illness, compound the dangers, the Federal Motor Carrier Safety Administration has consistently held that a diabetic who uses insulin for control does not meet the minimum physical requirements of the Federal Motor Carrier Safety Regulations.

4. Hypoglycemic drugs, taken orally, are sometimes prescribed for diabetic individuals to help stimulate natural body production of insulin. If the condition can be controlled by the use of oral medication and diet, then an individual may be qualified under the present rule. Commercial motor vehicle drivers who do not meet the Federal diabetes standard may call (202) 366-4001 for an application for a diabetes exemption.

D. Cardiovascular Condition: §391.41(b)(4)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse or congestive cardiac failure.

2. The term “has no current clinical diagnosis of” is specifically designed to encompass: “a clinical diagnosis of” a current cardiovascular condition, or a cardiovascular condition which has not fully stabilized regardless of the time limit. The term “known to be accompanied by” is designed to include a clinical diagnosis of a cardiovascular disease which is accompanied by symptoms of syncope, dyspnea, collapse or congestive cardiac failure; and/or which is s likely to cause syncope, dyspnea, collapse or congestive cardiac failure.

3. It is the intent of the Federal Motor Carrier Safety Regulations to render unqualified, a driver who has a current cardiovascular disease which is accompanied by and/or likely to cause symptoms of syncope, dyspnea, collapse, or congestive cardiac failure. However, the subjective decision of whether the nature and severity of an individual's condition will likely cause symptoms of cardiovascular insufficiency is on an individual basis and qualification rests with the medical examiner and the motor carrier. In those cases where there is an occurrence of cardiovascular insufficiency (myocardial infarction, thrombosis, etc.), it is suggested before a

driver is certified that he or she have a normal resting and stress electrocardiogram, no residual complications and no physical limitations, and is taking no medication likely to interfere with safe driving.

4. Coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not medically disqualifying. Implantable cardioverter defibrillators are disqualifying due to risk of syncope. Coumadin is a medical treatment which can improve the health and safety of the driver and should not, by its use, medically disqualify the commercial motor vehicle driver. The emphasis should be on the underlying medical condition(s) which require treatment and the general health of the driver. The Federal Motor Carrier Safety Administration should be contacted at (202) 366-4001 for additional recommendations regarding the physical qualification of drivers on coumadin.

E. Respiratory Dysfunction: §391.41(b)(5)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with ability to control and drive a commercial motor vehicle safely.

2. Since a driver must be alert at all times, any change in his or her mental state is in direct conflict with highway safety. Even the slightest impairment in respiratory function under emergency conditions (when greater oxygen supply is necessary for performance) may be detrimental to safe driving.

3. There are many conditions that interfere with oxygen exchange and may result in incapacitation, including emphysema, chronic asthma, carcinoma, tuberculosis, chronic bronchitis and sleep apnea. If the medical examiner detects a respiratory dysfunction, that in any way is likely to interfere with the driver's ability to safely control and drive a commercial motor vehicle, the driver must be referred to a specialist for further evaluation and therapy. Anticoagulation therapy for deep vein thrombosis and/or pulmonary thromboembolism is not medically disqualifying once optimum dose is achieved, provided lower extremity venous examinations remain normal and the treating physician gives a favorable recommendation.

F. Hypertension: §391.41(b)(6)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no current clinical diagnosis of high blood pressure likely to interfere with ability to operate a commercial motor vehicle safely.

2. Hypertension alone is unlikely to cause sudden collapse; however, the likelihood increases when target organ damage, particularly cerebral vascular disease, is present. This regulatory criterian is based on the Federal Motor Carrier Safety Administration's Cardiovascular Advisory Guidelines for the Examination of commercial motor vehicle Drivers, which used the Sixth Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure (1997).

3. Stage 1 hypertension corresponds to a systolic blood pressure of 140-159 mmHg and/or a diastolic blood pressure of 90-99 mmHg. The driver with a blood pressure in this range is at low risk for hypertension-related acute incapacitation and may be medically certified to drive for a one-year period. Certification examinations should be done annually thereafter and should be at or less than 140/90. If less than 160/100, certification may be extended one time for 3 months.

4. A blood pressure of 160-179 systolic and/or 100-109 diastolic is considered Stage 2 hypertension, and the driver is not necessarily unqualified during evaluation and institution of treatment. The driver is given a one-time certification of three months to reduce his or her blood pressure to less than or equal to 140/90. A blood pressure in this range is an absolute indication for anti-hypertensive drug therapy. Provided treatment is well tolerated and the driver demonstrates a blood pressure value of 140/90 or less, he or she may be certified for one year from date of the initial exam. The driver is certified annually thereafter.

5. A blood pressure at or greater than 180 (systolic) and 110 (diastolic) is considered Stage 3, high risk for an acute blood pressure-related event. The driver may not be qualified, even temporarily, until reduced to 140/90 or less and treatment is well tolerated. The driver may be certified for 6 months and biannually (every 6 months) thereafter if at recheck blood pressure is 140/90 or less.

6. Annual recertification is recommended if the medical examiner does not know the severity of hypertension prior to treatment. An elevated blood pressure finding should be confirmed by at least two subsequent measurements on different days.

7. Treatment includes nonpharmacologic and pharmacologic modalities as well as counseling to reduce other risk factors. Most antihypertensive medications also have side effects, the importance of which must be judged on an individual basis. Individuals must be alerted to the hazards of these medications while driving. Side effects of somnolence or syncope are particularly undesirable in commercial motor vehicle drivers.

8. Secondary hypertension is based on the above stages. Evaluation is warranted if patient is persistently hypertensive on maximal or near-maximal doses of 2-3 pharmacologic agents. Some causes of secondary hypertension may be amenable to surgical intervention or specific pharmacologic disease.

G. Rheumatic, Arthritic, Orthopedic, Muscular, Neuromuscular or Vascular Disease: §391.41(b)(7)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease which interferes with the ability to control and operate a commercial motor vehicle safely.

2. Certain diseases are known to have acute episodes of transient muscle weakness, poor muscular coordination (ataxia), abnormal sensations (paresthesia), decreased muscular tone

(hypotonia), visual disturbances and pain which may be suddenly incapacitating. With each recurring episode, these symptoms may become more pronounced and remain for longer periods of time. Other diseases have more insidious onsets and display symptoms of muscle wasting (atrophy), swelling and paresthesia which may not suddenly incapacitate a person but may restrict his/her movements and eventually interfere with the ability to safely operate a motor vehicle. In many instances these diseases are degenerative in nature or may result in deterioration of the involved area.

3. Once the individual has been diagnosed as having a rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease, then he/she has an established history of that disease. The physician, when examining an individual, should consider the following: The nature and severity of the individual's condition (such as sensory loss or loss of strength); the degree of limitation present (such as range of motion); the likelihood of progressive limitation (not always present initially but may manifest itself over time); and the likelihood of sudden incapacitation. If severe functional impairment exists, the driver does not qualify. In cases where more frequent monitoring is required, a certificate for a shorter period of time may be issued.

H. Epilepsy: §391.41(b)(8)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle.

2. Epilepsy is a chronic functional disease characterized by seizures or episodes that occur without warning, resulting in loss of voluntary control which may lead to loss of consciousness and/or seizures. Therefore, the following drivers cannot be qualified:

(i) A driver who has a medical history of epilepsy;

(ii) A driver who has a current clinical diagnosis of epilepsy; or

(iii) A driver who is taking antiseizure medication.

3. If an individual has had a sudden episode of a nonepileptic seizure or loss of consciousness of unknown cause which did not require antiseizure medication, the decision as to whether that person's condition will likely cause loss of consciousness or loss of ability to control a motor vehicle is made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6 month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and antiseizure medication is not required, then the driver may be qualified.

4. In those individual cases where a driver has a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration or acute metabolic disturbance),

certification should be deferred until the driver has fully recovered from that condition and has no existing residual complications, and not taking antiseizure medication.

5. Drivers with a history of epilepsy/seizures off antiseizure medication and seizure-free for 10 years may be qualified to drive a commercial motor vehicle in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a commercial motor vehicle in interstate commerce if seizure-free and off antiseizure medication for a 5-year period or more.

I. Mental Disorders: §391.41(b)(9)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no mental, nervous, organic or functional disease or psychiatric disorder likely to interfere with ability to drive a motor vehicle safely.

2. Emotional or adjustment problems contribute directly to an individual's level of memory, reasoning, attention, and judgment. These problems often underlie physical disorders. A variety of functional disorders can cause drowsiness, dizziness, confusion, weakness or paralysis that may lead to incoordination, inattention, loss of functional control and susceptibility to accidents while driving. Physical fatigue, headache, impaired coordination, recurring physical ailments and chronic “nagging” pain may be present to such a degree that certification for commercial driving is inadvisable. Somatic and psychosomatic complaints should be thoroughly examined when determining an individual's overall fitness to drive. Disorders of a periodically incapacitating nature, even in the early stages of development, may warrant disqualification.

3. Many bus and truck drivers have documented that “nervous trouble” related to neurotic, personality, or emotional or adjustment problems is responsible for a significant fraction of their preventable accidents. The degree to which an individual is able to appreciate, evaluate and adequately respond to environmental strain and emotional stress is critical when assessing an individual's mental alertness and flexibility to cope with the stresses of commercial motor vehicle driving.

4. When examining the driver, it should be kept in mind that individuals who live under chronic emotional upsets may have deeply ingrained maladaptive or erratic behavior patterns. Excessively antagonistic, instinctive, impulsive, openly aggressive, paranoid or severely depressed behavior greatly interfere with the driver's ability to drive safely. Those individuals who are highly susceptible to frequent states of emotional instability (schizophrenia, affective psychoses, paranoia, anxiety or depressive neuroses) may warrant disqualification. Careful consideration should be given to the side effects and interactions of medications in the overall qualification determination.

J. Vision: §391.41(b)(10)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has distant visual acuity of at least 20/40 (Snellen) in each eye with or without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant

binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

2. The term “ability to recognize the colors of” is interpreted to mean if a person can recognize and distinguish among traffic control signals and devices showing standard red, green and amber, he or she meets the minimum standard, even though he or she may have some type of color perception deficiency. If certain color perception tests are administered, (such as Ishihara, Pseudoisochromatic, Yarn) and doubtful findings are discovered, a controlled test using signal red, green and amber may be employed to determine the driver's ability to recognize these colors.

3. Contact lenses are permissible if there is sufficient evidence to indicate that the driver has good tolerance and is well adapted to their use. Use of a contact lens in one eye for distance visual acuity and another lens in the other eye for near vision is not acceptable, nor telescopic lenses acceptable for the driving of commercial motor vehicles.

4. If an individual meets the criteria by the use of glasses or contact lenses, the following statement shall appear on the Medical Examiner's Certificate: “Qualified only if wearing corrective lenses.” commercial motor vehicle drivers who do not meet the Federal vision standard may call (202) 366-4001 for an application for a vision exemption.

K. Hearing: §391.41(b)(11)

1. A person is physically qualified to drive a commercial motor vehicle if that person: First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ADA Standard) Z24.5-1951.

2. Since the prescribed standard under the Federal Motor Carrier Safety Regulations is from the American National Standards Institute, formerly the American Standards Association, it may be necessary to convert the audiometric results from the International Organization for Standardization standard to the American National Standards Institute standard. Instructions are included on the Medical Examination Report Form.

3. If an individual meets the criteria by using a hearing aid, the driver must wear that hearing aid and have it in operation at all times while driving. Also, the driver must be in possession of a spare power source for the hearing aid.

4. For the whispered voice test, the individual should be stationed at least 5 feet from the medical examiner with the ear being tested turned toward the medical examiner. The other ear is covered. Using the breath which remains after a normal expiration, the medical examiner whispers words or random numbers such as 66, 18, 3, etc. The medical examiner should not use only sibilants (s sounding materials). The opposite ear should be tested in the same manner.

5. If the individual fails the whispered voice test, the audiometric test should be administered. If an individual meets the criteria by the use of a hearing aid, the following statement must appear on the Medical Examiner's Certificate “Qualified only when wearing a hearing aid.”

L. Drug Use: §391.41(b)(12)

1. A person is physically qualified to drive a commercial motor vehicle if that person does not use any drug or substance identified in 21 CFR 1308.11, an amphetamine, a narcotic, or other habit-forming drug. A driver may use a non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 if the substance or drug is prescribed by a licensed medical practitioner who:

(i) Is familiar with the driver's medical history, and assigned duties; and

(ii) Has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

2. This exception does not apply to methadone. The intent of the medical certification process is to medically evaluate a driver to ensure that the driver has no medical condition which interferes with the safe performance of driving tasks on a public road. If a driver uses an amphetamine, a narcotic or any other habit-forming drug, it may be cause for the driver to be found medically unqualified. If a driver uses a Schedule I drug or substance, it will be cause for the driver to be found medically unqualified. Motor carriers are encouraged to obtain a practitioner's written statement about the effects on transportation safety of the use of a particular drug.

3. A test for controlled substances is not required as part of this biennial certification process. The Federal Motor Carrier Safety Administration or the driver's employer should be contacted directly for information on controlled substances and alcohol testing under Part 382 of the FMCSRs.

4. The term “uses” is designed to encompass instances of prohibited drug use determined by a physician through established medical means. This may or may not involve body fluid testing. If body fluid testing takes place, positive test results should be confirmed by a second test of greater specificity. The term “habit-forming” is intended to include any drug or medication generally recognized as capable of becoming habitual, and which may impair the user's ability to operate a commercial motor vehicle safely.

5. The driver is medically unqualified for the duration of the prohibited drug(s) use and until a second examination shows the driver is free from the prohibited drug(s) use. Recertification may involve a substance abuse evaluation, the successful completion of a drug rehabilitation program, and a negative drug test result. Additionally, given that the certification period is normally two years, the medical examiner has the option to certify for a period of less than 2 years if this medical examiner determines more frequent monitoring is required.

M. Alcoholism: §391.41(b)(13)

1. A person is physically qualified to drive a commercial motor vehicle if that person: Has no current clinical diagnosis of alcoholism.

2. The term "current clinical diagnosis of" is specifically designed to encompass a current alcoholic illness or those instances where the individual's physical condition has not fully stabilized, regardless of the time element. If an individual shows signs of having an alcohol-use problem, he or she should be referred to a specialist. After counseling and/or treatment, he or she may be considered for certification.

80 Fed. Reg. 22822, Apr. 23, 2015

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

§392.30-392.32 [Reserved]
§392.33 Obscured lamps or reflective devices/material.

Subpart E—License Revocation; Duties of Driver

§392.40-392.41[Reserved]

Subpart F—Fueling Precautions

§392.50 Ignition of fuel; prevention.
§392.51 Reserve fuel; materials of trade.
§392.52 [Reserved]

Subpart G—Prohibited Practices

§392.60 Unauthorized persons not to be transported.
§392.61 [Reserved]
§392.62 Safe operation, buses.
§392.63 Towing or pushing loaded buses.
§392.64 Riding within closed commercial motor vehicles without proper exits.
§392.65 [Reserved]
§392.66 Carbon monoxide; use of commercial motor vehicle when detected.
§392.67 Heater, flame-producing; on commercial motor vehicle in motion.
§392.68-392.69 [Reserved] Radar detectors; use and/or possession.

Subpart H—Limiting the Use of Electronic Devices

§392.80 Prohibition against texting.

Authority: 49 U.S.C. 13902, 31136, 31151, 31502; and 49 CFR 1.73.

33 Fed. Reg. 19732, Dec. 25, 1968, unless otherwise noted.

Editorial Note: Nomenclature changes to part 392 appear at 66 Fed. Reg. 49874, Oct. 1, 2001.

Subpart A—General

§392.1 Scope of the rules in this part.

Every motor carrier, its officers, agents, representatives, and employees responsible for the management, maintenance, operation, or driving of commercial motor vehicles, or the hiring, supervising, training, assigning, or dispatching of drivers, shall be instructed in and comply with the rules in this part.

53 Fed. Reg. 18057, May 19, 1988, as amended at 6038746, July 28, 1995

§392.2 Applicable operating rules.

Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Motor Carrier Safety Administration regulation must be complied with.

35 Fed. Reg. 7800, May 21, 1970, as amended at 60 Fed. Reg. 38746, July 28, 1995

§392.3 Ill or fatigued operator.

No driver shall operate a commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a commercial motor vehicle, while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle. However, in a case of grave emergency where the hazard to occupants of the commercial motor vehicle or other users of the highway would be increased by compliance with this section, the driver may continue to operate the commercial motor vehicle to the nearest place at which that hazard is removed.

35 Fed. Reg. 7800, May 21, 1970, as amended at 60 Fed. Reg. 38746, July 28, 1995

§392.4 Drugs and other substances.

(a) No driver shall be on duty and possess, be under the influence of, or use, any of the following drugs or other substances:

(1) Any 21 CFR 1308.11 Schedule I substance;

(2) An amphetamine or any formulation thereof (including, but not limited, to "pep pills," and "bennies");

(3) A narcotic drug or any derivative thereof; or

(4) Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle.

(b) No motor carrier shall require or permit a driver to violate paragraph (a) of this section.

(c) Paragraphs (a) (2), (3), and (4) do not apply to the possession or use of a substance administered to a driver by or under the instructions of a licensed medical practitioner, as defined in §382.107 of this subchapter, who has advised the driver that the substance will not affect the driver's ability to safely operate a motor vehicle.

(d) As used in this section, "possession" does not include possession of a substance which is manifested and transported as part of a shipment.

61 Fed. Reg. 9567, Mar. 8, 1996, as amended at 62 Fed. Reg. 37153, July 11, 1997

§392.5 Alcohol prohibition.

(a) No driver shall—

(1) Use alcohol, as defined in §382.107 of this subchapter, or be under the influence of alcohol, within 4 hours before going on duty or operating, or having physical control of, a commercial motor vehicle; or

(2) Use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle; or

(3) Be on duty or operate a commercial motor vehicle while the driver possesses wine of not less than one-half of one per centum of alcohol by volume, beer as defined in 26 U.S.C. 5052(a), of the Internal Revenue Code of 1954, and distilled spirits as defined in section 5002(a)(8), of such Code. However, this does not apply to possession of wine, beer, or distilled spirits which are:

(i) Manifested and transported as part of a shipment; or

(ii) Possessed or used by bus passengers.

(b) No motor carrier shall require or permit a driver to—

(1) Violate any provision of paragraph (a) of this section; or

(2) Be on duty or operate a commercial motor vehicle if, by the driver's general appearance or conduct or by other substantiating evidence, the driver appears to have used alcohol within the preceding four hours.

(c) Any driver who is found to be in violation of the provisons of paragraph (a) or (b) of this section shall be placed out-of-service immediately for a period of 24 hours.

(1) The 24-hour out-of-service period will commence upon issuance of an out-of-service order.

(2) No driver shall violate the terms of an out-of-service order issued under this section.

(d) Any driver who is issued an out-of-service order under this section shall:

(1) Report such issuance to his/her employer within 24 hours; and

(2) Report such issuance to a State official, designated by the State which issued his/her driver's license, within 30 days unless the driver chooses to request a review of the order. In this case, the driver shall report the order to the State official within 30 days of an affirmation of the order by either the Division Administrator or State Director for the geographical area or the Administrator.

(e) Any driver who is subject to an out-of-service order under this section may petition for review of that order by submitting a petition for review in writing within 10 days of the issuance of the order to the Division Administrator or State Director for the geographical area in which the order was issued. The Division Administrator or State Director may affirm or reverse the order. Any driver adversely affected by such order of the Regional Director of Motor Carriers may petition the Administrator for review in accordance with 49 CFR 386.13.

49 U.S.C. 304, 1655; 49 CFR 1.48(b) and 301.60

47 Fed. Reg. 47837, Oct. 28, 1982, as amended at 52 Fed. Reg. 27201, July 20, 1987; 59 Fed. Reg. 7515, Feb. 15, 1994; 61 Fed. Reg. 9567, Mar. 8, 1996

§392.6 Schedules to conform with speed limits.

No motor carrier shall schedule a run nor permit nor require the operation of any commercial motor vehicle between points in such period of time as would necessitate the commercial motor vehicle being operated at speeds greater than those prescribed by the jurisdictions in or through which the commercial motor vehicle is being operated.

33 Fed. Reg. 19732, Dec. 25, 1968, as amended at 60 Fed. Reg. 38746, July 28, 1995

§392.7 Equipment, inspection and use.

(a) No commercial motor vehicle shall be driven unless the driver is satisfied that the following parts and accessories are in good working order, nor shall any driver fail to use or make use of such parts and accessories when and as needed:

Service brakes, including trailer brake connections.

Parking (hand) brake.

Steering mechanism.

Lighting devices and reflectors.

Tires.

Horn.

Windshield wiper or wipers.

Rear-vision mirror or mirrors.

(b) ….

33 Fed. Reg. 19732, Dec. 25, 1968, as amended at 60 Fed. Reg. 38746, July 28, 1995; 73 Fed. Reg. 76823, Dec. 17, 2008; 74 Fed. Reg. 68708, Dec. 29, 2009

§392.8 Emergency equipment, inspection and use.

No commercial motor vehicle shall be driven unless the driver thereof is satisfied that the emergency equipment required by §393.95 is in place and ready for use; nor shall any driver fail to use or make use of such equipment when and as needed.
49 Fed. Reg. 38290, Sept. 28, 1984, as amended at 60 Fed. Reg. 38746, July 28, 1995

§392.9….

§392.9 Operating authority.

(a) Operating authority required. A motor vehicle providing transportation requiring operating authority must not be operated without the proper operating authority.

(b) Penalties. Every motor carrier providing transportation requiring operating authority shall be ordered out of service if it is determined that the motor carrier is operating in violation of paragraph (a) of this section. In addition, the motor carrier may be subject to penalties in 49 U.S.C. 14901.

(c) Administrative review. Upon issuance of the out-of-service order under paragraph (b) of this section, the driver shall comply immediately with such order. Opportunity for review shall be provided in accordance with 5 U.S.C. 554 not later than 10 days after issuance of such order.
71 Fed. Reg. 50867, Aug. 28, 2006

Subpart B—Driving of Commercial Motor Vehicles

§392.10 Railroad grade crossings; stopping required.

(a) Except as provided in paragraph (b), the driver of every bus transporting passengers shall not cross a railroad track or tracks at grade unless he/she first: Stops the CMV within 50 feet of, and not closer than 15 feet to, the tracks; thereafter listens and looks in each direction along the tracks for an approaching train; and determines that no train is approaching. When it is safe to do so, the driver may drive the CMV across the tracks in a gear that permits the CMV to complete the crossing without a change of gears. The driver must not shift gears while crossing the tracks.

(b) A stop need not be made at:

(1) A streetcar crossing, or railroad tracks used exclusively for industrial switching purposes, within a business district, as defined in §390.5.

(2) A railroad grade crossing when a police officer or crossing flagman directs traffic to proceed,

(3) A railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which, under local law, permits the commercial motor vehicle to proceed across the railroad tracks without slowing or stopping.

(4) An abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned,

(5) An industrial or spur line railroad grade crossing marked with a sign reading “Exempt.” Such “Exempt” signs shall be erected only by or with the consent of the appropriate State or local authority.
Sec. 12, 80 Stat. 931; 49 U.S.C. 1651 note; 49 U.S.C. 304, 1655; 49 CFR 1.48(b) and 301.60
33 Fed. Reg. 19732, Dec. 25, 1968, as amended at 35 Fed. Reg. 7801, May 21, 1970; 38 Fed. Reg. 1589, Jan. 16, 1973; 40 Fed. Reg. 44555, Sept. 29, 1975; 45 Fed. Reg. 46424, July 10, 1980; 47 Fed. Reg. 47837, Oct. 28, 1982; 59 Fed. Reg. 63924, Dec. 12, 1994; 60 Fed. Reg. 38746, 38747, July 28, 1995

§**392.11 ….**

33 Fed. Reg. 19732, Dec. 25, 1968, as amended at 60 Fed. Reg. 38747, July 28, 1995

§392.12-392.13 [Reserved]

§392.14 Hazardous conditions; extreme caution.

Extreme caution in the operation of a CMV shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the CMV shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated. Whenever compliance with the foregoing provisions of this rule increases hazard to passengers, the CMV may be operated to the nearest point at which the safety of passengers is assured.

33 Fed. Reg. 19732, Dec. 25, 1968, as amended at 60 Fed. Reg. 38747, July 28, 1995

§392.15 [Reserved]

§392.16 Use of seat belts.

A CMV which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly.

35 Fed. Reg. 10860, July 3, 1970, as amended at 60 Fed. Reg. 38747, July 28, 1995

§392.18 [Reserved]

Subpart C—Stopped Commercial Motor Vehicles

§392.20-392.21 [Reserved]

§392.22 Emergency signals; stopped commercial motor vehicles.

(a) Hazard warning signal flashers. Whenever a CMV is stopped upon the traveled portion of a highway or the shoulder of a highway for any cause other than necessary traffic stops, the driver of the stopped CMV shall immediately activate the vehicular hazard warning signal flashers and continue the flashing until the driver places the warning devices required by paragraph (b) of this section. The flashing signals shall be used during the time the warning devices are picked up for storage before movement. The flashing lights may be used at other times while a CMV is stopped in addition to, but not in lieu of, the warning devices required by paragraph (b) of this section.

(b) Placement of warning devices—(1) General rule. Except as provided in paragraph (b)(2) of this section, whenever a CMV is stopped upon the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall, as soon as possible, but in any event within 10 minutes, place the warning devices required by §393.95, in the following manner:

(i) One on the traffic side of and 4 paces (approximately 3 meters or 10 feet) from the stopped commercial motor vehicle in the direction of approaching traffic;

(ii) One at approximately 100 feet from the stopped CMV in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction of approaching traffic; and

(iii) One at approximately 100 feet from the stoppedCMV in the center of the traffic lane or shoulder occupied by the CMV and in the direction away from approaching traffic.

(2) Special rules—(i) Fusees and liquid-burning flares. The driver of a CMV equipped with only fusees or liquid-burning flares shall place a lighted fusee or liquid-burning flare at each of the locations specified in paragraph (b)(1) of this section. There shall be at least one lighted fusee or liquid-burning flare at each of the prescribed locations, as long as the CMV is stopped. Before the stopped commercial motor vehicle is moved, the driver shall extinguish and remove each fusee or liquid-burning flare.

(ii) Daylight hours. Except as provided in paragraph (b)(2)(iii) of this section, during the period lighted lamps are not required, three bidirectional reflective triangles, or three lighted

fusees or liquid-burning flares shall be placed as specified in paragraph (b)(1) of this section within a time of 10 minutes. In the event the driver elects to use only fusees or liquid-burning flares in lieu of bidirectional reflective triangles or red flags, the driver must ensure that at least one fusee or liquid-burning flare remains lighted at each of the prescribed locations as long as the commercial motor vehicle is stopped or parked.

(iii) Business or residential districts. The placement of warning devices is not required within the business or residential district of a municipality, except during the time lighted lamps are required and when street or highway lighting is insufficient to make a commercial motor vehicle clearly discernable at a distance of 500 feet to persons on the highway.

(iv) Hills, curves, and obstructions. If a commercial motor vehicle is stopped within 500 feet of a curve, crest of a hill, or other obstruction to view, the driver shall place the warning signal required by paragraph (b)(1) of this section in the direction of the obstruction to view a distance of 100 feet to 500 feet from the stopped commercial motor vehicle so as to afford ample warning to other users of the highway.

(v) Divided or one-way roads. If a CMV is stopped upon the traveled portion or the shoulder of a divided or one-way highway, the driver shall place the warning devices required by paragraph (b)(1) of this section, one warning device at a distance of 200 feet and one warning device at a distance of 100 feet in a direction toward approaching traffic in the center of the lane or shoulder occupied by the commercial motor vehicle. He/she shall place one warning device at the traffic side of the commercial motor vehicle within 10 feet of the rear of the CMV

(vi) Leaking, flammable material. If gasoline or any other flammable liquid, or combustible liquid or gas seeps or leaks from a fuel container or a CMV stopped upon a highway, no emergency warning signal producing a flame shall be lighted or placed except at such a distance from any such liquid or gas as will assure the prevention of a fire or explosion.

37 Fed. Reg. 17175, Aug. 25, 1972, as amended at 40 Fed. Reg. 10685, Mar. 7, 1975; 47 Fed. Reg. 47837, Oct. 28, 1982; 48 Fed. Reg. 57139, Dec. 23, 1983; 59 Fed. Reg. 34711, July 6, 1994; 60 Fed. Reg. 38747, July 28, 1995; 63 Fed. Reg. 33279, June 18, 1998

§**392.24 Emergency signals; flame-producing.**

No driver shall attach or permit any person to attach a lighted fusee or other flame-producing emergency signal to any part of a CMV.

33 Fed. Reg. 19732, Dec. 25, 1968, as amended at 60 Fed. Reg. 38747, July 28, 1995

§**392.25 ….**

Subpart D—Use of Lighted Lamps and Reflectors

§392.30-392.32 [Reserved]

§392.33 Obscured lamps or reflective devices/material.

(a) No CMV shall be driven when any of the lamps or reflective devices/material required by subpart B of part 393 of this title are obscured by the tailboard, or by any part of the load or its covering, by dirt, or other added vehicle or work equipment or otherwise.

(b) Exception. The conspicuity treatments on the front end protection devices of the trailer may be obscured by part of the load being transported.

70 Fed. Reg. 48025, Aug. 15, 2005

Subpart E—License Revocation; Duties of Driver

§392.40-392.41 [Reserved]

Subpart F—Fueling Precautions

§392.50 Ignition of fuel; prevention.

No driver or any employee of a motor carrier shall:

(a) Fuel a CMV with the engine running, except when it is necessary to run the engine to fuel the commercial motor vehicle;

(b) Smoke or expose any open flame in the vicinity of a CMV being fueled;

(c) Fuel a commercial motor vehicle unless the nozzle of the fuel hose is continuously in contact with the intake pipe of the fuel tank;

(d) Permit, insofar as practicable, any other person to engage in such activities as would be likely to result in fire or explosion.

33 Fed. Reg. 19732, Dec. 25, 1968, as amended at 60 Fed. Reg. 38747, July 28, 1995

§392.51 Reserve fuel; materials of trade.

Small amounts of fuel for the operation or maintenance of a CMV(including its auxiliary equipment) may be designated as materials of trade (see 49 CFR 171.8).

(a) ….

(b) ….

63 Fed. Reg. 33279, June 18, 1998

§392.52 [Reserved]

Subpart G—Prohibited Practices

§392.60 Unauthorized persons not to be transported.

(a) Unless specifically authorized in writing to do so by the motor carrier under whose authority the CMV is being operated, no driver shall transport any person or permit any person to be transported on any CMV other than a bus. When such authorization is issued, it shall state the name of the person to be transported, the points where the transportation is to begin and end, and the date upon which such authority expires. No written authorization, however, shall be necessary for the transportation of:

(1) Employees or other persons assigned to a CMV by a motor carrier;

(2) Any person transported when aid is being rendered in case of an accident or other emergency;

(3) An attendant delegated to care for livestock.

(b) ….

60 Fed. Reg. 38747, July 28, 1995

§392.61 [Reserved]

§392.62 Safe operation, buses.

No person shall drive a bus and a motor carrier shall not require or permit a person to drive a bus unless—

(a) All standees on the bus are rearward of the standee line or other means prescribed in §393.90 of this subchapter;

(b) All aisle seats in the bus conform to the requirements of §393.91 of this subchapter; and

(c) Baggage or freight on the bus is stowed and secured in a manner which assures—

(1) Unrestricted freedom of movement to the driver and his proper operation of the bus;

(2) Unobstructed access to all exits by any occupant of the bus; and

(3) Protection of occupants of the bus against injury resulting from the falling or displacement of articles transported in the bus.

63 Fed. Reg. 33278, June 18, 1998

§392.63 Towing or pushing loaded buses.

No disabled bus with passengers aboard shall be towed or pushed; nor shall any person use or permit to be used a bus with passengers aboard for the purpose of towing or pushing any disabled motor vehicle, except in such circumstances where the hazard to passengers would be

increased by observance of the foregoing provisions of this section, and then only in traveling to the nearest point where the safety of the passengers is assured.

33 Fed. Reg. 19732, Dec. 25, 1968, as amended at 60 Fed. Reg. 38747, July 28, 1995

§392.64 Riding within closed commercial motor vehicles without proper exits.

No person shall ride within the closed body of any CMVunless there are means on the inside thereof of obtaining exit. Said means shall be in such condition as to permit ready operation by the occupant.

33 Fed. Reg. 19732, Dec. 25, 1968, as amended at 60 Fed. Reg. 38747, July 28, 1995

§**392.65 [Reserved]**

§**392.66 Carbon monoxide; use of commercial motor vehicle when detected.**

(a) No person shall dispatch or drive any CMV or permit any passengers thereon, when the following conditions are known to exist, until such conditions have been remedied or repaired:

(1) Where an occupant has been affected by carbon monoxide;

(2) Where carbon monoxide has been detected in the interior of the CMV;

(3) When a mechanical condition of the CMV is discovered which would be likely to produce a hazard to the occupants by reason of carbon monoxide.

(b) [Reserved]

60 Fed. Reg. 38747, July 28, 1995

§392.67 ….

§392.68-392.69 [Reserved]

§392.71 Radar detectors; use and/or possession.

(a) No driver shall use a radar detector in a CMV, or operate a commercial motor vehicle that is equipped with or contains any radar detector.

(b) No motor carrier shall require or permit a driver to violate paragraph (a) of this section.

58 Fed. Reg. 67375, Dec. 21, 1993

Subpart H—Limiting the Use of Electronic Devices

§392.80 Prohibition against texting.

(a) Prohibition. No driver shall engage in texting while driving.

(b) Motor carriers. No motor carrier shall allow or require its drivers to engage in texting while driving.

(c) Definition. For the purpose of this section only, driving means operating a CMV, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a CMV with or without the motor running when the driver moved the vehicle to the side of, or off, a highway, as defined in 49 CFed. Reg. 390.5, and halted in a location where the vehicle can safely remain stationary.

(d) Exceptions—(1) School bus operations and vehicles designed or used to transport 9 to 15 passengers, including the driver, not for direct compensation. The provisions of §390.3(f)(1) and (6) are not applicable to this section.

(2) Emergency use. Texting while driving is permissible by drivers of a commercial motor vehicle when necessary to communicate with law enforcement officials or other emergency services.

75 Fed. Reg. 59136, Sept. 27, 2010

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Subpart A—General

Subpart B—Lighting Devices, Reflectors, and Electrical Equipment

Subpart C—Brakes

Subpart I—….

Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

Authority:

Sec. 1041(b) of Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

33 Fed. Reg. 19735, Dec. 25, 1968, unless otherwise noted.

Subpart A—General

Source: 53 Fed. Reg. 49384, Dec. 7, 1988, unless otherwise noted.

§393.1 Scope of the rules of this part.

Every employer and employee shall comply and be conversant with the requirements and specifications of this part. No employer shall operate a commercial motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

54 Fed. Reg. 48617, Nov. 24, 1989

§393.3 Additional equipment and accessories.

Nothing contained in this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this subchapter, provided such equipment and accessories do not decrease the safety of operation of the motor vehicles on which they are used.

§393.5 Definitions.

As used in this part, the following words and terms are construed to mean:

Antilock Brake System or ABS means a portion of a service brake system that automatically controls the degree of rotational wheel slip during braking by:

(1) Sensing the rate of angular rotation of the wheels;

(2) Transmitting signals regarding the rate of wheel angular rotation to one or more controlling devices which interpret those signals and generate responsive controlling output signals; and

(3) Transmitting those controlling signals to one or more modulators which adjust brake actuating forces in response to those signals.

Brake. An energy conversion mechanism used to stop, or hold a vehicle stationary.

Brake tubing/hose. Metallic brake tubing, nonmetallic brake tubing and brake hose are conduits or lines used in a brake system to transmit or contain the medium (fluid or vacuum) used to apply the motor vehicle's brakes.

Bus. A vehicle designed to carry more than 15 passengers, including the driver.

Clearance lamp. A lamp used on the front and the rear of a motor vehicle to indicate its overall width and height.

Converter dolly. A motor vehicle consisting of a chassis equipped with one or more axles, a fifth wheel and/or equivalent mechanism, and drawbar, the attachment of which converts a semitrailer to a full trailer.

Curb weight. The weight of a motor vehicle with standard equipment, maximum capacity of fuel, oil, and coolant; and, if so equipped, air conditioning and additional weight of optional engine. Curb weight does not include the driver.

Emergency brake system. A mechanism designed to stop a vehicle after a single failure occurs in the service brake system of a part designed to contain compressed air or brake fluid or vacuum (except failure of a common valve, manifold brake fluid housing or brake chamber housing).

Fuel tank fitting. Any removable device affixed to an opening in the fuel tank with the exception of the filler cap.

Grommet. A device that serves as a support and protection to that which passes through it.

Hazard warning signal. Lamps that flash simultaneously to the front and rear, on both the right and left sides of a commercial motor vehicle, to indicate to an approaching driver the presence of a vehicular hazard.

Head lamps. Lamps used to provide general illumination ahead of a motor vehicle.

Heater. Any device or assembly of devices or appliances used to heat the interior of any motor vehicle. This includes a catalytic heater which must meet the requirements of §177.834(1) of this title when flammable liquid or gas is transported.

Identification lamps. Lamps used to identify certain types of commercial motor vehicles.

Lamp. A device used to produce artificial light.

Length of a manufactured home. The largest exterior length in the traveling mode, including any projections which contain interior space. Length does not include bay windows, roof projections, overhangs, or eaves under which there is no interior space, nor does it include drawbars, couplings or hitches.

License plate lamp. A lamp used to illuminate the license plate on the rear of a motor vehicle.

Parking brake system. A brake system used to hold a vehicle stationary.

Play. Any free movement of components.

Rear extremity. The rearmost point on a motor vehicle that falls above a horizontal plane located 560 mm (22 inches) above the ground and below a horizontal plane located 1,900 mm (75 inches) above the ground when the motor vehicle is stopped on level ground; unloaded; its fuel tanks are full; the tires (and air suspension, if so equipped) are inflated in accordance with the manufacturer's recommendations; and the motor vehicle's cargo doors, tailgate, or other permanent structures are positioned as they normally are when the vehicle is in motion. Nonstructural protrusions such as tail lamps, rubber bumpers, hinges and latches are excluded from the determination of the rearmost point.

Reflective material. A material conforming to Federal Specification L-S-300, “Sheeting and Tape, Reflective; Non-exposed Lens, Adhesive Backing,” (September 7, 1965) meeting the performance standard in either Table 1 or Table 1A of SAE Standard J594f, “Reflex Reflectors” (January, 1977).

Reflex reflector. A device which is used on a vehicle to give an indication to an approaching driver by reflected lighted from the lamps on the approaching vehicle.

Service brake system. A primary brake system used for slowing and stopping a vehicle.

Side extremity. The outermost point on a side of the motor vehicle that is above a horizontal plane located 560 mm (22 inches) above the ground, below a horizontal plane located 1,900 mm

(75 inches) above the ground, and between a transverse vertical plane tangent to the rear extremity of the vehicle and a transverse vertical plane located 305 mm (12 inches) forward of that plane when the vehicle is unloaded; its fuel tanks are full; and the tires (and air suspension, if so equipped) are inflated in accordance with the manufacturer's recommendations. Non-structural protrusions such as taillights, hinges and latches are excluded from the determination of the outermost point.

Steering wheel lash. The condition in which the steering wheel may be turned through some part of a revolution without associated movement of the front wheels.

Stop lamps. Lamps shown to the rear of a motor vehicle to indicate that the service brake system is engaged.

Tail lamps. Lamps used to designate the rear of a motor vehicle.

Turn signals. Lamps used to indicate a change in direction by emitting a flashing light on the side of a motor vehicle towards which a turn will be made.

Upper coupler assembly. A structure consisting of an upper coupler plate, king-pin and supporting framework which interfaces with and couples to a fifth wheel.

Upper coupler plate. A plate structure through which the king-pin neck and collar extend. The bottom surface of the plate contacts the fifth wheel when coupled.

53 Fed. Reg. 49384, Dec. 7, 1988, as amended at 63 Fed. Reg. 8339, Feb. 18, 1998; 63 Fed. Reg. 24465, May 4, 1998; 64 Fed. Reg. 47707, Sept. 1, 1999

§393.7 Matter incorporated by reference.

(a) Incorporation by reference. Part 393 includes references to certain matter or materials. The text of the materials is not included in the regulations contained in part 393. The materials are hereby made a part of the regulations in part 393. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the Federal Register.

(b) Availability. The materials incorporated by reference are available as follows:

(1) Standards of the Underwriters Laboratories, Inc. Information and copies may be obtained by writing to: Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(2) Specifications of the American Society for Testing and Materials. Information and copies may be obtained by writing to: American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(3) Specifications of the National Association of Chain Manufacturers. Information and copies may be obtained by writing to: National Association of Chain Manufacturers, P.O. Box 3143, York, Pennsylvania 17402-0143.

(4) ….

(5) ….

(6) ….

(7)-(9)[Reserved]

(10) All of the materials incorporated by reference are available for inspection at:

(i) The Department of Transportation Library, 400 Seventh Street, SW., Washington, DC 20590 in room 2200. These documents are also available for inspection and copying as provided in 49 CFR part 7, appendix D; and

(ii) The Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

59 Fed. Reg. 34712, July 6, 1994, as amended at 59 Fed. Reg. 34718, July 6, 1994

Subpart B—Lighting Devices, Reflectors, and Electrical Equipment

§393.9 Lamps operable.

All lamps required by this subpart shall be capable of being operated at all times.

49 U.S.C. 304, 1655; 49 CFR 1.48(b) and 301.60

47 Fed. Reg. 47837, Oct. 28, 1982

§393.11 Lighting devices and reflectors.

The following Table 1 sets forth the required color, position, and required lighting devices by type of commercial motor vehicle. Diagrams illustrating the locations of lighting devices and reflectors, by type and size of commercial motor vehicle, are shown immediately following Table 1. All lighting devices on motor vehicles placed in operation after March 7, 1989, must meet the requirements of 49 CFR 571.108 in effect at the time of manufacture of the vehicle. Motor vehicles placed in operation on or before March 7, 1989, must meet either the requirements of this subchapter or part 571 of this title in effect at the time of manufacture.

Table 1.—Required Commercial Vehicle Lighting Equipment

Item on the vehicle Quantity Color Location Position Height above road surface in inches measured from the center of the lamp at curb weight

TABLE 1 OF § 393.11 - REQUIRED LAMPS AND REFLECTORS ON COMMERCIAL MOTOR VEHICLES

Item on the vehicle	Quantity	Color	Location	Position	Height above the road surface in millimeters (mm) (with English units in parenthesis) measured from the center of the lamp at curb weight	Vehicle for which the device are require
Headlamps	2	White	Front	On the front at the same height, with an equal number at each side of the vertical center line as far apart as practicable	Not less than 559 mm (22 inches) nor more than 1,372 mm (54 inches)	A, B, C
Turn signal (front). See	2	Amber	At or near the	One on each side of the	Not less than 381 mm (15	A, B, C

Parking lamp	2	Amber or white	Front	One lamp on each side of the vertical centerline, as far apart as practicable	Both on the same level, between 381 mm (15 inches) and 2,108 mm (83 inches)	A
Identification lamps (front). See footnote #1	3	Amber	Front	As close as practicable to the top of the vehicle, at the same height, and as close as practicable to the vertical centerline of the vehicle (or the vertical centerline of the cab where different from the centerline of the vehicle) with lamp centers spaced not less than 152 mm (6 inches) or more than 305 mm (12 inches) apart. Alternatively, the front lamps may be located as close as practicable to the top of	All three on the same level as close as practicable to the top of the motor vehicle	B, C

Tail lamps. See footnotes #5 and 11	2	Red	Rear	One lamp on each side of the vertical centerline at the same height and as far apart as practicable	Both on the same level between 381 mm (15 inches) and 1,829 mm (72 inches)	A, B, C D, E, F, G, H
Stop lamps. See footnotes #5 and 13	2	Red	Rear	One lamp on each side of the vertical centerline at the same height and as far apart as practicable	Both on the same level between 381 mm (15 inches) and 1,829 mm (72 inches)	A, B, C D, E, F, G
Clearance lamps. See footnotes #8, 9, 10, 15 & 17	2	Amber	One on each side of the front of the vehicle	One on each side of the vertical centerline to indicate overall width	Both on the same level as high as practicable	B, C, D G, H
	2	Red	One on each side of the rear of the vehicle	One on each side of the vertical centerline to indicate overall width	Both on the same level as high as practicable	B, D, G H
Reflex reflector, intermediate (side)	2	Amber	One on each side	At or near the midpoint between the front and rear side	Between 381 mm (15inches) and 1,524 (60 inches)	A, B, D F, G

Reflex reflector (rear). See footnotes #5, 6, and 8	2	Red	Rear	One on each side of the vertical centerline, as far apart as practicable and at the same height	Both on the same level, between 381 mm (15 inches) and 1,524 mm (60 inches)	A, B, C D, E, F, G
Reflex reflector (rear side).	2	Red	One on each side (rear)	As far to the rear as practicable	Both on the same level, between 381 mm (15 inches) and 1,524 mm (60 inches)	A, B, D F, G
Reflex reflector (front side). See footnote #16	2	Amber	One on each side (front)	As far to the front as practicable	Between 381 mm (15 inches) and 1,524 mm (60 inches)	A, B, C D, F, G
License plate lamp (rear). See footnote #11	1	White	At rear license plate to illuminate the plate from the top or sides		No requirements	A, B, C D, F, G
Side marker lamp (front). See footnote #16	2	Amber	One on each side	As far to the front as practicable	Not less than 381 mm (15 inches)	A, B, C D, F

Side marker lamp intermediate	2	Amber	One on each side	At or near the midpoint between the front and rear side marker lamps, if the length of the vehicle is more than 9,144 mm (30 feet)	Not less tan 381 mm (15 inches)	A, B, D F, G
Side marker lamp (rear). See footnotes #4 and 8	2	Red	One on each side	As far to the rear as practicable	Not less than 381 mm (15 inches), and on the rear of trailers not more than 1,524 mm (60 inches)	A, B, D F, G
Turn signal (rear). See footnotes #5 and 12	2	Amber or red	Rear	One lamp on each side of the vertical centerline as far apart as practicable	Both on the same level, between 381 mm (15 inches) and 2,108 mm (83 inches)	A, B, C D, E, F, G

Identification lamp (rear). See footnotes #3, 7, and 15	3	Red	Rear	One as close as practicable to the vertical centerline. One on each side with lamp centers spaced not less than 152 mm (6 inches) or more than 305 mm (12 inches) apart	All three on the same level as close as practicable to the top of the vehicle	B, D, G
Vehicular hazard warning signal flasher lamps. See footnotes #5 and 12	2	Amber	Front	One lamp on each side of the vertical centerline, as far apart as practicable	Both on the same level, between 381 mm (15 inches) and 2,108 mm (83 inches)	A, B, C
	2	Amber or red	Rear	One lamp on each side of the vertical centerline, as far apart as practicable	Both on the same level, between 381 mm (15 inches) and 2,108 mm (83 inches)	A, B, C D, E, F, G
Backup lamp. See footnote #14	1 or 2	White	Rear	Rear	No requirement	A, B, C
Parking lamp	2	Amber or white	Front	One lamp on each side of the vertical centerline, as far apart as practicable	Both on the same level, between 381 mm (15 inches) and 2,108 mm (83 inches)	A

Legend: Types of commercial motor vehicles shown in the last column of Table 1.

A. Buses and trucks less than 2,032 mm (80 inches) in overall width.

B. Buses and trucks 2,032 mm (80 inches) or more in overall width.

C. Truck tractors.

D. Semitrailers and full trailers 2,032 mm (80 inches) or more in overall width except converter dollies.

E. Converter dolly.

F. Semitrailers and full trailers less than 2,032 mm (80 inches) in overall width.

G. Pole trailers.

H. Projecting loads.

Note: Lamps and reflectors may be combined as permitted by §393.22 and S5.4 of 49 CFR 571.108, Equipment combinations.

Footnote - 1 Identification lamps may be mounted on the vertical centerline of the cab where different from the centerline of the vehicle, except where the cab is not more than 42 inches wide at the front roofline, then a single lamp at the center of the cab shall be deemed to comply with the requirements for identification lamps. No part of the identification lamps or their mountings may extend below the top of the vehicle windshield.

Footnote - 2 Unless the turn signals on the front are so constructed (double-faced) and located as to be visible to passing drivers, two turn signals are required on the rear of the truck tractor, one at each side as far apart as practicable.

Footnote - 3 The identification lamps need not be visible or lighted if obscured by a vehicle in the same combination.

Footnote - 4 Any semitrailer or full trailer manufactured on or after March 1, 1979, shall be equipped with rear side-marker lamps at a height of not less than 381 mm (15 inches), and on the rear of trailers not more than 1,524 mm (60 inches) above the road surface, as measured from the center of the lamp on the vehicle at curb weight.

Footnote - 5 Each converter dolly, when towed singly by another vehicle and not as part of a full trailer, shall be equipped with one stop lamp, one tail lamp, and two reflectors (one on each side of the vertical centerline, as far apart as practicable) on the rear. Each converter dolly shall be equipped with rear turn signals and vehicular hazard warning signal flasher lamps when towed singly by another vehicle and not as part of a full trailer, if the converter dolly obscures the turn signals at the rear of the towing vehicle.

Footnote - 6 Pole trailers shall be equipped with two reflex reflectors on the rear, one on each side of the vertical centerline as far apart as practicable, to indicate the extreme width of the trailer.

Footnote - 7 Pole trailers, when towed by motor vehicles with rear identification lamps meeting the requirements of §393.11 and mounted at a height greater than the load being transported on the pole trailer, are not required to have rear identification lamps.

Footnote - 8 Pole trailers shall have on the rearmost support for the load: (1) two front clearance lamps, one on each side of the vehicle, both on the same level and as high as practicable to indicate the overall width of the pole trailer; (2) two rear clearance lamps, one on each side of the vehicle, both on the same level and as high as practicable to indicate the overall width of the pole trailer; (3) two rear side marker lamps, one on each side of the vehicle, both on the same level, not less than 375 mm (15 inches) above the road surface; (4) two rear reflex reflectors, one on each side, both on the same level, not less than 375 mm (15 inches) above the road surface to indicate maximum width of the pole trailer; and (5) one red reflector on each side of the rearmost support for the load. Lamps and reflectors may be combined as allowed in §393.22.

Footnote - 9 Any motor vehicle transporting a load which extends more than 102 mm (4 inches) beyond the overall width of the motor vehicle shall be equipped with the following lamps in addition to other required lamps when operated during the hours when headlamps are required to be used.

(1) The foremost edge of that portion of the load which projects beyond the side of the vehicle shall be marked (at its outermost extremity) with an amber lamp visible from the front and side.

(2) The rearmost edge of that portion of the load which projects beyond the side of the vehicle shall be marked (at its outermost extremity) with a red lamp visible from the rear and side.

(3) If the projecting load does not measure more than 914 mm (3 feet) from front to rear, it shall be marked with an amber lamp visible from the front, both sides, and rear, except that if the projection is located at or near the rear it shall be marked by a red lamp visible from front, side, and rear.

Footnote - 10 Projections beyond rear of motor vehicles. Motor vehicles transporting loads which extend more than 1,219 mm (4 feet) beyond the rear of the motor vehicle, or which have tailboards or tailgates extending more than 1,219 mm (4 feet) beyond the body, shall have these projections marked as follows when the vehicle is operated during the hours when headlamps are required to be used:

(1) On each side of the projecting load, one red side marker lamp, visible from the side, located so as to indicate maximum overhang.

(2) On the rear of the projecting load, two red lamps, visible from the rear, one at each side; and two red reflectors visible from the rear, one at each side, located so as to indicate maximum width.

Footnote - 11 To be illuminated when headlamps are illuminated. No rear license plate lamp is required on vehicles that do not display a rear license plate.

Footnote - 12 Every bus, truck, and truck tractor shall be equipped with a signaling system that, in addition to signaling turning movements, shall have a switch or combination of switches that will cause the two front turn signals and the two rear signals to flash simultaneously as a vehicular traffic signal warning, required by §392.22(a). The system shall be capable of flashing simultaneously with the ignition of the vehicle on or off.

Footnote - 13 To be actuated upon application of service brakes.

Footnote - 14 Backup lamp required to operate when bus, truck, or truck tractor is in reverse.

Footnote - 15

(1) For the purposes of b
(2) the term "overall width" refers to the nominal design dimension of the widest part of the vehicle, exclusive of the signal lamps, marker lamps, outside rearview mirrors, flexible fender extensions, and mud flaps.

(2) Clearance lamps may be mounted at a location other than on the front and rear if necessary to indicate the overall width of a vehicle, or for protection from damage during normal operation of the vehicle.

(3) On a trailer, the front clearance lamps may be mounted at a height below the extreme height if mounting at the extreme height results in the lamps failing to mark the overall width of the trailer.

(4) On a truck tractor, clearance lamps mounted on the cab may be located to indicate the width of the cab, rather than the width of the vehicle.

(5) When the rear identification lamps are mounted at the extreme height of a vehicle, rear clearance lamps are not required to be located as close as practicable to the top of the vehicle.

Footnote - 16 A trailer subject to this part that is less than 1829 mm (6 feet) in overall length, including the trailer tongue, need not be equipped with front side marker lamps and front side reflex reflectors.

Footnote - 17 A boat trailer subject to this part whose overall width is 2032 mm (80 inches) or more need not be equipped with both front and rear clearance lamps provided an amber (front) and red (rear) clearance lamp is located at or near the midpoint on each side so as to indicate its extreme width

§393.13….
§393.17….
49 U.S.C. 304, 1655; 49 CFR 1.48(b) and 301.60
40 Fed. Reg. 36126, Aug. 19, 1975, as amended at 47 Fed.Reg. 47837, Oct. 28, 1982
§393.19 Requirements for turn signaling systems.

(a) Every bus shall be equipped with a signaling system that in addition to signaling turning movements shall have a switch or combination of switches that will cause the two front turn signals and the two rear turn signals to flash simultaneously as a vehicular traffic hazard warning as required by §392.22 with the ignition on or off.

(b) ….

53 Fed. Reg. 49397, Dec. 7, 1988

§393.20 Clearance lamps to indicate extreme width and height.

Clearance lamps shall be mounted so as to indicate the extreme width of the motor vehicle (not including mirrors) and as near the top thereof as practicable: Provided, That when rear identification lamps are mounted at the extreme height of the vehicle, rear clearance lamps may be mounted at optional height: And provided further, That when mounting of front clearance lamps at the highest point of a trailer results in such lamps failing to mark the extreme width of the trailer, such lamps may be mounted at optional height but must indicate the extreme width of the trailer. Clearance lamps on truck tractors shall be so located as to indicate the extreme width of the truck tractor cab.

33 Fed. Reg. 19735, Dec. 25, 1968, as amended at 34 Fed. Reg. 6851, Apr. 24, 1969

§393.22 Combination of lighting devices and reflectors.

(a) Permitted combinations. Except as provided in paragraph (b) of this section, two or more lighting devices and reflectors (whether or not required by the rules in this part) may be combined optically if—

(1) Each required lighting device and reflector conforms to the applicable rules in this part; and

(2) Neither the mounting nor the use of a non-required lighting device or reflector impairs the effectiveness of a required lighting device or reflector or causes that device or reflector to be inconsistent with the applicable rules in this part.

(b) Prohibited combinations. (1) A turn signal lamp must not be combined optically with either a head lamp or other lighting device or combination of lighting devices that produces a greater intensity of light than the turn signal lamp.

(2) A turn signal lamp must not be combined optically with a stop lamp unless the stop lamp function is always deactivated when the turn signal function is activated.

(3) A clearance lamp must not be combined optically with a tail lamp or identification lamp.

39 Fed. Reg. 26908, July 24, 1974

§393.23 Lighting devices to be electric.

Lighting devices shall be electric, except that red liquid-burning lanterns may be used on the end of loads in the nature of poles, pipes, and ladders projecting to the rear of the motor vehicle.

§393.24 Requirements for head lamps and auxiliary road lighting lamps.

(a) **Mounting**. Head lamps and auxiliary road lighting lamps shall be mounted so that the beams are readily adjustable, both vertically and horizontally, and the mounting shall be such that the aim is not readily disturbed by ordinary conditions of service.

(b) **Head lamps required**. Every bus shall be equipped with a head-lighting system composed of at least two head lamps, not including fog or other auxiliary lamps, with an equal number on each side of the vehicle. The head-lighting system shall provide an upper and lower distribution of light, selectable at the driver's will.

(c) Fog, adverse-weather, and auxiliary road-lighting lamps. For the purposes of this section, fog, adverse-weather, and auxiliary road lighting lamps, when installed, are considered

to be a part of the head-lighting system. Such lamps may be used in lieu of head lamps under conditions making their use advisable if there be at least one such lamp conforming to the appropriate SAE Standard 1for such lamps on each side of the vehicle.

Footnote(s):

1. Wherever reference is made in these regulations to SAE Standards or SAE Recommended Practices, they shall be:

(a) As found in the 1985 edition of the SAE Handbook with respect to parts and accessories other than lighting devices and reflectors.

(b) When reference is made in these regulations to SAE Standards or SAE Recommended Practices, they shall be as found in the 1985 edition of the SAE Handbook:

(1) With respect to parts and accessories other than lighting devices and reflectors:

(2) Lighting devices and reflectors on motor vehicles manufactured on and after March 7, 1990, shall conform to FMVSS 571.108 (49 CFR 571.108) in effect at the time of manufacture of the vehicle. Should a conflict arise between FMVSS 571.108 and a SAE Standard, FMVSS 571.108 will prevail.

(d) Aiming and intensity. Head lamps shall be constructed and installed so as to provide adequate and reliable illumination and shall conform to the appropriate specification set forth in the SAE Standards 1 for "Electric Head Lamps for Motor Vehicles" or "Sealed-Beam Head Lamp Units for Motor Vehicles."

33 Fed. Reg. 19735, Dec. 25, 1968, as amended at 41 Fed. Reg. 53031, Dec. 3, 1976; 53 Fed. Reg. 49397, Dec. 7, 1988

§393.25 Requirements for lamps other than head lamps.

(a) Mounting. All lamps shall be permanently and securely mounted in workmanlike manner on a permanent part of the motor vehicle. The requirement for three identification lamps on the centerline of a vehicle will be met as to location by one lamp on the centerline, with the other two at right and left. All temporary lamps must be firmly attached.

(b) Visibility. All required exterior lamps shall be so mounted as to be capable of being seen at all distances between 500 feet and 50 feet under clear atmospheric conditions during the time lamps are required to be lighted. The light from front clearance and front identification lamps shall be visible to the front, that from side-marker lamps to the side, that from rear clearance, rear identification, and tail lamps to the rear, and that from projecting load-marker lamps from those directions required by §393.11. This shall not be construed to apply to lamps on one unit which are obscured by another unit of a combination of vehicles.

(c) Specifications. All required lamps except those already installed on vehicles tendered for transportation in drive-away and tow-away operations shall conform to appropriate requirements of the SAE Standards and/or Recommended Practices 1/ as indicated below, except that the minimum required marking of lamps conforming to the 1985 requirements shall be as specified in paragraph (d) of this section. Projecting load marker lamps shall conform to the requirements for clearance, side-marker, and identification lamps. Turn signals shall conform to the requirements for class A, Type I turn signals, provided.

Footnote(s):

1/ See footnote 1 to §393.24(c).

(1) ….

(2) Lamps on vehicles made on and after July 1, 1961, and replacement lamps installed on and after December 31, 1961, shall conform to the 1985 requirements.

(3) ….

(d) Certification and markings. All lamps required to conform to the requirements of the SAE Standards 1/ shall be certified by the manufacturer or supplier that they do so conform, by markings indicated below. The markings in each case shall be visible when the lamp is in place on the vehicle.

Footnote(s):

1 See footnote 1 to §393.24(c).

(1) Stop lamps shall be marked with the manufacturer's or supplier's name or trade name and shall be marked "SAE-S".

(2) Turn signal units shall be marked with the manufacturer's or supplier's name or trade name and shall be marked "SAE-AI" or "SAE-I".

(3) Tail lamps shall be marked with the manufacturer's or supplier's name or trade name and shall be marked "SAE-T".

(4) Clearance, side marker, identification, and projecting load-marker lamps, except combination lamps, shall be marked with the manufacturer's or supplier's name or trade name and shall be marked "SAE" or "SAE-P".

(5) Combination lamps shall be marked with the manufacturer's or supplier's name or trade name and shall be marked "SAE" followed by the appropriate letters indicating the individual lamps combined. The letter "A", as specified in §393.26(c), may be included to certify that a reflector in the combination conforms to the requirements appropriate to such marking. If the letter "I" follows the letter "A" immediately the two letters shall be deemed to refer to a turn signal unit, as specified in paragraph (d)(2) of this section. Combination clearance and side marker lamps may be marked "SAE-PC".

(e) Lighting devices to be steady-burning. All exterior lighting devices shall be of the steady-burning type except turn signals on any vehicle, stop lamps when used as turn signals, warning lamps on school buses when operating as such, and warning lamps on emergency and service vehicles authorized by State or local authorities, and except that lamps combined into the same shell or housing with any turn signal may be turned off by the same switch that turns the signal on for flashing and turned on again when the turn signal as such is turned off. This paragraph shall not be construed to prohibit the use of vehicular hazard warning signal flashers as required by §392.22 or permitted by §392.18.

(f) Stop lamp operation. All stop lamps on each motor vehicle or combination of motor vehicles shall be actuated upon application of any of the service brakes, except that such actuation is not required upon activation of the emergency feature of trailer brakes by means of either manual or automatic control on the towing vehicle, and except that stop lamps on a towing vehicle need not be actuated when service brakes are applied to the towed vehicles or vehicles only, and except that no stop lamp need be actuated as such when it is in use as a turn signal or when it is turned off by the turn signal switch as provided in paragraph (e) of this section.

33 Fed. Reg. 19735, Dec. 25, 1968, as amended at 48 Fed. Reg. 57139, Dec. 28, 1983; 53 Fed. Reg. 49397, Dec. 7, 1988; 61 Fed. Reg. 1843, Jan. 24, 1996

§393.26 Requirements for reflectors.

(a) Mounting. All required reflectors shall be mounted upon the motor vehicle at a height not less than 15 inches nor more than 60 inches above the ground on which the motor vehicle stands, except that reflectors shall be mounted as high as practicable on motor vehicles which are so constructed as to make compliance with the 15-inch requirement impractical. They shall be so installed as to perform their function adequately and reliably, and all reflectors shall be

permanently and securely mounted in workmanlike manner so as to provide the maximum of stability and the minimum likelihood of damage. Required reflectors otherwise properly mounted may be securely installed on flexible strapping or belting provided that under conditions of normal operation they reflect light in the required directions.

(b) Specifications. All required reflectors shall comply with FMVSS 571.108 (49 CFR 571.108) in effect at the time the vehicle was manufactured or the current FMVSS 571.108 requirements.

(c) Certification and markings. All reflectors required to conform to the specifications in paragraph (b) shall be certified by the manufacturer or supplier that they do so conform, by marking with the manufacturer's or supplier's name or trade name and the letters "SAE-A". The marking in each case shall be visible when the reflector is in place on the vehicle.

(d) Retroreflective surfaces. Retroreflective surfaces other than required reflectors may be used, provided:

(1) Designs do not resemble traffic control signs, lights, or devices, except that straight edge striping resembling a barricade pattern may be used.

(2) Designs do not tend to distort the length and/or width of the motor vehicle.

(3) Such surfaces shall be at least 3 inches from any required lamp or reflector unless of the same color as such lamp or reflector.

(4) No red color shall be used on the front of any motor vehicle.

(5) Retroreflective license plates required by State or local authorities may be used.

33 Fed. Reg. 19735, Dec. 25, 1968, as amended at 35 Fed. Reg. 3167, Feb. 19, 1970; 53 Fed. Reg. 49397, Dec. 7, 1988

§393.27 Wiring specifications.

(a) Wiring for both low voltage (tension) and high voltage (tension) circuits shall be constructed and installed so as to meet design requirements. Wiring shall meet or exceed, both mechanically and electrically, the following SAE Standards as found in the 1985 edition of the SAE Handbook:

(1) Commercial vehicle engine ignition systems-SAE J557-High Tension Ignition Cable.

(2) Commercial vehicle battery cable-SAE J1127-Jan 80-Battery Cable.

(3) Other commercial vehicle wiring-SAE J1128-Low Tension Primary Cable.

(b) The source of power and the electrical wiring shall be of such size and characteristics as to provide the necessary voltage as the design requires to comply with FMVSS 571.108.

(c) Lamps shall be properly grounded.

Note:

This shall not prohibit the use of the frame or other metal parts of a motor vehicle as a return ground system.

53 FR 49397, Dec. 7, 1988

§393.28 Wiring to be protected.

(a) The wiring shall—

(1) Be so installed that connections are protected from weather, abrasion, road splash, grease, oil, fuel and chafing;

(2) Be grouped together, when possible, and protected by nonconductive tape, braid, or other covering capable of withstanding severe abrasion or shall be protected by being enclosed in a sheath or tube;

(3) Be properly supported in a manner to prevent chafing;

(4) Not be so located as to be likely to be charred, overheated, or enmeshed in moving parts;

(5) Not have terminals or splices located above the fuel tank except for the fuel sender wiring and terminal; and

(6) Be protected when passing through holes in metal by a grommet, or other means, or the wiring shall be encased in a protective covering.

(b) The complete wiring system including lamps, junction boxes, receptacle boxes, conduit and fittings must be weather resistant.

(c) Harness connections shall be accomplished by a mechanical means.

53 Fed. Reg. 49397, Dec. 7, 1988

§393.29 Grounds.

The battery ground shall be readily accessible. The contact surfaces of electrical connections shall be clean and free of oxide, paint, or other nonconductive coating.

§393.30 Battery installation.

Every storage battery on every vehicle, unless located in the engine compartment, shall be covered by a fixed part of the motor vehicle or protected by a removable cover or enclosure. Removable covers or enclosures shall be substantial and shall be securely latched or fastened. The storage battery compartment and adjacent metal parts which might corrode by reason of battery leakage shall be painted or coated with an acid-resisting paint or coating and shall have openings to provide ample battery ventilation and drainage. Wherever the cable to the starting motor passes through a metal compartment, the cable shall be protected against grounding by an acid and waterproof insulating bushing. Wherever a battery and a fuel tank are both placed under the driver's seat, they shall be partitioned from each other, and each compartment shall be provided with an independent cover, ventilation, and drainage.

§393.31 Overload protective devices.

(a) The current to all low tension circuits shall pass through overload protective devices except that this requirement shall not be applicable to battery-to-starting motor or battery-to-generator circuits, ignition and engine control circuits, horn circuits, electrically-operated fuel pump circuits, or electric brake circuits.

(b) Buses meeting the definition of a commercial motor vehicle and manufactured after June 30, 1953 shall have protective devices for electrical circuits arranged so that:

(1) The headlamp circuit or circuits shall not be affected by a short circuit in any other lighting circuits on the motor vehicle; or

(2) The protective device shall be an automatic reset overload circuit breaker if the headlight circuit is protected in common with other circuits.

33 Fed. Reg. 19735, Dec. 25, 1968, as amended at 53 Fed. Reg. 49397, Dec. 7, 1988

§393.32 ….

§393.33 Wiring, installation.

Electrical wiring shall be systematically arranged and installed in a workmanlike manner. All detachable wiring shall be attached to posts or terminals by means of suitable cable terminals which conform to the SAE Standard for “Cable Terminals”1/ or by cable terminals which are mechanically and electrically at least equal to such terminals. The number of wires attached to any post shall be limited to the number which such post was designed to accommodate. The presence of bare, loose, dangling, chafing, or poorly connected wires is prohibited.

Footnote(s):

1/ See footnote 1 to §393.24(c).

Subpart C—Brakes

§393.40 Required brake systems.

(a) General. A bus must have brakes adequate to control the movement of, and to stop and hold, the vehicle or combination of vehicles.

(b) Specific systems required. (1) A bus must have—

(i) A service brake system that conforms to the requirements of §393.52; and

(ii) A parking brake system that conforms to the requirements of §393.41.

(2) A bus manufactured on or after July 1, 1973, must have an emergency brake system that conforms to the requirements of §393.52(b) and consists of either—

(i) Emergency features of the service brake system; or

(ii) A system separate from the service brake system.

A control by which the driver applies the emergency brake system must be located so that the driver can readily operate it when he/she is properly restrained by any seat belt assembly provided for his/her use. The control for applying the emergency brake system may be combined with either the control for applying the service brake system or the control for applying the parking brake system. However, all three controls may not be combined.

(c) Interconnected systems. (1) If the brake systems specified in paragraph (b) of this section are interconnected in any way, they must be designed, constructed, and maintained so that, upon the failure of any part of the operating mechanism of one or more of the systems (except the service brake actuation pedal or valve)—

(i) The vehicle will have operative brakes; and

(ii) In the case of a vehicle manufactured on or after July 1, 1973, the vehicle will have operative brakes capable of performing as specified in §393.52(b).

(2) A motor vehicle to which the emergency brake system requirements of Federal Motor Vehicle Safety Standard No. 105 (§571.105 of this title) applied at the time of its manufacture conforms to the requirements of paragraph (c)(1) of this section if—

(i) It is maintained in conformity with the emergency brake requirements of Standard No. 105 in effect on the date of its manufacture; and

(ii) It is capable of performing as specified in §393.52(b), except upon structural failure of its brake master cylinder body or effectiveness indicator body.

(3) A bus conforms to the requirements of paragraph (c)(1) of this section if it meets the requirements of §393.44 and is capable of performing as specified in §393.52(b).

36 Fed. Reg. 20297, Oct. 20, 1971, as amended at 37 Fed. Reg. 5251, Mar. 11, 1972

§393.41 Parking brake system.

(a) Every commercial motor vehicle manufactured on and after March 7, 1990, shall at all times be equipped with a parking brake system adequate to hold the vehicle or combination under any condition of loading as required by FMVSS 571.121. An agricultural commodity trailer, heavy hauler or pulpwood trailer shall carry sufficient chocking blocks to prevent movement when parked.

(b) The parking brake system shall at all times be capable of being applied in conformance with the requirements of paragraph (a) of the section by either the driver's muscular effort, or by spring action, or by other energy, provided, that if such other energy is depended on for application of the parking brake, then an accumulation of such energy shall be isolated from any common source and used exclusively for the operation of the parking brake.

(c) The parking brake system shall be held in the applied position by energy other than fluid pressure, air pressure, or electric energy. The parking brake system shall be such that it

cannot be released unless adequate energy is available upon release of the parking brake to make immediate further application with the required effectiveness.
34 Fed. Reg. 15418, Oct. 3, 1969, as amended at 53 Fed. Reg. 49398, Dec. 7, 1988

§393.42 Brakes required on all wheels.

(a) Every commercial motor vehicle shall be equipped with brakes acting on all wheels.

(b) ….

52 Fed. Reg. 2803, Jan. 27, 1987, as amended at 53 Fed. Reg. 49398, Dec. 7, 1988; 54 Fed. Reg. 48617, Nov. 24, 1989; 59 Fed. Reg. 25574, May 17, 1994; 61 Fed. Reg. 1843, Jan. 24, 1996

§393.43….

§393.44 Front brake lines, protection.

On every bus, if equipped with air brakes, the braking system shall be so constructed that in the event any brake line to any of the front wheels is broken, the driver can apply the brakes on the rear wheels despite such breakage. The means used to apply the brakes may be located forward of the driver's seat as long as it can be operated manually by the driver when the driver is properly restrained by any seat belt assembly provided for use. Every bus shall meet this requirement or comply with the regulations in effect at the time of its manufacture.
53 Fed. Reg. 49400, Dec. 7, 1988

§393.45 Brake tubing and hose, adequacy.

(a) General requirements. Brake tubing and brake hose must—

(1) Be designed and constructed in a manner that insures proper, adequate, and continued functioning of the tubing or hose;

(2) Be installed in a manner that insures proper continued functioning of the tubing or hose;

(3) Be long and flexible enough to accommodate without damage all normal motions of the parts to which it is attached;

(4) Be suitably secured against chafing, kinking, or other mechanical damage;

(5) Be installed in a manner that prevents it from contacting the vehicle's exhaust system or any other source of high temperatures; and

(6) Conform to the applicable requirements of paragraph (b) or (c) of this section. In addition, all hose installed on and after January 1, 1981, must conform to those applicable subsections of FMVSS 106 (49 CFR 571.106).

(b) Special requirements for metallic brake tubing, nonmetallic brake tubing, coiled nonmetallic brake tubing and brake hose.

(1) Metallic brake tubing, nonmetallic brake tubing, coiled nonmetallic brake tubing, and brake hose installed on a commercial motor vehicle on and after March 7, 1989, must meet or exceed one of the following specifications set forth in the SAE Handbook, 1985 edition:

(i) Metallic Air Brake Tubing—SAE Recommended Practice J1149—Metallic Air Brake System Tubing and Pipe—July 76.

(ii) Nonmetallic Air Brake Tubing—SAE Recommended Practice J844—Nonmetallic Air Brake System Type B—OCT 80.

(iii) Air Brake Hose—SAE Recommended Practice J1402—Automotive Air Brake Hose and Hose Assemblies—JUN 85.

(iv) Hydraulic Brake Hose—SAE Recommended Practice J1401 Road Vehicle-Hydraulic Brake Hose Assemblies for Use with Non-Petroleum Base Hydraulic Fluid JUN 85.

(v) Vacuum Brake Hose—SAE Recommended Practice J1403 Vacuum Brake Hose JUN 85.

(2) Except as provided in paragraph (c) of this section, brake hose and brake tubing installed on a motor vehicle before March 7, 1989, must conform to 49 CFR 393.45 effective October 31, 1983.

(c) Nonmetallic brake tubing. Coiled nonmetallic brake tubing may be used for connections between towed and towing vehicles or between the frame of a towed vehicle and the un-sprung subframe of an adjustable axle of that vehicle if—

(1) The coiled tubing has a straight segment (pigtail) at each end that is at least 2 inches in length and is encased in a spring guard or similar device which prevents the tubing from kinking at the fitting at which it is attached to the vehicle; and

(2) The spring guard or similar device has at least 2 inches of closed coils or similar surface at its interface with the fitting and extends at least 11/2 inches into the coiled segment of the tubing from its straight segment.

(d) Brake tubing and brake hose, uses. Metallic and nonmetallic brake tubing is intended for use in areas of the brake system where relative movement in the line is not anticipated. Brake hose and coiled nonmetallic brake tubing is intended for use in the brake system where substantial relative movement in the line is anticipated or the hose/coiled nonmetallic brake tubing is exposed to potential tension or impact such as between the frame and axle in a conventional type suspension system (axle attached to frame by suspension system). Nonmetallic brake tubing may be used through an articulation point provided movement is less than 4.5 degrees in a vertical plane, and 7.4 degrees in a transverse horizontal plane.

49 U.S.C. 304, 1655; 49 CFR 1.48(b) and 301.60

38 Fed. Reg. 4333, Feb. 13, 1973, as amended at 44 Fed. Reg. 25457, May 1, 1979; 45 Fed. Reg. 46424, July 10, 1980; 47 Fed. Reg. 47837, Oct. 28, 1982; 53 Fed. Reg. 49400, Dec. 7, 1988

§393.46 Brake tubing and hose connections.

All connections for air, vacuum, or hydraulic braking systems shall:

(a) Be adequate in material and construction to insure proper continued functioning;

(b) Be designed, constructed, and installed so as to insure, when properly connected, an attachment free of leaks, constrictions, or other defects;

(c) Have suitable provision in every detachable connection to afford reasonable assurance against accidental disconnection;

(d) Have the vacuum brake engine manifold connection at least three-eighths inch in diameter.

(e) If installed on a vehicle on or after January 1, 1981, meet requirements under applicable subsections of FMVSS 106 (49 CFR 571.106).

(f) Splices in tubing if installed on a vehicle after March 7, 1989, must use fittings that meet the requirements of SAE Standard J512-OCT 80 Automotive Tube Fittings or for air brake systems SAE J246—March 81 Spherical and Flanged Sleeve (Compression) Tube Fittings as found in the SAE Handbook 1985 edition.

33 Fed. Reg. 19735, Dec. 28, 1968, as amended at 44 Fed. Reg. 25457, May 1, 1979; 53 Fed. Reg. 49400, Dec. 7, 1988

§393.47 Brake lining.

The brake lining in every motor vehicle shall be so constructed and installed as not to be subject to excessive fading and grabbing and shall be adequate in thickness, means of attachment, and physical characteristics to provide for safe and reliable stopping of the motor vehicle.

§393.48 Brakes to be operative.

(a) General rule. Except as provided in paragraphs (b) and (c) of this section, all brakes with which a motor vehicle is equipped must at all times be capable of operating.

(b) Devices to reduce or remove front-wheel braking effort. A motor vehicle may be equipped with a device to reduce the braking effort upon its front wheels. (1) Manually operated devices. A manually operated device to reduce or remove the front-wheel braking effort must not be—

(i) Installed in a motor vehicle other than a bus, truck, or truck tractor; or

(ii) Installed in a bus, truck, or truck tractor manufactured after February 28, 1975; or

(iii) Used in the reduced mode except when the vehicle is operating under adverse conditions such as wet, snowy, or icy roads.

(2) Automatic devices. An automatic device to reduce the front-wheel braking effort by up to 50 percent of the normal braking force, regardless of whether or not antilock system failure has occurred on any axle, must not—

(i) Be operable by the driver except upon application of the control that activates the braking system; and

(ii) Be operable when the pressure that transmits brake control application force exceeds—

(A) 85 psig on air-mechanical braking systems; or

(B) 85 percent of the maximum system pressure in the case of vehicles utilizing other than compressed air.

(c) Towed vehicle. Paragraph (a) of this section does not apply to a disabled vehicle being towed.

(Sec. 204 of the Interstate Commerce Act, as amended (49 U.S.C. 304); sec. 6 of the Department of Transportation Act (49 U.S.C. 1655), and the delegations of authority by the Secretary of Transportation and the Federal Highway Administrator at 49 CFed. Reg. 1.48 and 301.60, respectively)

39 Fed. Reg. 26907, July 24, 1974, as amended at 41 Fed. Reg. 29130, July 15, 1976; 41 Fed. Reg. 53031, Dec. 3, 1976

§393.49 Single valve to operate all brakes.

Every motor vehicle, the date of manufacture of which is subsequent to June 30, 1953, which is equipped with power brakes, shall have the braking system so arranged that one application valve shall when applied operate all the service brakes on the motor vehicle or combination of motor vehicles. This requirement shall not be construed to prohibit motor vehicles from being equipped with an additional valve to be used to operate the brakes on a trailer or trailers or as provided in §393.44.

§393.50 Reservoirs required.

(a) General. Every commercial motor vehicle using air or vacuum for braking shall be equipped with reserve capacity or a reservoir sufficient to ensure a full service brake application with the engine stopped without depleting the air pressure or vacuum below 70 percent of that pressure or degree of vacuum indicated by the gauge immediately before the brake application is made. For purposes of this section, a full service brake application is considered to be made when the service brake pedal is pushed to the limit of its travel.

(b) Safeguarding of air and vacuum. (1) Every bus, when equipped with air or vacuum reservoirs and regardless of date of manufacture, shall have such reservoirs so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the

source of compressed air or vacuum the air or vacuum supply in the reservoir shall not be depleted by the leak or failure.

(2) Means shall be provided to establish the check valve to be in working order. On and after May 1, 1966, means other than loosening or disconnection of any connection between the source of compressed air or vacuum and the check valve, and necessary tools for operation of such means, shall be provided to prove that the check valve is in working order. The means shall be readily accessible either from the front, side, or rear of the vehicle, or from the driver's compartment.

(i) In air brake systems with one reservoir, the means shall be a cock, valve, plug, or equivalent device arranged to vent a cavity having free communication with the connection between the check valve and the source of compressed air or vacuum.

(ii) Where air is delivered by a compressor into one tank or compartment (wet tank), and air for braking is taken directly from another tank or compartment (dry tank) only, with the required check valve between the tanks or compartments, a manually operated drain cock on the first (wet) tank or compartment will serve as a means herein required if it conforms to the requirements herein.

(iii) In vacuum systems stopping the engine will serve as the required means, the system remaining evacuated as indicated by the vacuum gauge.

33 Fed. Reg. 19735, Dec. 25, 1968, as amended at 53 Fed. Reg. 49400, Dec. 7, 1988

§393.51 Warning devices and gauges.

(a) General. In the manner and to the extent specified in paragraphs (b), (c), (d), and (e) of this section, a bus must be equipped with a signal that provides a warning to the driver when a failure occurs in the vehicle's service brake system.

(b) Hydraulic brakes. A vehicle manufactured on or after July 1, 1973, and having service brakes activated by hydraulic fluid must be equipped with a warning signal that performs as follows:

(1) If Federal Motor Vehicle Safety Standard No. 105 (§571.105 of this title) was applicable to the vehicle at the time it was manufactured, the warning signal must conform to the requirements of that standard.

(2) If Federal Motor Vehicle Safety Standard No. 105 (§571.105) was not applicable to the vehicle at the time it was manufactured, the warning signal must become operative, before or upon application of the brakes in the event of a hydraulic-type complete failure of a partial system. The signal must be readily audible or visible to the driver.

(c) Air brakes. A vehicle (regardless of the date it was manufactured) having service brakes activated by compressed air (air-mechanical brakes) or a vehicle towing a vehicle having service brakes activated by compressed air (air-mechanical brakes) must be equipped, and perform, as follows:

(1) The vehicle must have a low air pressure warning device that conforms to the requirements of either paragraph (c)(1) (i) or (ii) of this section.

(i) If Federal Motor Vehicle Safety Standard No. 121 (§571.121 of this title) was applicable to the vehicle at the time it was manufactured, the warning device must conform to the requirements of that standard.

(ii) If Federal Motor Vehicle Safety Standard No. 121 (§571.121) was not applicable to the vehicle at the time it was manufactured, the vehicle must have a device that provides a readily audible or visible continuous warning to the driver whenever the pressure of the

compressed air in the braking system is below a specified pressure, which must be at least one-half of the compressor governor cutout pressure.

(2) The vehicle must have a pressure gauge which indicates to the driver the pressure in pounds per square inch available for braking.

(d) Vacuum brakes. A vehicle (regardless of the date it was manufactured) having service brakes activated by vacuum must be equipped with—

(1) A device that provides a readily audible or visible continuous warning to the driver whenever the vacuum in the vehicle's supply reservoir is less than 8 inches of mercury; and

(2) A vacuum gauge which indicates to the driver the vacuum in inches of mercury available for braking.

(e) Hydraulic brakes applied or assisted by air or vacuum. A vehicle having a braking system in which hydraulically activated service brakes are applied or assisted by compressed air or vacuum must be equipped with both a warning signal that conforms to the requirements of paragraph (b) of this section and a warning device that conforms to the requirements of either paragraph (c) or paragraph (d) of this section.

(f) Maintenance. The warning signals, devices, and gauges required by this section must be maintained in operative condition.

37 Fed. Reg. 5251, Mar. 11, 1972, as amended at 53 Fed. Reg. 49400, Dec. 7, 1988

§393.52 Brake performance.

(a) Upon application of its service brakes, a motor vehicle or combination of motor vehicles must under any condition of loading in which it is found on a public highway, be capable of—

(1) Developing a braking force at least equal to the percentage of its gross weight specified in the table in paragraph (d) of this section;

(2) Decelerating to a stop from 20 miles per hour at not less than the rate specified in the table in paragraph (d) of this section; and

(3) Stopping from 20 miles per hour in a distance, measured from the point at which movement of the service brake pedal or control begins, that is not greater than the distance specified in the table in paragraph (d) of this section.

(b) Upon application of its emergency brake system and with no other brake system applied, a motor vehicle or combination of motor vehicles must, under any condition of loading in which it is found on a public highway, be capable of stopping from 20 miles per hour in a distance, measured from the point at which movement of the emergency brake control begins, that is not greater than the distance specified in the table in paragraph (d) of this section.

(c) Conformity to the stopping-distance requirements of paragraphs (a) and (b) of this section shall be determined under the following conditions:

(1) Any test must be made with the vehicle on a hard surface that is substantially level, dry, smooth, and free of loose material.

(2) The vehicle must be in the center of a 12-foot-wide lane when the test begins and must not deviate from that lane during the test.

(d) Vehicle brake performance table:

Type of motor vehicle	Service brake systems			Emergency brake systems
	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Application and braking distance in feet from initial speed at 20 mph	Application and braking distance in feet from initial speed of 20 mph
A. Passenger-carrying vehicles:				
(1) Vehicles with a seating capacity of 10 persons or less, including driver, and built on a passenger car chassis	65.2	21	20	54

(2) Vehicles with a seating capacity of more than 10 persons, including driver, and built on a passenger car chassis; vehicles built on a truck or bus chassis and having a manufacturer's GVWR of 10,000 pounds or less	52.8	17	25	66
(3) All other passenger-carrying vehicles	43.5	14	35	85
B. Property-carrying vehicles:				
(1) Single unit vehicles having a manufacturer's GVWR of 10,000 pounds or less	52.8	17	25	66
(2) Single unit vehicles having a manufacturer's GVWR of more than 10,000 pounds, except truck tractors. Combinations of a 2-axle towing vehicle and trailer having a GVWR of	43.5	14	35	85
(3) All other property-carrying vehicles and combinations of property-carrying vehicles	43.5	14	40	90

Notes: (a) There is a definite mathematical relationship between the figures in columns 2 and 3. If the decelerations set forth in column 3 are divided by 32.2 feet per-second per-second, the figures in column 2 will be obtained. (For example, 21 divided by 32.2 equals 65.2 percent.) Column 2 is included in the tabulation because certain brake testing devices utilize this factor.

(b) The decelerations specified in column 3 are an indication of the effectiveness of the basic brakes, and as measured in practical brake testing are the maximum decelerations attained at some time during the stop. These decelerations as measured in brake tests cannot be used to compute the values in column 4 because the deceleration is not sustained at the same rate over the entire period of the stop. The deceleration increases from zero to a maximum during a period of brake-system application and brake-force buildup. Also, other factors may cause the deceleration to decrease after reaching a maximum. The added distance which results because maximum deceleration is not sustained is included in the figures in column 4 but is not indicated by the usual brake-testing devices for checking deceleration.

(c) The distances in column 4 and the decelerations in column 3 are not directly related. "Brake-system application and braking distance in feet" (column 4) is a definite measure of the overall effectiveness of the braking system, being the distance traveled between the point at which the driver starts to move the braking controls and the point at which the vehicle comes to rest. It includes distance traveled while the brakes are being applied and distance traveled while the brakes are retarding the vehicle.

(d) The distance traveled during the period of brake-system application and brake-force buildup varies with vehicle type, being negligible for many passenger cars and greatest for combinations of commercial vehicles. This fact accounts for the variation from 20 to 40 feet in the values in column 4 for the various classes of vehicles.

(e) The terms "GVWR" and "GVW" refer to the manufacturer's gross vehicle rating and the actual gross vehicle weight, respectively.

36 Fed. Reg. 20298, Oct. 20, 1971, as amended at 37 Fed. Reg. 5251, Mar. 11, 1972; 37 Fed. Reg. 11336, June 7, 1972

§393.53 Automatic brake adjusters and brake adjustment indicators.

(a) Automatic brake adjusters (hydraulic brake systems). Each commercial motor vehicle manufactured on or after October 20, 1993, and equipped with a hydraulic brake system, shall meet the automatic brake adjustment system requirements of Federal Motor Vehicle Safety Standard No. 105 (49 CFR 571.105, S5.1) applicable to the vehicle at the time it was manufactured.

(b) Automatic brake adjusters (air brake systems). Each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system shall meet the automatic brake adjustment system requirements of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121, S5.1.8) applicable to the vehicle at the time it was manufactured.

(c) Brake adjustment indicator (air brake systems). On each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system which contains an external automatic adjustment mechanism and an exposed pushrod, the condition of service brake under-adjustment shall be displayed by a brake adjustment indicator conforming to the requirements of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121, S5.1.8) applicable to the vehicle at the time it was manufactured.

60 Fed. Reg. 46245, Sept. 6, 1995

§393.55 Antilock brake systems.

(a) Hydraulic brake systems. Each bus manufactured on or after March 1, 1999, and equipped with a hydraulic brake system, shall be equipped with an antilock brake system that meets the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 105 (49 CFR 571.105, S5.5).

(b) ABS malfunction indicators for hydraulic braked vehicles. Each hydraulic braked vehicle subject to the requirements of paragraph (a) of this section shall be equipped with an ABS malfunction indicator system that meets the requirements of FMVSS No. 105 (49 CFR 571.105, S5.3).

(c) Air brake systems. (1) Each truck tractor manufactured on or after March 1, 1997, shall be equipped with an antilock brake system that meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.1(b)).

(2) Each air braked commercial motor vehicle other than a truck tractor, manufactured on or after March 1, 1998, shall be equipped with an antilock brake system that meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.1(a) for trucks and buses.

(d) ABS malfunction circuits and signals for air braked vehicles. (1) Each single-unit air braked vehicle manufactured on or after March 1, 1998, subject to the requirements of paragraph (c) of this section, shall be equipped with an electrical circuit that is capable of signaling a malfunction that affects the generation or transmission of response or control signals to the vehicle's antilock brake system (49 CFR 571.121, S5.1.6.2(a)).

(2) Each single-unit vehicle that is equipped to tow another air-braked vehicle, subject to the requirements of paragraph (c) of this section, shall be equipped with an electrical circuit that is capable of transmitting a malfunction signal from the antilock brake system(s) on the towed vehicle(s) to the trailer ABS malfunction lamp in the cab of the towing vehicle, and shall have the means for connection of the electrical circuit to the towed vehicle. The ABS malfunction circuit and signal shall meet the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.2(b)).

(3) ….

63 Fed. Reg. 24465, May 4, 1998

Subpart D—Glazing and Window Construction

§393.60 Glazing in specified openings.

(a) **Glazing material**. Glazing material used in windshields, windows, and doors on a motor vehicle manufactured on or after December 25, 1968, shall at a minimum meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 205 in effect on the date of manufacture of the motor vehicle. The glazing material shall be marked in accordance with FMVSS No. 205 (49 CFR 571.205, S6).

(b) **Windshields required**. Each bus shall be equipped with a windshield. Each windshield or portion of a multi-piece windshield shall be mounted using the full periphery of the glazing material.

(c) **Windshield condition**. With the exception of the conditions listed in paragraphs (c)(1), (c)(2), and (c)(3) of this section, each windshield shall be free of discoloration or damage in the area extending upward from the height of the top of the steering wheel (excluding a 51 mm (2 inch) border at the top of the windshield) and extending from a 25 mm (1 inch) border at each side of the windshield or windshield panel. Exceptions:

(1) Coloring or tinting which meets the requirements of paragraph (d) of this section;

(2) Any crack that is not intersected by any other cracks;

(3) Any damaged area which can be covered by a disc 19 mm (3/4 inch) in diameter if not closer than 76 mm (3 inches) to any other similarly damaged area.

(d) **Coloring or tinting of windshields and windows**. Coloring or tinting of windshields and the windows to the immediate right and left of the driver is allowed, provided the parallel luminous transmittance through the colored or tinted glazing is not less than 70 percent of the

light at normal incidence in those portions of the windshield or windows which are marked as having a parallel luminous transmittance of not less than 70 percent. The transmittance restriction does not apply to other windows on the commercial motor vehicle.

(e) **Prohibition on obstructions to the driver's field of view**—(1) Devices mounted at the top of the windshield. Antennas, transponders, and similar devices must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals.

(2) Decals and stickers mounted on the windshield. Commercial Vehicle Safety Alliance (CVSA) inspection decals, and stickers and/or decals required under Federal or State laws may be placed at the bottom or sides of the windshield provided such decals or stickers do not extend more than 115 mm (41/2 inches) from the bottom of the windshield and are located outside the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs or signals.

63 Fed. Reg. 1387, Jan. 9, 1998

§393.61 Window construction.

(a) ….

(b) **Bus windows.** (1) Except as provided in paragraph (b)(3) of this section a bus manufactured before September 1, 1973, having a seating capacity of more than eight persons shall have, in addition to the area provided by the windshield, adequate means of escape for passengers through windows. The adequacy of such means shall be determined in accordance with the following standards: For each seated passenger space provided, inclusive of the driver there shall be at least 67 square inches of glazing if such glazing is not contained in a push-out window; or at least 67 square inches of free opening resulting from opening of a push-out type window. No area shall be included in this minimum prescribed area unless it will provide an unobstructed opening sufficient to contain an ellipse having a major axis of 18 inches and a minor axis of 13 inches or an opening containing 200 square inches formed by a rectangle 13 inches by 173/4 inches with corner arcs of 6-inch maximum radius. The major axis of the elipse and the long axis of the rectangle shall make an angle of not more than 45° with the surface on which the unladen vehicle stands. The area shall be measured either by removal of the glazing if not of the push-out type or of the movable sash if of the push-out type, and it shall be either glazed with laminated safety glass or comply with paragraph (c) of this section. No less than 40 percent of such prescribed glazing or opening shall be on one side of any bus.

(2) A bus, including a school bus, manufactured on and after September 1, 1973, having a seating capacity of more than 10 persons shall have emergency exits in conformity with Federal Motor Vehicle Safety Standard No. 217, part 571 of this title.

(3) A bus manufactured before September 1, 1973, may conform to Federal Motor Vehicle Safety Standard No. 217, part 571 of this title, in lieu of conforming to paragraph (b)(1) of this section.

(c) Push-out window requirements. (1) Except as provided in paragraph (c)(3) of this section, every glazed opening in a bus manufactured before September 1, 1973, and having a seating capacity of more than eight persons, used to satisfy the requirements of paragraph (b)(1) of this section, if not glazed with laminated safety glass, shall have a frame or sash so designed, constructed, and maintained that it will yield outwardly to provide the required free opening when subjected to the drop test specified in Test 25 of the American Standard Safety Code referred to in §393.60. The height of drop required to open such push-out windows shall not

exceed the height of drop required to break the glass in the same window when glazed with the type of laminated glass specified in Test 25 of the Code. The sash for such windows shall be constructed of such material and be of such design and construction as to be continuously capable of complying with the above requirement.

(2) On a bus manufactured on and after September 1, 1973, having a seating capacity of more than 10 persons, each push-out window shall conform to Federal Motor Vehicle Safety Standard No. 217,(§571.217) of this title.

(3) A bus manufactured before September 1, 1973, may conform to Federal Motor Vehicle Safety Standard No. 217 (§571.217) of this title, in lieu of conforming to paragraph (c)(1) of this section.

33 Fed. Reg. 19735, Dec. 25, 1968, as amended at 37 Fed. Reg. 11677, June 10, 1972

§393.62 Window obstructions.

Windows, if otherwise capable of complying with §393.61 (a) and (b), shall not be obstructed by bars or other such means located either inside or outside such windows such as would hinder the escape of occupants unless such bars or other such means are so constructed as to provide a clear opening, at least equal to the opening provided by the window to which it is adjacent, when subjected to the same test specified in §393.61(c). The point of application of such test force shall be such as will be most likely to result in the removal of the obstruction.

§393.63 Windows, markings.

(a) On a bus manufactured before September 1, 1973, each bus push-out window and any other bus escape window glazed with laminated safety glass required in §393.61 shall be identified as such by clearly legible and visible signs, lettering, or decalcomania. Such marking shall include appropriate wording to indicate that it is an escape window and also the method to be used for obtaining emergency exit.

(b) On a bus manufactured on and after September 1, 1973, emergency exits required in §393.61 shall be marked to conform to Federal Motor Vehicle Safety Standard No. 217 (§571.217), of this title.

(c) A bus manufactured before September 1, 1973, may mark emergency exits to conform to Federal Motor Vehicle Safety Standard No. 217 (§571.217), of this title in lieu of conforming to paragraph (a) of this section.

37 Fed. Reg. 11678, June 10, 1972

Subpart E—Fuel Systems

Authority:

Sec. 204, Interstate Commerce Act, as amended, 49 U.S.C. 304; sec. 6, Department of Transportation Act, 49 U.S.C. 1655; delegation of authority at 49 CFR 1.48 and 389.4.

§393.65 All fuel systems.

(a) Application of the rules in this section. The rules in this section apply to systems for containing and supplying fuel for the operation of motor vehicles or for the operation of auxiliary equipment installed on, or used in connection with, motor vehicles.

(b) Location. Each fuel system must be located on the motor vehicle so that—

(1) No part of the system extends beyond the widest part of the vehicle;

(2) No part of a fuel tank is forward of the front axle of a power unit;

(3) Fuel spilled vertically from a fuel tank while it is being filled will not contact any part of the exhaust or electrical systems of the vehicle, except the fuel level indicator assembly;

(4) Fill pipe openings are located outside the vehicle's passenger compartment and its cargo compartment;

(5) A fuel line does not extend between a towed vehicle and the vehicle that is towing it while the combination of vehicles is in motion; and

(6) No part of the fuel system of a bus manufactured on or after January 1, 1973, is located within or above the passenger compartment.

(c) Fuel tank installation. Each fuel tank must be securely attached to the motor vehicle in a workmanlike manner.

(d) Gravity or syphon feed prohibited. A fuel system must not supply fuel by gravity or syphon feed directly to the carburetor or injector.

(e) Selection control valve location. If a fuel system includes a selection control valve which is operable by the driver to regulate the flow of fuel from two or more fuel tanks, the valve must be installed so that either—

(1) The driver may operate it while watching the roadway and without leaving his/her driving position; or

(2) The driver must stop the vehicle and leave his/her seat in order to operate the valve.

(f) Fuel lines. A fuel line which is not completely enclosed in a protective housing must not extend more than 2 inches below the fuel tank or its sump. Diesel fuel crossover, return, and withdrawal lines which extend below the bottom of the tank or sump must be protected against damage from impact. Every fuel line must be—

(1) Long enough and flexible enough to accommodate normal movements of the parts to which it is attached without incurring damage; and

(2) Secured against chafing, kinking, or other causes of mechanical damage.

(g) Excess flow valve. When pressure devices are used to force fuel from a fuel tank, a device which prevents the flow of fuel from the fuel tank if the fuel feed line is broken must be installed in the fuel system.

36 Fed. Reg. 15445, Aug. 14, 1971, as amended at 37 Fed. Reg. 4341, Mar. 2, 1972; 37 Fed. Reg. 28752, Dec. 29, 1972

§393.67 Liquid fuel tanks.

(a) Application of the rules in this section. (1) A liquid fuel tank manufactured on or after January 1, 1973, and a side-mounted gasoline tank must conform to all the rules in this section.

(2) A diesel fuel tank manufactured before January 1, 1973, and mounted on a bus must conform to the rules in paragraphs (c)(7)(iii) and (d)(2) of this section.

(3) A diesel fuel tank manufactured before January 1, 1973, and mounted on a vehicle other than a bus must conform to the rules in paragraph (c)(7)(iii) of this section.

(4) A gasoline tank, other than a side-mounted gasoline tank, manufactured before January 1, 1973, and mounted on a bus must conform to the rules in paragraphs (c) (1) through (10) and (d)(2) of this section.

(5) A gasoline tank, other than a side-mounted gasoline tank, manufactured before January 1, 1973, and mounted on a vehicle other than a bus must conform to the rules in paragraphs (c) (1) through (10), inclusive, of this section.

(6) Private motor carrier of passengers. Motor carriers engaged in the private transportation of passengers may continue to operate a commercial motor vehicle which was not subject to this section or 49 CFR 571.301 at the time of its manufacture, provided the fuel tank of such vehicle is maintained to the original manufacturer's standards.

(b) Definitions. As used in this section—

(1) The term liquid fuel tank means a fuel tank designed to contain a fuel that is liquid at normal atmospheric pressures and temperatures.

(2) ….

(c) Construction of liquid fuel tanks—

(1) Joints. Joints of a fuel tank body must be closed by arc-, gas-, seam-, or spot-welding, by brazing, by silver soldering, or by techniques which provide heat resistance and mechanical securement at least equal to those specifically named. Joints must not be closed solely by crimping or by soldering with a lead-based or other soft solder.

(2) Fittings. The fuel tank body must have flanges or spuds suitable for the installation of all fittings.

(3) Threads. The threads of all fittings must be Dryseal American Standard Taper Pipe Thread or Dryseal SAE Short Taper Pipe Thread, specified in Society of Automotive Engineers Standard J476, as contained in the 1971 edition of the "SAE Handbook," except that straight (non-tapered) threads may be used on fittings having integral flanges and using gaskets for sealing. At least four full threads must be in engagement in each fitting.

(4) Drains and bottom fittings. (i) Drains or other bottom fittings must not extend more than three-fourths of an inch below the lowest part of the fuel tank or sump.

(ii) Drains or other bottom fittings must be protected against damage from impact.

(iii) If a fuel tank has drains the drain fittings must permit substantially complete drainage of the tank.

(iv) Drains or other bottom fittings must be installed in a flange or spud designed to accommodate it.

(5) Fuel withdrawal fittings. Except for diesel fuel tanks, the fittings through which fuel is withdrawn from a fuel tank must be located above the normal level of fuel in the tank when the tank is full.

(6) [Reserved]

(7) Fill pipe.

(i) Each fill pipe must be designed and constructed to minimize the risk of fuel spillage during fueling operations and when the vehicle is involved in a crash.

(ii) The fill pipe and vents of a fuel tank having a capacity of more than 25 gallons of fuel must permit filling the tank with fuel at a rate of at least 20 gallons per minute without fuel spillage.

(iii) Each fill pipe must be fitted with a cap that can be fastened securely over the opening in the fill pipe. Screw threads or a bayonet-type joint are methods of conforming to the requirements of this subdivision.

(8) Safety venting system. A liquid fuel tank with a capacity of more than 25 gallons of fuel must have a venting system which, in the event the tank is subjected to fire, will prevent internal tank pressure from rupturing the tank's body, seams, or bottom opening (if any).

(9) Pressure resistance. The body and fittings of a liquid fuel tank with a capacity of more than 25 gallons of fuel must be capable of withstanding an internal hydrostatic pressure equal to 150 percent of the maximum internal pressure reached in the tank during the safety venting systems test specified in paragraph (d)(1) of this section.

(10) Air vent. Each fuel tank must be equipped with a nonspill air vent (such as a ball check). The air vent may be combined with the fill-pipe cap or safety vent, or it may be a separate unit installed on the fuel tank.

(11) Markings. If the body of a fuel tank is readily visible when the tank is installed on the vehicle, the tank must be plainly marked with its liquid capacity. The tank must also be plainly marked with a warning against filling it to more than 95 percent of its liquid capacity.

(12) Overfill restriction. A liquid fuel tank manufactured on or after January 1, 1973, must be designed and constructed so that—

(i) The tank cannot be filled, in a normal filling operation, with a quantity of fuel that exceeds 95 percent of the tank's liquid capacity; and

(ii) When the tank is filled, normal expansion of the fuel will not cause fuel spillage.

(d) Liquid fuel tank tests. Each liquid fuel tank must be capable of passing the tests specified in paragraphs (d) (1) and (2) of this section. 1

(1) Safety venting system test—

(i) Procedure. Fill the tank three-fourths full with fuel, seal the fuel feed outlet, and invert the tank. When the fuel temperature is between 50° F. and 80° F., apply an enveloping flame to the tank so that the temperature of the fuel rises at a rate of not less than 6° F. and not more than 8° F. per minute.

(ii) Required performance. The safety venting system required by paragraph (c)(8) of this section must activate before the internal pressure in the tank exceeds 50 pounds per square inch, gauge, and the internal pressure must not thereafter exceed the pressure at which the system activated by more than five pounds per square inch despite any further increase in the temperature of the fuel.

(2) Leakage test—

(i) Procedure. Fill the tank to capacity with fuel having a temperature between 50° F. and 80° F. With the fill-pipe cap installed, turn the tank through an angle of 150° in any direction about any axis from its normal position.

(ii) Required performance. Neither the tank nor any fitting may leak more than a total of one ounce by weight of fuel per minute in any position the tank assumes during the test.

(e) Side-mounted liquid fuel tank tests. Each side-mounted liquid fuel tank must be capable of passing the tests specified in paragraphs (e) (1) and (2) of this section and the tests specified in paragraphs (d) (1) and (2) of this section. 1/

Footnote(s):

1/ The specified tests are a measure of performance only. Manufacturers and carriers may use any alternative procedures which assure that their equipment meets the required performance criteria.

(1) Drop test—(i) Procedure. Fill the tank with a quantity of water having a weight equal to the weight of the maximum fuel load of the tank and drop the tank 30 feet onto an unyielding surface so that it lands squarely on one corner.

(ii) Required performance. Neither the tank nor any fitting may leak more than a total of 1 ounce by weight of water per minute.

(2) Fill-pipe test—(i) Procedure. Fill the tank with a quantity of water having a weight equal to the weight of the maximum fuel load of the tank and drop the tank 10 feet onto an unyielding surface so that it lands squarely on its fill-pipe.

(ii) Required performance. Neither the tank nor any fitting may leak more than a total of 1 ounce by weight of water per minute.

(f) Certification and markings. Each liquid fuel tank shall be legibly and permanently marked by the manufacturer with the following minimum information:

(1) The month and year of manufacture,

(2) The manufacturer's name on tanks manufactured on and after July 1, 1988, and means of identifying the facility at which the tank was manufactured, and

(3) A certificate that it conforms to the rules in this section applicable to the tank. The certificate must be in the form set forth in either of the following:

(i) If a tank conforms to all rules in this section pertaining to side-mounted fuel tanks: "Meets all FHWA side-mounted tank requirements."

(ii) If a tank conforms to all rules in this section pertaining to tanks which are not side-mounted fuel tanks: "Meets all FHWA requirements for non-side-mounted fuel tanks."

(iii) The form of certificate specified in paragraph (f)(3) (i) or (ii) of this section may be used on a liquid fuel tank manufactured before July 11, 1973, but it is not mandatory for liquid fuel tanks manufactured before March 7, 1989. The form of certification manufactured on or before March 7, 1989, must meet the requirements in effect at the time of manufacture.

36 Fed. Reg. 15445, Aug. 14, 1971, as amended at 37 Fed. Reg. 4341, Mar. 2, 1972; 37 Fed. Reg. 28753, Dec. 29, 1972; 45 Fed. Reg. 46424, July 10, 1980; 53 Fed. Reg. 49400, Dec. 7, 1988; 59 Fed. Reg. 8753, Feb. 23, 1994

§393.69 Liquefied petroleum gas systems.

(a) A fuel system that uses liquefied petroleum gas as a fuel for the operation of a motor vehicle or for the operation of auxiliary equipment installed on, or used in connection with, a motor vehicle must conform to the "Standards for the Storage and Handling of Liquefied Petroleum Gases" of the National Fire Protection Association, Battery March Park, Quincy, MA 02269, as follows:

(1) A fuel system installed before December 31, 1962, must conform to the 1951 edition of the Standards.

(2) A fuel system installed on or after December 31, 1962, and before January 1, 1973, must conform to Division IV of the June 1959 edition of the Standards.

(3) A fuel system installed on or after January 1, 1973, and providing fuel for propulsion of the motor vehicle must conform to Division IV of the 1969 edition of the Standards.

(4) A fuel system installed on or after January 1, 1973, and providing fuel for the operation of auxiliary equipment must conform to Division VII of the 1969 edition of the Standards.

(b) When the rules in this section require a fuel system to conform to a specific edition of the Standards, the fuel system may conform to the applicable provisions in a later edition of the Standards specified in this section.

(c) The tank of a fuel system must be marked to indicate that the system conforms to the Standards.

36 Fed. Reg. 15445, Aug. 14, 1971, as amended at 37 Fed. Reg. 4342, Mar. 2, 1972; 41 Fed. Reg. 53031, Dec. 3, 1976; 53 Fed. Reg. 49400, Dec. 7, 1988

Subpart F—Coupling Devices and Towing Methods

§393.70….

Subpart G—Miscellaneous Parts and Accessories

§393.75 Tires.

(a) No motor vehicle shall be operated on any tire that (1) has body ply or belt material exposed through the tread or sidewall, (2) has any tread or sidewall separation, (3) is flat or has an audible leak, or (4) has a cut to the extent that the ply or belt material is exposed.

(b) Any tire on the front wheels of a bus, truck, or truck tractor shall have a tread groove pattern depth of at least 4/32 of an inch when measured at any point on a major tread groove. The measurements shall not be made where tie bars, humps, or fillets are located.

(c) Except as provided in paragraph (b) of this section, tires shall have a tread groove pattern depth of at least 2/32 of an inch when measured in a major tread groove. The measurement shall not be made where tie bars, humps or fillets are located.

(d) No bus shall be operated with re-grooved, recapped or retreaded tires on the front wheels.

(e) No truck or truck tractor shall be operated with re-grooved tires on the front wheels which have a load carrying capacity equal to or greater than that of 8.25-20 8 ply-rating tires.

(f) Tire loading restrictions. With the exception of manufactured homes, no motor vehicle shall be operated with tires that carry a weight greater than that marked on the sidewall of the tire or, in the absence of such a marking, a weight greater than that specified for the tires in any of the publications of any of the organizations listed in Federal Motor Vehicle Safety Standard No. 119 (49 CFR 571.119, S5.1(b)) unless:

(1) The vehicle is being operated under the terms of a special permit issued by the State; and

(2) The vehicle is being operated at a reduced speed to compensate for the tire loading in excess of the manufacturer's rated capacity for the tire. In no case shall the speed exceed 80 km/hr (50 mph).

(g) Tire loading restrictions for manufactured homes. Effective November 16, 1998, tires used for the transportation of manufactured homes (i.e., tires marked or labeled 7-14.5MH and 8-14.5MH) may be loaded up to 18 percent over the load rating marked on the sidewall of the tire or, in the absence of such a marking, 18 percent over the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b)). Manufactured homes which are labeled (24 CFR 3282.7(r)) on or after November 16, 1998 shall comply with this section. Manufactured homes transported on tires overloaded by 9 percent or more must not be operated at speeds exceeding 80 km/hr (50 mph). This provision will expire November 20, 2000 unless extended by mutual consent of the FHWA and the Department of Housing and Urban Development after review of appropriate tests or other data submitted by the industry or other interested parties.

(h) Tire inflation pressure.

(1) No motor vehicle shall be operated on a tire which has a cold inflation pressure less than that specified for the load being carried.

(2) If the inflation pressure of the tire has been increased by heat because of the recent operation of the vehicle, the cold inflation pressure shall be estimated by subtracting the inflation buildup factor shown in Table 1 from the measured inflation pressure.

Table 1.—Inflation Pressure Measurement Correction for Heat

Average speed of vehicle in the previous hour	Minimum inflation pressure buildup	
	Tires with 1,814 kg (4,000 lbs.) maximum load rating or less	Tires with over 1,814 kg (4,000 lbs.) load rating
66-88.5 km/hr (41-55 mph)	34.5 kPa (5 psi)	103.4 kPa (15 psi).

34 Fed. Reg. 9344, June 13, 1969, as amended at 40 Fed. Reg. 44557, Sept. 29, 1975; 41 Fed. Reg. 36657, Aug. 31, 1976; 44 Fed. Reg. 25455, May 1, 1979; 44 Fed. Reg. 47938, Aug. 16, 1979; 53 Fed. Reg. 18057, May 19, 1988; 53 Fed. Reg. 49401, Dec. 7, 1988; 63 Fed. Reg. 8339, Feb. 18, 1998

§393.76….

§393.77 Heaters.

On every motor vehicle, every heater shall comply with the following requirements:

(a) Prohibited types of heaters. The installation or use of the following types of heaters is prohibited:

(1) Exhaust heaters. Any type of exhaust heater in which the engine exhaust gases are conducted into or through any space occupied by persons or any heater which conducts engine compartment air into any such space.

(2) Unenclosed flame heaters. Any type of heater employing a flame which is not fully enclosed, except that such heaters are not prohibited when used for heating the cargo of tank motor vehicles.

(3) Heaters permitting fuel leakage. Any type of heater from the burner of which there could be spillage or leakage of fuel upon the tilting or overturning of the vehicle in which it is mounted.

(4) Heaters permitting air contamination. Any heater taking air, heated or to be heated, from the engine compartment or from direct contact with any portion of the exhaust system; or any heater taking air in ducts from the outside atmosphere to be conveyed through the engine compartment, unless said ducts are so constructed and installed as to prevent contamination of the air so conveyed by exhaust or engine compartment gases.

(5) Solid fuel heaters except wood charcoal. Any stove or other heater employing solid fuel except wood charcoal.

(6) Portable heaters. Portable heaters shall not be used in any space occupied by persons except the cargo space of motor vehicles which are being loaded or unloaded.

(b) Heater specifications. All heaters shall comply with the following specifications:

(1) Heating elements, protection. Every heater shall be so located or protected as to prevent contact therewith by occupants, unless the surface temperature of the protecting grilles or of any exposed portions of the heaters, inclusive of exhaust stacks, pipes, or conduits shall be lower than would cause contact burns. Adequate protection shall be afforded against igniting parts of the vehicle or burning occupants by direct radiation. Wood charcoal heaters shall be enclosed within a metal barrel, drum, or similar protective enclosure which enclosure shall be provided with a securely fastened cover.

(2) Moving parts, guards. Effective guards shall be provided for the protection of passengers or occupants against injury by fans, belts, or any other moving parts.

(3) Heaters, secured. Every heater and every heater enclosure shall be securely fastened to the vehicle in a substantial manner so as to provide against relative motion within the vehicle during normal usage or in the event the vehicle overturns. Every heater shall be so designed, constructed, and mounted as to minimize the likelihood of disassembly of any of its parts, including exhaust stacks, pipes, or conduits, upon overturn of the vehicle in or on which it is mounted. Wood charcoal heaters shall be secured against relative motion within the enclosure required by paragraph (c)(1) of this section, and the enclosure shall be securely fastened to the motor vehicle.

(4) Relative motion between fuel tank and heater. When either in normal operation or in the event of overturn, there is or is likely to be relative motion between the fuel tank for a heater and the heater, or between either of such units and the fuel lines between them, a suitable means shall be provided at the point of greatest relative motion so as to allow this motion without causing failure of the fuel lines.

(5) Operating controls to be protected. On every bus designed to transport more than 15 passengers, including the driver, means shall be provided to prevent unauthorized persons from tampering with the operating controls. Such means may include remote control by the driver; installation of controls at inaccessible places; control of adjustments by key or keys; enclosure of controls in a locked space, locking of controls, or other means of accomplishing this purpose.

(6) Heater hoses. Hoses for all hot water and steam heater systems shall be specifically designed and constructed for that purpose.

(7) Electrical apparatus. Every heater employing any electrical apparatus shall be equipped with electrical conductors, switches, connectors, and other electrical parts of ample current-carrying capacity to provide against overheating; any electric motor employed in any heater shall be of adequate size and so located that it will not be overheated; electrical circuits shall be provided with fusses and/or circuit breakers to provide against electrical overloading; and all electrical conductors employed in or leading to any heater shall be secured against dangling, chafing, and rubbing and shall have suitable protection against any other condition likely to produce short or open circuits.

Note:

Electrical parts certified as proper for use by Underwriters' Laboratories, Inc., shall be deemed to comply with the foregoing requirements.

(8) Storage battery caps. If a separate storage battery is located within the personnel or cargo space, such battery shall be securely mounted and equipped with non-spill filler caps.

(9) Combustion heater exhaust construction. Every heater employing the combustion of oil, gas, liquefied petroleum gas, or any other combustible material shall be provided with substantial means of conducting the products of combustion to the outside of the vehicle: Provided, however, That this requirement shall not apply to heaters used solely to heat the cargo space of motor vehicles where such motor vehicles or heaters are equipped with means specifically designed and maintained so that the carbon monoxide concentration will never exceed 0.2 percent in the cargo space. The exhaust pipe, stack, or conduit if required shall be sufficiently substantial and so secured as to provide reasonable assurance against leakage or discharge of products of combustion within the vehicle and, if necessary, shall be so insulated as to make unlikely the burning or charring of parts of the vehicle by radiation or by direct contact. The place of discharge of the products of combustion to the atmosphere and the means of discharge of such products shall be such as to minimize the likelihood of their reentry into the vehicle under all operating conditions.

(10) Combustion chamber construction. The design and construction of any combustion-type heater except cargo space heaters permitted by the proviso of paragraph (c)(9) of this section and unenclosed flame heaters used for heating cargo of tank motor vehicles shall be such as to provide against the leakage of products of combustion into air to be heated and circulated. The material employed in combustion chambers shall be such as to provide against leakage because of corrosion, oxidation, or other deterioration. Joints between combustion chambers and the air chambers with which they are in thermal and mechanical contact shall be so designed and constructed as to prevent leakage between the chambers and the materials

employed in such joints shall have melting points substantially higher than the maximum temperatures likely to be attained at the points of jointure.

(11) Heater fuel tank location. Every bus designed to transport more than 15 passengers, including the driver, with heaters of the combustion type shall have fuel tanks therefor located outside of and lower than the passenger space. When necessary, suitable protection shall be afforded by shielding or other means against the puncturing of any such tank or its connections by flying stones or other objects.

(12) Heater, automatic fuel control. Gravity or siphon feed shall not be permitted for heaters using liquid fuels. Heaters using liquid fuels shall be equipped with automatic means for shutting off the fuel or for reducing such flow of fuel to the smallest practicable magnitude, in the event of overturn of the vehicle. Heaters using liquefied petroleum gas as fuel shall have the fuel line equipped with automatic means at the source of supply for shutting off the fuel in the event of separation, breakage, or disconnection of any of the fuel lines between the supply source and the heater.

(13) "Tell-tale" indicators. Heaters subject to paragraph (c)(14) of this section and not provided with automatic controls shall be provided with "tell-tale" means to indicate to the driver that the heater is properly functioning. This requirement shall not apply to heaters used solely for the cargo space in semitrailers or full trailers.

(14) Shut-off control. Automatic means, or manual means if the control is readily accessible to the driver without moving from the driver's seat, shall be provided to shut off the fuel and electrical supply in case of failure of the heater to function for any reason, or in case the heater should function improperly or overheat. This requirement shall not apply to wood charcoal heaters or to heaters used solely to heat the contents of cargo tank motor vehicles, but wood charcoal heaters must be provided with a controlled method of regulating the flow of combustion air.

(15) Certification required. Every combustion-type heater, except wood charcoal heaters, the date of manufacture of which is subsequent to December 31, 1952, and every wood charcoal heater, the date of manufacture of which is subsequent to September 1, 1953, shall be marked plainly to indicate the type of service for which such heater is designed and with a certification by the manufacturer that the heater meets the applicable requirements for such use. For example, "Meets I.C.C. Bus Heater Requirements," Meets I.C.C. Flue-Vented Cargo Space Heater Requirements," and after December 31, 1967, such certification shall read "Meets FHWA Bus Heater Requirements," "Meets FHWA Flue-Vented Cargo Space Heater Requirements," etc.

(i) Exception. The certification for a catalytic heater which is used in transporting flammable liquid or gas shall be as prescribed under §177.834(1) of this title.

33 Fed. Reg. 19735, Dec. 25, 1968, as amended at 40 Fed. Reg. 51198, Nov. 4, 1975; 53 Fed. Reg. 49401, Dec. 7, 1988

§393.78 Windshield wipers.

(a) Every bus having a windshield shall be equipped with at least two automatically-operating windshield wiper blades, one on each side of the centerline of the windshield, for cleaning rain, snow, or other moisture from the windshield and which shall be in such condition as to provide clear vision for the driver, unless one such blade be so arranged as to clean an area of the windshield extending to within 1 inch of the limit of vision through the windshield at each side: Provided, however, That in drive-away--tow-away operations this section shall apply only to the driven vehicle: And provided further, That one windshield wiper blade will suffice under

this section when such driven vehicle in drive-away--tow-away operation constitutes part or all of the property being transported and has no provision for two such blades.

(b) Every bus, the date of manufacture of which is subsequent to June 30, 1953, which depends upon vacuum to operate the windshield wipers, shall be so constructed that the operation of the wipers will not be materially impaired by change in the intake manifold pressure.

§393.79 Defrosting device.

Every bus, having a windshield, when operating under conditions such that ice, snow, or frost would be likely to collect on the outside of the windshield or condensation on the inside of the windshield, shall be equipped with a device or other means, not manually operated, for preventing or removing such obstructions to the driver's view:

§393.80 Rear-vision mirrors.

(a) Every bus shall be equipped with two rear-vision mirrors, one at each side, firmly attached to the outside of the motor vehicle, and so located as to reflect to the driver a view of the highway to the rear, along both sides of the vehicle. All such regulated rear-vision mirrors and their replacements shall meet, as a minimum, the requirements of FMVSS No. 111 (49 CFR 571.111) in force at the time the vehicle was manufactured.

(b) Exceptions. (1) Mirrors installed on a vehicle manufactured prior to January 1, 1981, may be continued in service, provided that if the mirrors are replaced they shall be replaced with mirrors meeting, as a minimum, the requirements of FMVSS No. 111 (49 CFR 571.111) in force at the time the vehicle was manufactured.

(2) Only one outside mirror shall be required, which shall be on the driver's side, on trucks which are so constructed that the driver has a view to the rear by means of an interior mirror.

(3) ….

§393.81 Horn.

Every bus shall be equipped with a horn and actuating elements which shall be in such condition as to give an adequate and reliable warning signal.

§393.82 Speedometer.

Every bus shall be equipped with a speedometer indicating vehicle speed in miles per hour, which shall be operative with reasonable accuracy.

§393.83 Exhaust systems.

(a) Every motor vehicle having a device capable of expelling harmful combustion fumes shall have a system to direct the discharge of such fumes. No part shall be located where its location would likely result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.

(b) No exhaust system shall discharge to the atmosphere at a location immediately below the fuel tank or the fuel tank filler pipe.

(c) The exhaust system of a bus powered by a gasoline engine shall discharge to the atmosphere at or within 6 inches forward of the rearmost part of the bus.

(d) The exhaust system of a bus using fuels other than gasoline shall discharge to the atmosphere either:

(1) At or within 15 inches forward of the rearmost part of the vehicle; or

(2) To the rear of all doors or windows designed to be open, except windows designed to be opened solely as emergency exits.

(e) ….

(f) No part of the exhaust system shall be temporarily repaired with wrap or patches.

(g) No part of the exhaust system shall leak or discharge at a point forward of or directly below the driver/sleeper compartment. The exhaust outlet may discharge above the cab/sleeper roofline.

(h) The exhaust system must be securely fastened to the vehicle.

(i) Exhaust systems may use hangers which permit required movement due to expansion and contraction caused by heat of the exhaust and relative motion between engine and chassis of a vehicle.

53 Fed. Reg. 49401, Dec. 7, 1988

§393.84 Floors.

The flooring in all motor vehicles shall be substantially constructed, free of unnecessary holes and openings, and shall be maintained so as to minimize the entrance of fumes, exhaust gases, or fire. Floors shall not be permeated with oil or other substances likely to cause injury to persons using the floor as a traction surface.

53 Fed. Reg. 49401, Dec. 7, 1988

§393.85 [Reserved]

§393.86 Rear impact guards and rear end protection.

(a)(1)….

(b)(1) Requirements for motor vehicles manufactured after December 31, 1952 (except trailers or semitrailers manufactured on or after January 26, 1998). Each motor vehicle manufactured after December 31, 1952, in which the vertical distance between the rear bottom edge of the body (or the chassis assembly if the chassis is the rearmost part of the vehicle) and the ground is greater than 76.2 cm (30 inches) when the motor vehicle is empty, shall be equipped with a rear impact guard(s). The rear impact guard(s) must be installed and maintained in such a manner that:

(i) The vertical distance between the bottom of the guard(s) and the ground does not exceed 76.2 cm (30 inches) when the motor vehicle is empty;

(ii) The maximum lateral distance between the closest points between guards, if more than one is used, does not exceed 61 cm (24 inches);

(iii) The outermost surfaces of the horizontal member of the guard are no more than 45.7 cm (18 inches) from each side extremity of the motor vehicle;

(iv) The impact guard(s) are no more than 61 cm (24 inches) forward of the rear extremity of the motor vehicle.

(2) Construction and attachment. The rear impact guard(s) must be substantially constructed and attached by means of bolts, welding, or other comparable means.

(3) Vehicle components and structures that may be used to satisfy the requirements of paragraph (g) of this section. Low chassis vehicles, special purpose vehicles, or wheels back vehicles constructed and maintained so that the body, chassis, or other parts of the vehicle provide the rear end protection comparable to impact guard(s) conforming to the requirements of paragraph (b)(1) of this section shall be considered to be in compliance with those requirements.

64 Fed. Reg. 47708, Sept. 1, 1999

§393.87….

§393.88….

§393.89 Buses, driveshaft protection.

Any driveshaft extending lengthways under the floor of the passenger compartment of a bus shall be protected by means of at least one guard or bracket at that end of the shaft which is

provided with a sliding connection (spline or other such device) to prevent the whipping of the shaft in the event of failure thereof or of any of its component parts. A shaft contained within a torque tube shall not require any such device.
33 Fed. Reg. 19735, Dec. 25, 1968, as amended at 53 Fed. Reg. 49402, Dec. 7, 1988

§393.90 Buses, standee line or bar.

Except as provided below, every bus, which is designed and constructed so as to allow standees, shall be plainly marked with a line of contrasting color at least 2 inches wide or equipped with some other means so as to indicate to any person that he/she is prohibited from occupying a space forward of a perpendicular plane drawn through the rear of the driver's seat and perpendicular to the longitudinal axis of the bus. Every bus shall have clearly posted at or near the front, a sign with letters at least one-half inch high stating that it is a violation of the Federal Highway Administration's regulations for a bus to be operated with persons occupying the prohibited area. The requirements of this section shall not apply to any bus being transported in drive-away--tow-away operation or to any level of the bus other that the level in which the driver is located nor shall they be construed to prohibit any seated person from occupying permanent seats located in the prohibited area provided such seats are so located that persons sitting therein will not interfere with the driver's safe operation of the bus.

§393.91 Buses, aisle seats prohibited.

No bus shall be equipped with aisle seats unless such seats are so designed and installed as to automatically fold and leave a clear aisle when they are unoccupied. No bus shall be operated if any seat therein is not securely fastened to the vehicle.
53 Fed. Reg. 49402, Dec. 7, 1988

§393.92 Buses, marking emergency doors.

Any bus equipped with an emergency door shall have such door clearly marked in letters at least 1 inch in height with the words “Emergency Door” or “Emergency Exit.” Emergency doors shall also be identified by a red electric lamp readily visible to passengers which lamp shall be lighted at all times when lamps are required to be lighted by §392.30.

§393.93 Seats, seat belt assemblies, and seat belt assembly anchorages.

(a) Buses—(1) Buses manufactured on or after January 1, 1965, and before July 1, 1971. After June 30, 1972, every bus manufactured on or after January 1, 1965, and before July 1, 1971, must be equipped with a Type 1 or Type 2 seat belt assembly that conforms to Federal Motor Vehicle Safety Standard No. 209 (§571.209) installed at the driver's seat and seat belt assembly anchorages that conform to the location and geometric requirements of Federal Motor Vehicle Safety Standard No. 2101 (§571.210) for that seat belt assembly.

(2) Buses manufactured on or after July 1, 1971. Every bus manufactured on or after July 1, 1971, must conform to the requirements of Federal Motor Vehicle Safety Standard No. 208 1 (§571.208) (relating to installation of seat belt assemblies) and Federal Motor Vehicle Safety Standard No. 210 1 (§571.210) (relating to installation of seat belt assembly anchorages).

(3) Buses manufactured on or after January 1, 1972. Every bus manufactured on or after January 1, 1972, must conform to the requirements of Federal Motor Vehicle Safety Standard No. 207 1 (§571.207) (relating to seating systems).

(b) ….

(c)….

(d)….

§393.94 Vehicle interior noise levels.

(a) Application of the rule in this section. Except as provided in paragraph (d) of this section, this section applies to all motor vehicles manufactured on and after October 1, 1974. On and after April 1, 1975, this section applies to all motor vehicles manufactured before October 1, 1974.

(b) General rule. The interior sound level at the driver's seating position of a motor vehicle must not exceed 90 dB(A) when measured in accordance with paragraph (c) of this section.

(c) Test procedure.2/

(1) Park the vehicle at a location so that no large reflecting surfaces, such as other vehicles, signboards, buildings, or hills, are within 50 feet of the driver's seating position.

Footnote:

2/ Standards of the American National Standards Institute are published by the American National Standards Institute. Information and copies may be obtained by writing to the Institute at 1430 Broadway, New York, N.Y. 10018.

(2) Close all vehicle doors, windows, and vents. Turn off all power-operated accessories.

(3) Place the driver in his/her normal seated position at the vehicle's controls. Evacuate all occupants except the driver and the person conducting the test.

(4) Use a sound level meter which meets the requirements of the American National Standards Institute Standard ANSI S1.4-1971 Specification for Sound Level Meters, for Type 2 Meters. Set the meter to the A-weighting network, “fast” meter response.

(5) Locate the microphone, oriented vertically upward, 6 inches to the right of, in the same plane as, and directly in line with, the driver's right ear.

(6) With the vehicle's transmission in neutral gear, accelerate its engine to either its maximum governed engine speed, if it is equipped with an engine governor, or its speed at its maximum rated horsepower, if it is not equipped with an engine governor. Stabilize the engine at that speed.

(7) Observe the A-weighted sound level reading on the meter for the stabilized engine speed condition. Record that reading, if the reading has not been influenced by extraneous noise sources such as motor vehicles operating on adjacent roadways.

(8) Return the vehicle's engine speed to idle and repeat the procedures specified in paragraphs (c) (6) and (7) of this section until two maximum sound levels within 2 dB of each other are recorded. Numerically average those two maximum sound level readings.

(9) The average obtained in accordance with paragraph (c)(8) of this section is the vehicle's interior sound level at the driver's seating position for the purpose of determining whether the vehicle conforms to the rule in paragraph (b) of this section. How-ever, a 2 dB tolerance over the sound level limitation specified in that paragraph is permitted to allow for variations in test conditions and variations in the capabilities of meters.

(10) If the motor vehicle's engine radiator fan drive is equipped with a clutch or similar device that automatically either reduces the rotational speed of the fan or completely disengages the fan from its power source in response to reduced engine cooling loads the vehicle may be parked before testing with its engine running at high idle or any other speed the operator may choose, for sufficient time but not more than 10 minutes, to permit the engine radiator fan to automatically disengage.

(d) Vehicles manufactured before October 1, 1974, and operated wholly within the State of Hawaii, need not comply with this section until April 1, 1976.

38 Fed. Reg. 30881, Nov. 8, 1973, as amended at 40 Fed. Reg. 32336, Aug. 1, 1975; 41 Fed. Reg. 28268, July 9, 1976

Subpart H—Emergency Equipment

§393.95 Emergency equipment on all power units.

Every bus must be equipped as follows:

(a) Fire extinguisher. (1) Except as provided in paragraph (a)(4) of this section, every power unit must be equipped with a fire extinguisher that is properly filled and located so that it is readily accessible for use. The fire extinguisher must be securely mounted on the vehicle. The fire extinguisher must be designed, constructed, and maintained to permit visual determination of whether it is fully charged. The fire extinguisher must have an extinguishing agent that does not need protection from freezing. The fire extinguisher must not use a vaporizing liquid that gives off vapors more toxic than those produced by the substances shown as having a toxicity rating of 5 or 6 in the Underwriters' Laboratories "Classification of Comparative Life Hazard of Gases and Vapors." 1/

Footnote(s):

1/ Copies of the Classification can be obtained by writing to Underwriters' Laboratories, Inc., 205 East Ohio Street, Chicago, Ill. 60611.

(2)(i) Before July 1, 1971, a power unit that is used to transport hazardous materials must be equipped with a fire extinguisher having an Underwriters' Laboratories rating 2/ of 4 B:C or more. On and after July 1, 1971, a power unit that is used to transport hazardous materials must be equipped with a fire extinguisher having an Underwriters' Laboratories rating 2/ of 10 B:C or more.

Footnote(s):

2/ Underwriters' Laboratories ratings are given to fire extinguishers under the standards of Underwriters' Laboratories, Inc., 205 East Ohio Street, Chicago, Ill. 60611. Extinguishers must conform to the standards in effect on the date of manufacture or on Jan. 1, 1969, whichever is earlier.

(ii) Before January 1, 1973, a power unit that is not used to transport hazardous materials must be equipped with a fire extinguisher having an Underwriters' Laboratories rating 2 of 4 B:C or more. On and after January 1, 1973, a power unit that is not used to transport hazardous materials must be equipped with either—

(A) A fire extinguisher having an Underwriters' Laboratories rating 2 of 5 B:C or more; or

(B) Two fire extinguishers, each of which has an Underwriters' Laboratories rating 2/ of 4 B:C or more.

(iii) Each fire extinguisher required by this subparagraph must be labeled or marked with its Underwriters' Laboratories rating 2 and must meet the requirements of paragraph (a)(1) of this section.

(3) For purposes of this paragraph, a power unit is used to transport hazardous materials only if the power unit or a motor vehicle towed by the power unit must be marked or placarded in accordance with §177.823 of this title.

(4) This paragraph does not apply to the driven unit in a drive-away—tow-away operation.

(b) [Reserved]

(c) Spare fuses. At least one spare fuse or other overload protective device, if the devices used are not of a reset type, for each kind and size used.

(d)-(e)[Reserved]

(f) Warning devices for stopped vehicles. Except as provided in paragraph (g) of this section, one of the following combinations of warning devices:

(1) Vehicles equipped with warning devices before January 1, 1974. Warning devices specified below may be used until replacements are necessary:

(i) Three liquid-burning emergency flares which satisfy the requirements of SAE Standard J597, "Liquid Burning Emergency Flares," and three fuses and two red flags; or

(ii) Three electric emergency lanterns which satisfy the requirements of SAE Standard J596, "Electric Emergency Lanterns," and two red flags; or

(iii) Three red emergency reflectors which satisfy the requirements of paragraph (i) of this section, and two red flags; or

(iv) Three red emergency reflective triangles which satisfy the requirements of paragraph (h) of this section; or

(v) Three bidirectional emergency reflective triangles that conform to the requirements of Federal Motor Vehicle Safety Standard No. 125, §571.125 of this title.

(2) Vehicles equipped with warning devices on and after January 1, 1974.

(i) Three bidirectional emergency reflective triangles that conform to the requirements of Federal Motor Vehicle Safety Standard No. 125, §571.125 of this title; or

(ii) At least 6 fusees or 3 liquid-burning flares. The vehicle must have as many additional fusees or liquid-burning flares as are necessary to satisfy the requirements of §392.22.

(3) Supplemental warning devices. Other warning devices may be used in addition to, but not in lieu of, the required warning devices, provided those warning devices do not decrease the effectiveness of the required warning devices.

(g) ….

(h) Requirements for emergency reflective triangles manufactured before January 1, 1974. (1) Each reflector shall be a collapsible equilateral triangle, with legs not less than 17 inches long and not less than 2 inches wide. The front and back of the exposed leg surfaces shall be covered with red reflective material not less than one half inch in width. The reflective surface, front and back, shall be approximately parallel. When placed in position, one point of the triangle shall be upward. The area within the sides of the triangle shall be open.

(2) Reflective material: The reflecting material covering the leg of the equilateral triangle shall comply either with:

(i) The requirements for reflex-reflector elements made of red methyl-methacrylate plastic material, meeting the color, sealing, minimum candle-power, wind test, vibration test, and corrosion resistance test of section 3 and 4 of Federal Specification RR-R-1185, dated November 17, 1966, or

(ii) The requirements for red reflective sheeting of Federal Specification L-S-300, dated September 7, 1965, except that the aggregate candlepower of the assembled triangle, in one direction, shall be not less than eight when measured at 0.2° divergence angle and —4° incidence angle, and not less than 80 percent of the candlepower specified for 1 square foot of material at all other angles shown in Table II, Reflective Intensity Values, of L-S-300.

(3) Reflective surfaces alignment: Every reflective triangle shall be so constructed that, when the triangle is properly placed, the reflective surfaces shall be in a plane perpendicular to the plane of the roadway surface with a permissible tolerance of ±10°. Reflective triangles which are collapsible shall be provided with means for holding the reflective surfaces within the

required tolerance. Such holding means shall be readily capable of adjustment without the use of tools or special equipment.

(4) Reflectors mechanical adequacy: Every reflective triangle shall be of such weight and dimensions as to remain stationary when subjected to a 40 mile per hour wind when properly placed on any clean, dry paved road surface. The reflective triangle shall be so constructed as to withstand reasonable shocks without breakage.

(5) Reflectors, incorporation in holding device: Each set of reflective triangles shall be adequately protected by enclosure in a box, rack, or other adequate container specially designed and constructed so that the reflectors may be readily extracted for use.

(6) Certification: Every red emergency reflective triangle designed and constructed to comply with these requirements shall be plainly marked with the certification of the manufacturer that it complies therewith.

(i) Requirements for red emergency reflectors. Each red emergency reflector shall conform in all respects to the following requirements:

(1) Reflecting elements required. Each reflector shall be composed of at least two reflecting elements or surfaces on each side, front and back. The reflecting elements, front and back, shall be approximately parallel.

(2) Reflecting elements to be Class A. Each reflecting element or surface shall meet the requirement for a red Class A reflector contained in the SAE Recommended Practice 1/ "Reflex Reflectors." The aggregate candlepower output of all the reflecting elements or surface in one direction shall not be less than 12 when tested in a perpendicular position with observation at one-third degree as specified in the Photometric Test contained in the above-mentioned Recommended Practice.

Footnote(s):

1/ *See*, footnote 1 to §393.24(c).

(3) Reflecting surfaces, protection. If the reflector or the reflecting elements are so designed or constructed that the reflecting surfaces would be adversely affected by dust, soot, or other foreign matter or contacts with other parts of the reflector or its container, then such reflecting surfaces shall be adequately sealed within the body of the reflector.

(4) Reflecting surfaces to be perpendicular. Every reflector shall be so constructed that, when the reflector is properly placed, every reflecting element or surface is in a plane perpendicular to the plane of the roadway surface. Reflectors which are collapsible shall be provided with means for locking the reflector elements or surfaces in the required position; such locking means shall be readily capable of adjustment without the use of tools or special equipment.

(5) Reflectors, mechanical adequacy. Every reflector shall be of such weight and dimensions as to remain stationary when subjected to a 40 mile per hour wind when properly placed on any clean, dry, paved road surface. The reflector shall be so constructed as to withstand reasonable shocks without breakage.

(6) Reflectors, incorporation on holding device. Each set of reflectors and the reflecting elements or surfaces incorporated therein shall be adequately protected by enclosure in a box, rack, or other adequate container specially designed and constructed so that the reflectors may be readily extracted for use.

(7) Certification. Every red emergency reflector designed and constructed to comply with these requirements shall be plainly marked with the certification of the manufacturer that it complies therewith.

(j) Requirements for fusees and liquid-burning flares. Each fusee shall be capable of burning for 30 minutes, and each liquid-burning flare shall contain enough fuel to burn continuously for at least 60 minutes. Fusees and liquid-burning flares shall conform to the requirements of Underwriters Laboratories, Inc., UL No. 912, Highway Emergency Signals, Fourth Edition, July 30, 1979, (with an amendment dated November 9, 1981). (See §393.7(b) for information on the incorporation by reference and availability of this document.) Each fusee and liquid-burning flare shall be marked with the UL symbol in accordance with the requirements of UL 912.

(k) Requirements for red flags. Red flags shall be not less than 12 inches square, with standards adequate to maintain the flags in an upright position.

49 U.S.C. 304, 1655; 49 CFR 1.48(b) and 301.60

33 Fed. Reg. 19735, Dec. 25, 1968, as amended at 35 Fed. Reg. 13019, Aug. 15, 1970; 35 Fed. Reg. 14619, Sept. 18, 1970; 37 Fed. Reg. 17176, Aug. 25, 1972; 40 Fed. Reg. 10685, Mar. 7, 1975; 41 Fed. Reg. 53031, Dec. 3, 1976; 47 Fed. Reg. 47837, Oct. 28, 1982; 59 Fed. Reg. 34712, July 6, 1994

Subpart I—….

Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

Source:

53 Fed. Reg. 49402, Dec. 7, 1988, unless otherwise noted.

§393.201 Frames.

(a) The frame of every bus shall not be cracked, loose, sagging or broken.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame must not be loose, broken, or missing.

(c) The frame rail flanges between the axles shall not be bent, cut or notched, except as specified by the manufacturer.

(d) All accessories mounted to the truck tractor frame must be bolted or riveted.

(e) No holes shall be drilled in the top or bottom rail flanges, except as specified by the manufacturer.

(f) Field repairs are allowed.

§393.203 Cab and body components.

(a) The cab compartment doors or door parts used as an entrance or exist shall not be missing or broken. Doors shall not sag so that they cannot be properly opened or closed. No door shall be wired shut or otherwise secured in the closed position so that it cannot be readily opened. Exception: When the vehicle is loaded with pipe or bar stock that blocks the door and the cab has a roof exit.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame shall not be loose, broken, or missing.

(c) The hood must be securely fastened.

(d) All seats must be securely mounted.

(e) The front bumper must not be missing, loosely attached, or protruding beyond the confines of the vehicle so as to create a hazard.

§393.205 Wheels.

(a) Wheels and rims shall not be cracked or broken.

(b) Stud or bolt holes on the wheels shall not be elongated (out of round).

(c) Nuts or bolts shall not be missing or loose.

§393.207 Suspension systems.

(a) Axles. No axle positioning part shall be cracked, broken, loose or missing. All axles must be in proper alignment.

(b) Adjustable axles. Adjustable axle assemblies shall not have locking pins missing or disengaged.

(c) Leaf springs. No leaf spring shall be cracked, broken, or missing nor shifted out of position.

(d) Coil springs. No coil spring shall be cracked or broken.

(e) Torsion bar. No torsion bar or torsion bar suspension shall be cracked or broken.

(f) Air suspensions. The air pressure regulator valve shall not allow air into the suspension system until at least 55 psi is in the braking system. The vehicle shall be level (not tilting to the left or right). Air leakage shall not be greater than 3 psi in a 5-minute time period when the vehicle's air pressure gauge shows normal operating pressure.

§393.209 Steering wheel systems.

(a) The steering wheel shall be secured and must not have any spokes cracked through or missing.

(b) The steering wheel lash shall not exceed the following parameters:

Steering wheel diameter	Manual steering system	Power steering system
406 mm or less (16 inches or less)	51 mm (2 inches)	108 mm (4¼ inches).
457 mm (18 inches)	57 mm (2¼ inches)	121 mm (4¾ inches).
483 mm (19 inches)	60 mm (2⅜ inches)	127 mm (5 inches).
508 mm (20 inches)	64 mm (2½ inches)	133 mm (5¼ inches).
533 mm (21 inches)	67 mm (2⅝ inches)	140 mm (5½ inches).
559 mm (22 inches)	70 mm (2¾ inches)	146 mm (5¾ inches).

(c) Steering column. The steering column must be securely fastened.

(d) Steering system. Universal joints shall not be worn, faulty or repaired by welding. The steering gear box shall not have loose or missing mounting bolts or cracks in the gear box or mounting brackets. The pitman arm on the steering gear output shaft shall not be loose. Steering wheels shall turn freely through the limit of travel in both directions.

(e) Power steering systems. All components of the power system must be in operating condition. No parts shall be loose or broken. Belts shall not be frayed, cracked or slipping. The system shall not leak. The power steering system shall have

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

Sec 396.
Scope.
§396. Inspection, repair, and maintenance.
§396.Lubrication.
§396. Unsafe operations forbidden.
§396. Inspection of motor vehicles in operation.
§396.1 Inspection of motor vehicles in operation.
§396.1 Procedures for intermodal equipment providers to accept reports required by §390.42(b) of this chapter.
§396 Driver inspection.

§396.1Driveaway-towaway operations and inspections.
§396.1Periodic inspection.
§396.1Inspector qualifications.
§396.21Periodic inspection recordkeeping requirements.
§396.23 Equivalent to periodic inspection.
§396.25 Qualifications of brake inspectors.

Authority:
49 U.S.C. 31133, 31136, 31151, and 31502; and 49 CFR 1.73.
Source: 44 Fed. Reg. 38526, July 2, 1979, unless otherwise noted.

Editorial Note: Nomenclature changes to part 396 appear at 66 FR 49874, Oct. 1, 2001.

§396.1 Scope.

(a) Every motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with the inspection or maintenance of commercial motor vehicles must be knowledgeable of and comply with the rules of this part.

(b) ….

73 Fed. Reg. 76823, Dec. 17, 2008

§396.3 Inspection, repair, and maintenance.

(a) General. Every motor carrier … must systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles and intermodal equipment subject to its control.

(1) Parts and accessories shall be in safe and proper operating condition at all times. These include those specified in part 393 of this subchapter and any additional parts and accessories which may affect safety of operation, including but not limited to, frame and frame assemblies, suspension systems, axles and attaching parts, wheels and rims, and steering systems.

(2) Push-out windows, emergency doors, and emergency door marking lights in buses shall be inspected at least every 90 days.

(b) Required records. Motor carriers…must maintain, or cause to be maintained, records for each motor vehicle they control for 30 consecutive days. Intermodal equipment providers must maintain or cause to be maintained, records for each unit of intermodal equipment they tender or intend to tender to a motor carrier. These records must include:

(1) An identification of the vehicle including company number, if so marked, make, serial number, year, and tire size. In addition, if the motor vehicle is not owned by the motor carrier, the record shall identify the name of the person furnishing the vehicle;

(2) A means to indicate the nature and due date of the various inspection and maintenance operations to be performed;

(3) A record of inspection, repairs, and maintenance indicating their date and nature; and

(4) A record of tests conducted on pushout windows, emergency doors, and emergency door marking lights on buses.

(c) Record retention. The records required by this section shall be retained where the vehicle is either housed or maintained for a period of 1 year and for 6 months after the motor vehicle leaves the motor carrier's control.

44 Fed. Reg. 38526, July 2, 1979, as amended at 48 Fed. Reg. 55868, Dec. 16, 1983; 53 Fed. Reg. 18058, May 19, 1988; 59 Fed. Reg. 8753, Feb. 23, 1994; 59 Fed. Reg. 60324, Nov. 23, 1994; 73 Fed. Reg. 75824, Dec. 17, 2008

§396.5 Lubrication.

Every motor carrier shall ensure that each motor vehicle subject to its control is—

(a) Properly lubricated; and

(b) Free of oil and grease leaks.

§396.7 Unsafe operations forbidden.

(a) General. A motor vehicle shall not be operated in such a condition as to likely cause an accident or a breakdown of the vehicle.

(b) Exemption. Any motor vehicle discovered to be in an unsafe condition while being operated on the highway may be continued in operation only to the nearest place where repairs can safely be affected. Such operation shall be conducted only if it is less hazardous to the public than to permit the vehicle to remain on the highway.

§396.9 Inspection of motor vehicles in operation.

(a) Personnel authorized to perform inspections. Every special agent of the FMCSA (as defined in appendix B to this subchapter) is authorized to enter upon and perform inspections of a motor carrier's vehicles in operation and intermodal equipment in operation.

(b) Prescribed inspection report. The Driver Vehicle Examination Report shall be used to record results of motor vehicle inspections and results of intermodal equipment inspections conducted by authorized FMCSA personnel.

(c) Motor vehicles declared “out of service.”

(1) Authorized personnel shall declare and mark “out of service” any motor vehicle which by reason of its mechanical condition or loading would likely cause an accident or a breakdown. Authorized personnel may declare and mark “out of service” any motor vehicle not in compliance with §385.811(d). An “Out of Service Vehicle” sticker shall be used to mark vehicles “out of service.”

(2) No motor carrier or intermodal equipment provider shall require or permit any person to operate nor shall any person operate any motor vehicle or intermodal equipment declared and marked “out-of-service” until all repairs required by the “out-of-service notice” have been satisfactorily completed. The term operate as used in this section shall include towing the vehicle or intermodal equipment, except that vehicles or intermodal equipment marked “out-of-service” may be towed away by means of a vehicle using a crane or hoist. A vehicle combination consisting of an emergency towing vehicle and an “out-of-service” vehicle shall not be operated unless such combination meets the performance requirements of this subchapter except for those conditions noted on the Driver Vehicle Examination Report.

(3) No person shall remove the “Out-of-Service Vehicle” sticker from any motor vehicle or intermodal equipment prior to completion of all repairs required by the “out-of-service notice.”

(d) Motor carrier or intermodal equipment provider disposition. (1) The driver of any motor vehicle, including a motor vehicle transporting intermodal equipment, who receives an inspection report shall deliver a copy to both the motor carrier operating the vehicle and the intermodal equipment provider upon his/her arrival at the next terminal or facility. If the driver is not scheduled to arrive at a terminal or facility of the motor carrier operating the vehicle or at a facility of the intermodal equipment provider within 24 hours, the driver shall immediately mail, fax, or otherwise transmit the report to the motor carrier and intermodal equipment provider.

(2) Motor carriers and intermodal equipment providers shall examine the report. Violations or defects noted thereon shall be corrected. Repairs of items of intermodal equipment placed out-of-service are also to be documented in the maintenance records for such equipment.

(3) Within 15 days following the date of the inspection, the motor carrier or intermodal equipment provider shall—

(i) Certify that all violations noted have been corrected by completing the "Signature of Carrier/Intermodal Equipment Provider Official, Title, and Date Signed" portions of the form; and

(ii) Return the completed roadside inspection form to the issuing agency at the address indicated on the form and retain a copy at the motor carrier's principal place of business, at the intermodal equipment provider's principal place of business, or where the vehicle is housed for 12 months from the date of the inspection.

73 Fed. Reg. 76824, Dec. 17, 2008, as amended at 75 Fed. Reg. 17252, Apr. 5, 2010

§396.11 Driver vehicle inspection report(s).

(a) Report required—(1) Motor Carriers. Every motor carrier shall require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work on each vehicle operated, except for intermodal equipment tendered by an intermodal equipment provider. The report shall cover at least the following parts and accessories:

—Service brakes including trailer brake connections
—Parking brake
—Steering mechanism
—Lighting devices and reflectors
—Tires
—Horn
—Windshield wipers
—Rear vision mirrors
—Coupling devices
—Wheels and rims
—Emergency equipment

(2) ….

(b) Report content. The report shall identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate. In all instances, the driver shall sign the report. On two-driver operations, only one driver needs to sign the driver vehicle inspection report, provided both drivers agree as to the defects or deficiencies identified. If a driver operates more than one vehicle during the day, a report shall be prepared for each vehicle operated.

(c) Corrective action. Prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would be likely to affect the safety of operation of the vehicle.

(1) Every motor carrier or its agent shall certify on the original driver vehicle inspection report which lists any defect or deficiency that the defect or deficiency has been repaired or that repair is unnecessary before the vehicle is operated again.

(2) Every motor carrier shall maintain the original driver vehicle inspection report, the certification of repairs, and the certification of the driver's review for three months from the date the written report was prepared.

(d) Exceptions. The rules in this section shall not apply … any motor carrier operating only one commercial motor vehicle.

44 Fed. Reg. 38526, July 2, 1979, as amended at 45 Fed. Reg. 46425, July 10, 1980; 53 Fed. Reg. 18058, May 19, 1988; 59 Fed. Reg. 8753, Feb. 23, 1994; 63 Fed. Reg. 33279, June 18, 1998; 73 Fed. Reg. 76824, Dec. 17, 2008; 74 Fed. Reg. 68709, Dec. 29, 2009

§396.12….

§396.13 Driver inspection.

Before driving a motor vehicle, the driver shall:

(a) Be satisfied that the motor vehicle is in safe operating condition;

(b) Review the last driver vehicle inspection report; and

(c) Sign the report, only if defects or deficiencies were noted by the driver who prepared the report, to acknowledge that the driver has reviewed it and that there is a certification that the required repairs have been performed. The signature requirement does not apply to listed defects on a towed unit which is no longer part of the vehicle combination.

44 Fed. Reg. 76526, Dec. 27, 1979, as amended at 48 Fed. Reg. 55868, Dec. 16, 1983; 63 Fed. Reg. 33280, June 18, 1998

§396.15….

§396.17 Periodic inspection.

(a) Every commercial motor vehicle must be inspected as required by this section. The inspection must include, at a minimum, the parts and accessories set forth in appendix G of this subchapter. The term commercial motor vehicle includes each vehicle in a combination vehicle. For example, for a tractor semitrailer, full trailer combination, the tractor, semitrailer, and the full trailer (including the converter dolly if so equipped) must each be inspected.

(b) Except as provided in §396.23 and this paragraph, motor carriers must inspect or cause to be inspected all motor vehicles subject to their control. Intermodal equipment providers must inspect or cause to be inspected intermodal equipment that is interchanged or intended for interchange to motor carriers in intermodal transportation.

(c) A motor carrier must not use a commercial motor vehicle, and an intermodal equipment provider must not tender equipment to a motor carrier for interchange, unless each component identified in appendix G of this subchapter has passed an inspection in accordance with the terms of this section at least once during the preceding 12 months and documentation of such inspection is on the vehicle. The documentation may be:

(1) The inspection report prepared in accordance with §396.21(a), or

(2) Other forms of documentation, based on the inspection report (e.g., sticker or decal), which contains the following information:

(i) The date of inspection;

(ii) Name and address of the motor carrier, intermodal equipment provider, or other entity where the inspection report is maintained;

(iii) Information uniquely identifying the vehicle inspected if not clearly marked on the motor vehicle; and

(iv) A certification that the vehicle has passed an inspection in accordance with §396.17.

(d) A motor carrier may perform the required annual inspection for vehicles under the carrier's control which are not subject to an inspection under §396.23(b)(1). An intermodal equipment provider may perform the required annual inspection for intermodal equipment interchanged or intended for interchange to motor carriers that are not subject to an inspection under §396.23(b)(1).

(e) In lieu of the self-inspection provided for in paragraph (d) of this section, a motor carrier or intermodal equipment provider responsible for the inspection may choose to have a

commercial garage, fleet leasing company, truck stop, or other similar commercial business perform the inspection as its agent, provided that business operates and maintains facilities appropriate for commercial vehicle inspections and it employs qualified inspectors, as required by §396.19.

(f) Vehicles passing roadside or periodic inspections performed under the auspices of any State government or equivalent jurisdiction or the FMCSA, meeting the minimum standards contained in appendix G of this subchapter, will be considered to have met the requirements of an annual inspection for a period of 12 months commencing from the last day of the month in which the inspection was performed. If a vehicle is subject to a mandatory State inspection program, as provided in §396.23(b)(1), a roadside inspection may only be considered equivalent if it complies with the requirements of that program.

(g) It is the responsibility of the motor carrier or intermodal equipment provider to ensure that all parts and accessories on commercial motor vehicles intended for use in interstate commerce for which they are responsible are maintained at, or promptly repaired to, the minimum standards set forth in appendix G to this subchapter.

(h) Failure to perform properly the annual inspection required by this section shall cause the motor carrier or intermodal equipment provider to be subject to the penalty provisions of 49 U.S.C. 521(b).

73 Fed. Reg. 76825, Dec. 17, 2008

§396.19 Inspector qualifications.

(a) Motor carriers and intermodal equipment providers must ensure that individuals performing annual inspections under §396.17(d) or (e) are qualified as follows:

(1) Understand the inspection criteria set forth in part 393 and appendix G of this subchapter and can identify defective components;

(2) Are knowledgeable of and have mastered the methods, procedures, tools and equipment used when performing an inspection; and

(3) Are capable of performing an inspection by reason of experience, training, or both as follows:

(i) Successfully completed a Federal-or State-sponsored training program or have a certificate from a State or Canadian Province that qualifies the individuals to perform commercial motor vehicle safety inspections, or

(ii) Have a combination of training or experience totaling at least 1 year. Such training or experience may consist of:

(A) Participation in a commercial motor vehicle manufacturer-sponsored training program or similar commercial training program designed to train students in commercial motor vehicle operation and maintenance;

(B) Experience as a mechanic or inspector in a motor carrier or intermodal equipment maintenance program;

(C) Experience as a mechanic or inspector in commercial motor vehicle maintenance at a commercial garage, fleet leasing company, or similar facility; or

(D) Experience as a commercial motor vehicle inspector for a State, Provincial or Federal government.

(b) Motor carriers and intermodal equipment providers must retain evidence of that individual's qualifications under this section. They must retain this evidence for the period during which that individual is performing annual motor vehicle inspections for the motor carrier or intermodal equipment provider, and for one year thereafter. However, motor carriers and

intermodal equipment providers do not have to maintain documentation of inspector qualifications for those inspections performed either as part of a State periodic inspection program or at the roadside as part of a random roadside inspection program.

73 Fed. Reg. 76825, Dec. 17, 2008

§396.21 Periodic inspection recordkeeping requirements.

(a) The qualified inspector performing the inspection shall prepare a report that:

(1) Identifies the individual performing the inspection;

(2) Identifies the motor carrier operating the vehicle or intermodal equipment provider intending to interchange the vehicle to a motor carrier;

(3) Identifies the date of the inspection;

(4) Identifies the vehicle inspected;

(5) Identifies the vehicle components inspected and describes the results of the inspection, including the identification of those components not meeting the minimum standards set forth in appendix G to this subchapter; and

(6) Certifies the accuracy and completeness of the inspection as complying with all the requirements of this section.

(b)(1) The original or a copy of the inspection report shall be retained by the motor carrier, intermodal equipment provider, or other entity that is responsible for the inspection for a period of fourteen months from the date of the inspection report. The original or a copy of the inspection report must be retained where the vehicle is either housed or maintained.

(2) The original or a copy of the inspection report must be available for inspection upon demand of an authorized Federal, State or local official.

(3) Exception. If the motor carrier operating the commercial motor vehicles did not perform the commercial motor vehicle's last annual inspection, or if an intermodal equipment provider did not itself perform the annual inspection on equipment intended for interchange to a motor carrier, the motor carrier or intermodal equipment provider is responsible for obtaining the original or a copy of the last annual inspection report upon demand of an authorized Federal, State, or local official.

73 Fed. Reg. 76825, Dec. 17, 2008

§396.23 Equivalent to periodic inspection.

(a) A motor carrier or an intermodal equipment provider may meet the requirements of §396.17 through a State or other jurisdiction's roadside inspection program. The inspection must have been performed during the preceding 12 months. In using the roadside inspection, the motor carrier or intermodal equipment provider would need to retain a copy of an annual inspection report showing that the inspection was performed in accordance with the minimum periodic inspection standards set forth in appendix G to this subchapter. If the motor carrier operating the commercial vehicle is not the party directly responsible for its maintenance, the motor carrier must deliver the roadside inspection report to the responsible party in a timely manner. Before accepting such an inspection report, the motor carrier or intermodal equipment provider must ensure that the report complies with the requirements of §396.21(a).

(b)(1) If a commercial motor vehicle is subject to a mandatory State inspection program which is determined by the Administrator to be as effective as §396.17, the motor carrier or intermodal equipment provider must meet the requirement of §396.17 through that State's inspection program. Commercial motor vehicle inspections may be conducted by State personnel, at State authorized commercial facilities, or by the motor carrier or intermodal equipment provider itself under the auspices of a State authorized self-inspection program.

(2) Should the FMCSA determine that a State inspection program, in whole or in part, is not as effective as §396.17, the motor carrier or intermodal equipment provider must ensure that the periodic inspection required by §396.17 is performed on all commercial motor vehicles under its control in a manner specified in §396.17.

73 Fed. Reg. 76825, Dec. 17, 2008

§396.25 Qualifications of brake inspectors.

(a) Motor carriers and intermodal equipment providers must ensure that all inspections, maintenance, repairs or service to the brakes of its commercial motor vehicles, are performed in compliance with the requirements of this section.

(b) For purposes of this section, brake inspector means any employee of a motor carrier or intermodal equipment provider who is responsible for ensuring that all brake inspections, maintenance, service, or repairs to any commercial motor vehicle, subject to the motor carrier's or intermodal equipment provider's control, meet the applicable Federal standards.

(c) No motor carrier or intermodal equipment provider may require or permit any employee who does not meet the minimum brake inspector qualifications of paragraph (d) of this section to be responsible for the inspection, maintenance, service or repairs of any brakes on its commercial motor vehicles.

(d) The motor carrier or intermodal equipment provider must ensure that each brake inspector is qualified as follows:

(1) Understands the brake service or inspection task to be accomplished and can perform that task; and

(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an assigned brake service or inspection task; and

(3) Is capable of performing the assigned brake service or inspection by reason of experience, training, or both as follows:

(i) Has successfully completed an apprenticeship program sponsored by a State, a Canadian Province, a Federal agency or a labor union, or a training program approved by a State, Provincial or Federal agency, or has a certificate from a State or Canadian Province that qualifies the person to perform the assigned brake service or inspection task (including passage of Commercial Driver's License air brake tests in the case of a brake inspection); or

(ii) Has brake-related training or experience or a combination thereof totaling at least one year. Such training or experience may consist of:

(A) Participation in a training program sponsored by a brake or vehicle manufacturer or similar commercial training program designed to train students in brake maintenance or inspection similar to the assigned brake service or inspection tasks; or

(B) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task in a motor carrier or intermodal equipment provider maintenance program; or

(C) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task at a commercial garage, fleet leasing company, or similar facility.

(e) No motor carrier or intermodal equipment provider may employ any person as a brake inspector unless the evidence of the inspector's qualifications, required under this section, is maintained by the motor carrier or intermodal equipment provider at its principal place of business, or at the location at which the brake inspector is employed. The evidence must be maintained for the period during which the brake inspector is employed in that capacity and for one year thereafter. However, motor carriers … do not have to maintain evidence of

qualifications to inspect air brake systems for such inspections performed by persons who have passed the air brake knowledge and skills test for a Commercial Driver's License.

73 Fed. Reg. 76825, Dec. 17, 2008

FEDERAL CLAIMS COLLECTION ACT

The Federal Claims Collection Act ("FCCA") authorizes the FMCSA and FTA to either compromise or cause collection action to be terminated or suspended on claims which do not exceed $20,000, exclusive of interest. This authority, however, shall not be exercised with respect to a claim as to which there is an indication of fraud, the presentation of a false claim or misrepresentation on the part of the railroad.

Compromise shall be final and conclusive except if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact.

Nothing in the FCCA is to be construed as either increasing or diminishing the existing authority of FMCSA and FTA to litigate claims or to diminish existing authority to settle, compromise or close claims.

Under FCCA, the Secretary of Transportation may not compromise any civil penalty for a violation of these safety Acts or regulations issued under these laws for less than $250 for each violation.

31 U.S.C. § 3711

SCHOOL BUS SAFETY

There are 37 federal motor vehicle safety standards that apply to school buses. Several were written specifically for the yellow school bus. Listed here are summary descriptions of the standards that apply to school buses.

FMVSS 111: Rearview Visibility

This standard that specifies requirements for the performance and location of inside and outside rearview mirrors on motor vehicles and a requirement for rearview backup cameras in all vehicles including school buses that weigh less than 10,000 pounds GVWR. The final compliance deadline for vehicle manufacturers to meet the requirement is May 1, 2018, but they must provide data to NHTSA one year earlier indicating they will be compliant.

Application: Passenger cars, multipurpose passenger vehicles, trucks, buses, school buses, and motorcycles (exempted from rearview backup camera requirement) under 10,000 pounds GVWR.

FMVSS 126: Electronic Stability Control

This standard establishes requirement for Electronic Stability Control Systems (ESCs) on all multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 Kg (10,000 pounds) or less. ESC systems use automatic computer-controlled braking of individual wheels to assist the driver in maintaining control in critical driving situations in which the vehicle is beginning to lose directional stability at the rear wheels (spin out) or directional control at the front wheels (plow out). This standard was developed as part of a comprehensive plan for reducing the serious risk of rollover crashes and the risk of death and serious injury in those crashes.

Application: Passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 Kg (10,000 pounds) or less.

FMVSS 131: School Bus Pedestrian Safety Devices

This standard establishes requirements for devices, namely extendable stop arms, that can be installed on school buses to improve the safety of pedestrians in the vicinity of stopped school buses. It now permits strobe lights on stop signal arms and LED lighting on the surface of retro-reflective stop signal arms.

FMVSS 208: Occupant Crash Protection

This standard specifies performance requirements for the protection of vehicle occupants in crashes. The purpose of this standard is to reduce the number of deaths of vehicle occupants, and the severity of injuries, by specifying vehicle crashworthiness requirements in terms of forces and accelerations measured on a variety of anthropomorphic dummies in test crashes, and static airbag deployment tests. This standard also specifies equipment requirements for active and passive restraint systems.

Application: Passenger cars, trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8,500 lb) or less and an UVW of 2,495 kg (5,500 lb) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U. S. Postal Service.

FMVSS 209: Seat Belt Assemblies

This specifies requirements for seat belt assemblies. Seat belt assemblies are devices such as straps, webbing, or similar material, as well as to all necessary buckles and other fasteners and all hardware designed for installing the assembly in a motor vehicle, and to the installation, usage, and maintenance instructions for the assembly. The purpose of this standard is to ensure that the hardware of seat belt assemblies shall be designed to prevent attachment bolts and other parts from becoming disengaged from the vehicle while in service.

Application: Passenger cars, multipurpose passenger vehicles, trucks, and buses

FMVSS 210: Seat Belt Assembly Anchorages

This standard establishes requirements for seat belt assembly anchorages to ensure their proper location for effective occupant restraint and to reduce the likelihood of their failure during a vehicle impact.

Application: Any component, other than the webbing or straps, involved in transferring seat belt loads to the vehicle structure in passenger cars, multipurpose passenger vehicles, trucks, and buses

FMVSS 213: Child Restraint Systems

This standard specifies requirements for child restraint systems used in motor vehicles and aircraft for the purpose of reducing the number of children killed or injured in motor vehicle crashes and in aircraft.

Application: Passenger cars, multipurpose passenger vehicles, trucks and buses, and child restraint systems for use in motor vehicles and aircraft

FMVSS 217: Bus Emergency Exits and Window Retention and Release

This standard establishes requirements for the retention of windows other than windshields in buses, and establishes operating forces, opening dimensions, and markings for bus emergency exits. The purpose o f this standard is to minimize the likelihood of occupants being thrown from the bus and to provide a means of readily accessible emergency egress.

Application: Buses, including school buses

FMVSS 220: School Bus Rollover Protection

This standard establishes performance requirements for school bus rollover protection. The purpose of this standard is to reduce the number of deaths and the severity of injuries that result from failure of the school bus body structure to withstand forces encountered in rollover crashes.

FMVSS 221: School Bus Body Joint Strength

This standard establishes requirements for the strength of the body panel joints in school bus bodies. The purpose of this standard is to reduce deaths and injuries resulting from the structural collapse of school bus bodies during crashes.

Application: School buses with GVWR of more than 4,536 kg (10,000 lb)

FMVSS 222: School Bus Passenger Seating and Crash Protection

This standard establishes occupant protection requirements for school bus passenger seating, restraining barriers, and wheelchair anchorages. The purpose of this standard is to reduce the number of deaths and the severity of injuries that result from the impact of school bus occupants against structures within the vehicle during crashes and sudden driving maneuvers. This standard provides increased protection to passengers through a series of interior changes known as "compartmentalization," or high-backed, well-padded, and well-constructed seats. This standard only applies to school buses and covers all styles of school bus.

FMVSS 225: Child Restraint Anchorage Systems

This standard establishes requirements for child restraint anchorage systems to ensure their proper location and strength for the effective securing of child restraints. The purpose of this standard is to reduce the likelihood of the anchorage systems' failure, and to increase the likelihood that child restraints are properly secured and thus more fully achieve their potential effectiveness in motor vehicles.

Application: Except for shuttle buses, this standard applies to passenger cars, trucks and multipurpose passenger vehicles with a GVWR of 3,855 kg (8,500 lb) or less, except walk-in van-type vehicles and vehicles manufactured to be sold exclusively to the U.S. Postal Service; and to buses (including school buses) with a GVWR of 4,536 kg (10,000 lb) or less

FMVSS 301: Fuel System Integrity

This standard specifies requirements for the integrity of motor vehicle fuel systems. Its purpose is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after motor vehicle crashes.

Application: Passenger cars, multipurpose passenger vehicles, trucks, school buses and other buses with a GVWR of 4,536 kg (10,000 lb) or less

FMVSS 302: Flammability of Interior Materials

This standard specifies burn resistance requirements for materials used in the occupant compartments of motor vehicles. Its purpose is to reduce the deaths and injuries to motor vehicle occupants caused by vehicle fires, especially those originating in the interior of the vehicle from sources such as matches or cigarettes.

Application: Passenger cars, multipurpose passenger vehicles, trucks and buses.

FMVSS 304: Compressed Natural Gas Fuel System Integrity

This standard specifies requirements for the integrity of CNG motor vehicle fuel systems. The purpose of this standard is to reduce deaths and injuries occurring from fires that result from fuel leakage during and after motor vehicle crashes.

Application: This standard applies to each passenger car, multipurpose passenger vehicles, trucks, school buses and other buses that use CNG as a motor fuel and to each container designed to store CNG as motor fuel on-board any motor vehicle.

FMVSS 403 Platform Lift Systems for Motor Vehicles
FMVSS 404 Platform Lift Installations on Motor Vehicles

This companion set of federal motor vehicle safety standards consists of an equipment standard specifying requirements for platform lifts; and a vehicle standard for all vehicles equipped with such lifts. It requires platform lift manufacturers to ensure that their lifts meet minimum platform dimensions and maximum size limits on platform protrusions and gaps between the platform and either the vehicle floor or the ground. The standard also requires handrails, a threshold warning signal, and retaining barriers for lifts. Performance tests are specified for wheelchair retention on the platform, lift strength, and platform slip resistance. A set of interlocks is prescribed to prevent accidental movement of a lift and the vehicle on which the lift is installed. The vehicle standard will require vehicle manufacturers who install lifts to use lifts meeting the equipment standard, to install them in accordance with the lift manufacturer's instructions, and to ensure that specific information is made available to lift users.

Application: This standard applies to platform lifts designed to carry passengers into and out of motor vehicles, including school buses, multi-purpose passenger vehicles, transit buses, motor coaches, shuttle buses, paratransit vehicles, and private use vehicles.

STATE PARTICIPATION

1. 49 U.S. Code §31311

(a) **General.—** To avoid having amounts withheld from apportionment under section 31314 of this title, a State shall comply with the following requirements:

(1) The State shall adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under section 31305 (a) of this title.

(2) The State may issue a commercial driver's license to an individual only if the individual passes written and driving tests for the operation of a commercial motor vehicle that comply with the minimum standards.

(3) The State shall have in effect and enforce a law providing that an individual with a blood alcohol concentration level at or above the level established by section 31310 (a) of this title when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol.

(4) The State shall authorize an individual to operate a commercial motor vehicle only by issuing a commercial driver's license containing the information described in section 31308 (3) of this title.1/

(5) Not later than the time period prescribed by the Secretary by regulation, the State shall notify the Secretary or the operator of the information system under section 31309 of this title, as the case may be, of the proposed issuance of the license and other information the Secretary may require to ensure identification of the individual applying for the license.

(6) Before issuing a commercial driver's license to an individual or renewing such a license, the State shall request from any other State that has issued a driver's license to the individual all information about the driving record of the individual.

(7) Not later than 30 days after issuing a commercial driver's license, the State shall notify the Secretary or the operator of the information system under section 31309 of this title, as the case may be, of the issuance.

(8) Not later than 10 days after disqualifying the holder of a commercial driver's license from operating a commercial motor vehicle (or after revoking, suspending, or canceling the license) for at least 60 days, the State shall notify the Secretary or the operator of the information system under section 31309 of this title, as the case may be, and the State that issued the license, of the disqualification, revocation, suspension, or cancellation, and the violation that resulted in the disqualification, revocation, suspension, or cancellation shall be recorded.

(9) If an individual violates a State or local law on motor vehicle traffic control (except a parking violation) and the individual—

(A) has a commercial driver's license issued by another State; or

(B) is operating a commercial vehicle without a commercial driver's license and has a driver's license issued by another State,

the State in which the violation occurred shall notify a State official designated by the issuing State of the violations not later than 10 days after the date the individual is found to have committed the violation.

(10) (A) The State may not issue a commercial driver's license to an individual during a period in which the individual is disqualified from operating a commercial motor vehicle or the individual's driver's license is revoked, suspended, or canceled.

(B) The State may not issue a special license or permit (including a provisional or temporary license) to an individual who holds a commercial driver's license that permits the individual to drive a commercial motor vehicle during a period in which—

(i) the individual is disqualified from operating a commercial motor vehicle; or

(ii) the individual's driver's license is revoked, suspended, or canceled.

(11) The State may issue a commercial driver's license to an individual who has a commercial driver's license issued by another State only if the individual first returns the driver's license issued by the other State.

(12) (A) Except as provided in subparagraphs (B) and (C), the State may issue a commercial driver's license only to an individual who operates or will operate a commercial motor vehicle and is domiciled in the State.

(B) Under regulations prescribed by the Secretary, the State may issue a commercial driver's license to an individual who—

(i) operates or will operate a commercial motor vehicle; and

(ii) is not domiciled in a State that issues commercial driver's licenses.

(C) The State may issue a commercial driver's license to an individual who—

(i) operates or will operate a commercial motor vehicle;

(ii) is a member of the active duty military, military reserves, National Guard, active duty United States Coast Guard, or Coast Guard Auxiliary; and

(iii) is not domiciled in the State, but whose temporary or permanent duty station is located in the State.

(13) The State shall impose penalties consistent with this chapter that the State considers appropriate and the Secretary approves for an individual operating a commercial motor vehicle.

(14) The State shall allow an individual to operate a commercial motor vehicle in the State if—

(A) the individual has a commercial driver's license issued by another State under the minimum standards prescribed by the Secretary under section 31305 (a) of this title;

(B) the license is not revoked, suspended, or canceled; and

(C) the individual is not disqualified from operating a commercial motor vehicle.

(15) The State shall disqualify an individual from operating a commercial motor vehicle for the same reasons and time periods for which the Secretary shall disqualify the individual under subsections (b)–(e), (i)(1)(A) and (i)(2) of section 31310.

(16) (A) Before issuing a commercial driver's license to an individual, the State shall request the Secretary for information from the National Driver Register maintained under chapter 303 of this title (after the Secretary decides the Register is operational) on whether the individual—

(i) has been disqualified from operating a motor vehicle (except a commercial motor vehicle);

(ii) has had a license (except a license authorizing the individual to operate a commercial motor vehicle) revoked, suspended, or canceled for cause in the 3-year period ending on the date of application for the commercial driver's license; or

(iii) has been convicted of an offense specified in section 30304 (a)(3) of this title.

(B) The State shall give full weight and consideration to that information in deciding whether to issue the individual a commercial driver's license.

(17) The State shall adopt and enforce regulations prescribed by the Secretary under as [2] 31310(j) of this title.

(18) The State shall maintain, as part of its driver information system, a record of each violation of a State or local motor vehicle traffic control law while operating a motor vehicle (except a parking violation) for each individual who holds a commercial driver's license. The record shall be available upon request to the individual, the Secretary, employers, prospective employers, State licensing and law enforcement agencies, and their authorized agents.

(19) The State shall—

(A) record in the driving record of an individual who has a commercial driver's license issued by the State; and

(B) make available to all authorized persons and governmental entities having access to such record, all information the State receives under paragraph (9) with respect to the individual and every violation by the individual involving a motor vehicle (including a commercial motor vehicle) of a State or local law on traffic control (except a parking violation), not later than 10 days after the date of receipt of such information or the date of such violation, as the case may be. The State may not allow information regarding such violations to be withheld or masked in any way from the record of an individual possessing a commercial driver's license.

(20) The State shall revoke, suspend, or cancel the commercial driver's license of an individual in accordance with regulations issued by the Secretary to carry out section 31310 (g).

(21) By the date established by the Secretary under section 31309 (e)(4), the State shall be operating a commercial driver's license information system that is compatible with the modernized commercial driver's license information system under section 31309.

(22) The State shall report a conviction of a foreign commercial driver by that State to the Federal Convictions and Withdrawal Database, or another information system designated by the Secretary to record the convictions. A report shall include—

(A) for a driver holding a foreign commercial driver's license—

(i) each conviction relating to the operation of a commercial motor vehicle; and

(ii) each conviction relating to the operation of a non-commercial motor vehicle; and

(B) for an unlicensed driver or a driver holding a foreign non-commercial driver's license, each conviction relating to the operation of a commercial motor vehicle.

(23) Not later than 1 year after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2012, the State shall implement a system and practices for the exclusive electronic exchange of driver history record information on the system the Secretary maintains under section 31309, including the posting of convictions, withdrawals, and disqualifications.

(24) Before renewing or issuing a commercial driver's license to an individual, the State shall request information pertaining to the individual from the drug and alcohol clearinghouse maintained under section 31306a.

(25) Not later than 5 years after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2012, the State shall establish and maintain, as part of its driver information system, the capability to receive an electronic copy of a medical examiner's certificate, from a certified medical examiner, for each holder of a commercial driver's license issued by the State who operates or intends to operate in interstate commerce.

(b) **State Satisfaction of Requirements.—** A State may satisfy the requirements of subsection (a) of this section that the State disqualify an individual from operating a commercial motor vehicle by revoking, suspending, or canceling the driver's license issued to the individual.

(c) **Notification.—** Not later than 30 days after being notified by a State of the proposed issuance of a commercial driver's license to an individual, the Secretary or the operator of the information system under section 31309 of this title, as the case may be, shall notify the State whether the individual has a commercial driver's license issued by another State or has been disqualified from operating a commercial motor vehicle by another State or the Secretary.

(d) **State Commercial Driver's License Program Plan.—**

(1) **In general.—** A State shall submit a plan to the Secretary for complying with the requirements under this section during the period beginning on the date the plan is submitted and ending on September 30, 2016.

(2) **Contents.—** A plan submitted by a State under paragraph (1) shall identify—

(A) the actions that the State will take to address any deficiencies in the State's commercial driver's license program, as identified by the Secretary in the most recent audit of the program; and

(B) other actions that the State will take to comply with the requirements under subsection (a).

(3) **Priority.—**

(A) **Implementation schedule.—** A plan submitted by a State under paragraph (1) shall include a schedule for the implementation of the actions identified under paragraph (2). In establishing the schedule, the State shall prioritize actions to address any deficiencies highlighted by the Secretary as critical in the most recent audit of the program.

(B) **Deadline for compliance with requirements.—** A plan submitted by a State under paragraph (1) shall include assurances that the State will take the necessary actions to comply with the requirements of subsection (a) not later than September 30, 2015.

(4) **Approval and disapproval.—** The Secretary shall—

(A) review each plan submitted under paragraph (1);

(B) (i) approve a plan if the Secretary determines that the plan meets the requirements under this subsection and promotes the goals of this chapter; and

(ii) disapprove a plan that the Secretary determines does not meet the requirements or does not promote the goals.

(5) **Modification of disapproved plans.—** If the Secretary disapproves a plan under paragraph (4), the Secretary shall—

(A) provide a written explanation of the disapproval to the State; and

(B) allow the State to modify the plan and resubmit it for approval.

(6) **Plan updates.—** The Secretary may require a State to review and update a plan, as appropriate.

(e) **Annual Comparison of State Levels of Compliance.—** The Secretary shall annually—

(1) compare the relative levels of compliance by States with the requirements under subsection (a); and

(2) make the results of the comparison available to the public.

2. 49 CFR PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

3.

Subpart A—General

§384.101 Purpose and scope.
§384.103 Applicability.
§384.105 Definitions.
§384.107 Matter incorporated by reference.

Subpart B—Minimum Standards for Substantial Compliance by States

§384.201 Testing program.
§384.202 Test standards.
§384.203 Driving while under the influence.
§384.204 CLP or CDL issuance and information.
§384.205 CDLIS information.
§384.206 State record checks.
§384.207 Notification of licensing.
§384.208 Notification of disqualification.
§384.209 Notification of traffic violations.
§384.210 Limitation on licensing.
§384.211 Surrender of old licenses.
§384.212 Domicile requirement.
§384.213 Penalties for driving without a proper CDL.
§384.214 Reciprocity.
§384.215 First offenses.
§384.216 Second offenses.
§384.217 Drug offenses. Second serious traffic violation.

Authority:

49 U.S.C. 31136, 31301 et seq., and 31502; secs. 103 and 215 of Pub. L. 106-159, 113 Stat. 1753, 1767; and 49 CFR 1.73.

Source: 59 FR 26039, May 18, 1994, unless otherwise noted.

Editorial Note: Nomenclature changes to part 384 appear at 66 FR 49872, Oct. 1, 2001.

Subpart A—General

§384.101 Purpose and scope.

(a) Purpose. The purpose of this part is to ensure that the States comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)).

(b) Scope. This part:

(1) Includes the minimum standards for the actions States must take to be in substantial compliance with each of the 22 requirements of 49 U.S.C. 31311(a);

(2) Establishes procedures for determinations to be made of such compliance by States; and

(3) Specifies the consequences of State noncompliance.

62 Fed. Reg. 37152, July 11, 1997

§384.103 Applicability.

The rules in this part apply to all States.

§384.105 Definitions.

(a) The definitions in part 383 of this title apply to this part, except where otherwise specifically noted.

(b) As used in this part:

CDLIS motor vehicle record (CDLIS MVR) means a report generated from the CDLIS driver record meeting the requirements for access to CDLIS information and provided by States to users authorized in §384.225(e)(3) and (4), subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721-2725.

Issue and issuance mean initial issuance, transfer, renewal, or upgrade of a CLP or CDL and Non-domiciled CLP or CDL, as described in §383.73 of this subchapter.

Licensing entity means the agency of State government that is authorized to issue drivers' licenses.

Year of noncompliance means any Federal fiscal year during which—

(1) A State fails to submit timely certification as prescribed in subpart C of this part; or

(2) The State does not meet one or more of the standards of subpart B of this part, based on a final determination by the FMCSA under §384.307(c) of this part.

59 Fed. Reg. 26039, May 18, 1994, as amended at 73 Fed. Reg. 73125, Dec. 1, 2008; 76 Fed. Reg. 26893, May 9, 2011

§384.107 Matter incorporated by reference.

(a) Incorporation by reference. This part includes references to certain matter or materials. The text of the materials is not included in the regulations contained in this part. The materials are hereby made a part of the regulations in this part. The Director of the Office of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Office of the Federal Register and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the Federal Register.

(b) Materials incorporated. The AAMVA, Inc.'s "Commercial Driver License Information System (CDLIS) State Procedures Manual," Version 4.1.0, September 2007 ("CDLIS State Procedures Manual"), IBR approved for §§384.225(f) and 384.231(d).

(c) Addresses. (1) All of the materials incorporated by reference are available for inspection at:

(i) The Department of Transportation Library, 1200 New Jersey Ave., SE., Washington, DC 20590-0001; telephone is (202) 366-0746. These documents are also available for inspection and copying as provided in 49 CFR part 7.

(ii) The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(2) Information and copies of all of the materials incorporated by reference may be obtained by writing to: American Association of Motor Vehicle Administrators, Inc., 4301 Wilson Blvd, Suite 400, Arlington, VA 22203; Web site is http://www.aamva.org.

67 Fed. Reg. 49761, July 31, 2002, as amended at 72 Fed. Reg. 55700, Oct. 1, 2007; 73 Fed. Reg. 73125, Dec. 1, 2008

Subpart B—Minimum Standards for Substantial Compliance by States

§384.201 Testing program.

(a) The State shall adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles (CMVs) in accordance with the minimum Federal standards contained in part 383 of this title.

(b) To obtain a copy of FMCSA pre-approved State Testing System referenced in §§383.131, 383.133 and 383.135, State Driver Licensing Agencies may contact: FMCSA, CDL Division, 1200 New Jersey Avenue, SE, Washington DC 20590.

76 Fed. Reg. 26893, May 9, 2011

§384.202 Test standards.

No State shall authorize a person to operate a CMV unless such person passes acknowledge and driving skills test for the operation of a CMV in accordance with part 383 of this title.

§384.203 Driving while under the influence.

(a) The State must have in effect and enforce through licensing sanctions the disqualifications prescribed in §383.51(b) of this subchapter for driving a CMV with a 0.04 alcohol concentration.

(b) Nothing in this section shall be construed to require a State to apply its criminal or other sanctions for driving under the influence to a person found to have operated a CMV with an alcohol concentration of 0.04, except licensing sanctions including suspension, revocation, or cancellation.

(c) A State that enacts and enforces through licensing sanctions the disqualifications prescribed in §383.51(b) of this subchapter for driving a CMV with a 0.04 alcohol concentration and gives full faith and credit to the disqualification of CMV drivers by other States shall be deemed in substantial compliance with section 12009(a)(3) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)(3)).

67 Fed. Reg. 49761, July 31, 2002

§384.204 CLP or CDL issuance and information.

(a) General rule. The State shall authorize a person to operate a CMV only by issuance of a CLP or CDL, unless an exception in §383.3(c) or (d) applies, which contains, at a minimum, the information specified in part 383, subpart J, of this subchapter.

(b) Exceptions—(1) Training. The State may authorize a person who does not hold a CDL valid for the type of vehicle in which training occurs to undergo behind-the-wheel training in a CMV only by means of a CLP issued and used in accordance with §383.25 of this subchapter.

(2) Confiscation of CLP or CDL pending enforcement. A State may allow a CLP or CDL holder whose CLP or CDL is held in trust by that State or any other State in the course of enforcement of the motor vehicle traffic code, but who has not been convicted of a disqualifying offense under §383.51 of this subchapter based on such enforcement, to drive a CMV while holding a dated receipt for such CLP or CDL.

76 Fed. Reg. 26894, May 9, 2011

§384.205 CDLIS information.

Before issuing a CLP or a CDL to any person, the State must, within the period of time specified in §384.232, perform the check of the Commercial Driver's License Information System (CDLIS) in accordance with §383.73(b)(3)(ii) of this subchapter, and, based on that information, issue the license or, in the case of adverse information, promptly implement the disqualifications, licensing limitations, denials, and/or penalties that are called for in any applicable section(s) of this subpart.

76 Fed. Reg. 26894, May 9, 2011

§384.206 State record checks.

(a) Issuing State's records. (1) Before issuing, renewing, upgrading, or transferring a CLP or CDL to any person, the driver's State of record must, within the period of time specified in §384.232, check its own driver records as follows:

(i) The driver record of the person in accordance with §383.73(b)(3)(i) of this chapter; and

(ii) For a driver who certifies that his/her type of driving is non-excepted, interstate commerce according to §383.71(b)(1)(ii)(A) of this chapter, the medical certification status information on the person's CDLIS driver record.

(2) Based on the findings of its own State record check, the State of record must do one of the following as appropriate:

(i) Issue, renew, upgrade, or transfer the applicant's CLP or CDL;

(ii) In the event the State obtains adverse information regarding the applicant, promptly implement the disqualifications, licensing limitations, denials, or penalties that are called for in any applicable section(s) of this subpart; or

(iii) In the event there is no information regarding the driver's self-certification for driving type required by §383.71(b)(1)(ii), or for a driver who is required by §383.71(h) to be "certified," if the medical certification status of the individual is "non-certified," the State must deny the CDL action requested by the applicant and initiate a downgrade of the CDL, if required by §383.73(j)(4) of this chapter.

(b) Other States' records. (1) Before the initial or transfer issuance of a CLP or CDL to a person, and before renewing or upgrading a CLP or CDL held by any person, the issuing State must:

(i) Require the applicant to provide the names of all States where the applicant has previously been licensed to operate any type of motor vehicle during the previous 10 years.

(ii) Within the time period specified in §384.232, request the complete driver record from all States where the applicant was licensed within the previous 10 years to operate any type of motor vehicle.

(2) States receiving a request for the driver record of a person currently or previously licensed by the State must provide the information within 30 days.

(3) Based on the findings of the other State record checks, the issuing State must, in the case of adverse information regarding the applicant, promptly implement the disqualifications, licensing limitations, denials, or penalties that are called for in any applicable section(s) of this subpart.

76 Fed. Reg. 26894, May 9, 2011

§384.207 Notification of licensing.

Within the period defined in §383.73(h) of this subchapter, the State must:

(a) Notify the operator of the CDLIS of each CLP or CDL issuance;

(b) Notify the operator of the CDLIS of any changes in driver identification information; and

(c) In the case of transfer issuances, implement the Change State of Record transaction, as specified by the operator of the CDLIS, in conjunction with the previous State of record and the operator of the CDLIS.

59 Fed. Reg. 26039, May 18, 1994, as amended at 76 Fed. Reg. 26894, May 9, 2011

§384.208 Notification of disqualification.

(a) No later than 10 days after disqualifying a CLP or CDL holder licensed by another State, or disqualifying an out-of-State CLP or CDL holder's privilege to operate a commercial motor

vehicle for at least 60 days, the State must notify the State that issued the license of the disqualification.

(b) The notification must include both the disqualification and the violation that resulted in the disqualification, revocation, suspension, or cancellation. The notification and the information it provides must be recorded on the CDLIS driver record.

67 Fed. Reg. 49761, July 31, 2002, as amended at 73 Fed. Reg. 73125, Dec. 1, 2008; 76 Fed. Reg. 26894, May 9, 2011

§384.209 Notification of traffic violations.

(a) Required notification with respect to CLP or CDL holders.

(1) Whenever a person who holds a CLP or CDL from another State is convicted of a violation of any State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations), in any type of vehicle, the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

(2) Whenever a person who holds a foreign commercial driver's license is convicted of a violation of any State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations), in any type of vehicle, the licensing entity of the State in which the conviction occurs must report that conviction to the Federal Convictions and Withdrawal Database.

(b) Required notification with respect to non-CDL holders.

(1) Whenever a person who does not hold a CDL, but who is licensed to drive by another State, is convicted of a violation in a CMV of any State or local law relating to motor vehicle traffic control (other than a parking violation), the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

(2) Whenever a person who is unlicensed or holds a foreign non- commercial driver's license is convicted of a violation in a CMV of any State or local law relating to motor vehicle traffic control (other than a parking violation), the licensing entity of the State in which the conviction occurs must report that conviction to the Federal Convictions and Withdrawal Database.

67 Fed. Reg. 49761, July 31, 2002, as amended at 78 Fed. Reg. 60226, Oct. 1, 2013

§384.210 Limitation on licensing.

A State must not knowingly issue a CLP, a CDL, or a commercial special license or permit (including a provisional or temporary license) permitting a person to drive a CMV during a period in which:

(a) A person is disqualified from operating a CMV, as disqualification is defined in §383.5 of this subchapter, or under the provisions of §383.73(j) or §384.231(b)(2) of this subchapter;

(b) The CLP or CDL holder's noncommercial driving privilege has been disqualified; or

(c) Any type of driver's license held by such person is disqualified by the State where the driver is licensed for any State or local law related to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

76 Fed. Reg. 26894, May 9, 2011

§384.211 Surrender of old licenses.

The State may not initially issue, upgrade, or transfer a CDL to a person unless such person first surrenders any previously issued driver's license and CLP.

76 Fed. Reg. 26894, May 9, 2011

§384.212 Domicile requirement.

(a) The State may issue CDLs or CLPs only to persons for whom the State is the State of domicile as defined in §383.5 of this subchapter; except that the State may issue a Non-domiciled CLP or CDL under the conditions specified in §§383.23(b), 383.71(f), and 383.73(f) of this subchapter.

(b) The State must require any person holding a CLP or CDL issued by another State to apply for a transfer CLP or CDL from the State within 30 days after establishing domicile in the State, as specified in §383.71(c) of this subchapter.

76 Fed. Reg. 26894, May 9, 2011

§384.213 State penalties for drivers of CMVs.

The State must impose on drivers of CMVs appropriate civil and criminal penalties that are consistent with the penalties prescribed under part 383, subpart D, of this subchapter.

67 Fed. Reg. 49761, July 31, 2002

§384.214 Reciprocity.

The State must allow any person to operate a CMV in the State who is not disqualified from operating a CMV and who holds a CLP or CDL that is—

(a) Issued to him or her by his/her State or jurisdiction of domicile in accordance with part 383 of this subchapter;

(b) Not disqualified; and

(c) Valid, under the terms of part 383, subpart F, of this subchapter, for the type of vehicle being driven.

76 Fed. Reg. 26895, May 9, 2011

§384.215 First offenses.

(a) General rule. The State must disqualify from operating a CMV each person who is convicted, as defined in §383.5 of this subchapter, in any State or jurisdiction, of a disqualifying offense specified in items (1) through (8) of Table 1 to §383.51 of this subchapter, for no less than one year.

(b) Special rule for hazardous materials offenses. If the offense under paragraph (a) of this section occurred while the driver was operating a vehicle transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (implementing regulations at 49 Fed. Reg. 177.823), the State shall disqualify the person for no less than three years.

59 Fed. Reg. 26039, May 18, 1994, as amended at 67 Fed. Reg. 49762, July 31, 2002

§384.216 Second offenses.

(a) General rule. The State must disqualify for life from operating a CMV each person who is convicted, as defined in §383.5 of this subchapter, in any State or jurisdiction, of a subsequent offense as described in Table 1 to §383.51 of this subchapter.

(b) Special rule for certain lifetime disqualifications. A driver disqualified for life under Table 1 to §383.51 may be reinstated after 10 years by the driver's State of residence if the requirements of §383.51(a)(5) have been met.

67 Fed. Reg. 49762, July 31, 2002

§384.217 Drug offenses.

The State must disqualify from operating a CMV for life any person who is convicted, as defined in §383.5 of this subchapter, in any State or jurisdiction of a first offense of using a CMV (or, in the case of a CLP or CDL holder, a CMV or a non-CMV) in the commission of a felony described in item (9) of Table 1 to §383.51 of this subchapter. The State shall not apply the special rule in §384.216(b) to lifetime disqualifications imposed for controlled substance felonies as detailed in item (9) of Table 1 to §383.51 of this subchapter.

76 Fed. Reg. 26895, May 9, 2011

§384.218 Second serious traffic violation.

The State must disqualify from operating a CMV for a period of not less than 60 days each person who, in a three-year period, is convicted, as defined in §383.5 of this subchapter, in any State(s) or jurisdiction(s), of two serious traffic violations as specified in Table 2 to §383.51.

67 Fed. Reg. 49762, July 31, 2002

§384.219 Third serious traffic violation.

The State must disqualify from operating a CMV for a period of not less than 120 days each person who, in a three-year period, is convicted, as defined in §383.5 of this subchapter, in any State(s) or jurisdiction(s), of three serious traffic violations as specified in Table 2 to §383.51. This disqualification period must be in addition to any other previous period of disqualification.

67 Fed. Reg. 49762, July 31, 2002

§384.220 Problem Driver Pointer System information.

Before issuing a CLP or CDL to any person, the State must, within the period of time specified in §384.232, perform the check of the Problem Driver Pointer System in accordance with §383.73(b)(3)(iii) of this subchapter, and, based on that information, promptly implement the disqualifications, licensing limitations, and/or penalties that are called for in any applicable section(s) of this subpart.

76 Fed. Reg. 26895, May 9, 2011

§384.221 Out-of-service regulations (intoxicating beverage).

The State shall adopt, and enforce on operators of CMVs as defined in §§383.5 and 390.5 of this title, the provisions of §392.5 (a) and (c) of this title in accordance with the Motor Carrier Safety Assistance Program as contained in 49 CFR part 350 and applicable policy and guidelines.

§384.222 Violation of out-of-service orders.

The State must have and enforce laws and/or regulations applicable to drivers of CMVs and their employers, as defined in §383.5 of this subchapter, which meet the minimum requirements of §§383.37(c), Table 4 to 383.51, and 383.53(b) of this subchapter.

67 Fed. Reg. 49762, July 31, 2002

§384.223 Railroad-highway grade crossing violation.

The State must have and enforce laws and/or regulations applicable to CMV drivers and their employers, as defined in §383.5 of this subchapter, which meet the minimum requirements of §§383.37(d), Table 3 to 383.51, and 383.53(c) of this subchapter.

67 Fed. Reg. 49762, July 31, 2002

§384.224 Noncommercial motor vehicle violations.

The State must have and enforce laws and/or regulations applicable to drivers of non-CMVs, as defined in §383.5 of this subchapter, which meet the minimum requirements of Tables 1 and 2 to §383.51 of this subchapter.

67 Fed. Reg. 49762, July 31, 2002

§384.225 CDLIS driver recordkeeping.

The State must:

(a) CLP or CDL holder. Post and maintain as part of the CDLIS driver record:

(1) All convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than parking, vehicle weight, or vehicle defect violations) committed in any type of vehicle.

(2) The following medical certification status information:

(i) Driver self-certification for the type of driving operations provided in accordance with §383.71(b)(1)(ii) of this chapter, and

(ii) Information from medical certification recordkeeping in accordance with §383.73(o) of this chapter.

(b) A person required to have a CLP or CDL. Record and maintain as part of the CDLIS driver record all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than parking, vehicle weight, or vehicle defect violations) committed while the driver was operating a CMV.

(c) Make CDLIS driver record information required by this section available to the users designated in paragraph (e) of this section, or to their authorized agent, within 10 days of:

(1) Receiving the conviction or disqualification information from another State; or

(2) The date of the conviction, if it occurred in the same State.

(d) Retain on the CDLIS driver record record all convictions, disqualifications and other licensing actions for violations for at least 3 years or longer as required under §384.231(d).

(e) Only the following users or their authorized agents may receive the designated information:

(1) States—All information on all CDLIS driver records.

(2) Secretary of Transportation—All information on all CDLIS driver records.

(3) Driver—All information on that driver's CDLIS driver record obtained on the CDLIS Motor Vehicle Record from the State according to its procedures.

(4) Motor Carrier or Prospective Motor Carrier—After notification to a driver, all information on that driver's, or prospective driver's, CDLIS driver record obtained on the CDLIS Motor Vehicle Record from the State according to its procedures.

(f) The content of the report provided a user authorized by paragraph (e) of this section from the CDLIS driver record, or from a copy of this record maintained for use by the National Law Enforcement Telecommunications System, must be comparable to the report that would be generated by a CDLIS State-to-State request for a CDLIS driver history, as defined in the "CDLIS State Procedures Manual" (incorporated by reference, see §384.107(b)), and must include the medical certification status information of the driver in paragraph (a)(2) of this section. This does not preclude authorized users from requesting a CDLIS driver status.

67 Fed. Reg. 49762, July 31, 2002, as amended at 73 Fed. Reg. 73125, Dec. 1, 2008; 76 Fed. Reg. 26895, May 9, 2011

§384.226 Prohibition on masking convictions.

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP or CDL holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.

76 Fed. Reg. 26895, May 9, 2011

§384.227 Record of digital image or photograph.

The State must:

(a) Record the digital color image or photograph or black and white laser engraved photograph that is captured as part of the application process and placed on the licensing document of every person who is issued a CDL, as required under §383.153. The digital color image or photograph or black and white laser engraved photograph must either be made part of the driver history or be linked to the driver history in a separate file.

(b) Check the digital color image or photograph or black and white laser engraved photograph on record whenever the CDL applicant or holder appears in person to renew, upgrade, or transfer a CDL and when a duplicate CDL is issued.

(c) Check the digital color image or photograph or black and white laser engraved photograph on record whenever the CLP applicant or holder appears in person to renew, upgrade, or transfer a CLP and when a duplicate CLP is issued. If no digital color image or photograph or black and white laser engraved photograph exists on record, the State must check the photograph or image on the base-license presented with the CLP application.

76 Fed. Reg. 26895, May 9, 2011

§384.228 Examiner training and record checks.

For all State and third party CDL test examiners, the State must meet the following 10 requirements:

(a) Establish examiner training standards for initial and refresher training that provides CDL test examiners with a fundamental understanding of the objectives of the CDL testing program, and with all of the knowledge and skills necessary to serve as a CDL test examiner and assist jurisdictions in meeting the Federal CDL testing requirements.

(b) Require all State knowledge and skills test examiners to successfully complete a formal CDL test examiner training course and examination before certifying them to administer CDL knowledge and skills tests.

(c) The training course for CDL knowledge test examiners must cover at least the following three units of instruction:

(1) Introduction to CDL Licensing System:

(i) The Commercial Motor Vehicle Safety Act of 1986.

(ii) Drivers covered by CDL program.

(iii) CDL vehicle classification.

(iv) CDL endorsements and restrictions.

(2) Overview of the CDL tests:

(i) CDL test, classifications, and endorsements.

(ii) Different examinations.

(iii) Representative vehicles.

(iv) Validity and reliability.

(v) Test maintenance.

(3) Knowledge tests:

(i) General knowledge tests.

(ii) Specialized knowledge tests.

(iii) Selecting the appropriate tests and test forms.

(iv) Knowledge test administration.

(d) The training course for CDL skills test examiners must cover at least the following five units of instruction:

(1) Introduction to CDL Licensing System:

(i) The Commercial Motor Vehicle Safety Act of 1986.

(ii) Drivers covered by CDL program.

(iii) CDL vehicle classification.

(iv) CDL endorsements and restrictions.

(2) Overview of the CDL tests:

(i) CDL test, classifications, and endorsements.

(ii) Different examinations.

(iii) Representative vehicles.

(iv) Validity and reliability.

(v) Test maintenance.

(3) Vehicle inspection test:

(i) Test overview.

(ii) Description of safety rules.

(iii) Test scoring procedures.

(iv) Scoring standards.

(v) Calculating final score.

(4) Basic control skills testing:

(i) Setting up the basic control skills course.

(ii) Description of safety rules.

(iii) General scoring procedures.

(iv) Administering the test.

(v) Calculating the score.

(5) Road test:

(i) Setting up the road test.

(ii) Required maneuvers.

(iii) Administering the road test.

(iv) Calculating the score.

(e) Require all third party skills test examiners to successfully complete a formal CDL test examiner training course and examination before certifying them to administer CDL skills tests. The training course must cover at least the five units of instruction in paragraph (d) of this section.

(f) Require State and third party CDL test examiners to successfully complete a refresher training course and examination every four years to maintain their CDL test examiner certification. The refresher training course must cover at least the following:

(1) For CDL knowledge test examiners, the three units of training described in paragraph (c) of this section.

(2) For CDL skills test examiners, the five units of training described in paragraph (d) of this section.

(3) Any State specific material and information related to administering CDL knowledge and skills tests.

(4) Any new Federal CDL regulations, updates to administering the tests, and new safety related equipment on the vehicles.

(g) Complete nationwide criminal background check of all skills test examiners prior to certifying them to administer CDL skills tests.

(h) Complete annual nationwide criminal background check of all test examiners.

(i) Maintain a record of the results of the criminal background check and CDL examiner test training and certification of all CDL test examiners.

(j) Rescind the certification to administer CDL tests of all test examiners who:

(1) Do not successfully complete the required refresher training every four years; or

(2) Do not pass annual nationwide criminal background checks. Criteria for not passing the criminal background check must include at least the following:

(i) Any felony conviction within the last 10 years; or

(ii) Any conviction involving fraudulent activities.

(k) The six units of training described in paragraphs (c) and (d) of this section may be supplemented with State-specific material and information related to administering CDL knowledge and skills tests.

76 Fed. Reg. 26895, May 9, 2011

§384.229 Skills test examiner auditing and monitoring.

To ensure the integrity of the CDL skills testing program, the State must:

(a) At least once every 2 years, conduct unannounced, on-site inspections of third party testers' and examiners' records, including comparison of the CDL skills test results of applicants who are issued CDLs with the CDL scoring sheets that are maintained in the third party testers' files. For third party testers and examiners who were granted the training and skills testing exception under section 383.75(a)(7), the record checks must be performed at least once every year;

(b) At least once every two years, conduct covert and overt monitoring of examinations performed by State and third party CDL skills test examiners. For third party testers and examiners who were granted the training and skills testing exception under §383.75(a)(7), the covert and overt monitoring must be performed at least once every year;

(c) Establish and maintain a database to track pass/fail rates of applicants tested by each State and third party CDL skills test examiner, in order to focus covert and overt monitoring on examiners who have unusually high pass or failure rates;

(d) Establish and maintain a database of all third party testers and examiners, which at a minimum tracks the dates and results of audits and monitoring actions by the State, the dates third party testers were certified by the State, and name and identification number of each third party CDL skills test examiner;

(e) Establish and maintain a database of all State CDL skills examiners, which at a minimum tracks the dates and results of monitoring action by the State, and the name and identification number of each State CDL skills examiner; and

(f) Establish and maintain a database that tracks skills tests administered by each State and third party CDL skills test examiner's name and identification number.

76 Fed. Reg. 26896, May 9, 2011

§384.230 [Reserved]

§384.231 Satisfaction of State disqualification requirement.

(a) Applicability. The provisions of §§384.203, 384.206(b), 384.210, 384.213, 384.215 through 384.219, 384.221 through 384.224, and 384.231 of this part apply to the State of licensure of the person affected by the provision. The provisions of §384.210 of this part also apply to any State to which a person makes application for a transfer CDL.

(b) Required action—(1) CLP or CDL holders. A State must satisfy the requirement of this subpart that the State disqualify a person who holds a CLP or a CDL by, at a minimum, disqualifying the person's CLP or CDL for the applicable period of disqualification.

(2) A person required to have a CLP or CDL. A State must satisfy the requirement of this subpart that the State disqualify a person required to have a CLP or CDL who is convicted of an offense or offenses necessitating disqualification under §383.51 of this subchapter. At a minimum, the State must implement the limitation on licensing provisions of §384.210 and the timing and recordkeeping requirements of paragraphs (c) and (d) of this section so as to prevent such a person from legally obtaining a CLP or CDL from any State during the applicable disqualification period(s) specified in this subpart.

(c) Required timing. The State must disqualify a driver as expeditiously as possible.

(d) Recordkeeping requirements. The State must conform to the requirements of the CDLIS State Procedures Manual (incorporated by reference in §384.107(b).) These requirements include the maintenance of such driver records and driver identification data on the CDLIS as the FMCSA finds are necessary to the implementation and enforcement of the disqualifications called for in §§384.215 through 384.219, and 384.221 through 384.224 of this part.

67 Fed. Reg. 49762, July 31, 2002, as amended at 73 Fed. Reg. 73126, Dec. 1, 2008; 76 Fed. Reg. 26896, May 9, 2011

§384.232 Required timing of record checks.

The State shall perform the record checks prescribed in §§384.205, 384.206, and 384.220, no earlier than 10 days prior to issuance for licenses issued before October 1, 1995. For licenses issued after September 30, 1995, the State shall perform the record checks no earlier than 24 hours prior to issuance if the license is issued to a driver who does not currently possess a valid CDL from the same State and no earlier than 10 days prior to issuance for all other drivers.

§384.233 Background records checks.

(a) The State shall comply with Transportation Security Administration requirements concerning background records checks for drivers seeking to obtain, renew, transfer or upgrade a hazardous materials endorsement in 49 CFed. Reg. Part 1572, to the extent those provisions impose requirements on the State.

(b) The State shall comply with each requirement of 49 CFR 383.141.

68 Fed. Reg. 23850, May 5, 2003

§384.234 Driver medical certification recordkeeping.

The State must meet the medical certification recordkeeping requirements of §§383.73(a)(5) and (j) of this chapter.

73 Fed. Reg. 73126, Dec. 1, 2008

Subpart C—Procedures for Determining State Compliance

§384.301 Substantial compliance-general requirements.

(a) To be in substantial compliance with 49 U.S.C. 31311(a), a State must meet each and every standard of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices.

(b)(1) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of September 30, 2002 as soon as practical, but, unless otherwise specifically provided in this part, not later than September 30, 2005.

(2) Exception. A State must come into substantial compliance with 49 CFR 383.123 not later than September 30, 2006.

(c) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of September 4, 2007 as soon as practical but, unless otherwise specifically provided in this part, not later than September 4, 2010.

(d) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of January 30, 2009, as soon as practical, but not later than January 30, 2012.

(e) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of October 27, 2010 as soon as practical, but not later than October 28, 2013.

(f) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of July 8, 2011, as soon as practical but, unless otherwise specifically provided in this part, not later than July 8, 2014.

67 Fed. Reg. 49763, July 31, 2002, as amended at 70 Fed. Reg. 56593, Sept. 28, 2005; 72 Fed. Reg. 36788, July 5, 2007; 73 Fed. Reg. 73126, Dec. 1, 2008; 75 Fed. Reg. 59135, Sept. 27, 2010; 76 Fed. Reg. 26896, May 9, 2011; 76 Fed. Reg. 39018, July 5, 2011

§384.303 [Reserved]

§384.305 State certifications for Federal fiscal years after FY 1994.

(a) Certification requirement. Prior to January 1 of each Federal fiscal year after FY 1994, each State shall review its compliance with this part and certify to the Federal Motor Carrier Safety Administrator as prescribed in paragraph (b) of this section. The certification shall be submitted as a signed original and four copies to the State Director or Officer-in-Charge, Federal Motor Carrier Safety Administration, located in that State.

(b) Certification content. The certification shall consist of a statement signed by the Governor of the State, or by an official designated by the Governor, and reading as follows: “I (name of certifying official), (position title), of the State (Commonwealth) of ___, do hereby certify that the State (Commonwealth) has continuously been in substantial compliance with all requirements of 49 U.S.C. 31311(a), as defined in 49 CFR 384.301, since [the first day of the current Federal fiscal year], and contemplates no changes in statutes, regulations, or administrative procedures, or in the enforcement thereof, which would affect such substantial compliance through [the last date of the current Federal fiscal year].”

59 Fed. Reg. 26039, May 18, 1994, as amended at 62 Fed. Reg. 37152, July 11, 1997

§384.307 FMCSA program reviews of State compliance.

(a) FMCSA Program Reviews. Each State's CDL program will be subject to review to determine whether or not the State meets the general requirement for substantial compliance in §384.301. The State must cooperate with the review and provide any information requested by the FMCSA.

(b) Preliminary FMCSA determination and State response. If, after review, a preliminary determination is made either that the State has not submitted the required annual self-certification or that the State does not meet one or more of the minimum standards for substantial compliance under subpart B of this part, the State will be informed accordingly.

(c) Reply. The State will have up to 30 calendar days to respond to the preliminary determination. The State's reply must explain what corrective action it either has implemented or intends to implement to correct the deficiencies cited in the notice or, alternatively, why the FMCSA preliminary determination is incorrect. The State must provide documentation of corrective action as required by the agency. Corrective action must be adequate to correct the deficiencies noted in the program review and be implemented on a schedule mutually agreed

upon by the agency and the State. Upon request by the State, an informal conference will be provided during this time.

(d) Final FMCSA determination. If, after reviewing a timely response by the State to the preliminary determination, a final determination is made that the State is not in compliance with the affected standard, the State will be notified of the final determination. In making its final determination, the FMCSA will take into consideration the corrective action either implemented or planned to be implemented in accordance with the mutually agreed upon schedule.

(e) State's right to judicial review. Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

67 Fed. Reg. 49763, July 31, 2002

§384.309 Results of compliance determination.

(a) A State shall be determined not substantially in compliance with 49 U.S.C. 31311(a) for any fiscal year in which it:

(1) Fails to submit the certification as prescribed in this subpart; or

(2) Does not meet one or more of the standards of subpart B of this part, as established in a final determination by the FMCSA under §384.307(c).

(b) A State shall be in substantial compliance with 49 U.S.C. 31311(a) for any fiscal year in which neither of the eventualities in paragraph (a) of this section occurs.

62 Fed. Reg. 37152, July 11, 1997

Subpart D—Consequences of State Noncompliance

§384.401 Withholding of funds based on noncompliance.

(a) Following the first year of noncompliance. An amount up to 5 percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State on the first day of the fiscal year following such State's first year of noncompliance under this part.

(b) Following second and subsequent year(s) of noncompliance. An amount up to 10 percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State on the first day of the fiscal year following such State's second or subsequent year(s) of noncompliance under this part.

72 Fed. Reg. 36788, July 5, 2007

§384.403 Availability of funds withheld for noncompliance.

(a) Federal-aid highway funds withheld from a State under §384.401(a)(1) or (b)(1) shall not thereafter be available for apportionment to the State.

(b) MCSAP funds withheld from a State under §384.401(a)(2) or (b)(2) remain available until June 30 of the fiscal year in which they were withheld. If before June 30 the State submits a document signed by the Governor or his or her delegate certifying, and the FMCSA determines, that the State is now in substantial compliance with the standards of subpart B of this part, the withheld funds shall be restored to the State. After June 30, unrestored funds shall lapse and be allocated in accordance with §350.313 of this subchapter to all States currently in substantial compliance with subpart B of this part.

67 Fed. Reg. 49763, July 31, 2002

§384.405 Decertification of State CDL program.

(a) Prohibition on CLP or CDL transactions. The Administrator may prohibit a State found to be in substantial noncompliance from performing any of the following CLP or CDL transactions:

(1) Initial issuance.
(2) Renewal.
(3) Transfer.
(4) Upgrade.

(b) Conditions considered in making decertification determination. The Administrator will consider, but is not limited to, the following five conditions in determining whether the CDL program of a State in substantial noncompliance should be decertified:

(1) The State computer system does not check the Commercial Driver's License Information System (CDLIS) and/or National Driver Registry Problem Driver Pointer System (PDPS) as required by §383.73 of this subchapter when issuing, renewing, transferring, or upgrading a CLP or CDL.

(2) The State does not disqualify drivers convicted of disqualifying offenses in commercial motor vehicles.

(3) The State does not transmit convictions for out-of-State drivers to the State where the driver is licensed.

(4) The State does not properly administer knowledge and/or skills tests to CLP or CDL applicants or drivers.

(5) The State fails to submit a corrective action plan for a substantial compliance deficiency or fails to implement a corrective action plan within the agreed time frame.

(c) Standard for considering deficiencies. The deficiencies described in paragraph (b) of this section must affect a substantial number of either CLP and CDL applicants or drivers.

(d) Decertification: Preliminary determination. If the Administrator finds that a State is in substantial noncompliance with subpart B of this part, as indicated by the factors specified in paragraph (b) of this section, among other things, the FMCSA will inform the State that it has made a preliminary determination of noncompliance and that the State's CDL program may therefore be decertified. Any response from the State, including factual or legal arguments or a plan to correct the noncompliance, must be submitted within 30 calendar days after receipt of the preliminary determination.

(e) Decertification: Final determination. If, after considering all material submitted by the State in response to the FMCSA preliminary determination, the Administrator decides that substantial noncompliance exists, which warrants decertification of the CDL program, he/she will issue a decertification order prohibiting the State from issuing CLPs and CDLs until such time as the Administrator determines that the condition(s) causing the decertification has (have) been corrected.

(f) Recertification of a State. The Governor of the decertified State or his/her designated representative must submit a certification and documentation that the condition causing the decertification has been corrected. If the FMCSA determines that the condition causing the decertification has been satisfactorily corrected, the Administrator will issue a recertification order, including any conditions that must be met in order to begin issuing CLPs and CDLs in the State.

(g) State's right to judicial review. Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

(h) Validity of previously issued CLPs or CDLs. A CLP or CDL issued by a State prior to the date the State is prohibited from issuing CLPs or CDLs in accordance with provisions of paragraph (a) of this section, will remain valid until its stated expiration date.

76 Fed. Reg. 26896, May 9, 2011

§384.407 Emergency CDL grants.

The FMCSA may provide grants of up to $1,000,000 per State from funds made available under 49 U.S.C. 31107(a), to assist States whose CDL programs may fail to meet the compliance requirements of subpart B of this part, but which are determined by the FMCSA to be making a good faith effort to comply with these requirements.

67 Fed. Reg. 49764, July 31, 2002

WHISTLEBLOWER PROTECTION

I. WHISTLEBLOWER PROTECTIONS:

A bus company may not discharge, demote, suspend, reprimand, or in any other way discriminate, in whole or in part, against an employee for the following:

(1) for assisting in an any investigation relating to a violation of federal law, rule, or regulation relating to bus safety or security, gross fraud, waste, or abuse of Federal grants or other public funds to be used for rail safety or security. This includes protection for providing such information to a supervisor or such other person who has the authority to investigate, discover, or terminate the misconduct;

(2) to refuse to violate or assist in the violation of a bus safety or security requirement;

(3) file a complaint related to a violation of bus safety or security law or regulation, or testify in such a proceeding;

(4) notifying the bus company or Secretary of a work-related personal illness or injury;

(5) refuse to operate a bus in violation of a safety law or regulation;

(6) refuse to operate a bus where there is a reasonable concern of serious injury;

(7) accurately recording on duty time time records;

(8) cooperating with a safety or security investigation by the Sec. of Transportation, Secretary of Homeland Security, or the National Transportation Safety Board;

(9) furnishing information to the NTSB or any other public official relating to an accident or incident resulting in an injury or death or damage to property. Such protections also apply to reporting a hazardous condition, refusing to work when confronted by a hazardous condition, or refusing to authorize the use of defective hazardous equipment.

II. PROCEDURES FOR SEEKING RELIEF:

Within 180 days after an alleged violation occurs, a complaint must be filed with the Secretary of Labor. An OSHA investigator will review the complaint and interview witnesses. He/she will make a recommendation. If either side is not satisfied with the recommendation, an appeal may be taken to an Administrative Law Judge.

Such appeal must be filed within 30 days. A further appeal may be taken to the Administrative Review Board. If the Secretary of Labor has not issued a decision in 210 days, the employee may file a lawsuit in a U.S. district court, and seek a jury trial. It shall be a full review of the facts. There is no specific statute of limitations in the whistleblower law. However, a catch-all federal law applies. 28 U.S.C 1658(a) states:

"Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of enactment [Dec. 1, 1990] of this section may not be commenced later than 4 years after the cause of action accrues."

Also, any final decision by the Secretary of Labor may be appealed by filing an appeal in the U.S. court of appeals for the circuit in which the violation occurred or the circuit in which the employee resided on the date of such violation. The petition for review must be filed within 60 days of the final order.

Burden of Proof:

The employee need only show that his protected activity was a 'contributing factor' in the retaliatory discharge or discrimination, not the sole or even predominant cause. In other words, a contributing factor is any factor, which tends to affect in any way the outcome of the decision. This means that an employee does not have to prove his protected conduct was a significant, motivating, substantial, or predominant factor in an adverse personnel action. In other words, if the protected activity played any part at all, even to the slightest degree, then it is a "contributing factor."

The company's burden of proof is much higher than an employee's. Once the employee proves his initial case as mentioned above, the burden shifts to the company to demonstrate by clear and convincing evidence the company would have taken the same unfavorable personnel action in the absence of the protected activity.

No Need to Prove Retaliatory Motive

An employee need not demonstrate the existence of a retaliatory motive on the part of the supervisory employee taking the alleged prohibited personnel action in order to establish that his disclosure was a contributing factor to the adverse personnel action."

On December 5, 2013, OSHA announced that, in addition to paper filing, employees will be able to file complaints online.

Meaning of Disparate Treatment

Even if an injured employee violates a Rule, the bus company nevertheless violates the whistleblower law if it disciplines that injured employee after ignoring other employees who followed the same practice. The key is whether the bus company treats one employee differently from another.

III. REMEDIES:

Remedies shall include reinstatement with the same seniority, back pay with interest, and including compensation for special damages(such as, retirement rights, insurance, and emotional distress) and, court costs, expert witness fees, and reasonable attorneys' fees. In addition, relief may include punitive damages not to exceed $250,000.

Nothing herein preempts or diminishes any other rights against harassment, etc., provided by either Federal or State law, nor diminishes any rights under collective bargaining agreements.

If the whistleblower case is proven, the OSHA has the power to order reinstatement.

No agency may disclose the name of an employee who has provided information about an alleged violation of this section.

IV. SOME EXAMPLES OF HARASSMENT AND INTIMIDATION

1. Supervisors discouraging employees from filing accident reports;

2. Targeting employees for increased monitoring and testing.(The close supervisor scrutiny includes more frequent safety assessments; alcohol/ drug testing);

3. Supervisors attempting to influence medical care;

4. Light duty programs where injured employees come to work, but sit and do nothing. (This allows the company to minimize reporting of lost work days);

5. Availability policies where employee must work a certain number of days a year or is no longer a full time employee;

6. Supervisor compensation based in part on the number of reported injuries;

7. Employees being assigned "points" for safety incidents, injuries regardless of cause.

I. WHISTLEBLOWER PROTECTIONS:

A bus company may not discharge, demote, suspend, reprimand, or in any other way discriminate, in whole or in part, against an employee for the following:

(1) for assisting in an any investigation relating to a violation of federal law, rule, or regulation relating to bus safety or security, gross fraud, waste, or abuse of Federal grants or other public funds to be used for rail safety or security. This includes protection for providing such information to a supervisor or such other person who has the authority to investigate, discover, or terminate the misconduct;

(2) to refuse to violate or assist in the violation of a bus safety or security requirement;

(3) file a complaint related to a violation of bus safety or security law or regulation, or testify in such a proceeding;

(4) notifying the bus company or Secretary of a work-related personal illness or injury;

(5) refuse to operate a bus in violation of a safety law or regulation;

(6) refuse to operate a bus where there is a reasonable concern of serious injury;

(7) accurately recording on duty time time records;

(8) cooperating with a safety or security investigation by the Sec. of Transportation, Secretary of Homeland Security, or the National Transportation Safety Board;

(9) furnishing information to the NTSB or any other public official relating to an accident or incident resulting in an injury or death or damage to property. Such protections also apply to reporting a hazardous condition, refusing to work when confronted by a hazardous condition, or refusing to authorize the use of defective hazardous equipment.

II. PROCEDURES FOR SEEKING RELIEF:

Within 180 days after an alleged violation occurs, a complaint must be filed with the Secretary of Labor. An OSHA investigator will review the complaint and interview witnesses. He/she will make a recommendation. If either side is not satisfied with the recommendation, an appeal may be taken to an Administrative Law Judge.

Such appeal must be filed within 30 days. A further appeal may be taken to the Administrative Review Board. If the Secretary of Labor has not issued a decision in 210 days, the employee may file a lawsuit in a U.S. district court, and seek a jury trial. It shall be a full review of the facts. There is no specific statute of limitations in the whistleblower law. However, a catch-all federal law applies. 28 U.S.C 1658(a) states:

“Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of enactment[Dec. 1, 1990] of this section may not be commenced later than 4 years after the cause of action accrues.”

Also, any final decision by the Secretary of Labor may be appealed by filing anappeal in the U.S. court of appeals for the circuit in which the violation occurred or the circuit in which the employee resided on the date of such violation. The petition for review must be filed within 60 days of the final order.

Burden of Proof:

The employee need only show that his protected activity was a 'contributing factor' in the retaliatory discharge or discrimination, not the sole or even predominant cause. In other words, a contributing factor is any factor, which tends to affect in any way the outcome of the decision. This means that an employee does not have to prove his protected conduct was a significant, motivating, substantial, or predominant factor in an adverse personnel action. In

other words, if the protected activity played any part at all, even to the slightest degree, then it is a "contributing factor."

The company's burden of proof is much higher than an employee's. Once the employee proves his initial case as mentioned above, the burden shifts to the company to demonstrate by clear and convincing evidence the company would have taken the same unfavorable personnel action in the absence of the protected activity.

No Need to Prove Retaliatory Motive

An employee need not demonstrate the existence of a retaliatory motive on the part of the supervisory employee taking the alleged prohibited personnel action in order to establish that his disclosure was a contributing factor to the adverse personnel action."

On December 5, 2013, OSHA announced that, in addition to paper filing, employees will be able to file complaints online.

Meaning of Disparate Treatment

Even if an injured employee violates a Rule, the bus company nevertheless violates the whistleblower law if it disciplines that injured employee after ignoring other employees who followed the same practice. The key is whether the bus company treats one employee differently from another.

III. REMEDIES:

Remedies shall include reinstatement with the same seniority, back pay with interest, and including compensation for special damages(such as, retirement rights, insurance, and emotional distress) and, court costs, expert witness fees, and reasonable attorneys' fees. In addition, relief may include punitive damages not to exceed $250,000.

Nothing herein preempts or diminishes any other rights against harassment, etc., provided by either Federal or State law, nor diminishes any rights under collective bargaining agreements.

If the whistleblower case is proven, the OSHA has the power to order reinstatement.

No agency may disclose the name of an employee who has provided information about an alleged violation of this section.

IV. SOME EXAMPLES OF HARASSMENT AND INTIMIDATION

1. Supervisors discouraging employees from filing accident reports;
2. Targeting employees for increased monitoring and testing.(The close supervisor scrutiny includes more frequent safety assessments; alcohol/ drug testing);
3. Supervisors attempting to influence medical care;
4. Light duty programs where injured employees come to work, but sit and do nothing. (This allows the company to minimize reporting of lost work days);
5. Availability policies where employee must work a certain number of days a year or is no longer a full time employee;
6. Supervisor compensation based in part on the number of reported injuries;
7. Employees being assigned "points" for safety incidents, injuries regardless of cause.

AMERICANS WITH DISABILITIES ACT

What is Prohibited

Employers cannot discriminate against persons with disabilities in regard to any employment practice, or any terms and conditions of employment, including job recruitment and advertising, hiring, promotion, transfer, layoff, termination, rehiring, rate of pay, job assignments, leaves of

absence, fringe benefits, training and social activities. 29 CFR §1630.4.

What is Protected

The ADA prohibits discrimination against "qualified individuals with disabilities." §1630.4. A "qualified individual with a disability" is "an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individuals holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position." 29 CFR §1630.2 (m).

What Does "Disability" Mean under the ADA?

The term "disability" means, with respect to an individual-

(A) a physical impairment that substantially limits one or more of the major life activities of such individual;
(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

Either one of these three prerequisites will trigger the statute.

What is a Physical Impairment That Substantially Limits a Major Life Activity?

1.What is a Physical Impairment?

Physical impairment is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of several body systems, or any mental or psychological disorder. 29 CFR §1630.2.

The disorder or condition must relate to a diagnosable physical or mental impairment. Attempts to alleviate the disorder through medical means do not remove a person's disabled standing, such as a person with a hearing problem who alleviates the problem with a hearing aid. 29 CFR Part 1630, Appendix, §1630.2 (h). However, having a physical impairment alone does not trigger the statute, since the impairment must substantially limit a major life activity.

2.What constitutes a substantial limit on major life activities?

After the determination is made that there is a physical or mental impairment, the next test becomes whether the impairment substantially limits a major life activity. *See,* 42 U. S. C. §12102 (2) (a). Major life activities are fundamental actions which the average person in the general population
can perform with little or no difficulty. These activities include caring for
one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, sitting, standing, lifting, reaching, and working. 29 CFR §1630.2(i). When one of these

activities is "substantially limited" by an impairment, the statute is triggered.

What Amounts to Discrimination Under the ADA?

Once the determination is made that an individual has a protected disability, as a general rule, "[n]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. §12112(a).
Generally, the determination becomes whether the individual meets the requirements for the job, like adequate training, licenses, and skills. If the disabled individual is qualified, the employer must make a "reasonable accommodation" for the physical impairment so the individual can perform the essential job functions.

What is a Reasonable Accommodation?

If the employee is found to be qualified, but cannot perform an essential function of the job, the ADA still requires the employer to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity." 42 U.S.C. §12112 (b) (5) (A). Moreover, the employer cannot deny "employment opportunities to a job applicant or
employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant" 42 U.S.C. §12112 (b) (5) (B).

The term "reasonable accommodation" includes reassignment to a vacant position. 42 U.S.C. §12111 (a). However, an employer is not required to reassign a disabled employee where the change involves a promotion or bumping another employee out of a position to create a vacancy for the individual with the disability. *See,* 49 CFR, Part 1630, Appendix, §1630.2 (o). *Eckles v. Conrail, et. al.*, 94 F.3d 1041 (7th Cir. 1996), cert. denied March 24, 1997.

42 U.S.C. §12101
29 CFR Part l630

FAMILY MEDICAL LEAVE ACT

Employers covered:

Railroads are covered by FMLA if they employ 50 or more employees for 20 or more workweeks in a current or preceding calendar year.

Employee Eligibility:

Must have been employed for at least 12 months, and the 12 months does not have to be consecutive, and may be over a 7 year period.

The employee must work where the railroad employs at least 50 employees within a 75mile radius, and have worked there for at least 1,250 hours during the 12 month period immediately preceding the date the leave starts.

Note: Vacation, holiday and sick time does not count towards the 1,250 hours.

The employee must provide the railroad 30 day advance notice of the leave when practicable. If foreseeable less than 30 days, notice should be given the same day or next business day. If not foreseeable, must give notice as soon as practicable.

Basic Entitlements:

Requires employers to provide unpaid, job protected leave to employees for the following reasons:
-Incapacity due to pregnancy, prenatal medical care or child birth;
-Care for the employee's child after birth, or placement for adoption or foster care;
-Care for the employee's spouse, son or daughter, or parent, who has a **serious health condition**; or
-For a serious health condition that makes the employee unable to perform the employee's job.
Note: A "serious health condition" is defined in the FMLA as an illness, injury, impairment , or physical or mental conditions that involve either:
-An overnight stay in the hospital;
-Incapacity lasting more than 3 consecutive days requiring continuous medical treatment;
-Chronic conditions that require periodic treatments at least 2 per year by a health care provider;
-Pregnancy causing incapacity;
-Long term or permanent capacity; or
-Absences due to multiple treatments that left untreated would result in incapacity lasting more than 3 consecutive days.

Basic Rights:

-Up to 12 weeks of unpaid leave.
-Cannot force the employee to use vacation time.
-The employer must continue to pay for group health plan benefits.
-Upon recovery, the employee must be returned to his/her original job or equivalents.
-Employer cannot deny advancement or discriminate against an employee because of FMLA absences.
Employer cannot count FMLA time under an attendance control policy.

FMLA Leave Year:

The employer must choose one of 4 methods to define the 12 month period during which an employee may take the 12 weeks of leave:
-The calendar year;
-Another fixed 12 month period;
-The 12 month period counted forward from the date the employee first uses FMLA leave; or,
-A rolling 12 month period counted backward from each date an employee uses FMLA leave.
Note: The employer must apply the chosen leave year method to its entire workforce.

Greater Family or Medical Leave Rights

An employer must observe any employment benefit program that provides greater family or medical leave rights than those required by the FMLA, and any rights established by the FMLA cannot be diminished.

29 CFR Part 825
29 U.S.C.§2601-2654

NATIONAL TRANSPORTATION SAFETY BOARD

The National Transportation Safety Board ("NTSB") consists of 5 members (each one serving 5 years) has the authority to investigate all train accidents resulting in serious injury to any person or in damage to property of the railroad. It is an independent federal agency.

Any investigation of an accident by the Board shall have priority over all other investigations of such accident. If any accident is investigated by a federal agency or a state commission, the NTSB may, if convenient, make an investigation the same time.

The operator of a railroad shall notify the Board by telephoning the National Response Center by telephone 800-424-0201 at the earliest practicable time after the occurrence of any one of the following railroad accidents:

(a) No later than 2 hours after an accident which results in:

(1) A passenger or employee fatality or serious injury to 2 or more crew members or passengers requiring admission to a hospital;

(2) The evacuation of a passenger train;

(3) Damage to a tank car or container resulting in release of hazardous materials or involving evacuation of the general public; or

(4) A fatality at a grade crossing.

(b) No later than 4 hours after an accident which does not involve any of the circumstances enumerated in paragraph (a) of this section but which results in:

(1) Damage (based on a preliminary gross estimate) of $150,000 or more for repairs, or the current replacement cost to railroad and non-railroad property; or

(2) Damage of $25,000 or more to a passenger train and railroad and non-railroad property.

(c) Accidents involving joint operations must be reported by the railroad that controls the track and directs the movement of trains where the accident has occurred.

(d) Where an accident for which notification is required by paragraph (a) or (b) of this

section occurs in a remote area, the time limits set forth in that paragraph shall commence from the time the first railroad employee who was not at the accident site at the time of its occurrence has received notice thereof.

NTSB employees may only testify as to the factual information they obtained during the course of an investigation, including factual evaluations embodied in their factual accident reports. However, they shall decline to testify regarding matters beyond the scope of their investigation, and they shall not give any expert or opinion testimony.

Public access to information.

Copies of any communication, document, investigation, or other report or information in the NTSB's possession shall be made available to the public, except for certain trade secrets.

Use of reports.

(a) No part of any Board report relating to an accident investigation shall be admitted as evidence or used in any lawsuit.

(b) An NTSB employee may use a copy of his factual accident report as a testimonial aid, and may refer to that report during his testimony or use it to refresh his memory.

(c) An NTSB employee may not use the Board's accident report for any purpose during his testimony.

Manner in which testimony is given.

(a) Testimony of NTSB employees may be made available for use in actions or suits for damages arising out of accidents through depositions or written interrogatories. NTSB employees are not permitted to appear and testify in court in such actions.

(b) Normally, depositions will be taken and interrogatories answered at the NTSB's office to which the employee is assigned, and at a time arranged with the employee reasonably fixed to avoid substantial interference with the performance of his duties.

(c) NTSB employees are authorized to testify only once in connection with any investigation they have made of an accident. Consequently, when more than one lawsuit arises as a result of an accident, it shall be the duty of counsel seeking the employee's deposition to ascertain the identity of all parties to the multiple lawsuits and their counsel, and to advise them of the fact that a deposition has been granted, so that all interested parties may be afforded the opportunity to participate therein.

(d) Upon completion of the deposition of an NTSB employee, a copy of the transcript of the testimony will be furnished, at the expense of the party requesting the deposition, to the NTSB's Counsel.

Request for testimony.

(a) A request for testimony of an NTSB employee relating to an accident by deposition or interrogatories shall be addressed to the General Counsel, who may approve or deny the request. Such request shall set forth the title of the case, the court, the type of accident (aviation, railroad, etc.), the date and place of the accident, the reasons for desiring the testimony, and a showing that the information desired is not reasonably available from other sources.

(b) The General Counsel shall attach to his approval such reasonable conditions as he may deem appropriate in order that the testimony will be limited to the matters delineated in these rules, will not interfere with the performance of the duties of the employees, and will otherwise conform to the policies of this part.

(c) A subpoena shall not be served upon an NTSB employee in connection with the taking of his deposition.

Testimony of former NTSB employees.

It is not necessary to request NTSB approval for testimony of a former NTSB employee. However, the scope of testimony of former NTSB employees is limited to the matters delineated in these rules, and use of reports as prescribed in these rules.

Procedure in the event of a subpoena.

(a) If an NTSB employee has received a subpoena to appear and testify, a request for his deposition shall not be approved until the subpoena has been withdrawn.

(b) Upon receipt of a subpoena, the employee shall immediately notify the General Counsel and provide the data identifying the accident; the title of the case, the name of the judge, if available, and the title and address of the court; the type of accident (aviation, railroad, etc.); the date on which the employee is directed to appear; the name, address, and telephone number, if available, of the attorney representing the party who caused the issuance of the subpoena; the scope of the testimony, if known; and a statement as to whether a prior deposition on the same accident has been given.

(c) The General Counsel shall determine the course of action to be taken and will so advise the employee.

Testimony in State or local investigations.

NTSB employees may testify at a coroner's inquest, grand jury, or criminal proceeding conducted by a State or local government. Testimony shall be limited to the matters delineated in these rules.

Response to NTSB recommendations.

Whenever the Board submits a recommendation regarding transportation safety to the Secretary of the DOT, the Secretary shall respond within 90 days. The Secretary shall adopt the recommendations or set forth in detail the reasons for such refusal.

The Board shall publish in the Federal Register each recommendation and the response by the Secretary.

49 U.S.C. §§1901-1907; 49 CFR Part 84

INTERSTATE MOTORCOACH SAFETY REQUIREMENTS

This applies to interstate motorcoach companies and their drivers. There are requirements for operating authority registration, and driver qualifications plus hours of service limitations.

Interstate motorcoach companies are required to obtain both USDOT registration and operating authority registration from the Federal Motor Carrier Safety Administration (FMCSA) before transporting passengers for compensation **in interstate** commerce.

There are some statutory exemptions to the operating authority registration requirement.

For example, carriers operating wholly within a commercial zone or within a 25-mile radius of an airport may not be required to obtain operating authority registration. These carriers, however, are still subject to FMCSA's safety jurisdiction and the USDOT registration requirement, in most cases.

- Interstate commerce generally occurs when a passenger is transported across a State boundary.
- In order to obtain operating authority registration, a motorcoach company must demonstrate that its operations meet FMCSA's safety fitness standard and that the company is willing and able to comply with all applicable statutes and regulations, including regulatory insurance requirements.
- To obtain and retain operating authority registration, motorcoach companies must maintain and file evidence of $5 million in insurance coverage.

An interstate motorcoach driver must meet the following qualification requirements and responsibilities:

- Be at least 21 years of age;
- Speak and read English well enough to converse with the general public, understand

highway traffic signals, respond to official questions, and be able to make legible entries on reports and records;
- By experience, training, or both, be able to drive the motorcoach vehicle safely;
- Possess a valid medical examiner's certificate;
- Have only one valid commercial driver's license (CDL) and this CDL must have a passenger endorsement;
- Provide his/her employer with a list of all motor vehicle violations or a signed statement that driver has not been convicted of any motor vehicle violations during the past 12 months;
- Not be disqualified from operating a motorcoach.

Interstate motorcoach drivers are subject to driving limitations that are established by Federal regulations.

No interstate motorcoach driver can drive:

- More than 10 hours following 8 consecutive hours off duty.
- For any period after having been on duty 15 hours following 8 consecutive hours off duty.

No interstate motorcoach driver can drive for any period after such driver has been on duty:

- 60 hours in any 7 consecutive days if the driver's employer does not operate every day of the week; or
- 70 hours in any 8 consecutive days if the driver's employer operates every day of the week.

If a motorcoach driver works more than one job of any kind, that time must also be included as on-duty time.

A motorcoach company is subject to the Americans with Disabilities Act (ADA) implementing regulations.

A motorcoach company that provides charter or tour service must provide accessible motorcoach service to passengers with disabilities when provided with 48-hour advance notice of the need for accessible service. With 48-hour notice, a charter or tour operator must provide accessible service to include a motorcoach equipped with a wheelchair lift when required for passengers who are unable to board the motorcoach without the use of a wheelchair. The motorcoach must also be equipped with a specified location and equipment for securing the wheelchair.

It is considered discrimination for a motorcoach company to:

- Deny transportation to an individual with disabilities except when such individual engages in violent, seriously disruptive, or illegal conduct. Service may not be

denied, however, if the individual's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees or other people.

- Use or request the use of persons other than the motorcoach company's employees (e.g., family members or traveling companions of a passenger with a disability, medical or public safety personnel) for routine boarding or other assistance to passengers with disabilities, unless the passenger requests or consents to assistance from such persons;
- Require or request a passenger with a disability to reschedule his or her trip, or travel at a time other than the time the passenger has requested, in order to receive transportation; or
- Fail to provide reservation services to passengers with disabilities equivalent to those provided other passengers.

The Federal Motor Carrier Safety Administration (FMCSA) urges consumers and whistleblowers to report any unsafe or violating motorcoach company, vehicle, or driver to the Agency through its National Consumer Complaint Database (NCCDB).

- Complaints can be submitted by calling a toll free hotline 1-888-DOT-SAFT (1-888-368-7238) or using the NCCDB Web site at http://nccdb.fmcsa.dot.gov.
- The NCCDB Web site provides a user-friendly interface for consumers to file complaints on unsafe motorcoach companies and drivers.

Interstate motorcoach operations are regulated by the FMCSA. As the Federal agency responsible for safety oversight of commercial motor vehicle operations, FMCSA and our law enforcement partners enforce and administer applicable Federal laws and regulations. Motorcoach companies and their drivers and vehicles are subject to inspection by Federal, State, and local authorities. A violation of a law or regulation could result in a fine, a penalty, or the driver, vehicle or entire motor carrier operation being ordered out-of-service.

The various specific motorcoach regulations are located at 49 CFR parts 40, 382, 383, 387, 390-396, 655.

MINIMUM FINANCIAL RESPONSIBILITY For TRANSPORTING PASSENGERS

(a) **General Requirement.—**

(1) **Transportation of passengers for compensation.—** The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers for compensation by motor vehicle in the United States between a place in a State and—

(A) a place in another State;

(B) another place in the same State through a place outside of that State; or

(C) a place outside the United States.

(2) **Transportation of passengers not for compensation.—** The Secretary may prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers for commercial purposes, but not for compensation, by motor vehicle in the United States between a place in a State and—

(A) a place in another State;

(B) another place in the same State through a place outside of that State; or

(C) a place outside the United States.

(b) **Minimum Amounts.—** The level of financial responsibility established under subsection (a) of this section for a motor vehicle with a seating capacity of—

(1) at least 16 passengers shall be at least $5,000,000; and

(2) not more than 15 passengers shall be at least $1,500,000.

(c) **Evidence of Financial Responsibility.—**

(1) Subject to paragraph (2) of this subsection, financial responsibility may be established by evidence of one or a combination of the following if acceptable to the Secretary of Transportation:

(A) insurance, including high self-retention.

(B) a guarantee.

(C) a surety bond issued by a bonding company authorized to do business in the United States.

(2) A person domiciled in a country contiguous to the United States and providing transportation to which a minimum level of financial responsibility under this section applies shall have evidence of financial responsibility in the motor vehicle when the person is providing the transportation. If evidence of financial responsibility is not in the vehicle, the Secretary of Transportation and the Secretary of the Treasury shall deny entry of the vehicle into the United States.

(3) A motor carrier may obtain the required amount of financial responsibility from more than one source provided the cumulative amount is equal to the minimum requirements of this section.

(4) **Other persons.—** The Secretary may require a person, other than a motor carrier (as defined in section 13102), transporting passengers by motor vehicle to file with the Secretary the evidence of financial responsibility specified in subsection (c)(1) in an amount not less than the greater of the amount required by subsection (b)(1) or the amount required for such person to transport passengers under the laws of the State or States in which the person is operating; except that the amount of the financial responsibility must be sufficient to pay not more than the amount of the financial responsibility for each final judgment against the person for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of the motor vehicle, or for loss or damage to property, or both.

(d) **Civil Penalty.—**

(1) If, after notice and an opportunity for a hearing, the Secretary of Transportation finds that a person (except an employee acting without knowledge) has knowingly violated this section or a regulation prescribed under this section, the person is liable to the United States Government for a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation shall impose the penalty by written notice. In determining the amount of the penalty, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(3) The Secretary of Transportation may compromise the penalty before referring the matter to the Attorney General for collection.

(4) The Attorney General shall bring a civil action in an appropriate district court of the United States to collect a penalty referred to the Attorney General for collection under this subsection.

(5) The amount of the penalty may be deducted from amounts the Government owes the person. An amount collected under this section shall be deposited in the Highway Trust Fund (other than the Mass Transit Account).

(e) **Nonapplication.—** This section does not apply to a motor vehicle—

(1) transporting only school children and teachers to or from school;

(2) providing taxicab service (as defined in section 13102);

(3) carrying not more than 15 individuals in a single, daily round trip to and from work; or

(4) providing transportation service within a transit service area under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under section 5307, 5310, or 5311, including transportation designed and carried out to meet the special needs of elderly individuals and individuals with disabilities; except that, in any case in which the transit service area is located in more than 1 State, the minimum level of financial responsibility for such motor vehicle will be at least the highest level required for any of such States.

49 U.S.C. §31138

REGULATIONS RE INSURANCE REQUIREMENTS FOR MOTOR CARRIERS OF PASSENGERS: INTERSTATE OR FOREIGN FOR-HIRE:

16 or More Passengers

$5 million of insurance is required for motor carriers with 16 or more passengers (including the driver) if the carrier goes between states or countries.

15 or Fewer Passengers

$1.5 million of insurance is required for motor carriers with 15 or fewer passengers (including the driver) if the carrier travels between states or countries.

Exceptions

School buses, taxi cabs with fewer than 7 passengers, and commuter vehicles with less than 16 passengers on a daily round trip are excepted from this higher premium.

49 CFR §§287.25-387.43

MISCELLANEOUS SAFETY PROVISIONS

1. MOTORCOACH SAFETY ACTION PLAN

In 2009, FMCSA adopted a Motorcoach Safety Action Plan. It identified actions to address outstanding safety problems, and proposed a schedule to implement those actions. It assessed causes and contributing factors for motorcoach crashes, fatalities, and injuries, and identified ways to enhance motorcoach safety. The major issues addressed included driver errors resulting from fatigue, distraction, medical condition, and experience; crash avoidance technologies; vehicle maintenance and safety; carrier compliance; and measures to protect occupants in the event of a crash such as seat belts, roof strength, fire safety, and emergency egress. DOT identified seven priority action items that will have the greatest impact on reducing motorcoach crashes, fatalities, and injuries. The priority action items included:

1. Initiate rulemaking to require electronic on-board recording devices on all motorcoaches to better monitor drivers' duty hours and manage fatigue.
2. Initiate rulemaking to propose prohibiting texting and limiting the use of cellular telephones and other devices by motorcoach drivers.
3. Initiate rulemaking to require the installation of seat belts on motorcoaches to improve occupant protection.
4. Evaluate and develop roof crush performance requirements to enhance structural integrity.4
5. Develop performance requirements and assess the safety benefits for stability control systems on motorcoaches to reduce rollover events.
6. Enhance oversight of carriers attempting to evade sanctions and of other unsafe motorcoach companies. and
7. Establish minimum knowledge requirements for people applying for authority to transport passengers.

FMCSA has updated its Plan with the passage of MAP-21.

2. NOISE

49 CFR§325.93 Tires.

(a) Except as provided in paragraph (b) of this section, a motor vehicle does not conform to the visual tire inspection requirements, 40 CFR 202.23, of the Interstate Motor Carrier Noise Emissions Standards, if inspection of any tire on which the vehicle is operating discloses that the tire has a tread pattern composed primarily of cavities in the tread (excluding sipes and local chunking) which are not vented by grooves to the tire shoulder or circumferentially to each other around the tire.

(b) Paragraph (a) of this section does not apply to a motor vehicle operated on a tire having a tread pattern of the type specified in that paragraph, if the motor carrier who operates the motor vehicle demonstrates to the satisfaction of the Administrator or his/her designee that either—

(1) The tire did not have that type of tread pattern when it was originally manufactured or newly remanufactured; or

(2) The motor vehicle generates a maximum sound level reading of 90 dB(A) or less when measured at a standard test site for highway operations at a distance of 50 feet and under the following conditions:

(i) The measurement must be made at a time and place and under conditions specified by the Administrator or his/her designee.

(ii) The motor vehicle must be operated on the same tires that were installed on it when the inspection specified in paragraph (a) of this section occurred.

(iii) The motor vehicle must be operated on a highway having a posted speed limit of more than 35 mph.

(iv) The sound level measurement must be made while the motor vehicle is operating at the posted speed limit.

40 Fed. Reg. 42437, Sept. 12, 1975, as amended at 60 Fed. Reg. 38743, July 28, 1995

49 CFR§325.91 Exhaust systems.

A motor vehicle does not conform to the visual exhaust system inspection requirements, 40 CFR 202.22, of the Interstate Motor Carrier Noise Emission Standards, if inspection of the exhaust system of the motor vehicle discloses that the system—

(a) Has a defect which adversely affects sound reduction, such as exhaust gas leaks or alteration or deterioration of muffler elements, (small traces of soot on flexible exhaust pipe sections shall not constitute a violation of this subpart);

(b) Is not equipped with either a muffler or other noise dissipative device; or

(c) Is equipped with a cut-out, by-pass, or similar device, unless such device is designed as an exhaust gas driven cargo unloading system.

40 Fed. Reg. 42437, Sept. 12, 1975, as amended at 75 Fed. Reg. 57193, Sept. 20, 2010.

3. COMPATIBILITY

49 CFR Part 355—Compatibility of State Laws and Regulations Affecting Interstate Motor Carrier Operations

The purpose of this regulation is to promote adoption and enforcement of State laws and regulations pertaining to commercial motor vehicle safety that are compatible with appropriate parts of the Federal Motor Carrier Safety Regulations; provide guidelines for a continuous regulatory review of State laws and regulations; and to establish deadlines for States to achieve compatibility with appropriate parts of the Federal Motor Carrier Safety Regulations with respect to interstate commerce.

4. LOSS AND DAMAGE CLAIMS

49 CFR Part 370—Principles and Practices for the Investigation and Voluntary Disposition of Loss and Damage Claims and Processing Salvage

This regulation sets forth the processing of claims for loss, damage, injury, or delay to property transported or accepted for transportation, in interstate or foreign commerce, by each motor carrier.

5. DISCRIMINATION IN SEATING OF PASSENGERS

49 CFR Part 374—Passenger Carrier Regulations

374.101. Discrimination Prohibited

No motor common carrier of passengers subject to 49 U.S.C. subtitle IV, part B shall operate a motor vehicle in interstate or foreign commerce on which the seating of passengers is based upon race, color, creed, or national origin.

36 Fed. Reg. 1338, Jan. 28, 1971. Re-designated at 61 Fed. Reg. 54709, Oct. 21, 1996, as amended at 62 Fed. Reg. 15423, Apr. 1, 1997

6. SMOKING

374.201 Prohibition against smoking

(a) All motor common carriers of passengers subject to 49 U.S.C. subtitle IV, part B, shall prohibit smoking (including the carrying of lit cigars, cigarettes, and pipes) on vehicles transporting passengers in scheduled or special service in interstate commerce.

(b) Each carrier shall take such action as is necessary to ensure that smoking by passengers, drivers, and other employees is not permitted in violation of this section. This shall include making appropriate announcements to passengers, the posting of the international no-smoking symbol, and the posting of signs in all vehicles transporting passengers in letters in sharp color contrast to the background, and of such size, shape, and color as to be readily legible. Such signs and symbols shall be kept and maintained in such a manner as to remain legible and shall indicate that smoking is prohibited by Federal regulation.

(c) The provisions of paragraph (a) of this section shall not apply to charter operations as defined in §374.503 of this part.

56 Fed. Reg. 1745, Jan. 17, 1991. Re-designated at 61 Fed. Reg. 54709, Oct. 21, 1996, as amended at 62 Fed. Reg. 15423, Apr. 1, 1997

7. CERTIFICATION TRAINING PROGRAM

On July 19, 2018, FTA issued a final rule requiring uniform safety certification training curriculum and requirements for persons who conduct safety audits and examinations of public transportation systems.

8. NATIONAL TRANSIT DATABASE

To keep track of the industry and provide public information and statistics as it continues to grow, FTA's National Transit Database (NTD) records the financial, operating and asset condition of transit systems.

After data reporting was required by Congress in 1974, the NTD was set up to be the repository of data about the financial, operating and asset conditions of American transit systems. The NTD is designed to support local, state and regional planning efforts and help governments and other decision-makers make multi-year comparisons and perform trend analyses. It contains a wealth of information such as agency funding sources, inventories of vehicles and maintenance facilities, safety event reports, measures of transit service provided and consumed, and data on transit employees.

FTA grant recipients – those receiving funding from the Urbanized Area Formula Program (5307) or Rural Formula Program (5311) – are required to submit data to the NTD in uniform categories. More than 660 transit providers report to the NTD through the Internet-based system.

NTD data products include:

- Transit profiles: Frequently sought data on any transit provider

- National transit summaries and trends
- Time series data on transit systems dating back to 1991
- Up-to-date time series of monthly ridership data
- Time series of safety data

81 Fed. Reg. 48971, July 26, 2016

9. EXECUTIVE ORDERS:

I. EXECUTIVE ORDER 12866: REGULATORY PLANNING AND REVIEW

A. **Regulatory Philosophy and Principles**. The executive order sets forth a statement containing regulatory philosophy and principles to which agency should adhere.

B. **Review of Existing Regulations**. Agencies are required to submit to the Office of Management Budget a program for periodic review of existing significant regulations to determine whether to modify or eliminate them. Rules to be reviewed must be included in the agency's Plan. Agencies must also identify legislatively mandated regulations that are unnecessary or outdated.

C. **Public Participation**. Before issuing an NPRM, agencies are encouraged to seek involvement of those intended to benefit or be burdened. Agencies should provide a meaningful opportunity to comment, including a 60-day comment period in most cases. Where appropriate, agencies must use consensual mechanisms.

D. **OMB Review**. All significant rulemakings must be submitted to OMB for review before issuance. Time frames for completion of such review are established in the Order.

E. **Assessment of Economically Significant Rulemakings**. Agencies are required to prepare an assessment, including analyses, of benefits and costs, quantified to the extent feasible, of the anticipated action and potentially effective and reasonable feasible alternatives, including an explanation of why the planned action is preferable.

F. **Disclosure of Contacts**. Procedures are established for disclosure of communications with people outside of the executive branch.

II. DOT ORDER 2100.5: REGULATORY POLICIES AND PROCEDURES

A. **Coverage**. This order applies to all DOT rulemakings, including those that establish conditions for financial assistance, but excludes formal rulemakings and those related to military or foreign affairs functions, agency management or personnel, and Federal procurement. Special provisions are also made for "emergency" rulemakings.

B. **Objectives**. It sets forth objectives for DOT rulemaking (e.g., necessity, clarity).

C. **Regulations Council**. It establishes a Department Regulations Council chaired by the Deputy Secretary, vice-chaired by the General Counsel, and made up of the heads of the Secretary of Transportation offices and the operating administrations. The Council can review and make recommendations concerning regulatory review programs (*See,* ¶ G), significant rulemakings (*See,* ¶ E), and the Regulatory Policies and Procedures. It can also set up task forces or require studies if necessary.

D. **Initiating Office Responsibilities**. It establishes responsibilities for the offices initiating regulations to do such things as coordinate their proposals with other operating administrations within the Department.

E. **Significant Rulemaking Review**. It requires the submission of all significant

rulemakings to the Office of the Secretary for approval by the Secretary. (A significant regulation is essentially one that is costly or controversial.)

F. **Economic Analyses**. It requires an economic analysis for all proposed (including ANPRMs) and final rulemaking actions, not just for major (very costly) rulemakings. For major rulemakings, the document is a "Regulatory Analysis"; for non-major, it is a "Regulatory Evaluation." Where the impact is so minimal that a full Evaluation is not warranted, a statement to that effect and the basis for it is included in the rulemaking document.

G. **Reviews**. It requires the periodic review of existing regulations to determine whether they should be revised or revoked.

H. **Public Participation**. It sets forth some specific procedures to ensure a full opportunity for public participation; for example, it provides for a comment period of at least 45 days on non-significant regulations and60 days on significant regulations, unless the rulemaking document states the reasons for a shorter time period. It also requires that, to the maximum extent possible, even when not statutorily mandated, opportunity for the public to comment on proposed rules should be provided, if it could be expected to result in useful information.

I. **Agenda**. It requires the development and issuance of a semi-annual regulations agenda.

DOT ORDERS:

III. DOT ORDER 2100.2: PUBLIC CONTACTS IN RULEMAKING (1970)

The Order essentially discourages oral communications from the time just prior to the issuance of a notice until the time the final rule is issued. If such contacts occur, they must be summarized in writing and placed in the public rulemaking docket. (If the contact occurs before the issuance of the NPRM, it may be summarized in the preamble to the NPRM).

10.MOTOR CARRIER SAFETY ADVISORY COMMITTEE

The Federal Motor Carrier Safety Administrator, or his or her designee, shall present MCSAC with tasks on matters relating to motor carrier safety. The Committee will provide advice and recommendations to the Administrator of the Federal Motor Carrier Safety Administration (FMCSA) about needs, objectives, plans, approaches, content, and accomplishments of the motor carrier safety programs carried out by the Administration and motor carrier safety regulations.

11. GUIDANCE DOCUMENTS

The FHWA and FTA produce guidance documents to assist in clarifying and complying statutory and regulatory compliance; and communicating on certain issues. There have been numerous such documents issued by both FTA and FHWA. On February 5, 2019, DOT issued a notice to review existing guidance and determine whether they need to be updated, revised, or repealed. One such document is mentioned below.

The FMCSA, on March 8, 2019, issued a notice proposing to delete 47 guidance documents under Part 383 it claims are not needed, unclear, duplicative, or obsolete.

12. FTA GUIDANCE FOR PLANNING AND RESEARCH GRANTS

On August 9, 2018, FTA issued a revised Circular 8100.1C, which is a guidance for metropolitan and state planning and research grants. The various requirements are explained at 83 Federal Register 39505.

13. STUDY OF DOUBLE-DECKER MOTORCOACHES WITH REAR LUGGAGE COMPARTMENT

In 2008, Congress required the Secretary of Transportation to conduct a study on the effects of attaching a luggage compartment to the rear of a double-decker motorcoach, with respect to safety of vehicle operations, fire suppression capability, tire loads, and pavement impacts. This report presents the results of that study. The study was conducted through a combination of analysis and tests with a double-decker motorcoach. The three conditions were a reference loading condition, a regulatory loading condition, and a maximum loading condition. The reference or baseline condition had the load for passengers and luggage but no rear luggage compartment. The regulatory condition had a payload identical to the reference condition, but a rear luggage compartment was attached. In the maximum loading condition the motorcoach, with a rear luggage compartment attached, was loaded to its gross vehicle weight rating (GVWR). The rear luggage compartment did not affect safe maneuverability over the range of conditions tested. There is an unquantified concern that the compartment could contain heat in a severe engine compartment fire and lead to breaching the rear window. The tires and rims have adequate capacity for their loads. States must enact limits on tire and axle loads that are consistent with Federal Highway Administration (FHWA) regulations. The loads under all conditions may exceed some State limits with respect to the FHWA bridge formula.

14. TECHNICAL ASSISTANCE ASSISTANCE MATERIALS SUPPORTING PUBLIC SAFETY AWARENESS

On March 29, 2019, the FTA solicited proposals under the Department of Transportation's Technical Assistance and Workforce Development Program to select an eligible project or projects for the development and dissemination of technical assistance materials supporting public safety awareness campaigns. The technical assistance materials will address public safety issues impacting the transit industry, including but not limited to human trafficking, operator assault, and crime prevention. Technical assistance also may include recommended practices, and public and employee training. The awarded projects will be referred to as the Crime Prevention and Public Safety Awareness projects, and the available funding is $2,000,000 in Fiscal Year 2018 funds.

84 Fed. Reg. 12025

15. PROJECTS TO PROTECT TRANSIT OPERATORS FROM THE RISK OF ASSAULT AND TO REDUCE CRIME ON TRANSIT VEHICLES

On March 29, 2019, FTA solicited proposals under the Department of Transportation's Public Transportation Innovation Program to select an eligible project or projects that will identify innovative solutions to reduce or eliminate human trafficking occurring on transit systems, protect transit operators from the risk of assault, and reduce crime on public transit vehicles and in facilities. The awarded projects will be referred to as the Innovations in Transit Public Safety projects, and the available funding is $2,000,000.

84 Fed. Reg. 12021

MISCELLANEOUS PENDING RULEMAKINGS

1. Bus Rollover Structural Integrity; Motorcoach Safety Plan

In 2014**,** NHTSA proposed performance standards for over-the –road buses and non-over-the-road buses with a gross vehicle weight greater than 26,000 pounds. It does not propose to cover school busses and urban transit buses, but is requesting comments as to whether they should be covered.

The proposal would require rollover tests that would ensure that seats and overhead luggage racks remain secured, window glazing attached to its mounting during and after the test, and emergency exits remain closed and operable after the crash. In addition, roof strength and crush resistance requirements are proposed. The intent of the NPRM is to reduce the risk of passenger ejection, improving rollover structural integrity, enhancing emergency evacuation, and upgrading fire safety.

(Since the NPRM was issued, there has been a number of rollover testing conducted.)
79 Fed. Reg. 46090, Aug. 6, 2014

2. Sleep Apnea

FMCSA and FRA published an ANPRM on March 10, 2016, requesting certain information regarding the evaluation of safety sensitive personnel for moderate-to-severe obstructive sleep apnea (OSA). The agencies determined not to issue a NPRM at this time.

82 Fed. Reg. 37038, Aug. 8, 2017

3. Hours of Service

The introduction of electronic logging devices and their ability to accurately record compliance with hours-of-service (HOS) regulations for drivers of commercial motor vehicles (CMVs) have prompted numerous requests from Congress and the public for FMCSA to consider revising certain HOS provisions. To address these requests, FMCSA seeks public input in the following: The short-haul HOS limit; the HOS exception for adverse driving conditions; the 30-minute rest break provision; and the sleeper berth rule to allow drivers to split their required time in the sleeper berth.

83 Fed. Reg. 42631, August 23, 2018

4. Beyond Compliance Program

The U.S. Department of Transportation and motor carriers have invested millions of dollars in research, development, and implementation of strategies and technologies to reduce truck and bus crashes. FMCSA is evaluating the impacts of considering a company's proactive voluntary implementation of state-of-the-art best practices and technologies when evaluating the carrier's safety. FMCSA requests responses to specific questions and any supporting data the Agency should consider in the potential development of a Beyond Compliance program. Beyond Compliance would include voluntary programs implemented by motor carriers that exceed regulatory requirements, and improve the safety of commercial motor vehicles and drivers

operating on the Nations' roadways by reducing the number and severity of crashes. Beyond Compliance would not result in regulatory relief.

80 Fed. Reg. 22770, April 23, 2015.

5. **Bus Emergency Exits and Window Retention and Release;Anti Ejection Glazing for Bus Portals**

This NPRM proposes a new Federal Motor Vehicle Safety Standard (FMVSS) No. 217a, ‘‘Anti-ejection glazing for bus portals,’’ to drive the installation of advanced glazing in high-occupancy buses (generally, over-the- road buses (of any weight) and non- over-the-road buses with a gross vehicle weight rating greater than 11,793 kilograms (26,000 pounds). The new standard would specify impactor testing of glazing material. In the tests, a 26 kilogram (57 pound) impactor would be propelled from inside a test vehicle toward the window glazing at 21.6 kilometers/hour (13.4 miles per hour).

The impactor and impact speed would simulate the loading from an average size unrestrained adult male impacting a window on the opposite side of a large bus in a rollover. Performance requirements would apply to side and rear windows, and to glass panels and windows on the roof to mitigate partial and complete ejection of passengers from these windows and to ensure that emergency exits remain operable after a rollover crash. NHTSA also proposes to limit the protrusions of emergency exit latches into emergency exit openings of windows to ensure they do not unduly hinder emergency egress.

81 Fed. Reg. 27904, May 6, 2016