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SUBCHAPTER A—GENERAL REGULATIONS

PART 301—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES OF THE FEDERAL HIGHWAY ADMINISTRATION

Sec.
301.50 Regional offices; general description.
301.52 Jurisdiction of regional offices.

AUTHORITY: 49 U.S.C. 104, 307, 501 *et seq.*, 1801 *et seq.*, 3101 *et seq.*, 10925, 10927 note; 42 U.S.C. 4917; 49 CFR 1.48.

§ 301.50 Regional offices; general description.

The Federal Highway Administration has regional offices, commonly referred to as Regional Administrations, which are numerically identified as Regions 1 and 3 through 10. Each regional office has jurisdiction over a geographical area consisting of a designated group of States. Each regional office is headed by a Regional Federal Highway Administrator (commonly called the Regional Administrator for ease of reference), who is assisted by a regional headquarters staff of legal, administrative, and program specialists, and who is responsible for directing at local levels the Federal Highway Administration responsibilities for administration of the direct Federal, Federal-aid, and other highway and traffic safety programs.

[51 FR 12620, Apr. 14, 1986]

§ 301.52 Jurisdiction of regional offices.

The specific composition of each Federal Highway Administration region is as follows:

Region No.	Territory included	Location of regional office
1[1]	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, and Vermont.	4 Normanskill Blvd., Delmar, NY 12054.
3	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.	31 Hopkins Plaza, Baltimore, MD 21201.
4	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.	1720 Peachtree Rd. NW., Atlanta, GA 30309.
5	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.	18209 Dixie Highway, Homewood, IL 60430.
6	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.	819 Taylor St., Fort Worth, TX 76102.
7	Iowa, Kansas, Missouri, and Nebraska.	Post Office Box 7186, Country Club Station, Kansas City, MO 64113.
8	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.	Room 242, Bldg. 40, Denver Federal Center, Denver, CO 80225.
9	Arizona, California, Hawaii, and Nevada.	450 Golden Gate Ave., San Francisco, CA 94102.
10	Alaska, Idaho, Oregon, and Washington.	222 Southwest Morrison St., Portland, OR 97204.

[1] Conforms to Standard Federal Regions 1 and 2.

[38 FR 215, Jan. 7, 1972]

PART 325—COMPLIANCE WITH INTERSTATE MOTOR CARRIER NOISE EMISSION STANDARDS

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AUTHORITY: Sec. 18, 86 Stat. 1234, 1249–1250 (42 U.S.C. 4917).

SOURCE: 40 FR 42437, Sept. 12, 1975, unless otherwise noted.

Subpart A—General Provisions

§ 325.1 Scope of the rules in this part.

(a) The rules in this part prescribe procedures for inspection, surveillance, and measurement of motor vehicles and motor vehicle equipment operated by motor carriers to determine whether those vehicles and that equipment conform to the Interstate Motor Carrier Noise Emission Standards of the Environmental Protection Agency, 40 CFR part 202.

(b) Except as provided in paragraph (c) of this section, the rules in this part apply to motor carriers engaged in interstate commerce. The rules apply at any time or under any condition of highway grade, load, acceleration or deceleration.

(c) The rules in this part do not apply to—

(1) A motor vehicle that has a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds (4,536 kg.) or less;

(2) A combination of motor vehicles that has a Gross Combination Weight Rating (GCWR) of 10,000 pounds (4,536 kg.) or less;

(3) The sound generated by a warning device, such as a horn or siren, installed in a motor vehicle, unless such device is intentionally sounded in order to preclude an otherwise valid noise emission measurement;

(4) An emergency motor vehicle, such as a fire engine, an ambulance, a police van, or a rescue van, when it is responding to an emergency call;

(5) A snow plow in operation; or

(6) The sound generated by auxiliary equipment which is normally operated only when the motor vehicle on which it is installed is stopped or is operating at a speed of 5 miles per hour (8 kph) or less, unless such device is intentionally operated at speeds greater than 5 mph (8 kph) in order to preclude an otherwise valid noise measurement. Examples of that type of auxiliary equipment include, but are not limited to, cranes, asphalt, spreaders, ditch diggers, liquid or slurry pumps, auxiliary air compressors, welders, and trash compactors.

§ 325.3 Effective date.

The rules in this part are effective on October 15, 1975.

§ 325.5 Definitions.

(a) *Statutory definitions.* All terms defined in the Noise Control Act of 1972 (Pub. L. 92–574, 86 Stat. 1234) are used as they are defined in that Act.

(b) *Definitions in standards.* All terms defined in §202.10 of the Interstate Motor Carrier Noise Emission Standards, 40 CFR 202.10, are used as they are defined in that section.

(c) *Additional definitions.* (1) *Hard test site* means any test site having the ground surface covered with concrete, asphalt, packed dirt, gravel, or similar reflective material for more than ½ the distance between the microphone target point and the microphone location point.

(2) *Soft test site* means any test site having the ground surface covered with grass, other ground cover, or similar absorptive material for ½ or more of the distance between the microphone

target point and the microphone location point.

(3) *Ground cover* means any of various low, dense-growing plants, such as ivy, myrtle, low weeds, or brush.

(4) *Traffic railing* means any longitudinal highway traffic barrier system installed along the side or median of a highway. For the purpose of this part, a traffic railing must have at least 35 percent of its vertical height, from the ground surface to the top of the railing, open to free space in order to qualify as an acceptable object within a noise measurement test site. Further, for the purposes of this part, posts or other discrete supports shall be ignored when ascertaining open free space.

(5) *Relatively flat* when used to describe a noise measurement site means a site which does not contain significant concave curvatures or slope reversals that may result in the focusing of sound waves toward the microphone location point.

§ 325.7 Allowable noise levels.

Motor vehicle noise emissions, when measured according to the rules of this part, shall not exceed the values specified in Table 1.

TABLE 1.—MAXIMUM PERMISSIBLE SOUND LEVEL READINGS (DECIBEL (A)) [1, 2]

	Highway operation test				Stationary tests	
	Soft site		Hard Site		Soft site	Hard site
	35 mi/h or less	Above 35 mi/h	35 mi/h or less	Above 35 mi/h		
If the distance between the microphone location point and the microphone target point is—						
31 ft (9.5m) or more but less than 35 ft (10.7m)	87	91	89	93	89	91
35 ft (10.7m) or more but less than 39 ft (11.9m)	86	90	88	92	88	90
39 ft (11.9m) or more but less than 43 ft (13.1m)	85	89	87	91	87	89
43 ft (13.1m) or more but less than 48 ft (14.6m)	84	88	86	90	86	88
48 ft (14.6m) or more but less than 58 ft (17.1m)	83	87	85	89	85	87
58 ft (17.1m) or more but less than 70 ft (21.3m)	82	86	84	88	84	86
70 ft (21.3m) or more but less than 83 ft (25.3m)	81	85	83	87	83	85

[1] The speeds shown refer to measurements taken at sites having speed limits as indicated. These speed limits do not necessarily have to be posted.

[2] This table is based on motor carrier noise emission requirements specified in 40 CFR 202.20 and 40 CFR 202.21.

[40 FR 42437, Sept. 12, 1975, as amended at 54 FR 50385, Dec. 6, 1989]

§ 325.9 Measurement tolerances.

(a) Measurement tolerances will be allowed to take into account the effects of the following factors:

(1) The consensus standard practice of reporting filed sound level measurements to the nearest whole decibel.

(2) Variations resulting from commercial instrument tolerances.

(3) Variations resulting from the topography of the noise measurement site.

(4) Variations resulting from atmospheric conditions such as wind, ambient temperature, and atmospheric pressure.

(5) Variations resulting from reflected sound from small objects allowed within the test site.

(6) The interpretation of the effects of the above cited factors by enforcement personnel.

(b) Measurement tolerances shall not exceed 2 decibels for a given measurement.

Subpart B—Administrative Provisions

§ 325.11 Issuance, amendment, and revocation of the rules in this part.

The procedures specified in part 389 of this chapter for the issuance, amendment, or revocation of the Federal

Motor Carrier Safety Regulations apply to rulemaking proceedings for the issuance, amendment, or revocation of the rules in this part.

§ 325.13 Inspection and examination of motor vehicles.

(a) Any special agent of the Federal Highway Administration (designated in appendix B to subchapter B of this chapter) is authorized to inspect, examine, and test a motor vehicle operated by a motor carrier in accordance with the procedures specified in this part for the purpose of ascertaining whether the motor vehicle and equipment installed on the motor vehicle conforms to the Interstate Motor Carrier Noise Emission Standards of the Environmental Protection Agency, 40 CFR part 202.

(b) A motor carrier, its officers, drivers, agents, and employees must, at any time, submit a motor vehicle used in its operations for inspection, examination, and testing for the purpose of ascertaining whether the motor vehicle and equipment installed on it conforms to the Interstate Motor Carrier Noise Emission Standards of the Environmental Protection Agency, 40 CFR part 202.

(c) *Prescribed inspection report.* Form MCS–141, Noise Level Compliance Check shall be used to record findings from motor vehicles selected for noise emission inspection by authorized employees.

(d) *Motor carrier's disposition of form MCS–141.* (1) The driver of any motor vehicle receiving a Form MCS–141 shall deliver such MCS–141 to the motor carrier operating the vehicle upon his/her arrival at the next terminal or facility of the motor carrier, if such arrival occurs within twenty-four (24) hours. If the driver does not arrive at a terminal or facility of the motor carrier operating the vehicle within twenty-four (24) hours he/she shall immediately mail the Form MCS–141 to the motor carrier. For operating convenience, motor carriers may designate any shop, terminal, facility, or person to which it may instruct its drivers to deliver or forward Form MCS–141. It shall be the sole responsibility of the motor carrier that Form MCS–141 is returned to the Federal Highway Administration, in accordance with the terms prescribed thereon and in paragraphs (d) (2) and (3) of this section. A driver, if himself/herself a motor carrier, shall return Form MCS–141 to the Federal Highway Administration, in accordance with the terms prescribed thereon and in paragraphs (d) (2) and (3) of this section.

(2) Motor carriers shall carefully examine Forms MCS–141. Appropriate corrective action shall be taken on vehicles found to be not in compliance with the requirements of this part.

(3) Motor carriers shall complete the ''Motor Carrier Certification of Action Taken'' on Form MCS–141 in accordance with the terms prescribed thereon. Motor carriers shall return Forms MCS–141 to the Regional Director of Motor Carriers of the Office of Motor Carriers, Federal Highway Administration, at the address indicated upon Form MCS–141 within fifteen (15) days following the date of the vehicle inspection.

[40 FR 42437, Sept. 12, 1975, as amended at 41 FR 10226, Mar. 10, 1976; 54 FR 50385, Dec. 6, 1989; 60 FR 38743, July 28, 1995]

Subpart C—Instrumentation

§ 325.21 Scope of the rules in this subpart.

The rules in this subpart specify criteria for sound level measurement systems which are used to make the sound level measurements specified in subpart D and subpart E of this part.

§ 325.23 Type of measurement systems which may be used.

The sound level measurement system must meet or exceed the requirements of American National Standard Specification for Sound Level Meters (ANSI S1.4–1971), approved April 27, 1971, issued by the American National Standards Institute,[1] throughout the applicable frequency range for either:

(a) A Type 1 sound level meter;

(b) A Type 2 sound level meter; or

(c) A Type S sound level meter which has—

(1) A weighing frequency response;

[1] Copies of the specification may be secured from the American National Standards Institute, 1430 Broadway, New York, New York, 10018.

(2) Fast dynamic characteristics of its indicating instrument; and

(3) A relative response level tolerance consistent with those of either a Type 1 or Type 2 sound level meter, as specified in section 3.2 of ANSI S1.4–1971.

§ 325.25 Calibration of measurement systems.

(a)(1) The sound level measurement system must be calibrated and appropriately adjusted at one or more frequencies in the range from 250 to 1,000 Hz at the beginning of each series of measurements and at intervals of 5–15 minutes thereafter, until it has been determined that the sound level measurement system has not significantly drifted from its calibrated level. Once this fact has been established, calibrations may be made at intervals once every hour. A significant drift shall be considered to have occurred if a 0.3 dB or more excursion is noted from the system's predetermined reference calibration level. In the case of systems using displays with whole decibel increments, the operator may visually judge when the 0.3 dB drift has been met or exceeded.

(2) The sound level measurement system must be checked periodically by its manufacturer, a representative of its manufacturer, or a person of equivalent special competence to verify that its accuracy meets the manufacturer's design criteria.

(b) An acoustical calibrator of the microphone coupler type designed for the sound level measurement system in use shall be used to calibrate the sound level measurement system in accordance with paragraph (a) of this section. The calibration must meet or exceed the accuracy requirements specified in section 5.4.1 of the American National Standard Institute Standard *Methods for Measurements of Sound Pressure Levels* (ANSI S1.13–1971) for field method measurements.

[40 FR 42437, Sept. 12, 1975, as amended at 41 FR 10227, Mar. 10, 1976]

§ 325.27 Use of a windscreen.

A properly installed windscreen, of the type recommended by the manufacturer of the Sound Level Measurement System, shall be used during the time that noise emission measurements are being taken.

Subpart D—Measurement of Noise Emissions; Highway Operations

§ 325.31 Scope of the rules in this subpart.

The rules in this subpart specify conditions and procedures for measurement of the sound level generated by a motor vehicle engaged in a highway operation for the purpose of ascertaining whether the motor vehicle conforms to the Standards for Highway Operations set forth in 40 CFR 202.20.

§ 325.33 Site characteristics; highway operations.

(a) Measurement shall be made at a test site which is adjacent to, and includes a portion of, a traveled lane of a public highway. A microphone target point shall be established on the centerline of the traveled lane of the highway, and a microphone location point shall be established on the ground surface not less than 31 feet (9.5 m) or more than 83 feet (25.3 m) from the microphone target point and on a line that is perpendicular to the centerline of the traveled lane of the highway and that passes through the microphone target point. In the case of a standard test site, the microphone location point is 50 feet (15.2 m) from the microphone target point. Within the test site is a triangular measurement area. A plan view diagram of a standard test site, having an open site within a 50-foot (15.2 m) radius of both the microphone target point and the microphone location point, is shown in Figure 1. Measurements may be made at a test site having smaller or greater dimensions in accordance with the rules in subpart F of this part.

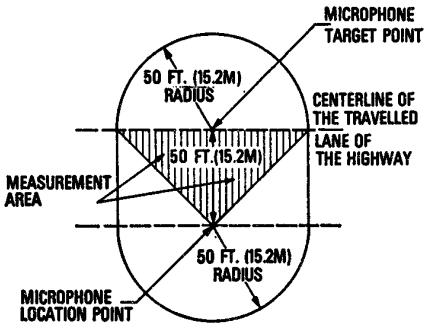

Figure 1
STANDARD TEST SITE;
HIGHWAY OPERATIONS

(b) The test site must be an open site, essentially free of large sound-reflecting objects. However, the following objects may be within the test site, including the triangular measurement area:

(1) Small cylindrical objects such as fire hydrants or telephone or utility poles.

(2) Rural mailboxes.

(3) Traffic railings of any type of construction except solid concrete barriers (see §325.5(c)(4)).

(4) One or more curbs having a vertical height of 1 foot (.3 m) or less.

(c) The following objects may be within the test site if they are outside of the triangular measurement area of the site:

(1) Any vertical surface (such as billboard), regardless of size, having a lower edge more than 15 feet (4.6 m) higher than the surface of the traveled lane of the highway.

(2) Any uniformly smooth sloping surface slanting away from the highway (such as a rise in grade alongside the highway) with a slope that is less than 45 degrees above the horizontal.

(3) Any surface slanting away from the highway that is 45 degrees or more and not more than 90 degrees above the horizontal, if all points on the surface are more than 15 feet (4.6 m) above the surface of the traveled lane of the highway.

(d) The surface of the ground within the measurement area must be relatively flat (see §325.5(c)(5)). The site shall be a ''soft'' test site. However, if the site is determined to be ''hard,'' the correction factor specified in §325.75(a) of this part shall be applied to the measurement.

(e) The traveled lane of the highway within the test site must be dry, paved with relatively smooth concrete or asphalt, and substantially free of—

(1) Holes or other defects which would cause a motor vehicle to emit irregular tire, body, or chassis impact noise; and

(2) Loose material, such as gravel or sand.

(f) The traveled lane of the highway on which the microphone target point is situated must not pass through a tunnel or underpass located within 200 feet (61 m) of that point.

[40 FR 42437, Sept. 12, 1975, as amended at 54 FR 50385, Dec. 6, 1989]

§325.35 Ambient conditions; highway operations.

(a)(1) *Sound.* The ambient A-weighted sound level at the microphone location point shall be measured, in the absence of motor vehicle noise emanating from within the clear zone, with fast meter response using a sound level measurement system that conforms to the rules of §325.23.

(2) The measured ambient level must be 10 dB(A) or more below that level specified in §325.7, Table 1, which corresponds to the maximum permissible sound level reading which is applicable at the test site at the time of testing.

(b) *Wind.* The wind velocity at the test shall be measured at the beginning of each series of noise measurements and at intervals of 5–15 minutes thereafter until it has been established that the wind velocity is essentially constant. Once this fact has been established, wind velocity measurements may be made at intervals of once every hour. Noise measurements may only be made if the measured wind velocity is 12 mph (19.3 kph) or less. Gust wind measurements of up to 20 mph (33.2 kph) are allowed.

(c) *Precipitation.* Measurements are prohibited under any condition of precipitation, however, measurements may be made with snow on the ground.

The ground surface within the measurement area must be free of standing water.

[40 FR 42437, Sept. 12, 1975, as amended at 41 FR 10227, Mar. 10, 1976; 41 FR 28267, July 9, 1976]

§ 325.37 Location and operation of sound level measurement system; highway operations.

(a) The microphone of a sound level measurement system that conforms to the rules in § 325.23 of this part shall be located at a height of not less than 2 feet (.6 m) nor more than 6 feet (1.8 M) above the plane of the roadway surface and not less than 3½ feet (1.1 m) above the surface on which the microphone stands. The preferred microphone height on flat terrain is 4 feet (1.2 m).

(b)(1) When the sound level measurement system is hand-held or is otherwise monitored by a person located near its microphone, the holder must orient himself/herself relative to the highway in a manner consistent with the recommendation of the manufacturer of the sound level measurement system.

(2) In no case shall the holder or observer be closer than 2 feet (.6 m) from the system's microphone, nor shall he/she locate himself/herself between the microphone and the vehicle being measured.

(c) The microphone of the sound level measurement system shall be oriented toward the traveled lane of the highway at the microphone target point at an angle that is consistent with the recommendation of the system's manufacturer. If the manufacturer of the system does not recommend an angle of orientation for its microphone, the microphone shall be oriented toward the highway at an angle of not less than 70 degrees and not more than perpendicular to the horizontal plane of the traveled lane of the highway at the microphone target point.

(d) The sound level measurement system shall be set to the A-weighting network and ''fast'' meter response mode.

[40 FR 42437, Sept. 12, 1975, as amended at 41 FR 10227, Mar. 10, 1976]

§ 325.39 Measurement procedure; highway operations.

(a) In accordance with the rules in this subpart, a measurement shall be made of the sound level generated by a motor vehicle operating through the measurement area on the traveled lane of the highway within the test site, regardless of the highway grade, load, acceleration or deceleration.

(b) The sound level generated by the motor vehicle is the highest reading observed on the sound level measurement system as the vehicle passes through the measurement area, corrected, when appropriate, in accordance with the rules in subpart F of this part. (Table 1 in § 325.7 lists the range of maximum permissible sound level readings for various test conditions.) The sound level of the vehicle being measured must be observed to rise at least 6 dB(A) before the maximum sound level occurs and to fall at least 6 dB(A) after the maximum sound level occurs in order to be considered a valid sound level reading.

[40 FR 42437, Sept. 12, 1975, as amended at 41 FR 10227, Mar. 10, 1976]

Subpart E—Measurement of Noise Emissions; Stationary Test

§ 325.51 Scope of the rules in this subpart.

(a) The rules in this subpart specify conditions and procedures for measuring the sound level generated by a vehicle when the vehicle's engine is rapidly accelerated from idle to governed speed at wide open throttle with the vehicle stationary, its transmission in neutral, and its clutch engaged, for the purpose of ascertaining whether the motor vehicle conforms to the Standard for Operation Under Stationary Test, 40 CFR 202.21.

(b) The rules in this subpart apply only to a motor vehicle that is equipped with an engine speed governor.

(c) Tests conducted in accordance with the rules of this subpart may be made on either side of the vehicle.

§ 325.53 Site characteristics; stationary test.

(a)(1) The motor vehicle to be tested shall be parked on the test site. A microphone target point shall be established on the ground surface of the site on the centerline of the lane in which the motor vehicle is parked at a point that is within 3 feet (.9 m) of the longitudinal position of the vehicle's exhaust system outlet(s). A microphone location point shall be established on the ground surface not less than 31 feet (9.5 m) and not more than 83 feet (25.3 m) from the microphone target point. Within the test site is a triangular measurement area. A plan view diagram of a standard test site, having an open site within a 50-foot (15.2 m) radius of both the microphone target point and the microphone location point, is shown in Figure 2.

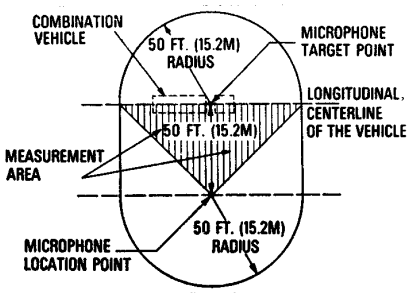

Figure 2
STANDARD TEST SITE; STATIONARY TEST

(2) Measurements may be made at a test site having smaller or greater dimensions in accordance with the rules in subpart F of this part.

(b) The test site must be an open site, essentially free of large sound-reflecting objects. However, the following objects may be within the test site, including the triangular measurement area:

(1) Small cylindrical objects such as fire hydrants or telephone or utility poles.

(2) Rural mailboxes.

(3) Traffic railings of any type of construction except solid concrete barriers (see § 325.5(c)(4)).

(4) One or more curbs having a height of 1 foot (.3 m) or less.

(c) The following objects may be within the test site if they are outside of the triangular measurement area of the site:

(1) Any vertical surface, regardless of size (such as a billboard), having a lower edge more than 15 feet (4.6 m) above the ground.

(2) Any uniformly smooth surface slanting away from the vehicle with a slope that is less than 45 degrees above the horizontal.

(3) Any surface slanting away from the vehicle that is 45 degrees or more and not more than 90 degrees above the horizontal, if all points on the surface are more than 15 feet (4.6 m) above the surface of the ground in the test site.

(d) The surface of the ground within the measurement area must be relatively flat. (See § 325.5(c)(5)). The site shall be a ''hard'' site. However, if the site is determined to be ''soft,'' the correction factor specified in § 325.75(b) of this part shall be applied to the measurement.

[40 FR 42437, Sept. 12, 1975, as amended at 41 FR 10227, Mar. 10, 1976; 54 FR 50385, Dec. 6, 1989]

§ 325.55 Ambient conditions; stationary test.

(a)(1) *Sound.* The ambient A-weighted sound level at the microphone location point shall be measured, in the absence of motor vehicle noise emanating from within the clear zone, with fast meter response using a sound level measurement system that conforms to the rules of § 325.23.

(2) The measured ambient level must be 10 dB(A) or more below that level specified in § 325.7, Table 1, which corresponds to the maximum permissible sound level reading which is applicable at the test site at the time of testing.

(b) *Wind.* The wind velocity at the test site shall be measured at the beginning of each series of noise measurements and at intervals of 5–15 minutes thereafter until it has been established that the wind velocity is essentially constant. Once this fact has been established, wind velocity measurements may be made at intervals of once every hour. Noise measurements may only be made if the measured wind velocity is 12 mph (19.3 kph) or less. Gust wind measurements of up to 20 mph (33.2 kph) are allowed.

(c) *Precipitation.* Measurements are prohibited under any conditions of precipitation, however, measurements may be made with snow on the ground. The ground within the measurement area must be free of standing water.

[40 FR 42437, Sept. 12, 1975, as amended at 41 FR 28267, July 9, 1976]

§ 325.57 Location and operation of sound level measurement systems; stationary test.

(a) The microphone of a sound level measurement system that conforms to the rules in § 325.23 shall be located at a height of not less than 2 feet (.6 m) nor more than 6 feet (1.8 m) above the plane of the roadway surface and not less than 3½ feet (1.1 m) above the surface on which the microphone stands. The preferred microphone height on flat terrain is 4 feet (1.2 m).

(b) When the sound level measurement system is hand-held or otherwise monitored by a person located near its microphone, the holder must orient himself/herself relative to the highway in a manner consistent with the recommendation of the manufacturer of the sound level measurement system. In no case shall the holder or observer be closer than 2 feet (.6 m) from the system's microphone, nor shall he/she locate himself/herself between the microphone and the vehicle being measured.

(c) The microphone of the sound level measurement system shall be oriented toward the vehicle at an angle that is consistent with the recommendation of the system's manufacturer. If the manufacturer of the system does not recommend an angle of orientation for its microphone, the microphone shall be oriented at an angle of not less than 70 degrees and not more than perpendicular to the horizontal plane of the test site at the microphone target point.

(d) The sound level measurement system shall be set to the A-weighting network and ''fast'' meter response mode.

[40 FR 42437, Sept. 12, 1975, as amended at 41 FR 10227, Mar. 10, 1976]

§ 325.59 Measurement procedure; stationary test.

In accordance with the rules in this subpart, a measurement shall be made of the sound level generated by a stationary motor vehicle as follows:

(a) Park the motor vehicle on the test site as specified in § 325.53 of this subpart. If the motor vehicle is a combination (articulated) vehicle, park the combination so that the longitudinal centerlines of the towing vehicle and the towed vehicle or vehicles are in substantial alinement.

(b) Turn off all auxiliary equipment which is installed on the motor vehicle and which is designed to operate under normal conditions only when the vehicle is operating at a speed of 5 mph (8 kph) or less. Examples of such equipment include cranes, asphalt spreaders, liquid or slurry pumps, auxiliary air compressors, welders, and trash compactors.

(c) 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, park the vehicle 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 when the vehicle's noise emissions are measured under stationary test.

(d) With the motor vehicle's transmission in neutral and its clutch engaged, rapidly accelerate the vehicle's engine from idle to its maximum governed speed with wide open throttle. Return the engine's speed to idle.

(e) Observe the maximum reading on the sound level measurement system during the time the procedures specified in paragraph (d) of this section are followed. Record that reading, if the reading has not been influenced by extraneous noise sources such as motor vehicles operating on adjacent roadways.

(f) Repeat the procedures specified in paragraphs (d) and (e) of this section until the first two maximum sound level readings that are within 2 dB(A) of each other are recorded. Numerically average those two maximum

sound level readings. When appropriate, correct the average figure in accordance with the rules in subpart F of this part.

(g) The average figure, corrected as appropriate, contained in accordance with paragraph (f) of this section, is the sound level generated by the motor vehicle for the purpose of determining whether it conforms to the Standard for Operation Under Stationary Test, 40 CFR 202.21. (Table 1 in §325.7 lists the range of maximum permissible sound level readings for various test conditions.)

[40 FR 42437, Sept. 12, 1975, as amended at 41 FR 10226, Mar. 10, 1976]

Subpart F—Correction Factors

§325.71 Scope of the rules in this subpart.

(a) The rules in this subpart specify correction factors which are added to, or subtracted from, the reading of the sound level generated by a motor vehicle, as displayed on a sound level measurement system, during the measurement of the motor vehicle's sound level emissions at a test site which is not a standard site.

(b) The purpose of adding or subtracting a correction factor is to equate the sound level reading actually generated by the motor vehicle to the sound level reading it would have generated if the measurement had been made at a standard test site.

§325.73 Microphone distance correction factors.[1]

If the distance between the microphone location point and the microphone target point is other than 50 feet (15.2 m), the maximum observed sound level reading generated by the motor vehicle in accordance with §325.39 of this part or the numerical average of the recorded maximum observed sound level readings generated by the motor vehicle in accordance with §325.59 of this part shall be corrected as specified in the following table:

TABLE 2—DISTANCE CORRECTION FACTORS

If the distance between the microphone location point and the microphone target point is	The value dB(A) to be applied to the observed sound level reading is—
31 feet (9.5 m) or more but less than 35 feet (10.7 m)	−4
35 feet (10.7 m) or more but less than 39 feet (11.9 m)	−3
39 feet (11.9 m) or more but less than 43 feet (13.1 m)	−2
43 feet (13.1 m) or more but less than 48 feet (14.6 m)	−1
48 feet (14.6 m) or more but less than 58 feet (17.7 m)	0
58 feet (17.7 m) or more but less than 70 feet (21.3 m)	+1
70 feet (21.3 m) or more but less than 83 feet (25.3 m)	+2

[40 FR 42437, Sept. 12, 1975, as amended at 54 FR 50385, Dec. 6, 1989]

§325.75 Ground surface correction factors.[1]

(a) *Highway operations.* When measurements are made in accordance with the rules in subpart D of this part upon a test site which is ''hard,'' a correction factor of 2 dB(A) shall be subtracted from the maximum observed sound level reading generated by the motor vehicle to determine whether the motor vehicle conforms to the Standards for Highway Operations, 40 CFR 202.20.

(b) *Stationary Test.* When measurements are made in accordance with the rules in subpart E of this part upon a test site which is ''soft,'' a correction factor of 2 dB(A) shall be added to the numerical average of the recorded maximum observed sound level readings generated by the motor vehicle to determine whether the motor vehicle conforms to the Standard for Operation Under Stationary Test, 40 CFR 202.21.

[1] Table 1, in §325.7 is a tabulation of the maximum allowable sound level readings taking into account both the distance correction factors contained in §325.73 and the ground surface correction factors contained in §325.75.

[1] Table 1, in §325.7 is a tabulation of the maximum allowable sound level readings taking into account both the distance correction factors contained in §325.73 and the ground surface correction factors contained in §325.75.

§ 325.77 Computation of open site requirements—nonstandard sites.

(a) If the distance between the microphone location point and the microphone target point is other than 50 feet (15.2 m), the test site must be an open site within a radius from both points which is equal to the distance between the microphone location point and the microphone target point.

(b) Plan view diagrams of nonstandard test sites are shown in Figures 3 and 4. Figure 3 illustrates a test site which is larger than a standard test site and is based upon a 60-foot (18.3 m) distance between the microphone location point and the microphone target point. (See § 325.79(b)(1) for an example of the application of the correction factor to a sound level reading obtained at such a site.) Figure 4 illustrates a test site which is smaller than a standard test site and is based upon a 35-foot (10.7 m) distance between the microphone location point and the microphone target point. (See § 325.79(b)(2) for an example of the application of the correction factor to a sound level reading obtained at such a site.)

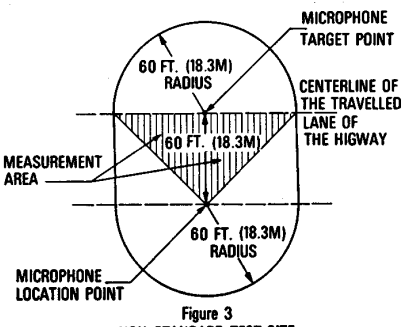

Figure 3
NON-STANDARD TEST SITE;
(60 FT (18.3M) DISTANCE BETWEEN
MICROPHONE LOCATION AND TARGET POINTS)

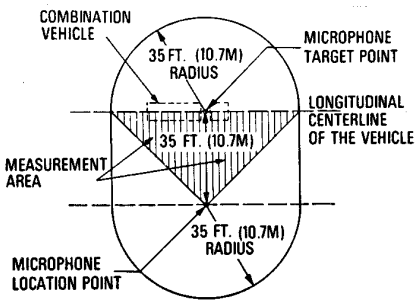

Figure 4
NON-STANDARD TEST SITE;
(35 FT.(10.7M) DISTANCE BETWEEN
MICROPHONE LOCATION AND TARGET POINTS)

§ 325.79 Application of correction factors.

(a) If two correction factors apply to a measurement they are applied cumulatively.

(b) The following examples illustrate the application of correction factors to sound level measurement readings:

(1) *Example 1—Highway operations.* Assume that a motor vehicle generates a maximum observed sound level reading of 86 dB(A) during a measurement in accordance with the rules in subpart D of this part. Assume also that the distance between the microphone location point and the microphone target point is 60 feet (18.3 m) and that the measurement area of the test site is acoustically ''hard.'' The corrected sound level generated by the motor vehicle would be 85 dB(A), calculated as follows:

86 dB(A)	Uncorrected reading
+1 dB(A)	Distance correction factor
−2 dB(A)	Ground surface correction factor
85 dB(A)	Corrected reading

(2) *Example 2—Stationary test.* Assume that a motor vehicle generates maximum sound level readings which average 88 dB(A) during a measurement in accordance with the rules in subpart E of this part. Assume also that the distance between the microphone location point and the microphone target point is 35 feet (10.7 m), and that the measurement area of the test site is acoustically ''soft.'' The corrected sound level generated by the motor vehicle

would be 87 dB(A), calculated as follows:

88 dB(A)	Uncorrected average of readings
−3 dB(A)	Distance correction factor
+2 dB(A)	Ground surface correction factor
87 dB(A)	Corrected reading

Subpart G—Exhaust Systems and Tires

§ 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, such as a turbocharger (supercharger driven by exhaust gases); or

(c) Is equipped with a cut-out, bypass, or similar device, unless such device is designed as an exhaust gas driven cargo unloading system.

§ 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 Associate Administrator for Motor Carriers 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 15.3 meters (50 feet) and under the following conditions:

(i) The measurement must be made at a time and place and under conditions specified by the Associate 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 56.3 kph (35 mph).

(iv) The sound level measurement must be made while the motor vehicle is operating at the posted speed limit.

[40 FR 42437, Sept. 12, 1975, as amended at 60 FR 38743, July 28, 1995]

SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

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350.3 Definitions.
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APPENDIX C TO PART 350—TOLERANCE GUIDELINES FOR ADOPTING COMPATIBLE STATE RULES AND REGULATIONS

AUTHORITY: 49 U.S.C. 31101–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.48.

SOURCE: 57 FR 40956, Sept. 8, 1992, unless otherwise noted.

§350.1 Purpose.

The purpose of this part is to prescribe requirements for Federal assistance to States for programs to adopt and enforce Federal rules, regulations, standards and orders applicable to commercial motor vehicle safety or compatible State rules, regulations, standards and orders.

§350.3 Definitions.

As used in this part:

Administrator means the Federal Highway Administrator.

Basic allocation means only those Federal funds distributed by the allocation formula, or the minimum funding level specified in this part.

Basic grant means the funds available to a State for carrying out an approved State Enforcement Plan (SEP), which include, but are not limited to:

(1) Recruiting and training of personnel, payment of salaries and fringe benefits, the acquisition and maintenance of equipment except those at fixed weigh scales for the purposes of weight enforcement, and reasonable overhead costs needed to operate the program;

(2) Commencement and conduct of expanded systems of enforcement;

(3) Establishment of an effective out-of-service and compliance enforcement system; and

(4) Retraining and replacing staff and equipment.

Commercial motor vehicle means any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or property when:

(1) The vehicle has a gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds; or

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

(3) The vehicle is used in the transportation of hazardous materials in quantities requiring placarding under regulations issued by the Secretary of Transportation pursuant to the authority of the Hazardous Material Transportation Act, as amended (49 U.S.C. app. 1801 *et seq.*).

Compatible or *compatibility* means, in relation to State laws and regulations pertaining to commercial motor vehicle safety, having the same effect as the Federal Motor Carrier Safety Regulations (FMCSR) or Federal Hazardous Materials Regulations (FHMR) in that those State rules are either identical or fall within the tolerance guidelines in appendix C to this part.

Motor carrier has the same meaning such term has in §390.5.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa,

Guam, or the Commonwealth of the Northern Marianas.

[57 FR 40956, Sept. 8, 1992, as amended at 60 FR 38743, July 28, 1995]

§ 350.5 Policy.

The Federal Highway Administration (FHWA) policy is to encourage each State to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. The requirements for compliance with safety standards in one State should be compatible with the requirements in another State. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance.

§ 350.7 Objective.

The objective of the Motor Carrier Safety Assistance Program (MCSAP) is to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles by substantially increasing the level and effectiveness of enforcement activity and the likelihood that safety defects, driver deficiencies and unsafe carrier practices will be detected and corrected.

§ 350.9 Conditions for basic grant approval.

(a) The State shall agree to adopt, and to assume responsibility for enforcing the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR parts 390 through 399, except as may be determined by the Administrator to be inapplicable to a State enforcement program) including highway related portions of the Federal Hazardous Materials Regulations (FHMR) (49 CFR parts 107, 171–173, 177, 178 and 180), or compatible State rules, regulations, standards, and orders applicable to motor carrier safety, including highway transportation of hazardous materials.

(b) The State shall submit a State Enforcement Plan (SEP) for the conduct of an effective safety program. Such plan, upon acceptance by the FHWA, will serve as the basis for monitoring and evaluating performance of the State under the grant, and will be resubmitted, with revisions as necessary, in applications for reapproval in following years.

(c) The SEP shall designate the lead State agency responsible for administering the plan for the State.

(d) The agencies named to perform functions under the plan shall have the legal authority, resources, and qualified personnel necessary to enforce the FMCSR and FHMR or compatible State rules at the time the State implements the approved SEP.

(e) The State shall allocate adequate funds for the administration of the SEP and the enforcement of the FMCSR and FHMR or compatible State rules.

(f) State laws shall provide for right of entry and inspection adequate to carry out the SEP and provide that the State will grant maximum reciprocity for inspections conducted pursuant to the North American Uniform Driver/Vehicle Inspection standard, through the use of a nationally accepted system allowing ready identification of previously inspected commercial motor vehicles.

(g) The State shall certify that it will maintain its aggregate expenditure of funds by the State and political subdivisions thereof, exclusive of Federal funds, for commercial motor vehicle safety programs and related programs eligible for funding under this part, as required by § 350.17 of this part.

(h) The State shall agree to prepare and submit all reports required in connection with the SEP or other conditions of the grant to the FHWA upon request.

(i) The lead State agency shall agree to adopt such uniform reporting requirements and use such uniform forms to record work activities performed under the SEP as may be established and required by the FHWA.

(j) The State shall require registrants of commercial motor vehicles to declare, at the time of registration, knowledge of the FMCSR and FHMR or compatible State rules, as applicable.

(k) The statutory authority of the State to regulate motor carriers shall extend to private motor carriers of

property as well as for-hire motor carriers.

(l) The State shall ensure that commercial motor vehicle size and weight enforcement, drug interdiction, and traffic enforcement activities funded under this program will not diminish the effectiveness of other commercial motor vehicle safety enforcement programs.

(m) The State shall take appropriate steps to ensure that fines imposed and collected by the State for violations will be reasonable and appropriate and, to the maximum extent practicable, will seek to implement into law and practice the recommended fine schedule published by the Commercial Vehicle Safety Alliance.

(n) The State will participate in the SAFETYNET no later than January 1, 1994.

(o) The State will undertake efforts to emphasize and improve enforcement of State and local traffic laws as they pertain to commercial motor vehicle safety.

(p) The State will ensure comprehensive enforcement and reinspection of vehicles and drivers placed out of service to verify compliance with lawful orders and the correction of all violations cited on roadside inspection reports.

§350.11 Adopting and enforcing compatible laws and regulations.

(a) No funds shall be awarded under this part to States that do not adopt and enforce laws and regulations that are compatible with the FMCSR (except as may be determined by the Administrator to be inapplicable) and the FHMR, unless otherwise provided in the Tolerance Guidelines (appendix C to this part).

(b) The State shall conduct an annual review of all its laws and regulations pertaining to commercial motor vehicle safety to determine their compatibility with the FMCSR and FHMR. The review shall be carried out in accordance with part 355 of this subchapter. To support a State's contention of compatibility, the State may submit opinions from the State's Attorney General or other chief legal officer with respect to the effect and enforceability of State laws, rules, regulations, standards, or orders in relation to the FMCSR and FHMR.

(c) State laws and regulations pertaining to commercial motor vehicle safety in interstate commerce are also subject to preemption under the provisions of §355.25 of this chapter.

(d) State laws and regulations that are not identical to the FMCSR or FHMR will be deemed compatible for purposes of this part only if they are within the variances permitted under the tolerance guidelines in appendix C of this part.

(e) No State shall implement any changes to a State law or regulation which makes that or any other law or regulation incompatible under this section.

(f) As soon as practical after the effective date of any amendment to the FMCSR or FHMR, but no longer than three years, the applicable State law or regulation must be adopted or amended in such manner as makes it compatible with the amended Federal provision.

(g) Any State may apply for a variance related to State laws, regulations or enforcement practices pertaining to commercial motor vehicle safety in intrastate commerce, which shall be granted if the State can satisfactorily demonstrate that the State law, regulation or enforcement practice achieves substantially the same purpose as the similar Federal rule, does not apply to interstate commerce, and has no adverse impact on safety.

(h) Upon a determination by the FHWA, on its own initiative or after determination initiated at the request of any person, including a State, that a State has failed to comply with the requirements of this part, or that a State law, regulation or enforcement practice pertaining to commercial motor vehicle safety in either interstate or intrastate commerce is incompatible with the FMCSR or HMTR, a proceeding under §350.27 for withdrawal of approval of a State plan may be initiated. This proceeding shall be in addition to or in conjunction with any action initiated under §355.25 of this chapter.

(i) Any decision regarding the compatibility of a State law or regulation

with the FHMR that requires an interpretation will be referred to the Research and Special Programs Administration for such interpretation before proceeding under § 350.27.

[57 FR 40956, Sept. 8, 1992, as amended at 59 FR 5264, Feb. 3, 1994]

§ 350.13 State Enforcement Plan (SEP) for a basic grant.

(a) As a condition of the basic grant the State shall submit its proposed SEP or update thereof to the FHWA division office.

(b) The SEP shall:

(1) Provide an assessment of the commercial motor carrier and highway hazardous materials safety problems within the State;

(2) Identify State penalty structures applicable to enforcement activities covered in the SEP, evaluate their reasonableness and appropriateness, and indicate the steps being taken to approximate the published Commercial Vehicle Safety Alliance (CVSA) fine schedule, if necessary.

(3) Demonstrate that the State has authority to regulate and to enforce its regulations with respect to private carriers of property as well as for-hire motor carriers; and

(4) Describe in detail the objectives sought to be achieved, the resources to be employed, the work items to be performed, the unit costs where feasible and the methods to be used to measure effectiveness. Specifically, the SEP shall:

(i) Identify other agencies participating in the plan and describe the roles of each;

(ii) Identify the number and category of personnel employed and the specialized training provided;

(iii) Include roadside inspection activity at such times and locations as will assure comprehensive enforcement;

(iv) Describe the proposed reinspection activities that would ensure motor carriers had made timely corrections of the out-of-service defects and other safety violations cited on the roadside inspection reports and that out-of-service drivers came into compliance with the regulations. These reinspection activities shall include covert operations to determine the extent of compliance with the State's out-of-service orders. State enforcement activities to remedy out-of-service violations shall depend on the extent of the verification problem and may include, but are not limited to: on-site reinspection activities; covert surveillance activities; safety and compliance review programs; and other State proposed activities approved by the FHWA; and

(v) Describe the tracking system to be used by the State to ensure that the motor carrier has certified to the correction of the safety violations and returned the inspection report to the issuing agency.

(5) Be coordinated with the State highway safety plan under 23 U.S.C. 402.

(6) Describe the methods the State will use to promote:

(i) Removing impaired drivers from the highways through enforcement of regulations on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment;

(ii) Appropriate training to its personnel on the recognition of drivers impaired by alcohol or controlled substances;

(iii) Enforcement of requirements relating to the licensing of commercial motor vehicle drivers, including checking the status of commercial driver's licenses;

(iv) Improved enforcement of hazardous materials transportation regulation by encouraging more inspections of shipper facilities and comprehensive inspections of hazardous materials loads;

(v) Effective controlled substance interdiction activities and training on strategies for carrying out such activities; and

(vi) Effective use of trained and qualified officers and employees of political subdivisions and local governments, under the direction and supervision of the lead agency, in enforcement of commercial motor vehicle safety and hazardous materials transportation safety.

(7) Document, if funds are used for vehicle size and weight, alcohol/controlled substance checks, drug interdiction and/or traffic law enforcement, that such activities are carried out in

conjunction with an appropriate type of vehicle or driver inspection.

(c) Guidelines for the preparation of the SEP are provided in appendix A to this part.

(Approved by the Office of Management and Budget under control number 2125–0536)

§350.15 Certification of compliance by State.

The FHWA will accept a certification, executed by the Governor, the State's Attorney General or other State official specifically designated by the Governor, in the form provided in appendix B to this part, that the State is in compliance with the conditions of §350.9 of this part. The certification shall accompany the SEP and be made part thereof. The certification shall be supplemented by a copy of any State law, regulation or forms pertaining to commercial motor carrier safety adopted since the State's last certification, if any, which bear on the items listed in the certification. The certificate should acknowledge that activities described in §350.9 will be performed.

§350.17 Maintenance of effort.

(a) No SEP shall be approved or grant awarded in the absence of a commitment by the State to maintain the aggregate expenditure of funds by the State for commercial motor vehicle and highway hazardous materials safety programs as provided in this section.

(b) The State shall certify each year that the level of State funding for the 12-month period covered in the SEP for motor carrier and highway hazardous materials safety, size and weight, traffic safety and drug interdiction enforcement purposes shall not fall below the average aggregate expenditure of funds, exclusive of Federal funds and any State matching funds used to receive Federal funding, for those purposes in the base period of three full fiscal years prior to December 18, 1991. The State may elect to use either Federal fiscal years or State fiscal years at its option.

(c) In determining whether a State has complied with this maintenance of effort commitment, expenditures of State funds for federally sponsored demonstration or pilot programs need not be included in aggregating expenditures in the base period.

(d) For the purpose of determining the State's expenditures in the base period, only costs associated with activities performed by State or local agencies currently receiving or projected to receive funds under this part must be counted, and only those activities which meet the most current requirements for funding eligibility under the grant program must be included.

(e) If it is determined that a State has not maintained its level of expenditures as certified, the State shall be notified of the deficiency. Upon receipt of such notification, the State shall have the opportunity to submit information to substantiate the certification.

(f) If, after consideration of all information, it is finally determined that a State has failed to meet its maintenance of effort requirement, an amount equal to the deficiency shall be deducted from the State's current allocation. That amount will then be available for reallocation under §350.21 of this part.

§350.19 Grant application submission.

A State shall submit its application to the FHWA division office on or before August 1 of each year. The time for submitting a plan may be extended for a period not to exceed 30 calendar days for good cause shown. Grants are approved for the fiscal year for which application is made. Failure of a State to submit a plan for any given fiscal year will preclude consideration of grant approval for that State for that year.

§350.21 Distribution of funds.

(a) The Federal share payable to reimburse States for eligible costs incurred in the administration of a commercial motor carrier safety program shall not exceed 80 percent.

(b) The FHWA will, upon request, waive the requirement for matching funds to be provided by the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas.

(c) The funds available to any State for a basic grant in any one year shall

be distributed according to an allocation formula based on the most recent reliable data concerning the following factors in equal proportion:

(1) Road mileage (all highways);

(2) Vehicle miles travelled (all vehicles);

(3) Number of commercial vehicles over 10,000 pounds (gross vehicle weight rating);

(4) Population (most current census); and

(5) Special fuel consumption (net after reciprocity adjustment).

(d) Subject to the availability of funds, the individual allocations shall be adjusted so that no State qualifying for an award shall be allocated more than a ceiling amount, which shall be no less than the ceiling amount used in the previous year's distribution process. The ceiling shall be increased each fiscal year in proportion to the amount of increase in the funds available for distribution in that fiscal year. The allocation formula shall also be adjusted so that no State qualifying for an award shall be allocated:

(1) Less than the basic allocation of funds received in the 1991 fiscal year, provided the SEP continues to support that level of funding; or

(2) Less than 0.5 percent of the total amount allocated to all States (or $250,000, whichever is greater).

(3) Beginning on October 1, 1994, and each October 1 thereafter, more than 50 percent of the basic formula allocation provided for in this section if any such State has adopted and is enforcing compatible regulations applicable to interstate transportation, but has not adopted or is not enforcing compatible regulations applicable to intrastate transportation.

(e) Funds will be allocated to States in recognition of innovative, successful, cost efficient or cost effective programs to promote commercial motor vehicle safety and hazardous materials transportation safety and provide incentives to States that conduct traffic safety enforcement activities done in conjunction with motor carrier safety inspections. The allocations will be done in three separate grants:

(1) Basic grants—funds used to perform commercial vehicle safety activities such as driver/vehicle inspections, safety reviews and compliance reviews. Allocation for basic grants will be made pursuant to paragraphs (c) and (d) of this section. Unused basic allocations will be periodically redistributed. Any eligible MCSAP activity can be included under the State's basic grant activities.

(2) Supplemental grants—funds used to conduct additional activities or innovative programs demonstrated to be effective and cost-efficient, and may include emphasis areas established by policy in consultation with the States. To be eligible for a supplemental grant, a State must qualify for a basic grant. Unused supplemental grant funds will be periodically redistributed among those States that are able to demonstrate innovative, cost-effective purposes consistent with the objectives of this part.

(3) Special grants—funds used by States to meet the conditions in §350.9 regarding eligibility requirements for basic grants; or for States already participating in the basic program, to develop the prerequisites for expanded activities not presently part of their basic programs. Special grants are also available for research or data collection activities, or for projects specifically identified by statute, as, for example, commercial driver's license enforcement. To be eligible for a special grant, a State need not qualify for a basic grant.

(f) Notwithstanding any other provisions of this section, funds which have not been awarded to States under application of the allocation formula and the provisions for additional allocations contained in this section may be redistributed at the discretion of the Administrator. Subject to the availability of funds, the primary purpose of any such redistribution is to prevent a decrease in the amount of Federal funds used by particular States in previous years to support effective and innovative programs. Preference will be given to those States which have maintained effective federally assisted programs at levels beyond that possible if limited to formula allocations.

(g) The funds obligated by a State will remain available to the State for a period of the fiscal year in which obligated and the next full fiscal year. Any

unexpended obligations which are to be carried over to the next fiscal year must be accounted for in the new SEP for that fiscal year. Funds must be expended in the order in which they are obligated.

[57 FR 40956, Sept. 8, 1992, as amended at 59 FR 5264, Feb. 3, 1994]

§ 350.23 Acceptance of State plan.

(a) Each plan will be reviewed for content, after which the State will be notified of its acceptance or rejection.

(b) The time for submitting a plan may be extended for a period not to exceed 30 calendar days for good cause shown.

(c) Each State plan shall include an analysis of the effectiveness of its prior year's plan in reaching the stated objectives. The State will be advised whether any changes are needed in the plan or in its intended objectives.

§ 350.25 Effect of failure to submit a satisfactory State plan.

(a) A State will be notified in writing that approval of the plan is being withheld along with the reasons for such action, if:

(1) It is determined that a plan does not meet the requirements described in §§ 350.9 and 350.13; or

(2) It is determined that an SEP is not adequate to ensure effective enforcement of the FMCSR and FHMR; or compatible State rules.

(b) The State shall have 30 calendar days from the date of the notice to modify the plan and resubmit it for approval.

§ 350.27 Procedure for withdrawal of approval.

(a) If a State is not performing according to an approved plan or a State is not adequately enforcing the FMCSR and FHMR, or compatible State rules, the Administrator shall issue a written notice of proposed determination of nonconformity to the Governor of the State or the official designated in the plan. The notice shall state the reasons for the proposed determination and inform the State that it may reply in writing within 30 calendar days from the date of the notice. The reply should address the deficiencies cited in the notice and provide documentation as necessary.

(b) The Administrator's decision, after notice and opportunity for comment, will constitute the final decision of the FHWA. An adverse decision will result in immediate cessation of Federal participation in the plan.

(c) If the State does not respond to a notice of proposed determination of nonconformity as provided in paragraph (a) of this section, the proposed determination shall become the Administrator's final decision with the same effect as paragraph (b) of this section.

(d) Any State aggrieved by an adverse decision issued under this part may seek judicial review pursuant to 5 U.S.C. ch. 7.

§ 350.29 Eligible costs.

(a) Work must be performed pursuant to an acceptable State plan in order for the cost of that work to be eligible for reimbursement. The eligible costs under the grant program are comprised of the allowable direct costs incident to the State's performance and its allocable portion of allowable indirect costs, less applicable credits.

(b) The primary functions to be performed under a basic grant are uniform roadside inspections and safety and compliance reviews with follow-up enforcement actions or compliance measures. Consequently, the major cost will be compensation and expenses of the personnel required to perform these functions.

(c) Subject to paragraph (c)(5) of this section, funds may also be used for:

(1) Enforcement of size and weight limitations;

(2) Detecting the unlawful presence of controlled substances in a commercial motor vehicle or on the person of any occupant (including the operator) of such a vehicle;

(3) Enforcement of State traffic laws and regulations designed to promote safe operation of commercial motor vehicles; and

(4) Sanitary food transportation inspections pursuant to 49 U.S.C. 2808.

(5) *Provided:* these activities are carried out in conjunction with an appropriate type of inspection for enforcement of safety regulations. Size and

weight enforcement must be conducted at locations other than fixed weight facilities, at specific geographical locations where the weight of the vehicle can significantly affect the safe operation of the vehicle, or at seaports where intermodal shipping containers enter and exit the United States.

(d) Eligible personnel costs include, but are not limited to:

(1) Recruitment and screening;

(2) Training;

(3) Salaries and fringe benefits; and

(4) Supervision.

(e) Equipment and travel costs directly related to the primary functions are also eligible for proportionate reimbursement. These costs include, but are not limited to:

(1) Vehicles;

(2) Uniforms;

(3) Communications equipment;

(4) Special inspection equipment;

(5) Vehicle maintenance;

(6) Motor fuel and oil; and

(7) Travel and per diem expenses.

(f) Indirect expenses related to facilities used to conduct inspections or to house enforcement personnel, support staff, and equipment, except those related to fixed weighing facilities, may also be eligible to the extent they are measurable and recurring, such as rent and overhead.

(g) A secondary function of the MCSAP is to develop a data base on which to coordinate resources and improve efficiency. Therefore, costs related to data acquisition, storage, and analysis that are specifically identifiable as program expenses may be eligible for reimbursement.

(h) Clerical and administrative expenses, to the extent they are necessary and directly attributable to the MCSAP, are eligible for reimbursement.

(i) The cost of acquisition of real property, land and buildings, is not eligible as a participating cost in the MCSAP. Expenditures related to the improvement of real property, for example, the installation of lights for the inspection of vehicles at night or minor modifications to existing structures, are not considered acquisition costs.

(j) The eligibility of specific costs is subject to review, and such costs must be necessary, reasonable, allocable to the approved SEP, and allowable under this part and 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(k) In-kind contributions are acceptable if they represent eligible costs as established by 49 CFR part 18, OMB Circulars, agency rule or policy.

APPENDIX A TO PART 350—GUIDELINES TO BE USED IN PREPARING STATE ENFORCEMENT PLAN

1. Designate the lead State agency: The plan should indicate the agency responsible for administering the plan.

2. Program Summary: This section includes objectives, activities, resources, costs and an analysis of the effectiveness of the program.

(a) *Define the problem:* In assessing the level of commitment to be made to the enforcement of commercial motor carrier and highway hazardous materials safety regulations, the following factors should be considered:

(1) Volume of commercial motor vehicle traffic;

(2) Type of commercial motor vehicle traffic;

(3) Volume of commercial motor vehicle traffic transporting hazardous materials;

(4) Number and frequency (rate) of commercial motor carrier accidents;

(5) Severity of accidents involving commercial motor carriers:

(i) Fatalities;

(ii) Injuries; and

(iii) Property damage.

(6) Seasonal commercial motor carrier operational patterns within the State;

(7) Type and frequency of violations of traffic safety laws and regulations pertaining to commercial motor vehicles and accidents;

(8) Use of alcohol and controlled substances by commercial motor vehicle drivers; and

(9) Problems related to overweight vehicles and safety. (The information in paragraphs 2(a) (6), (7), (8), and (9) of this appendix may or may not be available to the States at present. To be able to measure program effectiveness, however, States will need to compile this type of data.)

(b) *Determine current enforcement efforts:* The plan should identify the activities currently engaged in by the State to address the commercial motor carrier and hazardous materials safety problems. This should include a description of existing laws, regulations and compliance activities, as well as the agencies within the State with enforcement responsibilities.

(c) *Establish the objectives:* A key element in each plan is the establishment of the objectives sought to be achieved through the use of Federal funds. The objectives should be stated in terms of quantifiable measurements of results, where possible, or at least of effort. Ideally, the objectives should include a measurable reduction in highway accidents or hazardous materials incidents involving commercial motor vehicles, but may also refer to quantifiable improvements in legislative or regulatory authorities, problem identification, enforcement strategies and resource allocations.

(1) Goals should be identified as:

(i) Short term—the year beginning October 1 following submission of a MCSAP enforcement plan.

(ii) Medium term—two to four years after submission of the enforcement plan.

(iii) Long term—five years beyond the submission of the enforcement plan.

(2) Describe the practices: The plan should describe how the resources are to be employed to achieve the objectives included under 350.13 and should discuss:

(i) Schedules of operation of inspection sites and units;

(ii) Tactics for placing vehicles out of service and verifying compliance;

(iii) Projected number of annual:

(A) Roadside vehicle inspections including Commercial Driver's Licenses checks; and

(B) Safety and Compliance Reviews;

(iv) Methods to inspect all types of carriage;

(v) Strategy for preventing circumvention or avoidance of inspections;

(vi) Procedures for handling hazardous materials carriers and passenger carriers;

(vii) Supervision and recordkeeping; and

(viii) Methods used to coordinate activities with the State highway safety plan under 23 U.S.C. 402, including providing information to the appropriate State agency, describing the information provided, and discussing the comments that were received.

(3) Identify the resources: The plan should detail the resources to be used in accomplishing the objectives, and should include:

(i) State agencies involved:

(A) Lead agency; and

(B) Local and other cooperating political subdivisions.

(ii) Personnel (from each agency involved):

(A) Line functions;

(B) Staff and supervision; and

(C) Administrative, technical and clerical.

(iii) Facilities:

(A) Inspection sites regularly maintained; and

(B) Building space required.

(iv) Equipment:

(A) Vehicles;

(B) Communication and ADP; and

(C) Other specialized tools.

(v) Itemization of Costs:

(A) Personnel (salaries, benefits, etc.);

(B) Equipment (purchase, rental, fuel, maintenance, depreciation, salvage, etc.); and

(C) Facilities (rent and overhead).

(d) *Program evaluation:* Each plan should include a provision for program evaluation of the effectiveness of previous activities. This should include the economic and operational impact of increased enforcement and provisions for review and update of the plan. It is not practicable to establish objective minimums, as each State has unique characteristics and varying levels of existing enforcement activity. The FHWA will cooperate with State regulatory and enforcement agencies by gathering useful information and experience on elements of enforcement practices that produce positive results.

The bottom line objective in any safety program is a decrease in the number and severity of accidents. Motor carrier safety regulations should be designed to prescribe methods to eliminate the risks of accidents. Compliance with such regulations should, therefore, reduce accidents. The States are encouraged to design their programs to link their enforcement efforts to causes of accidents, whenever possible, and to develop the data necessary to demonstrate the results. The States are encouraged to use the safety and program performance data collected over several years to show trends and effects of program activities. In assessing State Enforcement Plans, the FHWA will be particularly attentive to the methods by which effectiveness is to be evaluated, and will provide whatever assistance is feasible in developing measurement factors.

APPENDIX B TO PART 350—FORM OF STATE CERTIFICATION

I (name), (title), on behalf of the State of _____, as requested by the Federal Highway Administrator as a condition of approval of a grant under the authority of Sec. 402 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424), do hereby certify as follows:

1. The State (has adopted) (will adopt) commercial motor carrier and highway hazardous materials safety rules and regulations, which (are) (will be) substantially similar to and consistent with the Federal Motor Carrier Safety Regulations and the Federal Hazardous Materials Regulations (a copy of the existing or proposed State rules and regulations to be attached in the first year of the program).

2. The State has designated (name of State commercial motor carrier safety agency) as the lead agency to administer the enforcement plan for which the grant is being awarded, and (name of agencies) to perform functions under the plan. These agencies

(have) (will have) the legal authority, resources and qualified personnel necessary for the enforcement of the State's commercial motor carrier and highway hazardous materials safety rules and regulations.

3. The State will devote such of its own funds as may be necessary to provide its matching share to the Federal assistance provided in the grant to administer the plan it is herewith submitting, and to enforce the State's commercial motor carrier safety rules and regulations in a manner to be consistent with the approved plan.

4. The laws of the State provide the State's enforcement officers right of entry and inspection sufficient to carry out the purposes of the enforcement plan as approved and provides that the State will grant maximum reciprocity for inspections conducted pursuant to the North American Inspection Standard, through the use of a nationally accepted system allowing ready identification of previously inspected commercial motor vehicles.

5. The State shall require that all reports relating to the program be submitted to the appropriate State agency or agencies; and such reports will be made available to the Federal Highway Administration upon request.

6. The State will adopt such uniform reporting requirements and use such uniform forms for recordkeeping, inspection, and other enforcement activities as may be established by the Federal Highway Administration.

7. The State (has) (will have) in effect a requirement that registrants of commercial motor vehicles declare knowledge of the applicable Federal or State commercial motor carrier safety rules and regulations.

8. The State will maintain the level of its expenditures for motor carrier safety programs and, if applicable, size and weight, traffic safety, and drug interdiction enforcement programs, exclusive of Federal assistance, at least at the level of the average of the aggregate expenditures of the State and political subdivisions for these purposes during the last three full fiscal years immediately prior to December 18, 1991 (fiscal years 1989, 1990, and 1991).

9. The State will ensure that commercial motor vehicle size and weight enforcement, drug interdiction, and traffic enforcement activities funded under this program will not diminish the effectiveness of other commercial motor vehicle safety enforcement programs.

10. The State will ensure that fines imposed and collected by the State for violations will be reasonable and appropriate and provides that, to the maximum extent practicable, it will seek to implement into law and practice the recommended fine schedule published by the Commercial Vehicle Safety Alliance.

11. The State will ensure that the SEP is coordinated with the State highway safety plan under 23 U.S.C. 402 and the name of the Governor's highway safety representative (or other authorized State official) through whom coordination was accomplished is _____.

12. The State will participate in the SAFETYNET no later than January 1, 1994.

13. The State will undertake efforts to emphasize and improve enforcement of State and local traffic laws as they pertain to commercial motor vehicle safety.

Date _____

Location _____

(Signature) _____

APPENDIX C TO PART 350—TOLERANCE GUIDELINES FOR ADOPTING COMPATIBLE STATE RULES AND REGULATIONS

1. INTRODUCTION, PURPOSE AND RULES OF CONSTRUCTION

The goal of the Federal Highway Administration (FHWA) is to encourage all States to ultimately adopt motor carrier safety and hazardous materials transportation rules and regulations identical in all respects to those requirements set forth in Federal laws and regulations, applicable to both interstate and intrastate commerce. Recognizing that there are circumstances unique to each State which may require special attention in that particular State, FHWA has concluded that certain circumstances may warrant limited deviations from the Federal standards where the Federal regulations do not apply.

The purpose of this appendix is to set forth the limits within which a State's deviations to variances in adopting motor carrier safety and hazardous materials rules may extend and still be considered compatible for funding purposes under 49 CFR 350. These limits or tolerances are applicable for this purpose to those State rules and regulations applicable where the U.S. Department of Transportation does not have jurisdiction.

2. TOLERANCE GUIDELINES FOR STATE RULES AND REGULATIONS WHERE THE U.S. DEPARTMENT OF TRANSPORTATION ALSO HOLDS JURISDICTION

(a) States shall not be required to adopt 49 CFR parts 398, 399, 107, 171.15, 171.16 and 177.807 as applicable to either interstate or intrastate commerce. A State is not required to adopt 49 CFR part 178 only if the State can still enforce the standards contained therein.

(b) State rules must be applicable to the same extent as the Federal Motor Carrier Safety and Hazardous Materials Regulations

except where deviation may be allowed by part 355 of this subchapter and this appendix.

3. TOLERANCE GUIDELINES FOR STATE RULES AND REGULATIONS WHERE THE U.S. DEPARTMENT OF TRANSPORTATION REGULATIONS DO NOT APPLY

(a) State rules must be applicable to the same extent as the Federal Motor Carrier Safety and Hazardous Materials Regulations except where deviation may be allowed by parts 350 and 355 of this subchapter and this appendix.

(b) States may exempt from all or part of their regulations commercial motor vehicles with a GVWR of 26,000 pounds or less. However, vehicles with a GVWR of 26,000 pounds or less may not be exempted from either the motor carrier safety regulations or hazardous materials regulations if the vehicle is used to transport hazardous materials requiring a placard or if the vehicle is designed to transport more than 15 passengers, including the driver.

(c) States may not exempt from regulation motor carriers based on the type of carriage being performed (i.e., for-hire, private, etc.).

(d) Exemptions granted to certain industries by a State prior to April 1988 and accepted by FHWA may remain valid. Although industry exemptions are strongly discouraged, a State may request and FHWA may approve such an exemption after the State has submitted to the FHWA documentation which will allow evaluation of the following or similar information:

(1) Type and scope of the industry exemption requested;

(2) Type and scope of regulatory exemption requested;

(3) Accident information related to that specific industry—ratio, frequency, comparative figures, etc.;

(4) Percentage of industry affected—number of vehicles, mileage traveled, number of companies involved, etc.;

(5) Inspection information—number of violations per inspection, out-of-service information, etc.;

(6) Other regulations enforced by other State agencies not participating in the MCSAP;

(7) Commodity transported—i.e., hazardous materials, livestock, grain, etc.;

(8) Similar exemptions granted;

(9) Reason exemption is needed;

(10) Projected effect on safety;

(11) The State's economic environment and its ability to compete in foreign and domestic markets.

(e) Regulatory exemptions based on the distance a motor carrier or driver operates from their home terminal are not deemed to be compatible. This prohibition does not apply to those exemptions already contained in the Federal Motor Carrier Safety Regulations nor to the extension of the mileage radius exemption contained in 49 CFR 395.1(e) from 100 to 150 miles.

(f) States are strongly encouraged to apply the identical regulatory and enforcement schemes to both interstate and intrastate carriers as set forth in the Federal Motor Carrier Safety Regulations when regulating drivers' hours of service. However, certain limited tolerances where the U.S. Department of Transportation's hours of service regulations do not apply are allowed. Specifically, an expansion of the 10-hour driving rule to a 12-hour driving limit, provided that the total period of time spent driving and on duty not driving is not extended to more than 16 hours and an increase in the 70 hour rule to 70 hours in 7 consecutive days or 80 hours in 8 consecutive days will be considered compatible.

(g) Drivers operating not subject to the jurisdiction of the U.S. Department of Transportation may drive if they are at least 18 years old.

(h) States may provide grandfather clauses in their rules and regulations if such exemptions are uniform or in substantial harmony with the Federal standards and provide an orderly transition to full regulatory adoption at a later date.

(i) The States may qualify any driver engaged wholly in intrastate commerce who is adversely affected by current State medical standards, upgraded to be consistent with part 391, even if the States adopted those medical standards in the past. Drivers identified through July 29, 1996, as not meeting the upgraded State standards may also be qualified. Such a driver may remain qualified after July 29, 1996, as long as an examining physician determines during the biennial medical examination that existing medical or physical conditions that would otherwise render the driver not qualified under Federal standards have not significantly worsened or another non-qualifying medical or physical condition has not developed.

(j) States whose rules and regulations do not meet these guidelines may still be considered qualified for participation under §350.21. However, their formula allocations for basic grant funds will be subject to the limitations of §350.21 (d).

It should be noted that the FHWA still considers the physical qualification requirements in part 391 to be the minimum requirements that contribute significantly to commercial motor vehicle operational safety. The FHWA continues to encourage States to adopt these minimum standards as their own and to use this grandfathering option judiciously to respond to legitimate hardships. This policy should in no way be interpreted as discrediting the medical standards adopted in part 391.

This guideline will not preclude a State's adoption of or continuation of a waiver program which can be demonstrated to be based

on sound medical judgment combined with appropriate performance standards causing no adverse affect on safety.

[57 FR 40956, Sept. 8, 1992, as amended at 58 FR 33776, June 21, 1993; 58 FR 40600, July 29, 1993; 59 FR 5264, Feb. 3, 1994; 60 FR 38743, July 28, 1995]

PART 355—COMPATIBILITY OF STATE LAWS AND REGULATIONS AFFECTING INTERSTATE MOTOR CARRIER OPERATIONS

Subpart A—General Applicability and Definitions

Sec.
355.1 Purpose.
355.3 Applicability.
355.5 Definitions.

Subpart B—Requirements

355.21 Regulatory review.
355.23 Submission of results.
355.25 Adopting and enforcing compatible laws and regulations.

APPENDIX A TO PART 355—GUIDELINES FOR THE REGULATORY REVIEW

AUTHORITY: 49 U.S.C. app. 2505—2508; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

SOURCE: 57 FR 40962, Sept. 8, 1992, unless otherwise noted.

Subpart A—General Applicability and Definitions

§ 355.1 Purpose.

(a) 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.

(b) To provide guidelines for a continuous regulatory review of State laws and regulations.

(c) To establish deadlines for States to achieve compatibility with appropriate parts of the Federal Motor Carrier Safety Regulations with respect to interstate commerce.

§ 355.3 Applicability.

These provisions apply to any State that adopts or enforces laws or regulations pertaining to commercial motor vehicle safety in interstate commerce.

§ 355.5 Definitions.

Unless specifically defined in this section, terms used in this part are subject to the definitions in 49 CFR 390.5.

Compatible or *compatibility* means, in relation to State laws and regulations pertaining to commercial motor vehicle safety, having the same effect as the Federal Motor Carrier Safety Regulations in that those State laws and regulations are either identical or fall within the guidelines in appendix C of part 350.

Federal Motor Carrier Safety Regulations means those safety regulations which are contained in parts 390, 391, 392, 393, 395, 396, and 397 of this subchapter.

State means a State of the United States and the District of Columbia.

Subpart B—Requirements

§ 355.21 Regulatory review.

(a) *General.* Each State shall annually analyze its laws and regulations, including those of its political subdivisions, which pertain to commercial motor vehicle safety to determine whether its laws and regulations are compatible with the Federal Motor Carrier Safety Regulations. Guidelines for the regulatory review are provided in the appendix to this part.

(b) *Responsibility.* The State agency designated as lead agency for the administration of grants made pursuant to part 350 of this subchapter is responsible for reviewing and analyzing State laws and regulations for compliance with this part. In the absence of an officially designated Motor Carrier Safety Assistance Program (MCSAP) lead agency or in its discretion, the State shall designate another agency responsible to review and determine compliance with these regulations.

(c) *State review.* (1) The State shall determine which of its laws and regulations pretaining to commercial motor vehicle safety are the same as the Federal Motor Carrier Safety or Federal Hazadous Materials Regulations. With respect to any State law or regulation which is not the same, the State shall identify such law or regulation and determine whether:

(i) It has the same effect as a corresponding section of the Federal Motor Carrier Safety or Federal Hazardous Materials Regulations;

(ii) It applies to interstate commerce;

(iii) It is more stringent than the FMCSR or FHMR in that it is more restrictive or places a greater burden on any entity subject to its provisions;

(2) If the inconsistent State law or regulation applies to interstate commerce and is more stringent than the FMCSR or FHMR, the State shall determine:

(i) The safety benefits associated with such State law or regulation; and

(ii) The effect of the enforcement of such State law or regulation on interstate commerce.

(3) If the inconsistent State law or regulation does not apply to interstate commerce or is less stringent than the FMCSR or FHMR, the tolerance guidelines for participation in the Motor Carrier Safety Assistance Program in part 350 of this subchapter shall apply.

§ 355.23 Submission of results.

Each State shall submit the results of its regulatory review annually with its certification of compliance under 49 CFR 350.15. It shall submit the results of the regulatory review with the certification no later than August 1 of each year with the SEP. The State shall include copies of pertinent laws and regulations.

§ 355.25 Adopting and enforcing compatible laws and regulations.

(a) *General.* No State shall have in effect or enforce any State law or regulation pertaining to commercial motor vehicle safety in interstate commerce which the Administrator finds to be incompatible with the provisions of the Federal Motor Carrier Safety Regulations.

(b) *New state requirements.* No State shall implement any changes to a law or regulation which makes that or any other law or regulation incompatible with a provision of the Federal Motor Carrier Safety Regulations.

(c) *Enforcement.* To enforce compliance with this section, the Administrator will initiate a rulemaking proceeding under part 389 of this subchapter to declare the incompatible State law or regulation pertaining to commercial motor vehicle safety unenforceable in interstate commerce.

(d) *Waiver of determination.* Any person (including any State) may petition for a waiver of a determination made under paragraph (c) of this section. Such petition will also be considered in a rulemaking proceeding under part 389. Waivers shall be granted only upon a satisfactory showing that continued enforcement of the incompatible State law or regulation is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.

(e) *Consolidation of proceedings.* The Administrator may consolidate any action to enforce this section with other proceedings required under this section if the Administrator determines that such consolidation will not adversely affect any party to any such proceeding.

APPENDIX A TO PART 355—GUIDELINES FOR THE REGULATORY REVIEW

Each State shall review its laws and regulations to achieve compatibility with the Federal Motor Carrier Safety Regulations (FMCSRs). Each State shall consider all related requirements on enforcement of the State's motor carrier safety regulations. The documentation shall be simple and brief.

SCOPE

The State review required by §355.21 may be limited to those laws and regulations previously determined to be incompatible in the report of the Commercial Motor Vehicle Safety Regulatory Review Panel issued in August 1990, or by subsequent determination by the Administrator under this part, *and* any State laws or regulations enacted or issued after August 1990.

APPLICABILITY

The requirements must apply to all segments of the motor carrier industry common, contract, and private carriers of property and for-hire carriers of passengers.

DEFINITIONS

Definitions of terms must be consistent with those in the FMCSR. For example, a commercial motor vehicle is a vehicle operating in interstate commerce on a public highway, that (1) has a gross vehicle weight rating (GVWR) of 10,001 pounds or more, (2) is designed to transport more that 15 passengers (including the driver), or (3) is used

to transport hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act, as amended (49 U.S.C. app. 1801 et seq).

DRIVER QUALIFICATIONS

Require a driver to be properly licensed to drive a motor vehicle; require a driver to be in good physical health, at least 21 years of age, able to operate a vehicle safely, and maintain a good driving record; prohibit drug and alcohol abuse; require a motor carrier to maintain a driver qualification file for each driver; require a motor carrier to ensure that a driver is medically qualified; and require a motor carrier to establish an anti-drug program with testing of drivers prior to employment, periodically, based on reasonable cause, after accidents, and by random selection.

NOTE: The requirements for testing apply only to drivers of commercial motor vehicles as defined in 49 CFR part 383.

DRIVING OF MOTOR VEHICLES

Prohibit possession, use, or driving under the influence of alcohol or other controlled substances (while on duty); and establish 0.04 percent as the level of alcohol in the blood at which a driver is considered under the influence of alcohol.

PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Require operational lights and reflectors; require systematically arranged and installed wiring; and require brakes working at the required performance level, and other key components included in 49 CFR part 393.

HOURS OF SERVICE

Prohibit a motor carrier from allowing or requiring any driver to drive: More than 10 hours following 8 consecutive hours off duty; after being on duty 15 hours, after being on duty more than 60 hours in any 7 consecutive days; or after being on duty more than 70 hours in any 8 consecutive days.

Require a driver to prepare a record-of-duty status for each 24-hour period. The driver and motor carrier must retain the records.

INSPECTION AND MAINTENANCE

Prohibit a commercial motor vehicle from being operated when it is likely to cause an accident or a breakdown; require the driver to conduct a walk-around inspection of the vehicle before driving it to ensure that it can be safely operated; require the driver to prepare a driver vehicle inspection report; and require commercial motor vehicles to be inspected at least annually.

HAZARDOUS MATERIALS

Require a motor carrier or a person operating a commercial motor vehicle transporting hazardous materials to follow the safety and hazardous materials requirements.

STATE DETERMINATIONS

1. Each State must determine whether its requirements affecting interstate motor carriers are ''less stringent'' than the Federal requirements. ''Less stringent'' requirements represent either gaps in the State requirements in relation to the Federal requirements as summarized under item number one in this appendix or State requirements which are less restrictive than the Federal requirements.

a. An example of a gap is when a State does not have the authority to regulate the safety of for-hire carriers of passengers or has the authority but chooses to exempt the carrier.

b. An example of a less restrictive State requirement is when a State allows a person under 21 years of age to operate a commercial motor vehicle in interstate commerce.

2. Each State must determine whether its requirements affecting interstate motor carriers are ''more stringent'' than the Federal requirements: ''More stringent'' requirements are more restrictive or inclusive in relation to the Federal requirements as summarized under item number one in this appendix. For example, a requirement that a driver must have 2 days off after working 5 consecutive days. The State would demonstrate that its more stringent requirements:

a. Have a ''safety benefit;'' for example, result in fewer accidents or reduce the risk of accidents;

b. do not create ''an undue burden on interstate commerce,'' e.g., do not delay, interfere with, or increase that cost or the administrative burden for a motor carrier transporting property or passengers in interstate commerce; and

c. Are otherwise compatible with Federal safety requirements.

3. A State must adopt and enforce in a consistent manner the requirements referenced in the above guidelines in order for the FHWA to accept the State's determination that it has compatible safety requirements affecting interstate motor carrier operations. Generally, the States would have up to 3 years from the effective date of the new Federal requirement to adopt and enforce compatible requirements. The FHWA would specify the deadline when promulgating future Federal safety requirements. The requirements are considered of equal importance.

[57 FR 40962, Sept. 8, 1992, as amended by 58 FR 33776, June 21, 1993]

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

Subpart A—General

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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 Requirement for notice.
382.115 Starting date for testing programs.

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382.201 Alcohol concentration.
382.205 On-duty use.
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382.301 Pre-employment testing.
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382.309 Return-to-duty testing.
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382.401 Retention of records.
382.403 Reporting of results in a management information system.
382.405 Access to facilities and records.
382.407 Medical review officer notifications to the employer.
382.409 Medical review officer record retention for controlled substances.
382.411 Employer notifications.
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Subpart E—Consequences for Drivers Engaging in Substance Use-Related Conduct

382.501 Removal from safety-sensitive function.
382.503 Required evaluation and testing.
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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.
382.603 Training for supervisors.
382.605 Referral, evaluation, and treatment.

AUTHORITY: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; and 49 CFR 1.48.

SOURCE: 61 FR 9553, Mar. 8, 1996, 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 driver's 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(g) of this subchapter do not apply to this part. The employers and drivers identified in §390.3(g) 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 parts 653 and 654 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;

(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 herein—

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 consumption of any beverage, 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 motor 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 and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation test for alcohol testing means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration. For controlled substances testing means a second analytical procedure to identify

the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

Consortium means an entity, including a group or association of employers or contractors, that provides alcohol or controlled substances testing as required by this part, or other DOT alcohol or controlled substances testing rules, and that acts on behalf of the employers.

Controlled substances mean those substances identified in §40.21(a) of this title.

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, 653 and 654), 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 who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer.

Employer means any person (including the United States, a State, District of Columbia, tribal government, or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term *employer* includes an employer's agents, officers and representatives.

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 means the number of positive results for random controlled substances tests conducted under this part plus the number of refusals of random controlled substances tests required by this part, divided by the total of random controlled substances tests conducted under this part plus the number of refusals of random tests required by this part.

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

(1) Fails to provide adequate breath for alcohol testing as required by part 40 of this title, without a valid medical explanation, after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part,

(2) Fails to provide an adequate urine sample for controlled substances testing as required by part 40 of this title, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, or

(3) Engages in conduct that clearly obstructs the testing process.

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 (also known as initial test) In alcohol testing, it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate ''negative'' urine specimens from further consideration.

Violation rate means the number of drivers (as reported under § 382.305 of this part) found during random tests given under this part to have an alcohol concentration of 0.04 or greater, plus the number of drivers who refuse a random test required by this part, divided by the total reported number of drivers in the industry given random alcohol tests under this part plus the total reported number of drivers in the industry who refuse a random test required by this part.

[61 FR 9553, Mar. 8, 1996, as amended at 61 FR 37224, July 17, 1996]

§ 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 and 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 an 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) *Large domestic employers.* Each employer with fifty or more drivers on March 17, 1994, will implement the requirements of this part beginning on January 1, 1995.

(b) *Small domestic employers.* Each employer with less than fifty drivers on March 17, 1994, will implement the requirements of this part beginning on January 1, 1996.

(c) *All domestic employers.* Each domestic employer that begins commercial motor vehicle operations after March 17, 1994, but before January 1, 1996, will implement the requirements

of this part beginning on January 1, 1996. However, such an employer may be subject to the requirements of part 391, subpart H on the date they begin operations, if operating commercial motor vehicles in interstate commerce. A domestic employer that begins commercial motor vehicle operations on or after January 1, 1996, will implement the requirements of this part on the date the employer begins such operations.

(d) *Large foreign employers.* Each foreign-domiciled employer with fifty or more drivers assigned to operate commercial motor vehicles in North America on December 17, 1995, must implement the requirements of this part beginning on July 1, 1996.

(e) *Small foreign employers.* Each foreign-domiciled employer with less than fifty drivers assigned to operate commercial motor vehicles in North America on December 17, 1995, must implement the requirements of this part beginning on July 1, 1997.

(f) *All foreign employers.* Each foreign-domiciled employer that begins commercial motor vehicle operations in the United States after December 17, 1995, but before July 1, 1997, must implement the requirements of this part beginning on July 1, 1997. A foreign employer that begins commercial motor vehicle operations in the United States on or after July 1, 1997, must implement the requirements of this part on the date the foreign employer begins such operations.

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 of this part 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 of this part, 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 for controlled substances. No employer having actual knowledge that a driver has tested positive 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 alcohol and controlled substances as a condition prior to being used, unless the employer uses the exception in paragraphs (c) and (d) of this section. No employer shall allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the driver has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04, and has received a controlled substances test result from the MRO indicating a verified negative test result. If a pre-employment alcohol test result under this section indicates an alcohol content of 0.02 or greater but less than 0.04, the provision of § 382.505 shall apply.

(b) *Exception for pre-employment alcohol testing.* An employer is not required to administer an alcohol test required by paragraph (a) of this section if:

(1) The driver has undergone an alcohol test required by this section or the alcohol misuse rule of another DOT agency under part 40 of this title within the previous six months, with a result indicating an alcohol concentration less than 0.04; and

(2) 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 alcohol misuse rule of another DOT agency within the previous six months.

(c) *Exception for pre-employment controlled substances testing.* 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.

(d)(1) An employer who exercises the exception in either paragraph (b) or (c) of this section shall contact the alcohol and/or 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 alcohol or 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 (d)(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, the employer shall conduct a pre-employment alcohol and/or controlled substances test.

(e) Nothwithstanding any other provisions of this subpart, all provisions and requirements in this section pertaining to pre-employment testing for alcohol are vacated as of May 1, 1995.

§ 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 and controlled substances each surviving driver:

(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 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.

(3) This table notes when a post-accident test is required to be conducted by paragraphs (a)(1) and (a)(2) of this section.

TABLE FOR § 382.303(a)(3)

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

(b)(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 FHWA upon request of the Associate Administrator.

(2) For the years stated in this paragraph, employers who submit MIS reports shall submit to the FHWA each record of a test required by this section that is not completed within eight hours. The employer's records of tests that are not completed within eight hours shall be submitted to the FHWA by March 15, 1996; March 15, 1997, and March 15, 1998, for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

(i) Type of test (reasonable suspicion/post-accident);

(ii) Triggering event (including date, time, and location);

(iii) Reason(s) test could not be completed within eight hours;

(iv) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred; and

(3) Records of alcohol tests that could not be completed in eight hours shall be submitted to the FHWA at the following address: Attn: Alcohol Testing Program, Office of Motor Carrier Research and Standards (HCS–1), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

(4) 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 FHWA upon request of the Associate Administrator.

(c) 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.

(d) 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.

(e)(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.

(f) *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 25 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 FHWA 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 of this part. In order to ensure reliability of the data, the FHWA 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. Each year, the FHWA Administrator will publish in the FEDERAL REGISTER the 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.

(d)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the FHWA Administrator may lower this rate to 10 percent of all driver positions if the FHWA 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 FHWA Administrator may lower this rate to 25 percent of all driver positions if the FHWA

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

(f) The FHWA 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 of this part. In order to ensure reliability of the data, the FHWA 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. Each year, the FHWA Administrator will publish in the FEDERAL REGISTER the minimum annual percentage rate for random 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.

(g) When the minimum annual percentage rate for random controlled substances testing is 50 percent, the FHWA Administrator may lower this rate to 25 percent of all driver positions if the FHWA 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. However, after the initial two years of random testing by large employers and the initial first year of testing by small employers under this section, the FHWA Administrator may lower the rate the following calendar year, if the combined positive testing rate is less than 1.0 percent, and if it would be in the interest of safety.

(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 FHWA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions.

(i) 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. Under the selection process used, each driver shall have an equal chance of being tested each time selections are made.

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

or any DOT alcohol or controlled substances random testing rule.

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

§ 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 of this part. 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) For the years stated in this paragraph, employers who submit MIS reports shall submit to the FHWA each record of a test required by this section that is not completed within 8 hours. The employer's records of tests that could not be completed within 8 hours shall be submitted to the FHWA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

(i) Type of test (reasonable suspicion/post-accident);

(ii) Triggering event (including date, time, and location);

(iii) Reason(s) test could not be completed within 8 hours; and

(iv) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

(3) Records of tests that could not be completed in eight hours shall be submitted to the FHWA at the following address: Attn.: Alcohol Testing program, Office of Motor Carrier Research and Standards (HCS–1), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

(4) 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.

(5) 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 a controlled substance 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 controlled substances test are released, whichever is earlier.

§ 382.309 Return-to-duty testing.

(a) Each employer shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part concerning alcohol, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(b) Each employer shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part concerning controlled substances, the driver shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

§ 382.311 Follow-up testing.

(a) Following a determination under § 382.605(b) that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, each employer shall ensure that the driver is subject to unannounced follow-up alcohol and/

or controlled substances testing as directed by a substance abuse professional in accordance with the provisions of § 382.605(c)(2)(ii).

(b) Follow-up alcohol testing shall be conducted only when 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 safety-sensitive functions.

Subpart D—Handling Of Test Results, Record 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) Consolidated annual calendar year summaries 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 § 382.407(a).

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

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

(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 of this part, and

(B) Must obtain as required by § 382.413 of this subpart.

(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 § 40.51(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) Quarterly laboratory statistical summaries of urinalysis required by § 40.29(g)(6) of this title;

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

(v) Records generated in connection with part 391, subpart H of this subchapter.

(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 Highway Administration.

(e)(1) *OMB control number.* The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2125–0543, approved through March 31, 1997.

(2) The information collection requirements of this part are found in the following sections: Section 382.105, 382.113, 382.301, 382.303, 382.305, 382.307, 382.309, 382.311, 382.401, 382.403, 382.405, 382.407, 382.409, 382.411, 382.413, 382.601, 382.603, 382.605.

§ 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 Highway Administration to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the Federal Highway Administration 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 Federal Highway Administration specifies in its request. The report shall be in the form and manner prescribed by the Federal Highway Administration in its request. When the report is submitted to the Federal Highway Administration 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.

(c) *Detailed summary*. Each annual calendar year summary that contains information on a verified positive controlled substances test result, an alcohol screening test result of 0.02 or greater, or any other violation of the alcohol misuse provisions of subpart B of this part shall include the following informational elements:

(1) Number of drivers subject to Part 382;

(2) Number of drivers subject to testing under the alcohol misuse or controlled substances use rules of more than one DOT agency, identified by each agency;

(3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);

(4) Number of positives verified by a MRO by type of test, and type of controlled substance;

(5) Number of negative controlled substance tests verified by a MRO by type of test;

(6) Number of persons denied a position as a driver following a pre-employment verified positive controlled substances test and/or a pre-employment alcohol test that indicates an alcohol concentration of 0.04 or greater;

(7) Number of drivers with tests verified positive by a medical review officer for multiple controlled substances;

(8) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart;

(9)(i) Number of supervisors who have received required alcohol training during the reporting period; and

(ii) Number of supervisors who have received required controlled substances training during the reporting period;

(10)(i) Number of screening alcohol tests by type of test; and

(ii) Number of confirmation alcohol tests, by type of test;

(11) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test;

(12) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test;

(13) Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional as described in §§ 382.503 and 382.605), in this reporting period, who previously:

(i) Had a verified positive controlled substance test result, or

(ii) Engaged in prohibited alcohol misuse under the provisions of this part;

(14) Number of drivers who were administered alcohol and drug tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater; and

(15) Number of drivers who were found to have violated any non-testing prohibitions of subpart B of this part, and any action taken in response to the violation.

(d) *Short summary*. Each employer's annual calendar year summary that contains only negative controlled substance test results, alcohol screening test results of less than 0.02, and does not contain any other violations of subpart B of this part, may prepare and submit, as required by paragraph (b) of this section, either a standard report form containing all the information elements specified in paragraph (c) of this section, or an ''EZ'' report form. The ''EZ'' report shall include the following information elements:

(1) Number of drivers subject to this Part 382;

(2) Number of drivers subject to testing under the alcohol misuse or controlled substance use rules of more than one DOT agency, identified by each agency;

(3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);

(4) Number of negatives verified by a medical review officer by type of test;

(5) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart;

(6)(i) Number of supervisors who have received required alcohol training during the reporting period; and

(ii) Number of supervisors who have received required controlled substances training during the reporting period;

(7) Number of screen alcohol tests by type of test; and

(8) Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional as described in §§ 382.503 and 382.605), in this reporting period, who previously:

(i) Had a verified positive controlled substance test result, or

(ii) Engaged in prohibited alcohol misuse under the provisions of this part.

(e) Each employer that is subject to more than one DOT agency alcohol or controlled substances rule shall identify each driver covered by the regulations of more than one DOT agency. The identification will be by the total number of covered functions. Prior to conducting any alcohol or controlled substances test on a driver subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(f) A consortium may prepare annual calendar year summaries and reports on behalf of individual employers for purposes of compliance with this section. However, each employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

§ 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, the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or controlled substance test administered under this part, or from the employer's determination that the driver engaged in conduct prohibited by subpart B 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.)

(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 consent.

§ 382.407 Medical review officer notifications to the employer.

(a) The medical review officer may report to the employer using any communications device, but in all instances a signed, written notification must be forwarded within three business days of completion of the medical review officer's review, pursuant to part 40 of this title. A legible photocopy of the fourth copy of Part 40 Appendix A subtitled *COPY 4—SEND DIRECTLY TO MEDICAL REVIEW OFFICER—DO NOT SEND TO LABORATORY* of the *Federal Custody and Control Form OMB Number 9999–0023* may be used to make the signed, written notification to the employer for all test results (positive, negative, canceled, etc.), provided that the controlled substance(s) verified as positive, and the MRO's signature, shall be legibly noted in the remarks section of step 8 of the form completed by the medical review officer. The MRO must sign all verified positive test results. An MRO may sign or rubber stamp negative test results. An MRO's staff may rubber stamp negative test results under written authorization of the MRO. In no event shall an MRO, or his/her staff, use electronic signature technology to comply with this section. All reports, both oral and in writing, from the medical review officer to an employer shall clearly include:

(1) A statement that the controlled substances test being reported was in accordance with part 40 of this title and this part, except for legible photocopies of Copy 4 of the Federal Custody and Control Form;

(2) The full name of the driver for whom the test results are being reported;

(3) The type of test indicated on the custody and control form (i.e. random, post-accident, follow-up);

(4) The date and location of the test collection;

(5) The identities of the persons or entities performing the collection, analyzing the specimens, and serving as the medical review officer for the specific test;

(6) The results of the controlled substances test, positive, negative, test canceled, or test not performed, and if positive, the identity of the controlled substance(s) for which the test was verified positive.

(b) A medical review officer shall report to the employer that the medical review officer has made all reasonable efforts to contact the driver as provided in § 40.33(c) of this title. The employer shall, as soon as practicable, request that the driver contact the medical review officer prior to dispatching the driver or within 24 hours, whichever is earlier.

§ 382.409 Medical review officer record retention for controlled substances.

(a) A medical review officer 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 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, and no medical review officer 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 shall prohibit a medical review officer 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 § 382.407(a) of this subpart.

§ 382.411 Employer notifications.

(a) An employer shall notify a driver of the results of a pre-employment controlled substance 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 management official 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 management official shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 24 hours.

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

(a)(1) An employer shall, pursuant to the driver's written authorization, inquire about the following information on a driver from the driver's previous employers, during the preceding two years from the date of application, which are maintained by the driver's previous employers under § 382.401(b)(1)(i) through (iii) of this subpart:

(i) Alcohol tests with a result of 0.04 alcohol concentration or greater;

(ii) Verified positive controlled substances test results; and

(iii) Refusals to be tested.

(2) The information obtained from a previous employer may contain any alcohol and drug information the previous employer obtained from other previous employers under paragraph (a)(1) of this section.

(b) If feasible, the information in paragraph (a) of this section must be obtained and reviewed by the employer prior to the first time a driver performs safety-sensitive functions for the employer. If not feasible, the information must be obtained and reviewed as soon as possible, but no later than 14-calendar days after the first time a driver performs safety-sensitive functions for the employer. An employer may not permit a driver to perform safety-sensitive functions after 14 days without having made a good faith effort to obtain the information as soon as possible. If a driver hired or used by the employer ceases performing safety-sensitive functions for the employer before expiration of the 14-day period or before the employer has obtained the information in paragraph (a) of this section, the employer must still make a good faith effort to obtain the information.

(c) An employer must maintain a written, confidential record of the information obtained under paragraph (a) or (f) of this section. If, after making a good faith effort, an employer is unable to obtain the information from a previous employer, a record must be made of the efforts to obtain the information and retained in the driver's qualification file.

(d) The prospective employer must provide to each of the driver's previous employers the driver's specific, written authorization for release of the information in paragraph (a) of this section.

(e) The release of any information under this section may take the form of personal interviews, telephone interviews, letters, or any other method of transmitting information that ensures confidentiality.

(f) The information in paragraph (a) of this section may be provided directly to the prospective employer by the driver, provided the employer assures itself that the information is true and accurate.

(g) An employer may not use a driver to perform safety-sensitive functions if the employer obtains information on a violation of the prohibitions in subpart B of this part by the driver, without obtaining information on subsequent compliance with the referral and rehabilitation requirements of § 382.605 of this part.

(h) Employers need not obtain information under paragraph (a) of this section generated by previous employers prior to the starting dates in § 382.115 of this part.

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 §382.605. 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 §382.605.

§ 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 penalty provisions of 49 U.S.C. section 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) of this part;

(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 § 382.605;

(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 coworker'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.

§ 382.605 Referral, evaluation, and treatment.

(a) Each driver who has engaged in conduct prohibited by subpart B of this part shall be advised by the employer of the resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b) Each driver who engages in conduct prohibited by subpart B of this part shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use.

(c)(1) Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less

than 0.02 if the conduct involved alcohol, or a controlled substances test with a verified negative result if the conduct involved a controlled substance.

(2) In addition, each driver identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use,

(i) Shall be evaluated by a substance abuse professional to determine that the driver has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol and controlled substances tests administered by the employer following the driver's return to duty. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional, and consist of at least six tests in the first 12 months following the driver's return to duty. The employer may direct the driver to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular driver. Any such testing shall be performed in accordance with the requirements of 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the driver's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the employer, by a substance abuse professional under contract with the employer, or by a substance abuse professional not affiliated with the employer. The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/driver agreements and employer policies.

(e) The employer shall ensure that a substance abuse professional who determines that a driver requires assistance in resolving problems with alcohol misuse or controlled substances use does not refer the driver to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring a driver for assistance provided through—

(1) A public agency, such as a State, county, or municipality;

(2) The employer or a person under contract to provide treatment for alcohol or controlled substance problems on behalf of the employer;

(3) The sole source of therapeutically appropriate treatment under the driver's health insurance program; or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the driver.

(f) The requirements of this section with respect to referral, evaluation and rehabilitation do not apply to applicants who refuse to submit to a pre-employment alcohol or controlled substances test or who have a pre-employment alcohol test with a result indicating an alcohol concentration of 0.04 or greater or a controlled substances test with a verified positive test result.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

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AUTHORITY: 49 U.S.C. 31101 *et seq.*, 31136, and 31502; sec. 345, Pub. L. 104–59, 109 Stat. 568, 613; and 49 CFR 1.48.

SOURCE: 52 FR 20587, June 1, 1987, unless otherwise noted.

Subpart A—General

§ 383.1 Purpose and scope.

(a) The purpose of this part is to help reduce or prevent truck and 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(g) of this subchapter do not apply to this part. The employers and drivers identified in §390.3(g) must comply with the requirements of this part, unless otherwise provided in this section.

(c) *Exception for certain military drivers.* Each State must exempt from the requirements of this part individuals who operate CMVs for military purposes. This exception is applicable to active duty military personnel; members of the military reserves; member 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. This exception is not applicable to U.S. Reserve technicians.

(d) *Exception for farmers, firefighters, emergency response vehicle drivers, and drivers removing snow and ice.* A State may, at its discretion, exempt individuals identified in paragraphs (d)(1), (d)(2), and (d)(3) of this section from the requirements of this part. The use of this waiver is limited to the driver's home State unless there is a reciprocity agreement with adjoining States.

(1) Operators of a farm vehicle which is:

(i) Controlled and operated by a farmer, including operation by employees or family members;

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

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

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

(2) Firefighters and other persons who operate CMVs which are necessary to 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. These vehicles include fire trucks, hook and ladder trucks, foam or water transport trucks, police SWAT team vehicles, ambulances, or other vehicles that are used in response to emergencies.

(3)(i) A driver, employed by an eligible unit of local government, operating a commercial motor vehicle within the boundaries of that unit for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting, if

(A) The properly licensed employee who ordinarily operates a commercial motor vehicle for these purposes is unable to operate the vehicle; or

(B) The employing governmental entity determines that a snow or ice emergency exists that requires additional assistance.

(ii) This exemption shall not preempt State laws and regulations concerning the safe operation of commercial motor vehicles.

(e) *Restricted commercial drivers license (CDL) for certain drivers in the State of Alaska.* (1) The State of Alaska may, at its discretion, waive only the following requirements of this part and issue a CDL to each driver that meets the conditions set forth in paragraphs (e) (2) and (3) of this section:

(i) The knowledge tests standards for testing procedures and methods of subpart H, but must continue to administer knowledge tests that fulfill the content requirements of subpart G for *all* applicants;

(ii) All the skills test requirements; and

(iii) The requirement under §383.153(a)(4) to have a photograph on the license document.

(2) Drivers of CMVs in the State of Alaska must operate exclusively over roads that meet *both* of the following criteria to be eligible for the exception in paragraph (e)(1) of this section:

(i) Such roads are not connected by land highway or vehicular way to the land-connected State highway system; and

(ii) Such roads are not connected to any highway or vehicular way with an average daily traffic volume greater than 499.

(3) Any CDL issued under the terms of this paragraph must carry two restrictions:

(i) Holders may not operate CMVs over roads other than those specified in paragraph (e)(2) of this section; and

(ii) The license is not valid for CMV operation outside the State of Alaska.

(f) *Restricted CDL for certain drivers in farm-related service industries.* (1) A State may, at its discretion, waive the required knowledge and skills tests of subpart H of this part and issue restricted CDLs to employees of these designated farm-related service industries:

(i) Agri-chemical businesses;

(ii) Custom harvesters;

(iii) Farm retail outlets and suppliers;

(iv) Livestock feeders.

(2) A restricted CDL issued pursuant to this paragraph shall meet all the requirements of this part, except subpart H of this part. A restricted CDL issued pursuant to this paragraph shall be accorded the same reciprocity as a CDL meeting all of the requirements of this part. The restrictions imposed upon the issuance of this restricted CDL shall not limit a person's use of the CDL in a non-CMV during either validated or non-validated periods, nor shall the CDL affect a State's power to administer its driver licensing program for operators of vehicles other than CMVs.

(3) A State issuing a CDL under the terms of this paragraph must restrict issuance as follows:

(i) Applicants must have a good driving record as defined in this paragraph. Drivers who have not held any motor vehicle operator's license for at least one year shall not be eligible for this CDL. Drivers who have between one and two years of driving experience must demonstrate a good driving record for their entire driving history. Drivers with more than two years of driving experience must have a good driving record for the two most recent years. For the purposes of this paragraph, the term *good driving record* means that an applicant:

(A) Has not had more than one license (except in the instances specified in § 383.21(b));

(B) Has not had *any* license suspended, revoked, or canceled;

(C) Has not had *any* conviction for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b)(2);

(D) Has not had *any* conviction for any type of motor vehicle for serious traffic violations; and

(E) Has not had *any* conviction for a violation of 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.

(ii) Restricted CDLs shall have the same renewal cycle as unrestricted CDLs, but shall be limited to the seasonal period or periods as defined by the State of licensure, provided that the total number of calendar days in any 12-month period for which the restricted CDL is valid does not exceed 180. If a State elects to provide for more than one seasonal period, the restricted CDL is valid for commercial motor vehicle operation only during the currently approved season, and must be revalidated for each successive season. Only one seasonal period of validity may appear on the license document at a time. The good driving record must be confirmed prior to any renewal or revalidation.

(iii) Restricted CDL holders are limited to operating Group B and C vehicles, as described in subpart F of this part.

(iv) Restricted CDLs shall not be issued with *any* endorsements on the license document. Only the limited tank vehicle and hazardous materials endorsement privileges that the restricted CDL automatically confers and are described in paragraph (f)(3)(v) of this section are permitted.

(v) Restricted CDL holders may not drive vehicles carrying any placardable quantities of hazardous materials, except for diesel fuel in quantities of 3,785 liters (1,000 gallons) or less; liquid fertilizers (i.e., plant nutrients) in vehicles or implements of husbandry in total quantities of 11,355 liters (3,000 gallons) or less; and solid fertilizers (i.e., solid plant nutrients) that are not transported with any organic substance.

(vi) Restricted CDL holders may not hold an unrestricted CDL at the same time.

(vii) Restricted CDL holders may not operate a commercial motor vehicle beyond 241 kilometers (150 miles) from the place of business or the farm currently being served.

(g) *Restricted CDL for certain drivers in the pyrotechnic industry.* (1) A State may, at its discretion, waive the required hazardous materials knowledge tests of subpart H of this part and issue restricted CDLs to part-time drivers operating commercial motor vehicles transporting less than 227 kilograms (500 pounds) of fireworks classified as DOT Class 1.3G explosives.

(2) A State issuing a CDL under the terms of this paragraph must restrict issuance as follows:

(i) The GVWR of the vehicle to be operated must be less than 4,537 kilograms (10,001 pounds);

(ii) If a State believes, at its discretion, that the training required by §172.704 of this title adequately prepares part-time drivers meeting the other requirements of this paragraph to deal with fireworks and the other potential dangers posed by fireworks transportation and use, the State may waive the hazardous materials knowledge tests of subpart H of this part. The State may impose any requirements it believes is necessary to ensure itself that a driver is properly trained pursuant to §172.704 of this title.

(iii) A restricted CDL document issued pursuant to this paragraph shall have a statement clearly imprinted on the face of the document that is substantially similar as follows: ''For use as a CDL only during the period from June 30 through July 6 for purposes of transporting less than 227 kilograms (500 pounds) of fireworks classified as DOT Class 1.3G explosives in a vehicle with a GVWR of less than 4,537 kilograms (10,001 pounds).

(3) A restricted CDL issued pursuant to this paragraph shall meet all the requirements of this part, except those specifically identified. A restricted CDL issued pursuant to this paragraph shall be accorded the same reciprocity as a CDL meeting all of the requirements of this part. The restrictions imposed upon the issuance of this restricted CDL shall not limit a person's use of the CDL in a non-CMV during either validated or non-validated periods, nor shall the CDL affect a State's power to administer its driver licensing program for operators of vehicles other than CMVs.

(4) Restricted CDLs shall have the same renewal cycle as unrestricted CDLs, but shall be limited to the seasonal period of June 30 through July 6 of each year or a lesser period as defined by the State of licensure.

(5) Persons who operate commercial motor vehicles during the period from July 7 through June 29 for purposes of transporting less than 227 kilograms (500 pounds) of fireworks classified as DOT Class 1.3G explosives in a vehicle with a GVWR of less than 4,537 kilograms (10,001 pounds) and who also operate such vehicles for the same purposes during the period June 30 through July 6 shall not be issued a restricted CDL pursuant to this paragraph.

[61 FR 9564, Mar. 8, 1996, as amended at 61 FR 14679, Apr. 3, 1996]

§ 383.5 Definitions.

As used in this part:

Administrator means the Federal Highway Administrator, the chief executive of the Federal Highway 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.

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 by a State or other jurisdiction, in accordance with the standards contained in 49 CFR part 383, to an individual 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 FHWA pursuant to section 12007 of the Commercial Motor Vehicle Safety Act of 1986.

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—

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

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

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

(d) 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 and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Controlled substance has the meaning such term has under section 102(6), of the Controlled Substances Act (21 U.S.C. 802(6)) and includes all substances listed on schedules I through V of 21 CFR part 1308, as they may be revised from time to time. Schedule I substances are identified in appendix D of this subchapter and schedules II through V are identified in appendix E of this subchapter.

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 either:

(a) The suspension, revocation, cancellation, or any other withdrawal by a State of a person's privileges to drive a commercial motor vehicle; or

(b) A determination by the FHWA, under the rules of practice for motor carrier safety contained in part 386 of this title, that a person is no longer qualified to operate a commercial motor vehicle under part 391; or

(c) The loss of qualification which automatically follows conviction of an offense listed in § 383.51.

Driver applicant means an individual who applies to a State to obtain, transfer, upgrade, or renew a CDL.

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: driving a CMV while the person's alcohol concentration is 0.04 percent 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 § 383.51(b)(2)(i)(A) or (B), or § 392.5(a)(2).

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 CDL required to permit the individual to operate certain types of commercial motor vehicles.

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.

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 has the meaning such term has under section 103 of the Hazardous Materials Transportation Act.

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.

Nonresident CDL means a CDL issued by a State to an individual domiciled in a foreign country.

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.

Serious traffic violation means conviction, when operating a commercial motor vehicle, of:

(a) Excessive speeding, involving any single offense for any speed of 15 miles per hour or more above the posted speed limit;

(b) Reckless driving, as defined by State or local law or regulation, including but not limited to offenses of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(c) Improper or erratic traffic lane changes;

(d) Following the vehicle ahead too closely; or

(e) A violation, arising in connection with a fatal accident, of State or local law relating to motor vehicle traffic control (other than a parking violation). (Serious traffic violations exclude vehicle weight and defect violations.)

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.

Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in part 171 of this title. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons.

United States the term United States means the 50 States and the District of Columbia.

Vehicle means a motor vehicle unless otherwise specified.

Vehicle group means a class or type of vehicle with certain operating characteristics.

[52 FR 20587, June 1, 1987, as amended at 53 FR 27648, July 21, 1988; 53 FR 39050, Oct. 4, 1988; 54 FR 40787, Oct. 3, 1989; 59 FR 26028, May 18, 1994; 61 FR 9566, Mar. 8, 1996; 61 FR 14679, Apr. 3, 1996]

§ 383.7 Waiver provisions.

(a) Any person subject to a requirement of this part may petition the Administrator for a waiver of compliance by a class of persons or a class of commercial motor vehicles with such requirement.

(b) Each petition for a waiver under this section shall be made in writing, preferably in triplicate, and shall:

(1) Include the name and complete address of petitioner;

(2) Identify the requirement the petitioner wants waived and any information in support of the request;

(3) Identify the class of persons or class of commercial motor vehicle for which the waiver is sought.

(4) Identify the type of operation addressed in the petition.

(5) Indicate what benefit would be derived from the issuance of a waiver.

(6) Indicate why the petition, if granted, would not diminish the safe operation of commercial motor vehicles.

(7) Include any other pertinent material the Administrator may require.

(c) If the Administrator determines that the petition is without merit, the Administrator may deny the petition. Notice of the denial, with the reasons therefor, will be provided to the petitioner in writing.

(d) If the Administrator determines that the petition may have merit, notice of the petition will be published in the FEDERAL REGISTER, and interested persons will be afforded an opportunity to comment thereon. After such notice and opportunity for comment, the Administrator may grant or deny the petition. Notice of the disposition of the petition, with the reasons therefor, will be published in the FEDERAL REGISTER.

Subpart B—Single License Requirement

§ 383.21 Number of drivers' licenses.

(a) No person who operates a commercial motor vehicle shall at any time have more than one driver's license.

(b) *Exception:*

(1) During the 10-day period beginning on the date such person is issued a driver's license, a person may hold more than one driver's license.

(2) A person may have more than one driver's license if a State law enacted before June 1, 1986, required the person to have more than one driver's license. After December 31, 1989, this exception shall not apply.

§ 383.23 Commercial driver's license.

(a) *General rule.* (1) Effective April 1, 1992, no person shall operate a commercial motor vehicle unless such person has taken and passed written and driving tests which 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) Effective April 1, 1992, except as provided in paragraph (b) of this section, no person shall operate a commercial motor vehicle 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.* If a commercial motor vehicle operator is domiciled in a foreign jurisdiction which, as determined by the Administrator, does not test drivers and issue a CDL in accordance with, or similar to, the standards contained in subparts F, G, and H of this part, the person shall obtain a Nonresident CDL from a State which does comply with the testing and licensing standards contained in such subparts F, G, and H.[1]

(c) *Learner's permit.* State learner's permits, issued 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:

(1) The learner's permit holder is at all time accompanied by the holder of a valid CDL; and

(2) 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

[1] Effective December 29, 1988, the Administrator determined that commercial drivers' licensees 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 nonresident CDL, or any other type of driver's license, from a State or other jurisdiction in the United States.

to applicants for automobile drivers' licenses.

[53 FR 27649, July 21, 1988, as amended at 54 FR 22285, May 23, 1989; 57 FR 31457, July 16, 1992]

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 FR 20587, June 1, 1987, as amended at 54 FR 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 FR 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 shall knowingly allow, require, permit, or authorize an employee to operate a commercial motor vehicle in the United States during any period—

(a) In which the employee has a commercial motor vehicle driver's license suspended, revoked, or canceled 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;

(b) In which the employee has more than one commercial motor vehicle 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 shall not be effective after December 31, 1989; or

(c) In which the employee, or the motor vehicle he/she is driving, or the motor carrier operation, is subject to an out-of-service order.

[52 FR 20587, June 1, 1987; 52 FR 32926, Sept. 1, 1987, as amended at 59 FR 26028, May 18, 1994]

Subpart D—Driver Disqualifications and Penalties

§ 383.51 Disqualification of drivers.

(a) *General.* A driver who is disqualified shall not drive a commercial motor vehicle. An employer shall not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a commercial motor vehicle.

(b) Disqualification for driving while under the influence, leaving the scene of an accident, or commission of a felony.

(1) *General rule.* A driver who is convicted of a disqualifying offense specified in paragraph (b)(2) of this section, is disqualified for the period of time specified in paragraph (b)(3) of this section, if the offense was committed while operating a commercial motor vehicle.

(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; or

(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)(2)(i)(A) or (B), or § 392.5(a)(2).

(ii) Driving a commercial motor vehicle while under the influence of a controlled substance as defined under Section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), including all substances listed in Schedules I through V of 21 CFR part 1308, as they may be amended from time to time. Schedule I substances are identified in appendix D of this subchapter and Schedules II through V are identified in appendix E of this subchapter.

(iii) Leaving the scene of an accident involving a commercial motor vehicle;

(iv) A felony involving the use of a commercial motor vehicle, other than a felony described in paragraph (b)(2)(v) of this section; or

(v) The use of a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance when defined as any substance under Section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) including all substances listed in Schedules I through V of 21 CFR part 1308, as they may be amended from time to time. Schedule I substances are identified in appendix D of this subchapter and Schedules II through V are identified in appendix E of this subchapter.

(3) *Duration of disqualification for driving while under the influence, leaving the scene of an accident, or commission of a felony*—(i) *First offenders.* A driver who is convicted of an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, is disqualified for a period of one year provided the vehicle was not transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1813).

(ii) *First offenders transporting hazardous materials.* A driver who is convicted of an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, is disqualified for a period of three years if the vehicle was transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1813).

(iii) *First offenders of controlled substance felonies.* A driver who is convicted of an offense described in paragraph (b)(2)(v) of this section, is disqualified for life.

(iv) *Subsequent offenders.* A driver who is convicted of an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, is disqualified for life if the driver had been convicted once before in a separate incident of any offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section.

(v) Any driver disqualified for life under §383.51(b)(3)(iv) of this paragraph, who has both voluntarily enrolled in and successfully completed, an appropriate rehabilitation program which meets the standards of his/her State's driver licensing agency, may apply to the licensing agency for reinstatement of his/her commercial driver's license. Such applicants shall not be eligible for reinstatement from the State unless and until such time as he/she has first served a minimum disqualification period of 10 years and has fully met the licensing State's standards for reinstatement of commercial motor vehicle driving privileges. Should a reinstated driver be subsequently convicted of another disqualifying offense, as specified in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, he/she shall be permanently disqualified for life, and shall be ineligible to again apply for a reduction of the lifetime disqualification.

(c) *Disqualification for serious traffic violations*—(1) *General rule.* A driver who is convicted of serious traffic violations is disqualified for the period of time specified in paragraph (c)(2) of this section, if the offenses were committed while operating a commercial motor vehicle.

(2) *Duration of disqualification for serious traffic violations*—(i) *Second violation.* A driver who, during any 3-year period, is convicted of two serious traffic violations in separate incidents, is disqualified for a period of 60 days.

(ii) *Third violation.* A driver who, during any 3-year period, is convicted of three serious traffic violations in separate incidents, is disqualified for a period of 120 days.

(d) *Disqualification for violation of out-of-service orders*—(1) *General rule.* A driver who is convicted of violating an out-of-service order while driving a commercial motor vehicle is disqualified for the period of time specified in paragraph (d)(2) of this section. In addition, such driver is subject to special penalties as contained in §383.53(b).

(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. app. 1801–1813), or while operating 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 motor vehicles designed to transport more than 15 passengers, including the driver.

(e) *Substantial compliance by States.* (1) Nothing in this rule 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 commercial motor vehicle with an alcohol concentration of 0.04 percent, except licensing sanctions including suspension, revocation, or cancellation.

(2) A State that enacts and enforces through licensing sanctions the disqualifications prescribed in §383.51(b) at the 0.04 alcohol concentration level and gives full faith and credit to the disqualification of commercial motor vehicle drivers by other States shall be deemed in substantial compliance with section 12009(a)(3) of the Commercial Motor Vehicle Safety Act of 1986.

[52 FR 20587, June 1, 1987, as amended at 53 FR 39050, Oct. 4, 1988; 54 FR 40788, Oct. 3, 1989; 55 FR 6727, Feb. 26, 1990; 57 FR 53295, Nov. 9, 1992; 59 FR 26028, May 18, 1994]

§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 $1,000 nor more than $2,500, in addition to disqualification under §383.51(d).

(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 $2,500 nor more than $10,000.

[59 FR 26028, May 18, 1994]

Subpart E—Testing and Licensing Procedures

SOURCE: 53 FR 27649, July 21, 1988, unless otherwise noted.

§383.71 Driver application procedures.

(a) *Initial Commercial Driver's License.* Prior to obtaining a CDL, a person must meet the following requirements:

(1) A person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to part 391 of this title, shall certify that he/she meets the qualification requirements contained in part 391 of this title. 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;

(2) Pass a knowledge test in accordance with the standards contained in subparts G and H of this part for the type of motor vehicle the person operates or expects to operate;

(3) Pass a driving or skills test in accordance with the standards contained in subparts G and H of this part taken in a motor vehicle which 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;

(4) 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;

(5) Provide to the State of issuance the information required to be included on the CDL as specified in subpart J of this part;

(6) Certify that he/she is not subject to any disqualification, suspension, revocation, or cancellation as contained in §383.51 and that he/she does not have a driver's license from more than one State or jurisdiction.

(7) The applicant shall surrender his/her non-CDL driver's licenses to the State.

(b) *License transfer.* When applying to transfer a CDL from one State of domicile to a new State domicile, an applicant shall apply for a CDL from the new State of domicile within no more than 30 days after establishing his/her new domicile. The applicant shall:

(1) Provide to the new State of domicile the certifications contained in § 383.71(a) (1) and (6):

(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, comply with State requirements as specified in § 383.73(b)(4); and

(4) Surrender the CDL from the old State of domicile to the new State of domicile.

(c) *License renewal.* When applying for a renewal of a CDL, all applicants shall:

(1) Provide certification contained in § 383.71(a)(1);

(2) Provide update information as specified in subpart J of this part; and

(3) If a person wishes to retain a hazardous materials endorsement, pass the test for such endorsement as specified in § 383.121.

(d) *License upgrades.* When applying to operate a commercial motor vehicle in a different group or endorsement from the group or endorsement in which the applicant already has a CDL, all persons shall:

(1) Provide the necessary certifications as specified in § 383.71(a) (1) and (4); and

(2) Pass all tests specified in § 383.71(a) (2) and (3) for the new vehicle group and/or different endorsements.

(e) *Nonresident CDL.* When an applicant is domiciled in a foreign jurisdiction, as defined in § 383.5, where the commercial motor vehicle operator testing and licensing standards do not meet the standards contained in subparts G and H of this part, as determined by the Administrator, such applicant shall obtain a Nonresident CDL from a State which meets such standards. Such applicant shall:

(1) Complete the requirements to obtain a CDL contained in § 383.71(a); and

(2) After receipt of the CDL, and for as long as it is valid, notify the State which issued the CDL of any adverse action taken by any jurisdiction or governmental agency, foreign or domestic, against his/her driving privileges. Such adverse actions would include but not be limited to license suspension or revocation, or disqualification from operating a commercial motor vehicle for the convictions described in § 383.51. Notifications shall be made within the time periods specified in § 383.33.

(f) If a State uses the alternative method described in § 383.73(i) to achieve the objectives of the certifications in § 383.71(a), then the driver applicant shall satisfy such alternative methods as are applicable to him/her with respect to initial licensing, license transfer, license renewal, and license upgrades.

§ 383.72 Implied consent to alcohol testing.

Any person who holds a CDL shall be deemed to have consented to such testing as is required of him/her by any State or jurisdiction in the enforcement of § 383.51(b)(2)(i) and § 392.5(a)(2). Consent is implied by driving a commercial motor vehicle.

[53 FR 39051, Oct. 4, 1988]

§ 383.73 State procedures.

(a) *Initial licensure.* Prior to issuing a CDL to a person, a State shall:

(1) Require the driver applicant to certify, pass tests, and provide information as described in §§ 383.71(a) (1) through (6);

(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, suspensions, revocations, or cancellations as contained in § 383.51 and that the person does not have a driver's license from more than one State. The record check shall include but not be 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 a CDL, whether the applicant's license has been suspended, revoked, or canceled, or if the applicant has been disqualified from operating a commercial motor vehicle; and

(iii) A check with the National Driver Register (NDR), when it is determined to be operational by the National Highway Traffic Safety Administrator, 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) suspended, revoked, or canceled for cause in the 3-year period ending on the date of application; or

(C) Been convicted of any offenses contained in section 205(a)(3) of the National Drivers Register Act of 1982 (23 U.S.C. 401 note); and

(4) Require the driver applicant, if he/she has moved from another State, to surrender his/her driver's license issued by another State.

(b) *License transfers.* Prior to issuing a CDL to a person who has a CDL from another State, a State shall:

(1) Require the driver applicant to make the certifications contained in §383.71(a);

(2) Complete a check of the driver applicant's record as contained in §383.73(a)(3);

(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, 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; and

(5) Obtain the CDL issued by the applicant's previous State of domicile.

(c) *License Renewals.* Prior to renewing any CDL a State shall:

(1) Require the driver applicant to make the certifications contained in §383.71(a);

(2) Complete a check of the driver applicant's record as contained in §383.73(a)(3);

(3) Request and receive updates of information specified in subpart J of this part; and

(4) If such applicant wishes to retain a hazardous materials endorsement, require the driver to pass the test for such endorsement specified in §383.121.

(d) *License upgrades.* Prior to issuing an upgrade of a CDL, a State shall:

(1) Require such driver applicant to provide certifications and pass tests as described in §383.71(d); and

(2) Complete a check of the driver applicant's record as described in §383.73(a)(3).

(e) *Nonresident CDL.* A State may issue a Nonresident CDL to a person domiciled in a foreign country if the Administrator has determined that the commercial motor vehicle testing and licensing standards in the foreign jurisdiction of domicile do not meet the standards contained in this part. State procedures for the issuance of a nonresident CDL, for any modifications thereto, and for notifications to the CDLIS shall at a minimum be identical to those pertaining to any other CDL, with the following exceptions:

(1) If the applicant is requesting a transfer of his/her Nonresident CDL, the State shall obtain the Nonresident CDL currently held by the applicant and issued by another State;

(2) The State shall add the word ''Nonresident'' to the face of the CDL, in accordance with §383.153(b); and

(3) The State shall have established, prior to issuing any Nonresident CDL, the practical capability of disqualifying the holder of any Nonresident CDL, by withdrawing, suspending, canceling, and revoking his/her Nonresident CDL as if the Nonresident CDL were a CDL issued to a resident of the State.

(f) *License issuance.* After the State has completed the procedures described in §383.73 (a), (b), (c), (d) or (e), it may issue a CDL to the driver applicant. The State shall 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.

(g) *Penalties for false information.* If a State determines, in its check of an applicant's license status and record prior to issuing a CDL, or at any time after the CDL is issued, that the applicant has falsified information contained in subpart J of this part or any of the certifications required in §383.71(a), the State shall at a minimum suspend, cancel, or revoke the person's 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.

(h) *Reciprocity.* A State shall allow any person who has a valid CDL which is not suspended, revoked, or canceled, and who is not disqualified from operating a commercial motor vehicle, to operate a commercial motor vehicle in the State.

(i) *Alternative procedures.* A State may implement alternative procedures to the certification requirements of §383.71(a) (1), (4), and (6), provided those procedures ensure that the driver meets the requirements of those paragraphs.

[53 FR 27649, July 21, 1988, as amended at 54 FR 40788, Oct. 3, 1989]

§383.75 Third party testing.

(a) *Third party tests.* A State may authorize a person (including another State, an employer, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government) to administer the skills tests as specified in subparts G and H of this part, if the following conditions are met:

(1) The tests given by the third party are the same as those which would otherwise be given by the State; and

(2) The third party as an agreement with the State containing, at a minimum, provisions that:

(i) Allow the FHWA, or its representative, and the State to conduct random examinations, inspections and audits without prior notice;

(ii) Require the State to conduct onsite inspections at least annually;

(iii) Require that all third party examiners meet the same qualification and training standards as State examiners, to the extent necessary to conduct skills tests in compliance with subparts G and H;

(iv) Require that, at least on an annual basis, State employees take the tests actually administered by the third party as if the State employee were a test applicant, or that States test a sample of drivers who were examined by the third party to compare pass/fail results; and

(v) Reserve unto the State the right to take prompt and appropriate remedial action against the third-party testers in the event that the third-party fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third-party contract.

(b) *Proof of testing by a third party.* A driver applicant who takes and passes driving tests administered by an authorized third party shall provide evidence to the State licensing agency that he/she has successfully passed the driving tests administered by the third party.

§383.77 Substitute for driving skills tests.

At the discretion of a State, the driving skill test as specified in §383.113 may be waived for a CMV operator who is currently licensed at the time of his/her application for a CDL, and substituted with either an applicant's driving record and previous passage of an acceptable skills test, or 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 in the instances specified in §383.21(b));

(2) Has not had any license suspended, revoked, or canceled;

(3) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in §383.51(b)(2);

(4) Has not had more than one conviction for any type of motor vehicle for serious traffic violations; and

(5) Has not had any conviction for a violation of 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:

(1) He/she is regularly employed in a job requiring operation of a CMV, and that either:

(2) He/she has previously taken and passed a skills test given by a State with a classified licensing and testing system, and that the test was behind-the-wheel in a representative vehicle for that applicant's driver's license classification; or

(3) He/she has operated, for at least 2 years immediately preceding application for a CDL, a vehicle representative of the commercial motor vehicle the driver applicant operates or expects to operate.

[53 FR 27649, July 21, 1988, as amended at 55 FR 25606, June 22, 1990]

Subpart F—Vehicle Groups and Endorsements

SOURCE: 53 FR 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) of 11,794 kilograms or more (26,001 pounds or more) provided the GVWR of the vehicle(s) being towed is in excess of 4,536 kilograms (10,000 pounds).

(2) Heavy Straight Vehicle (Group B)—Any single vehicle with a GVWR of 11,794 kilograms or more (26,001 pounds or more), or any such vehicle towing a vehicle not in excess of 4,536 kilograms (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:

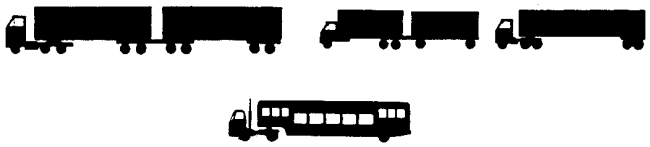
(1) A driver who has passed the knowledge and skills tests for a combination vehicle (Group A) may operate a heavy straight vehicle (Group B) or a small vehicle (Group C), provided that he/she possesses the requisite endorsement(s); and

(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.

Figure 1
VEHICLE GROUPS AS ESTABLISHED BY FHWA (SECTION 383.91)

[Note: Certain types of vehicles, such as passenger and doubles/triples, will require an endorsement. Please consult text for particulars.]

Group:	*Description:
A	Any combination of vehicles with a GCWR of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds. (Holders of a Group A license may, with any appropriate endorsements, operate all vehicles within Groups B and C.) Examples include but are not limited to: 
B	Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. (Holders of a Group B license may, with any appropriate endorsements, operate all vehicles within Group C.) Examples include but are not limited to:
C	Any single vehicle, or combination of vehicles, that does not meet the definition of Group A or Group B as contained herein, but that either is designed to transport 16 or more passengers including the driver, or is placarded for hazardous materials. Examples include but are not limited to:

*The representative vehicle for the skills test must meet the written description for that group. The silhouettes typify, but do not fully cover, the types of vehicles falling within each group.

[53 FR 27651, July 21, 1988, as amended at 54 FR 47989, Nov. 20, 1989; 61 FR 9566, Mar. 8, 1996]

§ 383.93 Endorsements.

(a) *General.* In addition to taking and 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 shall take and pass specialized tests to obtain each endorsement. The State shall issue CDL endorsements only to drivers who successfully complete the tests.

(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; or

(4) Required to be placarded for hazardous materials.

(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; and

(4) *Hazardous Materials*—a knowledge test.

§ 383.95 Air brake restrictions.

(a) 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 shall indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.

(b) For the purposes of the skills test and the restriction, air brakes shall include any braking system operating fully or partially on the air brake principle.

Subpart G—Required Knowledge and Skills

SOURCE: 53 FR 27654, July 21, 1988, unless otherwise noted.

§ 383.110 General requirement.

All drivers of commercial motor vehicles shall have knowledge and skills necessary to operate a commercial motor vehicle safely as contained in this subpart. A sample of the specific types of items which a State may wish to include in the knowledge and skills tests that it administers to CDL applicants is included in the appendix to this subpart G.

§ 383.111 Required knowledge.

All commercial motor vehicle operators must have knowledge of the following general areas:

(a) *Safe operations regulations.* Driver-related elements of the regulations contained in 49 CFR parts 391, 392, 393, 395, 396, and 397, such as: Motor vehicle inspection, repair, and maintenance requirements; procedures for safe vehicle operations; the effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation; the types of motor vehicles and cargoes subject to the requirements; and the effects of alcohol and drug use upon safe commercial motor vehicle operations.

(b) *Commercial motor vehicle safety control systems.* 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. Commercial motor vehicle drivers shall have knowledge on the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.

(c) *Safe vehicle control*—(1) *Control systems* The purpose and function of the controls and instruments commonly found on commercial motor vehicles.

(2) *Basic control.* The proper procedures for performing various basic maneuvers.

(3) *Shifting.* The basic shifting rules and terms, as well as shift patterns and procedures for common transmissions.

(4) *Backing.* The procedures and rules for various backing maneuvers.

(5) *Visual search.* The importance of proper visual search, and proper visual search methods.

(6) *Communication.* The principles and procedures for proper communications and the hazards of failure to signal properly.

(7) *Speed management.* The importance of understanding the effects of speed.

(8) *Space management.* The procedures and techniques for controlling the space around the vehicle.

(9) *Night operation.* Preparations and procedures for night driving.

(10) *Extreme driving conditions.* The basic information on operating in extreme driving conditions and the hazards that are encountered in extreme conditions.

(11) *Hazard perceptions.* The basic information on hazard perception and clues for recognition of hazards.

(12) *Emergency maneuvers.* The basic information concerning when and how to make emergency maneuvers.

(13) *Skid control and recovery.* The information on the causes and major types of skids, as well as the procedures for recovering from skids.

(d) *Relationship of cargo to vehicle control.* The principles and procedures for the proper handling of cargo.

(e) *Vehicle inspections:* The objectives and proper procedures for performing vehicle safety inspections, as follows:

(1) The importance of periodic inspection and repair to vehicle safety.

(2) The effect of undiscovered malfunctions upon safety.

(3) What safety-related parts to look for when inspecting vehicles.

(4) Pre-trip/enroute/post-trip inspection procedures.

(5) Reporting findings.

(f) *Hazardous materials knowledge, such as:* What constitutes hazardous material requiring an endorsement to transport; classes of hazardous materials; labeling/placarding requirements; and the need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes.

(g) *Air brake knowledge as follows:*

(1) Air brake system nomenclature;

(2) The dangers of contaminated air supply;

(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.

(6) Procedures for conducting enroute and post-trip inspections of air actuated brake systems, including ability to detect defects which may cause the system to fail.

(h) *Operators for the combination vehicle group shall also have knowledge of:*

(1) Coupling and uncoupling—The procedures for proper coupling and uncoupling a tractor to semi-trailer.

(2) Vehicle inspection—The objectives and proper procedures that are *unique* for performing vehicle safety inspections on combination vehicles.

§ 383.113 Required skills.

(a) *Basic vehicle control skills.* All applicants for a CDL must possess and demonstrate basic motor vehicle control skills for each vehicle group which the driver operates or expects to operate. These skills should include the ability to start, to stop, and to move the vehicle forward and backward in a safe manner.

(b) *Safe driving skills.* All applicants for a CDL must possess and demonstrate the safe driving skills for their vehicle group. These skills should include proper visual search methods, appropriate use of signals, speed control for weather and traffic conditions, and ability to position the motor vehicle correctly when changing lanes or turning.

(c) *Air brake skills.* Except as provided in §393.95, all applicants shall demonstrate the following skills with respect to inspection and operation of air brakes:

(1) *Pre-trip inspection skills.* Applicants shall demonstrate the skills necessary to conduct a pre-trip inspection which includes the ability to:

(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) Ascertain, with the engine running, 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.

(2) *Driving skills.* Applicants shall successfully complete the skills tests contained in § 383.113 in a representative vehicle equipped with air brakes.

(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.

§ 383.115 Requirements for double/triple trailers endorsement.

In order to obtain a Double/Triple Trailers endorsement each applicant must have knowledge covering:

(a) Procedures for assembly and hookup of the units;

(b) Proper placement of heaviest trailer;

(c) Handling and stability characteristics including off-tracking, response to steering, sensory feedback, braking, oscillatory sway, rollover in steady turns, yaw stability in steady turns; and

(d) Potential problems in traffic operations, including problems the motor vehicle creates for other motorists due to slower speeds on steep grades, longer passing times, possibility for blocking entry of other motor vehicles on freeways, splash and spray impacts, aerodynamic buffeting, view blockages, and lateral placement.

§ 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 at least 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 crossings and drawbridges; and

(5) Proper braking procedures.

(b) *Skills test.* To obtain a passenger endorsement applicable to a specific vehicle group, an applicant must take his/her skills test in a passenger vehicle satisfying the requirements of that group as defined in § 383.91.

§ 383.119 Requirements for tank vehicle endorsement.

In order to obtain a Tank Vehicle Endorsement, each applicant must have knowledge covering the following:

(a) Causes, prevention, and effects of cargo surge on motor vehicle handling;

(b) Proper braking procedures for the motor vehicle when it is empty, full and partially full;

(c) Differences in handling of baffled/compartmental tank interiors versus non-baffled motor vehicles;

(d) Differences in tank vehicle type and construction;

(e) Differences in cargo surge for liquids of varying product densities;

(f) Effects of road grade and curvature on motor vehicle handling with filled, half-filled and empty tanks;

(g) Proper use of emergency systems; and

(h) For drivers of DOT specification tank vehicles, retest and marking requirements.

§ 383.121 Requirements for hazardous materials endorsement.

In order to obtain a Hazardous Material Endorsement each applicant must have such knowledge as is required of a driver of a hazardous materials laden vehicle, from information contained in 49 CFR parts 171, 172, 173, 177, 178, and 397 on the following:

(a) Hazardous materials regulations including:

(1) Hazardous materials table;

(2) Shipping paper requirements;

(3) Marking;

(4) Labeling;

(5) Placarding requirements;

(6) Hazardous materials packaging;

(7) Hazardous materials definitions and preparation;
(8) Other regulated material (e.g., ORM–D);
(9) Reporting hazardous materials accidents; and
(10) Tunnels and railroad crossings.
(b) Hazardous materials handling including:
(1) Forbidden Materials and Packages;
(2) Loading and Unloading Materials;
(3) Cargo Segregation;
(4) Passenger Carrying Buses and Hazardous Materials;
(5) Attendance of Motor Vehicles;
(6) Parking;
(7) Routes;
(8) Cargo Tanks; and
(9) ''Safe Havens.''
(c) Operation of emergency equipment including:
(1) Use of equipment to protect the public;
(2) Special precautions for equipment to be used in fires;
(3) Special precautions for use of emergency equipment when loading or unloading a hazardous materials laden motor vehicle; and
(4) Use of emergency equipment for tank vehicles.
(d) Emergency response procedures including:
(1) Special care and precautions for different types of accidents;
(2) Special precautions for driving near a fire and carrying hazardous materials, and smoking and carrying hazardous materials;
(3) Emergency procedures; and
(4) Existence of special requirements for transporting Class A and B explosives.

APPENDIX TO SUBPART G—REQUIRED KNOWLEDGE AND SKILLS—SAMPLE GUIDELINES

The following is a sample of the specific types of items which a State may wish to include in the knowledge and skills tests that it administers to CDL applicants. This appendix closely follows the framework of §§383.111 and 383.113. It is intended to provide more specific guidance and suggestion to States. Additional detail in this appendix is not binding and States may depart from it at their discretion provided their CDL program tests for the general areas of knowledge and skill specified in §§383.111 and 383.113.

EXAMPLES OF SPECIFIC KNOWLEDGE ELEMENTS

(a) *Safe operations regulations.* Driver-related elements of the following regulations:
(1) Motor vehicle inspection, repair, and maintenance requirements as contained in parts 393 and 396 of this title;
(2) Procedures for safe vehicle operations as contained in part 392 of this title;
(3) The effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation as contained in parts 391, 392, and 395 of this title;
(4) The types of motor vehicles and cargoes subject to the requirements contained in part 397 of this title; and
(5) The effects of alcohol and drug use upon safe commercial motor vehicle operations as contained in parts 391 and 395 of this title.
(b) *Commercial motor vehicle safety control systems.* 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. Commercial motor vehicle drivers shall have knowledge on the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.
(c) *Safe vehicle control*—(1) *Control systems.* The purpose and function of the controls and instruments commonly found on commercial motor vehicles.
(2) *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.
(3) *Shifting.* The basic shifting rules and terms, as well as shift patterns and procedures 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.
(4) *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.
(5) *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.
(6) *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 speed or direction in traffic;

(ii) Communicating presence, e.g., using horn or lights to signal presence; and

(iii) Misuse of communications.

(7) *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.

(8) *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.

(9) *Night operation.* Preparations and procedures for night driving, including:

(i) Night driving factors, e.g., driver factors, (vision, glare, fatigue, inexperience), roadway factors, (low illumination, variation in illumination, familiarity with roads, other road users, especially drivers exhibiting erratic or improper driving), vehicle factors (headlights, auxiliary lights, turn signals, windshields and mirrors); and

(ii) Night driving procedures, e.g., preparing to drive at night and driving at night.

(10) *Extreme driving conditions.* The basic information on operating in extreme driving conditions and the hazards that are encountered in extreme conditions, including:

(i) Adverse weather;

(ii) Hot weather; and

(iii) Mountain driving.

(11) *Hazard perceptions.* The basic information on hazard perception and clues for recognition of hazards, including:

(i) Importance of hazards recognition;

(ii) Road characteristics; and

(iii) Road user activities.

(12) *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.

(13) *Skid control and recovery.* The information on the causes and major types of skids, as well as the procedures for recovering from skids.

(d) *Relationship of cargo to vehicle control.* The principles and procedures for the proper handling of cargo, including:

(1) The importance of proper cargo handling, e.g., consequences of improperly secured cargo, drivers' responsibilities, Federal/State and local regulations.

(2) Principles of weight distribution.

(3) Principles and methods of cargo securement.

(e) *Vehicle inspections:* The objectives and proper procedures for performing vehicle safety inspections, as follows:

(1) The importance of periodic inspection and repair to vehicle safety and to prevention of enroute breakdowns.

(2) The effect of undiscovered malfunctions upon safety.

(3) 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.

(4) Pre-trip/enroute/post-trip inspection procedures.

(5) Reporting findings.

(f) *Hazardous materials knowledge, as follows:*

(1) What constitutes hazardous material requiring an endorsement to transport; and

(2) Classes of hazardous materials, labeling/placarding requirements, and the need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes.

(g) *Air brake knowledge as follows:*

(1) General air brake system nomenclature;

(2) The dangers of contaminated air (dirt, moisture and oil) supply;

(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 enroute and post-trip inspections of air actuated brake systems, including ability to detect defects which may cause the system to fail, including:

(i) Tests which indicate the amount of air loss from the braking system within a specified period, with and without the engine running; and

(ii) Tests which indicate the pressure levels at which the low air pressure warning devices and the tractor protection valve should activate.

(h) *Operators for the combination vehicle group shall also have knowledge of:*

(1) *Coupling and uncoupling.* The procedures for proper coupling and uncoupling a tractor to semi-trailer.

(2) Vehicle inspection—The objectives and proper procedures that are *unique* for performing vehicle safety inspections on combination vehicles.

EXAMPLES OF SPECIFIC SKILLS ELEMENTS

These examples relate to paragraphs (a) and (b) of § 383.113 only.

(a) *Basic vehicle control skills.* All applicants for a CDL must possess and demonstrate the following basic motor vehicle control skills for each vehicle group which the driver operates or expects to operate. These skills shall include:

(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 and then make left and right turns;

(6) Ability to shift as required and select appropriate gear for speed and highway conditions;

(7) Ability to back along a curved path; and

(8) Ability to observe the road and the behavior of other motor vehicles, particularly before changing speed and direction.

(b) *Safe driving skills.* All applicants for a CDL must possess and demonstrate the following safe driving skills for any vehicle group. These skills shall include:

(1) Ability to use proper visual search methods.

(2) Ability to signal appropriately when changing speed or 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, on visibility, and on vehicle weight; and

(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.

Subpart H—Tests

SOURCE: 53 FR 27657, July 21, 1988, unless otherwise noted.

§ 383.131 Test procedures.

(a) *Driver information manuals.* Information on how to obtain a CDL and endorsements shall be included in manuals and made available by States to CDL applicants. All information provided to the applicant shall include the following:

(1) 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 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;

(2) Information on vehicle groups and endorsements as specified in subpart F of this part;

(3) The substance of the knowledge and skills which drivers shall have as outlined in subpart G of this part for the different vehicle groups and endorsements;

(4) Details of testing procedures, including the purpose of the tests, how to respond, any time limits for taking the test, and any other special procedures determined by the State of issuance; and

(5) Directions for taking the tests.

(b) *Examiner procedures.* A State shall provide to test examiners details on testing and any other State-imposed requirements in the examiner's manual, and shall ensure that examiners are qualified to administer tests on the basis of training and/or other experience. States shall provide standardized scoring sheets for the skills tests, as well as standardized driving instructions for the applicants. Such examiners' manuals shall contain the following:

(1) 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;

(2) Details on information which must be given to the applicant;

(3) Details on how to conduct the tests;

(4) Scoring procedures and minimum passing scores;

(5) Information for selecting driving test routes;

(6) List of the skills to be tested;
(7) Instructions on where and how the skills will be tested;
(8) How performance of the skills will be scored; and
(9) Causes for automatic failure of skills tests.

[53 FR 27657, July 21, 1988, as amended at 53 FR 39051, Oct. 4, 1988]

§ 383.133 Testing methods.

(a) All tests shall 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) States shall develop their own specifications for the tests for each vehicle group and endorsement which must be at least as stringent as the Federal standards.
(c) States shall determine specific methods for scoring the knowledge and skills tests.
(d) Passing scores must meet those standards contained in § 383.135.
(e) Knowledge and skills tests shall be based solely on the information contained in the driver manuals referred to in § 383.131(a).
(f) Each knowledge test shall be valid and reliable so as to assure that driver applicants possess the knowledge required under § 383.111.
(g) Each basic knowledge test, i.e., the test covering the areas referred to in § 383.111 for the applicable vehicle group, shall contain at least 30 items, exclusive of the number of items testing air brake knowledge. Each endorsement knowledge test, and the air brake component of the basic knowledge test as described in § 383.111(g), shall contain a number of questions that is sufficient to test the driver applicant's knowledge of the required subject matter with validity and reliability.
(h) The skills tests shall have administrative procedures, designed to achieve interexaminer reliability, that are sufficient to ensure fairness of pass/fail rates.

§ 383.135 Minimum passing scores.

(a) The driver applicant must correctly answer at least 80 percent of the questions on each knowledge test in order to achieve a passing score on such knowledge test.
(b) To achieve a passing score on the skills test, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in § 383.113.
(c) If the driver applicant does not obey traffic laws, or causes an accident during the test, he/she shall automatically fail the test.
(d) The scoring of the basic knowledge and skills tests shall be adjusted as follows to allow for the air brake restriction (§ 383.95):
(1) If the applicant scores less than 80 percent on the air brake component of the basic knowledge test as described in § 383.111(g), the driver will have failed the air brake component and, if the driver is issued a CDL, an air brake restriction shall be indicated on the license; and
(2) If the applicant performs the skills test in a vehicle not equipped with air brakes, the driver will have omitted the air brake component as described in § 383.113(c) and, if the driver is issued a CDL, the air brake restriction shall be indicated on the license.

Subpart I—[Reserved]

Subpart J—Commercial Driver's License Document

SOURCE: 53 FR 27657, July 21, 1988, unless otherwise noted.

§ 383.151 General.

The CDL shall be a document that is easy to recognize as a CDL. At a minimum, the document shall contain information specified in § 383.153.

§ 383.153 Information on the document and application.

(a) All CDLs shall contain the following information:
(1) The prominent statement that the license is a ''Commercial Driver's License'' or ''CDL,'' except as specified in § 383.153(b).
(2) The full name, signature, and mailing address 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 of the driver;

(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 the tank vehicle and hazardous materials endorsements; and

(vi) 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.

(b) If the CDL is a Nonresident CDL, it shall contain the prominent statement that the license is a ''Nonresident Commercial Driver's License'' or ''Nonresident CDL.'' The word ''Nonresident'' must be conspicuously and unmistakably displayed, but may be noncontiguous with the words ''Commercial Driver's License'' or ''CDL.''

(c) If the State has issued the applicant an air brake restriction as specified in §383.95, that restriction must be indicated on the license.

(d) Except in the case of a Nonresident CDL:

(1) A driver applicant must provide his/her Social Security Number on the application of a CDL; and

(2) The State must provide the Social Security Number to the CDLIS.

§383.155 Tamperproofing requirements.

States shall make the CDL tamperproof to the maximum extent practicable. At a minimum, a State shall use the same tamperproof method used for noncommercial drivers' licenses.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

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AUTHORITY: 49 U.S.C. 31136, 49 U.S.C. 31301 *et seq.*, 31502; 49 CFR 1.48.

SOURCE: 59 FR 26039, May 18, 1994, unless otherwise noted.

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. app. 2708(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. app. 2708(a);

(2) Establishes procedures for determinations to be made of such compliance by States; and

(3) Specifies the consequences of State noncompliance.

§ 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:

Issue and *issuance* mean initial licensure, license transfers, license renewals, license upgrades, and nonresident commercial driver's licenses (CDLs), as described in § 383.73 of this title.

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 FHWA under § 384.307(c) of this part.

Subpart B—Minimum Standards for Substantial Compliance by States

§ 384.201 Testing program.

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.

§ 384.202 Test standards.

No State shall authorize a person to operate a CMV unless such person passes a knowledge 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.

The State shall have in effect and enforce through licensing sanctions the disqualifications prescribed in § 383.51(b) at the 0.04 percent blood alcohol concentration level.

§ 384.204 CDL issuance and information.

(a) *General rule.* The State shall authorize a person to operate a CMV only by issuance of a CDL, unless a waiver under the provisions of § 383.7 applies, which contains, at a minimum, the information specified in part 383, subpart J, of this title.

(b) *Exceptions*—(1)*Training.* The State may authorize a person, who does not hold a CDL valid in the type of vehicle in which training occurs, to undergo behind-the-wheel training in a CMV only by means of a learner's permit issued and used in accordance with § 383.23(c) of this title.

(2) *Confiscation of CDL pending enforcement.* A State may allow a CDL holder whose 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 based on such enforcement, to drive a CMV while holding a dated receipt for such CDL.

§ 384.205 CDLIS information.

Before issuing a CDL to any person, the State shall, 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(a)(3)(ii) of this title, and, based on that information, shall 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.

§ 384.206 State record checks.

(a) *Required checks*—(1) *Issuing State's records.* Before issuing a CDL to any person, the State shall, within the period of time specified in § 384.232, check its own driving record for such person in accordance with § 383.73(a)(3) of this title.

(2) *Other States' records.* Before initial or transfer issuance of a CDL to a person, the issuing State shall, within the period of time specified in § 384.232, obtain from any other State or jurisdiction which has issued a CDL to such person, and such other State(s) shall provide, all information pertaining to the driving record of such person in accordance with § 383.73(a)(3) of this title.

(b) *Required action.* Based on the findings of the State record checks prescribed in this section, the State shall 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.

§ 384.207 Notification of licensing.

Within the period defined in § 383.73(f) of this title, the State shall:

(a) Notify the operator of the CDLIS of each 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.

§ 384.208 [Reserved]

§ 384.209 Notification of traffic violations.

(a) *Required notification with respect to CDL holders.* Whenever a person who holds a CDL from another State is convicted of a violation, in any type of vehicle, 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 shall notify the licensing entity of the person's State of licensure of the conviction as expeditiously as possible.

(b) *Required notification with respect to non-CDL holders.* 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 shall notify the licensing entity of the person's State of licensure of such conviction.

§ 384.210 Limitation on licensing.

The State shall not knowingly issue a CDL to a person during a period in which:

(a) Such person is disqualified from operating a CMV, as disqualification is defined in § 383.5 of this title, or under the provisions of § 384.231(b)(2).

(b) Any type of driver's license held by such person is suspended, revoked, or canceled by the State or jurisdiction of licensure for driving related offenses which in the judgment of the licensing State are based on valid information; or

(c) Such person is subject to the penalties for false information contained in § 383.73(g) of this title.

§ 384.211 Return of old licenses.

The State shall not issue a CDL to a person who possesses a driver's license issued by another State or jurisdiction unless such person first surrenders the driver's license issued by such other State or jurisdiction in accordance with §§ 383.71(a)(7) and (b)(4) of this title.

§ 384.212 Domicile requirement.

(a) The State shall issue CDLs only to those persons for whom such State is the State of domicile as defined in § 383.5 of this title; except that the State may issue a nonresident CDL under the conditions specified in §§ 383.23(b), 383.71(e), and 383.73(e) of this title.

(b) The State shall require any person holding a CDL issued by another State to apply for a transfer CDL from the State within 30 days after establishing domicile in the State, as specified in § 383.71(b) of this title.

§ 384.213 Penalties for driving without a proper CDL.

The State shall impose civil and criminal penalties for operating a CMV while not possessing a CDL that is valid for the type of CMV being driven; while having a driver's license suspended, revoked, or canceled; or while being disqualified from operating a CMV. In determining the appropriateness of such penalties, the State shall consider their effectiveness in deterring this type of violation. The State shall impose penalties on CMV drivers that are at least as stringent as those imposed on noncommercial drivers for the same or analogous offenses.

§ 384.214 Reciprocity.

The State shall allow any person to operate a CMV in the State who is not disqualified from operating a CMV and who holds a CDL which is—

(a) Issued to him or her by any other State or jurisdiction in accordance with part 383 of this title;

(b) Not suspended, revoked, or canceled; and

(c) Valid, under the terms of part 383, subpart F, of this title, for the type of vehicle being driven.

§ 384.215 First offenses.

(a) *General rule.* The State shall disqualify from operating a CMV each person who is convicted, as defined in § 383.5 of this title, in any State or jurisdiction, of a disqualifying offense specified in § 383.51(b)(2) (i) through (iv) of this title, 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 CFR 177.823), the State shall disqualify the person for no less than three years.

§ 384.216 Second offenses.

(a) *General rule.* The State shall disqualify for life from operating a CMV each person who is convicted, as defined in § 383.5 of this title, in any State or jurisdiction, of a subsequent offense as described in § 383.51(b)(3)(iv) of this title.

(b) *Special rule for certain lifetime disqualifications.* The State where the disqualified driver resides after 10 years of disqualification have elapsed may reduce the lifetime disqualification of a person disqualified for life under § 383.51(b)(3)(iv) of this title, to a minimum of ten years in accordance with § 383.51(b)(3)(v) of this title.

§ 384.217 Drug offenses.

The State shall disqualify from operating a CMV for life each person who is convicted, as defined in § 383.5 of this title, in any State or jurisdiction, of using a CMV in the commission of a felony described in §§ 383.51(b)(2)(v) and 383.51(b)(3)(iii) of this title. The State shall not apply the special rule in § 384.216(b) to lifetime disqualifications imposed for controlled substance felonies as detailed in §§ 383.51(b)(2)(v) and 383.51(b)(3)(iii) of this title.

§ 384.218 Second serious traffic violation.

The State shall 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 title, in any State(s) or jurisdiction(s), of two serious traffic violations involving a CMV operated by such person, as specified in §§ 383.51(c)(1) and 383.51(c)(2)(i) of this title.

§ 384.219 Third serious traffic violation.

The State shall 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 title, in any State(s) or jurisdiction(s), of three serious traffic violations involving a CMV operated by such person, as specified in §§ 383.51 (c)(1) and (c)(2)(ii) of this title. This disqualification period shall be in addition to any other previous period of disqualification.

§ 384.220 National Driver Register information.

Before issuing a CDL to any person, the State shall, within the period of time specified in § 384.232, perform the check of the National Driver Register in accordance with § 383.73(a)(3)(iii) of this title, 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.

§ 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—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, and 384.231 apply to the State of licensure of the person affected by the provision. The provisions of § 384.210 also apply to any State to which a person makes application for a transfer CDL.

(b) *Required action*—(1) *CDL holders.* A State shall satisfy the requirement of this part that the State disqualify a person who holds a CDL by, at a minimum, suspending, revoking, or canceling the person's CDL for the applicable period of disqualification.

(2) *Non-CDL holders applies on and after May 18, 1997.* A State shall satisfy the requirement of this subpart that the State disqualify a non-CDL holder who is convicted of an offense or offenses necessitating disqualification under § 383.51 by, at a minimum, implementing 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 non-CDL holder from legally obtaining a CDL from any State during the applicable disqualification period(s) specified in this subpart.

(c) *Required timing.* The State shall disqualify a driver as expeditiously as possible.

(d) *Recordkeeping requirements.* The State shall maintain such driver records and cause such driver identification data to be retained on the CDLIS as the operator of the CDLIS specifies are necessary to the implementation and enforcement of the disqualifications called for in §§ 384.215 through 384.219.

[59 FR 26039, May 18, 1994, as amended at 60 FR 57545, Nov. 16, 1995]

§ 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.

Subpart C—Procedures for Determining State Compliance

§ 384.301 Substantial compliance—general requirement.

To be in substantial compliance with 49 U.S.C. app. 2708(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.

§ 384.303 State certification for Federal fiscal year (FY 1994) 1994.

(a) *FY 1994 certification requirement.* Prior to July 18, 1994, each State shall review its compliance with this part and certify to the Federal Highway 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, Office of Motor Carriers, Federal Highway Administration, located in that State.

(b) *FY 1994 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) is in substantial compliance with all requirements of 49 U.S.C. app. 2708(a), as defined in 49 CFR 384.301, 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].

(Approved by the Office of Management and Budget under control number 2125–0542)

§ 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 Highway 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, Office of Motor Carriers, Federal Highway 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. app. 2708(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].

(Approved by the Office of Management and Budget under control number 2125–0542)

§ 384.307 FHWA program reviews of State compliance.

(a) *FHWA program reviews.* Each State's CDL program shall be subject to review to determine whether or not the State meets the general requirement for substantial compliance in § 384.301. The State shall cooperate with and provide information in conjunction with any program reviews under this section.

(b) *Preliminary FHWA determination and State response.* If, after review, a preliminary determination is made that a State does not meet one or more of the standards of subpart B of this part, the State will be informed accordingly prior to July 1 of the fiscal year in which the preliminary determination is made. The State will have up to thirty calendar days to respond to the preliminary determination. Upon request by the State, an informal conference will be provided during this time.

(c) *Final FHWA determination.* If, after reviewing any 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.

§ 384.309 Results of compliance determination.

(a) A State shall be determined not substantially in compliance with 49 U.S.C. app. 2708(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 FHWA under § 384.307(c).

(b) A State shall be in substantial compliance with 49 U.S.C. app. 2708(a) for any fiscal year in which neither of the eventualities in paragraph (a) of this section occurs.

Subpart D—Consequences of State Noncompliance

§ 384.401 Withholding of funds based on noncompliance.

(a) *Following first year of noncompliance.* An amount equal to five percent of the funds required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23, U.S.C., shall be withheld 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 equal to ten percent of the funds required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's second or subsequent year of noncompliance under this part.

§ 384.403 Period of availability; effect of compliance and noncompliance.

(a) *Period of availability*—(1) *Funds withheld on or before September 30, 1995.* Any funds withheld under this subpart 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 23 U.S.C. 104(b)(5)(B) but for the provisions of this subpart, 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 23 U.S.C. 104(b)(1) or 104(b)(3) but for the provisions of this subpart, 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.

(2) *Funds withheld after September 30, 1995.* No funds withheld under this subpart from apportionment to any State after September 30, 1995, shall be available for apportionment to such State.

(b) *Apportionment of withheld funds after compliance.* If, before September 10 of the last fiscal year for which funds withheld under this subpart from apportionment are to remain available for apportionment to a State under paragraph (a) of this section, the State makes the certification called for in § 384.305 and a determination is made that the State has met the standards of subpart B of this part for a period of 365 days and continues to meet such standards, the withheld funds remaining available for apportionment to such State shall be apportioned to the State on the day following the last day of such fiscal year.

(c) *Period of availability of subsequently apportioned funds.* Any funds apportioned pursuant to paragraph (b) of this section 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 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

(d) *Effect of noncompliance.* If, at the end of the period for which funds withheld under this subpart from apportionment are available for apportionment under paragraph (a) of this section, the State has not met the standards of subpart B of this part for a 365-day period, such funds shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

PART 385—SAFETY FITNESS PROCEDURES

Sec.

385.1 Purpose and scope.
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385.21 Motor carrier identification report.
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APPENDIX TO PART 385—FORM MCS–150, MOTOR CARRIER IDENTIFICATION REPORT

AUTHORITY: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 31136, 31144, 31502; and 49 CFR 1.48.

SOURCE: 53 FR 50968, Dec. 19, 1988, unless ohterwise noted.

§385.1 Purpose and scope.

(a) This part establishes procedures to determine the safety fitness of motor carriers, to assign safety ratings, to take remedial action when required, and to prohibit motor carriers receiving a safety rating of ''unsatisfactory'' from operating a commercial motor vehicle:

(1) To provide transportation of hazardous materials for which vehicle placarding is required in accordance with part 172, subpart F of this title; or

(2) To transport more than 15 passengers, including the driver.

(b) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter.

[56 FR 40805, Aug. 16, 1991]

§385.3 Definitions.

Applicable safety regulations or requirements means 49 CFR subtitle B, chapter III, Subchapter B—Federal Motor Carrier Safety Regulations; and 49 CFR subtitle B, chapter I, Subchapter C—Hazardous Materials Regulations.

Commercial motor vehicle shall have the same meaning as described in §390.5 of this subchapter.

Preventable accident on the part of a motor carrier means an accident (1) that involved a commercial motor vehicle, and (2) that could have been averted but for an act, or failure to act, by the motor carrier or the driver.

Reviews. For the purposes of this part:

(1) *Compliance review* means an on-site examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial drivers license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action.

(2) *Safety review* means an on-site assessment to determine if a motor carrier has adequate safety management controls in place and functioning to meet the safety fitness standard. The safety review includes an inspection of selected motor carrier records and operations. It is used to gather information for assigning ratings to unrated carriers. The safety review is not ordinarily employed to gather evidence in support of enforcement actions, but will if certain serious violations are discovered (e.g., absence of proof of financial responsibility; document falsification).

(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.

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 the occurrences listed in §385.5 (a) through (h).

(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 (h). Motor carriers receiving an ''unsatisfactory safety rating'' may be subject to the provisions of §385.13.

(4) *Unrated carrier* means that a safety rating has not been assigned to the motor carrier by the FHWA.

[53 FR 50968, Dec. 19, 1988, as amended at 56 FR 40805, Aug. 16, 1991]

§ 385.5 Safety fitness standard.

The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. To meet the safety fitness standard, the motor carrier shall demonstrate that 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),

(b) Inadequate levels of financial responsibility (part 387),

(c) The use of unqualified drivers (part 391),

(d) Improper use and driving of motor vehicles (part 392),

(e) Unsafe vehicles operating on the highways (part 393),

(f) Failure to maintain accident registers and copies of accident reports (part 390),

(g) The use of fatigued drivers (part 395),

(h) Inadequate inspection, repair, and maintenance of vehicles (part 396),

(i) Transportation of hazardous materials, driving and parking rule violations (part 397),

(j) Violation of hazardous materials regulations (parts 170 through 177), and

(k) Motor vehicle accidents and hazardous materials incidents.

[53 FR 50968, Dec. 19, 1988, as amended at 58 FR 33776, June 21, 1993]

§ 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 in roadside inspections.

(d) Number and frequency of out-of-service driver/vehicle violations.

(e) Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews.

(f) Frequency of accidents; hazardous materials incidents; accident rate per million miles; preventable accident rate per million miles; and other accident indicators; and whether these accident and incident indicators have improved or deteriorated over time.

(g) The number and severity of violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicles and motor carrier safety that are compatible with Federal rules, regulations, standards, and orders.

[53 FR 50968, Dec. 19, 1988, as amended at 58 FR 33776, June 21, 1993]

§ 385.9 Determination of a safety rating.

Following a safety or compliance review of a motor carrier operation, the FHWA, using the factors prescribed in §385.7, 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.

§ 385.11 Notification of a safety rating.

(a) The FHWA shall provide written notification to the motor carrier of the assigned safety rating.

(b) Notification of a ''conditional'' or ''unsatisfactory'' rating will include a list of those items for which immediate corrective action must be taken.

(c) A notification of an ''unsatisfactory'' safety rating will also include a notice that the motor carrier will be subject to the provisions of §385.13, which prohibit motor carriers rated ''unsatisfactory'' from transporting:

(1) Hazardous materials requiring placarding under part 172, subpart F, of this title; or

(2) 15 or more passengers, including the driver.

[56 FR 40806, Aug. 16, 1991]

§385.13 Unsatisfactory safety rating—Prohibition on transportation of hazardous materials and passengers.

(a)(1) A motor carrier that receives a safety rating from the Federal Highway Administration which is ''unsatisfactory'' shall have 45 calendar days from the effective date of that rating or from the date of notice of that rating, whichever is later, to take such action as may be necessary to improve such safety rating to ''conditional'' or ''satisfactory.''

(2) *Prohibition on transportation.* After the last day of the 45-day period established pursuant to paragraph (a)(1) of this section and until notification is issued pursuant to this part of either a ''conditional'' or ''satisfactory'' safety rating, a motor carrier rated ''unsatisfactory'' shall be prohibited from operating a commercial motor vehicle to transport—

(i) Hazardous materials for which vehicle placarding is required pursuant to this title; or

(ii) More than 15 passengers, including the driver.

(3) *Ineligibility for Federal Government transportation.* Any motor carrier that receives a safety rating of ''unsatisfactory'' shall be ineligible to contract or subcontract with any Federal agency for the transportation of—

(i) Hazardous materials for which vehicle placarding is required pursuant to this title; or

(ii) More than 15 passengers, including the driver.

(b) *Penalties.* Any motor carrier that operates commercial motor vehicles in violation of this section will be subject to the penalty provisions of 49 U.S.C. App. 1809 and 49 U.S.C. 521.

[56 FR 40806, Aug. 16, 1991]

§385.15 Request for a change in a safety rating; facts and procedure.

(a) A petition for review of a safety rating, where there are factual or procedural disputes, must list all issues in dispute and be accompanied by any information or documents the motor carrier is relying upon as the basis for its petition.

(b)(1) The petition must be submitted to the Director, Office of Motor Carrier Field Operations, within 90 days of the date of notification of the assignment, or change, of a safety rating.

(2) Motor carriers affected by the provisions of §385.13 should submit their petitions and supporting documentation to the Director, Office of Motor Carrier Field Operations, within 15 days from the date of notification of the assignment of a safety rating.

(c) As part of the consideration of a petition, the Director, Office of Motor Carrier Field Operations, may request the motor carrier to submit additional data and attend a conference to discuss the safety rating. Failure to provide such data or to attend the conference may result in dismissal of the petition.

(d) The Director, Office of Motor Carrier Field Operations, shall notify the motor carrier in writing of a decision on a petition for review of a safety rating, which will constitute the final agency action. The decision may:

(1) Confirm the rating; or

(2) Revise the rating.

[56 FR 40806, Aug. 16, 1991]

§385.17 Request for a change in a safety rating; corrective action taken.

(a) A request for a change in a safety rating may be made when the basis for the change is evidence that corrective actions have been taken and that operations currently meet the safety fitness standard specified in §385.5. The request shall be directed in writing, via certified mail, to the Regional Director of Motor Carriers for the FHWA Region in which the motor carrier maintains its principal place of business for safety. The Regional Office addresses are listed in §390.27 of this subchapter. Such a request shall include a written description of corrective actions taken and other documentation that may be relied upon as a basis for improving the assigned rating.

(b) The FHWA will make its determination based upon documentation submitted or any additional investigation deemed necessary.

(c) In cases where the FHWA is unable to make a determination within the 45-day period established in § 385.13 and the motor carrier has submitted evidence that corrective actions have been taken pursuant to paragraph (a) of this section, and has cooperated in any investigation, the FHWA may conditionally suspend the effective date of the ''unsatisfactory'' safety rating for an additional period of up to 10 days.

[56 FR 40806, Aug. 16, 1991, as amended at 61 FR 1843, Jan. 24, 1996]

§ 385.19 Safety fitness information.

(a) Safety rating information on motor carriers will be made available to all Federal agencies telephonically or by remote computer terminals.

(b) The 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 should provide the FHWA with the motor carrier name, principal office address, and the ICC assigned docket number, or the U.S. DOT identification number.

(c) Requests should be addressed to: OMC—Safety Rating, P.O. Box 13028, Arlington, Virginia 22219.

(d) Oral requests by telephone will be accepted and may be made by calling (703) 276–6876. Oral requests made by telephone will be sent a written response if so requested.

[56 FR 51344, Oct. 11, 1991]

§ 385.21 Motor carrier identification report.

(a) All motor carriers currently conducting operations in interstate or foreign commerce shall file a Motor Carrier Identification Report, Form MCS–150, within 90 days after the effective date of this rule. Exception: The provisions of this section do not apply to a motor carrier that has received written notification of a safety rating from the FHWA.

(b) All motor carriers beginning operation after the effective date of this rule shall file the Motor Carrier Identification Report, Form MCS–150, within 90 days after beginning operations.

(c) The Motor Carrier Identification Report, Form MCS–150, is available from all FHWA region and division motor carrier safety offices nationwide and from FHWA Office of Motor Carrier Information Management and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

(d) The completed Motor Carrier Identification Report, Form MCS–150, shall be filed with the FHWA, Office of Motor Carrier Information Management and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

§ 385.23 Failure to report.

Failure by a motor carrier to file a Motor Carrier Identification Report, Form MCS–150, pursuant to the provisions of § 385.21, or furnishing misleading information or making false statements upon the MCS–150 shall subject the offender to the penalties prescribed in title 49, United States Code, 522(b).

[53 FR 50968, Dec. 19, 1988, as amended at 60 FR 38743, July 28, 1995]

APPENDIX TO PART 385—FORM MCS–150, MOTOR CARRIER IDENTIFICATION REPORT

(Approved by OMB under control number 2125–0544)

OMB No. 2125-0544

US Department of Transportation
Federal Highway Administration

MOTOR CARRIER IDENTIFICATION REPORT

IF THE ABOVE LOCATION IS BLANK, INCORRECT, OR IS A DIVISION OR BRANCH, PLEASE IDENTIFY YOUR COMPANY'S PRINCIPAL OFFICE IN THE SPACE BELOW.

1. NAME OF MOTOR CARRIER

2. DBA NAME

PHYSICAL ADDRESS:

3. STREET ADDRESS/ROUTE NUMBER

4. CITY

5. COUNTY

6. STATE

7. ZIP CODE + 4

8. PRINCIPAL PHONE NUMBER ( ) _____ - _____

9. ICC DOCKET NUMBER MC _____

10. USDOT NUMBER USDOT _____

11. OPERATION CLASSIFICATION
A. Authorized For Hire B. Exempt For Hire C. Private
D. Migrant E. U.S. Mail F. Other _____

12. CARGO CLASSIFICATIONS: *(Please circle all that apply)*

A. General Freight	H. Mobile Homes	O. Livestock	V. Commodities Dry Bulk
B. Household Goods	I. Machinery, Large Objects	P. Grain, Feed, Hay	W. Refrigerated Food
C. Metal: Sheets, Coils, Rolls	J. Fresh Produce	Q. Coal/Coke	X. Beverages
D. Motor Vehicles	K. Liquids/Gases	R. Meat	Y. Paper Products
E. Driveaway/Towaway	L. Intermodal Containers	S. Garbage, Refuse, Trash	Z. Other *(Specify)*
F. Logs, Poles, Beams, Lumber	M. Passengers	T. U.S. Mail	
G. Building Materials	N. Oilfield Equipment	U. Chemicals	_____

13. CARRIER OPERATION
A. Interstate
B. Intrastate Only—HazMat.
C. Intrastate Only—Non-HazMat.

14. HAZARDOUS MATERIALS CARRIED *(Please circle all that apply)* (T)—*In Cargo Tanks* (P)—*In Packages*

	T	P		T	P		T	P
A. Explosives A	T	P	H. Corrosives	T	P	O. Irritating Material	T	P
B. Explosives B	T	P	I. Oxidizers	T	P	P. 'ORM' Material	T	P
C. Explosives C	T	P	J. Poison A	T	P	Q. Hazardous Waste	T	P
D. Flammable Liquid	T	P	K. Poison B	T	P	R. Etiological Agent	T	P
E. Flammable Solid	T	P	L. Combustible Liquid	T	P	S. Blasting Agent	T	P
F. Flammable Gas	T	P	M. Radioactive Material	T	P	T. Hazardous Substance	T	P
G. Non-flammable Gas	T	P	N. Organic Peroxide	T	P	U. Cryogenics	T	P

15. EQUIPMENT	Straight Trucks	Truck Tractors	Trailers	HazMat Cargo Tank Trailers	HazMat Cargo Tank Trucks	Buses
OWNED						
TERM LEASED						
TRIP LEASED						

16. DRIVERS SUBJECT TO FMCSR
100 Mile Radius _____
Beyond 100 Mile Radius _____
TOTAL _____

17. CERTIFICATION STATEMENT *(to be completed by an authorized official)*

I, _____ *(please print name)*, certify that I am familiar with the Federal Motor Carrier Safety Regulations. Under penalties of perjury, I declare that the information entered on this report is, to the best of my knowledge and belief, true, correct and complete.

Signature _____ Date _____ Title _____

Form MCS-150 (7-90)

NOTICE

The Form MCS–150, Motor Carrier Identification Report, must be filed by all motor carriers operating in interstate or foreign commerce. A new motor carrier must file Form MCS–150 within 90 days after beginning operations. Exception: A motor carrier that has received written notification of a safety rating from the Federal Highway Administration (FHWA) need not file the report. To mail, fold the completed report so that the self-addressed postage paid panel is on the outside. This report is required by 49 CFR Part 385 and authorized by 49 U.S.C. 504 (1982 & Supp. III 1985).

The public reporting burden for this collection of information on the Form MCS–150 is estimated by the FHWA to average 20 minutes. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to Office of Management and Budget and the FHWA at the following addresses:

Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503

and

Federal Highway Administration, Office of Motor Carrier Field Operations, HFO–10, 400 7th Street, SW, Washington, DC 20590

INSTRUCTIONS FOR COMPLETING THE MOTOR CARRIER IDENTIFICATION REPORT (MCS–150)

(Please Print or Type All Information)

1. Enter the name of the business entity (i.e. corporation, partnership, or individual) that owns and controls the motor carrier operation.
2. If the business entity is operating under a name other than that in Block 1, i.e. ''trade name'', enter that name. Otherwise, leave blank.
3. Enter the principal place of business (where all safety records are maintained) street address.
4. Enter the city where the principal place of business is located.
5. Enter the name of the county in which the principal place of business is located.
6. Enter the two-letter postal abbreviation for the State, or the name of the Canadian Province or Mexican State, in which the principal place of business is located.
7. Enter the zip code number corresponding with the street address.
8. Enter the telephone number including area code of the principal place of business.
9. Enter the motor carrier 'MC' number under which the Interstate Commerce Commission (ICC) issued your operating authority, if appropriate. Otherwise, enter ''N/A.''
10. Enter the identification number assigned to your motor carrier operation by the U.S. Department of Transportation, if known. Otherwise, enter ''unknown.''
11. Circle appropriate classification. Circle all that apply. If F ''other'' is circled, enter the type of operation in the space provided.

A. Authorized For Hire
B. Exempt For Hire
C. Private
D. Migrant
E. U.S. Mail
F. Other _____

Authorized For Hire—transportation for compensation as a common or contract carrier of property, owned by others, or passengers under the provisions of the ICC.

Exempt For Hire—transportation for compensation of property exempt from the economic regulation by the ICC.

Private—transportation of property, owned or leased by the motor carrier, in furtherance of a commercial enterprise other than for-hire transportation.

Migrant—interstate transportation, including a contract carrier, but not a common carrier of 3 or more migrant workers to or from their employment by any motor vehicle other than a passenger automobile or station wagon.

U.S. Mail—transportation of U.S. Mail under contract with the U.S. Postal Service.

12. Circle the letter of the types of cargo you usually transport. If Z ''other,'' is circled enter the name of the commodity in the space provided.
13. Circle the appropriate type of operation.

A. Interstate
B. Intrastate, transporting hazardous materials (49 CFR 100–178)
C. Intrastate, NOT transporting hazardous materials.

Interstate—transportation of persons or property across State lines, *including international boundaries*, or wholly within one State as part of a through movement that originates or terminates in another State or country.

Intrastate—transportation of persons or property wholly within one State.

14. Circle the letter of *all* of the types of hazardous materials (HM) you transport. In the columns following the HM types, either circle *T* if the HM is transported in cargo tanks or *P* if the HM is transported in other packages.
15. Enter the total number of vehicles owned, term leased and trip leased, that are, or can be, operational the day this form is completed.

16. Enter the number of drivers used on an average work day. Part-time, casual, term leased, trip leased and company drivers are to be included.

100 mile radius driver—a driver that operates within a *100 air-mile radius* of the normal work reporting location.

17. Print or type the name, in the space provided, of the individual authorized to sign documents on behalf of the entity listed in Block 1. That individual must sign, date, and show his or her title in the spaces provided. (Certification Statement, see 49 CFR 385.21 and 385.23)

[56 FR 5365, Feb. 11, 1991]

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS PROCEEDINGS

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386.2 Definitions.

Subpart B—Commencement of Proceedings, Pleadings

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APPENDIX A TO PART 386—PENALTY SCHEDULE; VIOLATIONS OF NOTICES AND ORDERS

AUTHORITY: Title XII of Public Law 99–570, 100 Stat. 3207–170 (49 U.S.C. App. 2701 *et seq.*); Title II of Public Law 98–554, 98 Stat. 2829 (49 U.S.C. App. 2501 *et seq.*); Public Law 97–449; 96 Stat. 2413 (49 U.S.C. 104(c)(2), 501 *et seq.*, 3101 *et seq.*); Public Law 93–633, 88 Stat. 2156 (49 U.S.C. App. 1801 *et seq.*); Public Law 97–261, 96 Stat. 1121 (49 U.S.C. 10927, note); Public Law 96–296, 94 Stat. 820 (49 U.S.C. 10927, note); 49 CFR 1.45, 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.

The rules in this part govern procedures in proceedings before the Associate Administrator authorized by the Commercial Motor Vehicle Safety Act of 1986, title XII of Public Law 99–570, 100 Stat. 3207–170 (49 U.S.C. 2701 *et. seq.*); the Motor Carrier Safety Act of 1984, Public Law 98–554, 98 Stat. 2829 (49 U.S.C. 2501 *et. seq*); the recodification of title 49, United States Code, Transportation, Public Law 97–449, 96 Stat. 2413 (49 U.S.C. 104(c)(2), 501 *set seq.*, 3101 *et seq.*); the Hazardous Materials Transportation Act, Public Law 93–633, 88 STat. 2156 (49 U.S.C. 1801 *et seq.*); the Bus Regulatory Reform Act of 1982, Public Law 97–261, 96 Stat. 1121 (49 U.S.C. 10927, note) and the Motor Carrier Act of 1980, Public Law 96–296, 94 Stat. 820, as amended by Public Law 97–424, 96 Stat. 2158 (49 U.S.C. 10927, note). The purpose of the proceedings is to enable the Associate Administrator to determine whether any motor carrier, its agent, employee or other person subject to the jurisdiction of the FHWA under any of the above-mentioned Acts has failed to comply with any provision or requirement of those statutes or regulations issued under them and, if such a violation is found, to issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both.

[50 FR 40306, Oct. 2, 1985, as amended at 53 FR 2036, Jan. 26, 1988]

§ 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 Public Law 99–570, 100 Stat. 3207–170 (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 FR 40306, Oct. 2, 1985, as amended at 53 FR 2036, Jan. 26, 1988; 56 FR 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 FR 40306, Oct. 2, 1985, as amended at 53 FR 2036, Jan. 26, 1988; 56 FR 10182, Mar. 11, 1991]

§ 386.12 Complaint.

(a) *Filing of a complaint.* Except as otherwise provided in paragraph (c) of this section, any person, State board, organization, or body politic may file a written complaint with the Associate Administrator, requesting the issuance of a notice of investigation under § 386.11(c). Each complaint must contain:

(1) The name and address of the party who files it, and a statement specifying the authority for a party (other than a natural person) to file the complaint;

(2) A statement of the interest of the party in the proceedings;

(3) The name and address of each motor carrier against who relief is sought;

(4) The reasons why the party believes that a notice of investigation should be issued;

(5) A statement of any prior action which the party has taken to redress the violations of law alleged in the complaint and the results of that action; and

(6) The relief which the party believes the Administration should seek.

(b) *Action on paragraph (a) complaint.* Upon the filing of a complaint under paragraph (a) of this section, the Associate Administrator shall determine whether it states reasonable grounds for investigation and action by the Administration. If he/she determines that the complaint states such grounds, the Associate Administrator shall issue, or authorize the issuance of, a notice of investigation under § 386.11(c). If he/she determines that the complaint does not state reasonable grounds for investigation and action by the Administration, the Associate Administrator shall dismiss it.

(c) *Complaint of substantial violation.* Any person may file a written complaint with the Associate Administrator alleging that a substantial violation of any regulation issued under the Motor Carrier Safety Act of 1984 is occurring or has occurred within the preceding 60 days. A substantial violation is one which could reasonably lead to, or has resulted in, serious personal injury or death. Each complaint must be signed by the complainant and must contain:

(1) The name, address, and telephone number of the person who files it;

(2) The name and address of the alleged violator and, with respect to each alleged violator, the specific provisions of the regulations that the complainant believes were violated; and

(3) A concise but complete statement of the facts relied upon to substantiate each allegation, including the date of each alleged violation.

(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 nonfrivolous and meets the requirements of paragraph (c) of this section. If the Associate Administrator determines that the complaint is nonfrivolous 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 frivalous 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 FR 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 FR 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 FR 40306, Oct. 2, 1985. Redesignated at 56 FR 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 FR 40306, Oct. 2, 1985. Redesignated and amended at 56 FR 10183, Mar. 11, 1991]

Subpart D—General Rules and Hearings

§ 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 fequency 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 FR 40306, Oct. 2, 1985, as amended at 53 FR 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 FR 40306, Oct. 2, 1985, as amended at 53 FR 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 FR 40306, Oct. 2, 1985, as amended at 53 FR 2036, Jan. 26, 1988; 53 FR 50970, Dec. 19, 1988; 56 FR 10184, Mar. 11, 1991]

Subpart G—Penalties

SOURCE: 56 FR 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, ability to pay, 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.

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—$1,000 per violation per day.

Maximum—$10,000.

II. Notice to Post

Violation—Failure to post notice of violation (i.e., notice of investigation) as prescribed.

Penalty—$500 (A separate violation may be charged each time a failure to post as ordered is discovered.)

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 $1,000 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 $10,000 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—$1,000 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 $10,000 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 $500 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 $10,000 per day the operation continues after the effective date and time of the order to cease.

[56 FR 10184, Mar. 11, 1991]

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

Subpart A—Motor Carriers of Property

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AUTHORITY: 49 U.S.C. 31138 and 31139; and 49 CFR 1.48.

Subpart A—Motor Carriers of Property

§ 387.1 Purpose and scope.

This subpart prescribes the minimum levels of financial responsibility required to be maintained by motor carriers of property operating motor vehicles in interstate, foreign, or intrastate commerce. The purpose of these regulations is to create additional incentives to motor carriers to maintain and operate their vehicles in a safe manner and to assure that motor carriers

maintain an appropriate level of financial responsibility for motor vehicles operated on public highways.

[46 FR 30982, June 11, 1981, as amended at 48 FR 52683, Nov. 21, 1983]

§ 387.3 Applicability.

(a) This subpart applies to for-hire motor carriers operating motor vehicles transporting property in interstate or foreign commerce.

(b) This subpart applies to motor carriers operating motor vehicles transporting hazardous materials, hazardous substances, or hazardous wastes in interstate, foreign, or intrastate commerce.

(c) *Exception.* (1) The rules in this part do not apply to a motor vehicle that has a gross vehicle weight rating (GVWR) of less than 10,000 pounds. This exception does not apply if the vehicle is used to transport any quantity of a Division 1.1, 1.2, or 1.3 material, any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A, or to a highway route controlled quantity of a Class 7 material as it is defined in 49 CFR 173.403, in interstate or foreign commerce.

(2) The rules in this part do not apply to the transportation of non-bulk oil, non-bulk hazardous materials, substances, or wastes in intrastate commerce, except that the rules in this part do apply to the transportation of a highway route controlled quantity of a Class 7 material as defined in 49 CFR 173.403, in intrastate commerce.

[46 FR 30982, June 11, 1981; 46 FR 45612, Sept. 14, 1981, as amended at 48 FR 5559, Feb. 7, 1983; 48 FR 52683, Nov. 21, 1983; 49 FR 38290, Sept. 28, 1984; 59 FR 63923, Dec. 12, 1994]

§ 387.5 Definitions.

As used in this subpart—

Accident includes continuous or repeated exposure to the same conditions resulting in public liability which the insured neither expected nor intended.

Bodily injury means injury to the body, sickness, or disease including death resulting from any of these.

Cancellation of insurance the withdrawal of insurance coverage by either the insurer or the insured.

Endorsement an amendment to an insurance policy.

Environmental restoration restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measure taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Evidence of security a surety bond or a policy of insurance with the appropriate endorsement attached.

Financial responsibility the financial reserves (e.g., insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this subpart covering public liability.

For-hire carriage transportation of property by motor vehicle except when—

(1) The property is transported by a person engaged in a business other than transportation; and

(2) The transportation is within the scope of, and furthers a primary business (other than transportation) of, the person.

In bulk—the transportation, as cargo, of property, except Division 1.1, 1.2, or 1.3 materials, and Division 2.3, Hazard Zone A gases, in containment systems with capacities in excess of 3500 water gallons.

In bulk (Division 1.1, 1.2, and 1.3 explosives)—the transportation, as cargo, of any Division 1.1, 1.2, or 1.3 materials in any quantity.

In bulk (Division 2.3, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A materials)—the transportation, as cargo, of any Division 2.3, Hazard Zone A, or Division 6.1, packing Group I, Hazard Zone A material, in any quantity.

Insured and principal—the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.

Insurance premium the monetary sum an insured pays an insurer for acceptance of liability for public liability claims made against the insured.

Motor carrier a common, contract, or private carrier of property by motor vehicle.

Property damage means damage to or loss of use of tangible property.

Public liability liability for bodily injury or property damage and includes liability for environmental restoration.

[46 FR 30982, June 11, 1981; 46 FR 45612, Sept. 14, 1981; 47 FR 12801, Mar. 25, 1982, as amended at 48 FR 52683, Nov. 21, 1983; 51 FR 33856, Sept. 23, 1986; 53 FR 12160, Apr. 13, 1988; 59 FR 63923, Dec. 12, 1994]

§387.7 Financial responsibility required.

(a) No motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in §387.9 of this subpart.

(b)(1) Policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated. Cancellation may be effected by the insurer or the insured motor carrier giving 35 days' notice in writing to the other. The 35 days' notice shall commence to run from the date the notice is mailed. Proof of mailing shall be sufficient proof of notice.

(2) *Exception.* Policies of insurance and surety bonds may be obtained for a finite period of time to cover any lapse in continuous compliance.

(3) *Exception.* Mexican motor carriers may meet the minimum financial responsibility requirements of this subpart by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurers that meet the requirements of §387.11 of this subpart. A Mexican motor carrier so insured must have available for inspection in each of its vehicles copies of the following documents:

(i) The Certificate of Registration;

(ii) The required insurance endorsement (Form MCS–90); and

(iii) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the temporary insurance coverage authorized by this exception.

Mexician motor carriers insured under this exception are also exempt from the notice of cancellation requirements stated on Form MCS–90.

(c) Policies of insurance and surety bonds required under this section may be replaced by other policies of insurance or surety bonds. The liability of the retiring insurer or surety, as to events after the termination date, shall be considered as having terminated on the effective date of the replacement policy of insurance or surety bond or at the end of the 35 day cancellation period required in paragraph (b) of this section, whichever is sooner.

(d) Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business. The proof shall consist of—

(1) ''Endorsement(s) for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980'' (Form MCS–90) issued by an insurer(s);

(2) A ''Motor Carrier Surety Bond for Public Liability Under Section 30 of the Motor Carrier Act of 1980'' (Form MCS–82) issued by a surety; or

(3) A written decision, order, or authorization of the Interstate Commerce Commission authorizing a motor carrier to self-insure under §1043.5 of this title, provided the motor carrier maintains a satisfactory safety rating as determined by the Federal Highway Administration under part 385 of this title.

(e) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

(f) All vehicles operated within the United States by motor carriers domiciled in a contiguous foreign country, shall have on board the vehicle a legible copy, in English, of the proof of the required financial responsibility (Form MCS–90 or MCS–82) used by the motor carrier to comply with paragraph (d) of this section.

(g) Any motor vehicle in which there is no evidence of financial responsibility required by paragraph (f) of this

section shall be denied entry into the United States.

[46 FR 30982, June 11, 1981; 46 FR 45612, Sept. 14, 1981, as amended at 48 FR 5559, Feb. 7, 1983; 48 FR 52683, Nov. 21, 1983; 51 FR 22083, June 18, 1986; 54 FR 49092, Nov. 29, 1989; 59 FR 63923, Dec. 12, 1994]

§ 387.9 Financial responsibility, minimum levels.

The minimum levels of financial responsibility referred to in § 387.7 of this subpart are hereby prescribed as follows:

SCHEDULE OF LIMITS—PUBLIC LIABILITY

Type of carriage	Commodity transported	Jan. 1, 1985
(1) For-hire (In interstate or foreign commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Property (nonhazardous)	$750,000
(2) For-hire and Private (In interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2, and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403.	5,000,000
(3) For-hire and Private (In interstate or foreign commerce, in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,000 or more pounds).	Oil listed in 49 CFR 172.101: hazardous waste, hazardous materials, and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	1,000,000
(4) For-hire and Private (In interstate or foreign commerce, with a gross vehicle weight rating of less than 10,000 pounds).	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	5,000,000

[59 FR 63923, Dec. 12, 1994]

§ 387.11 State authority and designation of agent.

A policy of insurance or surety bond does not satisfy the financial responsibility requirements of this subpart unless the insurer or surety furnishing the policy or bond is—

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates; or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

[46 FR 30982, June 11, 1981, as amended at 48 FR 52683, Nov. 21, 1983]

§ 387.13 Fiduciaries.

The coverage of fiduciaries shall attach at the moment of succession of such fiduciaries.

[46 FR 30982, June 11, 1981]

§ 387.15 Forms.

Endorsements for policies of insurance (Illustration I) and surety bonds (Illustration II) must be in the form prescribed by the FHWA and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated, as required in § 387.7 of this subpart. The continuous coverage requirement does not apply to Mexican motor carriers insured under § 387.7(b)(3) of this subpart. The endorsement and surety bond shall be issued in the exact name of the motor carrier.

ILLUSTRATION I

Form MCS–90 (3/82)
Form Approved
OMB No. 2125–0074

ENDORSEMENT FOR MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY UNDER SECTIONS 29 AND 30 OF THE MOTOR CARRIER ACT OF 1980

Issued to _____
of _____
Dated at _____
this ___ day of _____, 19___
Amending Policy No. _____
Effective Date _____
Name of Insurance Company _____
Countersigned by _____
Authorized Company Representative

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by ''X'', for the limits shown:

☐ This insurance is primary and the company shall not be liable for amounts in excess of $_____ for each accident.

☐ This insurance is excess and the company shall not be liable for amounts in excess of $_____ for each accident in excess of the underlying limit of $_____ for each accident.

Whenever required by the FHWA or the ICC the company agrees to furnish the FHWA or the ICC a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FHWA or the ICC, to verify that the policy is in force as of a particular date. The telephone number to call is: _____

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the ICC's jurisdiction, by providing thirty (30) days notice to the ICC (said 30 days notice to commence from the date the notice is received by the ICC at its office in Washington, DC).

DEFINITIONS AS USED IN THIS ENDORSEMENT

Accident includes continuous or repeated exposure to conditions which results in bodily injury, property damage, or environmental damage which the insured neither expected or intended.

Motor Vehicle means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and

used on a highway for transporting property, or any combination thereof.

Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Environmental Restoration means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Property Damage means damage to or loss of use of tangible property.

Public Liability means liability for bodily injury, property damage, and environmental restoration.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Highway Administration and the Interstate Commerce Commission (ICC).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

ILLUSTRATION II

Form MCS–82 (4/83)

(Form approved by Office of Management and Budget under control no. 2125–0075)

MOTOR CARRIER PUBLIC LIABILITY SURETY BOND UNDER SECTIONS 29 AND 30 OF THE MOTOR CARRIER ACT OF 1980

Parties	Surety company and principal place of business address	Motor carrier principal, ICC Docket No. and principal place of business
	.....	.....
	.....	.....
	.....	.....
	.....	.....

Purpose—This is an agreement between the Surety and the Principal under which the Surety, its successors and assigness, agree to be responsible for the payment of any final judgment or judgments against the Principal for public liability, property damage, and environmental restoration liability claims in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing provisions—(1) Sections 29 and 30 of the Motor Carrier Act of 1980 (49 U.S.C. 10927 note).

(2) Rules and regulations of the Federal Highway Administration.

(3) Rules and regulations of the Interstate Commerce Commission (ICC).

Conditions—The Principal is or intends to become a motor carrier of property subject to the applicable governing provisions relating to financial responsibility for the protection of the public.

This bond assures compliance by the Principal with the applicable governing provisions, and shall inure to the benefit of any person or persons who shall recover a final

judgment or judgments against the Principal for public liability, property damage, or environmental restoration liability claims (excluding injury to or death of the Principal's employees while engaged in the course of their employment, and loss of or damange to property of the principal, and the cargo transported by the Principal). If every final judgment shall be paid for such claims resulting from the negligent operation, maintenance, or use of motor vehicles in transportation subject to the applicable governing provisions, then this obligation shall be void, otherwise it will remain in full effect.

Within the limits described herein, the Surety extends to such losses regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the Principal or elsewhere.

The liability of the Surety on each motor vehicle subject to the financial responsibility requirements of Section's 29 and 30 of the Motor Carrier Act of 1980 for each accident shall not exceed $_____, and shall be a continuing one notwithstanding any recovery hereunder.

The surety agrees, upon telephone request by an authorized representative of the FHWA or the ICC, to verify that the surety bond is in force as of a particular date. The telephone number is: _____

This bond is effective from _____ (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall countine in force until terminated as described herein. The principal or the Surety may at any time terminate this bond by giving (1) thirty five (35) days notice in writing to the other party (said 35 day notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the Principal is subject to the ICC's jurisdiction, by providing thirty (30) days notice to the ICC (said 30 days notice to commence from the date notice is received by the ICC at its office in Washington, DC). The Surety shall not be liable for the payment of any judgment or judgments against the Principal for public liability, property damage, or environmental restoration claims resulting from accidents which occur after the termination of this bond as described herein, but such termination shall not affect the liability of the Surety for the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

(AFFIX CORPORATE SEAL)

Date _____

Surety _____

City _____

State _____

By _____

ACKNOWLEDGEMENT OF SURETY

State of _____

County of _____

On this _____ day of _____, 19____, before me personally came _____, who, being by me duly sworn, did depose and say that he/she resides in _____; that he/she is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the board of directors of said corporation, that he/she signed his/her name thereto by like order, and he/she duly acknowledged to me that he/she executed the same for and on behalf of said corporation.

(OFFICIAL SEAL)

Title of official administering oath _____

Surety Company File No. _____

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

§ 387.17 Violation and penalty.

Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for civil penalty of no more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the FHWA's Associate Administrator for the Office of Motor Carriers, by written notice. In determining the amount of such penalty, the Associate Administrator, or his/her authorized delegate shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

[59 FR 63924, Dec. 12, 1994]

Subpart B—Motor Carriers of Passengers

SOURCE: 48 FR 52683, Nov. 21, 1983, unless otherwise noted.

§ 387.25 Purpose and scope.

This subpart prescribes the minimum levels of financial responsibility required to be maintained by for-hire motor carriers of passengers operating motor vehicles in interstate or foreign commerce. The purpose of these regulations is to create additional incentives to carriers to operate their vehicles in a safe manner and to assure that they maintain adequate levels of financial responsibility.

§ 387.27 Applicability.

(a) This subpart applies to for-hire motor carriers transporting passengers in interstate or foreign commerce.

(b) *Exception.* The rules in this subpart do not apply to—

(1) A motor vehicle transporting only school children and teachers to or from school;

(2) A motor vehicle providing taxicab service and having a seating capacity of less than 7 passengers and not operated on a regular route or between specified points; and

(3) A motor vehicle carrying less than 16 individuals in a single daily round trip to commute to and from work.

§ 387.29 Definitions.

As used in this subpart—

Accident includes continuous or repeated exposure to the same conditions resulting in public liability which the insured neither expected nor intended.

Bodily injury means injury to the body, sickness, or disease including death resulting from any of these.

Endorsement an amendment to an insurance policy.

Financial responsibility the financial reserves (e.g., insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this subpart covering public liability.

For hire carriage transportation performed by a motor carrier.

Insured and principal the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.

Insurance premium the monetary sum an insured pays an insurer for acceptance of liability for public liability claims made against the insured.

Motor carrier means a motor common carrier and a motor contract carrier.

Motor common carrier Means a person holding itself out to the general public to provide motor vehicle transportation of passengers for compensation over regular or irregular routes.

Motor contract carrier means a person, other than a motor common carrier, providing motor vehicle transportation of passengers for compensation under continuing agreement with a person or limited number of persons.

Property damage means damage to or loss of use of tangible property.

Public liability liability for bodily injury or property damage.

Seating capacity any plan view location capable of accommodating a person at least as large as a 5th percentile adult female, if the overall seat configuration and design and vehicle design is such that the position is likely to be used as a seating position while the vehicle is in motion, except for auxiliary seating accommodations such as temporary or folding jump seats. Any bench or split bench seat in a passenger car, truck or multi-purpose passenger vehicle with a gross vehicle weight rating less than 10,000 pounds, having greater than 50 inches of hip room (measured in accordance with SEA Standards J1100(a)) shall have not less than three designated seating positions, unless the seat design or vehicle design is such that the center position cannot be used for seating.

§ 387.31 Financial responsibility required.

(a) No motor carrier shall operate a motor vehicle transporting passengers until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in § 387.33 of this subpart.

(b) Policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated.

(1) Cancellation may be effected by the insurer or the insured motor carrier giving 35 days notice in writing to the other. The 35 days notice shall commence to run from the date the notice is mailed. Proof of mailing shall be sufficient proof of notice.

(2) *Exception.* Policies of insurance and surety bonds may be obtained for a finite period of time to cover any lapse in continuous compliance.

(3) *Exception.* Mexican motor carriers may meet the minimum financial responsibility requirements of this subpart by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurers that meet the requirements of § 387.35 of this subpart. A Mexican motor carrier so insured must have available for inspection in each of its vehicles copies of the following documents:

(i) The required insurance endorsement (Form MCS–90B); and

(ii) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the temporary insurance coverage authorized by this exception.

Mexican motor carriers insured under this exception are also exempt from the notice of cancellation requirements stated on Form MCS–90B.

(c) Policies of insurance and surety bonds required under this section may be replaced by other policies of insurance or surety bonds. The liability of retiring insurer or surety, as to events after the termination date, shall be considered as having terminated on the effective date of the replacement policy of insurance or surety bond or at the end or the 35 day cancellation period required in paragraph (b) of this section, whichever is sooner.

(d) Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business. The proof shall consist of—

(1) ''Endorsement(s) for Motor Carriers of Passengers Policies of Insurance for Public Liability Under Section 18 of the Bus Regulatory Reform Act of 1982'' (Form MCS–90B) issued by an insurer(s); or

(2) A ''Motor Carrier of Passengers Surety Bond for Public Liability Under Section 18 of the Bus Regulatory Reform Act of 1982'' (Form MCS–82B) issued by a surety.

(e) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

(f) All passenger carrying vehicles operated within the United States by motor carriers domiciled in a contiguous foreign country, shall have on board the vehicle a legible copy, in English, of the proof of the required financial responsibility (Forms MCS–90B or MCS–82B) used by the motor carrier to comply with paragraph (d) of this section.

(g) Any motor vehicle in which there is no evidence of financial responsibility required by paragraph (f) of this section shall be denied entry into the United States.

[48 FR 52683, Nov. 21, 1983, as amended at 50 FR 7062, Feb. 20, 1985; 54 FR 49092, Nov. 29, 1989; 60 FR 38743, July 28, 1995]

§ 387.33 Financial responsibility, minimum levels.

The minimum levels of financial responsibility referred to in § 387.31 of this subpart are hereby prescribed as follows:

SCHEDULE OF LIMITS

Public Liability

For-hire motor carriers of passengers operating in interstate or foreign commerce.

Vehicle seating capacity	Effective dates	
	Nov. 19, 1983	Nov. 19, 1985
(1) Any vehicle with a seating capacity of 16 passengers or more	$2,500,000	$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less[1]	750,000	1,500,000

[1] Except as provided in § 387.27(b).

§ 387.35 State authority and designation of agent.

A policy of insurance or surety bond does not satisfy the financial responsibility requirements of this subpart unless the insurer or surety furnishing the policy or bond is—

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates, or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and is willing to designate a person upon whom process, issued by or under the

authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates..

§ 387.37 Fiduciaries.

The coverage of fiduciaries shall attach at the moment of succession of such fiduciaries.

§ 387.39 Forms.

Endorsements for policies of insurance (Illustration I) and surety bonds (Illustration II) must be in the form prescribed by the FHWA and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated, as required in § 387.31 of this subpart. The continuous coverage requirement does not apply to Mexican motor carriers insured under § 387.31(b)(3) of this subpart. The endorsement and surety bond shall be issued in the exact name of the motor carrier.

U.S. Department of Transportation
Federal Highway Administration

Expiration Date:
Form Approved
OMB No.

ENDORSEMENT FOR MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY UNDER SECTION 18 OF THE BUS REGULATORY REFORM ACT OF 1982

Issued to _____ of _____

Dated at _____ this _____ day of _____, 19____

Amending Policy No. _____ Effective Date _____

Name of Insurance Company _____

Countersigned by _____
Authorized Company Representative

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "☒", for the limits shown:

☐ This insurance is primary and the company shall not be liable for amounts in excess of $ _____ for each accident.

☐ This insurance is excess and the company shall not be liable for amounts in excess of $ _____ for each accident in excess of the underlying limit of $ _____ for each accident.

Whenever required by the Bureau or the ICC, the company agrees to furnish the Bureau or the ICC a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the Bureau or the ICC, to verify that the policy is in force as of a particular date. The telephone number to call is: _____

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the ICC's jurisdiction, by providing thirty (30) days notice to the ICC (said 30 days notice to commence from the date the notice is received by the ICC at its office in Washington, D.C.).

DEFINITIONS AS USED IN THIS ENDORSEMENT

ACCIDENT includes continuous or repeated exposure to conditions which results in Public Liability which the insured neither expected nor intended.

BODILY INJURY means injury to the body, sickness, or disease to any person, including death resulting from any of these.

MOTOR CARRIER means a for-hire carrier of passengers by motor vehicle.

PROPERTY DAMAGE means damage to or loss of use of tangible property.

PUBLIC LIABILITY means liability for bodily injury or property damage.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a for-hire motor carrier of passengers with Section 18 of the Bus Regulatory Reform Act of 1982 and the rules and regulations of the Federal Highway Administration's Bureau of Motor Carrier Safety (Bureau) and the Interstate Commerce Commission (ICC).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to financial responsibility requirements of Section 18 of the Bus Regulatory Reform Act of 1982 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

The Bus Regulatory Reform Act of 1982 requires limits of financial responsibility according to vehicle seating capacity. It is the MOTOR CARRIER'S obligation to obtain the required limits of financial responsibility.
THE SCHEDULE OF LIMITS SHOWN ON THE REVERSE SIDE DOES NOT PROVIDE COVERAGE.
The limits shown in the schedule are for information purposes only.

SCHEDULE OF LIMITS
Public Liability
For-hire motor carriers of passengers operating in interstate or foreign commerce

Vehicle Seating Capacity	Effective Dates	
	Nov. 19, 1983	Nov. 19, 1985
(1) Any vehicle with a seating capacity of 16 passengers or more.	$2,500,000	$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less.	$ 750,000	$1,500,000

U.S. Department of Transportation
Federal Highway Administration

Form Approved
OMB No.

MOTOR CARRIER PUBLIC LIABILITY SURETY BOND UNDER SECTION 18 OF THE BUS REGULATORY REFORM ACT OF 1982

PARTIES

Surety Company and Principal Place of Business Address	Motor Carrier Principal, I.C.C. Docket No., and Principal Place of Business Address

PURPOSE

This is an agreement between the Surety and the Principal under which the Surety, its successors and assignees, agree to be responsible for the payment of any final judgment or judgments against the Principal for public liability and property damage claims in the sums prescribed herein, subject to the governing provisions and following conditions.

GOVERNING PROVISIONS

(1) Section 18 of the Bus Regulatory Reform Act of 1982
(2) Rules and regulations of the Federal Highway Administration's Bureau of Motor Carrier Safety (Bureau)
(3) Rules and regulations of the Interstate Commerce Commission (ICC)

CONDITIONS

The Principal is or intends to become a motor carrier of passengers subject to the applicable governing provisions relating to financial responsibility for the protection of the public.

This bond assures compliance by the Principal with the applicable governing provisions, and shall inure to the benefit of any person or persons who shall recover a final judgment or judgments against the Principal for public liability or property damage claims (excluding injury to or death of the Principal's employees while engaged in the course of their employment, and loss of or damage to property of the Principal, and the cargo transported by the Principal). If every final judgment shall be paid for such claims resulting from the negligent operation, maintenance, or use of motor vehicles in transportation subject to the applicable governing provisions, then this obligation shall be void, otherwise it will remain in full effect.

Within the limits described herein, the Surety extends to such losses regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the Principal or elsewhere.

The liability of the Surety for each motor vehicle subject to the applicable governing provisions for each accident shall not exceed $_____, and shall be a continuing one notwithstanding any recovery thereunder.

The surety agrees, upon telephone request by an authorized representative of the Bureau or ICC, to verify that the surety bond is in force as of a particular date. The telephone number to call is: _____.

This bond is effective from _____ (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described herein. The Principal or the Surety may at any time terminate this bond by giving (1) thrity five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the Principal is subject to the ICC's jurisdiction, by providing thirty (30) days notice to the ICC (said 30 days notice to commence from the date notice is received by the ICC at its office in Washington, D.C.). The Surety shall not be liable for the payment of any judgment or judgments against the Principal for public liability or property damage claims resulting from accidents which occur after the termination of this bond as described herein, but such termination shall not affect the liability of the Surety from the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

_____
Date

(AFFIX CORPORATE SEAL)

_____
Surety

_____, _____
City *State*

By _____

ACKNOWLEDGMENT OF SURETY

STATE OF _____ COUNTY OF _____

On this _____ day of _____, 19____, before me personally came _____, who, being by me duly sworn, did depose and say that he resides in _____; that he is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; that he signed his name thereto by like order, and he duly acknowledged to me that he executed the same for an on behalf of said corporation.

_____

_____
Title of offical administering oath

(OFFICIAL SEAL)

Surety Company File No. _____

Form MCS-82B
(11-83)

(Approved by the Office of Management and Budget under control number 2125–0518)

[48 FR 52683, Nov. 21, 1983, as amended at 49 FR 22326, May 29, 1984; 54 FR 49093, Nov. 29, 1989]

§ 387.41 Violation and penalty.

Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for civil penalty of no more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the Associate Administrator for Motor Carriers or his/her designee, by written notice. In determining the amount of such penalty, the Associate Administrator or his/her designee shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

[53 FR 47543, Nov. 23, 1988]

PART 388—COOPERATIVE AGREEMENTS WITH STATES

Sec.

388.1 Eligibility.
388.2 Extent of acceptance.
388.3 Cancellation.
388.4 Exchange of information.
388.5 Requests for assistance.
388.6 Joint investigation, inspection, or examination.
388.7 Joint administrative activities related to enforcement of safety and hazardous materials laws and regulations.
388.8 Supplemental agreements.

AUTHORITY: 49 U.S.C. 104 and 502; 49 CFR 1.48.

SOURCE: 33 FR 19725, Dec. 25, 1968, unless otherwise noted.

§ 388.1 Eligibility.

Any State may agree with the Federal Highway Administration to enforce the safety laws and regulations of said State and the United States concerning motor carrier transportation by filing with the Administrator at Washington, DC 20591, a written acceptance of the terms herein.

§ 388.2 Extent of acceptance.

The written acceptance may be in letter form, signed by competent authority of said State charged with regulations of motor carrier saftey and hazardous materials transportation and shall specify the terms herein pertaining to the obligations of a State in which said State will participate. To the extent that a State agrees to participate in the terms herein, officials of the Federal Highway Administration will reciprocate.

§ 388.3 Cancellation.

Cancellation or withdrawal, in whole or in part, from any agreement made under this chapter may be effected by written notice from either party indicating the effective date of said cancellation or withdrawal.

§ 388.4 Exchange of information.

(a) *Federal Highway Administration furnishing information to State.* Information that comes to the attention of an employee of the Federal Highway Administration in the course of his/her official duties of investigation, inspection, or examination of the property, equipment, and records of a motor carrier or others, pursuant to 49 U.S.C. 504(c), and that is believed to be a violation of any law or regulation of the State pertaining to unsafe motor carrier operations and practices, shall be communicated to the appropriate State authority by an official of the Federal Highway Administration.

(b) *State furnishing information to Federal Highway Administration.* Information that comes to the attention of a duly authorized agent of the State in the course of his/her official duties of investigation, inspection, or examination of the property, equipment, and records of a motor carrier or others, and that is believed to be a violation of

any provision of the safety or hazardous materials laws of the United States concerning highway transportation or the regulations of the Federal Highway Administration thereunder, shall be communicated to the Regional Director of Motor Carriers.

[51 FR 12621, Apr. 14, 1986]

§ 388.5 Requests for assistance.

(a) *State request for Federal Highway Administration assistance.* Upon written request of the appropriate State authority, the Office of Motor Carriers officials of the Federal Highway Administration for that State shall, as time, personnel, and funds permit, obtain evidence for use by said State in the enforcement of its laws and regulations concerning unsafe motor carrier operations. Evidence obtained in this manner shall be transmitted to the appropriate State authority together with the name and address of an agent or employee, if any, having knowledge of the facts, who shall be made available when necessary to testify as a witness in an enforcement proceeding or other action.

(b) *Federal Highway Administration request for State assistance.* Upon written request from a Regional Director of Motor Carriers, the appropriate State authority, shall, as time, personnel, and funds permit, obtain evidence in the State for use by the Federal Highway Administration in its enforcement of the safety and hazardous materials laws and regulations of the United States concerning highway transportation. Evidence obtained in this manner shall be transmitted to the Regional Director of Motor Carriers, together with the name and address of an agent or employee, if any, having knowledge of the facts, who shall be made available when necessary to testify as a witness in an enforcement proceeding or other action.

[33 FR 19725, Dec. 25, 1968, as amended at 51 FR 12621, Apr. 14, 1986; 60 FR 38743, July 28, 1995]

§ 388.6 Joint investigation, inspection, or examination.

Upon agreement by the Regional Director of Motor Carriers and the appropriate State authority, there will be conducted a joint investigation, inspection, or examination of the property, equipment, or records of motor carriers or others, for the enforcement of the safety and hazardous materials laws and regulations of the United States and the State concerning highway transportation. The said Regional Director of Motor Carriers and the appropriate State authority shall decide as to the location and time, the objectives sought, and the identity of the person who will supervise the joint effort and make the necessary decisions. Any agent or employee of either agency who has personal knowledge of pertinent facts shall be made available when necessary to testify as a witness in an enforcement proceeding or other action.

[33 FR 19725, Dec. 25, 1968, as amended at 51 FR 12621, Apr. 14, 1986]

§ 388.7 Joint administrative activities related to enforcement of safety and hazardous materials laws and regulations.

To facilitate the interchange of information and evidence, and the conduct of joint investigation and administrative action, the Regional Director of Motor Carriers and the appropriate State authority shall, when warranted, schedule joint conferences of staff members of both agencies. Information shall be exchanged as to the nature and extent of the authority and capabilities of the respective agencies to enforce the safety and hazardous materials laws and regulations of the State or of the United States concerning motor carrier transportation. The Federal Highway Administration and the State (or appropriate State authority) shall use their best efforts to inform each other of changes in their rules and regulations and cooperate with and assist each other in conducting training schools for Federal and State enforcement officials engaged in such duties.

[33 FR 19725, Dec. 25, 1968, as amended at 51 FR 12621, Apr. 14, 1986]

§ 388.8 Supplemental agreements.

The terms specified in this part may be supplemented from time to time by specific agreement between the Federal Highway Administration and the appropriate State authority in order to

further implement the provisions of 49 U.S.C. 502.

[51 FR 12621, Apr. 14, 1986]

PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

Subpart A—General

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389.1 Applicability.
389.3 Definitions.
389.5 Regulatory docket.
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Subpart B—Procedures for Adoption of Rules

389.11 General.
389.13 Initiation of rule making.
389.15 Contents of notices of proposed rule making.
389.17 Participation by interested persons.
389.19 Petitions for extension of time to comment.
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389.23 Consideration of comments received.
389.25 Additional rule making proceedings.
389.27 Hearings.
389.29 Adoption of final rules.
389.31 Petitions for rule making.
389.33 Processing of petition.
389.35 Petitions for reconsideration.
389.37 Proceedings on petitions for reconsideration.

AUTHORITY: Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99–570, 100 Stat. 3207–170 (49 U.S.C. 2701 *et seq.*); 49 U.S.C. 104 and 3102; sec. 30 of the Motor Carrier Act of 1980 (Pub. L. 96–296, 94 Stat. 820), as amended by sec. 108(b)(5) of Pub. L. 96–510, 94 Stat. 2767; sec. 406 of Pub. L. 97–424, 96 Stat. 2097; sec. 222 of Pub. L. 98–554, 98 Stat. 2846 (49 U.S.C. 10927 note); secs. 18 and 25(c) of the Bus Regulatory Reform Act of 1982 (Pub. L. 97–261, 96 Stat. 1102, 1120, 49 U.S.C. 10927 note); and 42 U.S.C. 4917.

SOURCE: 35 FR 9209, June 12, 1970, unless otherwise noted.

Subpart A—General

§ 389.1 Applicability.

This part prescribes rulemaking procedures that apply to the issuance, amendment and revocation of rules under 49 U.S.C. 3102; section 30 of the Motor Carrier Act of 1980, as amended; section 18 of the Bus Regulatory Reform Act of 1982, as amended; the Motor Carrier Safety Act of 1984; the Commercial Motor Vehicle Safety Act of 1986 and the Noise Control Act of 1972.

[51 FR 12621, Apr 14, 1986, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.3 Definitions.

Act means 49 U.S.C. 104, 501 *et seq.*, 3101 *et seq.*, the Motor Carrier Act of 1980, the Motor Carrier Safety Act of 1984, the Commercial Motor Vehicle Safety Act of 1986, the Bus Regulatory Reform Act of 1982, or the Noise Control Act of 1972.

Administrator means the Federal Highway Administrator.

Rule includes any order or regulation issued under the Act.

[35 FR 9209, June 12, 1970, as amended at 51 FR 12621, Apr. 14, 1986; 53 FR 2036, Jan. 26, 1988]

§ 389.5 Regulatory docket.

(a) Information and data deemed relevant by the Administrator relating to rule making actions, including notices of proposed rule making; comments received in response to notices; petitions for rule making and reconsideration; denials of petitions for rule making and reconsideration; records of additional rule making proceedings under § 389.25; and final rules are maintained at Headquarters, Federal Highway Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

(b) Any person may examine docketed material, at any time during regular business hours after the docket is established, except material ordered withheld from the public under section 552(b) of title 5 of the United States Code, and may obtain a copy of it upon payment of a fee.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.7 Records.

Records of the Administrator relating to rule making proceedings are available for inspection as provided in section 552(b) of title 5 of the United

States Code and part 7 of the regulations of the Secretary of Transportation (part 7 of this title; 32 FR 9284 *et seq.*).

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

Subpart B—Procedures for Adoption of Rules

§ 389.11 General.

Unless the Administrator, for good cause, finds that notice is impractical, unnecessary, or contrary to the public interest, and incorporates that finding and a brief statement of the reasons for it in the rule, a notice of proposed rulemaking is issued, and interested persons are invited to participate in the rulemaking proceedings involving rules under 49 U.S.C. 3102; section 30 of the Motor Carrier Act of 1980, as amended; section 18 of the Bus Regulatory Reform Act of 1982, as amended; the Motor Carrier Safety Act of 1984; the Commercial Motor Vehicle Safety Act of 1986 and the Noise Control Act of 1972.

[51 FR 12621, Apr 14, 1986 as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.13 Initiation of rule making.

The Administrator initiates rule making on his/her own motion. However, in so doing, he/she may, in his/her discretion, consider the recommendations of his/her staff or other agencies of the United States or of other interested persons.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.15 Contents of notices of proposed rule making.

(a) Each notice of proposed rule making is published in the FEDERAL REGISTER, unless all persons subject to it are named and are personally served with a copy of it.

(b) Each notice, whether published in the FEDERAL REGISTER or personally served, includes:

(1) A statement of the time, place, and nature of the proposed rule making proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects and issues involved or the substance and terms of the proposed rule;

(4) A statement of the time within which written comments must be submitted; and

(5) A statement of how and to what extent interested persons may participate in the proceeding.

§ 389.17 Participation by interested persons.

(a) Any interested person may participate in rule making proceedings by submitting comments in writing containing information, views, or arguments.

(b) In his/her discretion, the Administrator may invite any interested person to participate in the rule making procedures described in § 389.25.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.19 Petitions for extension of time to comment.

A petition for extension of the time to submit comments must be received in duplicate not later than three (3) days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments. Such a petition is granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest. If an extension is granted, it is granted to all persons, and it is published in the FEDERAL REGISTER.

§ 389.21 Contents of written comments.

All written comments must be in English and submitted in five (5) legible copies, unless the number of copies is specified in the notice. Any interested person must submit as part of his/her written comments all material that he/she considers relevant to any statement of fact made by him/her. Incorporation of material by reference is to be avoided. However, if such incorporation is necessary, the incorporated material shall be identified with respect to document and page.

§ 389.23 Consideration of comments received.

All timely comments are considered before final action is taken on a rule making proposal. Late filed comments may be considered as far as practicable.

§ 389.25 Additional rule making proceedings.

The Administrator may initiate any further rule making proceedings that he/she finds necessary or desirable. or example, interested persons may be invited to make oral arguments, to participate in conferences between the Administrator or his/her representative at which minutes of the conference are kept, to appear at informal hearings presided over by officials designated by the Administrator at which a transcript or minutes are kept, or participate in any other proceeding to assure informed administrative action and to protect the public interest.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.27 Hearings.

(a) Sections 556 and 557 of title 5, United States Code, do not apply to hearings held under this part. Unless otherwise specified, hearings held under this part are informal, nonadversary, fact-finding procedures at which there are no formal pleadings or adverse parties. Any rule issued in a case in which an informal hearing is held is not necessarily based exclusively on the record of the hearing.

(b) The Administrator designates a representative to conduct any hearing held under this part. The Chief Counsel of the Federal Highway Administration designates a member of his/her staff to serve as legal officer at the hearing.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.29 Adoption of final rules.

Final rules are prepared by representatives of the office concerned and the Office of the Chief Counsel. The rule is then submitted to the Administrator for his/her consideration. If the Administrator adopts the rule, it is published in the FEDERAL REGISTER, unless all persons subject to it are named and are personally served with a copy of it.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.31 Petitions for rule making.

(a) Any interested person may petition the Administrator to establish, amend, or repeal a rule.

(b) Each petition filed under this section must:

(1) Be submitted in duplicate to the Administrator, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590;

(2) Set forth the text or substance of the rule or amendment proposed, or specify the rule that the petitioner seeks to have repealed, as the case may be;

(3) Explain the interest of the petitioner in the action requested;

(4) Contain any information and arguments available to the petitioner to support the action sought.

[35 FR 9209, June 12, 1970, as amended at 45 FR 46424, July 10, 1980; 53 FR 2036, Jan. 26, 1988]

§ 389.33 Processing of petition.

(a) Unless the Administrator otherwise specifies, no public hearing, argument, or other proceeding is held directly on a petition before its disposition under this section.

(b) *Grants.* If the Administrator determines that the petition contains adequate justification, he/she initiates rule making action under this Subpart B.

(c) *Denials.* If the Administrator determines that the petition does not justify rule making, he/she denies the petition.

(d) *Notification*. Whenever the Administrator determines that a petition should be granted or denied, the Office of the Chief Counsel prepares a notice of that grant or denial for issuance to the petitioner, and the Administrator issues it to the petitioner.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.35 Petitions for reconsideration.

(a) Any interested person may petition the Administrator for reconsideration of any rule issued under this

part. The petition must be in English and submitted in five (5) legible copies to the Administrator, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, and received not later than thirty (30) days after publication of the rule in the FEDERAL REGISTER. Petitions filed after that time will be considered as petitions filed under § 389.31. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest.

(b) If the petitioner requests the consideration of additional facts, he/she must state the reason they were not presented to the Administrator within the prescribed time.

(c) The Administrator does not consider repetitious petitions.

(d) Unless the Administrator otherwise provides, the filing of a petition under this section does not stay the effectiveness of the rule.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.37 Proceedings on petitions for reconsideration.

The Administrator may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event he/she determines to reconsider any rule, he/she may issue a final decision on reconsideration without further proceedings, or he/she may provide such opportunity to submit comment or information and data as he/she deems appropriate. Whenever the Administrator determines that a petition should be granted or denied, he/she prepares a notice of the grant or denial of a petition for reconsideration, for issuance to the petitioner, and issues it to the petitioner. The Administrator may consolidate petitions relating to the same rule.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

Subpart A—General Applicability and Definitions

Sec.

390.1 Purpose.
390.3 General applicability.
390.5 Definitions.
390.7 Rules of construction.

Subpart B—General Requirements and Information

390.9 State and local laws, effect on.
390.11 Motor carrier to require observance of driver regulations.
390.13 Aiding or abetting violations.
390.15 Assistance in investigations and special studies.
390.16–390.17 [Reserved]
390.19 Additional equipment and accessories.
390.21 Marking of commercial motor vehicles.
390.23 Relief from regulations.
390.25 Extension of relief from regulations—emergencies.
390.27 Locations of regional offices of motor carriers.
390.29 [Reserved]
390.31 Copies of records or documents.
390.33 Commercial motor vehicles used for purposes other than defined.
390.35 Certificates, reports, and records: falsification, reproduction, or alteration.
390.37 Violation and penalty.

Subpart C—Intermodal Transportation

390.50 Applicability.
390.52 Definitions.
390.54 Notification and certification.
390.56 Duty of motor carrier.
390.58 Forwarding and retention of certification.
390.60 Coercion.

AUTHORITY: 49 U.S.C. 5901-5907, 31132, 31133, 31136, 31502, and 31504; and 49 CFR 1.48

EFFECTIVE DATE NOTE: At 59 FR 67554, Dec. 29, 1994, the authority citation for part 390 was revised, effective June 27, 1995. At 60 FR 26002, May 16, 1995, the effective date was extended to Sept. 27, 1995. At 60 FR 40761, Aug. 10, 1995, the effective date was further extended to Sept. 1, 1996. At 61 FR 42822, Aug. 19, 1996, the effective date was further extended to Jan. 2, 1997. For the convenience of

the user, the revised text is set forth as follows:

AUTHORITY: 49 U.S.C. 5901–5907, 31132, 31136, 31502, and 31504; 49 CFR 1.48.

SOURCE: 53 FR 18052, May 19, 1988, unless otherwise noted.

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 subpart C of this part are applicable to persons tendering loaded containers or trailers, to carriers used to transport such loaded containers or trailers, and to persons who coerce or attempt to coerce a motor carrier to transport a loaded container or trailer in violation of that subpart.

(c) 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.

(d) 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.

(e) *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.

(f) 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.

(g) *Exceptions.* Unless otherwise specifically provided, the rules in this subchapter do not apply to—

(1) All school bus operations as defined in § 390.5;

(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. The accident recordkeeping requirements of § 390.15 of this part remain applicable to the entities identified in this paragraph when engaged in the interstate charter transportation of passengers;

(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.

[53 FR 18052, May 19, 1988, as amended at 54 FR 12202, Mar. 24, 1989; 58 FR 33776, June 21, 1993; 59 FR 8752, Feb. 23, 1994; 59 FR 67554, Dec. 29, 1994]

EFFECTIVE DATE NOTE: At 59 FR 67554, Dec. 29, 1994, § 390. 3 was amended by redesignating paragraphs (b) through (f) as (c) through (g), and by adding a new paragraph (b), effective June 27, 1995. At 60 FR 26002, May 16, 1995, the effective date was extended to Sept. 27, 1995. At 60 FR 40761, Aug. 10, 1995, the effective date was further extended to Sept. 1, 1996. At 61 FR 42822, Aug. 19, 1996, the effective date was further extended to Jan. 2, 1997.

§ 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 public road 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 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; or

(iii) 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 a motor carrier and is not 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.

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 vehicle used on public highways in interstate commerce to transport passengers or property when:

(a) The vehicle has a gross vehicle weight rating or gross combination weight rating of 4,537 or more kilograms (10,001 or more pounds); or

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

(c) The vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et. seq.*).

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.

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 any operation in which a motor vehicle constitutes the commodity being transported and one or more set of wheels of the motor vehicle being transported are on the surface of the roadway during transportation.

Driver means any person who operates any commercial motor vehicle.

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV: Driving a CMV while the person's alcohol concentration is 0.04 percent 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 §383.51(b)(2)(i)(A) or (B), or §392.5(a)(2).

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 Regional Director of Motor Carriers for the region 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 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 by the ICC in 49 CFR part 1048, revised as of October 1, 1975. The descriptions are printed 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 §391.2(d), 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 Interstate

Commerce Commission (ICC) under 49 U.S.C. 10526. ''Exempt motor carriers'' are subject to the safety regulations set forth in this subchapter.

Farm-to-market agricultural transportation means the operation of a commercial motor vehicle controlled and operated by a farmer who:

(a) Is a private motor carrier of property;

(b) Is using the commercial motor vehicle to transport agricultural products from a farm owned by the farmer, or to transport farm machinery or farm supplies to or from a farm owned by the farmer; and

(c) Is not using the commercial motor vehicle to transport hazardous materials of a type or quantity that require the commercial motor vehicle to be placarded in accordance with §177.823 of this subtitle.

Farm vehicle driver means a person who drives only a commercial motor vehicle that is—

(a) Controlled and operated by a farmer as a private motor carrier of property;

(b) Being used to transport either—

(1) Agricultural products, or

(2) Farm machinery, farm supplies, or both, to or from a farm;

(c) Not being used in the operation of a for-hire motor carrier;

(d) Not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with §177.823 of this subtitle; and

(e) Being used within 150 air-miles of the farmer's farm.

Farmer means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which—

(a) Are owned by that person; or

(b) Are under the direct control of that person.

Fatality means any injury which results in the death of a person at the time of the motor vehicle accident or within 30 days of the accident.

Federal Highway Administrator means the chief executive of the Federal Highway 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.

Hazardous material means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

Hazardous substance means a material, and its mixtures or solutions, that is identified in the appendix to §172.101, List of Hazardous Substances and Reportable Quantities, of this title when offered for transportation in one package, or in one transport motor vehicle if not packaged, and when the quantity of the material therein equals or exceeds the reportable quantity (RQ). This definition does not apply to petroleum products that are lubricants or fuels, or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in §171.8 of this title, based on the reportable quantity (RQ) specified for the materials listed in the appendix to §172.101.

Hazardous waste means any material that is subject to the hazardous waste manifest requirements of the EPA specified in 40 CFR part 262 or would be subject to these requirements absent an interim authorization to a State under 40 CFR part 123, subpart F.

Intermittent, casual, or occasional driver means a driver who in any period of 7 consecutive days is employed or used as a driver by more than a single motor carrier. The qualification of such a driver shall be determined and recorded in accordance with the provisions of §391.63 or 391.65 of this subchapter, as applicable.

Interstate commerce means trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between two places in a State through another State or a place outside of 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 a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to perform physical examinations. The term includes but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic.

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 Highway 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.

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 §§ 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American Uniform Out-of-Service Criteria.

Person means any individual, partnership, association, corporation, business trust, or any other organized group of individuals.

Principal place of business means a single location designated by the motor carrier, normally its headquarters, where records required by parts 387, 390, 391, and 395 of this subchapter will be maintained and where records required by part 382 must be made available for inspection within two business days after a request has been made by an authorized representative of the Federal Highway Administration. Provisions in this subchapter are made for maintaining certain records at locations other than the principal place of business.

Private motor carrier means a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier.

Private motor carrier of passengers (business) means a private motor carrier engaged in the interstate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large.

Private motor carrier of passengers (nonbusiness) means private motor carrier involved in the interstate transportation of passengers that does not otherwise meet the definition of a private motor carrier of passengers (business).

Radar detector means any device or mechanism to detect the emission of radio microwaves, laser beams or any other future speed measurement technology employed by enforcement personnel to measure the speed of commercial motor vehicles upon public roads 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 Director of the Office of Motor Carriers, Federal Highway Administration, for a given geographical region of the United States.

Regularly employed 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.

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.

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.

Trailer includes:

(a) *Full trailer* means any motor vehicle other than a pole trailer which is designed to be drawn by another motor vehicle and so constructed that no part of its weight, except for the towing device, rests upon the self-propelled towing motor vehicle. A semitrailer equipped with an auxiliary front axle (converter dolly) shall be considered a full trailer.

(b) *Pole trailer* means any motor vehicle which is designed to be drawn by another motor vehicle and attached to the towing motor vehicle by means of a ''reach'' or ''pole,'' or by being ''boomed'' or otherwise secured to the towing motor vehicle, for transporting long or irregularly shaped loads such as poles, pipes, or structural members, which generally are capable of sustaining themselves as beams between the supporting connections.

(c) *Semitrailer* means any motor vehicle, other than a pole trailer, which is designed to be drawn by another motor vehicle and is constructed so that some part of its weight rests upon the self-propelled towing motor vehicle.

Truck means any self-propelled commercial motor vehicle except a truck tractor, designed and/or used for the transportation of property.

Truck tractor means a self-propelled commercial motor vehicle designed and/or used primarily for drawing other vehicles.

United States means the 50 States and the District of Columbia.

[53 FR 18052, May 19, 1988, as amended at 53 FR 39051, Oct. 4, 1988; 53 FR 47543, Nov. 23, 1988; 55 FR 32916, Aug. 13, 1990; 55 FR 35435, Aug. 27, 1990; 57 FR 33278, July 28, 1992; 57 FR 33646, July 30, 1992; 58 FR 6729, Feb. 2, 1993; 58 FR 33777, June 21, 1993; 58 FR 59196, Nov. 8, 1993; 58 FR 67375, Dec. 21, 1993; 59 FR 8752, Feb. 23, 1994; 59 FR 26028, May 18, 1994; 59 FR 60323, Nov. 23, 1994; 60 FR 38743, July 28, 1995; 60 FR 44440, Aug. 28, 1995; 61 FR 9566, Mar. 8, 1996]

§ 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 FR 18052, May 19, 1988, as amended at 60 FR 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) A motor carrier shall make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Highway Administration upon request or as part of any inquiry within such time as the request or inquiry may specify. A motor carrier shall give an authorized representative of the Federal Highway Administration all reasonable assistance in the investigation of any accident including providing a full, true and correct answer to any question of the inquiry.

(b) Motor carriers shall maintain for a period of one year after an accident occurs, an accident register containing at least the following information:

(1) A list of accidents containing for each accident:

(i) Date of accident,

(ii) City or town in which or most near where the accident occurred and the State in which the accident occurred,

(iii) Driver name,

(iv) Number of injuries,

(v) Number of fatalities, and

(vi) Whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicles involved in the accident, were released.

(2) Copies of all accident reports required by State or other governmental entities or insurers.

(Approved by the Office of Management and Budget under control number 2125–0526)

[58 FR 6729, February 2, 1993, as amended at 60 FR 38744, July 28, 1995; 60 FR 44441, Aug. 28, 1995]

§§ 390.16—390.17 [Reserved]

§ 390.19 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 FR 18052, May 19, 1988, as amended at 60 FR 38744, July 28, 1995]

§ 390.21 Marking of commercial motor vehicles.

(a) *General.* Every self-propelled commercial motor vehicle operated in interstate commerce and subject to the rules of subchapter B of this chapter must be marked as specified in paragraphs (b), (c) and (d) of this section. Self-propelled commercial motor vehicles operated by for-hire motor carriers under authority issued by the Interstate Commercial Commission (ICC) may meet the requirements of this section by complying with the marking requirements set forth in 49 CFR part 1058.

(b) *Nature of marking.* The marking must display the following information:

(1) The name or trade name of the motor carrier operating the self-propelled commercial motor vehicle.

(2) The city or community and State (name abbreviated), in which the carrier maintains its principal place of business or in which the commercial motor vehicle is customarily based.

(3) The motor carrier identification number, if issued by the FHWA, preceded by the letters ''USDOT''.

(4) If the name of any person other than the operating carrier appears on the commercial motor vehicle operated under its own power, either alone or in combination, the name of the operating carrier shall be followed by the information required by paragraphs (b)(1), (2), and (3) of this section, and be preceded by the words ''*operated by*.''

(5) Other identifying information may be displayed on the commercial motor vehicle if it is not inconsistent with the information required by this paragraph.

(c) *Size, shape, location, and color of marking.* The marking must—

(1) Appear on both sides of the self-propelled commercial motor vehicle;

(2) Be in letters that contrast sharply in color with the background on which the letters are placed;

(3) Be readily legible, during daylight hours, from a distance of 50 feet while the commercial motor vehicle is stationary; and

(4) Be kept and maintained in a manner that retains the legibility required by paragraph (c)(3) of this section.

(d) *Construction and durability.* The marking may be painted on the commercial motor vehicle or may consist of a removable device, if that device meets the identification and legibility requirements of this section, and such marking shall be maintained in such a manner as to remain legible as required by this section.

(e) *Rented commercial motor vehicles.* A motor carrier operating a self-propelled commercial motor vehicle under a rental agreement having a term not in excess of 30 calendar days may meet the requirements of this section in either one of two ways:

(1) The commercial motor vehicle is marked in accordance with the provisions of paragraphs (b) through (d) of this section; or

(2) The commercial motor vehicle is marked as set forth below:

(i) The name or trade name of the lessor is displayed in accordance with paragraphs (c) and (d) of this section;

(ii) The city or community and State (name abbreviated), in which the lessor maintians its principal place of business or in which the commercial motor vehicle is customarily based is displayed in accordance with paragraphs (c) and (d) of this section;

(iii) The lessor's identification number, issued by the FHWA, preceded by the letters ''USDOT'' is displayed in accordance with paragraphs (c) and (d) of this section; and

(iv) The rental agreement entered into by the lessor and the renting motor carrier conspicuously contains the following information:

(A) The name and complete physical address of the principal place of business of the renting motor carrier;

(B) The identification number issued the renting motor carrier by the Federal Highway Administration, preceded by the letters ''USDOT,'' if the motor carrier has been issued such a number. In lieu of the identification number required in this paragraph, the following may be shown:

(*1*) Information which will indicate if the motor carrier is engaged in ''interstate'' or ''intrastate'' commerce; and

(*2*) Information which will indicate if the renting motor carrier is transporting hazardous materials in the rented commercial motor vehicle;

(C) The sentence: ''This lessor cooperates with all federal, state, and local law enforcement officials nationwide to provide the identity of customers who operate this rental commercial motor vehicle;'' and

(v) The rental agreement entered into by the lessor and the renting motor carrier is carried on the rental commercial motor vehicle during the full term of the rental agreement.

[53 FR 18052, May 19, 1988; 53 FR 27689, July 22, 1988, as amended at 53 FR 47543, Nov. 23, 1988; 55 FR 6993, Feb. 28, 1990; 57 FR 3142, Jan. 28, 1992; 60 FR 38744, July 28, 1995]

§ 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 Regional Director of Motor Carriers 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 Regional Director of Motor Carriers, 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 Regional Director of Motor Carriers 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 Regional Director of Motor Carriers, 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 shall be permitted at least 8 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) of this chapter; and

(2) The driver has had at least 24 consecutive hours off-duty when:

(A) 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

(B) 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 FR 33647, July 30, 1992, as amended at 60 FR 38744, July 28, 1995]

§ 390.25 Extension of relief from regulations—emergencies.

The Regional Director of Motor Carriers 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 Regional Director of Motor Carriers 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 Regional Director of Motor Carriers 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 Regional Director of Motor Carriers 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 FR 33647, July 30, 1992]

§ 390.27 Locations of regional offices of motor carriers.

Region No.	Territory included	Location of regional office
1	Connecticut, Maine, Massachusetts, New Jersey, New Hampshire, New York, Rhode Island, Vermont, Puerto Rico, and the Virgin Islands. That part of Canada east of Highways 19 and 8 from Port Burwell to Goderich, thence a straight line running north through Tobermory and Sudbury, and thence due north to the Canadian border.	Leo W. O'Brien Federal Office Building, Clinton & Pearl Streets, Room 737, Albany, NY 12207–2334.
3	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	City Crescent Building, #10 South Howard Street, Suite 4000, Baltimore, MD 21201–2819.
4	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee	1720 Peachtree Road, NW., Suite 200, Atlanta, GA 30367–2349.
5	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. That part of Canada west of Highways 19 and 8 from Port Burwell to Goderich, thence a straight line running north through Tobermory and Sudbury, and thence due north to the Canadian border, and east of the boundary between the Provinces of Ontario and Manitoba to Hudson Bay and thence a straight line north to the Canadian border.	19900 Governors Drive, Suite 210, Olympia Fields, IL 60461–1021.
6	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. All of Mexico, except the States of Baja California and Sonora and the Territory of Baja California Sur., Mexico. All nations south of Mexico.	Room 8A00, Federal Building, 819 Taylor Street, P.O. Box 902003, Fort Worth, TX 76102.
7	Iowa, Kansas, Missouri, and Nebraska	6301 Rockhill Road, P.O. Box 419715, Kansas City, MO 64141–6715.
8	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. That part of Canada west of the boundary between the Provinces of Ontario and Manitoba to Hudson Bay and thence a straight line due north to the Canadian border, and east of Highway 95 from Kingsgate to Blaeberry and thence a straight line due north to the Canadian border.	555 Zang Street, room 190, Lakewood, CO 80228–1014.
9	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Mariana Islands. The States of Baja California and Sonora, Mexico, and the Territory of Baja California Sur., Mexico.	201 Mission Street, Suite 2100, San Francisco, CA 94105.
10	Alaska, Idaho, Oregon and Washington. That part of Canada west of Highway 95 from Kingsgate to Blaeberry and thence a straight line due north to the Canadian border, and all the Province of British Columbia.	KOIN Center, suite 600, 222 SW Columbia Street, Portland, OR 97201–2491.

[61 FR 9566, Mar. 8, 1996]

§ 390.29 [Reserved]

§ 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 FR 18052, May 19, 1988, as amended at 60 FR 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.

Subpart C—Intermodal Transportation

SOURCE: 59 FR 67554, Dec. 29, 1994, unless otherwise noted.

EFFECTIVE DATE NOTE: At 59 FR 67554, Dec. 29, 1994, subpart C to part 390 was added, effective June 27, 1995. At 60 FR 26002, May 16, 1995, the effective was extended to Sept. 27, 1995. At 60 FR 40761, Aug. 10, 1995, the effective was further extended to Sept. 1, 1996. At 61 FR 42822, Aug. 19, 1996, the effective date was further extended to Jan. 2, 1997.

§ 390.50 Applicability.

The provisions of this subpart apply to any person tendering a loaded container or trailer which is transported by a motor carrier on a public highway in the United States and to carriers used to transport such containers or trailers. This subpart also applies to any person who coerces or attempts to coerce a motor carrier to transport a loaded container or trailer in violation of this subpart.

§ 390.52 Definitions.

In this subpart:

Applicable State law means the vehicle weight laws, including overweight operating permit regulations, of each State in which intermodal transportation occurs or where an act of coercion allegedly occurs.

Carrier means:

(1) A motor carrier, water carrier, and rail carrier (as such terms are defined in 49 U.S.C. 10102), and

(2) An ocean common carrier (as such term is defined in 46 U.S.C. app. 1702), providing transportation of property in commerce.

Coerce or *attempt to coerce* means a threat to inflict physical harm or to withhold business from a person participating in intermodal transportation in order to induce that person to transport a loaded container or trailer in violation of the provisions of § 390.56 or 390.60.

Container means an article of transport equipment:

(1) Of a permanent character and accordingly strong enough to be suitable for repeated use;

(2) Specially designed to facilitate the carriage of goods by one or more modes of transport, without intermediate reloading;

(3) Fitted with devices permitting its ready handling, particular its transfer from one mode of transport to another;

(4) So designed as to be easy to fill and empty; and

(5) Having an internal volume of one cubic meter (35.3 cubic feet) or more.

Initial carrier means the first carrier transporting in intermodal transportation a loaded container or trailer.

Intermodal transportation means successive carriage of a loaded container or trailer from an origin point to a destination point by more than one type of carrier in interstate or foreign commerce. Such term shall include carriage by more than one mode of transportation in interstate or foreign commerce both under a single bill of lading and under separate bills of lading.

Loaded container or trailer means a container or trailer in intermodal transportation with an actual gross cargo weight (inclusive of packing material and pallets) of more than 10,000 pounds or 4,536 kilograms.

Reasonable description means a representative statement that characterizes the cargo transported, such as, but not limited to, the term freight all kinds and other similar generic descriptions. A *reasonable description* shall identify a container or trailer loaded with perishable agricultural commodities. A *reasonable description* shall identify a container or trailer whose contents are likely to shift during intermodal transportation causing an uneven or concentrated weight distribution which may result in an axle weight violation during highway transportation. For the purposes of *reasonable description*, likely to shift means the contents of a container or trailer by the nature of its transportation characteristics has a high probability of moving within the container or trailer. Hazardous material shipping paper requirements (49 CFR part 172, subpart C) are not affected by this definition, and shipping papers must be prepared as required.

Tender a loaded container or trailer means to present a loaded container or trailer to an initial carrier for intermodal transportation. A person who

loads the container or trailer, including a person who consolidates multiple shipments, shall be considered to be the person tendering a loaded container or trailer unless some other appropriate party assumes that responsibility.

Trailer means a nonpower, cargo carrying, trailing unit which is designed for use in combination with a truck tractor.

§ 390.54 Notification and certification.

(a) If the initial carrier is a motor carrier, before any person tenders a container or trailer subject to this subpart having a projected gross cargo weight (inclusive of packing material and pallets) of more than 10,000 pounds or 4,536 kilograms, such person shall notify the initial carrier of the projected gross cargo weight and a reasonable description of the contents of the container or trailer. The notification may be communicated by electronic transmission or telephone.

(b) At or before the time any person tenders a loaded container or trailer subject to this subpart, such person shall provide a certification to the initial carrier.

(1) If the initial carrier is a motor carrier, the certification shall be provided in a tangible form.

(2) The certification may be transmitted electronically, provided that the certification can be reproduced in a tangible form.

(3) A carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouseman, and terminal operator shall not be considered to be tendering a loaded container or trailer unless such person loads the container or trailer or issues the certification on the basis of information available from the person who loads the container or trailer.

(c) The certification shall include:

(1) The title ''INTERMODAL CERTIFICATION'';

(2) The identification number of the container or trailer;

(3) The actual gross cargo weight, including the unit of measurement, of the contents of the container or trailer, including packing material and pallets;

(4) A reasonable description of the contents;

(5) The name and company of the person tendering the loaded container or trailer; and

(6) The date.

(d) *Signature.* The certification required by paragraph (c) of this section:

(1) Must be legibly signed by the person or representative tendering the loaded container or trailer; and

(2) May be legibly signed manually, by typewriter, or other mechanical means.

(e) The required elements of a certification shall be legible and in the English language.

(f) No person may provide false or erroneous information in a certification.

(g) The following form may be used to comply with this section:

INTERMODAL CERTIFICATION

Identification number:

Gross cargo weight:

Reasonable description:

(Name and company of the person tendering the loaded container or trailer)

(Signature of the person tendering the loaded container or trailer)

(Date)

§ 390.56 Duty of motor carrier.

(a) No motor carrier may provide transportation of a loaded container or trailer subject to this subpart prior to receiving the certification required by § 390.54 in a tangible form.

(b) The certification in a tangible form shall accompany the loaded container or trailer during transportation by a motor carrier.

§ 390.58 Forwarding and retention of certification.

(a) A carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouseman, or terminal operator that receives the certification required by § 390.54 in the course of intermodal transportation shall forward the certification to a subsequent carrier transporting the loaded container or trailer.

(1) If received in a tangible form, the certification may be converted into an electronic format.

(2) If received as a separate document, the certification may be incorporated into a shipping document corresponding to the loaded container or trailer.

(3) The person who converts a certification into an electronic format and/or incorporates a certification into a shipping document corresponding to the loaded container or trailer shall state in writing that the conversion and/or incorporation was performed accurately. Such statement shall take the following form: ''Electronic Format and/or Incorporation by John Doe, X Company, Month/Day/Year.'' Such statement shall appear immediately after the certification of the person tendering the loaded container or trailer.

(b) The certification may be forwarded by electronic transmission provided that all subsequent motor carriers receive the certification in a tangible form.

(c) The forwarding of any certification required or statement authorized by this section does not constitute a verification or affirmation of the accuracy or completeness of the certification or statement.

(d) Any person who tenders a loaded container or trailer that is transported by a motor carrier, and each motor carrier transporting a loaded container or trailer shall maintain a copy of the certification for a period of one year from the date of the tendering. Certifications may be maintained electronically if the certification can be reproduced in a tangible form.

§ 390.60 Coercion.

(a) No person may coerce or attempt to coerce a person to transport a loaded container or trailer subject to this subpart without the certification required by § 390.54.

(b) No person, knowing that the weight of a tractor-trailer combination which includes a loaded container or trailer is in excess of that permitted by applicable State law, may coerce or attempt to coerce a motor carrier or driver in violation of such law—

(1) To transport the loaded container or trailer; or

(2) To operate the tractor-trailer combination.

(c) *Exception.* This section does not apply to a carrier transferring a loaded container or trailer to another carrier in the course of intermodal transportation. This exception does not apply if the transferring carrier is also the person tendering the loaded container or trailer.

PART 391—QUALIFICATIONS OF DRIVERS

Subpart A—General

Sec.

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AUTHORITY: 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

SOURCE: 35 FR 6460, Apr. 22, 1970, unless otherwise noted.

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) A motor carrier who employs himself/herself as a driver 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 FR 6460, Apr. 22, 1970, as amended at 53 FR 18057, May 19, 1988; 60 FR 38744, July 28, 1995]

§ 391.2 General exemptions.

(a) *Farm custom operation.* The rules in this part 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 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 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. (For limited exemptions for farm vehicle drivers of articulated commercial motor vehicles, see § 391.67.)

[36 FR 24219, Dec. 22, 1971, as amended at 37 FR 26112, Dec. 8, 1972; 54 FR 12202, Mar. 24, 1989; 60 FR 38745, July 28, 1995; 61 FR 13346, Mar. 26, 1996; 61 FR 17253, Apr. 19, 1996]

Subpart B—Qualification and Disqualification of Drivers

§ 391.11 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 commercial 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) 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;

(5) Is familiar with methods and procedures for securing cargo in or on the commercial motor vehicle he/she drives.

(6) Is physically qualified to drive a commercial motor vehicle in accordance with subpart E—Physical Qualifications and Examinations of part 391;

(7) Has a currently valid commercial motor vehicle operator's license issued only from one State or jurisdiction;

(8) Has prepared and furnished the motor carrier that employs him/her with the list of violations or the certificate as required by § 391.27;

(9) Is not disqualified to drive a commercial motor vehicle under the rules in § 391.15;

(10) 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;

(11) Has completed and furnished the motor carrier that employs him/her with an application for employment in accordance with § 391.21.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 35 FR 19181, Dec. 18, 1970; 36 FR 222, Jan. 7, 1971, 36 FR 24220, Dec. 22, 1971; 45 FR 46424, July 10, 1980; 52 FR 20589, June 1, 1987; 59 FR 60323, Nov. 23, 1994; 60 FR 38744, 38745, July 28, 1995]

§ 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.* A driver is disqualified for the duration of his/her 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.

(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(a) 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 Schedule I drug or other substance identified in

appendix D to this subchapter [1], 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 Schedule I drug or other substance identified in appendix D of this subchapter [1], amphetamines, narcotic drugs, formulations of an amphetamine, or derivatives of narcotic drugs while on on-duty time;

(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.

[37 FR 24902, Nov. 23, 1972, as amended at 49 FR 44215, Nov. 5, 1984; 51 FR 8200, Mar. 10, 1986; 53 FR 18057, May 19, 1988; 53 FR 39051, Oct. 4, 1988; 54 FR 40788, Oct. 3, 1989; 59 FR 26028, May 18, 1994; 60 FR 38744, 38745, July 28, 1995]

[1] A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Office of Motor Carrier Research and Standards, Washington, DC 20590, or to any Regional Office of Motor Carriers of the Federal Highway Administration at the address given in §390.27 of this subchapter.

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) A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted, together with the dates he/she was employed by, and his/her reason for leaving the employ of, each employer;

(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 shall 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 prior employers may be contacted, for the purpose of investigating the applicant's background as required by § 391.23.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 52 FR 20589, June 1, 1987; 60 FR 38744, July 28, 1995]

§ 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 into the driver's driving record during the preceding 3 years to the appropriate agency of every State in which the driver held a motor vehicle operator's license or permit during those 3 years; and

(2) An investigation of the driver's employment record during the preceding 3 years.

(b) The inquiry to State agencies required by paragraph (a)(1) of this section must be made within 30 days of the date the driver's employment begins and shall be made in the form and manner those agencies prescribe. A copy of the response by each State agency, showing the driver's driving record or certifying that no driving record exists for that driver, shall be retained in the carrier's files as part of the driver's qualification file.

(c) The investigation of the driver's employment record required by paragraph (a)(2) of this section must be made within 30 days of the date his/her employment begins. The investigation may consist of personal interviews, telephone interviews, letters, or any other method of obtaining information that the carrier deems appropriate. Each motor carrier must make a written record with respect to each past employer who was contacted. The record must include the past employer's name and address, the date he/she was contacted, and his/her comments with respect to the driver. The record shall be retained in the motor carrier's files as part of the driver's qualification file.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970]

§ 391.25 Annual review of driving record.

Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, review the driving 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. In reviewing a driving record, the motor carrier must consider any evidence that the driver has violated applicable provisions of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations. The motor carrier must also 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. A note, setting forth the date upon which the review was performed and the name of the person who reviewed the driving record, shall be included in the driver's qualification file.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 60 FR 38744, July 28, 1995]

§ 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 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 52 FR 20589, June 1, 1987; 60 FR 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 pretrip 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 _____, 19____, 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 FR 6460, Apr. 22, 1970, as amended at 36 FR 223, Jan. 7, 1971; 59 FR 8752, Feb. 23, 1994; 60 FR 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 operator's license which has been issued to him/her by a State that licenses drivers 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 FR 6460, Apr. 22, 1970, as amended at 60 FR 38744, July 28, 1995]

Subpart E—Physical Qualifications and Examinations

§ 391.41 Physical qualifications for drivers.

(a) A person shall not drive a commercial motor vehicle unless he/she is physically qualified to do so and, except as provided in § 391.67, has on his/her person the original, or a photographic copy, of a medical examiner's certificate that he/she is physically qualified to drive a commercial motor vehicle.

(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 waiver 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 waiver 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) Does not use a Schedule I drug or other substance identified in appendix D to this subchapter[1], an amphetamine, a narcotic, or any other habit-forming drug, except that a driver may use such a substance or drug if the substance or drug is prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties and who 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; and

(13) Has no current clinical diagnosis of alcoholism.

(c) Drivers subject to subpart H of this part shall be tested in compliance with the requirements of that subpart.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 36 FR 223, Jan. 7, 1971; 36 FR 12857, July 8, 1971; 43 FR 56900, Dec. 5, 1978; 51 FR 17571, May 13, 1986; 53 FR 18057, May 19, 1988; 53 FR 47154, Nov. 21, 1988; 55 FR 3554, Feb. 1, 1990; 60 FR 38744, 38745, July 28, 1995]

§ 391.43 Medical examination; certificate of physical examination.

(a)(1) Except as provided by paragraph (b) of this section, the medical examination shall be performed by a licensed medical examiner as defined in § 390.5 of this subchapter.

(2) The drug use verification procedures required by subpart H need not be performed by or under the supervision of the medical examiner. If not performed, the medical examiner shall assess compliance with § 391.41(b)(12) based on his/her observations, statements of the applicant and/or any tests performed.

(b) 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).

(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 regulatory criteria prepared by the FHWA 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 § 391.2(d) 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, substantially in accordance with the following instructions and examination form. Existing forms may be used until current printed supplies are depleted or until March 31, 1997.

[1] A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Office of Motor Carrier Research and Standards, Washington, DC 20590, or to any Regional Office of Motor Carriers of the Federal Highway Administration at the address given in § 390.27 of this subchapter.

INSTRUCTIONS FOR PERFORMING AND RECORDING PHYSICAL EXAMINATIONS

The examining medical examiner should review these instructions before performing the physical examination. Answer each question yes or no where appropriate.

The examining medical examiner should be aware of the rigorous physical demands and mental and emotional responsibilities placed on the driver of a commercial motor vehicle. In the interest of public safety the examining medical examiner is required to certify that the driver does not have any physical, mental, or organic defect of such a nature as to affect the driver's ability to operate safely a commercial motor vehicle.

General information. The purpose of this history and physical examination is to detect the presence of physical, mental, or organic defects of such a character and extent as to affect the applicant's ability to operate a commercial motor vehicle safely. The examination should be made carefully and at least as complete as indicated by the attached form. History of certain defects may be cause for rejection or indicate the need for making certain laboratory tests or a further, and more stringent, examination. Defects may be recorded which do not, because of their character or degree, indicate that certification of physical fitness should be denied. However, these defects should be discussed with the applicant and he/she should be advised to take the necessary steps to insure correction, particularly of those which, if neglected, might lead to a condition likely to affect his/her ability to drive safely.

General appearance and development. Note marked overweight. Note any posture defect, perceptible limp, tremor, or other defects that might be caused by alcoholism, thyroid intoxication, or other illnesses. The Federal Motor Carrier Safety Regulations provide that no driver shall use a narcotic or other habit-forming drugs.

Head-eyes. When other than the Snellen chart is used, the results of such test must be expressed in values comparable to the standard Snellen test. If the applicant wears corrective lenses, these should be worn while applicant's visual acuity is being tested. If appropriate, indicate on the Medical Examiner's Certificate by checking the box, ''Qualified only when wearing corrective lenses.'' In recording distance vision use 20 feet as normal. Report all vision as a fraction with 20 as numerator and the smallest type read at 20 feet as denominator. Note ptosis, discharge, visual fields, ocular muscle imbalance, color blindness, corneal scar, exophtalmos, or strabismus, uncorrected by corrective lenses. Monocular drivers are not qualified to operate commercial motor vehicles under existing Federal Motor Carrier Safety Regulations. If the driver habitually wears contact lenses, or intends to do so while driving, there should be sufficient evidence to indicate that he/she has good tolerance is well adapted to their use. The use of contact lenses should be noted on the record.

Ears. Note evidence of mastoid or middle ear disease, discharge, symptoms of aural vertigo, or Meniere's Syndrome. When recording hearing, record distance from patient at which a forced whispered voice can first be heard. If audiometer is used to test hearing, record decibel loss at 500 Hz, 1,000 Hz, and 2,000 Hz.

Throat. Note evidence of disease, irremediable deformities of the throat likely to interfere with eating or breathing, or any laryngeal condition which could interfere with the safe operation of a commercial motor vehicle.

Thorax-heart. Stethoscopic examination is required. Note murmurs and arrhythmias, and any past or present history of cardiovascular disease, of a variety known to be accompanied by syncope, dyspnea, collapse, enlarged heart, or congestive heart failures. Electrocardiogram is required when findings so indicate.

Blood pressure. Record with either spring or mercury column type of sphygomomanometer. If the blood pressure is consistently above 160/90 mm. Hg., further tests may be necessary to determine whether the driver is qualified to operate a commercial motor vehicle.

Lungs. If any lung disease is detected, state whether active or arrested; if arrested, your opinion as to how long it has been quiescent.

Gastrointestinal system. Note any diseases of the gastrointestinal system.

Abdomen. Note wounds, injuries, scars, or weakness of muscles of abdominal walls sufficient to interfere with normal function. Any hernia should be noted if present. State how long and if adequately contained by truss.

Abnormal masses. If present, note location, if tender, and whether or not applicant knows how long they have been present. If the diagnosis suggests that the condition might interfere with the control and safe operation of a commercial motor vehicle, more stringent tests must be made before the applicant can be certified.

Tenderness. When noted, state where most pronounced, and suspected cause. If the diagnosis suggests that the condition might interfere with the control and safe operation of a commercial motor vehicle, more stringent tests must be made before the applicant can be certified.

Genito-urinary. Urinalysis is required. Acute infections of the genito-urinary tract, as defined by local and State public health laws, indications from urinalysis of uncontrolled diabetes, symptomatic albumin-urea in the urine, or other findings indicative of health conditions likely to interfere with the control and safe operation of a commercial

motor vehicle, will disqualify an applicant from operating a motor vehicle.

Neurological. If positive Romberg is reported, indicate degrees of impairment. Pupillary reflexes should be reported for both light and accommodation. Knee jerks are to be reported absent only when not obtainable upon reinforcement and as increased when foot is actually lifted from the floor following a light blow on the patella, sensory vibratory and positional abnormalities should be noted.

Extremities. Carefully examine upper and lower extremities. Record the loss of impairment of a leg, foot, toe, arm, hand, or fingers. Note any and all deformities, the presence of atrophy, semiparalysis or paralysis, or varicose veins. If a hand or finger deformity exists, determine whether sufficient grasp is present to enable the driver to secure and maintain a grip on the steering wheel. If a leg deformity exists, determine whether sufficient mobility and strength exist to enable the driver to operate pedals properly. Particular attention should be given to and a record should be made of, any impairment or structural defect which may interfere with the driver's ability to operate a commercial motor vehicle safely.

Spine. Note deformities, limitation of motion, or any history of pain, injuries, or disease, past or presently experienced in the cervical or lumbar spine region. If findings so dictate, radiologic and other examinations should be used to diagnose congenital or acquired defects; or spondylolisthesis and scoliosis.

Recto-genital studies. Diseases or conditions causing discomfort should be evaluated carefully to determine the extent to which the condition might be handicapping while lifting, pulling, or during periods of prolonged driving that might be necessary as part of the driver's duties.

Laboratory and other special findings. Urinalysis is required, as well as such other tests as the medical history or findings upon physical examination may indicate are necessary. A serological test is required if the applicant has a history of luetic infection or present physical findings indicate the possibility of latent syphilis. Other studies deemed advisable may be ordered by the examining medical examiner.

Diabetes. If insulin is necessary to control a diabetic condition, the driver is not qualified to operate a commercial motor vehicle. If mild diabetes is noted at the time of examination and it is stabilized by use of a hypoglycemic drug and a diet that can be obtained while the driver is on duty, it should not be considered disqualifying. However, the driver must remain under adequate medical supervision.

Controlled Substances Testing. If a test for controlled substances is performed as part of the medical examination, the medical examiner is to check the box next to the statement, ''Controlled substances test performed'' on the medical examination form. If a test for controlled substances is not performed, the medical examiner is to check the box next to the statement, ''Controlled substances test not performed.'' If a controlled substances test is performed under the requirements of subpart H of this part, then the medical examiner must also check the box next to the statement, ''in accordance with subpart H,'' and must obtain information that the results of such test were negative prior to certifying that the driver is otherwise medically qualified. If a controlled substance test is performed but not in accordance with subpart H, the medical examiner must also check the box next to the statement, ''not in accordance with subpart H,'' and ensure that the results of the test were negative prior to certifying that the driver is otherwise medically qualified.

The medical examiner must date and sign his/her findings upon completion of the examination.

EXAMINATION TO DETERMINE PHYSICAL CONDITION OF DRIVERS

Driver's name _____ ☐ New Certification
Address _____ ☐ Recertification
Social Security No. _____
Date of birth _____ Age ___

Yes	No	Health History
☐	☐	Head or spinal injuries.
☐	☐	Seizures, fits, convulsions, or fainting.
☐	☐	Extensive confinement by illness or injury.
☐	☐	Cardiovascular disease.
☐	☐	Tuberculosis.
☐	☐	Syphilis.
☐	☐	Gonorrhea.
☐	☐	Diabetes.
☐	☐	Gastrointestinal ulcer.
☐	☐	Nervous stomach.
☐	☐	Rheumatic fever.
☐	☐	Asthma.
☐	☐	Kidney disease.
☐	☐	Muscular disease.
☐	☐	Suffering from any other disease.
☐	☐	Permanent defect from illness, disease or injury.
☐	☐	Psychiatric disorder.
☐	☐	Any other nervous disorder.

If answer to any of the above is yes, explain:

PHYSICAL EXAMINATION

General appearance and development:
Good ___ Fair ___ Poor ___
Vision: For distance:
Right 20/ ___ Left 20/ ___
☐ Without corrective lenses.
☐ With corrective lenses if worn.
Evidence of disease or injury:
Right ___ Left ___

Color Test _____
Horizontal field of vision:
Right ___° Left ___°
Hearing:
Right ear ___ Left ear ___
Disease or injury _____
Audiometric Test (complete only if audiometer is used to test hearing) decibel loss as 500 Hz ___, at 1,000 Hz ___, at 2,000 Hz ___
Throat _____
Thorax:
Heart _____
If organic disease is present, is it fully compensated? _____
Blood pressure:
Systolic ___ Diastolic ___
Pulse: Before exercise _____
Immediately after exercise _____
Lungs _____
Abdomen:
Scars ___ Abnormal masses ___
Tenderness ___
Hernia: Yes ___ No ___
If so, where? _____
Is truss worn? _____
Gastrointestinal:
Ulceration or other disease:
Yes ___ No ___
Genito-Urinary:
Scars _____
Urethral discharge _____
Reflexes:
Romberg _____
Pupillary ___ Light R ___ L ___
Accommodation Right ___ Left ___
Knee Jerks:
Right:
Normal ___ Increased ___ Absent ___
Left:
Normal ___ Increased ___ Absent ___
Remarks _____
Extremities:
Upper _____
Lower _____
Spine _____
Laboratory and other Special Findings:
Urine: Spec. Gr. ___ Alb. ___
Sugar ___
Other laboratory data (Serology, etc.)
_____
Radiological data _____
Electrocardiograph _____
Controlled Substances Testing
☐ Controlled substances test performed—
☐ In accordance with subpart H.
☐ Not in accordance with subpart H.
☐ Controlled substances test NOT performed.

General comments _____

(Date of examination)

(Address of examining medical examiner)

(Name of examining medical examiner (Print))

(Title) (License or Certification No.) (State)

(Signature of examining medical examiner)

NOTE: This section to be completed only when visual test is conducted by a licensed ophthalmologist or optometrist.

(Date of examination)

(Address of ophthalmologist or optometrist)

(Name of ophthalmologist or optometrist (Print))

(Signature of ophthalmologist or optometrist)

(g) If the medical examiner finds that the person he/she examined is physically qualified to drive a commercial motor vehicle in accordance with §391.41(b), he/she shall complete a certificate in the form prescribed in paragraph (g) of this section and furnish one copy to the person who was examined and one copy to the motor carrier that employs him/her.

(h) The medical examiner's certificate shall be in accordance with the following form. Existing forms may be used until current printed supplies are depleted or until March 31, 1997, provided that the medical examiner writes down in pen and ink any applicable information contained in the following form:

MEDICAL EXAMINER'S CERTIFICATE

I certify that I have examined

_____

(Driver's Name—Print)

In accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41 through 391.49) and with knowledge of his/her duties, I find him/her qualified under the regulations.

—Qualified only when wearing corrective lenses

—Qualified only when wearing a hearing aid

—Qualified by operation of 49 CFR 391.64

—Medically unqualified unless accompanied by a _____ waiver

—Medically unqualified unless driving within an exempt intracity zone

A completed examination form for this person is on file in my office.

Area Code & Telephone Number

(License or Certificate No.)

(State in Which Licensed)

(Expiration Date)

(Name & Title of Medical Examiner—Print)

(Signature of Medical Examiner)

(Signature of Driver)

(Address of Driver)

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 36 FR 8452, May 6, 1971; 36 FR 12857, July 8, 1971; 43 FR 56900, Dec. 5, 1978; 46 FR 53418, Oct. 29, 1981; 53 FR 18057, May 19, 1988; 53 FR 47154, Nov. 21, 1988; 54 FR 12202, Mar. 24, 1989; 55 FR 3555, Feb. 1, 1990; 57 FR 33278, July 28, 1992; 58 FR 59196, Nov. 8, 1993; 60 FR 38745, 38746, July 28, 1995; 61 FR 13347, Mar. 26, 1996]

§ 391.45 Persons who must be medically examined and certified.

Except as provided in § 391.67, the following persons must be medically examined and certified in accordance with § 391.43 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; and

(c) Any driver whose ability to perform his/her normal duties has been impaired by a physical or mental injury or disease.

[35 FR 6460, Apr. 22, 1970, as amended at 36 FR 223, Jan. 7, 1971; 54 FR 12202, Mar. 24, 1989; 61 FR 13347, Mar. 26, 1996]

§ 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 Motor Carrier Research and Standards 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 Motor Carrier Research and Standards 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 Motor Carrier Research and Standards 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 Motor Carrier Research and Standards, the driver shall be deemed disqualified until such time as the Director, Office of Motor Carrier Research and Standards makes a determination, or until the Director, Office of Motor Carrier Research and Standards orders otherwise.

(49 U.S.C. 304, 322; 18 U.S.C. 831–835; Pub. L. 93–633, 88 Stat. 8156 (49 U.S.C. 1801, *et seq.*); 49 CFR 1.48, 301.60)

[42 FR 18081, Apr. 5, 1977, as amended at 42 FR 53966, Oct. 4, 1977; 60 FR 38746, July 28, 1995]

§ 391.49 Waiver of certain physical defects.

(a) A person who is not physically qualified to drive under § 391.41(b) (1) or (2) and who is otherwise qualified to drive a commercial motor vehicle, may drive a commercial motor vehicle, if the Regional Director of Motor Carriers has granted a waiver to that person.

(b) A letter of application for a waiver may be submitted jointly by the person who seeks a waiver of the physical disqualification (driver applicant) and by the motor carrier that will employ the driver applicant if the application is granted. The application must be addressed to the Regional Director of Motor Carriers for the region in which the coapplicant motor carrier's principal place of business is located. The address for each regional office is listed in § 390.27 of this subchapter. *Exception.* A letter of application for a waiver may be submitted unilaterally by a driver applicant. The application must be addressed to the Regional Director of Motor Carriers for the region in which the driver has legal residence.

The address of each regional office is listed in § 390.27 of this subchapter. The driver applicant must comply with all the requirements of paragraph (c) of this section except paragraphs (c)(1) (i) and (iii). The driver applicant shall respond to the requirements of paragraph (c)(2) (i) to (v) of this section, if the information is known.

(c) A letter of application for a waiver 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 Federal Highway Administration Motor Carrier Identification Number, if known; and

(iv) A description of the driver applicant's limb impairment for which waiver 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 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, flat bed, 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 the 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 coapplicant 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 (s)he 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. Dependent upon the motor carrier's organizational structure (corporation, partnership, or proprietorship), this signer of the application shall be an officer, partner, or the proprietor.

(d) The letter of application for a waiver 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(e);

(3) A medical evaluation summary completed by either a board qualified or board certified physiatrist (doctor of physical medicine) or orthopedic surgeon;

NOTE: The coapplicant motor carrier or the driver applicant shall provide the physiatrist or orthopedic surgeon with a description of the job 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 a waiver, 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, by the driver applicant;

(5) Road test:

(i) A copy of the driver applicant's road test administered by the motor carrier coapplicant 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 s/he held. If not previously employed as a commercial driver, so state.

(7) A copy of the driver applicant's waiver 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 a waiver agrees to:

(1) File promptly (within 30 days) with the Regional Director of Motor Carriers 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 waiver is a unilateral one or has a coapplicant motor carrier;

(i) A motor carrier who is a coapplicant must file the required documents with the Regional Director of Motor Carriers for the region in which the carrrier's principal place of business is located; or

(ii) A motor carrier who employs a driver who has been issued a unilateral waiver must file the required documents with the Regional Director of Motor Carriers for the region 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;

NOTE: Job tasks, as stated in paragraph (e)(3) of this section, are not evaluated in the Skill Performance Evalulation.

(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 waiver only when the driver is in compliance with the conditions and limitations of the waiver.

(f) The driver shall supply each employing motor carrier with a copy of the waiver.

(g) The Regional Director of Motor Carriers may require the driver applicant to demonstrate his or her ability to to safely operate the commercial motor vehicle(s) the driver intends to drive to an agent of the Regional Director of Motor Carriers. The waiver form will identify the power unit (bus, truck, truck-tractor) for which the waiver has been granted. The waiver forms will also identify the trailer type used in the Skill Performance Evaluation; however, the waiver is not limited to that specific trailer type. A driver may use the waiver 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 Regional Director of Motor Carriers may deny the application for waiver or may grant it totally or in part and issue the waiver subject to such terms, conditions, and limitations as deemed consistent with the public interest. A waiver 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 waiver renewal application shall be submitted to the Regional Director of Motor Carriers for the region in which the driver has legal residence, if the waiver was issued unilaterally. If the waiver has a coapplicant, then the renewal application is submitted to the Regional Director of Motor Carriers for the region in which the coapplicant motor carrier's principal place of business is located. The waiver 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 waiver;

(4) Expiration date of the current waiver;

(5) Total miles driven under the current waiver;

(6) Number of accidents incurred while driving under the current waiver, 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.

NOTE: 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 waiver 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 coapplicant's signature and date signed.

(j) Upon granting a waiver, the Regional Director of Motor Carriers will notify the driver applicant and coapplicant motor carrier (if applicable) by letter. The terms, conditions, and limitations of the waiver will be set forth. A motor carrier shall maintain a copy of the waiver in its driver qualification file. A copy of the waiver 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 waiver (or a legible copy) in his/her possession whenever on duty.

(k) The Regional Director of Motor Carriers may revoke a waiver 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.

(Approved by the Office of Management and Budget under control number 2125–0080)

[48 FR 38487, Aug. 24, 1983, as amended at 49 FR 38293, Sept. 28, 1984; 50 FR 49851, Dec. 5, 1985; 51 FR 12621, Apr. 14, 1986; 60 FR 38745, 38746, July 28, 1995; 61 FR 1843, Jan. 24, 1996]

Subpart F—Files and Records

§391.51 Driver qualification files.

(a) Except as provided in subpart G, each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with the driver's personnel file.

(b) The qualification file for a driver who has been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971, must include:

(1) The medical examiner's certificate of his/her physical qualification to drive a commercial motor vehicle or a legible photographic copy of the certificate;

(2) The letter from the Regional Director of Motor Carriers granting a waiver of a physical disqualification, if a waiver was issued under §391.49;

(3) The note relating to the annual review of his/her driving record required by §391.25;

(4) The list or certificate relating to violations of motor vehicle laws and ordinances required by §391.27; and

(5) Any other matter which relates to the driver's qualifications or ability to drive a commercial motor vehicle safely.

(c) The qualification file for a regularly employed driver who has not been regularly employed by the motor carrier for a continuous period which began before January 1, 1971, must include:

(1) The documents specified in paragraph (b) of this section;

(2) The driver's application for employment completed in accordance with §391.21;

(3) The responses of State agencies and past employers to the motor carrier's inquiries concerning the driver's driving record and employment pursuant to §391.23; and

(4) 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.

(d) The qualification file for an intermittent, casual, or occasional driver employed under the rules in §391.63 must include—

(1) The medical examiner's certificate of his/her physical qualification to drive a commercial motor vehicle or a legible photographic copy of the certificate;

(2) 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 §391.31; and

(3) The driver's name, his/her social security number, and the identification number, type, and issuing State of his/her commercial motor vehicle operator's license.

(e) A using carrier's qualification file for a driver who is regularly employed by another motor carrier, and who is employed by the using carrier in accordance with §391.65 of this part, shall include a copy of a certificate, as prescribed by §391.65(a)(2) of this part, by the regularly employing carrier that the driver is fully qualified to drive a commercial motor vehicle.

(f) Except as provided in paragraphs (g) and (h) of this section, each driver's qualification file shall be kept at the motor carrier's principal place of business for as long as a driver is employed by that motor carrier and for 3 years thereafter.

(g) Upon a written request to, and with the approval of, the Regional Director of Motor Carriers for the region in which a motor carrier has his/her principal place of business, the carrier may retain one or more of its drivers' qualification files at a regional or terminal office. The addresses and jurisdictions of the Regional Director of Motor Carriers are shown in §390.27 of this subchapter.

(h) The following records may be removed from a driver's qualification file after 3 years from date of execution:

(1) The medical examiner's certificate of his/her physical qualification to drive a commercial motor vehicle or the photographic copy of the certificate as required by §391.43(d).

(2) The note relating to the annual review of his/her driving record as required by §391.25.

(3) The list or certificate relating to violations of motor vehicle laws and ordinance as required by §391.27.

(4) The letter issued under §391.49 granting a waiver of a physical disqualification.

(Sec. 204, Interstate Commerce Act, as amended, (49 U.S.C. 304); sec. 6, 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 CFR 1.48 and 301.60, respectively)

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 41 FR 36656, Aug. 31, 1976; 42 FR 37370, July 21, 1977; 45 FR 46424, July 10, 1980; 53 FR 18057, May 19, 1988; 59 FR 8752, Feb. 23, 1994; 59 FR 60323, Nov. 23, 1994; 60 FR 38745, July 28, 1995]

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 §391.31 (relating to road tests) do not apply to a driver who has been a regularly employed 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 regularly employed driver of that motor carrier. Such a driver is qualified to drive a commercial motor vehicle if he/she fulfills the requirements of paragraphs (b)(1) through (b)(9) of §391.11 (relating to qualifications of drivers).

[59 FR 60323, Nov. 23, 1994, as amended at 60 FR 38745, July 28, 1995]

§391.62 Limited exemptions for intracity 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 FR 13346, Mar. 26, 1996; 61 FR 17253, Apr. 19, 1996]

§391.63 Intermittent, casual, or occasional drivers.

(a) If a motor carrier employs a person who is not a regularly employed driver (as defined in §390.5 of this subchapter) to drive a commercial motor vehicle for a single trip or on an intermittent, casual, or occasional basis, 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 review of the person's driving record required by §391.25; or

(4) Require the person to furnish a record of violations or a certificate in accordance with §391.27.

(b) Before a motor carrier permits a person described in paragraph (a) of this section 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 retain that information in its files for 3 years after the person's employment by the motor carrier ceases.

[35 FR 6460, Apr. 22, 1970, as amended at 53 FR 18057, May 19, 1988; 60 FR 38745, July 28, 1995]

§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 shalll 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 FHWA;

(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 FR 13346, Mar. 26, 1996]

§391.65 Drivers furnished by other motor carriers.

(a) A motor carrier may employ a driver who is not a regularly employed driver of that motor carrier without complying with the generally applicable driver qualification file requirements in this part, if—

(1) The driver is regularly employed by another motor carrier; and

(2) The motor carrier which regularly employs the driver 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 regularly employing carrier;

(ii) Contains the driver's name and signature;

(iii) Certifies that the driver has been regularly employed as defined in §390.5;

(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) After April 1, 1977, 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 §391.3(c) is regularly 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 retain a copy of that certificate in its files for 3 years.

(c) A carrier which certifies a driver's qualifications under this section shall—

(1) Be responsible for the accuracy of the certificate; and

(2) Recall the unexpired certificate carried by a driver immediately upon learning that the driver is no longer qualified under the rules in this part.

[41 FR 36656, Aug. 31, 1976, as amended at 53 FR 18057, May 19, 1988; 60 FR 38745, July 28, 1995]

§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) who is 18 years of age or older and who drives an articulated commercial motor vehicle:

(a) Section 391.11(b)(1), (b)(8), (b)(10), and (b)(11) (relating to driver qualifications in general);

(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);

(d) Subpart F (relating to maintenance of files and records).

[59 FR 60324, Nov. 23, 1994, as amended at 60 FR 38745, 38746, July 28, 1995]

§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 their drivers:

(a) Section 391.11 (b)(8), (b)(10), and (b)(11), (relating to driver qualifications in general).

(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).

(d) 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.

(e) Subpart F (relating to maintenance of files and records).

(f) Subpart H (relating to controlled substances testing).

[60 FR 38746, July 28, 1995]

§391.69 Drivers operating in Hawaii.

The provisions of §391.21 (relating to application for employment), §391.23 (relating to investigations and inquiries), and §391.31 (relating to road tests) do not apply to a driver who has been a regularly employed driver (as defined in §390.5 of this subchapter) of a motor carrier operating in the State of Hawaii for a continuous period which began before April 1, 1975, as long as he/she continues to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a commercial motor vehicle if he/she fulfills the requirements of paragraphs (b)(1) through (b)(9) of §391.11 (relating to qualifications of drivers).

[59 FR 60324, Nov. 23, 1994, as amended at 60 FR 38745, July 28, 1995]

§ 391.71 Intrastate drivers of commercial motor vehicles transporting Class 3 combustible liquids.

(a) The provisions of § 391.11(b)(1) (relating to minimum age), § 391.21 (relating to application for employment), § 391.23 (relating to investigations and inquiries), and § 391.31 (relating to road test) do not apply to a driver who is otherwise qualified and was a regularly employed driver (as defined in § 390.5 of the subchapter) as of July 1, 1975, and continues to be a regularly employed driver of that motor carrier and who drives a commercial motor vehicle that:

(1) Is transporting Class 3 combustible liquids (as defined in § 173.120 of this title), and

(2) Is being operated in intrastate commerce.

(b) In addition to the exemptions provided in paragraph (a) of this section, the provisions of § 391.41(b) (10) (relating to minimum visual requirements), do not apply to a driver who was a regularly employed driver (as defined in § 390.5 of this subchapter) as of July 1, 1975, and continues to be a regularly employed driver of that motor carrier and who drives a commercial motor vehicle that:

(1) Is a truck (as defined in § 390.5 of this subchapter), and

(2) Is operated in retail delivery service, and

(3) Is transporting a Class 3 combustible liquid (as defined in § 173.120 of this title), and

(4) Is operated in intrastate commerce.

[40 FR 54796, Nov. 26, 1975; 40 FR 58858, Dec. 19, 1975, as amended at 53 FR 18057, May 19, 1988; 59 FR 60324, Nov. 23, 1994; 59 FR 63924, Dec. 12, 1994; 60 FR 38745, 38746, July 28, 1995]

§ 391.73 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 has been a regularly employed 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 regularly employed driver of that motor carrier. Such a driver is qualified to drive a commercial motor vehicle if that driver fulfills the requirements of paragraphs (b)(1) through (b)(9) of § 391.11 (relating to qualifications of drivers).

[59 FR 60324, Nov. 23, 1994, as amended at 60 FR 38745, July 28, 1995]

Subpart H—Controlled Substances Testing

SOURCE: 53 FR 47151, Nov. 21, 1988, unless otherwise noted.

§ 391.81 Purpose and scope.

(a) The purpose of this subpart is to reduce highway accidents that result from driver use of controlled substances, thereby reducing fatalities, injuries, and property damage.

(b) This subpart prescribes minimum Federal safety standards to detect and deter the use of controlled substances as defined in 49 CFR part 40 (marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP)).

(c) As part of reasonable cause drug testing programs established pursuant to this subpart, motor carriers may test for drugs in addition to those specified in this part only with approval granted by the Federal Highway Administrator under 49 CFR part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

§ 391.83 Applicability.

(a) Except for a private motor carrier of passengers (nonbusiness), this subpart applies to motor carriers and persons who operate a commercial motor vehicle as defined in this subpart in interstate commerce and are subject to the driver qualification requirements of part 391 of this subchapter.

(b) This subpart shall not apply to any person for whom compliance with this subpart would violate the domestic laws or policies of another country.

(c) This subpart is not applicable with respect to any foreign-based employee of a foreign-domiciled motor carrier.

[53 FR 47151, Nov. 21, 1988, as amended at 59 FR 8753, Feb. 23, 1994; 60 FR 56, Jan. 3, 1995]

§ 391.85 Definitions.

As used in this subpart—

Collection site means a place where individuals present themselves for the purpose of providing body fluid or tissue samples to be analyzed for specified controlled substances. The site must possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation or shipment of the samples to a laboratory.

Commercial motor vehicle means any self-propelled or towed motor vehicle used on public highways in interstate commerce to transport passengers or property when:

(a) The motor vehicle has a gross vehicle weight rating or gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds); or

(b) The motor vehicle is designed to transport more than 15 passengers, including the driver; or

(c) The motor vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et. seq.*).

Controlled substances has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR part 1308).

Drug means any substance (other than alcohol) that is a controlled substance as defined in this section and 49 CFR part 40.

FHWA means the Federal Highway Administration, U.S. Department of Transportation.

Interstate commerce means trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between two places in a State through another State or a place outside of the United States.

Medical practitioner means a licensed doctor of medicine (MD) or osteopathy (DO) or a doctor of dental surgery (DDS) authorized to practice by the State in which the person practices.

Medical Review Officer means a licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders that is employed or used by a motor carrier to conduct drug testing in accordance with this part.

Motor carrier means a for-hire motor carrier or a private motor carrier of property. The term ''motor carrier'' 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, the definition of ''*motor carrier*'' includes the terms ''*employer*'' and ''*exempt motor carrier.*''

Non-suspicion-based post-accident testing means testing of a commercial motor vehicle driver after an accident, as defined in § 390.5 of this subchapter:

(1) If the driver of the commercial motor vehicle receives a citation for a moving traffic violation arising from the accident, as required by § 391.113 of this subpart; and

(2) Without regard to whether there is any reasonable suspicion of drug usage, reasonable cause to believe the driver has been operating the commercial motor vehicle while under the influence of drugs, or reasonable cause to believe the driver was at fault in the accident and drug usage may have been a factor.

Random selection process means that drug tests are unannounced and that every commercial motor vehicle driver of a motor carrier has an equal chance of being selected for testing.

Reasonable cause means that the motor carrier believes the actions or appearance or conduct of a commercial motor vehicle driver, on duty as defined in § 395.2 of this subchapter, are indicative of the use of a controlled substance.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3555, Feb. 1, 1990; 56 FR 40809, Aug. 16, 1991; 58 FR 33777, June 21, 1993; 60 FR 38746, July 28, 1995; 61 FR 9567, Mar. 8, 1996]

§ 391.87 Notification of test results and recordkeeping.

(a) The MRO shall report to the motor carrier whether a driver's test

was positive or negative and, if positive, the identity of the controlled substance for which the test was positive.

(b) A motor carrier shall notify its driver or driver-applicant of the results of a controlled substance test conducted under this subpart.

(c) A motor carrier shall notify—

(1) A driver-applicant of the results of a pre-employment controlled substance test conducted under this subpart provided the driver-applicant requests such results within 60 days of being notified of the disposition of the employment application; or

(2) A driver of the results of a periodic, random, reasonable cause, or post-accident test conducted under this subpart, provided the results were positive. The driver must also be advised of what controlled substance was identified in any positive test.

(d) A motor carrier shall ensure that all records related to the administration and results of the drug testing program for its drivers subject to the testing requirements are maintained for a minimum period of 5 years except that individual negative test results shall be maintained for a minimum of 12 months.

(e) A medical review officer shall be the sole custodian of individuals test results. The medical review officer shall retain the reports of individual test results for a minimum of 5 years.

(f) A motor carrier shall retain in the driver's qualification file such information that will indicate only the following:

(1) The types of controlled substances testing for which the driver submitted a urine specimen.

(2) The date of such collection.

(3) The location of such collection.

(4) The identity of person or entity:

(i) Performing the collection,

(ii) Analysis of the specimens, and

(iii) Serving as the MRO.

(5) Whether the test finding was ''positive'' or ''negative'' and, if ''positive,'' the controlled substances identified in any positive test.

(g) A motor carrier shall produce upon demand and shall permit the Federal Highway Administrator to examine all records related to the administration and results of controlled substance testing performed under this part.

(h) A motor carrier shall maintain all administrative records pertaining to its controlled substances testing program and an annual calendar year summary of the results of its controlled substances testing program performed under this subpart.

(1) The administrative records shall include agreements with collection facilities, laboratories, MROs, consortia, names and positions of company officials and their role in the motor carrier's controlled substances testing program, quarterly laboratory summaries, recordkeeping and testing procedures including random testing selection and notification procedures.

(2) The motor carrier's summary shall include the following information:

(i) Number of drivers subject to subpart H;

(ii) Number of drivers subject to testing under the anti-drug rules of more than one DOT agency, identified by each agency;

(iii) Number of specimens collected by type of test (e.g., pre-employment, random, reasonable cause/suspicion, post-accident);

(iv) Number of positives verified by a MRO by type of test, type of controlled substance;

(v) Number of negatives verified by a MRO by type of test;

(vi) Number of persons denied a position as a driver following a verified controlled substances test;

(vii) Number of drivers verified positive by a MRO who were returned to duty as a driver during the reporting period;

(viii) Number of drivers with tests verified positive by a MRO for multiple controlled substances;

(ix) Number of drivers who refused to submit to a controlled substances test required under this subpart; and

(x) Number of supervisors who have received required training during the reporting period.

(3) A motor carrier 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 motor carrier or any of its drivers. The information shall be made available for inspection at the motor carrier's principal place of business within two business days of the request.

(4) If, during the month of January, a motor carrier is provided with forms by the Federal Highway Administration on which to report the motor carrier's annual calendar year summary information, the motor carrier shall complete the forms and submit them to the Federal Highway Administration by March 15 of that year. The motor carrier shall ensure that the annual summary report is accurate and received by March 15 at the location that the Federal Highway Administration specifies in its request. The report shall be in the form and manner prescribed by the Federal Highway Administration in its request. When the report is submitted to the Federal Highway Administration by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each motor carrier shall ensure the accuracy and timeliness of each report submitted by the motor carrier or a consortium.

(Approved by the Office of Management and Budget under control number 2125–0543)

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3555, Feb. 1, 1990; 58 FR 68222, Dec. 23, 1993; 59 FR 49586, Sept. 29, 1994; 60 FR 13370, Mar. 13, 1995]

§ 391.89 Access to individual test results or test findings.

(a) No person may obtain the individual test results retained by a medical review officer, and no medical review officer shall release the individual test results of any employee to any person, without first obtaining written authorization from the tested employee. Nothing in this paragraph shall prohibit a medical review officer from releasing, to the employing motor carrier, the information delineated in § 391.87(f) of this subpart.

(b) No person may obtain the information delineated in § 391.87(f) of this part and retained by a motor carrier, and no motor carrier shall release such information about any employee or previous employee, without first obtaining written authorization from the tested employee.

[58 FR 33777, June 21, 1993]

§ 391.93 Implementation schedule.

(a) All motor carriers shall have a drug testing program that conforms to this subpart and 49 CFR part 40 by the date a motor carrier begins motor carrier operations.

(b) All motor carriers shall require all collection personnel to implement the split sample collection procedures required under § 40.25(f)(10) of this title by August 15, 1994.

(c) An employer may begin complying with the requirements of paragraph (b) of this section on or after March 17, 1994.

[59 FR 7514, Feb. 15, 1994]

§ 391.95 Drug use prohibitions.

(a) No driver shall be on duty, as defined in § 395.2 of this subchapter, if the driver uses any controlled substances, except as provided in § 391.97 of this part.

(b) No driver shall be on duty, as defined in § 395.2 of this subchapter, if the driver tests positive for use of controlled substances, except as provided in § 391.97 of this part.

(c) A person who tests positive for the use of a controlled substance, as defined in 49 CFR part 40, is medically unqualified to operate a commercial motor vehicle.

(d) A person who refuses to be tested under provisions of this subpart shall not be permitted to operate a commercial motor vehicle. Such refusal shall be treated as a positive test and subject the driver to the restrictions contained in paragraph (c) of this section.

§ 391.97 Prescribed drugs.

(a) *Affirmative defense.* Any driver who is alleged to have violated § 391.95 of this subpart shall have available as an affirmative defense, to be proven by the driver through clear and convincing evidence, that his/her use of a controlled substance (except for methadone) was prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties.

(b) The MRO shall afford a tested individual the opportunity to discuss a positive test result with the MRO before reporting the positive test result to the motor carrier. If an MRO, after making and documenting all reasonable efforts is unable to contact a tested person, the MRO shall contact a designated management official of the motor carrier to arrange for the individual to contact the MRO prior to going on duty. The MRO may verify a positive test without having communicated with the driver about the results of the test if:

(1) The driver expressly declines the opportunity to discuss the results of the test, or

(2) Within 5 days after a documented contact by a designated management official of the motor carrier instructing the driver to contact the MRO, the driver has not done so.

(c) All positive tests reported to the motor carrier by the MRO in which the MRO did not discuss the results with the driver shall be so noted and be accompanied by complete documentation of the MRO's efforts to contact the driver including contacts with a motor carrier's designated management official.

(d) The rules in this subpart do not prohibit a motor carrier from requiring a driver to notify the motor carrier of thereapeutic drug use.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3555, Feb. 1, 1990]

§ 391.99 Reasonable cause testing requirements.

(a) A motor carrier shall require a driver to be tested, upon reasonable cause, for the use of controlled substances.

(b) A driver shall submit to testing, upon reasonable cause, for the use of controlled substances when requested to do so by the motor carrier.

(c) The conduct must be witnessed by at least two supervisors or company officials, if feasible. If not feasible, only one supervisor or company official need witness the conduct. The witness or witnesses must have received training in the identification of actions, appearance, or conduct of a commercial motor vehicle driver which are indicative of the use of a controlled substance.

(d) The documentation of the driver's conduct shall be prepared and signed by the witnesses within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

§ 391.101 Reasonable cause testing procedures.

(a) A motor carrier shall ensure that the driver is transported immediately to a collection site for the collection of a urine sample.

(b) A motor carrier shall ensure that the test performed under the requirements of § 391.99 of this subpart conforms with 49 CFR part 40 and this subpart.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

§ 391.103 Pre-employment testing requirements.

(a) A motor carrier shall require a driver-applicant who the motor carrier intends to hire or use to be tested for the use of controlled substances as a prequalification condition.

(b) A driver-applicant shall submit to controlled substance testing as a prequalification condition.

(c) Prior to collection of a urine sample under § 391.107 of this subpart, a driver-applicant shall be notified that the sample will be tested for the presence of controlled substances.

(d) *Exceptions.* (1) A motor carrier may use a driver who is a regularly employed driver of another motor carrier without complying with paragraph (a) of this section, if the driver meets the requirement of § 391.65 of this subchapter.

(2) A motor carrier may use a driver who is not tested by the motor carrier without complying with paragraph (a) of this section, provided the motor carrier assures itself:

(i) That the driver has participated in a drug testing program that meets the requirements of this subpart within the previous 30 days and,

(ii) While participating in that program, was either

(A) Tested for controlled substances within the past 6 months (from the date of application with the motor carrier) or

(B) Participated in the drug testing program for the previous 12 months (from the date of application with the motor carrier).

(3) A motor carrier who exercises either paragraph (d)(1) or (d)(2) of this section shall contact the controlled substances testing program in which the driver participates or participated and shall obtain the following information:

(i) Name and address of the program.

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

(iii) Verification that the program conforms to 49 CFR part 40.

(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, positive or negative, of any test taken.

(4) The motor carrier shall retain the information required by this paragraph in the driver's qualification file required under §391.51 of this part.

(5) A motor carrier who uses, but does not employ, such a driver more than once a year must assure itself once every 6 months that the driver participates in a controlled substances testing program that meets the requirements of this subpart.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

§391.105 Biennial (periodic) testing requirements.

(a) A motor carrier shall require a driver to be tested in accordance with the procedures set forth in this subpart and part 40 of this title at least once every two years commencing with the driver's first medical examination required under §391.45 of this part after the motor carrier's implementation of a drug testing program in accordance with this subpart.

(b) *Exception.* A motor carrier may use a driver who participates in a drug testing program of another motor carrier or controlled substance test consortium.

(c) *Exceptions.* A motor carrier may discontinue periodic testing after a driver has been tested at least once under

(1) The requirements of paragraph (a) of this section;

(2) The requirements of §391.103 of this subpart; or

(3) The requirements of §391.109 of this subpart, and the motor carrier is testing its drivers at a 50 percent rate under its random testing program as required by §391.109 of this subpart.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

§391.107 Pre-employment and biennial testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A motor carrier shall ensure that the test preformed under the requirements of §391.105 of this subpart conforms with 49 CFR part 40 and this subpart.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

§391.109 Random testing requirements.

(a) The number of tests conducted under this section annually shall equal or exceed 50 percent (50%) of the average number of commercial motor vehicle driver positions for which testing is required to be tested under this subpart.

(b) A motor carrier shall use a random selection process to select and request a driver to be tested for the use of controlled substances.

(c) A driver shall submit to controlled substance testing when selected by a random selection process used by a motor carrier.

(d) *Exception.* A motor carrier may use the results of another's controlled substances testing program that a driver participates in to meet the requirements of this section provided that the motor carrier obtains the following information from the controlled substances testing program entity:

(1) Name and address of the program.

(2) Verification that the driver participates in the program.

(3) Verification that program conforms to the 49 CFR part 40.

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

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

(6) The results, positive or negative, of any tests taken.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

§ 391.111 Random testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A motor carrier shall ensure that the test performed under the requirements of § 391.109 of this subpart conforms with 49 CFR part 40 and this subpart.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

§ 391.113 Post-accident testing requirements.

(a) A driver shall provide a urine sample to be tested for the use of controlled substances as soon as possible, but not later than 32 hours, after an accident, as defined in § 390.5 of this subchapter, if the driver of the commercial motor vehicle receives a citation for a moving traffic violation arising from the accident.

(b) A driver who is seriously injured and cannot provide a specimen at the time of the accident shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any controlled substances in his/her system.

(c) A motor carrier shall provide drivers with necessary information and procedures so that the driver will be able to meet the requirement of paragraph (a) of this section.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990; 58 FR 33777, June 21, 1993]

§ 391.115 Post-accident testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A driver shall ensure that a specimen is collected and forwarded to a National Institute on Drug Abuse (NIDA) certified laboratory in a manner which conforms to 49 CFR part 40.

(c) A motor carrier shall ensure that the test performed under the requirements of § 391.113 of this subpart conforms with 49 CFR part 40 and this subpart.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3557, Feb. 1, 1990]

§ 391.117 Disqualification.

(a) *Disqualification for refusal.* Except for a driver who meets the conditions of § 391.113(b), a driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year following a refusal to give a urine sample when the driver has been involved in a fatal accident.

(b) *Disqualification for use of controlled substances.* A driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year for a positive test of controlled substance use when the driver has been involved in a fatal accident.

§ 391.119 Employee Assistance Program (EAP).

(a) Every motor carrier shall establish an EAP program. The EAP program shall, as a minimum, include—

(1) An educational and training component for drivers which addresses controlled substances;

(2) An education and training component for supervisory personnel and company officials which addresses controlled substances; and

(3) A written statement, on file and available for inspection, at the motor carrier's principal place of business, outlining the motor carrier's EAP.

(b) [Reserved]

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3557, Feb. 1, 1990]

§ 391.121 EAP training program.

(a) Each EAP shall consist of an effective training program for the motor carrier's supervisory personnel and all drivers.

(b) The training program must include at least the following elements:

(1) The effects and consequences of controlled substance use on personal

health, safety, and the work environment;

(2) The manifestations and behavioral changes that may indicate controlled substance use or abuse; and

(3) Documentation of training given to drivers and motor carrier supervisory personnel.

(c) EAP training programs for all drivers and supervisory personnel must consist of at least 60 minutes of training.

[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3557, Feb. 1, 1990]

§ 391.123 After-care monitoring.

After returning to work, drivers who test positive must continue in any after-care program and be subject to follow-up testing for not longer than 60 months folowing return to work.

§ 391.125 Termination schedule of this subpart.

(a) All motor carriers shall retain all records generated in connection with this subpart as required by §382.401 of this subchapter.

(b) *Large employers.* Except as provided in paragraph (a) of this section, each motor carrier with fifty or more drivers on March 17, 1994, shall terminate compliance with this subpart and shall implement the requirements of part 382 of this subchapter beginning on January 1, 1995.

(c) *Small employers.* Except as provided in paragraph (a) of this section, each motor carrier with fewer than fifty drivers on March 17, 1994, shall terminate compliance with this subpart and shall implement the requirements of Part 382 of this subchapter beginning on January 1, 1996.

(d) Except as provided in paragraph (a) of this section, all motor carriers shall terminate compliance with this subpart on January 1, 1996.

[61 FR 9567, Mar. 8, 1996]

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

Subpart A—General

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AUTHORITY: 49 U.S.C. 31136, 31502; 49 U.S.C. 1.48.

SOURCE: 33 FR 19732, Dec. 25, 1968, unless otherwise noted.

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 FR 18057, May 19, 1988, as amended at 60 FR 38746, 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 Highway Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Highway Administration regulation must be complied with.

[35 FR 7800, May 21, 1970, as amended at 60 FR 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 FR 7800, May 21, 1970, as amended at 60 FR 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 Schedule I drug or other substance identified in appendix D to this subchapter;

(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 FR 9567, Mar. 8, 1996]

§ 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 Regional Director of Motor Carriers for the Region or the Associate 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 Regional Director of Motor Carriers for the Region in which the order was issued. The Regional Director of Motor Carriers may affirm or reverse the order. Any driver adversely affected by such order of the Regional Director of Motor Carriers may petition the Associate 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 FR 47837, Oct. 28, 1982, as amended at 52 FR 27201, July 20, 1987; 59 FR 7515, Feb. 15, 1994; 61 FR 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 FR 19732, Dec. 25, 1968, as amended at 60 FR 38746, July 28, 1995]

§ 392.7 Equipment, inspection and use.

No commercial motor vehicle shall be driven unless the driver thereof shall have satisfied himself/herself 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.
Coupling devices.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38746, July 28, 1995]

§ 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 of this subchapter 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 FR 38290, Sept. 28, 1984, as amended at 60 FR 38746, July 28, 1995]

§ 392.9 Safe loading.

(a) *General.* No person shall drive a commercial motor vehicle and a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless—

(1) The commercial motor vehicle's cargo is properly distributed and adequately secured as specified in §§ 393.100–393.106 of this subchapter.

(2) The commercial motor vehicle's tailgate, tailboard, doors, tarpaulins, its spare tire and other equipment used in its operation, and the means of fastening the commercial motor vehicle's cargo are secured; and

(3) The commercial motor vehicle's cargo or any other object does not obscure the driver's view ahead or to the right or left sides, interfere with the free movement of his/her arms or legs, prevent his/her free and ready access to accessories required for emergencies, or prevent the free and ready exit of any person from the commercial motor vehicle's cab or driver's compartment.

(b) *Drivers of trucks and truck tractors.* Except as provided in paragraph (b)(4) of this section, the driver of a truck or truck tractor must—

(1) Assure himself/herself that the provisions of paragraph (a) of this section have been complied with before he/she drives that commercial motor vehicle;

(2) Examine the commercial motor vehicle's cargo and its load-securing devices within the first 25 miles after beginning a trip and cause any adjustments to be made to the cargo or load-securing devices (other than steel strapping) as may be necessary to maintain the security of the commercial motor vehicle's load; and

(3) Reexamine the commercial motor vehicle's cargo and its load-securing devices periodically during the course of transportation and cause any adjustments to be made to the cargo or load-securing devices (other than steel strapping) as may be necessary to maintain the security of the commercial motor vehicle's load. A periodic reexamination and any necessary adjustments must be made—

(i) When the driver makes a change of his/her duty status; or

(ii) After the commercial motor vehicle has been driven for 3 hours; or

(iii) After the commercial motor vehicle has been driven for 150 miles, whichever occurs first.

(4) The rules in this paragraph do not apply to the driver of a sealed commercial motor vehicle who has been ordered not to open it to inspect its cargo or to the driver of a commercial motor vehicle that has been loaded in a manner that makes inspection of its cargo impracticable.

(c) *Buses.* No person shall drive a bus and a motor carrier shall not require or permit a person to drive a bus unless—

(1) All standees on the bus are rearward of the standee line or other means prescribed in § 393.90 of this subchapter;

(2) All aisle seats in the bus conform to the requirements of § 393.91 of this subchapter; and

(3) Baggage, freight, or express on the bus is stowed and secured in a manner which assures—

(i) Unrestricted freedom of movement to the driver and his/her proper operation of the bus;

(ii) Unobstructed access to all exits by any occupant of the bus; and

(iii) Protection of occupants of the bus against injury resulting from the falling or displacement of articles transported in the bus.

[36 FR 18863, Sept. 23, 1971, as amended at 37 FR 12642, June 27, 1972; 38 FR 23522, Aug. 31, 1973; 60 FR 38746, July 28, 1995]

§ 392.9a [Reserved]

§ 392.9b Hearing aid to be worn.

A driver whose hearing meets the minimum requirements of § 391.41(b)(11) of this subchapter only when he/she wears a hearing aid shall wear a hearing aid and have it in operation at all times while he/she is driving. The driver must also have in his/her possession a spare power source for use in the hearing aid.

[36 FR 12857, July 8, 1971]

Subpart B—Driving of Commercial Motor Vehicles

§ 392.10 Railroad grade crossings; stopping required.

(a) Except as provided in paragraph (b) of this section, the driver of a commercial motor vehicle specified in

paragraphs (a) (1) through (6) of this section shall not cross a railroad track or tracks at grade unless he/she first: Stops the commercial motor vehicle 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 ascertains that no train is approaching. When it is safe to do so, the driver may drive the commercial motor vehicle across the tracks in a gear that permits the commercial motor vehicle to complete the crossing without a change of gears. The driver must not shift gears while crossing the tracks.

(1) Every bus transporting passengers,

(2) Every commercial motor vehicle transporting any quantity of a Division 2.3 chlorine.

(3) Every commercial motor vehicle which, in accordance with the regulations of the Department of Transportation, is required to be marked or placarded with one of the following classifications:

(i) Division 1.1
(ii) Division 1.2, or Division 1.3
(iii) Division 2.3 Poison gas
(iv) Division 4.3
(v) Class 7
(vi) Class 3 Flammable
(vii) Division 5.1
(viii) Division 2.2
(ix) Division 2.3 Chlorine
(x) Division 6.1 Poison
(xi) Division 2.2 Oxygen
(xii) Division 2.1
(xiii) Class 3 Combustible liquid
(xiv) Division 4.1
(xv) Division 5.1
(xvi) Division 5.2
(xvii) Class 8
(xviii) Division 1.4

(4) Every cargo tank motor vehicle, whether loaded or empty, used for the transportation of any hazardous material as defined in the Hazardous Materials Regulations of the Department of Transportation, Parts 107 through 180 of this title.

(5) Every cargo tank motor vehicle transporting a commodity which at the time of loading has a temperature above its flashpoint as determined by § 173.120 of this title.

(6) Every cargo tank motor vehicle, whether loaded or empty, transporting any commodity under exemption in accordance with the provisions of subpart B of part 107 of this title.

(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 of this chapter.

(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 FR 19732, Dec. 25, 1968, as amended at 35 FR 7801, May 21, 1970; 38 FR 1589, Jan. 16, 1973; 40 FR 44555, Sept. 29, 1975; 45 FR 46424, July 10, 1980; 47 FR 47837, Oct. 28, 1982; 59 FR 63924, Dec. 12, 1994; 60 FR 38746, 38747, July 28, 1995]

§ 392.11 Railroad grade crossings; slowing down required.

Every commercial motor vehicle other than those listed in § 392.10 shall, upon approaching a railroad grade crossing, be driven at a rate of speed which will permit said commercial motor vehicle to be stopped before reaching the nearest rail of such crossing and shall not be driven upon or over such crossing until due caution has been taken to ascertain that the course is clear.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.12 [Reserved]

§ 392.13 Drawbridges; slowing down of commercial motor vehicles.

Any commercial motor vehicle, shall, upon approaching a drawbridge, be driven at a rate of speed which will permit said commercial motor vehicle to be stopped before reaching the lip of the draw and shall proceed only when the draw is completely closed.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.14 Hazardous conditions; extreme caution.

Extreme caution in the operation of a commercial motor vehicle 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 commercial motor vehicle 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 commercial motor vehicle may be operated to the nearest point at which the safety of passengers is assured.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.15 Required and prohibited use of turn signals.

(a) *Turns.* Every commercial motor vehicle turn shall be signaled for a distance of not less than 100 feet in advance of, and during, the turning movement by flashing the turn signals at the front and the rear of the commercial motor vehicle on the side toward which the turning movement is made.

(b) *Entry into traffic stream.* Turn signals shall be flashed to indicate the direction of commercial motor vehicle movement, prior to and during entry of the commercial motor vehicle into the traffic stream from a parked position.

(c) *Lane changes.* Turn signals shall be flashed to indicate the direction of commercial motor vehicle movement continuously, for a distance of not less than 100 feet in advance of, and during, the turning movement of the commercial motor vehicle from one traffic lane to another.

(d) *Parking or disablement.* Turn signals shall not be flashed on one side only on parked or disabled commercial motor vehicles.

(e) *Courtesy or ''do pass'' signals.* Turn signals shall not be used as courtesy or ''do pass'' signals to operators of motor vehicles approaching from the rear.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.16 Use of seat belts.

A commercial motor vehicle 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 FR 10860, July 3, 1970, as amended at 60 FR 38747, July 28, 1995]

§ 392.18 [Reserved]

Subpart C—Stopped Commercial Motor Vehicles

§ 392.20 Unattended commercial motor vehicles; precautions.

No commercial motor vehicle shall be left unattended until the parking brake has been securely set and all reasonable precautions have been taken to prevent the movement of such commercial motor vehicle.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.21 [Reserved]

§ 392.22 Emergency signals; stopped commercial motor vehicles.

(a) *Hazard warning signal flashers.* Whenever a commercial motor vehicle 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 commercial motor vehicle 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 of the commercial motor vehicle. The flashing lights may be used at other times while a commercial motor vehicle 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 commercial motor vehicle is stopped on the traveled portion of a highway 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 with which the commercial motor vehicle is equipped in conformance with the requirements of §393.95 of this subchapter, in the following manner:

(i) One at the traffic side of the stopped commercial motor vehicle, within 10 feet of the front or rear of the commercial motor vehicle;

(ii) One at a distance of approximately 100 feet from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in a direction toward traffic approaching in that lane; and

(iii) One at a distance of approximately 100 feet from the stopped commercial motor vehicle in the opposite direction from those placed in accordance with paragraphs (b)(1) (i) and (ii) of this section, in the center of the traffic lane or shoulder occupied by the commercial motor vehicle.

(iv) The same type of required emergency warning device (see §393.95(f) (1) and (2)) shall be placed at each of the three locations specified in paragraph (b)(1) (i) through (iii) of this section. If supplemental warning devices are also used (see §393.95(f)(3)), a device of the same type shall be placed at each of those locations.

(2) *Special rules*—(i) *Fusees and liquid-burning flares.* The driver of a commercial motor vehicle 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 commercial motor vehicle 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 commercial motor vehicle 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 commercial motor vehicle.

(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 commercial motor vehicle 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 FR 17175, Aug. 25, 1972, as amended at 40 FR 10685, Mar. 7, 1975; 47 FR 47837, Oct. 28, 1982; 48 FR 57139, Dec. 23, 1983; 59 FR 34711, July 6, 1994; 60 FR 38747, July 28, 1995]

§ 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 commercial motor vehicle.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.25 Emergency signals; dangerous cargoes.

No driver shall use or permit the use of any flame-producing emergency signal for protecting any commercial motor vehicle transporting Division 1.1, Division 1.2, or Division 1.3 explosives; any cargo tank motor vehicle used for the transportation of any Class 3 or Division 2.1, whether loaded or empty; or any commercial motor vehicle using compressed gas as a motor fuel. In lieu thereof, emergency reflective triangles, red electric lanterns, or red emergency reflectors shall be used, the placement of which shall be in the same manner as prescribed in § 392.22(b).

[59 FR 63925, Dec. 12, 1994, as amended at 60 FR 38747, July 28, 1995]

Subpart D—Use of Lighted Lamps and Reflectors

§ 392.30—392.32 [Reserved]

§ 392.33 Obscured lamps or reflectors.

No commercial motor vehicle shall be driven when any of the required lamps or reflectors are obscured by the tailboard, by any part of the load, by dirt, or otherwise.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

Subpart E—License Revocation; Duties of Driver

§ 392.40—392.41 [Reserved]

§ 392.42 Notification of license revocation.

A driver who receives a notice that his/her license, permit, or privilege to operate a 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 he/she received it.

[35 FR 6466, Apr. 22, 1970]

Subpart F—Fueling Precautions

§ 392.50 Ignition of fuel; prevention.

No driver or any employee of a motor carrier shall:

(a) Fuel a commercial motor vehicle 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 commercial motor vehicle 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 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.51 Reserve fuel.

No supply of fuel for the propulsion of said commercial motor vehicle or for the operation of accessories shall be carried on any commercial motor vehicle except in a properly mounted fuel tank or tanks.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.52 Buses; fueling.

No bus shall be fueled in a closed building with passengers aboard. The fueling of buses when passengers are being carried shall be reduced to the minimum number of times necessary during such transportation.

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 commercial motor vehicle is being operated, no driver shall transport any person or permit any person to be transported on any commercial motor vehicle 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 commercial motor vehicle 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) This section shall not apply to the operation of commercial motor vehicles controlled and operated by any farmer and used in the transportation of agricultural commodities or products thereof from his/her farm or in the transportation of supplies to his/her farm.

[60 FR 38747, July 28, 1995]

§ 392.61—392.62 [Reserved]

§ 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 FR 19732, Dec. 25, 1968, as amended at 60 FR 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 commercial motor vehicle unless 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 FR 19732, Dec. 25, 1968, as amended at 60 FR 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 commercial motor vehicle 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 commercial motor vehicle;

(3) When a mechanical condition of the commercial motor vehicle is discovered which would be likely to produce a hazard to the occupants by reason of carbon monoxide.

(b) [Reserved]

[60 FR 38747, July 28, 1995]

§ 392.67 Heater, flame-producing; on commercial motor vehicle in motion.

No open flame heater used in the loading or unloading of the commodity transported shall be in operation while the commercial motor vehicle is in motion.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.68 Motive power not to be disengaged.

No commercial motor vehicle shall be driven with the source of motive power disengaged from the driving

wheels except when such disengagement is necessary to stop or to shift gears.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.69 [Reserved]

§ 392.71 Radar detectors; use and/or possession.

(a) No driver shall use a radar detector in a commercial motor vehicle, 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 FR 67375, Dec. 21, 1993]

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

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393.203 Cab and body components.
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393.209 Steering wheel 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.

SOURCE: 33 FR 19735, Dec. 25, 1968, unless otherwise noted.

Subpart A—General

SOURCE: 53 FR 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 FR 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:

Agricultural commodity trailer. A trailer that is designed to transport bulk agricultural commodities in off-road harvesting sites and to a processing plant or storage location, as evidenced by skeletal construction that accommodates harvest containers, a maximum length of 28 feet, and an arrangement of air control lines and reservoirs that minimizes damage in field operations.

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.

Chassis. The load-supporting frame in a truck or trailer, exclusive of any appurtenances which might be added to accommodate cargo.

Clearance lamp. A lamp used on the front and the rear of a motor vehicle to indicate its overall width and height.

Container chassis. A semitrailer of skeleton construction limited to a bottom frame, one or more axles, specially built and fitted with locking devices for the transport of cargo containers, so that when the chassis and container are assembled, the units serve the same function as an over the road trailer.

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).

Fifth wheel. A device mounted on a truck tractor or similar towing vehicle (e.g., converter dolly) which interfaces

with and couples to the upper coupler assembly of a semitrailer.

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(l) of this title when flammable liquid or gas is transported.

Heavy hauler trailer. A trailer with one or more of the following characteristics:

(1) Its brake lines are designed to adapt to separation or extension of the vehicle frame; or

(2) Its body consists only of a platform whose primary cargo-carrying surface is not more than 40 inches above the ground in an unloaded condition, except that it may include sides that are designed to be easily removable and a permanent ''front-end structure'' as that term is used in Section 393.106 of this title.

Identification lamps. Lamps used to identify certain types of commercial motor vehicles.

Lamp. A device used to produce artificial light.

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.

Pulpwood trailer. A trailer that is designed exclusively for harvesting logs or pulpwood and constructed with a skeletal frame with no means for attachment of a solid bed, body, or container, and with an arrangement of air control lines and reservoirs designed to minimize damage in off-road operations.

Rear extremity. The rearmost point on a vehicle when the vehicle's cargo doors, tailgate or other permanent structure are positioned as they normally are when the vehicle is being driven. Non-structural protrusions such as tail lights, hinges, and latches are deleted 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.

Saddle-mount. A device, designed and constructed as to be readily demountable, used in driveaway-towaway operations to perform the functions of a conventional fifth wheel:

(1) Upper-half. *Upper-half* of a ''saddle-mount'' means that part of the device which is securely attached to the towed vehicle and maintains a fixed position relative thereto, but does not include the ''king-pin;''

(2) Lower-half. *Lower-half* of a ''saddle-mount'' means that part of the device which is securely attached to the towing vehicle and maintains a fixed position relative thereto but does not include the ''king-pin;'' and

(3) King-pin. *King-pin* means that device which is used to connect the ''upper-half'' to the ''lower-half'' in such manner as to permit relative movement in a horizontal plane between the towed and towing vehicles.

Service brake system. A primary brake system used for slowing and stopping a vehicle.

Side extremities. The outermost point on the sides of the vehicle. Non-structural protrusions such as tail lights, hinges, and latches are excluded from the determination of the outermost point.

Side marker lamp (Intermediate). A lamp shown to the side of a trailer to

indicate the approximate middle of a trailer 30 feet or more in length.

Side marker lamps. Lamps used on each side of a trailer to indicate its overall length.

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.

§ 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) Specifications of the Web Sling and Tiedown Association. Information and copies may be obtained by writing to: Web Sling and Tiedown Association, Inc., 710 East Ogden Avenue, suite 113, Naperville, Illinois 60563.

(5) Manuals of the Wire Rope Technical Board. Information and copies may be obtained by writing to: Wire Rope Technical Committee, P.O. Box 849, Stevensville, Maryland 21666.

(6) Standards of the Cordage Institute. Information and copies may be obtained by writing to: Cordage Institute, 350 Lincoln Street, No. 115, Hingham, Massachusetts 02043.

(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 FR 34712, July 6, 1994, as amended at 59 FR 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 FR 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	Required lighting devices/vehicles
Headlamps	2 At Least	White	Front	On the front at the same height, an equal number at each side of the vertical centerline as far apart as practicable.	Not less than 22 nor more than 54.	A, B, C
Turn Signal (Front) See Footnotes #2 & 12.	2	Amber	At or Near Front	One on each side of the vertical centerline at the same height and as far apart as practicable.	Not less than 15 nor more than 83.	A, B, C
Identification Lamp (Front) Footnote #1	3	Amber	Front	Mounted on the vertical centerline of the vehicle or the vertical centerline of the cab where different from the centerline of the vehicle.	All three on same level as close as practicable to the top of the vehicle with lamp centers spaced not less than 6 inches or more than 12 inches apart.	B, C
Tail Lamp See Footnotes #5 & 11	2	Red	Rear	One lamp each side of the vertical centerline at the same height and as far apart as practicable.	Both on the same level between 15 and 72.	A, B, C, D, E, F, G, H
Stop Lamp See Footnotes #5 & 13	2	Red	Rear	One lamp each side of the vertical centerline at the same height and as far apart as practicable.	Both on the same level between 15 and 72.	A, B, C, D, E, F, G
Clearance Lamps See Footnotes #9, 10, & 15.	2	Amber	One on each side of front.	One on each side of the vertical centerline to indicate width.	Both on same level as high as practicable.	B, C, D, G, H
	2	Red	One on each side of rear.	One on each side of the vertical centerline to indicate overall width.	Both on same level as high as practicable.	B, D, G, H
Side Marker Lamp, Intermediate	2	Amber	One on each side.	At or near midpoint between front and rear side marker lamps, if over 30′ in length.	Not less than 15	A, B, D, F, G
Reflex Reflector Intermediate (Side)	2	Amber	One on each side.	At or near midpoint between front and rear side reflectors if over 30′ in length.	Between 15 and 60	A, B, D, F, G
Reflex Reflector (Rear) See Footnotes #5, 6, & 8.	2	Red	Rear	One on each side of vertical centerline, as far apart as practicable.	Both on same level, between 15 and 60.	A, B, C, D, E, F, G
Reflex Reflector (Rear Side) Footnote #4.	2	Red	One on each side (rear).	As far to the rear as practicable	Both on same level, between 15 and 60.	A, B, D, F, G
Reflex Reflector (Front Side)	2	Amber	One on each side (front).	As far to the front as practicable	Between 15 and 60	A, B, C, D, F, G
License Plate Lamp Rear See Footnote #11.	1	White	At rear license plate.	To illuminate the license plate from the top or sides.	No requirements	A, B, C, D, F, G
Side Marker Lamp (Front)	2	Amber	One on each side.	As far to the front as practicable	Not less than 15	A, B, C, D, F
Side Marker Lamp (Rear) See Footnotes #4 & 8.	2	Red	One on each side.	As far to the rear as practicable	Not less than 15 and on the rear of trailer, not more than 60.	A, B, D, F, G
Turn Signal (Rear) See Footnotes #5 & 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 15 and 83.	A, B, C, D, E, F, G

Identification Lamp (Rear) See Footnotes # 3, 7 & 15.	3	Red	Rear	One as close as practicable to vertical centerline. One on each side with lamp centers spaced not less than 6″ or more than 12″ apart.	All three on same level as close as practicable to the top of the vehicle.	B, D, G
Vehicular Hazard Warning Flashing Lamps See Footnote # 12.	2	Amber	Front	One lamp on each side of vertical centerline as far apart as practicable.	Both on same level, between 15 and 83.	A, B, C, D, E, F, G
	2	Amber or Red.	Rear			
Backup Lamp See Footnote # 14	1	White	Rear	Rear	No requirement	A, B, C
Parking Lamp	2	Amber or white.	Front	One lamp on each side of vertical centerline as far apart as practicable.	Both on same level, between 15 and 72.	A

* Lighting Required per Type of Commercial Vehicle as Shown **Last Column of Table.**

A. Small buses and trucks less than 80 inches in overall width.
B. Buses and trucks 80 inches or more in overall width.
C. Truck Tractors.
D. Large semitrailers and full trailers 80 inches or more in overall width except converter dollies.
E. Converter dolly.
F. Small semitrailers and full trailers less than 80 inches in overall width.
G. Pole Trailers.
H. Projecting loads.
Lamps and reflectors may be combined as permitted by Paragraphs 393.22 and S4.4 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 vehicles manufactured on and after March 1, 1979, shall be equipped with rear side-marker lamps at a height of not less than 15 inches (381 mm) nor more than 60 inches (1524 mm) above the road surface, as measured from the center of the lamp on the vehicle at curb weight. The rear side marker lamps shall be visible in the vehicle's rearview mirrors when the trailer is tracking straight.

Footnote—5

For purposes of these regulations, each converter dolly shall be equipped with one stop lamp, one tail lamp, and two reflectors on the rear at each side when towed singly by another vehicle. Each converter dolly shall be equipped with turn signals at the rear if the converter dolly obscures the turn signals at the rear of the towing vehicle when towed singly by another vehicle.

Footnote—6

Pole trailers will have two reflectors, one on each side, placed to indicate extreme width of the trailer.

Footnote—7

Pole trailers may have three identification lamps mounted on the vertical centerline of the rear of the cab of the truck tractor drawing the pole trailer, and higher than the load being transported, in lieu of the three identification lamps mounted on the rear vertical centerline of the trailer.

Footnote—8

Pole trailers shall have on the rearmost support for the load, one combination marker lamp or two single lamps showing amber to the front and red to the rear and side, mounted on each side to indicate maximum width of the pole trailer; and one red reflector on each side of the rearmost support for the load.

Footnote—9

Any motor vehicle transporting a load which extends more than 4 inches beyond the width of the motor vehicle, or having projections beyond the rear of such vehicles, shall be equipped with the following lamps in addition to other required lamps, have the loads marked

Loads projecting more than 4 inches beyond sides of motor vehicles:

(1) The foremost edge of the projecting load at its outermost extremity shall be marked with an amber lamp visible from the front and both sides.

(2) The rearmost edge of the projecting load at its outermost extremity shall be marked with a red lamp visible from the rear and side.

(3) If any portion of the projecting load extends beyond both the foremost and rearmost edge, it shall be marked with an amber lamp visible from the front, both sides, and rear.

(4) If the protecting load does not measure more than 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 4 feet beyond the rear of the motor vehicle, or which have these tailboards or tailgates extending more than 4 feet beyond the body, shall have projections marked as follows:

(1) On each side of the projecting load, one red 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 tractor headlamps are illuminated.

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.

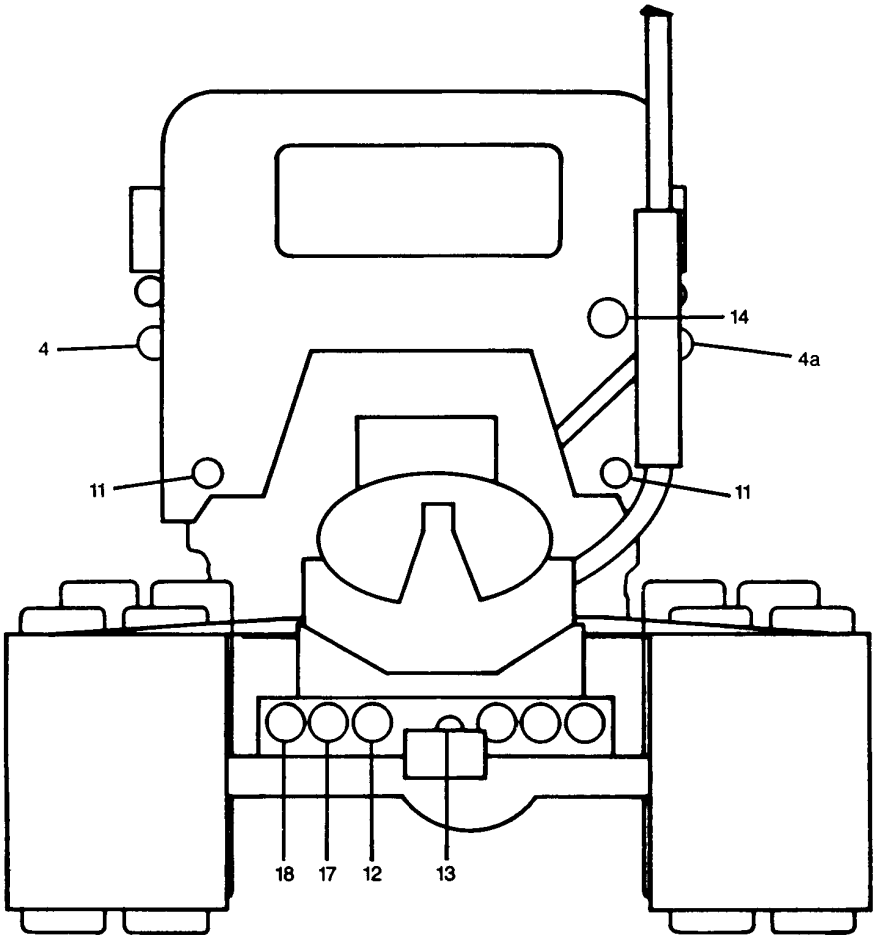
Footnote—13

To be actuated upon application of service brakes.

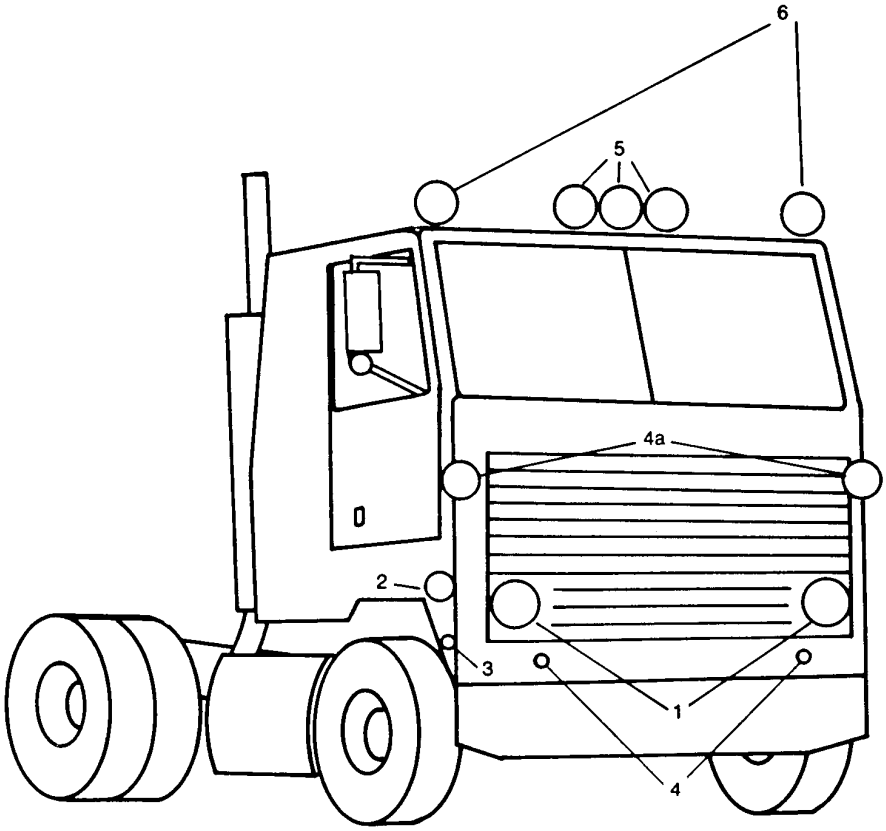
Footnote—14

Backup lamp required to operate when bus, truck, or truck tractor is in reverse.	
Footnote—15	
	When the rear identification lamps are mounted at the extreme height of a vehicle, rear clearance lamps need not meet the requirement that they be located as close as practicable to the top of the vehicle.

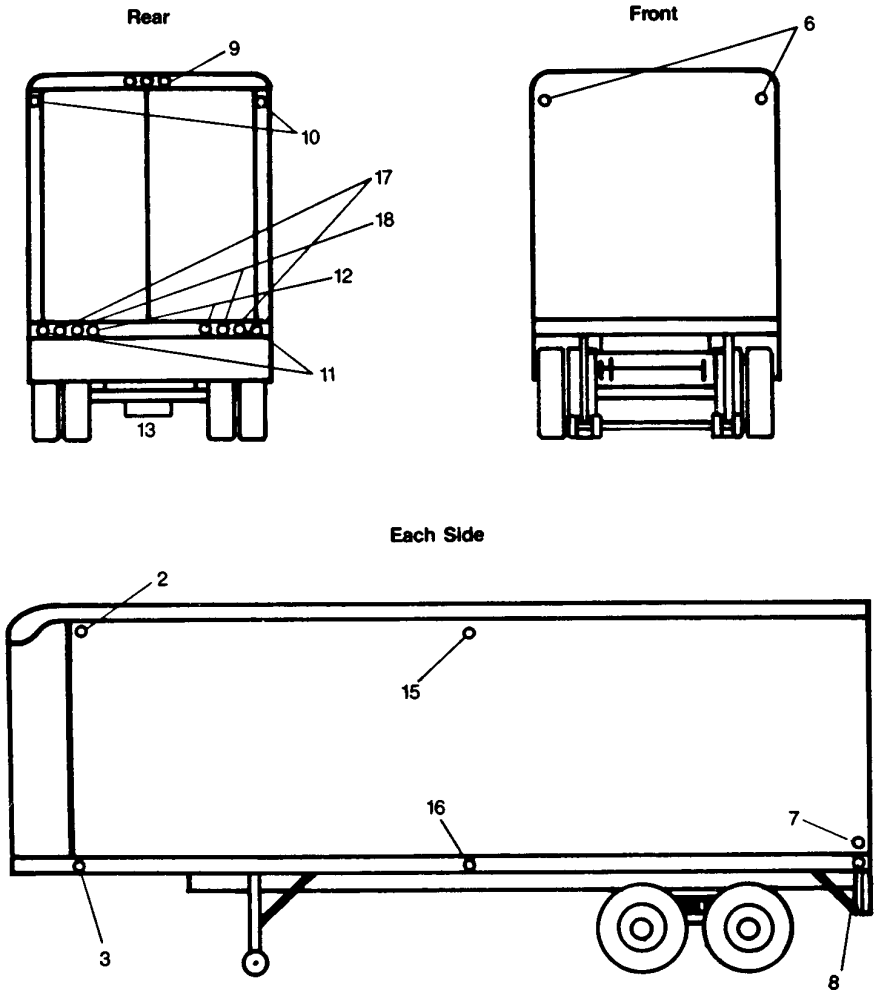
Truck Tractor
Rear View



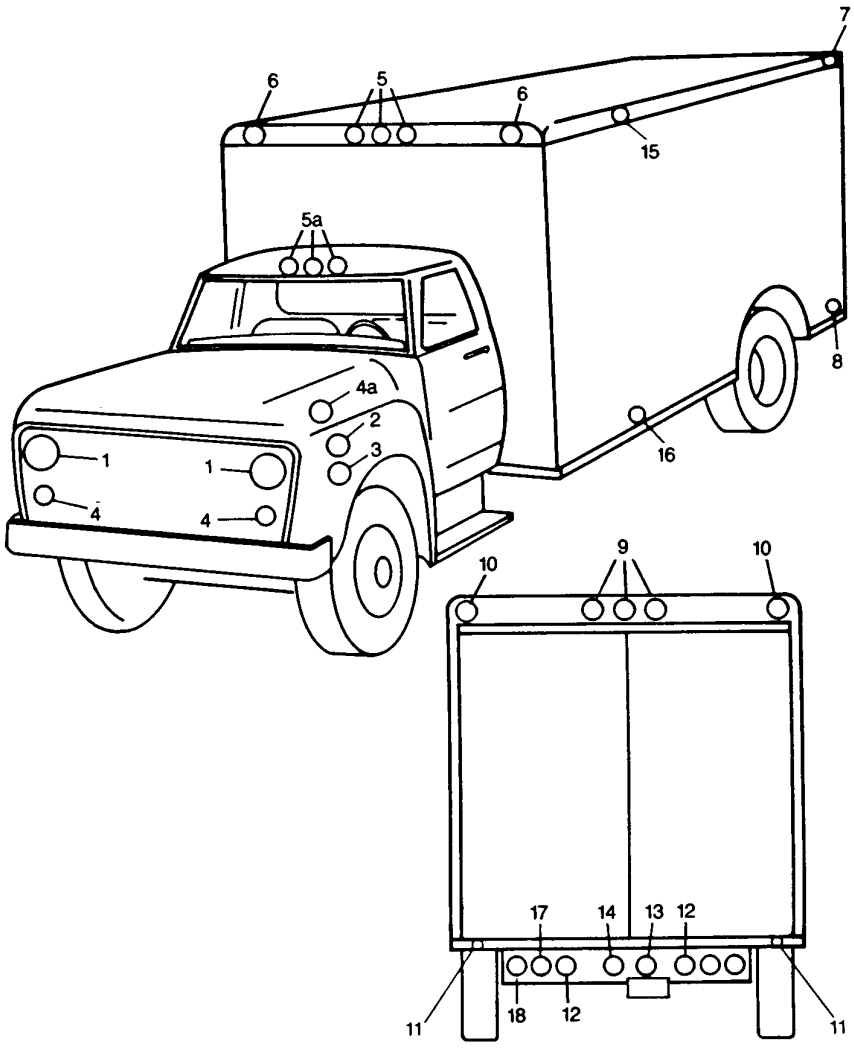
Truck Tractor
Front & Side View



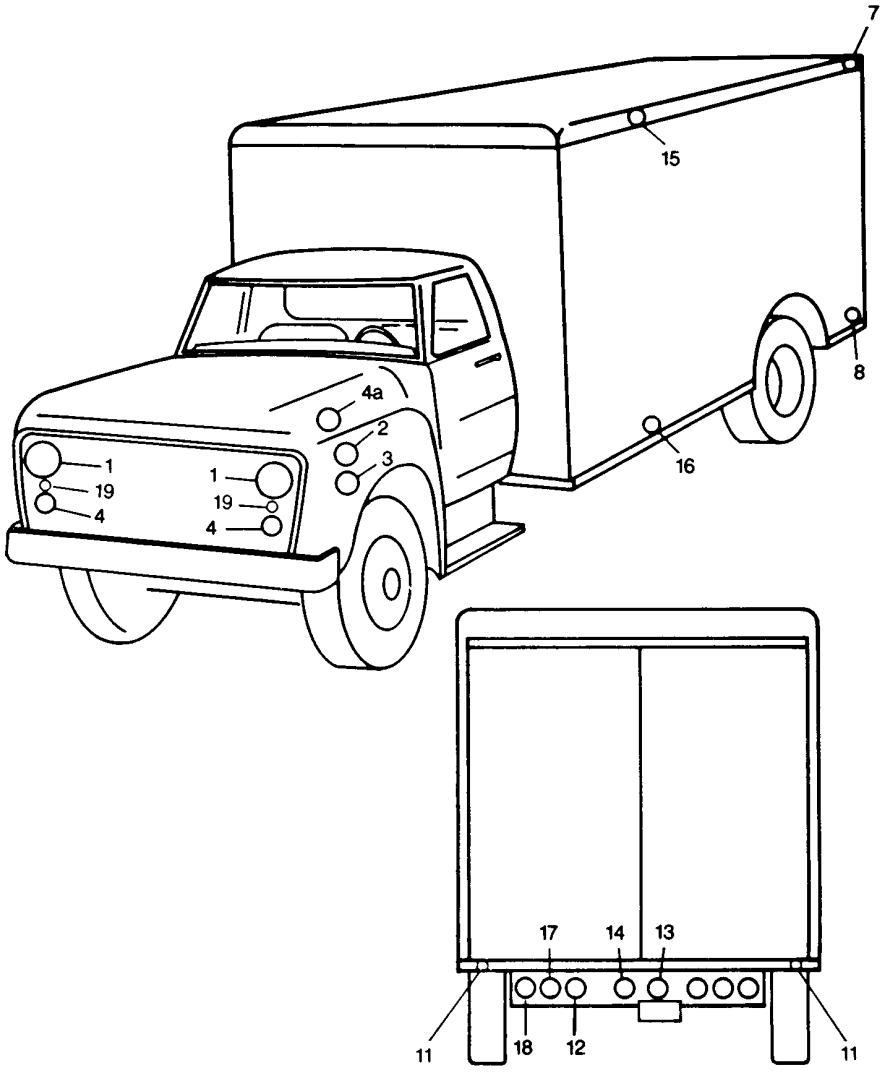
Large Trailers



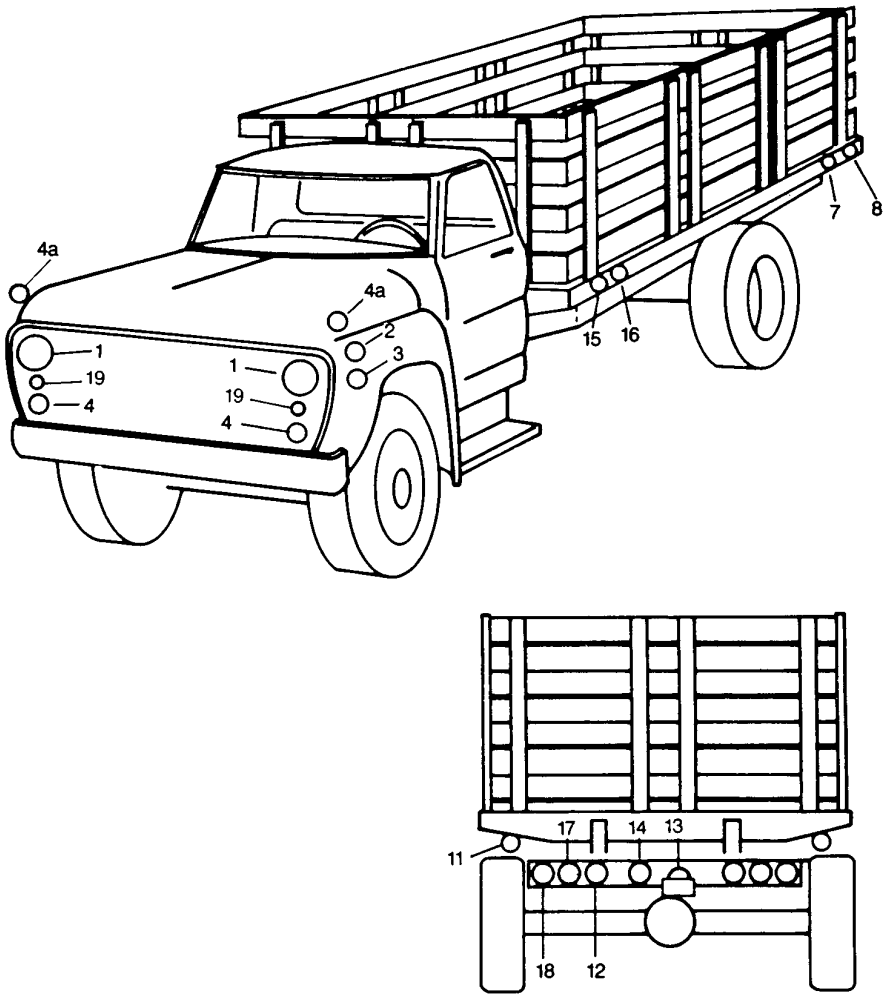
Over 80 Inches



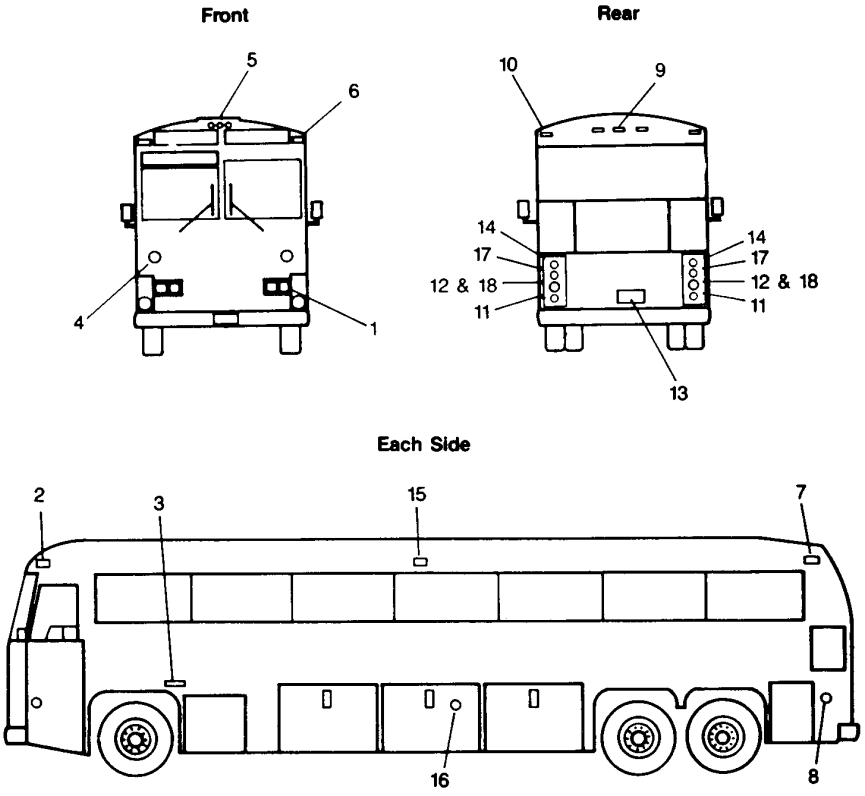
Under 80 Inches



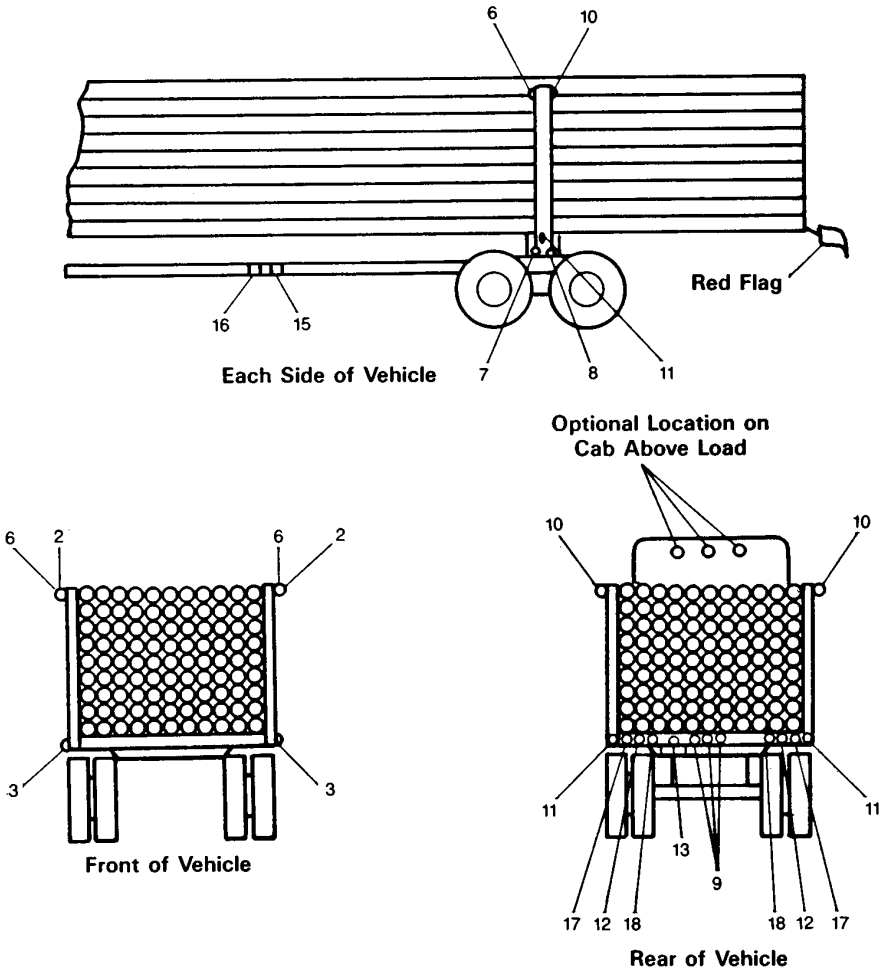
Under 80 Inches



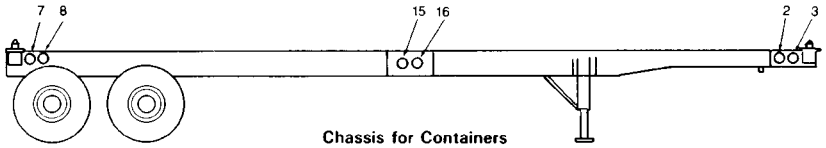
Large Bus


Front
Rear
5
6
4
1
10
9
14
17
12 & 18
11
14
17
12 & 18
11
13
Each Side
2
3
15
7
16
8

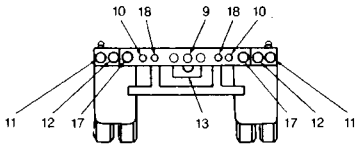
Pole Trailers — All Vehicle Widths



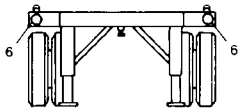
Container Chassis



Chassis for Containers

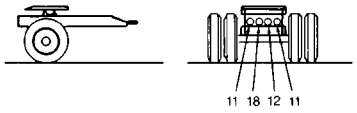


Rear



Front

Converter Dolly



LEGEND (USED IN ILLUSTRATIONS)

1. Headlamps (2)-White (4 optional)
2. Side-marker lamps. Front (2)-Amber
3. Side reflectors. Front (2)-Amber
4. Turn-signal lamps. Front (2)-Amber
4a. Turn-signal lamps. Front (2)-Amber (Optional location)
5. Identification lamps. Front (3)-Amber
5a. Identification lamps. Front (3)-Amber (Optional location)
6. Clearance lamps. Front (2)-Amber
7. Side-marker lamps. Rear (2)-Red
8. Side-reflectors. Rear (2)-Red
9. Identification lamps. Rear (3)-Red
10. Clearance lamps. Rear (2)-Red
11. Reflectors Rear (2)-Red
12. Stop lamps. Rear (2)-Red
13. License plate lamp. Rear (1)-White
14. Backup lamp. Rear (1)-White (location optional provided optional requirements are met)
15. Side-marker lamps. Intermediate (2)-Amber (if vehicle is 30' or more overall length)
16. Side reflectors. Intermediate (2)-Amber (if vehicle is 30' or more overall length)
17. Turn signal lamps. Rear (2)-Amber or Red
18. Tail lamps. Rear (2)-Red
19. Parking lamps. Front 2-Amber or White

[53 FR 49385, Dec. 7, 1988]

§ 393.17 Lamps and reflectors—combinations in driveaway-towaway operation.

A combination of motor vehicles engaged in driveaway-towaway operation must be equipped with operative lamps and reflectors conforming to the rules in this section.

(a) The towing vehicle must be equipped as follows:

(1) On the front, there must be at least two headlamps, an equal number at each side, two turn signals, one at each side, and two clearance lamps, one at each side.

(2) On each side, there must be at least one side-marker lamp, located near the front of the vehicle.

(3) On the rear, there must be at least two tail lamps, one at each side, and two stop lamps, one at each side.

(b) Except as provided in paragraph (c) of this section, the rearmost towed vehicle of the combination (including the towed vehicle or a tow-bar combination, the towed vehicle of a single saddle-mount combination, and the rearmost towed vehicle of a double or triple saddle-mount combination) or, in the case of a vehicle full-mounted on a saddle-mount vehicle, either the full-mounted vehicle or the rearmost saddle-mounted vehicle must be equipped as follows:

(1) On each side, there must be at least one side-marker lamp, located near the rear of the vehicle.

(2) On the rear, there must be at least two tail lamps, two stop lamps, two turn signals, two clearance lamps, and two reflectors, one of each type at each side. In addition, if any vehicle in the combination is 80 inches or more in overall width, there must be three identification lamps on the rear.

(c) If the towed vehicle in a combination is a mobile structure trailer, it must be equipped in accordance with the following lighting devices. For the purposes of this part, *mobile structure trailer* means a trailer that has a roof and walls, is at least 10 feet wide, and can be used off road for dwelling or commercial purposes.

(1) When the vehicle is operated in accordance with the terms of a special permit prohibiting operation during the times when lighted lamps are required under § 392.30, it must have on the rear—

(i) Two stop lamps, one on each side of the vertical centerline, at the same height, and as far apart as practicable;

(ii) Two tail lamps, one on each side of the vertical centerline, at the same height, and as far apart as practicable;

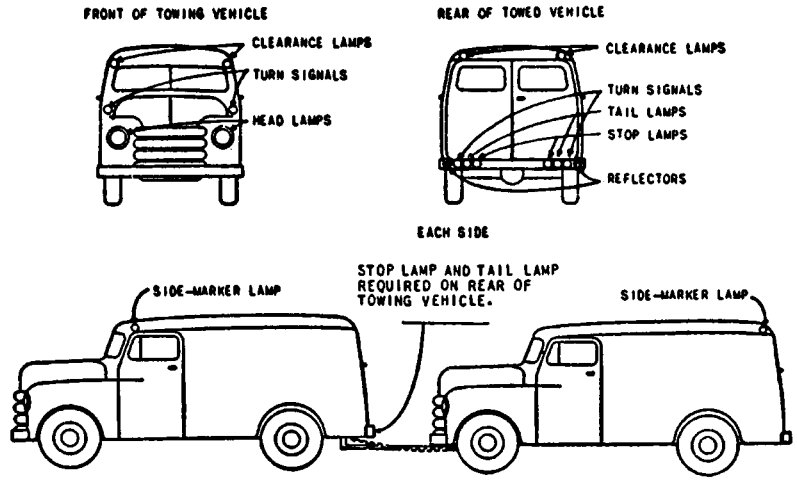
(iii) Two red reflex reflectors, one on each side of the vertical centerline, at the same height, and as far apart as practicable; and

(iv) Two turn signal lamps, one on each side of the vertical centerline, at the same height, and as far apart as practicable.

(2) At all other times, the vehicle must be equipped as specified in paragraph (b) of this section.

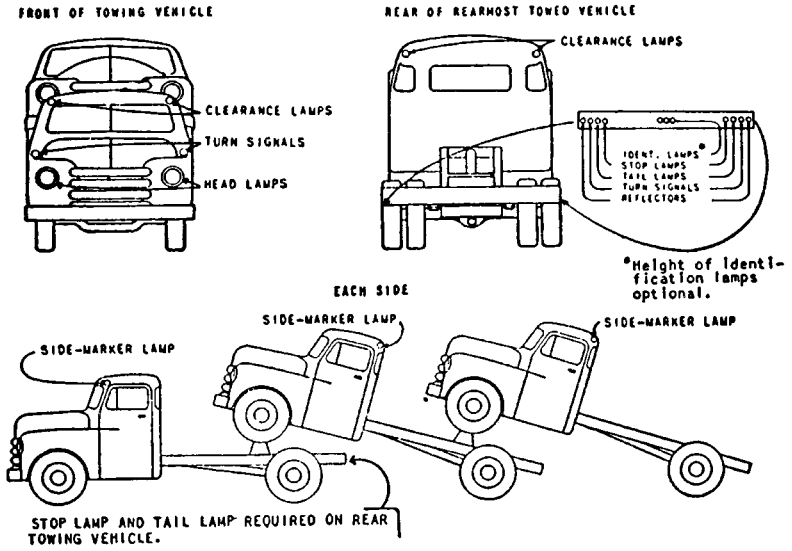
(d) An intermediate towed vehicle in a combination consisting of more than two vehicles (including the first saddle-mounted vehicle of a double saddle-mount combination and the first and second saddle-mount vehicles of a triple saddle-mount combination) must have one side-marker lamp on each side, located near the rear of the vehicle.

(Tow-bar diagram to illustrate § 393.17.)



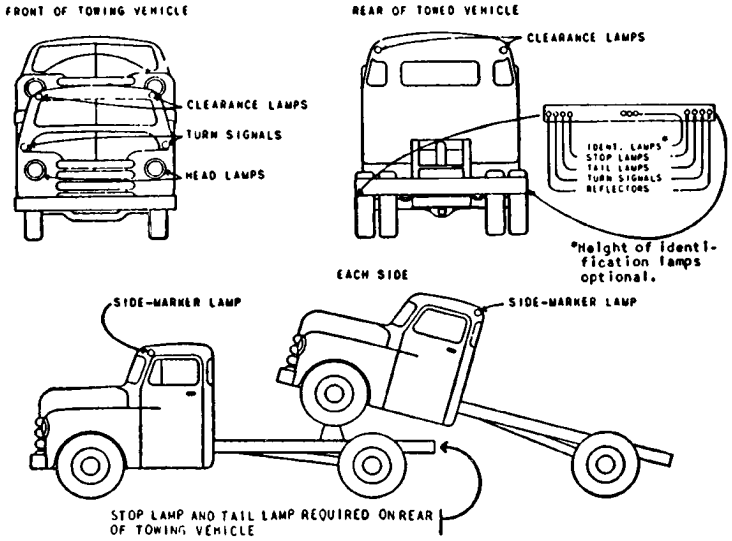
Lamps may be combined as permitted by § 393.22(e). Color of exterior lighting devices shall conform to requirements of § 393.25(e). Color of reflectors shall conform to requirements of § 393.26(d).

(Double-saddle-mount diagram to illustrate § 393.17.)



Lamps may be combined as permitted by § 393.22. Color of exterior lighting devices shall conform to requirements of § 393.25(e). Color of reflectors shall conform to requirements of § 393.26(d).

(Single-saddle-mount diagram to illustrate § 393.17.)



Lamps may be combined as permitted by § 393.22. Color of exterior lighting devices shall conform to requirmeents of § 393.25(e). Color of reflectors shall conform to requirements of § 393.26(d).

(49 U.S.C. 304, 1655; 49 CFR 1.48(b) and 301.60)

[40 FR 36126, Aug. 19, 1975, as amended at 47 FR 47837, Oct. 28, 1982]

§ 393.19 Requirements for turn signaling systems.

(a) Every bus, truck, or 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 turn signals to flash simultaneously as a vehicular traffic hazard warning as required by § 392.22 with the ignition on or off.

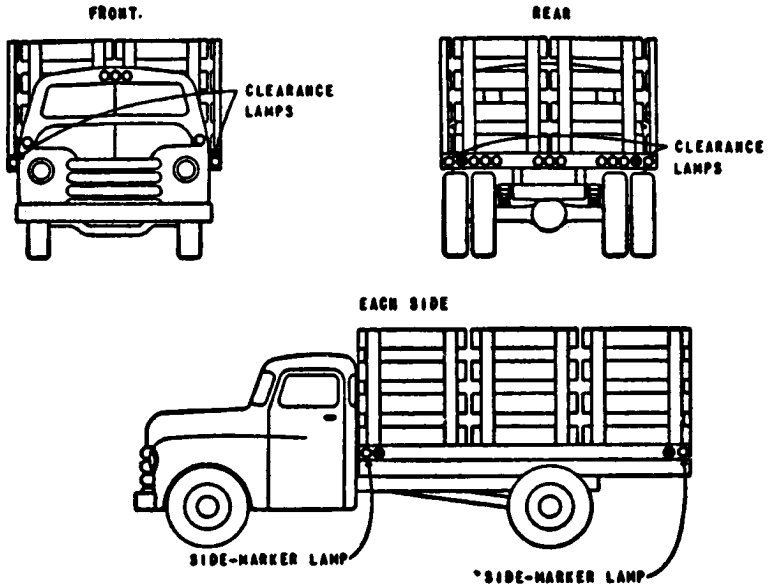
(b) Every semitrailer and full trailer shall be equipped so as to have the two rear turn signals to flash simultaneously with the two front turn signals of the towing vehicle as a vehicular traffic hazard warning as required by § 392.22(a).

[53 FR 49397, Dec. 7, 1988]

§ 393.20 Clearance lamps to indicate extreme width and height.

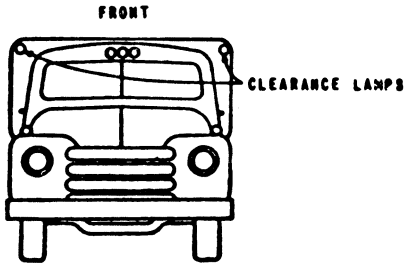
Clearance lamps shall be mounted so as to indicate the extreme width of the motor vehicle (not including mirrors) and as near the top thereof as practicable: *Provided,* That when rear identification lamps are mounted at the extreme height of the vehicle, rear clearance lamps may be mounted at optional 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.

(Diagram to illustrate § 393.20 for mounting of lamps on vehicles without permanent top or sides.)



Lamps may be combined as permitted by § 393.22. Color of exterior lighting devices shall conform to requirements of § 393.25(e). Color of reflectors shall conform to requirements of § 393.26(d).

Diagram to illustrate §393.20 for mounting of front clearance lamps on truck tractors with sleeper cabs.)



[33 FR 19735, Dec. 25, 1968, as amended at 34 FR 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 nonrequired 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 FR 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, truck, and truck tractor shall be equipped with a headlighting 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 headlighting 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 headlighting 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 [1] for such lamps on each side of the vehicle.

(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 FR 19735, Dec. 25, 1968, as amended at 41 FR 53031, Dec. 3, 1976; 53 FR 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, except that temporary lamps on motor vehicles being transported in driveaway-towaway operations and temporary electric lamps on projecting loads need not be permanently mounted nor mounted on a permanent part of the 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 sidemarker lamps to the side, that from rear clearance, rear identification, and tail lamps to the rear, and that from projecting loadmarker 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

[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.

driveaway and towaway 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.

(1) Lamps on vehicles made before July 1, 1961, excepting replacement lamps as specified in paragraph (c)(2) of this section, shall conform to the 1952 requirements.

(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) Lamps temporarily attached to vehicles transported in driveaway and towaway operations on and after December 31, 1961, shall conform to the 1985 requirements.

(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.

(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 FR 19735, Dec. 25, 1968, as amended at 48 FR 57139, Dec. 28, 1983; 53 FR 49397, Dec. 7, 1988; 61 FR 1843, Jan. 24, 1996]

[1] See footnote 1 to § 393.24(c).

[1] See footnote 1 to § 393.24(c).

§ 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 except for temporary reflectors required for vehicles in driveaway-towaway operations, or on projecting loads, 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. Required temporary reflectors mounted on motor vehicles during the time they are in transit in any driveaway-towaway operation must be firmly attached.

(b) *Specifications.* All required reflectors except those installed on vehicles tendered for transportation in driveaway and towaway operations 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, except for display of markings or placards required by § 177.823 of this title.

(5) Retroreflective license plates required by State or local authorities may be used.

[33 FR 19735, Dec. 25, 1968, as amended at 35 FR 3167, Feb. 19, 1970; 53 FR 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 provided truck-tractor semitrailer/full trailer combinations are electrically connected.

[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 FR 49397, Dec. 7, 1988]

§ 393.29 Grounds.

The battery ground and trailer return ground connections on a grounded system 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) Trucks, truck-tractors, and 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 FR 19735, Dec. 25, 1968, as amended at 53 FR 49397, Dec. 7, 1988]

§ 393.32 Detachable electrical connections.

Electrical wiring between towing and towed vehicles shall be contained in a cable or cables or entirely within another substantially constructed protective device. All such electrical wiring shall be mechanically and electrically adequate and free of short or open circuits. Suitable provision shall be made in every such detachable connection to afford reasonable assurance against connection in an incorrect manner or accidental disconnection. Detachable connections made by twisting together wires from the towed and towing units are prohibited. Precaution shall be taken to provide sufficient slack in the connecting wire or cable to accommodate without damage all normal motions of the parts to which they are attached.

§ 393.33 Wiring, installation.

Electrical wiring shall be systematically arranged and installed in a workmanlike manner. All detachable wiring, except temporary wiring connections for driveaway-towaway operations, shall be attached to posts or terminals by means of suitable cable

terminals which conform to the SAE Standard[1] for ''Cable Terminals'' 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.

Subpart C—Brakes

§ 393.40 Required brake systems.

(a) *General.* A bus, truck, truck tractor, or a combination of motor vehicles 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, truck, truck tractor, or combination of motor vehicles 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, truck, truck tractor, or a combination of motor vehicles 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 FR 20297, Oct. 20, 1971, as amended at 37 FR 5251, Mar. 11, 1972]

§ 393.41 Parking brake system.

(a) Every commercial motor vehicle manufactured on and after March 7, 1990, except an agricultural commodity trailer, converter dolly, heavy hauler or pulpwood trailer, 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.

[1] See footnote 1 to § 393.24(c).

(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 FR 15418, Oct. 3, 1969, as amended at 53 FR 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) *Exception.* (1) Trucks or truck tractors having three or more axles—

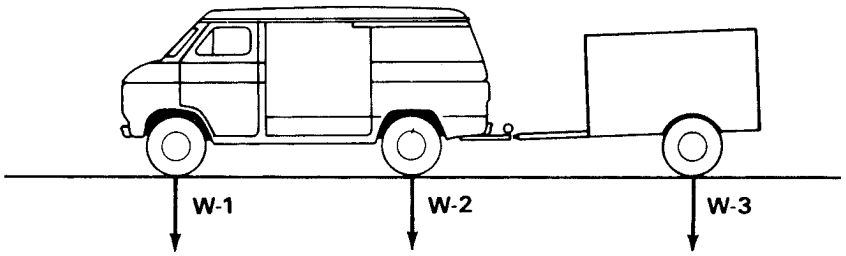
(i) Need not have brakes on the front wheels if the vehicle was manufactured before July 25, 1980; or

(ii) Manufactured between July 24, 1980, and October 27, 1986, must be retrofitted to meet the requirements of this section within one year from February 26, 1987, if the brake components have been removed.

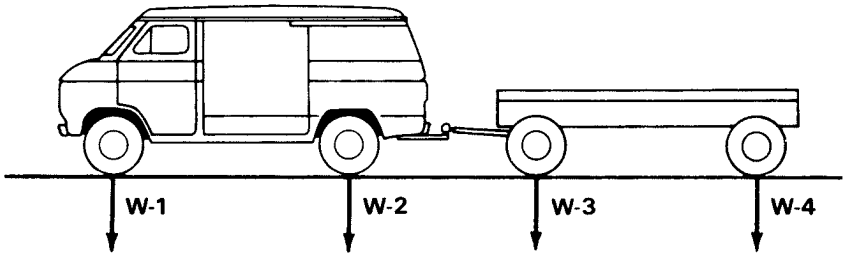
(2) Any motor vehicle being towed in a driveaway-towaway operation must have operative brakes as may be necessary to ensure compliance with the performance requirements of § 393.52. This paragraph is not applicable to any motor vehicle towed by means of a tow-bar when any other vehicle is full-mounted on such towed motor vehicle or any combination of motor vehicles utilizing three or more saddle-mounts. (See § 393.71(a)(3).)

(3) Any full trailer, any semitrailer, or any pole trailer having a GVWR of 3,000 pounds or less must be equipped with brakes if the weight of the towed vehicle resting on the towing vehicle exceeds 40 percent of the GVWR of the towing vehicle.

(Diagrams to illustrate § 393.42 for brake requirements for light trailers.)



(Semitrailer or 2-wheel pole trailer of 3,000 pounds gross weight or less must be equipped with brakes if W-3 is greater than 40 percent of the sum of W-1 and W-2.)



(Full trailer or 4-wheel pole trailer of 3,000 pounds gross weight or less must be equipped with brakes if the sum of W-3 and W-4 is greater than 40 percent of the sum of W-1 and W-2.)

[52 FR 2803, Jan. 27, 1987, as amended at 53 FR 49398, Dec. 7, 1988; 54 FR 48617, Nov. 24, 1989; 59 FR 25574, May 17, 1994; 61 FR 1843, Jan. 24, 1996]

§393.43 Breakaway and emergency braking.

(a) Every motor vehicle, if used to tow a trailer equipped with brakes, shall be equipped with means for providing that in case of breakaway of such trailer the service brakes on the towing vehicle will be sufficiently operative to stop the towing vehicle.

(b) Every truck or truck tractor equipped with air brakes, when used for towing other vehicles equipped with air brakes, shall be equipped with two means of activating the emergency features of the trailer brakes. One of these means shall operate automatically in the event of reduction of the towing vehicle air supply to a fixed pressure which shall not be lower than 20 pounds per square inch nor higher than 45 pounds per square inch. The other means shall be a manually controlled device readily operable by a person seated in the driving seat. Its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and manual means required by this section may be, but are not required to be, separate.

(c) Every truck tractor and truck when used for towing other vehicles equipped with vacuum brakes, shall have, in addition to the single control required by §393.49 to operate all brakes of the combination, a second manual control device which can be used to operate the brakes on the towed vehicles in emergencies. Such second control shall be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure on which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required by this rule to provide modulated or graduated braking.

(d) Every trailer required to be equipped with brakes shall be equipped with brakes of such character as to be applied automatically and promptly upon breakaway from the towing vehicle, and means shall be provided to maintain application of the brakes on the trailer in such case for at least 15 minutes.

(e) Air brake systems installed on towed vehicles shall be so designed, by the use of ''no-bleed-back'' relay emergency valves or equivalent devices, that the supply reservoir used to provide air for brakes shall be safeguarded against backflow of air to the towing vehicle upon reduction of the towing vehicle air pressure.

(f) The requirements of paragraphs (b), (c), and (d) of this section shall not be applicable to motor vehicles in driveaway-towaway operations.

§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 FR 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 unsprung 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 1½ 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 FR 4333, Feb. 13, 1973, as amended at 44 FR 25457, May 1, 1979; 45 FR 46424, July 10, 1980; 47 FR 47837, Oct. 28, 1982; 53 FR 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 FR 19735, Dec. 28, 1968, as amended at 44 FR 25457, May 1, 1979; 53 FR 49400, Dec. 7, 1988]

§ 393.47 Brake lining.

The brake lining on 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 or, in the case of a three-axle truck or truck tractor manufactured before March 1, 1975, to remove the braking effort upon its front wheels, if that device conforms to, and is used in compliance with, the rules in paragraph (b) (1) or (2) of this section.

(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—

(1) A disabled vehicle being towed; or

(2) A vehicle being towed in a driveaway-towaway operation which is exempt from the general rule of § 393.42 under paragraph (b) of that section.

(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 CFR 1.48 and 301.60, respectively)

[39 FR 26907, July 24, 1974, as amended at 41 FR 29130, July 15, 1976; 41 FR 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. This section shall not be applicable to driveaway-towaway operations unless the brakes on such operations are designed to be operated by a single valve.

§ 393.50 Reservoirs required.

(a) *General.* Every commercial motor vehicle using air or vacuum for breaking 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, truck, and truck tractor, 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 FR 19735, Dec. 25, 1968, as amended at 53 FR 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, truck, or truck tractor 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 or a vehicle towing a vehicle 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 FR 5251, Mar. 11, 1972, as amended at 53 FR 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 of 20 m.p.h.	Application and braking distance in feet from initial speed of 20 m.p.h.
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

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 of 20 m.p.h.	Application and braking distance in feet from initial speed of 20 m.p.h.
(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 3,000 pounds or less. All combinations of 2 or less vehicles in driveaway or towaway operation	43.4	14	35	85
(3) All other property-carrying vehicles and combinations of property-carrying vehicles	43.5	14	40	90

NOTE: (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 FR 20298, Oct. 20, 1971, as amended at 37 FR 5251, Mar. 11, 1972; 37 FR 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 FR 46245, Sept. 6, 1995]

Subpart D—Glazing and Window Construction

§ 393.60 Glazing in specified openings.

(a) *Kind of glass.* (1) Glazing utilized or installed in the windshield, window, door, or any other opening into a bus, truck, or truck tractor, except vehicles engaged in armored car service, shall conform to the requirements contained in the ''American Standard Safety Code for Safety Glazing Materials for Motor Vehicles Operating on Land Highways,'' with the effective dates shown in paragraph (a)(2) of this section.

(2) Table of Glazing Requirements and Effective Dates:

Vehicles manufactured	Must comply with		
	Z 26.1–1950	Z 26.1–1950 as supplemented by Z 26.1a–1964	Z 26.1–1966 as supplemented by Z 26.1a–1969
Before January 1, 1966	x		
From January 1, 1966 to December 31, 1980		x	
On and after January 1, 1981			x

(b) *Windshield condition.* Every motor vehicle windshield shall be free of discoloration or other damage in that portion thereof extending upward from the height of the topmost portion of the steering wheel, but not including a 2 inch border at the top and a 1 inch border at each side of the windshield or each panel thereof, except that discoloration and damage as follows are allowable:

(1) Coloring or tinting applied in manufacture, for reduction of glare;

(2) Any crack not over ¼-inch wide, if not intersected by any other crack;

(3) Any damaged area which can be covered by a disc ¾-inch in diameter, if not closer than 3 inches to any other such damaged area.

(c) *Use of vision-reducing matter.* No motor vehicle may be operated with any label, sticker, decalcomania, or other vision-reducing matter covering any portion of its windshield or windows at either side of the driver's compartment, except that stickers required by law may be affixed at the bottom of the windshield, provided no portion of any label, sticker, decalcomania, or other vision-reducing matter may extend upward more than 4½ inches from the bottom of such windshield.

[33 FR 19735, Dec. 25, 1968, as amended at 41 FR 53031, Dec. 3, 1976; 44 FR 25457, May 1, 1979; 44 FR 31982, June 4, 1979]

§ 393.61 Window construction.

(a) *Windows in trucks and truck tractors.* Every truck and truck tractor, except vehicles engaged in armored car service, shall have, in addition to the area provided by the windshield, at least one window on each side of the driver's compartment, which window shall have sufficient area to contain either 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 17¾ inches with corner arcs of 6-inch maximum radius. The major axis of the ellipse and the long axis of the rectangle shall not make an angle of more than 45 degrees with the surface on which the unladen vehicle stands; however, if the cab is designed with a folding door or doors or with clear openings where doors or windows are customarily located, then no windows shall be required in such locations.

(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 17¾ 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 FR 19735, Dec. 25, 1968, as amended at 37 FR 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 FR 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 FR 15445, Aug. 14, 1971, as amended at 37 FR 4341, Mar. 2, 1972; 37 FR 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) A *side-mounted* fuel tank is a liquid fuel tank which—

(i) If mounted on a truck tractor, extends outboard of the vehicle frame and outside of the plan view outline of the cab; or

(ii) If mounted on a truck, extends outboard of a line parallel to the longitudinal centerline of the truck and tangent to the outboard side of a front tire in a straight ahead position. In determining whether a fuel tank on a truck or truck tractor is side-mounted, the

fill pipe is not considered a part of the tank.

(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 (nontapered) 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]

(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.

[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.

(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 FR 15445, Aug. 14, 1971, as amended at 37 FR 4341, Mar. 2, 1972; 37 FR 28753, Dec. 29, 1972; 45 FR 46424, July 10, 1980; 53 FR 49400, Dec. 7, 1988; 59 FR 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 FR 15445, Aug. 14, 1971, as amended at 37 FR 4342, Mar. 2, 1972; 41 FR 53031, Dec. 3, 1976; 53 FR 49400, Dec. 7, 1988]

Subpart F—Coupling Devices and Towing Methods

§ 393.70 Coupling devices and towing methods, except for driveaway-towaway operations.

(a) *Tracking.* When two or more vehicles are operated in combination, the coupling devices connecting the vehicles shall be designed, constructed, and installed, and the vehicles shall be designed and constructed, so that when the combination is operated in a straight line on a level, smooth, paved surface, the path of the towed vehicle will not deviate more than 3 inches to either side of the path of the vehicle that tows it.

(b) *Fifth wheel assemblies*—(1) *Mounting*—(i) *Lower half.* The lower half of a fifth wheel mounted on a truck tractor or converter dolly must be secured to the frame of that vehicle with properly designed brackets, mounting plates or angles and properly tightened bolts of adequate size and grade, or devices that provide equivalent security. The installation shall not cause cracking, warping, or deformation of the frame. The installation must include a device for positively preventing the lower half of the fifth wheel from shifting on the frame to which it is attached.

(ii) *Upper half.* The upper half of a fifth wheel must be fastened to the motor vehicle with at least the same security required for the installation of the lower half on a truck tractor or converter dolly.

(2) *Locking.* Every fifth wheel assembly must have a locking mechanism. The locking mechanism, and any adapter used in conjunction with it, must prevent separation of the upper and lower halves of the fifth wheel assembly unless a positive manual release is activated. The release may be located so that the driver can operate it from the cab. If a motor vehicle has a fifth wheel designed and constructed to be readily separable, the fifth wheel locking devices shall apply automatically on coupling.

(3) *Location.* The lower half of a fifth wheel shall be located so that, regardless of the condition of loading, the relationship between the kingpin and the rear axle or axles of the towing motor vehicle will properly distribute the gross weight of both the towed and towing vehicles on the axles of those vehicles, will not unduly interfere with the steering, braking, and other maneuvering of the towing vehicle, and will not otherwise contribute to unsafe operation of the vehicles comprising the combination. The upper half of a fifth wheel shall be located so that the weight of the vehicles is properly distributed on their axles and the combination of vehicles will operate safely during normal operation.

(c) *Towing of full trailers.* A full trailer must be equipped with a tow-bar and a means of attaching the tow-bar to the towing and towed vehicles. The tow-bar and the means of attaching it must—

(1) Be structurally adequate for the weight being drawn;

(2) Be properly and securely mounted;

(3) Provide for adequate articulation at the connection without excessive slack at that location; and

(4) Be provided with a locking device that prevents accidental separation of the towed and towing vehicles. The mounting of the trailer hitch (pintle hook or equivalent mechanism) on the towing vehicle must include reinforcement or bracing of the frame sufficient

to produce strength and rigidity of the frame to prevent its undue distortion.

(d) *Safety devices in case of tow-bar failure or disconnection.* Every full trailer and every converter dolly used to convert a semitrailer to a full trailer must be coupled to the frame, or an extension of the frame, of the motor vehicle which tows it with one or more safety devices to prevent the towed vehicle from breaking loose in the event the tow-bar fails or becomes disconnected. The safety device must meet the following requirements:

(1) The safety device must not be attached to the pintle hook or any other device on the towing vehicle to which the tow-bar is attached. However, if the pintle hook or other device was manufactured prior to July 1, 1973, the safety device may be attached to the towing vehicle at a place on a pintle hook forging or casting if that place is independent of the pintle hook.

(2) The safety device must have no more slack than is necessary to permit the vehicles to be turned properly.

(3) The safety device, and the means of attaching it to the vehicles, must have an ultimate strength of not less than the gross weight of the vehicle or vehicles being towed.

(4) The safety device must be connected to the towed and towing vehicles and to the tow-bar in a manner which prevents the tow-bar from dropping to the ground in the event it fails or becomes disconnected.

(5) Except as provided in paragraph (d)(6) of this section, if the safety device consists of safety chains or cables, the towed vehicle must be equipped with either two safety chains or cables or with a bridle arrangement of a single chain or cable attached to its frame or axle at two points as far apart as the configuration of the frame or axle permits. The safety chains or cables shall be either two separate pieces, each equipped with a hook or other means for attachment to the towing vehicle, or a single piece leading along each side of the tow-bar from the two points of attachment on the towed vehicle and arranged into a bridle with a single means of attachment to be connected to the towing vehicle. When a single length of cable is used, a thimble and twin-base cable clamps shall be used to form the forward bridle eye. The hook or other means of attachment to the towing vehicle shall be secured to the chains or cables in a fixed position.

(6) If the towed vehicle is a converter dolly with a solid tongue and without a hinged tow-bar or other swivel between the fifth wheel mounting and the attachment point of the tongue eye or other hitch device—

(i) Safety chains or cables, when used as the safety device for that vehicle, may consist of either two chains or cables or a single chain or cable used alone;

(ii) A single safety device, including a single chain or cable used alone as the safety device, must be in line with the centerline of the trailer tongue; and

(iii) The device may be attached to the converter dolly at any point to the rear of the attachment point of the tongue eye or other hitch device.

(7) Safety devices other than safety chains or cables must provide strength, security of attachment, and directional stability equal to, or greater than, safety chains or cables installed in accordance with paragraphs (d) (5) and (6) of this section.

(8) When two safety devices, including two safety chains or cables, are used and are attached to the towing vehicle at separate points, the points of attachment on the towing vehicle shall be located equally distant from, and on opposite sides of, the centerline of the towing vehicle. Where two chains or cables are attached to the same point on the towing vehicle, and where a bridle or a single chain or cable is used, the point of attachment must be on the longitudinal centerline of the towing vehicle. A single safety device, other than a chain or cable, must also be attached to the towing vehicle at a point on its longitudinal centerline.

[37 FR 21439, Oct. 11, 1972]

§ 393.71 Coupling devices and towing methods, driveaway-towaway operations.

(a) *Number in combination.* (1) No more than three saddle-mounts may be used in any combination.

(2) No more than one tow-bar may be used in any combination.

(3) When motor vehicles are towed by means of triple saddle-mounts, the towed vehicles shall have brakes acting on all wheels which are in contact with the roadway.

(b) *Carrying vehicles on towing vehicle.* (1) When adequately and securely attached by means equivalent in security to that provided in paragraph (j)(2) of this section, a motor vehicle or motor vehicles may be full-mounted on the structure of a towing vehicle engaged in any driveaway-towaway operation.

(2) No motor vehicle or motor vehicles may be full-mounted on a towing vehicle unless the relationship of such full-mounted vehicles to the rear axle or axles results in proper distribution of the total gross weight of the vehicles and does not unduly interfere with the steering, braking, or maneuvering of the towing vehicle, or otherwise contribute to the unsafe operation of the vehicles comprising the combination.

(c) *Carrying vehicles on towed vehicles.* (1) When adequately and securely attached by means equivalent in security to that provided in paragraph (j)(2) of this section, a motor vehicle or motor vehicles may be full-mounted on the structure of towed vehicles engaged in any driveaway-towaway operation.

(2) No motor vehicle shall be full-mounted on a motor vehicle towed by means of a tow-bar unless the towed vehicle is equipped with brakes and is provided with means for effective application of brakes acting on all wheels and is towed on its own wheels.

(3) No motor vehicle or motor vehicles shall be full-mounted on a motor vehicle towed by means of a saddle-mount unless the center line of the kingpin or equivalent means of attachment of such towed vehicle shall be so located on the towing vehicle that the relationship to the rear axle or axles results in proper distribution of the total gross weight of the vehicles and does not unduly interfere with the steering, braking, or maneuvering of the towing vehicle or otherwise contribute to the unsafe operation of vehicles comprising the combination; and unless a perpendicular to the ground from the center of gravity of the full-mounted vehicles lies forward of the center line of the rear axle of the saddle-mounted vehicle.

(4) If a motor vehicle towed by means of a double saddle-mount has any vehicle full-mounted on it, such saddle-mounted vehicle shall at all times while so loaded have effective brakes acting on those wheels which are in contact with the roadway.

(d) *Bumper tow-bars on heavy vehicles prohibited.* Tow-bars of the type which depend upon the bumpers as a means of transmitting forces between the vehicles shall not be used to tow a motor vehicle weighing more than 5,000 pounds.

(e) *Front wheels of saddle-mounted vehicles restrained.* A motor vehicle towed by means of a saddle-mount shall have the motion of the front wheels restrained if under any condition of turning of such wheels they will project beyond the widest part of either the towed or towing vehicle.

(f) *Vehicles to be towed in forward position.* Unless the steering mechanism is adequately locked in a straight-forward position, all motor vehicles towed by means of a saddle-mount shall be towed with the front end mounted on the towing vehicle.

(g) *Means required for towing.* (1) No motor vehicle or motor vehicles shall be towed in driveaway-towaway operations by means other than tow-bar or saddle-mount connections which shall meet the requirements of this section.

(2) For the purpose of the regulations of this part:

(i) Coupling devices such as those used for towing house trailers and employing ball and socket connections shall be considered as tow-bars.

(ii) Motor vehicles or parts of motor vehicles adequately, securely, and rigidly attached by devices meeting the requirements of paragraph (n) of this section shall be considered as one vehicle in any position in any combination.

(h) *Requirements for tow-bars.* Tow-bars shall comply with the following requirements:

(1) *Tow-bars, structural adequacy and mounting.* Every tow-bar shall be structurally adequate and properly installed and maintained. To insure that it is structurally adequate, it must, at least, meet the requirements of the following table:

Gross weight of towed vehicle (pounds)[1]	Longitudinal strength in tension and compression[2]		
	All tow-bars	New tow-bars acquired and used by a motor carrier after Sept. 30, 1948	Strength as a beam (in any direction concentrated load at center)[2, 3]
	Pounds		
Less than 5,000	3,000	6,500	3,000
5,000 and over	.....	.....	.....
Less than 10,000	6,000	(1)	(1)
10,000 and over	.....	.....	.....
Less than 15,000	9,000	(1)	(1)

[1] The required strength of tow-bars for towed vehicles of 15,000 pounds and over gross weight and of new tow-bars acquired and used after Sept. 30, 1948, for towed vehicles of 5,000 pounds and over gross weight shall be computed by means of the following formulae: Longitudinal strength=gross weight of towed vehicle x 1.3. Strength as a beam=gross weight of towed vehicle x 0.6.

[2] In testing, the whole unit shall be tested with all clamps, joints, and pins so mounted and fastened as to approximate conditions of actual operation.

[3] This test shall be applicable only to tow-bars which are, in normal operation, subjected to a bending movement such as tow-bars for house trailers.

(2) *Tow-bars, jointed.* The tow-bar shall be so constructed as to freely permit motion in both horizontal and vertical planes between the towed and towing vehicles. The means used to provide the motion shall be such as to prohibit the transmission of stresses under normal operation between the towed and towing vehicles, except along the longitudinal axis of the tongue or tongues.

(3) *Tow-bar fastenings.* The means used to transmit the stresses to the chassis or frames of the towed and towing vehicles may be either temporary structures or bumpers or other integral parts of the vehicles: *Provided, however,* That the means used shall be so constructed, installed, and maintained that when tested as an assembly, failure in such members shall not occur when the weakest new tow-bar which is permissible under paragraph (h)(1) of this section is subjected to the tests given therein.

(4) *Means of adjusting length.* On tow-bars, adjustable as to length, the means used to make such adjustment shall fit tightly and not result in any slackness or permit the tow-bar to bend. With the tow-bar supported rigidly at both ends and with a load of 50 pounds at the center, the sag, measured at the center, in any direction shall not exceed 0.25 inch under any condition of adjustment as to length.

(5) *Method of clamping.* Adequate means shall be provided for securely fastening the tow-bar to the towed and towing vehicles.

(6) *Tow-bar connection to steering mechanism.* The tow-bar shall be provided with suitable means of attachment to and actuation of the steering mechanism, if any, of the towed vehicle. The attachment shall provide for sufficient angularity of movement of the front wheels of the towed vehicle so that it may follow substantially in the path of the towing vehicle without cramping the tow-bar. The tow-bar shall be provided with suitable joints to permit such movement.

(7) *Tracking.* The tow-bar shall be so designed, constructed, maintained, and mounted as to cause the towed vehicle to follow substantially in the path of the towing vehicle. Tow-bars of such design on in our condition as to permit the towed vehicle to deviate more than 3 inches to either side of the path of a towing vehicle moving in a straight line as measured from the center of the towing vehicle are prohibited.

(8) *Passenger car-trailer type couplings.* Trailer couplings used for driveaway-towaway operations of passenger car trailers shall conform to Society of Automotive Engineers Standard No. J684c, ''Trailer Couplings and Hitches—Automotive Type,'' July 1970.[1]

(9) *Marking tow-bars.* Every tow-bar acquired and used in driveaway-towaway operations by a motor carrier shall be plainly marked with the following certification of the manufacturer thereof (or words of equivalent meaning):

This tow-bar complies with the requirements of the Federal Highway Administration for (maximum gross weight for which tow-bar is manufactured) vehicles.
Allowable Maximum Gross Weight _____
Manufactured _____
(month and year)
by _____
(name of manufacturer)

Tow-bar certification manufactured before the effective date of this regulation must meet requirements in effect at the time of manufacture.

[1] See footnote 1 to § 393.24(c).

(10) *Safety devices in case of tow-bar failure or disconnection.* (i) The towed vehicle shall be connected to the towing vehicle by a safety device to prevent the towed vehicle from breaking loose in the event the tow-bar fails or becomes disconnected. When safety chains or cables are used as the safety device for that vehicle, at least two safety chains or cables meeting the requirements of paragraph (h)(10)(ii) of this section shall be used. The tensile strength of the safety device and the means of attachment to the vehicles shall be at least equivalent to the corresponding longitudinal strength for tow-bars required in the table of paragraph (h)(1) of this section. If safety chains or cables are used as the safety device, the required strength shall be the combined strength of the combination of chains and cables.

(ii) If chains or cables are used as the safety device, they shall be crossed and attached to the vehicles near the points of bumper attachments to the chassis of the vehicles. The length of chain used shall be no more than necessary to permit free turning of the vehicles. The chains shall be attached to the tow-bar at the point of crossing or as close to that point as is practicable.

(iii) A safety device other than safety chains or cables must provide strength, security of attachment, and directional stability equal to, or greater than, that provided by safety chains or cables installed in accordance with paragraph (h)(10)(ii) of this section. A safety device other than safety chains or cables must be designed, constructed, and installed so that, if the tow-bar fails or becomes disconnected, the tow-bar will not drop to the ground.

(i) [Reserved]

(j) *Requirements for upper-half of saddle-mounts.* The upper-half of any saddle-mount shall comply with the following requirements:

(1) *Upper-half connection to towed vehicle.* The upper-half shall be securely attached to the frame or axle of the towed vehicle by means of U-bolts or other means providing at least equivalent security.

(2) U-*bolts or other attachments.* U-bolts used to attach the upper half to the towed vehicle shall be made of steel rod, free of defects, so shaped as to avoid at any point a radius of less than 1 inch: *Provided, however,* That a lesser radius may be utilized if the U-bolt is so fabricated as not to cause more than 5 percent reduction in cross-sectional area at points of curvature, in which latter event the minimum radius shall be one-sixteenth inch. U-bolts shall have a diameter not less than required by the following table:

DIAMETER OF U-BOLTS IN INCHES

Weight in pounds of heaviest towed vehicle	Double or triple saddle-mount			
	Front mount	Middle or front mount	Rear mount	Single saddle-mount[1]
Up to 5,000	0.625	0.5625	0.500	0.500
5,000 and over	0.6875	0.625	0.5625	0.5625

[1] The total weight of all the vehicles being towed shall govern. If other devices are used to accomplish the same purposes as U-bolts they shall have at least equivalent strength of U-bolts made of mild steel. Cast iron shall not be used for clamps or any other holding devices.

(3) U-*bolts and points of support, location.* The distance between the most widely separated U-bolts shall not be less than 9 inches. The distance between the widely separated points where the upper-half supports the towed vehicle shall not be less than 9 inches, except that saddle-mounts employing ball and socket joints shall employ a device which clamps the axle of the towed vehicle throughout a length of not less than 5 inches.

(4) *Cradle-type upper-halves, specifications.* Upper-halves of the cradle-type using vertical members to restrain the towed vehicle from relative movement in the direction of motion of the vehicles shall be substantially constructed and adequate for the purpose. Such cradle-mounts shall be equipped with at least one bolt or equivalent means to provide against relative vertical movement between the upper-half and the towed vehicle. Bolts, if used, shall be at least one-half inch in diameter. Devices using equivalent means shall have at least equivalent strength. The means used to provide against relative vertical motion between the upper-half and the towed vehicle shall be such as not to permit a relative motion of over one-half inch. The distance between the most widely separated points of support between the upper-half and the towed vehicle shall be at least 9 inches.

(5) *Lateral movement of towed vehicle.* (i) Towed vehicles having a straight axle or an axle having a drop of less than 3 inches, unless the saddle-mount is constructed in accordance with paragraph (m)(2) of this section, shall be securely fastened by means of chains or cables to the upper-half so as to insure against relative lateral motion between the towed vehicle and the upper-half. The chains or cables shall be at least 3/16-inch diameter and secured by bolts of at least equal diameter.

(ii) Towed vehicles with an axle with a drop of 3 inches or more, or connected by a saddle-mount constructed in accordance with paragraph (m)(2) of this section, need not be restrained by chains or cables provided that the upper-half is so designed as to provide against such relative motion.

(iii) Chains or cables shall not be required if the upper-half is so designed as positively to provide against lateral movement of the axle.

(k) *Requirements for lower half of saddle-mounts.* The lower half of any saddle-mount shall comply with the following requirements:

(1) U-*bolts or other attachments.* U-bolts used to attach the lower half to the towing vehicle shall be made of steel rod, free of defects, so shaped as to avoid at any point a radius of less than 1 inch: *Provided, however,* That a lesser radius may be utilized if the U-bolt is so fabricated as not to cause more than 5 percent reduction in cross-sectional area at points of curvature, in which latter event the minimum radius shall be one-sixteenth inch. U-bolts shall have a total cross-sectional area not less than as required by the following table:

TOTAL CROSS-SECTIONAL AREA OF U-BOLTS IN SQUARE INCHES

Weight in pounds of heaviest towed vehicle	Double or triple saddle-mount			
	Front mount	Middle or front mount	Rear mount	Single saddle-mount[1]
Up to 5,000	1.2	1.0	0.8	0.8
5,000 and over	1.4	1.2	1.0	1.0

[1] The total weight of all the vehicles being towed shall govern. If other devices are used to accomplish the same purposes as U-bolts they shall have at least equivalent strength of U-bolts made of mild steel. Cast iron shall not be used for clamps or any other holding devices.

(2) *Shifting.* Adequate provision shall be made by design and installation to provide against relative movement between the lower-half and the towing vehicle especially during periods of rapid acceleration and deceleration. To insure against shifting, designs of the tripod type shall be equipped with adequate and securely fastened hold-back chains or similar devices.

(3) *Swaying.* (i) Adequate provision shall be made by design and installation to provide against swaying or lateral movement of the towed vehicle relative to the towing vehicle. To insure against swaying, lower-halves designed with cross-members attached to but separable from vertical members shall have such cross-members fastened to the vertical members by at least two bolts on each side. Such bolts shall be of at least equivalent cross-sectional area as those required for U-bolts for the corresponding saddle-mount as given in the table in paragraph (k)(1) of this section. The minimum distance between the most widely separated points of support of the cross-member by the vertical member shall be three inches as measured in a direction parallel to the longitudinal axis of the towing vehicle.

(ii) The lower-half shall have a bearing surface on the frame of the towing vehicle of such dimensions that the pressure exerted by the lower-half upon the frame of the towing vehicle shall not exceed 200 pounds per square inch under any conditions of static loading. Hardwood blocks or blocks of other suitable material, such as hard rubber, aluminum or brakelining, if used between the lower half and the frame of the towing vehicle shall be at least ½ inch thick, 3 inches wide, and a combined length of 6 inches.

(iii) Under no condition shall the highest point of support of the towed vehicle by the upper-half be more than 24 inches, measured vertically, above the top of the frame of the towing vehicle, measured at the point where the lower-half rests on the towing vehicle.

(4) *Wood blocks.* (i) Hardwood blocks of good quality may be used to build up the height of the front end of the towed vehicle, provided that the total height of such wood blocks shall not exceed 8 inches and not over two separate pieces are placed upon each other to obtain such height; however, hardwood blocks,

not over 4 in number, to a total height not to exceed 14 inches, may be used if the total cross-sectional area of the U-bolts used to attach the lower-half of the towing vehicle is at least 50 percent greater than that required by the table contained in paragraph (k)(1) of this section, or, if other devices are used in lieu of U-bolts, they shall provide for as great a resistance to bending as is provided by the larger U-bolts above prescribed.

(ii) Hardwood blocks must be at least 4 inches in width and the surfaces between blocks or block and lower-half or block and upper-half shall be planed and so installed and maintained as to minimize any tendency of the towed vehicle to sway or rock.

(5) *Cross-member, general requirements.* The cross-member, which is that part of the lower-half used to distribute the weight of the towed vehicle equally to each member of the frame of the towing vehicle, if used, shall be structurally adequate and properly installed and maintained adequately to perform this function.

(6) *Cross-member, use of wood.* No materials, other than suitable metals, shall be used as the cross-member, and wood may not be used structurally in any manner that will result in its being subject to tensile stresses. Wood may be used in cross-members if supported throughout its length by suitable metal cross-members.

(7) *Lower half strength.* The lower half shall be capable of supporting the loads given in the following table. For the purpose of test, the saddle-mount shall be mounted as normally operated and the load applied through the upper half:

MINIMUM TEST LOAD IN POUNDS

Weight in pounds of heaviest towed vehicle	Double or triple saddle-mount			
	Front mount	Middle or front mount	Rear mount	Single saddle-mount[1]
Up to 5,000	15,000	10,000	5,000	5,000
5,000 and over	30,000	20,000	10,000	10,000

[1] The total weight of all the vehicles being towed shall govern.

(l) *Requirements for kingpins of saddle-mounts.* The kingpin of any saddle-mount shall comply with the following requirements:

(1) *Kingpin size.* (i) Kingpins shall be constructed of steel suitable for the purpose, free of defects, and having a diameter not less than required by the following table:

DIAMETER OF SOLID KINGPIN IN INCHES

Weight in pounds of heaviest towed vehicle	Double or triple saddle-mount							
	Front mount		Middle or front mount		Rear mount		Single saddle-mount[1]	
	Mild steel	H.T.S.[2]	Mild steel	H.T.S.[2]	Mild steel	H.T.S.[2]	Mild steel	H.T.S.
Up to 5,000	1.125	1.000	1.000	0.875	0.875	0.750	0.875	0.750
5,000 and over	1.500	1.125	1.250	1.000	1.000	0.875	1.000	0.875

[1] The total weight of all the vehicles being towed shall govern.
[2] High-tensile steel is steel having a minimum ultimate strength of 65,000 pounds per square inch.

(ii) If a ball and socket joint is used in place of a kingpin, the diameter of the neck of the ball shall be at least equal to the diameter of the corresponding solid kingpin given in the above table. If hollow kingpins are used, the metallic cross-sectional area shall be at least equal to the cross-sectional area of the corresponding solid kingpin.

(2) *Kingpin fit.* If a kingpin bushing is not used, the king-pin shall fit snugly into the upper and lower-halves but shall not bind. Those portions of the upper or lower-halves in moving contact with the kingpin shall be smoothly machined with no rough or sharp edges. The bearing surface thus provided shall not be less in depth than the radius of the kingpin.

(3) *Kingpin bushing on saddle-mounts.* The kingpin of all new saddle-mounts acquired and used shall be snugly enclosed in a bushing at least along such length of the kingpin as may be in moving contact with either the upper or lower-halves. The bearing surface

thus provided shall not be less in depth than the radius of the kingpin.

(4) *Kingpin to restrain vertical motion.* The kingpin shall be so designed and installed as to restrain the upper-half from moving in a vertical direction relative to the lower-half.

(m) *Additional requirements for saddle-mounts.* Saddle-mounts shall comply with the following requirements:

(1) *Bearing surface between upper and lower-halves.* The upper and lower-halves shall be so constructed and connected that the bearing surface between the two halves shall not be less than 16 square inches under any conditions of angularity between the towing and towed vehicles: *Provided, however,* That saddle-mounts using a ball and socket joint shall have a ball of such dimension that the static bearing load shall not exceed 800 pounds per square inch, based on the projected cross-sectional area of the ball: *And further provided,* That saddle-mounts having the upper-half supported by ball, taper, or roller-bearings shall not have such bearings loaded beyond the limits prescribed for such bearings by the manufacturer thereof. The upper-half shall rest evenly and smoothly upon the lower-half and the contact surfaces shall be lubricated and maintained so that there shall be a minimum of frictional resistance between the parts.

(2) *Saddle-mounts, angularity.* All saddle-mounts acquired and used shall provide for angularity between the towing and towed vehicles due to vertical curvatures of the highway. Such means shall not depend upon either the looseness or deformation of the parts of either the saddle-mount or the vehicles to provide for such angularity.

(3) *Tracking.* The saddle-mount shall be so designed, constructed, maintained, and installed that the towed vehicle or vehicles will follow substantially in the path of the towing vehicle without swerving. Towed vehicles shall not deviate more than 3 inches to either side of the path of the towing vehicle when moving in a straight line.

(4) *Prevention of frame bending.* Where necessary, provision shall be made to prevent the bending of the frame of the towing vehicle by insertion of suitable blocks inside the frame channel to prevent kinking. The saddle-mount shall not be so located as to cause deformation of the frame by reason of cantilever action.

(5) *Extension of frame.* No saddle-mount shall be located at a point to the rear of the frame of a towing vehicle.

(6) *Nuts, secured.* All nuts used on bolts, U-bolts, king-pins, or in any other part of the saddle-mount shall be secured against accidental disconnection by means of cotter-keys, lock-washers, double nuts, safety nuts, or equivalent means. Parts shall be so designed and installed that nuts shall be fully engaged.

(7) *Inspection of all parts.* The saddle-mount shall be so designed that it may be disassembled and each separate part inspected for worn, bent, cracked, broken, or missing parts.

(8) *Saddle-mounts, marking.* Every new saddle-mount acquired and used in driveaway-towaway operations by a motor carrier shall have the upper-half and the lower-half separately marked with the following certification of the manufacturer thereof (or words of equivalent meaning).

This saddle-mount complies with the requirements of the Federal Highway Administration for vehicles up to 5,000 pounds (or over 5,000 pounds):

Manufactured _____
(Month and year)

by _____
(Name of manufacturer)

(n) *Requirements for devices used to connect motor vehicles or parts of motor vehicles together to form one vehicle*—(1) *Front axle attachment.* The front axle of one motor vehicle intended to be coupled with another vehicle as defined in paragraph (g)(2)(ii) of this section shall be attached with U-bolts meeting the requirements of paragraph (j)(2) of this section.

(2) *Rear axle attachment.* The rear axle of one vehicle shall be coupled to the frame of the other vehicle by means of a connecting device which when in place forms a rectangle. The device shall be composed of two pieces, top and bottom. The device shall be made of 4-inch by ½-inch steel bar bent to shape and shall have the corners reinforced with a plate at least 3 inches by ½ inch by 8 inches long. The device shall be bolted together with ¾-inch

bolts and at least three shall be used on each side. Wood may be used as spacers to keep the frames apart and it shall be at least 4 inches square.

(Sec. 12, 80 Stat. 931; 49 U.S.C. 1651 note; section 6 of the Department of Transportation Act, 49 U.S.C. 1655, and the delegations of authority at 49 CFR 1.48 and 389.4)

[33 FR 19735, Dec. 25, 1968, as amended at 35 FR 10907, July 7, 1970; 37 FR 21440, Oct. 11, 1972; 53 FR 49400, Dec. 7, 1988]

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 regrooved, recapped or retreaded tires on the front wheels.

(e) No truck or truck tractor shall be operated with regrooved 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 load rating[1]. (1) General rule: No motor vehicle shall be operated with tires that carry a greater weight than that specified for the tires in any of the publications of the standardizing bodies listed in FMVSS 571.119 (49 CFR 571.119) and marked on the sidewall of the tire unless:

(i) The vehicle is being operated under the terms of a special permit issued by the State, and

(ii) The vehicle is being operated at a reduced speed that is appropriate to compensate for tire loading in excess of the manufacturer's normal rated capacity.

(2) Tire pressure. No motor vehicle shall be operated on a tire which has a cold inflation pressure less than that specified for the load being carried.

(3) 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 I from the measured inflation pressure.

TABLE I—INFLATION PRESSURE MEASUREMENT CORRECTION FOR HEAT

Average speed of tire in previous hour	Minimum inflation pressure buildup	
	Tires with 4,000 lb (1,814 kg) maximum load rating or less	Tires with over 4,000 lb (1,814 kg) load rating
41 to 55 mi/h 66 to 88.5 km/h).	5 lb/in^2 (0.36 bar)	15 lb/in^2 (1.07 bars).

(Sec. 204, 49 Stat. 546 as amended (49 U.S.C. 304); sec. 6, Pub. L. 89–670, 80 Stat. 937 (49 U.S.C. 1655); 49 CFR 1.48 and 49 CFR 301.60)

[34 FR 9344, June 13, 1969, as amended at 40 FR 44557, Sept. 29, 1975; 41 FR 36657, Aug. 31, 1976; 44 FR 25455, May 1, 1979; 44 FR 47938, Aug. 16, 1979; 53 FR 18057, May 19, 1988; 53 FR 49401, Dec. 7, 1988]

§ 393.76 Sleeper berths.

(a) *Dimensions*—(1) *Size.* A sleeper berth must be at least the following size:

Date of installation on motor vehicle	Length measured on centerline of longitudinal axis (inches)	Width measured on centerline of transverse axis (inches)	Height measured from highest point of top of mattress (inches)[1]
Before January 1, 1953	72	18	18
After December 31, 1952, and before October 1, 1975 ...	75	21	21

[1] The load and cold inflation pressure imposed on the rim and wheel must not exceed the rim and wheel manufacturer's recommendations even though the tire may be approved for a higher load or inflation. Rims and wheels may be identified (stamped) with a maximum load and maximum cold inflation rating.

Date of installation on motor vehicle	Length measured on centerline of longitudinal axis (inches)	Width measured on centerline of transverse axis (inches)	Height measured from highest point of top of mattress (inches)[1]
After September 30, 1975	75	24	24

[1] In the case of a sleeper berth which utilizes an adjustable mechanical suspension system, the required clearance can be measured when the suspension system is adjusted to the height to which it would settle when occupied by a driver.

(2) *Shape.* A sleeper berth installed on a motor vehicle on or after January 1, 1953 must be of generally rectangular shape, except that the horizontal corners and the roof corners may be rounded to radii not exceeding 10½ inches.

(3) *Access.* A sleeper berth must be constructed so that an occupant's ready entrance to, and exit from, the sleeper berth is not unduly hindered.

(b) *Location.* (1) A sleeper berth must not be installed in or on a semitrailer or a full trailer other than a house trailer.

(2) A sleeper berth located within the cargo space of a motor vehicle must be securely compartmentalized from the remainder of the cargo space. A sleeper berth installed on or after January 1, 1953 must be located in the cab or immediately adjacent to the cab and must be securely fixed with relation to the cab.

(c) *Exit from the berth.* (1) Except as provided in paragraph (c)(2) of this section, there must be a direct and ready means of exit from a sleeper berth into the driver's seat or compartment. If the sleeper berth was installed on or after January 1, 1963, the exit must be a doorway or opening at least 18 inches high and 36 inches wide. If the sleeper berth was installed before January 1, 1963, the exit must have sufficient area to contain an ellipse having a major axis of 24 inches and a minor axis of 16 inches.

(2) A sleeper berth installed before January 1, 1953 must either:

(i) Conform to the requirements of paragraph (c)(1) of this section; or

(ii) Have at least two exits, each of which is at least 18 inches high and 21 inches wide, located at opposite ends of the vehicle and useable by the occupant without the assistance of any other person.

(d) *Communication with the driver.* A sleeper berth which is not located within the driver's compartment and has no direct entrance into the driver's compartment must be equipped with a means of communication between the occupant and the driver. The means of communication may consist of a telephone, speaker tube, buzzer, pull cord, or other mechanical or electrical device.

(e) *Equipment.* A sleeper berth must be properly equipped for sleeping. Its equipment must include:

(1) Adequate bedclothing and blankets; and

(2) Either:

(i) Springs and a mattress; or

(ii) An innerspring mattress; or

(iii) A cellular rubber or flexible foam mattress at least four inches thick; or

(iv) A mattress filled with a fluid and of sufficient thickness when filled to prevent ''bottoming-out'' when occupied while the vehicle is in motion.

(f) *Ventilation.* A sleeper berth must have louvers or other means of providing adequate ventilation. A sleeper berth must be reasonably tight against dust and rain.

(g) *Protection against exhaust and fuel leaks and exhaust heat.* A sleeper berth must be located so that leaks in the vehicle's exhaust system or fuel system do not permit fuel, fuel system gases, or exhaust gases to enter the sleeper berth. A sleeper berth must be located so that it will not be overheated or damaged by reason of its proximity to the vehicle's exhaust system.

(h) *Occupant restraint.* A motor vehicle manufactured on or after July 1, 1971, and equipped with a sleeper berth must be equipped with a means of preventing ejection of the occupant of the sleeper berth during deceleration of the vehicle. The restraint system must be designed, installed, and maintained to withstand a minimum total force of 6,000 pounds applied toward the front of the vehicle and parallel to the longitudinal axis of the vehicle.

[39 FR 14711, Apr. 26, 1974; 39 FR 17233, May 14, 1974, as amended at 53 FR 49401, Dec. 7, 1988]

§ 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 fuses 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 nonspill 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 ''telltale'' 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 FR 19735, Dec. 25, 1968, as amended at 40 FR 51198, Nov. 4, 1975; 53 FR 49401, Dec. 7, 1988]

§393.78 Windshield wipers.

(a) Every bus, truck, and truck tractor, 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 driveaway-towaway 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 driveaway-towaway operation constitutes part or all of the property being transported and has no provision for two such blades.

(b) Every bus, truck, and truck tractor, 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, truck, and truck tractor 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: *Provided, however,* That this section shall not apply in driveaway-towaway operations when the driven vehicle is a part of the shipment being delivered.

§393.80 Rear-vision mirrors.

(a) Every bus, truck, and truck tractor 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) In driveway-towaway operations, the driven vehicle shall have at least one mirror furnishing a clear view to the rear. (49 U.S.C. 3102; 49 CFR 1.48.)

[48 FR 57139, Dec. 28, 1983]

§ 393.81 Horn.

Every bus, truck, truck-tractor, and every driven motor vehicle in driveaway-towaway operations 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, truck, and truck-tractor shall be equipped with a speedometer indicating vehicle speed in miles per hour, which shall be operative with reasonable accuracy; however, this requirement shall not apply to any driven vehicle which is part of a shipment being delivered in a driveaway-towaway operation if such driven vehicle is equipped with an effective means of limiting its maximum speed to 45 miles per hour, nor to any towed vehicle.

§ 393.83 Exhaust systems.

(a) Every motor vehicle having a device (other than as part of its cargo) 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) The exhaust system of every truck and truck tractor shall discharge to the atmosphere at a location to the rear of the cab or, if the exhaust projects above the cab, at a location near the rear of the cab.

(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 FR 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 FR 49401, Dec. 7, 1988]

§ 393.85 [Reserved]

§ 393.86 Rear end protection.

Every motor vehicle, except truck-tractors, pole trailers, and vehicles engaged in driveaway-towaway operations, the date of manufacture of which is subsequent to December 31, 1952, which is so constructed that the body or the chassis assembly if without a body has a clearance at the rear end of more than 30 inches from the ground when empty, shall be provided with

bumpers or devices serving similar purposes which shall be so constructed and located that:

(a) The clearance between the effective bottom of the bumpers or devices and the ground shall not exceed 30 inches with the vehicle empty;

(b) The maximum distance between the closest points between bumpers, or devices, if more than one is used, shall not exceed 24 inches;

(c) The maximum transverse distance from the widest part of the motor vehicle at the rear to the bumper or device shall not exceed 18 inches;

(d) The bumpers or devices shall be located not more than 24 inches forward of the extreme rear of the vehicle; and

(e) The bumpers or devices shall be substantially constructed and firmly attached. Motor vehicles constructed and maintained so that the body, chassis, or other parts of the vehicle afford the rear end protection contemplated shall be deemed to be in compliance with this section.

§ 393.87 Flags on projecting loads.

Any motor vehicle having a load or vehicle component which extends beyond the sides more than 4 inches or more than 4 feet beyond the rear shall have the extremities of the load marked with a red flag, not less than 12 inches square, at each point where a lamp is required by Table 1, § 393.11.

[53 FR 49401, Dec. 7, 1988]

§ 393.88 Television receivers.

Any motor vehicle equipped with a television viewer, screen or other means of visually receiving a television broadcast shall have the viewer or screen located in the motor vehicle at a point to the rear of the back of the driver's seat if such viewer or screen is in the same compartment as the driver and the viewer or screen shall be so located as not to be visible to the driver, while he/she is driving the motor vehicle. The operating controls for the television receiver shall be so located that the driver cannot operate them without leaving the driver's seat.

§ 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 FR 19735, Dec. 25, 1968, as amended at 53 FR 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 driveaway-towaway 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 FR 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[1] (§ 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. 210[1] (§ 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) *Trucks and truck tractors*—(1) *Trucks and truck tractors manufactured on and after January 1, 1965, and before July 1, 1971.* Except as provided in paragraph (d) of this section, after June 30, 1972, every truck and truck tractor 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 at the right front outboard seat, if the vehicle has one, and seat belt assembly anchorages that conform to the location and geometric requirements of Federal Motor Vehicle Safety Standard No. 210 (§ 571.210) for each seat belt assembly that is required by this subparagraph.

(2) *Trucks and truck tractors manufactured on or after July 1, 1971.* Every truck and truck tractor manufactured on or after July 1, 1971, except a truck or truck tractor being transported in driveaway-towaway operation and having an incomplete vehicle seating and cab configuration, 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) *Trucks and truck tractors manufactured on or after January 1, 1972.* Every truck and truck tractor manufactured on or after January 1, 1972, except a truck or truck tractor being transported in driveaway-towaway operation and having an incomplete vehicle seating and cab configuration, must conform to the requirements of Federal Motor Vehicle Safety Standard No. 207[1] (§ 571.207) (relating to seating systems).

(c) *Effective date of standards.* Whenever paragraph (a) or (b) of this section requires conformity to a Federal Motor Vehicle Safety Standard, the vehicle or equipment must conform to the version of the Standard that is in effect on the date the vehicle is manufactured or on the date the vehicle is modified to conform to the requirements of paragraph (a) or (b) of this section, whichever is later.

(d) Trucks and truck tractors manufactured on or after January 1, 1965, and before July 1, 1971, and operated in the State of Hawaii, must comply with

[1] Individual copies of Federal Motor Vehicle Safety Standards may be obtained from the National Highway Traffic Safety Administration. Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

[1] See footnote to § 393.93(a).

the provisions of paragraph (b) of this section on and after January 1, 1976.

[35 FR 16839, Oct. 30, 1970, as amended at 39 FR 32561, Sept. 9, 1974; 40 FR 32336, Aug. 1, 1975]

§ 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.

(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. However, 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 FR 30881, Nov. 8, 1973, as amended at 40 FR 32336, Aug. 1, 1975; 41 FR 28268, July 9, 1976]

Subpart H—Emergency Equipment

§ 393.95 Emergency equipment on all power units.

Except for a lightweight vehicle, every bus, truck, truck-tractor, and every driven vehicle in driveaway-towaway operation must be equipped as follows:

[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.

(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]

(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.

(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 driveaway-towaway 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. In driveaway-towaway operations, spares located on any one of the vehicles will be deemed adequate.

(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 fusees 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

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[1] Copies of the Classification can be obtained by writing to Underwriters' Laboratories, Inc., 205 East Ohio Street, Chicago, Ill. 60611.

[2] Underwriters' Laboratories ratings are given to fire entinguishers 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) 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) *Restrictions on the use of flame-producing devices.* Liquid-burning flares, fusees, oil lanterns, or any signal produced by a flame shall not be carried on any commercial motor vehicle transporting Division 1.1, 1.2, 1.3 (explosives) hazardous materials; any cargo tank motor vehicle used for the transportation of Division 2.1 (flammable gas) or Class 3 (flammable liquid) hazardous materials whether loaded or empty; or any commercial motor vehicle using compressed gas as a motor fuel.

(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.

(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.

[1] See footnote 1 to § 393.24(c).

(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 FR 19735, Dec. 25, 1968, as amended at 35 FR 13019, Aug. 15, 1970; 35 FR 14619, Sept. 18, 1970; 37 FR 17176, Aug. 25, 1972; 40 FR 10685, Mar. 7, 1975; 41 FR 53031, Dec. 3, 1976; 47 FR 47837, Oct. 28, 1982; 59 FR 34712, July 6, 1994]

Subpart I—Protection Against Shifting or Falling Cargo

SOURCE: 38 FR 23522, Aug. 31, 1973, unless otherwise noted.

§ 393.100 General rules for protection against shifting or falling cargo.

(a) *Application and scope of the rules in this section.* This section applies to trucks, truck tractors, semitrailers, full trailers, and pole trailers. Each of those motor vehicles must, when transporting cargo, be loaded and equipped to prevent the shifting or falling of the cargo in the manner prescribed by the rules in paragraph (b) of this section. In addition, each cargo-carrying motor vehicle must conform to the applicable rules in §§ 393.102, 393.104, and 393.106.

(b) *Basic protection components.* Each cargo-carrying motor vehicle must be equipped with devices providing protection against shifting or falling cargo that meet the requirements of either paragraph (b) (1), (2), (3), or (4) of this section.

(1) *Option A.* The vehicle must have sides, side-boards, or stakes, and a rear

endgate, endboard, or stakes. Those devices must be strong enough and high enough to assure that cargo will not shift upon, or fall from the vehicle. Those devices must have no aperture large enough to permit cargo in contact with one or more of the devices to pass through it.

(2) *Option B.* The vehicle must have at least one tiedown assembly that meets the requirements of §393.102 for each 10 linear feet of lading or fraction thereof. (However, a pole trailer or an expandable trailer transporting metal articles under the special rules in paragraph (c) of this section is required only to have two or more of those tiedown assemblies at each end of the trailer.) In addition, the vehicle must have as many additional tiedown assemblies meeting the requirements of §393.102 as are necessary to secure all cargo being transported either by direct contact between the cargo and the tiedown assemblies or by dunnage which is in contact with the cargo and is secured by tiedown assemblies.[1]

(3) *Option C* (*for vehicles transporting metal articles only*). A vehicle transporting cargo which consists of metal articles must conform to either the rules in paragraph (b) (1), (2), or (4) of this section, or the special rules for transportation of metal articles set forth in paragraph (c) of this section.

(4) *Option D.* The vehicle must have other means of protecting against shifting or falling cargo which are similar to, and at least as effective as, those specified in paragraph (b) (1), (2), or (3) of this section.

(c) *Special rules for metal articles*—(1) *Scope of the rules in this paragraph.* The rules in this paragraph apply to a motor vehicle transporting cargo consisting of metal articles if that vehicle does not conform to the rules in paragraph (b) (1), (2), or (4) of this section.

(2) *Application of other sections.* A motor vehicle transporting property consisting of metal articles must, regardless of whether the rules in this paragraph apply to it, conform to the rules in §393.102 (relating to securement systems), §393.104 (relating to blocking and bracing of cargo), and §393.106 (relating to front-end structure requirements).

(3) *Coils.* Whenever a motor carrier transports one or more coils of metal which, individually or as a combination banded together, weigh 5,000 pounds or more, the coils shall be secured in the following manner:

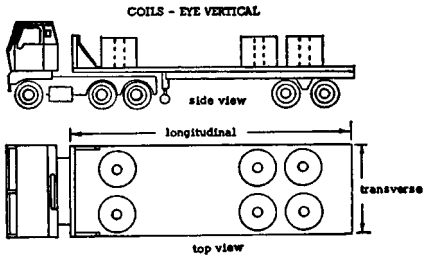
(i) *Coils with eyes vertical:* One or more coils which are grouped and loaded side by side in a transverse or longitudinal row must be secured by—

(*a*) A tiedown assembly against the front of the coil or row of coils, restraining against forward motion;

(*b*) A tiedown assembly against the rear of the coil or row of coils, restraining against rearward motion; and

(*c*) A tiedown assembly over the top of each coil or transverse row of coils, restraining against vertical motion.

The same tiedown assembly shall not be used to comply with more than one of the requirements of paragraph (c)(3)(i) (*a*), (*b*), or (*c*) of this section.



(ii) *Coils with eyes crosswise:* Each coil or transverse row of coils loaded side by side and having approximately the same outside diameters must be secured by—

(*a*) A tiedown assembly through the eye of each coil, restricting against forward motion and making an angle of less than 45° with the horizontal when viewed from the side of the vehicle;

(*b*) A tiedown assembly through the eye of each coil, restricting against rearward motion and making an angle of less than 45° with the horizontal when viewed from the side of the vehicle; and

(*c*) Timbers, having a nominal cross section of 4 x 4 inches or more and a length which is at least 75 percent of

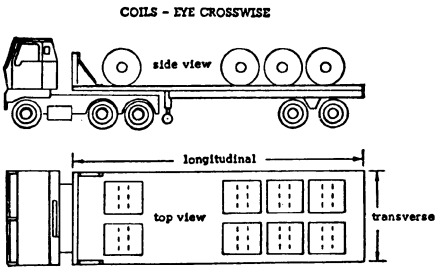
[1] Tiedown assemblies or dunnage in contact with sufficient exterior (including topmost) pieces of the cargo and securely holding each interior or lower piece comply with this requirement.

the width of the coil or row of coils, tightly placed against both the front and rear sides of the coil or row of coils and restrained to prevent movement of the coil or coils in the forward and rearward directions.

(*d*) If coils are loaded to contact each other in the longitudinal direction and relative motion between coils, and between coils and the vehicle, is prevented by tiedown assemblies and timbers—

(*1*) Only the foremost and rearmost coils must be secured with timbers; and

(*2*) A single tiedown assembly, restricting against forward motion, may be used to secure any coil except the rearmost one, which must be restrained against rearward motion.



(iii) *Coils with eyes lengthwise:* A coil or transverse row of coils having approximately equal outside diameters and loaded side by side or a longitudinal row of coils having approximately equal outside diameters and loaded end to end must be secured as follows:

(*a*) The coil or coils must be restrained against side-by-side and fore-and-aft movement by—

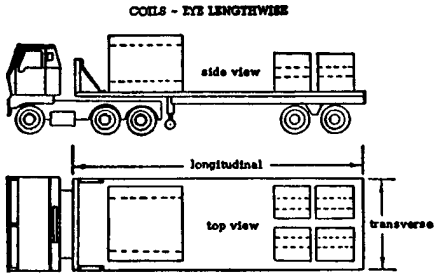
(*1*) One or more tiedown assemblies over the top of each coil or transverse row; or

(*2*) Two or more tiedown assemblies through the eye of each coil or longitudinal row; or

(*3*) One or more tiedown assemblies, crossing from one side of the vehicle to the other, through the eye of each coil or longitudinal row of coils in a transverse row.

(*b*) Timbers having nominal cross section of 4 x 4 inches or more must be tightly placed against the sides of each coil or against the outboard sides of each transverse row of coils which are loaded side by side so that the timbers restrain against side-to-side movement.

(*c*) If, in accordance with paragraph (c)(3)(iii)(*a*)(*1*) of this section, only one tiedown assembly over the top of each coil or transverse row of coils is used to restrain against side-to-side movement and fore-and-aft movement, timbers having a nominal cross section of 2 x 4 inches or more and which are firmly secured to longitudinal blocking must be tightly placed against the front and back of each coil, each longitudinal row of coils, and each transverse row of coils in a manner which restricts forward and rearward movement.



(iv) Timber which is used for blocking must be sound lumber which is free of defects (such as knots or cracks) that materially reduce its strength.

(v) Timbers need not be used on vehicles which have depressions in the floor or are equipped with other restraining devices which perform the functions specified for timbers by the rules in this section.

(vi) As used in this section, the term ''nominal'', when used to describe timber, means commercially dressed sizes generally designated by the dimensions indicated.

(4) *Miscellaneous metal articles.* Except as provided in paragraph (c)(4)(iv) of this section, whenever a motor carrier transports metal articles consisting of cut-to-length bars, plates, rods, sheet and tin mill products, billets, blooms, ingots, slabs, structural shapes, or pipe, and other tubular products and those articles, either individually or as a combination of articles banded or boxed together and handled as a single unit, weigh more than 2,000 pounds, the article shall be secured in the following manner:

(i) A single article, a group of articles, or a combination of articles loaded side by side across the width of the vehicle must be secured by at least one tiedown assembly over its top for at least every 8 feet of its length and at least two tiedown assemblies securing each individual article or combination of articles banded or otherwise secured together and handled as a single unit. However, articles which individually have a length of 8 feet or less and which are securely butted against each other in the fore-and-after direction may be secured by metal angles secured by tiedown assemblies, or they may be secured by a timber having a nominal cross section of 4 x 4 inches or more placed longitudinally over the articles and secured by tiedown assemblies. Tiedown assemblies may not be located beyond the ends of the article which they secure.

(ii) If articles are tiered and each tiered article rests securely on the one beneath it, the tier may be secured in the same manner as a single level of those articles is secured in accordance with the rules in this section.

(iii) Pole trailers must either comply with the requirements of paragraph (c)(4) (i) and (ii) of this section or have at least two tiedown assemblies securing the load to the forward bolster and at least two tiedown assemblies securing the load to the rear bolster.

(iv) The rules in this paragraph do not apply to special loads consisting of machinery or fabricated structural items, such as beams, girders, and trusses, which are fastened by special methods. However, those loads must be securely and adequately fastened to the vehicle.

(d) *Special rule for special-purpose vehicles.* The rules in this section do not apply to a vehicle transporting one or more articles which, because of their size, shape, or weight, must be carried on special-purpose vehicles or must be fastened by special methods. However, any article carried on that vehicle must be securely and adequately fastened to the vehicle.

(e) *Special rule for intermodal cargo containers.* Containers designed for the transportation of containerized, intermodal cargo and having integral securement devices must be fastened to the chassis of the motor vehicle with securement devices that prevent them from being unintentionally unfastened. The securement devices must restrain the container from moving more than one-half inch forward, more than one-half inch aft, more than one-half inch to the right, more than one-half inch to the left, or more than one inch vertically when the container is subjected to the following accelerations relative to the vehicle:

Direction of force relative to longitudinal axis of vehicle	Acceleration in G's
Downward	1.70
Upward	0.50
Lateral	0.30
Longitudinal	1.80

(f) *Effective date.* This section is effective on October 1, 1973.

§ 393.102 Securement systems.

(a) *Application and scope of the rules in this section.* The rules in this section apply to tiedown assemblies (including chains, cables, steel straps, and fiber webbing), other securement devices, and attachment or fastening devices used in conjunction therewith, which are used to secure cargo to motor vehicles in transit. All devices which are used to secure cargo to a motor vehicle in transit under the rules in this subpart must conform to the requirements of this section.

(b) *Tiedown assemblies.* Except for integral securement devices of containers designed for the transportation of containerized, intermodal cargo which conform to the rules in § 393.100(e), the aggregate working load limit of the tiedown assemblies used to secure an article against movement in any direction must be at least 1/2 times the weight of the article. With the exception of marking identification, tiedowns used must meet applicable manufacturing standards listed in this paragraph (b).

(1) *Steel strapping.* Steel strapping used as a component of a tiedown assembly must conform to the requirements of the 1991 edition of the American Society for Testing and Materials' Standard Specification for Strapping, Flat Steel and Seals, ASTM D3953–91. Steel strapping which is not marked by the manufacturer with a working load

limit, shall be considered to have a working load limit equal to 1/4 of the breaking strength listed in ASTM D3953–91. (See § 393.7(b) for information on the incorporation by reference and availability of this document.) Steel strapping that is one inch wide or wider must have at least two pairs of crimps in each seal and when an end-over-end lap joint is formed, it must be sealed with at least two seals.

(2) *Chain.* Chain used as a component of a tiedown assembly must conform to the requirements of the June 15, 1990, edition of the National Association of Chain Manufacturers' Welded Steel Chain Specifications applicable to all types of chain. (See § 393.7(b) for information on the incorporation by reference and availability of this document.)

(3) *Webbing.* Webbing used as a component of a tiedown assembly must conform to the requirements of the 1991 edition of the Web Sling and Tiedown Association's Recommended Standard Specification for Synthetic Webbing Tiedowns. (See § 393.7(b) for information on the incorporation by reference and availability of this document.)

(4) *Wire rope.* Wire rope used as a component of a tiedown assembly must conform to the requirements of the November 1985 second edition of the Wire Rope Technical Board's Wire Rope Users Manual. Wire rope which is not marked by the manufacturer with a working load limit, shall be considered to have a working load limit equal to ¼ of the nominal strength listed in the Wire Rope Users Manual. (See § 393.7(b) for information on the incorporation by reference and availability of this document.)

(5) *Cordage.* Cordage used as a component of a tiedown assembly, must conform to the applicable Cordage Institute rope standards listed below: PETRS–2, Polyester Fiber Rope, 3-Strand and 8-Strand Constructions, January, 1993; PPRS–2, Polypropylene Fiber Rope, 3-Strand and 8-Strand Constructions, August, 1992; CRS–1, Polyester/Polypropylene Composite Rope Specifications, Three- and Eight-Strand Standard Construction, May 1979; NRS–1, Nylon Rope Specifications, Three- and Eight-Strand Standard Construction, May 1979; C1, Double Braided Nylon Rope Specifications, DBN-January 1984. (See § 393.7(b) for information on the incorporation by reference and availability of these documents.)

(6) *Tables of working load limits.* The working load limits listed in the tables in this paragraph are to be used when the tiedown material is not marked by the manufacturer with the working load limit. Tiedown materials which are marked by the manufacturer with working load limits which differ from the table, shall be considered to have a working load limit equal to the value for which they are marked. Synthetic cordage (e.g., nylon, polypropylene, polyester) which is not marked or labeled to enable identification of its composition or working load limit shall be considered to have a working load limit equal to that for polypropylene fiber rope.

TABLES TO § 393.102(b)(6)—WORKING LOAD LIMITS (WLL)

[Chain WLL in pounds (kg)]

Size inch (mm)	Grade 3 proof coil	Grade 4 high test	Grade 7 transport	Grade 8 alloy
¼ (7)	1300 (590)	2600 (1180)	3150 (1430)	3500 (1590)
5/16 (8)	1900 (860)	3900 (1770)	4700 (2130)	5100 (2310)
⅜ (10)	2650 (1200)	5400 (2450)	6600 (2990)	7100 (3220)
7/16 (11)	3500 (1590)	5800 (2630)	8750 (3970)	.....
½ (13)	4500 (2040)	9200 (4170)	11300 (5130)	12000 (5440)
⅝ (16)	6900 (3130)	11500 (5220)	15800 (7170)	18100 (8210)
Chain Mark	PC	HT	.....	T
Examples	3	4	7	8
	30	40	70	80

Synthetic Webbing WLL

Width inch (mm)	WLL pounds (kg)
1-¾ (45)	1750 (790)
2 (50)	2000 (910)

Synthetic Webbing WLL—Continued

Width inch (mm)	WLL pounds (kg)
3 (75)	3000 (1360)
4 (100)	4000 (1810)

Wire Rope (6 X 37, Fiber Core) WLL

Diameter inch (mm)	WLL pounds (kg)
1/4 (7)	1400 (640)
5/16 (8)	2100 (950)
3/8 (10)	3000 (1360)
7/16 (11)	4100 (1860)
1/2 (13)	5300 (2400)
5/8 (16)	8300 (3770)
3/4 (20)	10900 (4940)
7/8 (22)	16100 (7300)
1 (25)	20900 (9480)

Manila Rope WLL

Diameter inch (mm)	WLL pounds (kg)
3/8 (10)	205 (90)
7/16 (11)	265 (120)
1/2 (13)	315 (150)
5/8 (16)	465 (210)
3/4 (20)	640 (290)
1 (25)	1050 (480)

Polypropylene Fiber Rope WLL (3-Strand and 8-Strand Constructions)

Diameter inch (mm)	WLL pounds (kg)
3/8 (10)	400 (180)
7/16 (11)	525 (240)
1/2 (13)	625 (280)
5/8 (16)	925 (420)
3/4 (20)	1275 (580)
1 (25)	2100 (950)

Polyester Fiber Rope WLL (3-Strand and 8-Strand Constructions)

Diameter inch (mm)	WLL pounds (kg)
3/8 (10)	555 (250)
7/16 (11)	750 (340)
1/2 (13)	960 (440)
5/8 (16)	1500 (680)
3/4 (20)	1880 (850)
1 (25)	3300 (1500)

Nylon Rope WLL

Diameter inch (mm)	WLL pounds (kg)
3/8 (10)	278 (130)
7/16 (11)	410 (190)
1/2 (13)	525 (240)
5/8 (16)	935 (420)
3/4 (20)	1420 (640)
1 (25)	2520 (1140)

Double Braided Nylon Rope WLL

Diameter inch (mm)	WLL pounds (kg)
3/8 (10)	336 (150)
7/16 (11)	502 (230)
1/2 (13)	655 (300)
5/8 (16)	1130 (510)
3/4 (20)	1840 (830)
1 (25)	3250 (1470)

Steel Strapping WLL

Width – thickness inch	WLL pounds (kg)
1-¼ × 0.029	1190 (540)
1-¼ × 0.031	1190 (540)
1-¼ × 0.035	1190 (540)
1-¼ × 0.044	1690 (770)
1-¼ × 0.050	1690 (770)
1-¼ × 0.057	1925 (870)
2 × 0.044	2650 (1200)
2 × 0.050	2650 (1200)

(c) *Load binders and hardware.* The strength of load binders and hardware that are part of, or used in conjunction with, a tiedown assembly must be equal to, or greater than the minimum strength specified for that tiedown assembly in paragraph (b) of this section.

(d) *Attachment to the vehicle.* The hook, bolt, weld, or other connector by which a tiedown assembly is attached to a vehicle, and the mounting place and means of mounting the connector, must be at least as strong as the tiedown assembly when that connector is loaded in any direction in which the tiedown assembly may load it.

(e) *Winches or other fastenings.* The anchorages of a winch or other fastening device mounted on a vehicle and used in conjunction with a tiedown assembly must have a combined tensile strength equal to, or greater than, the strength of the tiedown assembly.

(f) *Adjustability.* A tiedown assembly and its associated connectors and attachment devices must be designed, constructed, and maintained so that the driver of an in-transit vehicle can tighten them. However, the rules in this paragraph do not apply to a securement system in which the tiedown assembly consists of steel strapping or to a tiedown assembly which is not required by the rules in this section.

(49 U.S.C. 304, 1655; 49 CFR 1.48(b) and 301.60)

[38 FR 23522, Aug. 31, 1973, as amended at 47 FR 47837, Oct. 28, 1982; 59 FR 34718, July 6, 1994; 59 FR 43898, Aug. 25, 1994]

§ 393.104 Blocking and bracing.

(a) *Protection against longitudinal movement.* When a motor vehicle carries cargo that is not firmly braced against a front-end structure that conforms to the requirements of § 393.106, the cargo must be secured so that, when the vehicle decelerates at a rate of 20 feet per second per second, the cargo will remain on the vehicle and will not penetrate the vehicle's front-end structure.

(b) *Protection against lateral movement.* When a vehicle carries cargo that may shift sideways in transit, the cargo must either be securely blocked or braced against the sides, sideboards, or stakes of the vehicle or be secured by devices that conform to the requirements of paragraph (b)(2), (b)(3), or (b)(4) of § 393.100.

(c) *Effective date.* This section is effective on October 1, 1973.

[38 FR 23522, Aug. 31, 1973, as amended at 38 FR 25183, Sept. 12, 1973]

§ 393.106 Front-end structure.

(a) *General rule.* (1) Except as provided in paragraph (g) of this section, every cargo-carrying motor vehicle must be equipped with a headerboard or similar device of sufficient strength to prevent load shifting and penetration or crushing of the driver's compartment.

(2) On and after the effective dates specified in paragraph (h) of this section, every cargo-carrying motor vehicle must have a front-end structure that conforms to the rules in this section.

(b) *Location.* The front-end structure must be located between the vehicle's cargo and the vehicle's driver.

(c) *Height and width.* The front-end structure must extend either to a height of 4 feet above the floor of the vehicle or to a height at which it blocks forward movement of any item of cargo being carried on the vehicle, whichever is lower. The front-end structure must have a width which is at least equal to the width of the vehicle or which blocks forward movement of any item of cargo being transported on the vehicle, whichever is narrower.

(d) *Strength.* The front-end structure must be capable of withstanding the horizontal forward static load specified in either paragraph (d) (1) or (2) of this section.

(1) For a front-end structure less than 6 feet in height, a horizontal forward static load equal to one half (½) of the weight of the cargo being transported on the vehicle uniformly distributed over the entire portion of the front-end structure that is within 4 feet above the vehicle's floor or that is at or below a height above the vehicle's floor at which it blocks forward movement of any item of the vehicle's cargo, whichever is less.

(2) For a front-end structure 6 feet in height or higher, a horizontal forward static load equal to four-tenths (0.4) of the weight of the cargo being transported on the vehicle uniformly distributed over the entire front-end structure.

(e) *Penetration resistance.* The front-end structure must be designed, constructed and maintained so that it is capable of resisting penetration by any item of cargo that contacts it when the vehicle decelerates at a rate of 20 feet per second per second. The front-end structure must have no aperture large enough to permit any item of cargo in contact with the structure to pass through it.

(f) *Substitute devices.* The requirements of this section may be met by the use of devices performing the same functions as a front-end structure, if the devices are at least as strong as, and provide protection against shifting cargo at least equal to, a front-end structure which conforms to those requirements.

(g) *Exemptions.* The following motor vehicles are exempt from the rules in this section:

(1) A vehicle which is designed and used exclusively to transport other vehicles, if each vehicle it transports is securely tied down by devices that conform to the requirements of § 393.102.

(2) A pole trailer or semitrailer being towed by a truck tractor that is equipped with a front-end structure that conforms to the rules in this section.

(3) A full trailer being towed by a vehicle that is equipped with a front-end structure that conforms to the requirements of this section for a front-end structure.

(4) A full trailer being towed by a vehicle that is loaded in such a manner that the cargo on the towing vehicle conforms to the requirements of this section for a front-end structure.

(5) The rules in paragraphs (d) and (e) of this section do not apply to a motor vehicle manufactured before January 1, 1974.

(h) *Effective dates.* Cargo-carrying motor vehicles which are not exempted by paragraph (g) of this section must conform to the rules in this section as follows:

If the vehicle was manufactured—	It must conform to the rules in paragraph—	On and after—
Before Jan. 1, 1974.	(a), (b), and (f)	October 1, 1973 or the date it was manu- factured, whichever is later.
Before Jan. 1, 1974.	(c)	January 1, 1975.
On or after Jan. 1, 1974.	(a) through (f) inclusive.	The date it was manufactured.

Paragraphs (d) and (e) of this section do not apply to a motor vehicle that was manufactured before January 1, 1974.

Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

SOURCE: 53 FR 49402, Dec. 7, 1988, unless otherwise noted.

§ 393.201 Frames.

(a) The frame of every bus, truck, and truck tractor 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 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
16″ or less	2″+	4½″+
18″	2¼″+	4¾″+
20″	2½″+	5¼″+
22″	2¾″+	5¾″+

(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 sufficient fluid in the reservoir.

PART 394—[RESERVED]

PART 395—HOURS OF SERVICE OF DRIVERS

Sec.

395.1 Scope of rules in this part.
395.2 Definitions.
395.3 Maximum driving time.
395.7 [Reserved]
395.8 Driver's record of duty status.
395.10—395.12 [Reserved]
395.13 Drivers declared out of service.
395.15 Automatic on-board recording devices.

AUTHORITY: 49 U.S.C. 31133, 31136, and 31502; sec. 345, Pub.L. 104–59, 109 Stat. 568, 613; and 49 CFR 1.48.

SOURCE: 33 FR 19758, Dec. 25, 1968, unless otherwise noted.

§ 395.1 Scope of rules in this part.

(a) *General.* (1) The rules in this part apply to all motor carriers and drivers,

except as provided in paragraphs (b) through (n) of this section.

(2) The exceptions from Federal requirements contained in paragraphs (l) through (n) do not preempt State laws and regulations governing the safe operation of commercial motor vehicles.

(b) *Adverse driving conditions.* (1) Except as provided in paragraph (i)(2) of this section, a driver who encounters adverse driving conditions, as defined in §395.2, and cannot, because of those conditions, safely complete the run within the 10-hour maximum driving time permitted by §395.3(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours in order to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo. However, that driver may not drive or be permitted to drive—

(i) For more than 12 hours in the aggregate following 8 consecutive hours off duty; or

(ii) After he/she has been on duty 15 hours following 8 consecutive hours off duty.

(2) *Emergency conditions.* In case of any emergency, a driver may complete his/her run without being in violation of the provisions of the regulations in this part, if such run reasonably could have been completed absent the emergency.

(c) *Driver-salesperson.* The provisions of §395.3(b) shall not apply to any driver-salesperson whose total driving time does not exceed 40 hours in any period of 7 consecutive days.

(d) *Oilfield operations.* (1) In the instance of drivers of commercial motor vehicles used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(2) In the case of specially trained drivers of commercial motor vehicles which are specially constructed to service oil wells, on-duty time shall not include waiting time at a natural gas or oil well site; *provided,* that all such time shall be fully and accurately accounted for in records to be maintained by the motor carrier. Such records shall be made available upon request of the Federal Highway Administration.

(e) *100 air-mile radius driver.* A driver is exempt from the requirements of §395.8 if:

(1) The driver operates within a 100 air-mile radius of the normal work reporting location;

(2) The driver, except a driver salesperson, returns to the work reporting location and is released from work within 12 consecutive hours;

(3) At least 8 consecutive hours off duty separate each 12 hours on duty;

(4) The driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty; and,

(5) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

(i) The time the driver reports for duty each day;

(ii) The total number of hours the driver is on duty each day;

(iii) The time the driver is released from duty each day; and

(iv) The total time for the preceding 7 days in accordance with §395.8(j)(2) for drivers used for the first time or intermittently.

(f) *Retail store deliveries.* The provisions of §395.3 (a) and (b) shall not apply with respect to drivers of commercial motor vehicles engaged solely in making local deliveries from retail stores and/or retail catalog businesses to the ultimate consumer, when driving solely within a 100-air mile radius of the driver's work-reporting location, during the period from December 10 to December 25, both inclusive, of each year.

(g) *Retention of driver's record of duty status.* Upon written request to, and with the approval of, the Regional Director of Motor Carriers for the region in which the motor carrier has its principal place of business, a motor carrier may forward and maintain the driver's records of duty status at a regional or terminal office. The addresses and jurisdictions of the Regional Director of Motor Carriers offices are shown in §390.27 of this chapter.

(h) *Sleeper berths.* Drivers using sleeper berth equipment as defined in §395.2 or who are off duty at a natural gas or oil well location, may cumulate the required 8 consecutive hours off duty, as required by §395.3, resting in a sleeper berth in two separate periods totaling 8 hours, neither period to be less than 2 hours, or resting while off duty in other sleeping accommodations at a natural gas or oil well location.

(i) *State of Alaska.* (1) The provisions of §395.3 shall not apply to any driver who is driving a commercial motor vehicle in the State of Alaska. A driver who is driving a commercial motor vehicle in the State of Alaska must not drive or be required or permitted to drive—

(i) More than 15 hours following 8 consecutive hours off duty;

(ii) After being on duty for 20 hours or more following 8 consecutive hours off duty;

(iii) After having been on duty for 70 hours in any period of 7 consecutive days, if the motor carrier for which the driver drives does not operate every day in the week; or

(iv) After having been on duty for 80 hours in any period of 8 consecutive days, if the motor carrier for which the driver drives operates every day in the week.

(2) A driver who is driving a commercial motor vehicle in the State of Alaska and who encounters adverse driving conditions (as defined in §395.2) may drive and be permitted or required to drive a commercial motor vehicle for the period of time needed to complete the run. After he/she completes the run, that driver must be off duty for 8 consecutive hours before he/she drives again.

(j) *State of Hawaii.* The rules in §395.8 do not apply to a driver who drives a commercial motor vehicle in the State of Hawaii, if the motor carrier who employs the driver maintains and retains for a period of 6 months accurate and true records showing—

(1) The total number of hours the driver is on duty each day; and

(2) The time at which the driver reports for, and is released from, duty each day.

(k) *Travel time.* When a driver at the direction of the motor carrier is traveling, but not driving or assuming any other responsibility to the carrier, such time shall be counted as on-duty time unless the driver is afforded at least 8 consecutive hours off duty when arriving at destination, in which case he/she shall be considered off duty for the entire period.

(l) *Agricultural operations.* The provisions of §395.3 shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation:

(1) Is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies, and

(2) Is conducted during the planting and harvesting seasons within such State, as determined by the State.

(m) *Ground water well drilling operations.* In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation and operations of a ground water well drilling rig, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(n) Construction materials and equipment. In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation of construction materials and equipment, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(o) *Utility service vehicles.* In the instance of a driver of a utility service vehicle, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

[57 FR 33647, July 30, 1992, as amended at 58 FR 33777, June 21, 1993; 60 FR 38748, July 28, 1995; 61 FR 14679, Apr. 3, 1996]

§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.

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.

Driver-salesperson means any employee who is employed solely as such by a private carrier of property by commercial motor vehicle, who is engaged both in selling goods, services, or the use of goods, and in delivering by commercial motor vehicle the goods sold or provided or upon which the services are performed, who does so entirely within a radius of 100 miles of the point at which he/she reports for duty, who devotes not more than 50 percent of his/her hours on duty to driving time. The term *selling goods* for purposes of this section shall include in all cases solicitation or obtaining of reorders or new accounts, and may also include other selling or merchandising activities designed to retain the customer or to increase the sale of goods or services, in addition to solicitation or obtaining of reorders or new accounts.

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.

Ground water well drilling rig means any vehicle, machine, tractor, trailer, semi-trailer, or specialized mobile equipment propelled or drawn by mechanical power and used on highways to transport water well field operating equipment, including water well drilling and pump service rigs equipped to access ground water.

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 he/she is relieved from work and all responsibility for performing work. *On-duty time* shall include:

(1) All time at a carrier 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 motor carrier;

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

(3) All driving time as defined in the term *driving time* in this section;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth as defined by the term *sleeper berth* of this section;

(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, in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by part 382 or part 391, subpart H, of this subchapter, whichever is applicable, when directed by a motor carrier;

(8) Performing any other work in the capacity of, or in the employ or service of, a common, contract or private motor carrier; and

(9) Performing any compensated work for any nonmotor carrier entity.

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.

Sleeper berth means a berth conforming to the requirements of §393.76 of this chapter.

Transportation of construction materials and equipment means the transportation of construction and pavement materials, construction equipment, and construction maintenance vehicles, by a driver to or from an active construction site (a construction site between mobilization of equipment and materials to the site to the final completion of the construction project) within a 50 air mile radius of the normal work reporting location of the driver. This paragraph does not apply to the transportation of material found by the Secretary to be hazardous under 49 U.S.C. 5103 in a quantity requiring placarding under regulations issued to carry out such section.

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.

Utility service vehicle means any commercial motor vehicle:

(1) Used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;

(2) While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and

(3) Except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

[57 FR 33648, July 30, 1992, as amended at 59 FR 7515, Feb. 15, 1994; 59 FR 60324, Nov. 23, 1994; 60 FR 38748, July 28, 1995; 61 FR 14679, Apr. 3, 1996]

§ 395.3 Maximum driving time.

(a) Except as provided in §§ 395.1(b)(1), 395.1(f), and 395.1(i), no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive:

(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 commercial motor vehicle to drive, nor shall any driver drive, 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.

[57 FR 33649, July 30, 1992, as amended at 60 FR 38748, July 28, 1995]

§ 395.7 [Reserved]

§ 395.8 Driver's record of duty status.

(a) Except for a private motor carrier of passengers (nonbusiness), every motor carrier shall require every driver used by the motor carrier to record his/her duty status for each 24 hour period using the methods prescribed in either paragraph (a)(1) or (2) of this section.

(1) Every driver who operates a commercial motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period. The duty status time 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 forms. The previously approved format of the Daily Log, Form MCS–59 or the Multi-day Log, MCS–139 and 139A, which meets the requirements of this section, may continue to be used.

(2) Every driver who operates a commercial motor vehicle shall record his/her duty status by using an automatic on-board recording device that meets the requirements of § 395.15 of this part. The requirements of § 395.8 shall not apply, except paragraphs (e) and (k) (1) and (2) of this section.

(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 nerest 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) Truck or tractor and trailer number;

(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) Shipping document number(s), or name of shipper and commodity;

(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 to 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 State and the license number 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 State and the license number 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.

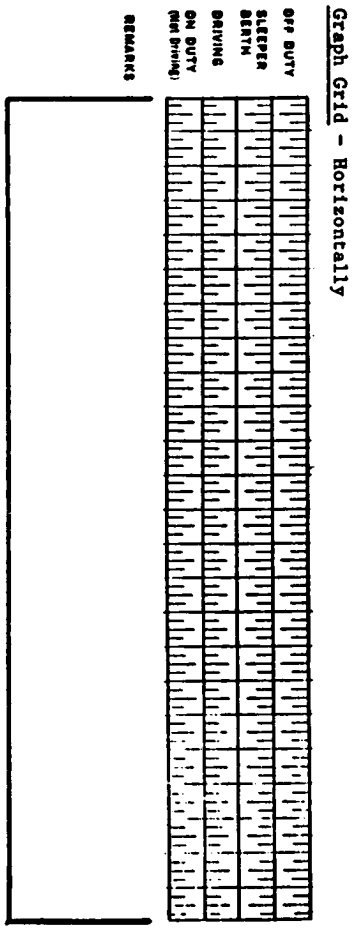
(9) *Main office address.* The motor carrier's main office address shall be shown on the form containing the driver's duty status record.

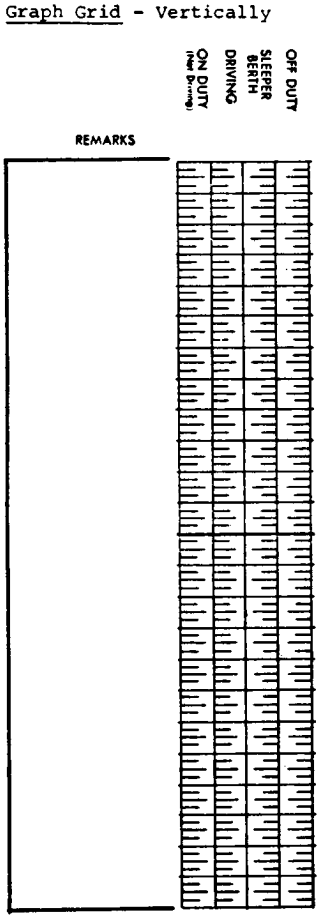
(10) *Recording days off duty.* Two or more consecutive 24-hour periods off duty may be recorded on one duty status record.

(11) *Total hours.* The total hours in each duty status: off 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) *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.


Graph Grid - Horizontally
OFF DUTY
SLEEPER BERTH
DRIVING
ON DUTY (Not Driving)
REMARKS


Graph Grid - Vertically
OFF DUTY
SLEEPER BERTH
DRIVING
ON DUTY (Not Driving)
REMARKS

(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) *Sleeper berth.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of time off duty resting in a sleeper berth, as defined in §395.2. (If a non-sleeper berth operation, sleeper berth need not be shown on the grid.)

(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.

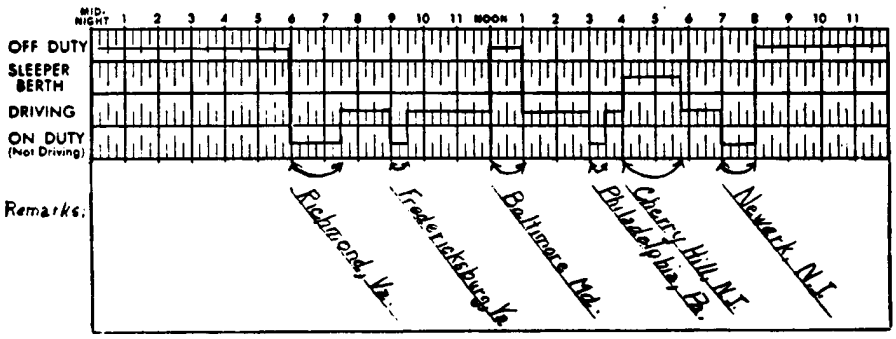
(k) *Retention of driver's record of duty status.* (1) Driver's records of duty status for each calendar month may be retained at the driver's home terminal until the 20th day of the succeeding calendar month. Such records shall then be forwarded to the carrier's principal place of business where they shall be retained with all supporting documents for a period of 6 months from 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.

(Approved by the Office of Management and Budget under control number 2125–0016)

[47 FR 53389, Nov. 26, 1982, as amended at 49 FR 38290, Sept. 28, 1984; 49 FR 46147, Nov. 23, 1984; 51 FR 12622, Apr. 14, 1986; 52 FR 41721, Oct. 30, 1987; 53 FR 18058, May 19, 1988; 53 FR 38670, Sept. 30, 1988; 57 FR 33649, July 30, 1992; 58 FR 33777, June 21, 1993; 59 FR 8753, Feb. 23, 1994; 60 FR 38748, July 28, 1995]

§§ 395.10—395.12 [Reserved]

§ 395.13 Drivers declared out of service.

(a) *Authority to declare drivers out of service.* Every special agent of the Federal Highway 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 8 consecutive hours and is in compliance with this section. The consecutive 8 hour off-duty period 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 Regional Director of Motor Carriers, Federal Highway 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 8 consecutive hours 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.

[44 FR 34963, June 18, 1979, as amended at 47 FR 53392, Nov. 26, 1982; 51 FR 12622, Apr. 14, 1986; 53 FR 18058, May 19, 1988; 53 FR 38670, Sept. 30, 1988; 53 FR 47544, Nov. 23, 1988; 60 FR 38748, July 28, 1995]

§395.15 Automatic on-board recording devices.

(a) *Authority to use automatic on-board recording device.* (1) A motor carrier may require a driver to use an automatic on-board recording device to record the driver's hours of service in lieu of complying with the requirements of §395.8 of this part.

(2) 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.

(b) *Information requirements.* (1) Automatic on-board recording devices shall produce, upon demand, a driver's hours of service chart, electronic display, or printout showing the time and sequence of duty status changes including the drivers' starting time at the beginning of each day.

(2) The device shall provide a means whereby authorized Federal, State, or local officials can immediately check the status of a driver's hours of service. This information may be used in conjunction with handwritten or printed records of duty status, for the previous 7 days.

(3) Support systems used in conjunction with on-board recorders at a driver's home terminal or the motor carrier's principal place of business must be capable of providing authorized Federal, State or local officials with summaries of an individual driver's hours of service records, including the information specified in §395.8(d) of this part. The support systems must also provide information concerning on-board system sensor failures and identification of edited data. Such support systems should meet the information interchange requirements of the American National Standard Code for Information Interchange (ANSCII) (EIARS–232/CCITT V.24 port (National Bureau of Standards ''Code for Information Interchange,'' FIPS PUB 1–1)).

(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

FHWA 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 FHWA 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 FHWA 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 FHWA may issue such an order if the FHWA has determined that—

(i) The motor carrier has been issued a conditional or unsatisfactory safety rating by the FHWA;

(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 § 395.3 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.

[53 FR 38670, Sept. 30, 1988, as amended at 60 FR 38748, July 28, 1995]

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

Sec.

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AUTHORITY: 49 U.S.C. 31133, 31136, and 31502; 49 CFR 1.48.

SOURCE: 44 FR 38526, July 2, 1979, unless otherwise noted.

§ 396.1 Scope.

General—Every motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with the inspection or maintenance of motor vehicles shall comply and be conversant with the rules of this part.

[44 FR 38526, July 2, 1979, as amended at 53 FR 18058, May 19, 1988]

§ 396.3 Inspection, repair, and maintenance.

(a) *General.* Every motor carrier shall systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to its control.

(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) Pushout windows, emergency doors, and emergency door marking lights in buses shall be inspected at least every 90 days.

(b) *Required records*—For vehicles controlled for 30 consecutive days or more, except for a private motor carrier of passengers (nonbusiness), the motor carriers shall maintain, or cause to be maintained, the following record for each vehicle:

(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 FR 38526, July 2, 1979, as amended at 48 FR 55868, Dec. 16, 1983; 53 FR 18058, May 19, 1988; 59 FR 8753, Feb. 23, 1994; 59 FR 60324, Nov. 23, 1994]

§ 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 effected. 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 FHWA (as defined in appendix B to this subchapter) is authorized to enter upon and perform inspections of motor carrier's vehicles in operation.

(b) *Prescribed inspection report.* The Driver-Equipment Compliance Check shall be used to record results of motor vehicle inspections conducted by authorized FHWA 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. An ''Out of Service Vehicle'' sticker shall be used to mark vehicles ''out of service.''

(2) No motor carrier shall require or permit any person to operate nor shall any person operate any motor vehicle 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, except that vehicles 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 Equipment Compliance Check.

(3) No person shall remove the ''Out of Service Vehicle'' sticker from any motor vehicle prior to completion of all repairs required by the ''out of service notice''.

(d) *Motor carrier disposition.* (1) The driver of any motor vehicle receiving an inspection report shall deliver it to the motor carrier operating the vehicle

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 within 24 hours, the driver shall immediately mail the report to the motor carrier.

(2) Motor carriers shall examine the report. Violations or defects noted thereon shall be corrected.

(3) Within 15 days following the date of the inspection, the motor carrier shall—

(i) Certify that all violations noted have been corrected by completing the ''Signature of Carrier 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 or where the vehicle is housed for 12 months from the date of the inspection.

(49 U.S.C. 3102; 49 CFR 1.48(b))

[44 FR 38526, July 2, 1979, as amended at 49 FR 38290, Sept. 28, 1984; 57 FR 40964, Sept. 8, 1992]

§ 396.11 Driver vehicle inspection report(s).

(a) *Report required.* 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 and the report shall cover at least the following parts and accessories:

—Service brakes including trailer brake connections
—Parking (hand) brake
—Steering mechanism
—Lighting devices and reflectors
—Tires
—Horn
—Windshield wipers
—Rear vision mirrors
—Coupling devices
—Wheels and rims
—Emergency equipment

(b) *Report content.* The report shall identify the motor vehicle and list any defect or deficiency discovered by or reported to the driver which would affect safety of operation of the motor vehicle or result in its mechanical breakdown. If no defect or deficiency is discovered by or reported to the driver, the report(s) shall so indicate. In all instances, the driver shall sign the vehicle inspection report. On two-driver operations, only one driver needs to sign the report, provided both drivers agree as to the defects or deficiencies. 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 operating a motor vehicle, motor carriers or their agent(s) shall effect repair of any items listed on the vehicle inspection report(s) that would be likely to affect the safety of operation of the vehicle.

(1) Motor carriers or their agent(s) shall certify on the report(s) which lists any defect(s) or deficiency(s) that the defect(s) or deficiency(s) has been corrected or that correction is unnecessary before the vehicle is again dispatched.

(2) Motor Carriers shall retain the original copy of each vehicle inspection report and the certification of repairs for at least 3 months from the date the report was prepared.

(3) A legible copy of the last vehicle inspection report, certified if required, shall be carried on the power unit.

(d) *Exemption.* The rules in this section shall not apply to a private motor carrier of passengers (nonbusiness) operations, driveaway-towaway operations as specified in § 396.15, or to any motor carrier operating only one (1) motor vehicle.

[44 FR 38526, July 2, 1979, as amended at 45 FR 46425, July 10, 1980; 53 FR 18058, May 19, 1988; 59 FR 8753, Feb. 23, 1994]

§ 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 vehicle inspection report required to be carried on the power unit; 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 FR 76526, Dec. 27, 1979, as amended at 48 FR 55868, Dec. 16, 1983]

§ 396.15 Driveaway-towaway operations and inspections.

(a) *General.* Effective December 7, 1989, every motor carrier, with respect to motor vehicles engaged in driveaway-towaway operations, shall comply with the requirements of this part. EXCEPTION: Maintenance records required by § 396.3, the vehicle inspection report required by § 396.11, and the periodic inspection required by § 396.17 of this part shall not be required for any vehicle which is part of the shipment being delivered.

(b) *Pre-trip inspection.* Before the beginning of any driveaway-towaway operation of motor vehicles in combination, the motor carrier shall make a careful inspection and test to ascertain that:

(1) The towbar or saddle-mount connections are properly secured to the towed and towing vehicle;

(2) They function adequately without cramping or binding of any of the parts; and

(3) The towed motor vehicle follows substantially in the path of the towing vehicle without whipping or swerving.

(c) *Post-trip inspection.* Motor carriers shall maintain practices to ensure that following completion of any trip in driveaway-towaway operation of motor vehicles in combination, and before they are used again, the towbars and saddle-mounts are disassembled and inspected for worn, bent, cracked, broken, or missing parts. Before reuse, suitable repair or replacement shall be made of any defective parts and the devices shall be properly reassembled.

[44 FR 38526, July 2, 1979, as amended at 53 FR 49410, Dec. 7, 1988; 53 FR 49968, Dec. 12, 1988]

§ 396.17 Periodic inspection.

(a) Every commercial motor vehicle shall be inspected as required by this section. The inspection shall include, at a minimum, the parts and accessories set forth in appendix G of this subchapter.

NOTE: The term commercial motor vehicle includes each vehicle in a combination vehicle. For example, for a tractor semitrailer, fulltrailer combination, the tractor, semitrailer, and the fulltrailer (including the converter dolly if so equipped) shall each be inspected.

(b) Except as provided in § 396.23, a motor carrier shall inspect or cause to be inspected all motor vehicles subject to its control.

(c) A motor carrier shall not use a commercial motor vehicle unless each component identified in appendix G 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 paragraph 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 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).

(e) In lieu of the self inspection provided for in paragraph (d) of this section, a motor carrier 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 FHWA, 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, except as provided in § 396.23(b)(1).

(g) It shall be the responsibility of the motor carrier to ensure that all parts and accessories not meeting the minimum standards set forth in appendix G to this subchapter are repaired promptly.

(h) Failure to perform properly the annual inspection set forth in this section shall cause the motor carrier to be subject to the penalty provisions provided by 49 U.S.C. 521(b).

[53 FR 49410, Dec. 7, 1988; 53 FR 49968, Dec. 12, 1988, as amended at 54 FR 50725, Dec. 8, 1989]

§ 396.19 Inspector qualifications.

(a) It shall be the motor carrier's responsibility to ensure that the individual(s) performing an annual inspection under § 396.17 (d) or (e) is qualified as follows:

(1) Understands the inspection criteria set forth in 49 CFR part 393 and appendix G of this subchapter and can identify defective components;

(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an inspection; and

(3) Is capable of performing an inspection by reason of experience, training, or both as follows:

(i) Successfully completed a State or Federal-sponsored training program or has a certificate from a State or Canadian Province which qualifies the person to perform commercial motor vehicle safety inspections, or

(ii) Have a combination of training and/or experience totaling at least 1 year. Such training and/or experience may consist of:

(A) Participation in a truck manufacturer-sponsored training program or similar commercial training program designed to train students in truck operation and maintenance;

(B) Experience as a mechanic or inspector in a motor carrier maintenance program;

(C) Experience as a mechanic or inspector in truck maintenance at a commercial garage, fleet leasing company, or similar facility; or

(D) Experience as a commercial vehicle inspector for a State, Provincial or Federal Government.

(b) Evidence of that individual's qualifications under this section shall be retained by the motor carrier for the period during which that individual is performing annual motor vehicle inspections for the motor carrier, and for one year thereafter. However, motor carriers 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.

[53 FR 49410, Dec. 7, 1988; 53 FR 49968, Dec. 12, 1988]

§ 396.21 Periodic inspection recordkeeping requirements.

(a) The qualified inspector performing the inspection shall prepare a report which:

(1) Identifies the individual performing the inspection;

(2) Identifies the motor carrier operating the vehicle;

(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 or other entity who 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 shall be retained where the vehicle is either housed or maintained.

(2) The original or a copy of the inspection report shall be available for inspection upon demand of an authorized Federal, State or local official.

(3) *Exception.* Where the motor carrier operating the commercial motor vehicles did not perform the commercial motor vehicle's last annual inspection, the motor carrier shall be responsible for obtaining the original or a

copy of the last annual inspection report upon demand of an authorized Federal, State, or local official.

[54 FR 50725, Dec. 8, 1989]

§ 396.23 Equivalent to periodic inspection.

(a) The motor carrier 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 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. When accepting such an inspection report, the motor carrier 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 shall 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 under the auspices of a State authorized self-inspection program.

(2) Should the FHWA determine that a State inspection program, in whole or in part, is not as effective as § 396.17, the motor carrier 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.

[53 FR 49410, Dec. 7, 1988; 53 FR 49968, Dec. 12, 1988, as amended at 60 FR 38749, July 28, 1995]

§ 396.25 Qualifications of brake inspectors.

(a) The motor carrier shall 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 who is responsible for ensuring all brake inspections, maintenance, service, or repairs to any commercial motor vehicle, subject to the motor carrier's control, meet the applicable Federal standards.

(c) No motor carrier shall require or permit any employee who does not meet the minimum brake inspector qualifications of § 396.25(d) to be responsible for the inspection, maintenance, service or repairs of any brakes on its commercial motor vehicles.

(d) The motor carrier shall 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 which 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 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 shall 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 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.

[56 FR 491, Jan. 7, 1991]

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

Subpart A—General

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AUTHORITY: 49 U.S.C. 322; 49 CFR 1.48. Subpart A also issued under 49 U.S.C. 31136, 31502. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

SOURCE: 36 FR 4876, Mar. 13, 1971, unless otherwise noted.

Subpart A—General

§ 397.1 Application of the rules in this part.

(a) The rules in this part apply to each motor carrier engaged in the transportation of hazardous materials by a motor vehicle which must be marked or placarded in accordance with § 177.823 of this title and to—

(1) Each officer or employee of the motor carrier who performs supervisory duties related to the transportation of hazardous materials; and

(2) Each person who operates or who is in charge of a motor vehicle containing hazardous materials.

(b) Each person designated in paragraph (a) of this section must know and obey the rules in this part.

[36 FR 4876, Mar. 13, 1971, as amended at 36 FR 16067, Aug. 19, 1971; 53 FR 18058, May 19, 1988; 60 FR 38749, July 28, 1995]

§ 397.2 Compliance with Federal motor carrier safety regulations.

A motor carrier or other person to whom this part is applicable must comply with the rules in parts 390 through 397, inclusive, of this subchapter when

he/she is transporting hazardous materials by a motor vehicle which must be marked or placarded in accordance with §177.823 of this title.

[37 FR 18080, Sept. 7, 1972]

§ 397.3 State and local laws, ordinances, and regulations.

Every motor vehicle containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless they are at variance with specific regulations of the Department of Transportation which are applicable to the operation of that vehicle and which impose a more stringent obligation or restraint.

§ 397.5 Attendance and surveillance of motor vehicles.

(a) Except as provided in paragraph (b) of this section, a motor vehicle which contains a Division 1.1, 1.2, or 1.3 (explosive) material must be attended at all times by its driver or a qualified representative of the motor carrier that operates it.

(b) The rules in paragraph (a) of this section do not apply to a motor vehicle which contains Division 1.1, 1.2, or 1.3 material if all the following conditions exist—

(1) The vehicle is located on the property of a motor carrier, on the property of a shipper or consignee of the explosives, in a safe haven, or, in the case of a vehicle containing 50 pounds or less of a Division 1.1, 1.2, or 1.3 material, on a construction or survey site; and

(2) The lawful bailee of the explosives is aware of the nature of the explosives the vehicle contains and has been instructed in the procedures which must be followed in emergencies; and

(3) The vehicle is within the bailee's unobstructed field of view or is located in a safe haven.

(c) A motor vehicle which contains hazardous materials other than Division 1.1, 1.2, or 1.3, materials, and which is located on a public street or highway, or the shoulder of a public highway, must be attended by its driver. However, the vehicle need not be attended while its driver is performing duties which are incident and necessary to the driver's duties as the operator of the vehicle.

(d) For purposes of this section—

(1) A motor vehicle is attended when the person in charge of the vehicle is on the vehicle, awake, and not in a sleeper berth, or is within 100 feet of the vehicle and has it within his/her unobstructed field of view.

(2) A qualified representative of a motor carrier is a person who—

(i) Has been designated by the carrier to attend the vehicle;

(ii) Is aware of the nature of the hazardous materials contained in the vehicle he/she attends;

(iii) Has been instructed in the procedures he/she must follow in emergencies; and

(iv) Is authorized to move the vehicle and has the means and ability to do so.

(3) A safe haven in an area specifically approved in writing by local, State, or Federal governmental authorities for the parking of unattended vehicles containing Division 1.1, 1.2, or 1.3 materials.

(e) The rules in this section do not relieve the driver from any obligation imposed by law relating to the placing of warning devices when a motor vehicle is stopped on a public street or highway.

[59 FR 63925, Dec. 12, 1994]

§ 397.7 Parking.

(a) A motor vehicle which contains Division 1.1, 1.2, or 1.3 materials must not be parked under any of the following circumstances—

(1) On or within 5 feet of the traveled portion of a public street or highway;

(2) On private property (including premises of fueling or eating facility) without the knowledge and consent of the person who is in charge of the property and who is aware of the nature of the hazardous materials the vehicle contains; or

(3) Within 300 feet of a bridge, tunnel, dwelling, or place where people work, congregate, or assemble, except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.

(b) A motor vehicle which contains hazardous materials other than Division 1.1, 1.2, or 1.3 materials must not

be parked on or within five feet of the traveled portion of public street or highway except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.

[59 FR 63925, Dec. 12, 1994]

§ 397.9 [Reserved]

§ 397.11 Fires.

(a) A motor vehicle containing hazardous materials must not be operated near an open fire unless its driver has first taken precautions to ascertain that the vehicle can safely pass the fire without stopping.

(b) A motor vehicle containing hazardous materials must not be parked within 300 feet of an open fire.

§ 397.13 Smoking.

No person may smoke or carry a lighted cigarette, cigar, or pipe on or within 25 feet of—

(a) A motor vehicle which contains Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2; or

(b) An empty tank motor vehicle which has been used to transport Class 3, flammable materials, or Division 2.1 flammable gases, which when so used, was required to be marked or placarded in accordance with the rules in § 177.823 of this title.

[59 FR 63925, Dec. 12, 1994]

§ 397.15 Fueling.

When a motor vehicle which contains hazardous materials is being fueled—

(a) Its engine must not be operating; and

(b) A person must be in control of the fueling process at the point where the fuel tank is filled.

§ 397.17 Tires.

(a) If a motor vehicle which contains hazardous materials is equipped with dual tires on any axle, its driver must stop the vehicle in a safe location at least once during each 2 hours or 100 miles of travel, whichever is less, and must examine its tires. The driver must also examine the vehicle's tires at the beginning of each trip and each time the vehicle is parked.

(b) If, as the result of an examination pursuant to paragraph (a) of this section, or otherwise, a tire if found to be flat, leaking, or improperly inflated, the driver must cause the tire to be repaired, replaced, or properly inflated before the vehicle is driven. However, the vehicle may be driven to the nearest safe place to perform the required repair, replacement, or inflation.

(c) If, as the result of an examination pursuant to paragraph (a) of this section, or otherwise, a tire is found to be overheated, the driver shall immediately cause the overheated tire to be removed and placed at a safe distance from the vehicle. The driver shall not operate the vehicle until the cause of the overheating is corrected.

(d) Compliance with the rules in this section does not relieve a driver from the duty to comply with the rules in §§ 397.5 and 397.7.

§ 397.19 Instructions and documents.

(a) A motor carrier that transports Division 1.1, 1.2, or 1.3 (explosive) materials must furnish the driver of each motor vehicle in which the explosives are transported with the following documents:

(1) A copy of the rules in this part;

(2) [Reserved]

(3) A document containing instructions on procedures to be followed in the event of accident or delay. The documents must include the names and telephone numbers of persons (including representatives of carriers or shippers) to be contracted, the nature of the explosives being transported, and the precautions to be taken in emergencies such as fires, accidents, or leakages.

(b) A driver who receives documents in accordance with paragraph (a) of this section must sign a receipt for them. The carrier shall retain the receipt in its files for 1 year at its principal place of business.

(c) A driver of a motor vehicle which contains Division 1.1, 1.2, or 1.3 materials must be in possession of, be familiar with, and be in compliance with

(1) The documents specified in paragraph (a) of this section;

(2) The documents specified in § 177.817 of this title; and

(3) The written route plan specified in § 397.67.

[59 FR 63925, Dec. 12, 1994]

Subpart B—[Reserved]

Subpart C—Routing of Non-Radioactive Hazardous Materials

SOURCE: 59 FR 51830, Oct. 12, 1994, unless otherwise noted.

§ 397.61 Purpose and scope.

This subpart contains routing requirements and procedures that States and Indian tribes are required to follow if they establish, maintain, or enforce routing designations over which a non-radioactive hazardous material (NRHM) in a quantity which requires placarding may or may not be transported by a motor vehicle. It also provides regulations for motor carriers transporting placarded or marked NRHM and procedures for dispute resolutions regarding NRHM routing designations.

§ 397.63 Applicability.

The provisions of this subpart apply to any State or Indian tribe that establishes, maintains, or enforces any routing designations over which NRHM may or may not be transported by motor vehicle. They also apply to any motor carrier that transports or causes to be transported placarded or marked NRHM in commerce.

§ 397.65 Definitions.

For purposes of this subpart, the following definitions apply:

Administrator. The Federal Highway Administrator, who is the chief executive of the Federal Highway Administration, an agency within the United States Department of Transportation, or his/her designate.

Commerce. Any trade, traffic, or transportation in the United States which:

(1) Is between a place under the jurisdiction of a State or Indian tribe and any place outside of such jurisdiction; or

(2) Is solely within a place under the jurisdiction of a State or Indian tribe but which affects trade, traffic, or transportation described in subparagraph (a).

FHWA. The Federal Highway Administration, an agency within the Department of Transportation.

Hazardous material. A substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, or property when transported in commerce, and which has been so designated.

Indian tribe. Has the same meaning as contained in §4 of the Indian Self-Determination and Education Act, 25 U.S.C. 450b.

Motor carrier. A for-hire motor carrier or a private motor carrier of property. 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.

Motor vehicle. 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.

NRHM. A non-radioactive hazardous material transported by motor vehicle in types and quantities which require placarding, pursuant to Table 1 or 2 of 49 CFR 172.504.

Political subdivision. A municipality, public agency or other instrumentality of one or more States, or a public corporation, board, or commission established under the laws of one or more States.

Radioactive material. Any material having a specific activity greater than 0.002 microcuries per gram (uCi/g), as defined in 49 CFR 173.403.

Routing agency. The State highway agency or other State agency designated by the Governor of that State, or an agency designated by an Indian tribe, to supervise, coordinate, and approve the NRHM routing designations for that State or Indian tribe.

Routing designations. Any regulation, limitation, restriction, curfew, time of travel restriction, lane restriction, routing ban, port-of-entry designation,

or route weight restriction, applicable to the highway transportation of NRHM over a specific highway route or portion of a route.

Secretary. The Secretary of Transportation.

State. A State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa or Guam.

§ 397.67 Motor carrier responsibility for routing.

(a) A motor carrier transporting NRHM shall comply with NRHM routing designations of a State or Indian tribe pursuant to this subpart.

(b) A motor carrier carrying hazardous materials required to be placarded or marked in accordance with 49 CFR 177.823 and not subject to a NRHM routing designations pursuant to this subpart, shall operate the vehicle over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys, except where the motor carrier determines that:

(1) There is no practicable alternative;

(2) A reasonable deviation is necessary to reach terminals, points of loading and unloading, facilities for food, fuel, repairs, rest, or a safe haven; or

(3) A reasonable deviation is required by emergency conditions, such as a detour that has been established by a highway authority, or a situation exists where a law enforcement official requires the driver to take an alternative route.

(c) Operating convenience is not a basis for determining whether it is practicable to operate a motor vehicle in accordance with paragraph (b) of this section.

(d) Before a motor carrier requires or permits a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, 1.3, as defined in 49 CFR 173.50 and 173.53 respectively, to be operated, the carrier or its agent shall prepare a written route plan that complies with this section and shall furnish a copy to the driver. However, the driver may prepare the written plan as agent for the motor carrier when the trip begins at a location other than the carrier's terminal.

§ 397.69 Highway routing designations; preemption.

(a) Any State or Indian tribe that establishes or modifies a highway routing designation over which NRHM may or may not be transported on or after November 14, 1994, and maintains or enforces such designation, shall comply with the highway routing standards set forth in § 397.71 of this subpart. For purposes of this subpart, any highway routing designation affecting the highway transportation of NRHM, made by a political subdivision of a State is considered as one made by that State, and all requirements of this subpart apply.

(b) Except as provided in §§ 397.75 and 397.219, a NRHM route designation made in violation of paragraph (a) of this section is preempted pursuant to section 105(b)(4) of the Hazardous Materials Transportation Act (49 U.S.C. app. 1804(b)(4)). This provision shall become effective after November 14, 1996.

(c) A highway routing designation established by a State, political subdivision, or Indian tribe before November 14, 1994 is subject to preemption in accordance with the preemption standards in paragraphs (a)(1) and (a)(2) of § 397.203 of this subpart.

(d) A State, political subdivision, or Indian tribe may petition for a waiver of preemption in accordance with § 397.213 of this part.

§ 397.71 Federal standards.

(a) A State or Indian tribe shall comply with the Federal standards under paragraph (b) of this section when establishing, maintaining or enforcing specific NRHM routing designations over which NRHM may or may not be transported.

(b) The Federal standards are as follows:

(1) *Enhancement of public safety*. The State or Indian tribe shall make a finding, supported by the record to be developed in accordance with paragraphs (b)(2)(ii) and (b)(3)(iv) of this section, that any NRHM routing designation enhances public safety in the areas subject to its jurisdiction and in other

areas which are directly affected by such highway routing designation. In making such a finding, the State or Indian tribe shall consider:

(i) The factors listed in paragraph (b)(9) of this section; and

(ii) The DOT ''Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials,'' DOT/RSPA/OHMT–89–02, July 1989[1] or its most current version; or an equivalent routing analysis which adequately considers overall risk to the public.

(2) *Public participation.* Prior to the establishment of any NRHM routing designation, the State or Indian tribe shall undertake the following actions to ensure participation by the public in the routing process:

(i) The State or Indian tribe shall provide the public with notice of any proposed NRHM routing designation and a 30-day period in which to comment. At any time during this period or following review of the comments received, the State or Indian tribe shall decide whether to hold a public hearing on the proposed NRHM route designation. The public shall be given 30 days prior notice of the public hearing which shall be conducted as described in paragraph (b)(2)(ii) of this section. Notice for both the comment period and the public hearing, if one is held, shall be given by publication in at least two newspapers of general circulation in the affected area or areas and shall contain a complete description of the proposed routing designation, together with the date, time, and location of any public hearings. Notice for both the comment period and any public hearing may also be published in the official register of the State.

(ii) If it is determined that a public hearing is necessary, the State or Indian tribe shall hold at least one public hearing on the record during which the public will be afforded the opportunity to present their views and any information or data related to the proposed NRHM routing designation. The State shall make available to the public, upon payment of prescribed costs, copies of the transcript of the hearing, which shall include all exhibits and documents presented during the hearing or submitted for the record.

(3) *Consultation with others.* Prior to the establishment of any NRHM routing designation, the State or Indian tribe shall provide notice to, and consult with, officials of affected political subdivisions, States and Indian tribes, and any other affected parties. Such actions shall include the following:

(i) At least 60 days prior to establishing a routing designation, the State or Indian tribe shall provide notice, in writing, of the proposed routing designation to officials responsible for highway routing in all other affected States or Indian tribes. A copy of this notice may also be sent to all affected political subdivisions. This notice shall request approval, in writing, by those States or Indian tribes, of the proposed routing designations. If no response is received within 60 days from the day of receipt of the notification of the proposed routing designation, the routing designation shall be considered approved by the affected State or Indian tribe.

(ii) The manner in which consultation under this paragraph is conducted is left to the discretion of the State or Indian tribe.

(iii) The State or Indian tribe shall attempt to resolve any concern or disagreement expressed by any consulted official related to the proposed routing designation.

(iv) The State or Indian tribe shall keep a record of the names and addresses of the officials notified pursuant to this section and of any consultation or meeting conducted with these officials or their representatives. Such record shall describe any concern or disagreement expressed by the officials and any action undertaken to resolve such disagreement or address any concern.

(4) *Through routing.* In establishing any NRHM routing designation, the State or Indian tribe shall ensure through highway routing for the transportation of NRHM between adjacent areas. The term ''through highway routing'' as used in this paragraph means that the routing designation

[1] This document may be obtained from Safety Technology and Information Management Division, HHS–10, Federal Highway Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590–0001.

must ensure continuity of movement so as to not impede or unnecessarily delay the transportation of NRHM. The State or Indian tribe shall utilize the procedures established in paragraphs (b)(2) and (b)(3) of this section in meeting these requirements. In addition, the State or Indian tribe shall make a finding, supported by a risk analysis conducted in accordance with paragraph (b)(1) of this section, that the routing designation enhances public safety. If the risk analysis shows—

(i) That the current routing presents at least 50 percent more risk to the public than the deviation under the proposed routing designation, then the proposed routing designation may go into effect.

(ii) That the current routing presents a greater risk but less than 50 percent more risk to the public than the deviation under the proposed routing restriction, then the proposed routing restriction made by a State or Indian tribe shall only go into effect if it does not force a deviation of more than 25 miles or result in an increase of more than 25 percent of that part of a trip affected by the deviation, whichever is shorter, from the most direct route through a jurisdiction as compared to the intended deviation.

(iii) That the current route has the same or less risk to the public than the deviation resulting from the proposed routing designation, then the routing designation shall not be allowed.

(5) *Agreement of other States; burden on commerce.* Any NRHM routing designation which affects another State or Indian tribe shall be established, maintained, or enforced only if:

(i) It does not unreasonably burden commerce, and

(ii) It is agreed to by the affected State or Indian tribe within 60 days of receipt of the notice sent pursuant to paragraph (b)(3)(i) of this section, or it is approved by the Administrator pursuant to § 397.75.

(6) *Timeliness.* The establishment of a NRHM routing designation by any State or Indian tribe shall be completed within 18 months of the notice given in either paragraph (b)(2) or (b)(3) of this section, whichever occurs first.

(7) *Reasonable routes to terminals and other facilities.* In establishing or providing for reasonable access to and from designated routes, the State or Indian tribe shall use the shortest practicable route considering the factors listed in paragraph (b)(9) of this section. In establishing any NRHM routing designation, the State or Indian tribe shall provide reasonable access for motor vehicles transporting NRHM to reach:

(i) Terminals,

(ii) Points of loading, unloading, pickup and delivery, and

(iii) Facilities for food, fuel, repairs, rest, and safe havens.

(8) *Responsibility for local compliance.* The States shall be responsible for ensuring that all of their political subdivisions comply with the provisions of this subpart. The States shall be responsible for resolving all disputes between such political subdivisions within their jurisdictions. If a State or any political subdivision thereof, or an Indian tribe chooses to establish, maintain, or enforce any NRHM routing designation, the Governor, or Indian tribe, shall designate a routing agency for the State or Indian tribe, respectively. The routing agency shall ensure that all NRHM routing designations within its jurisdiction comply with the Federal standards in this section. The State or Indian tribe shall comply with the public information and reporting requirements contained in § 397.73.

(9) *Factors to consider.* In establishing any NRHM routing designation, the State or Indian tribe shall consider the following factors:

(i) *Population density.* The population potentially exposed to a NRHM release shall be estimated from the density of the residents, employees, motorists, and other persons in the area, using United States census tract maps or other reasonable means for determining the population within a potential impact zone along a designated highway route. The impact zone is the potential range of effects in the event of a release. Special populations such as schools, hospitals, prisons, and senior citizen homes shall, among other things, be considered when determining the potential risk to the populations along a highway routing. Consideration shall be given to the amount of time

during which an area will experience a heavy population density.

(ii) *Type of highway.* The characteristics of each alternative NRHM highway routing designation shall be compared. Vehicle weight and size limits, underpass and bridge clearances, roadway geometrics, number of lanes, degree of access control, and median and shoulder structures are examples of characteristics which a State or Indian tribe shall consider.

(iii) *Types and quantities of NRHM.* An examination shall be made of the type and quantity of NRHM normally transported along highway routes which are included in a proposed NRHM routing designation, and consideration shall be given to the relative impact zone and risks of each type and quantity.

(iv) *Emergency response capabilities.* In consultation with the proper fire, law enforcement, and highway safety agencies, consideration shall be given to the emergency response capabilities which may be needed as a result of a NRHM routing designation. The analysis of the emergency response capabilities shall be based upon the proximity of the emergency response facilities and their capabilities to contain and suppress NRHM releases within the impact zones.

(v) *Results of consultation with affected persons.* Consideration shall be given to the comments and concerns of all affected persons and entities provided during public hearings and consultations conducted in accordance with this section.

(vi) *Exposure and other risk factors.* States and Indian tribes shall define the exposure and risk factors associated with any NRHM routing designations. The distance to sensitive areas shall be considered. Sensitive areas include, but are not limited to, homes and commercial buildings; special populations in hospitals, schools, handicapped facilities, prisons and stadiums; water sources such as streams and lakes; and natural areas such as parks, wetlands, and wildlife reserves.

(vii) *Terrain considerations.* Topography along and adjacent to the proposed NRHM routing designation that may affect the potential severity of an accident, the dispersion of the NRHM upon release and the control and clean up of NRHM if released shall be considered.

(viii) *Continuity of routes.* Adjacent jurisdictions shall be consulted to ensure routing continuity for NRHM across common borders. Deviations from the most direct route shall be minimized.

(ix) *Alternative routes.* Consideration shall be given to the alternative routes to, or resulting from, any NRHM route designation. Alternative routes shall be examined, reviewed, or evaluated to the extent necessary to demonstrate that the most probable alternative routing resulting from a routing designation is safer than the current routing.

(x) *Effects on commerce.* Any NRHM routing designation made in accordance with this subpart shall not create an unreasonable burden upon interstate or intrastate commerce.

(xi) *Delays in transportation.* No NRHM routing designations may create unnecessary delays in the transportation of NRHM.

(xii) *Climatic conditions.* Weather conditions unique to a highway route such as snow, wind, ice, fog, or other climatic conditions that could affect the safety of a route, the dispersion of the NRHM upon release, or increase the difficulty of controlling it and cleaning it up shall be given appropriate consideration.

(xiii) *Congestion and accident history.* Traffic conditions unique to a highway routing such as: traffic congestion; accident experience with motor vehicles, traffic considerations that could affect the potential for an accident, exposure of the public to any release, ability to perform emergency response operations, or the temporary closing of a highway for cleaning up any release shall be given appropriate consideration.

§ 397.73 Public information and reporting requirements.

(a) *Public information.* Information on NRHM routing designations must be made available by the States and Indian tribes to the public in the form of maps, lists, road signs or some combination thereof. If road signs are used, those signs and their placements must

comply with the provisions of the Manual on Uniform Traffic Control Devices,[2] published by the FHWA, particularly the Hazardous Cargo signs identified as R14–2 and R14–3 shown in Section 2B–43 of that Manual.

(b) *Reporting and publishing requirements.* Each State or Indian tribe, through its routing agency, shall provide information identifying all NRHM routing designations which exist within their jurisdictions on November 14, 1994 to the FHWA, HHS–30, 400 7th St., SW., Washington, D.C. 20590–0001 by March 13,1995. The State or Indian tribe shall include descriptions of these routing designations, along with the dates they were established. This information may also be published in each State's official register of State regulations. Information on any subsequent changes or new NRHM routing designations shall be furnished within 60 days after establishment to the FHWA. This information will be available from the FHWA, consolidated by the FHWA, and published annually in whole or as updates in the FEDERAL REGISTER. Each State may also publish this information in its official register of State regulations.

(Approved by the Office of Management and Budget under control number 2125–0554)

§397.75 Dispute resolution.

(a) *Petition.* One or more States or Indian tribes may petition the Administrator to resolve a dispute relating to an agreement on a proposed NRHM routing designation. In resolving a dispute under these provisions, the Administrator will provide the greatest level of safety possible without unreasonably burdening commerce, and ensure compliance with the Federal standards established at §397.71 of this subpart.

(b) *Filing.* Each petition for dispute resolution filed under this section must:

(1) Be submitted to the Administrator, Federal Highway Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. Attention: HCC–10 Docket Room, Hazardous Materials Routing Dispute Resolution Docket.

(2) Identify the State or Indian tribe filing the petition and any other State, political subdivision, or Indian tribe whose NRHM routing designation is the subject of the dispute.

(3) Contain a certification that the petitioner has complied with the notification requirements of paragraph (c) of this section, and include a list of the names and addresses of each State, political subdivision, or Indian tribe official who was notified of the filing of the petition.

(4) Clearly set forth the dispute for which resolution is sought, including a complete description of any disputed NRHM routing designation and an explanation of how the disputed routing designation affects the petitioner or how it impedes through highway routing. If the routing designation being disputed results in alternative routing, then a comparative risk analysis for the designated route and the resulting alternative routing shall be provided.

(5) Describe any actions taken by the State or Indian tribe to resolve the dispute.

(6) Explain the reasons why the petitioner believes that the Administrator should intervene in resolving the dispute.

(7) Describe any proposed actions that the Administrator should take to resolve the dispute and how these actions would provide the greatest level of highway safety without unreasonably burdening commerce and would ensure compliance with the Federal standards established in this subpart.

(c) *Notice.* (1) Any State or Indian tribe that files a petition for dispute resolution under this subpart shall mail a copy of the petition to any affected State, political subdivision, or Indian tribe, accompanied by a statement that the State, political subdivision, or Indian tribe may submit comments regarding the petition to the Administrator within 45 days.

(2) By serving notice on any other State, political subdivision, or Indian

[2] This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 and has Stock No. 050–001–81001–8. It is available for inspection and copying as prescribed in 49 CFR part 7, appendix D. See 23 CFR part 655, subpart F.

tribe determined by the Administrator to be possibly affected by the issues in dispute or the resolution sought, or by publication in the FEDERAL REGISTER, the Administrator may afford those persons an opportunity to file written comments on the petition.

(3) Any affected State, political subdivision, or Indian tribe submitting written comments to the Administrator with respect to a petition filed under this section shall send a copy of the comments to the petitioner and certify to the Administrator as to having complied with this requirement. The Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

(d) *Court actions.* After a petition for dispute resolution is filed in accordance with this section, no court action may be brought with respect to the subject matter of such dispute until a final decision has been issued by the Administrator or until the last day of the one-year period beginning on the day the Administrator receives the petition, whichever occurs first.

(e) *Hearings; alternative dispute resolution.* Upon receipt of a petition filed pursuant to paragraph (a) of this section, the Administrator may schedule a hearing to attempt to resolve the dispute and, if a hearing is scheduled, will notify all parties to the dispute of the date, time, and place of the hearing. During the hearing the parties may offer any information pertinent to the resolution of the dispute. If an agreement is reached, it may be stipulated by the parties, in writing, and, if the Administrator agrees, made part of the decision in paragraph (f) of this section. If no agreement is reached, the Administrator may take the matter under consideration and announce his or her decision in accordance with paragraph (f) of this section. Nothing in this section shall be construed as prohibiting the parties from settling the dispute or seeking other methods of alternative dispute resolution prior to the final decision by the Administrator.

(f) *Decision.* The Administrator will issue a decision based on the petition, the written comments submitted by the parties, the record of the hearing, and any other information in the record. The decision will include a written statement setting forth the relevant facts and the legal basis for the decision.

(g) *Record.* The Administrator will serve a copy of the decision upon the petitioner and any other party who participated in the proceedings. A copy of each decision will be placed on file in the public docket. The Administrator may publish the decision or notice of the decision in the FEDERAL REGISTER.

§ 397.77 Judicial review of dispute decision.

Any State or Indian tribe adversely affected by the Administrator's decision under § 397.75 of this subpart may seek review by the appropriate district court of the United States under such proceeding only by filing a petition with such court within 90 days after such decision becomes final.

Subpart D—Routing of Class 7 (Radioactive) Materials

§ 397.101 Requirements for motor carriers and drivers.

(a) Except as provided in paragraph (b) of this section or in circumstances when there is only one practicable highway route available, considering operating necessity and safety, a carrier or any person operating a motor vehicle that contains a Class 7 (radioactive) material, as defined in 49 CFR 172.403, for which placarding is required under 49 CFR part 172 shall:

(1) Ensure that the motor vehicle is operated on routes that minimize radiological risk;

(2) Consider available information on accident rates, transit time, population density and activities, and the time of day and the day of week during which transportation will occur to determine the level of radiological risk; and

(3) Tell the driver which route to take and that the motor vehicle contains Class 7 (radioactive) materials.

(b) Except as otherwise permitted in this paragraph and in paragraph (f) of this section, a carrier or any person operating a motor vehicle containing a highway route controlled quantity of

Class 7 (radioactive) materials, as defined in 49 CFR 173.403(l), shall operate the motor vehicle only over preferred routes.

(1) For purposes of this subpart, a preferred route is an Interstate System highway for which an alternative route is not designated by a State routing agency; a State-designated route selected by a State routing agency pursuant to §397.103; or both of the above.

(2) The motor carrier or the person operating a motor vehicle containing a highway route controlled quantity of Class 7 (radioactive) materials, as defined in 49 CFR 173.403(l) and (y), shall select routes to reduce time in transit over the preferred route segment of the trip. An Interstate System bypass or Interstate System beltway around a city, when available, shall be used in place of a preferred route through a city, unless a State routing agency has designated an alternative route.

(c) A motor vehicle may be operated over a route, other than a preferred route, only under the following conditions:

(1) The deviation from the preferred route is necessary to pick up or deliver a highway route controlled quantity of Class 7 (radioactive) materials, to make necessary rest, fuel or motor vehicle repair stops, or because emergency conditions make continued use of the preferred route unsafe or impossible;

(2) For pickup and delivery not over preferred routes, the route selected must be the shortest-distance route from the pickup location to the nearest preferred route entry location, and the shortest-distance route to the delivery location from the nearest preferred route exit location. Deviation from the shortest-distance pickup or delivery route is authorized if such deviation:

(i) Is based upon the criteria in paragraph (a) of this section to minimize the radiological risk; and

(ii) Does not exceed the shortest-distance pickup or delivery route by more than 25 miles and does not exceed 5 times the length of the shortest-distance pickup or delivery route.

(iii) Deviations from preferred routes, or pickup or delivery routes other than preferred routes, which are necessary for rest, fuel, or motor vehicle repair stops or because of emergency conditions, shall be made in accordance with the criteria in paragraph (a) of this section to minimize radiological risk, unless due to emergency conditions, time does not permit use of those criteria.

(d) A carrier (or a designated agent) who operates a motor vehicle which contains a package of highway route controlled quantity of Class 7 (radioactive) materials, as defined in 49 CFR 173.403(l), shall prepared a written route plan and supply a copy before departure to the motor vehicle driver and a copy to the shipper (before departure for exclusive use shipments, as defined in 49 CFR 173.403(i), or within fifteen working days following departure for all other shipments). Any variation between the route plan and routes actually used, and the reason for it, shall be reported in an amendment to the route plan delivered to the shipper as soon as practicable but within 30 days following the deviation. The route plan shall contain:

(1) A statement of the origin and destination points, a route selected in compliance with this section, all planned stops, and estimated departure and arrival times; and

(2) Telephone numbers which will access emergency assistance in each State to be entered.

(e) No person may transport a package of highway route controlled quantity of Class 7 (radioactive) materials on a public highway unless:

(1) The driver has received within the two preceding years, written training on:

(i) Requirements in 49 CFR parts 172, 173, and 177 pertaining to the Class 7 (radioactive) materials transported;

(ii) The properties and hazards of the Class 7 (radioactive) materials being transported; and

(iii) Procedures to be followed in case of an accident or other emergency.

(2) The driver has in his or her immediate possession a certificate of training as evidence of training required by this section, and a copy is placed in his or her qualification file (see §391.51 of this subchapter), showing:

(i) The driver's name and operator's license number;

(ii) The dates training was provided;

(iii) The name and address of the person providing the training;

(iv) That the driver has been trained in the hazards and characteristics of highway route controlled quantity of Class 7 (radioactive) materials; and

(v) A statement by the person providing the training that information on the certificate is accurate.

(3) The driver has in his or her immediate possession the route plan required by paragraph (d) of this section and operates the motor vehicle in accordance with the route plan.

(f) A person may transport irradiated reactor fuel only in compliance with a plan if required under 49 CFR 173.22(c) that will ensure the physical security of the material. Variation for security purposes from the requirements of this section is permitted so far as necessary to meet the requirements imposed under such a plan, or otherwise imposed by the U.S. Nuclear Regulatory Commission in 10 CFR part 73.

(g) Expect for packages shipped in compliance with the physical security requirements of the U.S. Nuclear Regulatory Commission in 10 CFR part 73, each carrier who accepts for transportation a highway route controlled quantity of Class 7 (radioactive) material (see 49 CFR 173.401(l)), shall, within 90 days following the acceptance of the package, file the following information concerning the transportation of each such package with the Associate Administrator for Safety and System Applications, Federal Highway Administration, Attn: Traffic Control Division, HHS–32, room 3419, 400 Seventh Street, SW., Washington, DC 20590–0001:

(1) The route plan required under paragraph (d) of this section, including all required amendments reflecting the routes actually used;

(2) A statement identifying the names and addresses of the shipper, carrier and consignee; and

(3) A copy of the shipping paper or the description of the Class 7 (radioactive) material in the shipment required by 49 CFR 172.202 and 172.203.

[57 FR 44131, Sept. 24, 1992]

§ 397.103 Requirements for State routing designations.

(a) The State routing agency, as defined in § 397.201(c), shall select routes to minimize radiological risk using ''Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials,'' or an equivalent routing analysis which adequately considers overall risk to the public. Designations must be preceded by substantive consultation with affected local jurisdictions and with any other affected States to ensure consideration of all impacts and continuity of designated routes.

(b) State routing agencies may designate preferred routes as an alternative to, or in addition to, one or more Interstate System highways, including interstate system bypasses, or Interstate System beltways.

(c) A State-designated route is effective when—

(1) The State gives written notice by certified mail, return receipt requested, to the Associate Administrator for Safety and System Applications, Federal Highway Administration, Attn: Traffic Control Division, HHS–32, Room 3419, Registry of State-designated routes, at the address above; and

(2) Receipt thereof is acknowledged in writing by the Associate Administrator.

(d) Upon request, the Office of Highway Safety, Traffic Control Division, HHS–32, room 3419, at the address above, will provide a list of State-designated preferred routes and a copy of the ''Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials.''

[57 FR 44131, Sept. 24, 1992]

Subpart E—Preemption Procedures

SOURCE: 57 FR 44132, Sept. 24, 1992, unless otherwise noted.

§ 397.201 Purpose and scope of the procedures.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State, political subdivision thereof, or Indian tribe, directly affected by any highway routing designation for hazardous materials may apply to the Administrator

for a determination as to whether that highway routing designation is preempted under 49 U.S.C. 5125, or § 397.69 or § 397.203 of this part; and

(2) A State, political subdivision thereof, or Indian tribe may apply to the Administrator for a waiver of preemption with respect to any highway routing designation that the State, political subdivision thereof, or Indian tribe acknowledges to be preempted by 49 U.S.C. 5125, or § 397.69 or § 397.203 of this part, or that has been determined by a court of competent jurisdiction to be so preempted.

(b) Unless otherwise ordered by the Administrator, an application for a preemption determination which includes an application for a waiver of preemption will be treated and processed solely as an application for a preemption determination.

(c) For purposes of this part:

Act means 49 U.S.C. 5101 *et seq.*, formerly known as the Hazardous Materials Transportation Act.

Administrator means the Federal Highway Administrator, who is the chief executive of the Federal Highway Administration, an agency of the United States Department of Transportation, or his/her designate.

Hazardous material means a substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, or property, when transported in commerce, and which has been so designated.

Indian tribe has the same meaning as contained in section 4 of the Indian Self-Determination and Education Act, 25 U.S.C. 450b.

Person means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include the United States Postal Service.

Political subdivision includes a municipality; a public agency or other instrumentality of one or more States, or a public corporation, board, or commission established under the laws of one or more States.

Routing agency means the State highway agency or other State agency designated by the Governor of a State, or an agency designated by an Indian tribe, to supervise, coordinate, and approve the highway routing designations for that State or Indian tribe. Any highway routing designation made by a political subdivision of a State shall be considered a designation made by that State.

Routing designation includes any regulation, limitation, restriction, curfew, time of travel restriction, lane restriction, routing ban, port-of-entry designation, or route weight restriction applicable to the highway transportation of hazardous materials over a specific highway route or portion of a route.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary.

[57 FR 44132, Sept. 24, 1992, as amended at 59 FR 51834, Oct. 12, 1994]

§ 397.203 Standards for determining preemption.

(a) Any highway routing designation established, maintained, or enforced by a State, political subdivision thereof, or Indian tribe is preempted if—

(1) Compliance with both the highway routing designation and any requirement under the Act or of a regulation issued under the Act is not possible;

(2) The highway routing designation as applied or enforced creates an obstacle to the accomplishment and execution of the Act or the regulations issued under the Act; or

(3) The highway routing designation is preempted pursuant to § 397.69(b) of this part.

(b) [Reserved]

[57 FR 44132, Sept. 24, 1992, as amended at 59 FR 51834, Oct. 12, 1994]

§ 397.205 Preemption application.

(a) Any person, including a State, political subdivision thereof, or Indian tribe directly affected by any highway routing designation of another State, political subdivision, or Indian tribe, may apply to the Administrator for a determination of whether that highway routing designation is preempted by the Act or § 397.203 of this subpart. The Administrator shall publish notice of the application in the FEDERAL REGISTER.

(b) Each application filed under this section for a determination must:

(1) Be submitted to the Administrator, Federal Highway Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Attention: HCC–10 Docket Room, Hazardous Materials Preemption;

(2) Set forth a detailed description of the highway routing designation of the State, political subdivision thereof, or Indian tribe for which the determination is sought;

(3) If applicable, specify the provisions of the Act or the regulations issued under the Act under which the applicant seeks preemption of the highway routing designation of the State, political subdivision thereof, or Indian tribe;

(4) Explain why the applicant believes the highway routing designation of the State, political subdivision thereof, or Indian tribe should or should not be preempted under the standards of § 397.203; and

(5) State how the applicant is affected by the highway routing designation of the State, political subdivision thereof, or Indian tribe.

(c) The filing of an application for a determination under this section does not constitute grounds for noncompliance with any requirement of the Act or any regulation issued under the Act.

(d) Once the Administrator has published notice in the FEDERAL REGISTER of an application received under paragraph (a) of this section, no applicant for such determination may seek relief with respect to the same or substantially the same issue in any court until final action has been taken on the application or until 180 days after filing of the application, whichever occurs first. Nothing in this section shall be construed as prohibiting any person, including a State, political subdivision thereof, or Indian tribe, directly affected by any highway routing designation from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Administrator under paragraph (a) of this section.

§ 397.207 Preemption notice.

(a) If the applicant is other than a State, political subdivision thereof, or Indian tribe, the applicant shall mail a copy of the application to the State, political subdivision thereof, or Indian tribe concerned, accompanied by a statement that comments may be submitted regarding the application to the Administrator within 45 days. The application filed with the Administrator must include a certification that the applicant has complied with this paragraph and must include the names and addresses of each official to whom a copy of the application was sent.

(b) The Administrator may afford interested persons an opportunity to file written comments on the application by serving notice on any persons readily identifiable by the Administrator as persons who will be affected by the ruling sought or by publication in the FEDERAL REGISTER.

(c) Each person submitting written comments to the Administrator with respect to an application filed under this section shall send a copy of the comments to the applicant and certify to the Administrator that he or she has complied with this requirement. The Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

§ 397.209 Preemption processing.

(a) The Administrator may initiate an investigation of any statement in an application and utilize in his or her evaluation any relevant facts obtained by that investigation. The Administrator may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Administrator may

consider any other source of information. The Administrator may convene a hearing or conference, if a hearing or conference will advance the evaluation of the application.

(b) The Administrator may dismiss the application without prejudice if:

(1) he or she determines that there is insufficient information upon which to base a determination; or

(2) he or she requests additional information from the applicant and it is not submitted.

§ 397.211 Preemption determination.

(a) Upon consideration of the application and other relevant information received, the Administrator issues a determination.

(b) Notwithstanding that an application for a determination has not been filed under § 397.205, the Administrator, on his or her own initiative, may issue a determination as to whether a particular highway routing designation of a State, political subdivision thereof, or Indian tribe is preempted under the Act or the regulations issued under the Act.

(c) The determination includes a written statement setting forth the relevant facts and the legal basis for the determination, and provides that any person aggrieved thereby may file a petition for reconsideration within 20 days in accordance with § 397.223.

(d) Unless the determination is issued pursuant to paragraph (b) of this section, the Administrator serves a copy of the determination upon the applicant. In all preemption determinations, the Administrator serves a copy of the determination upon any other person who participated in the proceeding or who is readily identifiable by the Administrator as affected by the determination. A copy of each determination is placed on file in the public docket. The Administrator may publish the determination or notice of the determination in the FEDERAL REGISTER.

(e) If no petition for reconsideration is filed within 20 days in accordance with § 397.223, a determination issued under this section constitutes the final agency decision as to whether a particular highway routing designation of a State, political subdivision thereof, or Indian tribe is preempted under the Act or regulations issued thereunder. The fact that a determination has not been issued under this section with respect to a particular highway routing designation of a State, political subdivision thereof, or Indian tribe carries no implication as to whether the requirement is preempted under the Act or regulations issued thereunder.

§ 397.213 Waiver of preemption application.

(a) Any State, political subdivision thereof, or Indian tribe may apply to the Administrator for a waiver of preemption with respect to any highway routing designation that the State, political subdivision thereof, or Indian tribe acknowledges to be preempted by the Act, § 397.203 of this subpart, or a court of competent jurisdiction. The Administrator may waive preemption with respect to such requirement upon a determination that such requirement—

(1) Affords an equal or greater level of protection to the public than is afforded by the requirements of the Act or regulations issued under the Act, and

(2) Does not unreasonably burden commerce.

(b) Each application filed under this section for a waiver of preemption determination must:

(1) Be submitted to the Administrator, Federal Highway Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Attention: HCC–10 Docket Room, Hazardous Materials Preemption Docket;

(2) Set forth a detailed description of the highway routing designation of the State, political subdivision thereof, or Indian tribe for which the determination is being sought;

(3) Include a copy of any relevant court order or determination issued pursuant to § 397.211;

(4) Contain an express acknowledgment by the applicant that the highway routing designation of the State, political subdivision thereof, our Indian tribe is preempted under the Act or the regulations issued under the Act, unless it has been so determined by a court of competent jurisdiction or

in a determination issued under this subpart;

(5) Specify each provision of the Act or the regulations issued under the Act that preempts the highway routing designation of the State, political subdivision thereof, or Indian tribe;

(6) State why the applicant believes that the highway routing designation of the State, political subdivision thereof, or Indian tribe affords an equal or greater level of protection to the public than is afforded by the requirements of the Act or the regulations issued under the Act;

(7) State why the applicant believes that the highway routing designation of the State, political subdivision thereof, or Indian tribe does not unreasonably burden commerce; and

(8) Specify what steps the State, political subdivision thereof, or Indian tribe is taking to administer and enforce effectively the preempted requirement.

§ 397.215 Waiver notice.

(a) The applicant State, political subdivision thereof, or Indian tribe shall mail a copy of the application and any subsequent amendments or other documents relating to the application to each person whom the applicant reasonably ascertains will be affected by the determination sought. The copy of the application must be accompanied by a statement that the person may submit comments regarding the application to the Administrator within 45 days. The application filed with the Administrator must include a certification with the application has complied with this paragraph and must include the names and addresses of each person to whom the application was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the State, political subdivision thereof, or Indian tribe determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application filed with the Administrator a description of the persons or class or classes of persons to whom notice was not sent.

(c) The Administrator may require the applicant to provide notice in addition to that required by paragraphs (a) and (b) of this section, or may determine that the notice required by paragraph (a) of this section is not impracticable, or that notice should be published in the FEDERAL REGISTER.

(d) The Administrator may serve notice on any other persons readily identifiable by the Administrator as persons who will be affected by the determination sought and may afford those persons an opportunity to file written comments on the application.

(e) Any person submitting written comments to the Administrator with respect to an application filed under this section shall send a copy of the comments to the applicant. The person shall certify to the Administrator that he or she has complied with the requirements of this paragraph. The Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

§ 397.217 Waiver processing.

(a) The Administrator may initiate an investigation of any statement in an application and utilize any relevant facts obtained by that investigation. The Administrator may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Administrator may convene a hearing or conference, if a hearing or conference will advance the evaluation of the application.

(b) The Administrator may dismiss the application without prejudice if:

(1) he or she determines that there is insufficient information upon which to base a determination;

(2) Upon his or her request, additional information is not submitted by the applicant; or

(3) The applicant fails to provide the notice required by this subpart.

(c) Except as provided in this subpart, the Administrator will only consider an application for a waiver of preemption determination if:

(1) The applicant expressly acknowledges in its application that the highway routing designation of the State, political subdivision thereof, or Indian tribe for which the determination is sought is preempted by the Act or the regulations thereunder; or

(2) The highway routing designation of the State, political subdivision thereof, or Indian tribe has been determined by a court of competent jurisdiction or in a determination issued pursuant to § 397.211 to be preempted by the Act or the regulations issued thereunder.

(d) When the Administrator has received all substantive information necessary to process an application for a waiver of preemption determination, notice of that fact will be served upon the applicant. Additional notice to all other persons who received notice of the proceeding may be served by publishing a notice in the FEDERAL REGISTER.

§ 397.219 Waiver determination and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the Administrator issues an order setting forth his or her determination.

(b) The Administrator may issue a waiver of preemption order only if he or she finds that the requirement of the State, political subdivision thereof, or Indian tribe affords the public a level of safety at least equal to that afforded by the requirements of the Act and the regulations issued under the Act and does not unreasonably burden commerce. In determining whether the requirement of the State, political subdivision thereof, or Indian tribe unreasonably burdens commerce, the Administrator may consider the following factors:

(1) The extent to which increased costs and impairment of efficiency result from the highway routing designation of the State, political subdivision thereof, or Indian tribe;

(2) Whether the highway routing designation of the State, political subdivision thereof, or Indian tribe has a rational basis;

(3) Whether the highway routing designation of the State, political subdivision thereof, or Indian tribe achieves its stated purpose; and

(4) Whether there is need for uniformity with regard to the subject concerned and if so, whether the highway routing designation of the State, political subdivision thereof, or Indian tribe competes or conflicts with those of other States, political subdivisions thereof, or Indian tribes.

(c) The order includes a written statement setting forth the relevant facts and the legal basis for the determination, and provides that any person aggrieved by the order may file a petition for reconsideration in accordance with § 397.223.

(d) The Administrator serves a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by the Administrator as one who may be affected by the order. A copy of each order is placed on file in the public docket. The Administrator may publish the order or notice of the order in the FEDERAL REGISTER.

(e) If no petition for reconsideration is filed within 20 days in accordance with § 397.223, an order issued under this section constitutes the final agency decision regarding whether a particular requirement of a State, political subdivision thereof, or Indian tribe is preempted under the Act or any regulations issued thereunder, or whether preemption is waived.

§ 397.221 Timeliness.

If the Administrator fails to take action on the application within 90 days of serving the notice required by § 397.217(d), the applicant may treat the application as having been denied in all respects.

§ 397.223 Petition for reconsideration.

(a) Any person aggrieved by an order issued under § 397.211 or § 397.219 may file a petition for reconsideration with the Administrator. The petition must be filed within 20 days of service of the determination or order issued under the above sections.

(b) The petition must contain a concise statement of the basis for seeking reconsideration, including any specific

factual or legal errors, or material information not previously available.

(c) The petitioner shall mail a copy of the petition to each person who participated, either as an applicant or routing, in the waiver of preemption proceeding, accompanied by a statement that the person may submit comments concerning the petition to the Administrator within 20 days. The petition filed with the Administrator must contain a certification that the petitioner has complied with this paragraph and include the names and addresses of all persons to whom a copy of the petition was sent.

(d) The Administrator's decision under this section constitutes the final agency decision. If no petition for reconsideration is filed under this section, then the determination issued under §397.211 or §397.219 becomes the final agency decision at the end of the 20 day period.

§397.225 Judicial review.

A party to a proceeding under §397.205(a), §397.213(a), or §397.223(a) may seek review by the appropriate district court of the United States of the decision of the Administrator under such proceeding only by filing a petition with such court within 60 days after the final agency decision.

PART 398—TRANSPORTATION OF MIGRANT WORKERS

Sec.
398.1 Definitions.
398.2 Applicability.
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398.5 Parts and accessories necessary for safe operation.
398.6 Hours of service of drivers; maximum driving time.
398.7 Inspection and maintenance of motor vehicles.
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AUTHORITY: Secs. 203, 204, 49 Stat. 544, as amended, 546, as amended; 49 U.S.C. 303, 304.

SOURCE: 33 FR 19765, Dec. 25, 1968, unless otherwise noted.

§398.1 Definitions.

(a) *Migrant worker.* ''Migrant worker'' means any individual proceeding to or returning from employment in agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)) or section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)).

(b) *Carrier of migrant workers by motor vehicle.* ''Carrier of migrant worker by motor vehicle'' means any person, including any ''contract carrier by motor vehicle'', but not including any ''common carrier by motor vehicle'', who or which transports in interstate or foreign commerce at any one time three or more migrant workers to or from their employment by any motor vehicle other than a passenger automobile or station wagon, except a migrant worker transporting himself/herself or his/her immediate family.

(c) *Motor carrier.* ''Motor carrier'' means any carrier of migrant workers by motor vehicle as defined in paragraph (b) of this section.

(d) *Motor vehicle.* ''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 Administration, but does not include a passenger automobile or station wagon, 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 in street-railway service.

(e) *Bus.* ''Bus'' means any motor vehicle designed, constructed, and used for the transportation of passengers: Except passenger automobiles or station wagons other than taxicabs.

(f) *Truck.* ''Truck'' means any self-propelled motor vehicle except a truck tractor, designed and constructed primarily for the transportation of property.

(g) *Truck tractor.* ''Truck tractor'' means a self-propelled motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(h) *Semitrailer.* ''Semitrailer'' means any motor vehicle other than a ''pole

trailer'', with or without motive power designed to be drawn by another motor vehicle and so constructed that some part of its weight rests upon the towing vehicle.

(i) *Driver or operator.* ''Driver or operator'' means any person who drives any motor vehicle.

(j) *Highway.* ''Highway'' means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic.

§ 398.2 Applicability.

The regulations prescribed in this part shall be applicable to motor carriers of migrant workers, as defined in § 398.1(b), only in the case of transportation of any migrant worker for a total distance of more than seventy-five miles, and then only if such transportation is across the boundary line of any State, the District of Columbia, or Territory of the United States, or a foreign country.

[33 FR 19765, Dec. 25, 1968, as amended at 40 FR 44557, Sept. 29, 1975]

§ 398.3 Qualifications of drivers or operators.

(a) *Compliance required.* Every motor carrier, and its officers, agents, representatives and employees who drive motor vehicles or are responsible for the hiring, supervision, training, assignment or dispatching of drivers shall comply and be conversant with the requirements of this part.

(b) *Minimum physical requirements.* No person shall drive, nor shall any motor carrier require or permit any person to drive, any motor vehicle unless such person possesses the following minimum qualifications:

(1) No loss of foot, leg, hand or arm,

(2) No mental, nervous, organic, or functional disease, likely to interfere with safe driving.

(3) No loss of fingers, impairment of use of foot, leg, fingers, hand or arm, or other structural defect or limitation, likely to interfere with safe driving.

(4) *Eyesight:* Visual acuity of at least 20/40 (Snellen) in each eye either without glasses or by correction with glasses; form field of vision in the horizontal meridian shall not be less than a total of 140 degrees; ability to distinguish colors red, green and yellow; drivers requiring correction by glasses shall wear properly prescribed glasses at all times when driving.

(5) *Hearing:* Hearing shall not be less than 10/20 in the better ear, for conversational tones, without a hearing aid.

(6) *Liquor, narcotics and drugs:* Shall not be addicted to the use of narcotics or habit forming drugs, or the excessive use of alcoholic beverages or liquors.

(7) *Initial and periodic physical examination of drivers:* No person shall drive nor shall any motor carrier require or permit any person to drive any motor vehicle unless within the immediately preceding 36 month period such person shall have been physically examined and shall have been certified in accordance with the provisions of paragraph (b)(8) of this section by a licensed doctor of medicine or osteopathy as meeting the requirements of this subsection.

(8) *Certificate of physical examination:* Every motor carrier shall have in its files at its principal place of business for every driver employed or used by it a legible certificate of a licensed doctor of medicine or osteopathy based on a physical examination as required by paragraph (b)(7) of this section or a legible photographically reproduced copy thereof, and every driver shall have in his/her possession while driving, such a certificate or a photographically reproduced copy thereof covering himself/herself.

(9) *Doctor's certificate:* The doctor's certificate shall certify as follows:

DOCTOR'S CERTIFICATE

(Driver of Migrant Workers)

This is to certify that I have this day examined _____ in accordance with § 398.3(b) of the Federal Motor Carrier Safety Regulations of the Federal Highway Administration and that I find him/her

Qualified under said rules ☐

Qualified only when wearing glasses ☐

I have kept on file in my office a completed examination.

(Date)

(Place)

(Signature of examining doctor)

(Address of doctor)

Signature of driver _____

Address of driver _____

(c) *Minimum age and experience requirements.* No person shall drive, nor shall any motor carrier require or permit any person to drive, any motor vehicle unless such person possesses the following minimum qualifications:

(1) *Age.* Minimum age shall be 21 years.

(2) *Driving skill.* Experience in driving some type of motor vehicle (including private automobiles) for not less than one year, including experience throughout the four seasons.

(3) *Knowledge of regulations.* Familiarity with the rules and regulations prescribed in this part pertaining to the driving of motor vehicles.

(4) *Knowledge of English.* Every driver shall be able to read and speak the English language sufficiently to understand highway traffic signs and signals and directions given in English and to respond to official inquiries.

(5) *Driver's permit.* Possession of a valid permit qualifying the driver to operate the type of vehicle driven by him/her in the jurisdiction by which the permit is issued.

[33 FR 19765, Dec. 25, 1968, as amended at 40 FR 44557, Sept. 29, 1975]

§ 398.4 Driving of motor vehicles.

(a) *Compliance required.* Every motor carrier shall comply with the requirements of this part, shall instruct its officers, agents, representatives and drivers with respect thereto, and shall take such measures as are necessary to insure compliance therewith by such persons. All officers, agents, representatives, drivers, and employees of motor carriers directly concerned with the management, maintenance, operation, or driving of motor vehicles, shall comply with and be conversant with the requirements of this part.

(b) *Driving rules to be obeyed.* Every motor vehicle shall be driven in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless such laws, ordinances and regulations are at variance with specific regulations of this Administration which impose a greater affirmative obligation or restraint.

(c) *Driving while ill or fatigued.* No driver shall drive or be required or permitted to drive a motor vehicle while his/her ability or alertness is so impaired through fatigue, illness, or any other cause as to make it unsafe for him/her to begin or continue to drive, except in case of grave emergency where the hazard to passengers would be increased by observance of this section and then only to the nearest point at which the safety of passengers is assured.

(d) *Alcoholic beverages.* No driver shall drive or be required or permitted to drive a motor vehicle, be in active control of any such vehicle, or go on duty or remain on duty, when under the influence of any alcoholic beverage or liquor, regardless of its alcoholic content, nor shall any driver drink any such beverage or liquor while on duty.

(e) *Schedules to conform with speed limits.* No motor carrier shall permit nor require the operation of any motor vehicle between points in such period of time as would necessitate the vehicle being operated at speeds greater than those prescribed by the jurisdictions in or through which the vehicle is being operated.

(f) *Equipment and emergency devices.* No motor vehicle shall be driven unless the driver thereof shall have satisfied himself/herself that the following parts, accessories, and emergency devices are in good working order; nor shall any driver fail to use or make use of such parts, accessories, and devices 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.
Coupling devices.
Fire extinguisher, at least one properly mounted.

Road warning devices, at least one red burning fusee and at least three flares (oil burning pot torches), red electric lanterns, or red emergency reflectors.

(g) *Safe loading*—(1) *Distribution and securing of load.* No motor vehicle shall be driven nor shall any motor carrier permit or require any motor vehicle to be driven if it is so loaded, or if the load thereon is so improperly distributed or so inadequately secured, as to prevent its safe operation.

(2) *Doors, tarpaulins, tailgates and other equipment.* No motor vehicle shall be driven unless the tailgate, tailboard, tarpaulins, doors, all equipment and rigging used in the operation of said vehicle, and all means of fastening the load, are securely in place.

(3) *Interference with driver.* No motor vehicle shall be driven when any object obscures his/her view ahead, or to the right or left sides, or to the rear, or interferes with the free movement of his/her arms or legs, or prevents his/her free and ready access to the accessories required for emergencies, or prevents the free and ready exit of any person from the cab or driver's compartment.

(4) *Property on motor vehicles.* No vehicle transporting persons and property shall be driven unless such property is stowed in a manner which will assure:

(i) Unrestricted freedom of motion to the driver for proper operation of the vehicle;

(ii) Unobstructed passage to all exits by any person; and

(iii) Adequate protection to passengers and others from injury as a result of the displacement or falling of such articles.

(5) *Maximum passengers on motor vehicles.* No motor vehicle shall be driven if the total number of passengers exceeds the seating capacity which will be permitted on seats prescribed in § 398.5(f) when that section is effective. All passengers carried on such vehicle shall remain seated while the motor vehicle is in motion.

(h) *Rest and meal stops.* Every carrier shall provide for reasonable rest stops at least once between meal stops. Meal stops shall be made at intervals not to exceed six hours and shall be for a period of not less than 30 minutes duration.

(i) *Kinds of motor vehicles in which workers may be transported.* Workers may be transported in or on only the following types of motor vehicles: A bus, a truck with no trailer attached, or a semitrailer attached to a truck-tractor provided that no other trailer is attached to the semitrailer. Closed vans without windows or means to assure ventilation shall not be used.

(j) *Limitation on distance of travel in trucks.* Any truck when used for the transportation of migrant workers, if such workers are being transported in excess of 600 miles, shall be stopped for a period of not less than eight consecutive hours either before or upon completion of 600 miles travel, and either before or upon completion of any subsequent 600 miles travel to provide rest for drivers and passengers.

(k) *Lighting devices and reflectors.* No motor vehicle shall be driven when any of the required lamps or reflectors are obscured by the tailboard, by any and all lighting devices required by subpart B of part 393 of this subchapter shall be lighted during darkness or at any other time when there is not sufficient light to render vehicles and persons visible upon the highway at a distance of 500 feet.

(l) *Ignition of fuel; prevention.* No driver or any employee of a motor carrier shall:

(1) Fuel a motor vehicle with the engine running, except when it is necessary to run the engine to fuel the vehicle;

(2) Smoke or expose any open flame in the vicinity of a vehicle being fueled;

(3) Fuel a motor vehicle unless the nozzle of the fuel hose is continuously in contact with the intake pipe of the fuel tank;

(4) Permit any other person to engage in such activities as would be likely to result in fire or explosion.

(m) *Reserve fuel.* No supply of fuel for the propulsion of any motor vehicle or for the operation of any accessory thereof shall be carried on the motor vehicle except in a properly mounted fuel tank or tanks.

(n) *Driving by unauthorized person.* Except in case of emergency, no driver shall permit a motor vehicle to which he/she is assigned to be driven by any

person not authorized to drive such vehicle by the motor carrier in control thereof.

(o) *Protection of passengers from weather.* No motor vehicle shall be driven while transporting passengers unless the passengers therein are protected from inclement weather conditions such as rain, snow, or sleet, by use of the top or protective devices required by § 398.5(f).

(p) *Unattended vehicles; precautions.* No motor vehicle shall be left unattended by the driver until the parking brake has been securely set, the wheels chocked, and all reasonable precautions have been taken to prevent the movement of such vehicle.

(q) *Railroad grade crossings; stopping required; sign on rear of vehicle.* Every motor vehicle shall, upon approaching any railroad grade crossing, make a full stop not more than 50 feet, nor less than 15 feet from the nearest rail of such railroad grade crossing, and shall not proceed until due caution has been taken to ascertain that the course is clear; except that a full stop need not be made at:

(1) A street car crossing within a business or residence district of a municipality;

(2) A railroad grade crossing where a police officer or a traffic-control signal (not a railroad flashing signal) directs traffic to proceed;

(3) An abandoned or exempted grade crossing which is clearly marked as such by or with the consent of the proper state authority, when such marking can be read from the driver's position.

All such motor vehicles shall display a sign on the rear reading, ''This Vehicle Stops at Railroad Crossings.''

[33 FR 19765, Dec. 25, 1968, as amended at 40 FR 44557, Sept. 29, 1975]

§ 398.5 Parts and accessories necessary for safe operation.

(a) *Compliance.* Every motor carrier and its officers, agents, drivers, representatives and employees directly concerned with the installation and maintenance of equipment and accessories shall comply and be conversant with the requirements and specifications of this part, and no motor carrier shall operate any motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with said requirements and specifications.

(b) *Lighting devices.* Every motor vehicle shall be equipped with the lighting devices and reflectors required by subpart B of part 393 of this subchapter.

(c) *Brakes.* Every motor vehicle shall be equipped with brakes as required by subpart C of part 393 of this subchapter, except § 393.44 of this subchapter, and shall satisfy the braking performance requirements contained therein.

(d) *Coupling devices; fifth wheel mounting and locking.* The lower half of every fifth wheel mounted on any truck-tractor or dolly shall be securely affixed to the frame thereof by U-bolts of adequate size, securely tightened, or by other means providing at least equivalent security. Such U-bolts shall not be of welded construction. The installation shall be such as not to cause cracking, warping, or deformation of the frame. Adequate means shall be provided positively to prevent the shifting of the lower half of a fifth wheel on the frame to which it is attached. The upper half of every fifth wheel shall be fastened to the motor vehicle with at least the security required for the securing of the lower half to a truck-tractor or dolly. Locking means shall be provided in every fifth wheel mechanism including adapters when used, so that the upper and lower halves may not be separated without the operation of a positive manual release. A release mechanism operated by the driver from the cab shall be deemed to meet this requirement. On fifth wheels designed and constructed as to be readily separable, the fifth wheel locking devices shall apply automatically on coupling for any motor vehicle the date of manufacture of which is subsequent to December 31, 1952.

(e) *Tires.* Every motor vehicle shall be equipped with tires of adequate capacity to support its gross weight. No motor vehicle shall be operated on tires which have been worn so smooth as to expose any tread fabric or which have any other defect likely to cause failure. No vehicle shall be operated while transporting passengers while using any tire which does not have

tread configurations on that part of the tire which is in contact with the road surface. No vehicle transporting passengers shall be operated with re-grooved, re-capped, or re-treaded tires on front wheels.

(f) *Passenger compartment.* Every motor vehicle transporting passengers, other than a bus, shall have a passenger compartment meeting the following requirements:

(1) *Floors.* A substantially smooth floor, without protruding obstructions more than two inches high, except as are necessary for securing seats or other devices to the floor, and without cracks or holes.

(2) *Sides.* Side walls and ends above the floor at least 60 inches high, by attachment of sideboards to the permanent body construction if necessary. Stake body construction shall be construed to comply with this requirement only if all six-inch or larger spaces between stakes are suitably closed to prevent passengers from falling off the vehicle.

(3) *Nails, screws, splinters.* The floor and the interior of the sides and ends of the passenger-carrying space shall be free of inwardly protruding nails, screws, splinters, or other projecting objects likely to be injurious to passengers or their apparel.

(4) *Seats.* On and after November 1, 1957, a seat shall be provided for each worker transported. The seats shall be: Securely attached to the vehicle during the course of transportation; not less than 16 inches nor more than 19 inches above the floor; at least 13 inches deep; equipped with backrests extending to a height of at least 36 inches above the floor, with at least 24 inches of space between the backrests or between the edges of the opposite seats when face to face; designed to provide at least 18 inches of seat for each passenger; without cracks more than two inches wide, and the exposed surfaces, if made of wood, planed or sanded smooth and free of splinters.

(5) *Protection from weather.* Whenever necessary to protect the passengers from inclement weather conditions, be equipped with a top at least 80 inches high above the floor and facilities for closing the sides and ends of the passenger-carrying compartment. Tarpaulins or other such removable devices for protection from the weather shall be secured in place.

(6) *Exit.* Adequate means of ingress and egress to and from the passenger space shall be provided on the rear or at the right side. Such means of ingress and egress shall be at least 18 inches wide. The top and the clear opening shall be at least 60 inches high, or as high as the side wall of the passenger space if less than 60 inches. The bottom shall be at the floor of the passenger space.

(7) *Gates and doors.* Gates or doors shall be provided to close the means of ingress and egress and each such gate or door shall be equipped with at least one latch or other fastening device of such construction as to keep the gate or door securely closed during the course of transportation; and readily operative without the use of tools.

(8) *Ladders or steps.* Ladders or steps for the purpose of ingress or egress shall be used when necessary. The maximum verticle spacing of footholds shall not exceed 12 inches, except that the lowest step may be not more than 18 inches above the ground when the vehicle is empty.

(9) *Hand holds.* Hand holds or devices for similar purpose shall be provided to permit ingress and egress without hazard to passengers.

(10) *Emergency exit.* Vehicles with permanently affixed roofs shall be equipped with at least one emergency exit having a gate or door, latch and hand hold as prescribed in paragraphs (f) (7) and (9) of this section and located on a side or rear not equipped with the exit prescribed in paragraph (f)(6) of this section.

(11) *Communication with driver.* Means shall be provided to enable the passengers to communicate with the driver. Such means may include telephone, speaker tubes, buzzers, pull cords, or other mechanical or electrical means.

(g) *Protection from cold.* Every motor vehicle shall be provided with a safe means of protecting passengers from cold or undue exposure, but in no event shall heaters of the following types be used:

(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.

(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) Any heater not securely fastened to the vehicle.

§ 398.6 Hours of service of drivers; maximum driving time.

No person shall drive nor shall any motor carrier permit or require a driver employed or used by it to drive or operate for more than 10 hours in the aggregate (excluding rest stops and stops for meals) in any period of 24 consecutive hours, unless such driver be afforded eight consecutive hours rest immediately following the 10 hours aggregate driving. The term ''24 consecutive hours'' as used in this part means any such period starting at the time the driver reports for duty.

§ 398.7 Inspection and maintenance of motor vehicles.

Every motor carrier shall systematically inspect and maintain or cause to be systematically maintained, all motor vehicles and their accessories subject to its control, to insure that such motor vehicles and accessories are in safe and proper operating condition.

§ 398.8 Administration inspection of motor vehicles in operation.

(a) *Administration personnel authorized to perform inspections.* All persons designated as Special Agents of the Federal Highway Administration, as detailed in appendix B of chapter III of this title, are authorized to enter upon and perform inspections of motor carrier's vehicles in operation.

(b) *Prescribed inspection report.* Form MCS 63, Driver-Equipment Compliance Check, shall be used to record findings from motor vehicles selected for final inspection by authorized Administration employees.

(c) *Motor vehicles declared ''out of service''.* (1) Authorized Administration employees shall declare and mark ''out of service'' any motor vehicle which by reason of its mechanical condition or loading is so imminently hazardous to operate as to be likely to cause an accident or a breakdown. Form MCS 64, ''Out of Service Vehicle'' sticker shall be used to mark vehicles ''out of service.''

(2) No motor carrier shall require or permit any person to operate nor shall any person operate any motor vehicle declared and marked, ''out of service'' until all repairs required by the ''out of service notice'' on Form MCS 63 have been satisfactorily completed. The term operate as used in this section shall include towing the vehicle; provided, however, that vehicles marked ''out of service'' may be towed away by means of a vehicle using a crane or hoist; and provided further, that the vehicle combination consisting of the emergency towing vehicle and the ''out of service'' vehicle meets the performance requirements of § 393.52.

(3) No person shall remove the ''Out of Service Vehicle'' sticker from any motor vehicle prior to completion of all repairs required by the ''out of service notice'' on Form MCS 63.

(4) The person or persons completing the repairs required by the ''out of service notice'' shall sign the ''Certification of Repairman'' in accordance with the terms prescribed on Form MCS 63, entering the name of his/her shop or garage and the date and time the required repairs were completed. If the driver completes the required repairs, he/she shall sign and complete the ''Certification of Repairman.''

(d) *Motor carrier's disposition of Form MCS 63.* (1) Motor carriers shall carefully examine Forms MCS 63. Any and all violations or mechanical defects noted thereon shall be corrected. To the extent drivers are shown not to be

in compliance with the Federal Motor Carrier Safety Regulations, appropriate corrective action shall be taken by the motor carrier.

(2) Motor carriers shall complete the ''Motor Carrier Certification of Action Taken'' on Form MCS 63 in accordance with the terms prescribed thereon. Motor carriers shall return Forms MCS 63 to the address indicated upon Form MCS 63 within fifteen (15) days following the date of the vehicle inspection.

[33 FR 19765, Dec. 25, 1968, as amended at 40 FR 44557, Sept. 29, 1975]

PART 399—EMPLOYEE SAFETY AND HEALTH STANDARDS

Subparts A—K [Reserved]

Subpart L—Step, Handhold, and Deck Requirements for Commercial Motor Vehicles

Sec.
399.201 Purpose and scope.
399.203 Applicability.
399.205 Definitions.
399.207 Truck and truck-tractor access requirements.
399.209 Test procedures.
399.211 Maintenance.

AUTHORITY: 49 U.S.C. 304, 1655; 49 CFR 1.48 and 301.60.

SOURCE: 44 FR 43732, July 26, 1979, unless otherwise noted.

Subparts A—K [Reserved]

Subpart L—Step, Handhold, and Deck Requirements for Commercial Motor Vehicles

§ 399.201 Purpose and scope.

This subpart prescribes step, handhold, and deck requirements on commercial motor vehicles. These requirements are intended to enhance the safety of motor carrier employees.

§ 399.203 Applicability.

This subpart applies to all trucks and truck-tractors, having a high profile cab-over-engine (COE) configuration, for entrance, egress and back of cab access, manufactured on and after September 1, 1982.

[44 FR 43732, July 26, 1979, as amended at 46 FR 56799, Nov. 19, 1981]

§ 399.205 Definitions.

Cab-over-engine (COE) A truck or truck-tractor having all, or the front portion, of the engine under the cab.

COE—High profile A COE having the door sill step above the height of the front tires.

Deck plate A horizontal surface designed to provide a person with stable footing for the performance of work such as the connection and disconnection of air and electrical lines, gaining access to permanently-mounted equipment or machinery or for similar needs.

Door sill step Any step normally protected from the elements by the cab door when closed.

Effective peripheral grip Any shaped surface, free of sharp edges, in which a full grasp can be made to secure a handhold by a person.

Fingertip grasp A handhold surface which provides a person contact restricted to finger segments 1 and/or 2 only; or which limits wrap-around closure of finger segment 1 with the palm of the hand to 90 degrees as shown in Illustration I.

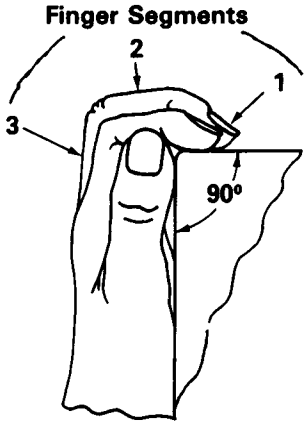

Illustration I
Fingertip Grasp

Full grasp A handhold surface which provides a person contact with finger segments 2 and 3 and which provides

space for finger segment 1 to wrap around toward the palm of the hand beyond the 90-degree surface restriction shown in Illustration I. The handhold need not require contact between fingers and thumb. For example, the hand position shown in Illustration II qualifies as full grasp.

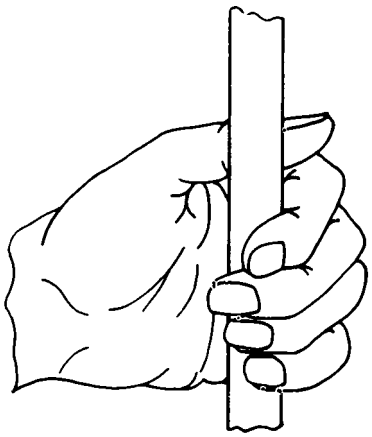

Illustration II
Full Grasp

Ground The flat horizontal surface on which the tires of a motor vehicle rest.

Handhold That which qualifies as providing full grasp if a person is able to find a hand position on the handhold which allows more than fingertip grasp.

Handprint The surface area contacted by the hand when grasping a handhold. The size of this area is the width of the hand across the metacarpal and half the circumference of the handhold. The hand breadth of the typical person is 88.9 millimeters (3.5 inches).

Person Any individual within the 5th percentile female adult through the 95th percentile male adult of anthropometric measures as described by the 1962 Health Examination Survey, ''Weight, Height and Selected Body Dimensions of Adults, United States 1960–1962'' which is incorporated by reference. It is Public Health Service publication No. 1000–Series 11–No. 8 and is for sale from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. When ordering use NTIS Accession No. PB 267174. It is also available for inspection at the Office of the Federal Register Library, 800 North Capitol Street, NW, suite 700, Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register on July 17, 1979. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

Slip resistant material Any material designed to minimize the accumulation of grease, ice, mud or other debris and afford protection from accidental slipping.

§ 399.207 Truck and truck-tractor access requirements.

(a) *General rule.* Any person entering or exiting the cab or accessing the rear portion of a high profile COE truck or truck-tractor shall be afforded sufficient steps and handholds, and/or deck plates to allow the user to have at least 3 limbs in contact with the truck or truck-tractor at any time. This rule applies to intermediate positions as well as transition between intermediate positions. To allow for changes in climbing sequence, the step design shall include, as a minimum, one intermediate step of sufficient size to accommodate two feet. *Exception.* If air and electrical connections necessary to couple or uncouple a truck-tractor from a trailer are accessible from the ground, no step, handholds or deck plates are required to permit access to the rear of the cab.

(b) *Performance requirements.* All high profile COE trucks or truck-tractors shall be equipped on each side of the vehicle where a seat is located, with a sufficient number of steps and handholds to conform with the requirements of paragraph (a) of this section and shall meet the performance requirements:

(1) *Vertical height.* All measurements of vertical height shall be made from ground level with the vehicle at unladen weight.

(2) *Distance between steps.* The distance between steps, up to and including the door sill step, shall provide any person a stable resting position which can be sustained without body motion and by exerting no more arm force

than 35 percent of the person's body weight per grasp during all stages of entry and exit. This criterion applies to intermediate positions as well as transition between intermediate positions above ground level.

(i) When the ground provides the person foot support during entry or is the final step in the sequence during exit, and the step is 508 millimeters (20 inches) or more above ground, the stable resting position shall be achievable by the person using both hands to grasp the handhold(s) and requiring no more arm force than 35 percent of body weight per grasp.

(ii) The vertical height of the first step shall be no more than 609 millimeters (24 inches) from ground level.

(3) *Construction.* Each step or deck plate shall be of a slip resistant design which minimizes the accumulation of foreign material. Wherever practicable, a self-cleaning material should be used.

(4) *Foot accommodation.* Step depth or clearance and step width necessary to accommodate a climbing person are defined by using a minimum 127 millimeter (5 inch) diameter disc as shown in Illustration III.

(i) *Single foot accommodation.* The disc shall fit on a tread rung, or in a step recess, with no exterior overhang.

(ii) *Two-foot accommodation.* Two discs shall fit on a tread rung, or in a step recess, with no exterior overhang.

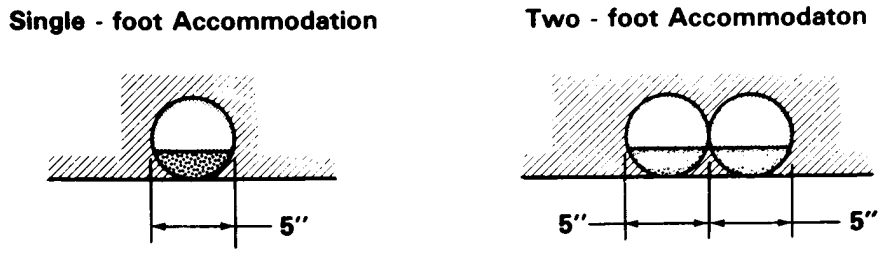

Illustration III
Foot Accommodation

NOTE: The 127 millimeter (5 inch) disc is only intended to test for a minimum depth and width requirement. The step need not retain the disc at rest.

(5) *Step strength.* Each step must withstand a vertical static load of at least 204 kilograms (450 pounds) uniformly distributed over any 127 millimeter (5 inch) increment of step width.

(6) *Handhold location.* A handhold must be located within the reach of any person entering or exiting the vehicle.

(7) *Exterior mounting specifications for handholds.* Each handhold, affixed to the exterior of the vehicle, shall have at least 38 millimeters (1.5 inches) clearance between the handhold and the surface to which it is mounted for the distance between its mounting points.

(8) *Handhold size and shape.* Each handhold shall be free of sharp edges (minimum 1 millimeter [0.04 inch] radius) and have an effective peripheral grip length that permits full grasp by any person.

(9) *Handhold strength.* Each handhold shall withstand a horizontal static load of at least 114 kilograms (250 pounds) uniformly distributed over the area of a hand print and applied away from the mounting surface.

(10) *Deck plates.* Deck plates shall be on the rear of a truck-tractor as necessary to couple or uncouple air and/or electrical connections.

(11) *Deck plate strength.* Each deck plate shall be capable of withstanding

the vertical static load of at least 205 kilograms (450 pounds) uniformly distributed over a 127 millimeter (5 inch) diameter disc.

§ 399.209 Test procedures.

(a) The force exerted on a handhold will be measured using a handheld spring scale or force transducer which can be attached to the vehicle and is free to rotate into alignment with a person's hand position.

(b) Hand grasp will be evaluated by observing the handgrip of any individual who conforms with the definition of ''person'' appearing in § 399.205 of this subpart.

§ 399.211 Maintenance.

All steps, handholds, and/or deck plates required by this subpart shall be adequately maintained to serve their intended function.

APPENDIX A TO SUBCHAPTER B—[RESERVED]

APPENDIX B TO SUBCHAPTER B—SPECIAL AGENTS

CAUTIONARY NOTE: This appendix relates only to Federal authority to enforce the regulations in this subchapter. In its present form, it has no application for the States and is not to be included in any adoption of these regulations by State authorities as a condition of eligibility for grants under part 350 of this chapter.

1. *Authority.* Persons appointed as special agents of the Federal Highway Administration (''Administration''), are authorized to enter upon, to inspect, and to examine any and all lands, buildings, and equipment of motor carriers and other persons subject to the Interstate Commerce Act, the Department of Transportation Act, and other related Acts, and to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of such carriers and other persons.

2. *Compliance.* Motor carriers and other persons subject to these Acts shall submit their accounts, books, records, memoranda, correspondence, and other documents for inspection and copying, and they shall submit their lands, buildings, and equipment for examination and inspection, to any special agent of the Administration upon demand and display of an Administration credential identifying him/her as a special agent.

3. *Definition of special agent.* Federal Highway Administration (FHWA) employees charged with enforcing 42 U.S.C. 4917 and 49 U.S.C. 104, 501 et seq., 521 et seq., 5101 et seq., 5901 et seq., 31101–31104, 31108, 31131 et seq., 31161, 31301 et seq., and 31501 *et seq.*, including employees within the Office of Motor Carriers and such other persons as the Federal Highway Administrator or the Associate Administrator for Motor Carriers may specify in writing, in possession of credentials issued by the FHWA, are special agents. They are hereby authorized to inspect and copy records and to inspect and examine lands, buildings, and equipment to the manner and extent provided by law.

4. *Facsimile of the Administration Credential:*

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION

This is to certify that _____ whose photograph and signature appear hereon is duly accredited as _____ with authority to enter upon, to inspect, and examine lands, buildings, and equipment, and to inspect and copy records and papers of carriers and other persons, in performance of his/her duties under the Department of Transportation Act, related acts, and regulations of the Department.

By direction of the Secretary

(Certifying Authority) (Bearer)

(Sec. 204, Interstate Commerce Act (49 U.S.C. 304); sec. 6, Department of Transportation Act (49 U.S.C. 1655); 49 U.S.C. 1801 et seq.; 18 U.S.C. 831–835; and the delegations of authority at 49 CFR 1.48 and 301.60; 49 U.S.C. 3102; 49 CFR 1.48(b))

[35 FR 1016, Jan. 24, 1970 as amended at 36 FR 16067, Aug. 19, 1971; 43 FR 20011, May 10, 1978; 44 FR 46425, July 10, 1980; 49 FR 38290, Sept. 28, 1984; 60 FR 38749, July 28, 1995; 61 FR 1843, Jan. 24, 1996]

APPENDIX C TO SUBCHAPTER B—[RESERVED]

APPENDIX D TO SUBCHAPTER B—TABLE OF DISQUALIFYING DRUGS AND OTHER SUBSTANCES, SCHEDULE I

This drug classification system's Schedule is adopted in whole from § 1308.11 of 21 CFR part 1308, Schedules of Controlled Substances.

Schedule I—Controlled Substances

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) *Opiates.* Unless specifically excepted or unless listed in another schedule, any of the

following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, salts is possible within the specific chemical designation:

(1) Acetylmethadol 9601
(2) Allylprodine 9602
(3) Alphacetylmethadol 9603
(4) Alphameprodine 9604
(5) Alphamethadol 9605
(6) Alpha-methylfentanyl (N-[1-alpha-methyl-betaphenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine) 9814
(7) Benzethidine 9606
(8) Betacetylmethadol 9607
(9) Betameprodine 9608
(10) Betamethadol 9609
(11) Betaprodine 9611
(12) Clonitazene 9612
(13) Dextromoramide 9613
(14) Diampromide 9615
(15) Diethylthiambutene 9616
(16) Difenoxin 9618
(17) Dimenoxadol 9617
(18) Dimepheptanol 9618
(19) Dimethylthiambutene 9619
(20) Dioxphetyl butyrate 9621
(21) Dipipanone 9622
(22) Ethylmethylthambutene 9623
(23) Etonilazene 9624
(24) Etoxeridine 9625
(25) Furethidine 9626
(26) Hydroxypethidine 9627
(27) Ketobemidone 9628
(28) Levomoramide 9629
(29) Levophenacylmorphan 9631
(30) Morpheridine 9632
(31) Noracymethadol 9633
(32) Norlevorphanol 9634
(33) Normethadone 9635
(34) Norpipanone 9636
(35) Phenadoxone 9637
(36) Phenampromide 9638
(37) Phenomorphan 9647
(38) Phenoperidine 9641
(39) Piritramide 9642
(40) Proheptazine 9643
(41) Properidine 9644
(42) Propiram 9649
(43) Racemoramide 9645
(44) Sufentanil 9740
(45) Tilidine 9750
(46) Trimeperidine 9646

(c) *Opium derivatives.* Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine 9319
(2) Acetyldithydrocodeine 9051
(3) Benzylmorphine 9052
(4) Codeine methylbromide 9070
(5) Codeine-N-Oxide 9053
(6) Cyprenorphine 9054
(7) Desomorphine 9055
(8) Dihydromorphine 9145
(9) Drotebanol 9335
(10) Etorphine (except hydrochloride salt) 9056
(11) Heroin 9200
(12) Hydromorphinol 9301
(13) Methyldesorphine 9302
(14) Methyldihydromorphine 9304
(15) Morphine methylbromide 9305
(16) Morphine methylsulfonate 9306
(17) Morphine-N-Oxide 9307
(18) Myrophine 9308
(19) Nicocodeine 9309
(20) Nicomorphine 9312
(21) Normorphine 9313
(22) Phocodine 9314
(23) Thebacon 9315

(d) *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term ''isomer'' includes the optical, position and geometric isomers):

(1) 4-bromo-2,5-dimethoxy-amphetamine 7391
Some trade or other names: 4-bromo-2,5-dimethoxy-α-methylphenthylamine; 4-bromo-2,5-DMA
(2) 2,5-dimethoxyamphetamine 7396
Some trade or other names: 2,5-dimethoxy-α-methylphenethylamine; 2,5-DMA
(3) 4-methoxyamphetamine 7411
Some trade or other names: 4-methoxy-α-methylphenethylamine; paramethoxyamphetamine, PMA
(4) 5-methoxy-3,4-methylenedioxy-amphetamine 7401
(5) 4-methyl-2,5-dimethoxy-amphetamine 7395
Some trade and other names: 4-methyl-2,5-dimethoxy-α-methylphenethylamine; ''DOM''; and ''STP''
(6) 3,4-methylenedioxy amphetamine 7400
(7) 3,4,5-trimethoxy amphetamine 7390
(8) Bufotenine 7433
Some trade and other names: 3-(β-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltptamine; mappine
(9) Diethytryptamine 7434
Some trade and other names: N,N-Diethyltryptamine; DET
(10) Dimethyltryptamine 7435
Some trade or other names: DMT .....
(11) Ibogaine 7260
Some trade and other names: 7-Ethyl-6,6β,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1′, 2′:1,2] azepino [5,4-b] indole; Tabermanthe iboga
(12) Lysergic acid diethylamide 7315
(13) Marihuana 7360
(14) Mescaline 7381
(15) Parahexyl—7374; some trade or other names: 3-Hexyl-1-hydrozy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl.
(16) Peyote 7415
Meaning all parts of the plant presently classified botanically as *Lophophora williamsii Lemaire,* whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts
(Interprets 21 USC 812(c), Schedule 1(c)(12))
(17) N-ethyl-3-piperidyl benzilate 7482

(18) N-methyl-3-piperidyl benzilate 7484
(19) Psilocybin 7437
(20) Psilocyn 7438
(21) Tetrahydrocannabinols 7370
Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis,* sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
> 1 cis or trans tetrahydrocannabinol, and their optical isomers
> 6 cis or trans tetrahydrocannabinol, and their optical isomers
> 3,4 cis or trans tetrahydrocannabinol, and its optical isomers
(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
(22) Ethylamine analog of phencyclidine 7455
Some trade or other names: N-ethyl-1-phenylcyclo-hexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE
(23) Pyrrolidine analog of phencyclidine 7458
Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP
(24) Thiophene analog of phencyclidine 7470
Some trade or other names: 1-[1-(2-thienyl)-cyclo-hexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP

(e) *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone 2572

(f) *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylline 1503
(2) N-ethylamphetamine 1475

(49 U.S.C. 3102; 49 CFR 1.48 and 301.60)

[49 FR 44215, Nov. 5, 1984, as amended at 52 FR 20590, June 1, 1987]

APPENDIX E TO SUBCHAPTER B—TABLES OF DISQUALIFYING DRUGS AND OTHER SUBSTANCES, SCHEDULES II THROUGH V°

Schedules II through V of the drug classification system are adopted in whole from 21 CFR 1308.12 through 1308. 15, Schedules of Controlled Substances.

[52 FR 20590, June 1, 1987]

APPENDIX F TO SUBCHAPTER B—COMMERCIAL ZONES

NOTE.—The text of these definitions is identical to the text of 49 CFR part 1048, revised as of October 1, 1975, which is no longer in print.

COMMERCIAL ZONES

Sec.
1 New York, N.Y.
2 Chicago, Ill.
3 St. Louis, Mo.-East St. Louis, Ill.
4 Washington, D.C.
5 Los Angeles, Calif., and contiguous and adjacent municipalities.
6 Philadelphia, Pa.
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8 Kansas City, Mo.-Kansas City, Kans.
9 Boston, Mass.
10 Davenport, Iowa; Rock Island and Moline, Ill.
11 Commercial zones of municipalities in New Jersey within 5 miles of New York, N.Y.
12 Commercial zones of municipalities in Westchester and Nassau Counties, N.Y.
13 Tucson, Ariz.
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22 Cleveland, Ohio.
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24 Seattle, Wash.
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27 New Orleans, La.
28 Pittsburgh, Pa.
29 Portland, Oreg.
30 Vancouver, Wash.
31 Charleston, S.C.
32 Charleston, W. Va.
33 Memphis, Tenn.
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35 Pueblo, Colo.
36 Warren, Ohio
37 Louisville, Ky.
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44 Commercial zones determined generally, with exceptions.
45 Controlling distances and population data.

Section 1 *New York, N.Y.*

(a) The application of §1048.101 Commercial Zones determined generally, with exceptions, is hereby extended to New York, N.Y.

(b) The exemption provided by section 203(b)(8) of the Interstate Commerce Act, of

transportation by motor vehicle, in interstate or foreign commerce, performed wholly within the zone the limits of which are defined in paragraph (a) of this section, is hereby removed as to all such transportation except:

(1) Transportation which is performed wholly within the following territory: The area within the corporate limits of the cities of New York, Yonkers, Mount Vernon, North Pelham, Pelham, Pelham Manor, Great Neck Estates, Floral Park, and Valley Stream, N.Y., and Englewood, N.J.; the area within the borough limits of Alpine, Tenafly, Englewood Cliffs, Leonia, Fort Lee, Edgewater, Cliffside Park, Fairview, Palisades Park, and Ridgefield, Bergen County, N.J.; and that part of Hudson County, N.J., east of Newark Bay and the Hackensack River;

(2) Transportation which is performed in respect of a shipment which has had a prior, or will have a subsequent movement by water carrier, and which is performed wholly between points named in subparagraph (1) of this paragraph, on the one hand, and, on the other, those points in Newark and Elizabeth, N.J., identified as follows: All points in that area within the corporate limits of the cities of Newark and Elizabeth, N.J., west of Newark Bay and bounded on the south by the main line of the Central Railroad of New Jersey, on the west by the Newark & Elizabeth Branch of the Central Railroad Company of New Jersey, and on the north by the property line of the Penn Central Transportation Company.

(3) Transportation which is performed in respect of a shipment by rail carrier, and which is performed wholly between points named in subparagraph (1) of this paragraph, on the one hand, and, on the other,

(a) Those portions of Kearny, N.J., within an area bounded on the north by the main line of the Jersey City Branch of the Penn Central Transportation Co., on the south and east by Fish House Road and Pennsylvania Avenue, and on the west by the property line of the Penn Central Transportation Co. Truck-Train Terminal.

(b)(i) That portion of Newark, N.J., within an area bounded on the north by South Street and Delancey Street, on the east by Doremus Avenue, on the south by the freight right-of-way of the Penn Central Transportation Co. (Waverly Yard, Newark, N.J., to Greenville Piers, Jersey City, N.J., line), and on the west by the Penn Central Transportation Co.'s Hunter Street produce yard, and (ii) that portion of Newark, N.J., within an area bounded on the north by Poinier Street, on the east by Broad Steet, on the south by the passenger right-of-way of the Penn Central Transportation Co.'s main line and on the west by Frelinghuysen Avenue.

(c) That portion of Port Reading, N.J., within an area bounded on the east by the Arthur Kill, on the south by the right-of-way of the Reading Co., on the west by Cliff Road, and on the north by Woodbridge-Carteret Road, and

(d) That portion of Elizabeth, N.J., within an area bounded by a line extending from Newark Bay westward along Trumbull Street to its intersection with Division Street; thence northward along Trumbull Street to its intersection with East North Avenue; thence eastward along East North Avenue to its intersection with the New Jersey Turnpike, thence along the New Jersey Turnpike to the Elizabeth Channel; thence easterly along the Elizabeth Channel to Newark Bay; thence along the western shore of Newark Bay to the point of beginning.

Sec. 2 *Chicago, Ill.*

The zone adjacent to and commercially a part of Chicago, Ill., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), includes and is comprised of all points as follows:

The area within the corporate limits of Chicago, Evanston, Oak Park, Cicero, Berwyn, River Forest, Willow Springs, Bridgeview, Hickory Hills, Worth, Homewood, and Lansing, Ill.; the area within the township limits of Niles, Maine, Leyden, Norwood Park, Proviso, Lyons, Riverside, Stickeny, Worth, Calumet, Bremen, and Thornton Townships, Cook County, Ill.; the area comprised of that part of Lemont Township, Cook County, and that part of Downers Grove Township, Du Page County, Ill., bounded by a line beginning at the intersection of Archer Avenue and the southern corporate limits of Willow Springs, Ill., and extending in a southwesterly direction along Archer Avenue to its junction with Chicago Joliet Road (Sag Lemont Highway), thence in a westerly direction over Chicago Joliet Road to its junction with Walker Road, thence directly north along an imaginary line to the southern shoreline of the Chicago Sanitary and Ship Canal, thence in a northeasterly direction along said shoreline to the corporate limits of Willow Springs, including points on the indicated portions of the highways specified; the area within Burr Ridge, Du Page County, bounded by a line beginning at the intersection of County Line Road and Frontage Road, thence southwesterly along Frontage Road to its intersection with Garfield Street, thence northerly along Garfield Street to its junction with 74th Street, thence westerly along an imaginary line to the junction of 74th Street and Grant Street, thence southerly along Grant Street to its junction with 75th Street, thence westerly

along 75th Street to its junction with Brush Hill Road, thence southerly along Brush Hill Road to its junction with Frontage Road, thence northeasterly along Frontage Road to its junction with County Line Road; and the area within the corporate limits of Hammond, Whiting, East Chicago, and Gary, Ind.

Sec. 3 *St. Louis, Mo.-East St. Louis, Ill.*

(a) The zone adjacent to and commercially a part of St. Louis, Mo.-East St. Louis, Ill, within which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management or arrangement for a continuous carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), includes and is comprised of all points as follows: (1) All points within the corporate limits of St. Louis, Mo.; (2) all points in St. Louis County, Mo., within a line drawn 0.5 mile south, west, and north of the following line:—Beginning at the Jefferson Barracks Bridge across the Mississippi River and extending westerly along Missouri Highway 77 to its junction with U.S. Highway 61 Bypass, thence along U.S. Highway 61 Bypass to its junction with U.S. Highway 66, thence westerly along U.S. Highway 66 to its junction with Bowles Avenue, thence northerly along Bowles Avenue, actual or projected, to the Meramec River, thence easterly along the south bank of the Meramec River to a point directly south of the western boundary of Kirkwood, thence across the Meramec River to and along the western boundary of Kirkwood to Marshall Road, thence westerly along Marshall Road to its junction with Treecourt Avenue, thence northerly along Treecourt Avenue to its junction with Big Bend Road, thence easterly along Big Bend Road to the western boundry of Kirkwood, thence northerly along the western boundary of Kirkwood to its junction with Dougherty Ferry Road, thence westerly along Dougherty Ferry Road to its junction with Interstate Highway 244, thence northerly along Interstate Highway 244 to its junction with Manchester Road, thence easterly along Manchester Road to its junction with the northwest corner of Kirkwood, thence along the western and northern boundaries of Kirkwood to the western boundary of Huntleigh, Mo., thence along the western and northern boundaries of Huntleigh to its junction with Lindbergh Boulevard, thence northerly along Lindbergh Boulevard to its junction with Lackland Avenue, thence in a westerly direction along Lackland Avenue to its junction with the right-of-way of the proposed Circumferential Expressway (Interstate Highway 244), thence in a northerly direction along said right-of-way to its junction with the right-of-way of the Chicago, Rock Island and Pacific Railroad, thence in an easterly direction along said right-of-way to its junction with Dorsett Road, thence in an easterly direction along Dorsett Road to its junction with Lindbergh Boulevard, thence in a northerly direction along Lindbergh Boulevard to its junction with St. Charles Rock Road, thence westerly along St. Charles Rock Road to its function with the Missouri River, thence northerly along the east shore of the Missouri River to its junction with the Norfolk and Western Railway Co. right-of-way, thence easterly along the southern boundary of the Norfolk and Western Railway Co. right-of-way to Lindbergh Boulevard, thence in an easterly direction along Lindbergh Boulevard to the western boundary of St. Ferdinand (Florissant), Mo., thence along the western, northern, and eastern boundaries of St. Ferdinand to junction Insterstate Highway 270, and thence along Interstate Highway 270 to the corporate limits of St. Louis (near Chain of Rocks Bridge); and (3) all points within the corporate limits of East St. Louis, Belleville, Granite City, Madison, Venice, Brooklyn, National City, Fairmont City, Washington Park, and Sauget, Ill.; that part of the village of Cahokia, Ill., bounded by Illinois Highway 3 on the east, First Avenue and Red House (Cargill) Road on the south and southwest, the east line of the right-of-way of the Alton and Southern Railroad on the west, and the corporate limits of Sauget, Ill., on the northwest and north; that part of Centerville, Ill., bounded by a line beginning at the junction of 26th Street and the corporate limit of East St. Louis, Ill., and extending northeasterly along 26th Street to its junction with Bond Avenue, thence southeasterly along Bond Avenue to its junction with Owen Street, thence southwesterly along Owen Street to its junction with Church Road, thence southeasterly along Church Road to its junction with Illinois Avenue, thence southwesterly along Illinois Avenue to the southwesterly side of the right-of-way of the Illinois Central Railroad Co., thence along the southwesterly side of the right-of-way of the Illinois Central Railroad Co. to the corporate limits of East St. Louis, Ill, thence along the corporate limits of East St. Louis, Ill., to the point of beginning; and that area bounded by a line commencing at the intersection of the right-of-way of the Alton and Southern Railroad and the Madison, Ill., corporate limits near 19th Street, and extending east and south along said right-of-way to its intersection with the right-of-way of Illinois Terminal Railroad Co., thence southwesterly along the Illinois Terminal Railroad Co. right-of-way to its intersection with Illinois Highway 203, thence northwesterly along said highway to its intersection with the Madison, Ill., corporate boundary near McCambridge Avenue, thence northerly along the Madison, Ill., corporate boundary to the point of beginning.

(b) The exemption provided by section 203(b)(8) of the Interstate Commerce Act in respect of transportation by motor vehicle, in interstate or foreign commerce, between Belleville, Ill., on the one hand, and, on the other, any other point in the commercial zone, the limits of which are defined in paragraph (a) of this section, is hereby removed, and the said transportation is hereby subjected to all applicable provisions of the Interstate Commerce Act.

Sec. 4 *Washington, DC.*

The zone adjacent to and commercially a part of Washington, DC, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.A. 303(b)(8)) includes and it is comprised of all as follows:

Beginning at the intersection of MacArthur Boulevard and Falls Road (Maryland Highway 189) and extending northeasterly along Falls Road to its junction with Scott Drive, thence west on Scott Drive to its junction with Viers Drive, thence west on Viers Drive to its junction with Glen Mill Road, thence northeast on Glen Mill Road to its junction with Maryland Highway 28, thence west on Maryland Highway 28 to its junction with Shady Grove Road, thence northeast on Shady Grove Road approximately 2.7 miles to Crabbs Branch, thence southeasterly along the course of Crabbs Branch to Rock Creek, thence southerly along the course of Rock Creek to Viers Mill Road (Maryland Highway 586), thence southeasterly along Viers Mill Road approximately 0.3 mile to its junction with Aspen Hill Road, thence northeasterly along Aspen Hill Road to its junction with Brookeville Road (Maryland Highway 97), thence southeasterly along Brookeville Road to its junction with Maryland Highway 183, thence northeasterly along Maryland Highway 183 to Colesville, Md., thence southeasterly along Beltsville Road to its junction with Powder Mill Road (Maryland Highway 212), thence easterly over Powder Mill Road to its junction with Montgomery Road, thence northeasterly along Montgomery Road, approximately 0.2 mile, to its junction with an unnumbered highway extending northeasterly to the north of Ammendale Normal Institute, thence along such unnumbered highway for a distance of about 2.2 miles to its junction somewhat north of Virginia Manor, Md., with an unnumbered highway extending easterly through Muirkirk, Md., thence along such unnumbered highway through Muirkirk to its junction, approximately 1.8 miles east of the Baltimore and Ohio Railroad, with an unnumbered highway, thence southwesterly along such unnumbered highway for a distance of about 0.5 mile to its junction with an unnumbered highway, thence southeasterly along such unnumbered highway through Springfield and Hillmeade, Md., to its junction with Defense Highway (U.S. Highway 50), thence southwesterly along Defense Highway approximately 0.8 mile to its junction with Enterprise Road (Maryland Highway 556), thence southerly over Enterprise Road to its junction with Central Avenue (Maryland Highway 214), thence westerly over Central Avenue about 0.5 mile to its crossing of Western Branch, thence southerly down the course of Western Branch to Maryland Highway 202, thence westerly approximately 0.3 mile along Maryland Highway 202 to its junction with White House Road, thence southwesterly along White House Road to its junction with Maryland Highway 221, thence southeasterly along Maryland Highway 221 to its junction with Maryland Highway 4, thence westerly along Maryland Highway 4 to the boundary of Andrews Air Force Base, thence south and west along said boundary to Brandywine Road (Maryland Highway 5), thence northwesterly along Maryland Highway 5 to its junction with Maryland Highway 337, thence southwesterly along Maryland Highway 337 to its junction with Maryland Highway 224, thence southerly along Maryland Highway 224 to a point opposite the mouth of Broad Creek, thence due west across the Potomac River to the west bank thereof, thence southerly along the west bank of the Potomac River to Gunston Cove, thence up the course of Gunston Cove to Pohick Creek, thence up the course of Pohick Creek to Virginia Highway 611, thence southwesterly along Virginia Highway 611 to the Fairfax-Prince William County line, thence along said county line to Virginia Highway 123, thence northerly along Virginia Highway 123 to its junction with Virginia Highway 636, thence northeasterly along Virginia Highway 636 to its junction with Virginia Highway 638, thence northwesterly along Virginia Highway 638 to its junction with Virginia Highway 620, thence westerly along Virginia Highway 620 to its junction with Virginia Highway 655, thence northeasterly along Virginia Highway 655 to its junction with U.S. Highway 211, thence westerly along U.S. Highway 211 to its junction with Virginia Highway 608, thence northerly along Virginia Highway 608 to its junction with U.S. Highway 50, thence westerly along U.S. Highway 50 to the Fairfax-Loudoun County line, thence northeasterly along said county line to its intersection with Dulles International Airport, thence along the southern, western, and northern boundaries of said airport to the Fairfax-Loudoun County line (at or near Dulles Airport Access Road), thence northeasterly along said county line to its junction with Virginia Highway 7, thence

southeasterly along Virginia Highway 7 to its junction with Virginia Highway 193, thence along Virginia Highway 193 to its junction with Scott Run Creek, thence northerly down the course of Scott Run Creek to the Potomac River, thence due north across the river to MacArthur Boulevard to its junction with Maryland Highway 189, the point of beginning.

Sec. 5 *Los Angeles, Calif., and contiguous and adjacent municipalities.*

(a) The exemption provided by section 203(b)(8) of Part II of the Interstate Commerce Act to the extent it affects transportation by motor vehicle, in interstate or foreign commerce, performed wholly within Los Angeles, Calif., or wholly within any municipalitiy contiguous or adjacent to Los Angeles, Calif., or wholly a part of Los Angeles, as defined in paragraph (b) of this section, or wholly within the zone adjacent to and commercially a part of the San Pedro, Wilmington, and Terminal Island Districts of Los Angeles and Long Beach, as defined in paragraph (c) of this section, or wholly within the zone of any independent municipality contiguous or adjacent to Los Angeles, as determined under §1048.101, or otherwise, between any point in Los Angeles County, Calif., north of the line described below, on the one hand, and, on the other, any point in Los Angeles County, Calif., south thereof is hereby removed and the said transportation is hereby subjected to all the applicable provisions of the Interstate Commerce Act:

Beginning at the Pacific Ocean, and extending easterly along the northern and eastern corporate limits of Manhattan Beach to the northern corporate limits of Redondo Beach, thence along the northern and eastern corporate limits of Redondo Beach to the intersection of Inglewood Avenue and Redondo Beach Boulevard, thence along Redondo Beach Boulevard to the corporate limits of Torrance, thence along the northwestern and eastern corporate limits of Torrance to 182d Street, thence along 182d Street, Walnut, and Main Streets to Alondra Boulevard, thence along Alondra Boulevard to its intersection with Dwight Avenue, thence southerly along Dwight Avenue and an imaginary straight line extending southward to Greenleaf Boulevard, thence eastward along Greenleaf Boulevard to the northwestern corner of the corporate limits of Long Beach, thence along the northern and eastern corporate limits of Long Beach to Artesia Boulevard, thence east on Artesia Boulevard to the Los Angeles-Orange County line.

(b) For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of Los Angeles and contiguous municipalities (except the San Pedro, Wilmington, and Terminal Island districts of Los Angeles and Long Beach, Calif.), in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt from regulation under section 203(b)(8) of the act, is hereby defined to include the area of a line extending in a generally northwesterly and northerly direction from the intersection of Inglewood Avenue and Redondo Beach Boulevard along the eastern and northern corporate limits of Redondo Beach, Calif., to the eastern corporate limits of Manhattan Beach, Calif., thence along the eastern and northern corporate limits of Manhattan Beach to the Pacific Ocean, thence along the shoreline of the Pacific Ocean to the western corporate limits of Los Angeles at a point east of Topanga Canyon, and thence along the western corporate limits of Los Angeles to a point near Santa Susana Pass; south of a line extending in a generally easterly direction from a point near Santa Susana Pass along the northern corporate limits of Los Angeles to the eastern corporate limits of Burbank, Calif., thence along the eastern corporate limits of Burbank to the northern corporate limits of Glendale, Calif., and thence along the northern corporate limits of Glendale and Pasadena, Calif., to the northeastern corner of Pasadena; west of a line extending in a generally southerly and southwesterly direction from the northeastern corner of Pasadena along the eastern and a portion of the southern corporate limits of Pasadena to the eastern corporate limits of San Marino, Calif., thence along the eastern corporate limits of San Marino and the eastern and a portion of the southern corporate limits of Alhambra, Calif., to the western corporate limits of Monterey Park, Calif., and the western corporate limits of Montebello, Calif., thence along the western corporate limits of Montebello, Calif., to the Rio Hondo, and the Los Angeles River to the northern corporate limits of Long Beach; and north of a line extending in a generally westerly direction from the Los Angeles River along the northern corporate limits of Long Beach and thence along Greenleaf Boulevard to its intersection with an imaginary straight line extending southward from Dwight Avenue, thence north on the imaginary straight line extending southward from Dwight Avenue, and thence northerly along Dwight Avenue to Alondra Boulevard, thence west along Alondra Boulevard, Main, Walnut, and 182d Streets to the eastern corporate limits of Torrance, thence along a portion of the eastern and the northwestern corporate limits of Torrance to Redondo Beach Boulevard, and thence along Redondo Beach Boulevard to Inglewood Avenue.

(c) For the purpose of administration and enforcement of Part II of the Interstate

Commerce Act, the zone adjacent to and commercially a part of the San Pedro, Wilmington, and Terminal Island districts of Los Angeles and Long Beach in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt from regulation under section 203(b)(8) of the act, is hereby defined to include the area east of a line extending in a generally northerly and northwesterly direction from the Pacific Ocean along the western corporate limits of Los Angeles to 258th Street, thence along 258th Street to the eastern corporate limits of Torrance, and thence along a portion of the eastern, and along the southern and western, corporate limits of Torrance to the northwestern corner of Torrance, south of a line extending in a generally easterly direction from the northwestern corner of Torrance along the northwestern and a portion of the eastern corporate limits of Torrance to 182d Street, thence along 182d, Walnut, Main, and Alondra Boulevard to its intersection with Dwight Avenue, thence southerly along Dwight Avenue and an imaginary straight line extending southward from Dwight Avenue to Greenleaf Boulevard and thence along Greenleaf Boulevard and the northern corporate limits of Long Beach to the northeastern corner of Long Beach; west of the eastern corporate limits of Long Beach; and north of the southern corporate limits of Long Beach and Los Angeles.

Sec. 6 *Philadelphia, Pa.*

The zone adjacent to and commercially a part of Philadelphia, Pa., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The area within Pennsylvania included within the corporate limits of Philadelphia and Bensalem and Lower Southampton Townships in Bucks County; Conshohocken and West Conshohocken, Pa., and Lower Moreland, Abington, Cheltenham, Springfield, Whitemarsh, and Lower Merion Townships in Montgomery County; an area in Upper Dublin Township, Montgomery County, bounded by a line beginning at the intersection of Pennsylvania Avenue and Fort Washington Avenue and extending northeast along Fort Washington Avenue to its junction with Susquehanna Road, thence southeast along Susquehanna Road to its junction with the right-of-way of the Pennsylvania Railroad Company, thence southwest along the right-of-way of the Pennsylvania Railroad Company to Pennsylvania Avenue, thence northwest along Pennsylvania Avenue to its junction with Fort Washington Avenue, the point of beginning; Haverford Township in Delaware County; and an area in Delaware County south and east of a line extending southward from the intersection of the western and northern boundaries of Upper Darby Township along Darby Creek to Bishop Avenue, thence south along Bishop Avenue to Baltimore Pike, thence west along Baltimore Pike to Pennsylvania Highway 320, thence south along Pennsylvania Highway 320 to the corporate limits of Chester, thence along the northern corporate limit of Chester in a westerly direction to the eastern boundary of Upper Chichester Township, thence south to the southern boundary of said township along the eastern boundary thereof, and thence west along the southern boundary of said township to the Delaware State line, and thence south along the Delaware State line to the Delaware River, and

(b) The area in New Jersey included in the corporate limits of Camden, Gloucester City, Woodlynne, Merchantville, and Palmyra Boroughs, and the area included in Pennsauken Township in Camden County.

Sec. 7 *Cincinnati, Ohio.*

The zone adjacent to and commercially a part of Cincinnati, Ohio, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuing carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 203(b)(8)), includes and is comprised of all points as follows:

Addyston, Ohio.	Mariemont, Ohio.
Cheviot, Ohio.	North Bend, Ohio.
Cincinnati, Ohio.	Norwood, Ohio.
Cleves, Ohio.	St. Bernard, Ohio.
Elmwood Place, Ohio.	Covington, Ky.
	Newport, Ky.
Fairfax, Ohio.	Cold Spring, Ky.

That part of Ohio bounded by a line commencing at the intersection of the Colerain-Springfield Township line and corporate limits of Cincinnati, Ohio, and extending along said township line in a northerly direction to its intersection with the Butler-Hamilton County line, thence in an easterly direction along said county line to its intersection with Ohio Highway 4, thence in a northerly direction along Ohio Highway 4 to its intersection with Seward Road, thence in a northerly direction along said road to its intersection with Port Union Road, thence east along Port Union Road to the Fairfield Township-Union Township line, thence northward along said township line to its intersection with the right-of-way of the

Pennsylvania Railroad Co., thence southeasterly along the right-of-way of the Pennsylvania Railroad Co. to its intersection with Princeton-Glendale Road (Ohio Highway 747), thence southward along said road to its intersection with Mulhauser Road, thence in an easterly direction along said road to the terminus thereof west of the tracks of the Pennsylvania Railroad Co., thence continue in an easterly direction in a straight line to Allen Road, thence along the latter to the junction thereof with Cincinnati-Dayton Road, thence in a southerly direction along Cincinnati-Dayton Road, to the Butler, Hamilton County line, thence along said county line to the Warren-Hamilton County line in an easterly direction to the Symmes-Sycamore Township line, thence in a southerly direction along the Symmes-Sycamore Township line to its intersection with the Columbia Township line, thence in a westerly direction along Sycamore-Columbia Township line to Madeira Township, thence in a clockwise direction around the boundary of Madeira Township to the Sycamore-Columbia Township line, thence in a westerly direction along said township line to Silverton Township, thence in a southerly direction along said corporate limits to junction with Redbank Road, thence in a southerly direction over Redbank Road to the Cincinnati Corporate limits.

That part of Kenton County, Ky., lying on and north of a line commencing at the intersection of the Kenton-Boone County line and Dixie Highway (U.S. Highways 25 and 42), and extending over said highway to the corporate limits of Covington, Ky., including communities on the described line.

That part of Campbell County, Ky., lying on and north of a line commencing at the southern corporate limits of Newport, Ky., and extending along Licking Pike (Kentucky Highway 9) to junction with Johns Hill Road, thence along Johns Hill Road to junction with Alexandria Pike (U.S. Highway 27), thence northward along Alexandria Pike to junction with River Road (Kentucky Highway 445), thence over the latter to the Ohio River, including communities on the described line.

That part of Boone County, Ky., bounded by a line beginning at the Boone-Kenton County line west of Erlanger, Ky., and extending in a northwesterly direction along Donaldson Highway to its intersection with Zig-Zag Road, thence along Zig-Zag Road to its intersection with Kentucky Highway 18, thence along Kentucky Highway 18 to its intersection with Kentucky Highway 237, thence along Kentucky Highway 237 to its intersection with Kentucky Highway 20, and thence easterly along Kentucky Highway 20 to the Boone-Kenton County line.

That part of Boone and Kenton Counties, Ky., bounded by a line commencing at the intersection of the Boone-Kenton County line and U.S. Highway 42, and extending in a southwesterly direction along U.S. Highway 42 to its junction with Gunpowder Road, thence southerly along Gunpowder Road to its junction with Sunnybrook Road, thence easterly along Sunnybrook Road to its junction with Interstate Highway 75, thence in a straight line in a northeasterly direction to Richardson Road, thence in an easterly direction over Richardson Road to its junction with Kentucky State Route 1303, thence in a northerly direction over Kentucky State Route 1303 to the southern boundary of Edgewood, Kenton County, Ky.

Sec. 8 *Kansas City, Mo.-Kansas City, Kans.*

The zone adjacent to and commercially a part of Kansas City, Mo.-Kansas City, Kans., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuing carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), includes and is comprised of all points as follows:

Beginning on the north side of the Missouri River at the western boundary line of Parkville, Mo., thence along the western and northern boundaries of Parkville to the Kansas City, Mo., corporate limits, thence along the western, northern, and eastern corporate limits of Kansas City, Mo., to its junction with U.S. Bypass 71 (near Liberty, Mo.), thence along U.S. Bypass 71 to Liberty, thence along the northern and eastern boundaries of Liberty to its junction with U.S. Bypass 71 south of Liberty, thence south along U.S. Bypass 71 to its junction with the Independence, Mo., corporate limits, thence along the eastern Independence, Mo., corporate limits to its junction with Interstate Highway 70, thence along Interstate Highway 70 to its junction with the Blue Springs, Mo., corporate limits, thence along the western, northern, and eastern corporate limits of Blue Springs, Mo., to its junction with U.S. Highway 40, thence east along U.S. Highway 40 to its junction with Brizen-Dine Road, thence south along the southerly extension of Brizen-Dine Road to its junction with Missouri Highway AA, thence along Missouri Highway AA to its junction with the Blue Springs, Mo., corporate limits, thence along the southern and western corporate limits of Blue Springs, Mo., to its junction with U.S. Highway 40, thence west along U.S. Highway 40 to its junction with the Lee's Summit, Mo., corporate limits.

Thence along the eastern Lee's Summit corporate limits to the Jackson-Cass County line, thence west along Jackson-Cass County line to the eastern corporate limits of

Belton, Mo., thence along the eastern, southern, and western corporate limits of Belton to the western boundary of Richards-Gebaur Air Force Base, thence along the western boundary of said Air Force Base to Missouri Highway 150, thence west along Missouri Highway 150 to the Kansas-Missouri State line, thence north along the Kansas-Missouri State line, to 110th Street, thence west along 110th Street to its junction with U.S. Highway 69, thence north along U.S. Highway 69 to its junction with 103d Street, thence west along 103d Street to its junction with Quivera Road (the corporate boundary of Lenexa, Kans.), thence along the eastern and southern boundaries of Lenexa to Black Bob Road, thence south along Black Bob Road to 119th Street, thence east along 119th Street to the corporate limits of Olathe, Kans., thence south and east along the Olathe corporate limits to Schlagel Road, thence south along Schlagel Road to Olathe Morse Road, thence west along Olathe Morse Road to the northeast corner of Johnson County Airportr, thence south, west, and north along the boundaries of said airport to Pflumm Road, thence north along Pflumm Road to its junction with Olathe Martin City Road, thence west along Olathe Martin City Road to its junction with Murden Road, thence south along Murden Road to its junction with Olathe Morse Road (the corporate boundary of Olathe, Kans.), thence west and north along said corporate boundary to its intersection with U.S. Highway 56, thence southwest along U.S. Highway 56 to its junction with 159th Street.

Thence west along 159th Street to its junction with the Johnson County Industrial Airport, thence south, west, north and east along the boundaries of said airport to the point of beginning, on 159th Street, thence, east along 159th Street to its junction with U.S. Highway 56, thence northeast along U.S. Highway 56 to its junction with Parker Road, thence north along Parker Road to the northern boundary of Olathe, thence east and north along the northern corporate limits of Olathe to Pickering Road, thence north along Pickering Road to 107th Street (the corporate boundary of Lenexa, Kans.), thence along the western and northern boundaries of Lenexa to Pflumm Road, thence north along Pflumm Road to its junction with Kansas Highway 10, thence along Kansas Highway 10 to its junction with Kansas Highway 7, thence along an imaginary line due west across the Kansas River to the Wyandotte County-Leavenworth County line (142d Street) at Loring, Kans., thence westerly along County Route No. 82, a distance of three-fourths of a mile to the entrance of the facilities at Mid-Continent Underground Storage, Loring, thence from Loring in a northerly direction along Loring Lane and Lindwood Avenue to the southern boundary of Bonner Springs, Kans.

Thence along the southern, western, and northern boundaries of Bonner Springs to its intersection with Kansas Highway 7, thence southeast along Kansas Highway 7 to its junction with Kansas Highway 32, thence east on Kansas Highway 32 to the corporate boundary of Kansas City, Kans., thence north, west, and east along the corporate boundaries of Kansas City, Kans., to its junction with Cernech Road and Pomeroy Drive, thence northwesterly along Pomeroy Drive to its junction with 79th Street, thence along 79th Street to its junction with Walcotte Drive at Pomeroy, Kans., thence due west 1.3 miles to its junction with an unnamed road, thence north along such unnamed road to the entrance of Powell Port facility, thence due north to the southern bank of the Missouri River, thence east along the southern bank of Missouri River to a point directly across from the western boundary of Parkville, Mo., thence across the Missouri River to the point of beginning.

Sec. 9 *Boston, Mass.*

For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of Boston, Mass., and contiguous municipalities in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt under section 203(b)(8) of the act from regulation, is hereby defined to include the following:

Boston, Mass.	Cambridge, Mass.
Winthrop, Mass.	Watertown, Mass.
Chelsea, Mass.	Brookline, Mass.
Revere, Mass.	Newton, Mass.
Everett, Mass.	Needham, Mass.
Malden, Mass.	Dedham, Mass.
Medford, Mass.	Milton, Mass.
Somerville, Mass.	Quincy, Mass.

Sec. 10 *Davenport, Iowa; Rock Island and Moline, Ill.*

For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zones adjacent to and commercially a part of Davenport, Iowa, Rock Island and Moline, Ill., in which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such municipalities or zones, will be partially exempt from regulation under section 203(b)(8) of the act (49 U.S.C. 303(b)(8) are hereby determined to be coextensive and to include and to be comprised of the following:

(a) All points within the corporate limits of the city of Davenport and the city of

Bettendorf, and in Davenport Township, Iowa.

(b) All points north of Davenport Township within that portion of Sheridan Township, Iowa, bounded by a line as follows: Beginning at the points where U.S. Highway 61 crosses the Davenport-Sheridan Township line and extending northward along U.S. Highway 61 to the right-of-way of the Chicago, Milwaukee, St. Paul & Pacific Railroad Co., thence northwesterly along said right-of-way to its junction with the first east-west unnumbered highway, thence westerly approximately 0.25 mile to its junction with a north-south unnumbered highway, thence southerly along such unnumbered highway to the northeast corner of Mount Joy Airport, thence along the northern and western boundaries of said airport to the southwestern corner thereof, and thence south in a straight line to the northern boundary of Davenport Township.

(c)(1) That part of Iowa lying west of the municipal limits of Davenport south of Iowa Highway 22, north of the Mississippi River and east of the present western boundary of the Dewey Portland Cement Co., at Linwood, including points on such boundaries, and (2) that part of Iowa east of the municipal limits of Bettendorf, south of U.S. Highway 67, west of a private road running between U.S. Highway 67 and Riverside Power Plant of the Iowa-Illinois Gas & Electric Co., and north of the Mississippi River, including points on such boundaries.

(d) The municipalities of Carbon Cliff, Silvis, East Moline, Moline, Rock Island, and Milan, Ill., and that part of Illinois lying south or east of such municipalities, within a line as follows: Beginning at a point where Illinois Highway 84 crosses the southern municipal limits of Carbon Cliff and extending southerly along such highway to its junction with Colona Road, thence westerly along Colona Road to Bowlesburg Road, thence southerly on Bowlesburg Road to the southern boundary of Hampton Township, thence along the southern boundaries of Hampton and South Moline Townships to U.S. Highway 150, thence southerly along U.S. Highway 150 to the southern boundary of the Moline Airport, thence along the southern and western boundaries of the Moline Airport to Illinois Highway 92, and thence along Illinois Highway 92 to the corporate limits of Milan.

(e) All points in Illinois within one-half mile on each side of Rock Island County State Aid Route No. 9 extending southwesterly from the corporate limits of Milan for a distance of 1 mile, including points on such highway.

Sec. 11 *Commercial zones of municipalities in New Jersey within 5 miles of New York, N.Y.*

(a) The application of §1048.101 is hereby extended to each municipality in New Jersey, any part of which is within 5 miles of the corporate limits of New York, N.Y.

(b) The exemption provided by section 203(b)(8) of the Interstate Commerce Act, of transportation by motor vehicle, in interstate or foreign commerce, performed wholly within any commercial zone, the limits of which are defined in paragraph (a) of this section, is hereby removed as to all such transportation except (1) transportation which is performed wholly between any two points in New Jersey, or (2) transportation which is performed wholly between points in New Jersey named in §1048.1(b)(1), on the one hand, and, on the other, points in New York named in §1048.1(b)(1).

Sec. 12 *Commercial zones of municipalities in Westchester and Nassau Counties, N.Y.*

(a) The application of §1048.101 is hereby extended to each municipality in Westchester or Nassau Counties, N.Y.

(b) The exemption provided by section 203(b)(8) of the Interstate Commerce Act, of transportation by motor vehicle, in interstate or foreign commerce, performed wholly within any commercial zone, the limits of which are defined in paragraph (a) of this section, is hereby removed as to all such transportation except (1) transportation which is performed wholly between points in New York neither of which is New York City, NY, or (2) transportation which is performed wholly between points in Westchester or Nassau County named in §1048.1(b)(1), on the one hand, and, on the other, New York City, N.Y., or points in New Jersey named in §1048.1(b)(1).

Sec. 13 *Tucson, Ariz.*

That zone adjacent to and commercially a part of Tucson, Ariz., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) from regulation, includes, and is comprised of, all points as follows:

(a) The municipality of Tucson, Ariz., itself.

(b) All points within a line drawn 5 miles beyond the corporate limits of Tucson, Ariz.

(c) All points in that area south of the line described in paragraph (b) of this section, bounded by a line as follows: Beginning at the point where the line described in paragraph (b) of this section, intersects Wilmot Road, thence south along Wilmot Road to junction Nogales Old Vail Connection, thence west along Nogales Old Vail Connection, actual or extended, to the Santa Cruz River, thence north along the east bank of the Santa Cruz River to its joinder with the

line described in paragraph (b) of this section.

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section.

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the city of Tucson or by any municipality included under the terms of paragraph (d) of this section.

Sec. 14 *Albuquerque, N. Mex.*

The zone adjacent to and commercially a part of Albuquerque, N. Mex., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), from regulation, includes, and is comprised of, all points as follows:

(a) The municipality of Albuqerque, N. Mex., itself.

(b) All points within a line drawn 5 miles beyond the corporate limits of Albuquerque, N. Mex.

(c) All points in that area north of the line described in paragraph (b) of this section, bounded by a line as follows: Beginning at the intersection of the line described in paragraph (b) of this section and New Mexico Highway 528, extending in a northeasterly direction along New Mexico Highway 528 to its intersection with New Mexico Highway 44, thence easterly along New Mexico Highway 44 to its intersection with New Mexico Highway 422, thence southerly along New Mexico Highway 422 to its intersection with the line described in paragraph (b) of this section.

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section;

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the city of Albuquerque, N. Mex., or by any municipality included under the terms of paragraph (b) of this section.

Sec. 18 *Ravenswood, W. Va.*

That zone adjacent to and commercially a part of Ravenswood, W. Va., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), from regulation, includes, and is comprised of, all points as follows:

(a) The municipality of Ravenswood, W. Va., itself.

(b) All points within a line drawn 3 miles beyond the corporate limits of Ravenswood, W. Va., and

(c) All points in West Virginia in that area south and southwest of those described in paragraph (b) of this section, bounded by a line as follows: Beginning at the point where the Ohio River meets the line described in paragraph (b) of this section southwest of Ravenswood, thence southerly along the east bank of the Ohio River to the point where the mouth of the Lick Run River empties into the Ohio River; thence in a northeasterly direction along the northern bank of the Lick Run River to the point where it crosses West Virginia Highway 2 south of Ripley Landing, W. Va.; thence in a northerly direction along West Virginia Highway 2 to its intersection with the line described in paragraph (b) of this section west of Pleasant View, W. Va.

Sec. 19 *Lake Charles, La.*

That zone adjacent to and commercially a part of Lake Charles, La., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), from regulation, includes, and is comprised of, all points as follows:

(a) The municipality of Lake Charles La., itself;

(b) All points within a line drawn 4 miles beyond the corporate limits of Lake Charles, La.;

(c) All points in that area south and west of the line described in paragraph (b) of this section, bounded by a line, as follows: beginning at the point where the line described in paragraph (b) of this section intersects Louisiana Highway 385; thence south along Louisiana Highway 385 to its intersection with the Calcasieu-Cameron Parish line; thence west along the Calcasieu-Cameron Parish line to its intersection with Louisiana Highway 27; thence northerly along Louisiana Highway 27 to a point thereon 2 miles south of U.S. Highway 90; thence east along a line parallel to U.S. Highway 90 to Louisiana Highway 108; thence north along Louisiana Highway 108 to junction U.S. Highway 90; thence east along U.S. Highway 90 to the intersection thereof with the line described in paragraph (b) of this section;

(d) All of the municipality any part of which is within the limits of the combined areas in paragraphs (b) and (c) of this section; and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the City of Lake Charles or by any municipality included under the terms of paragraph (d) of this section.

Sec. 20 *Syracuse, N.Y.*

The zone adjacent to and commercially a part of Syracuse, N.Y., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuing carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), includes and is comprised of all points as follows:

(a) The municipality of Syracuse, NY., itself;

(b) All other municipalities and unincorporated areas within 5 miles of the corporate limits of Syracuse, N.Y., and all of any other municipality any part of which lies within 5 miles of such corporate limits;

(c) Those points in the town of Geddes, Onondaga County, N.Y., which are not within 5 miles of the corporate limits of Syracuse, N.Y.;

(d) Those points in the towns of Van Buren and Lysander, Onondaga County, N.Y., not within 5 miles of the corporate limits of Syracuse, N.Y., and within an area bounded by a line beginning at the intersection of Van Buren Road with the line described in (b) above, thence northwesterly along Van Buren Road to its intersection with the cleared right-of-way of Niagara Mohawk Power Company, thence northwesterly and north along said right-of-way to its intersection between Church Road and Emerick Road, with the cleared right-of-way of New York State Power Authority, thence easterly along said cleared right-of-way to its intersection with the Seneca River, thence south along the Seneca River to its intersection, near Gaskin Road, with the cleared right-of-way of Niagara Mohawk Power Company, thence southwesterly along said cleared right-of-way to its intersection with the eastern limits of the Village of Baldwinsville, thence south along such Village limits to their intersection with a line of railroad presently operated by the Erie-Lackawanna Railroad Company, thence southeasterly along said line of railroad to its intersection with the Van-Buren Lysander Town line, thence southeasterly along the Van-Buren Lysander Town line to its intersection with the Van-Buren Geddes Town line, thence southeasterly along the Van-Buren Geddes Town line to the line described in (b) above.

Sec. 21 *Baltimore, Md.*

The zone adjacent to and commercially a part of Baltimore, Md., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and it is comprised of all as follows:

(a) The municipality of Baltimore itself;

(b) All points within a line drawn 5 miles beyond the boundaries of Baltimore;

(c) All points in that area east of the line described in paragraph (b) of this section bounded by a line as follows: Beginning at the point where the line described in paragraph (b) of this section crosses Dark Head Creek and extending in a southeasterly direction along the center of Dark Head Creek and beyond to a point off Wilson Point, thence in a northeasterly direction to and along the center of Frog Mortar Creek to Stevens Road, thence northerly along Stevens Road to Eastern Avenue, thence easterly along Eastern Avenue to Bengies Road, thence northwesterly along Bengies Road, to the right-of-way of the Penn Central Transportation Co., thence westerly along such right-of-way to the junction thereof with the line described in paragraph (b) of this section;

(d) All points in that area south of the line described in paragraph (b) of this section, bounded on the west by the right-of-way of the line of the Penn Central Transportation Co., extending between Stony Run and Severn, Md., and on the south by that part of Maryland Highway 176, extending easterly from the said railroad to its junction with the line described in paragraph (b) of this section;

(e) All points in that area southwest of the line described in paragraph (b) of this section, bounded by a line as follows: Beginning at the point where the line described in paragraph (b) of this section crosses the Baltimore-Washington Expressway and extending in a southwesterly direction along the Baltimore-Washington Expressway to its intersection with Maryland Highway 176, thence westerly along Maryland Highway 176 to its intersection with the Howard-Anne Arundel County line, thence southwesterly along said county line to its intersection with Maryland Highway 32, thence northwesterly along Maryland Highway 32 to its intersection with the Little Patuxent River, thence northerly along the Little Patuxent River to the intersection of its north fork and its east fork located approximately 1 mile north of the intersection of Maryland Highway 32 and Berger Road, thence easterly along the east fork of the Little Patuxent River to its intersection with Broken Land Parkway, thence southerly along Broken Land Parkway to its intersection with Snowden River Parkway, thence easterly along Snowden River Parkway, to its intersection with relocated Maryland Highway 175, thence southeasterly along relocated Maryland Highway 175, to its intersection with Lark Brown Road, thence northeasterly along Lark Brown Road to its intersection with Maryland Highway 175, thence southerly along

Maryland Highway 175 to its intersection with Interstate Highway 95, thence northeasterly along Interstate Highway 95 to its intersection with the line described in paragraph (b) of this section;

(f) All points in that area north of the line described in paragraph (b) of this section bounded by a line as follows: Beginning at the junction of the line described in paragraph (b) of this section and the Baltimore-Harrisburg Expressway (Interstate Highway 83), thence northerly along Interstate Highway 83 to its junction with Shawan Road, thence easterly along Shawan Road to its junction with York Road (Maryland Highway 45) and continuing to a point 1,500 feet east of Maryland Highway 45, thence southerly along a line 1,500 feet east of the parallel to Maryland Highway 45 to its junction with the line described in paragraph (b) of this section;

(g) All points in that area west of the line described in paragraph (b) of this section bounded by a line as follows: Beginning at the point where the line described in paragraph (b) of this section intersects U.S. Highway 40 west of Baltimore, Md., and extending in a westerly direction along U.S. Highway 40 to its intersection with St. John's Lane, thence southerly along St. John's Lane to its intersection with Maryland Highway 144, thence easterly along Maryland Highway 144 to its intersection with the line in paragraph (b) of this section;

(h) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b), (c), (d), (e), (f), and (g) of this section;

(i) All of any municipality wholly surrounded, or surrounded except for a water boundary, by the city of Baltimore or by any municipality included under the terms of (h) above.

Sec. 22 *Cleveland, Ohio*

The zone adjacent to and commercially a part of Cleveland, Ohio, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and it is comprised of all as follows:

(a) All points in Cuyahoga County, Ohio, and

(b) All points in Wickliffe, Willoughby Hills, Waite Hill, Willoughby, Willowick, Eastlake, Lakeline, Timberlake, and Mentor, Lake County, Ohio.

Sec. 23 *Detroit, Mich.*

For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of Detroit, Mich., in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt under section 203(b)(8) of the act (49 U.S.C. 303(b)(8)) from regulation, is hereby determined to include, and to be comprised of, all that area within a line as follows:

Beginning at a point on Lake St. Clair opposite the intersection of Fifteen Mile Road and Michigan Highway 29 and extending south and southwest along the shore of Lake St. Clair, to the Detroit River, thence along such River (east of Belle Isle) and Trenton Channel to a point opposite Sibley Road, thence west to and along Sibley Road to Waltz Road, thence north along Waltz Road to Wick Road, thence west along Wick Road to Cogswell Road, thence north along Cogswell Road to Van Born Road, thence east along Van Born Road to Newburgh Road, thence north along Newburgh Road to its junction with Halsted Road, thence north along Halsted Road to West Maple Road, thence east along West Maple Road to Telegraph Road, thence north along Telegraph Road to Sixteen Mile Road, thence east along Sixteen Mile Road to Utica Road, thence southeasterly along Utica Road to Fifteen Mile Road (also called East Maple Road), thence along Fifteen Mile Road and across Michigan Highway 29 to Lake St. Clair, the point of beginning.

Sec. 24 *Seattle, Wash.*

The zone adjacent to and commercially a part of Seattle, Wash., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for continuous carriage or shipments to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Seattle itself.

(b) All points within a line drawn 5 miles beyond the municipal limits of Seattle, except points on Bainbridge Island, Vashon Island, and Blake Island.

(c) All points more than 5 miles beyond the municipal limits of Seattle (1) within a line as follows: Beginning at that point south of Seattle where the eastern shore of Puget Sound intersects the line described in paragraph (b) of this section, thence southerly along the eastern shore of Puget Sound to Southwest 192d Street, thence easterly along Southwest 192d Street to the point where it again intersects the line described in paragraph (b) of this section; and (2) within a line as follows: Beginning at the junction of the

southern corporate limits of Kent, Wash., and Washington Highway 181, and extending south along Washington Highway 181 to the northern corporate limits of Auburn, Wash., thence along the western, southern, and eastern corporate limits of Auburn to the junction of the northern corporate limits of Auburn and Washington Highway 167, thence northerly along Washington Highway 167 to its junction with the southern corporate limits of Kent, Wash., including all points on the highways named.

(d) All points more than 5 miles beyond the municipal limits of Seattle within a line as follows: Beginning at the junction of the northern corporate limits of Lynwood, Wash., and U.S. Highway 99, thence north along U.S. Highway 99 to its junction with Washington Highway 525, thence along Washington Highway 525 to its junction with West Casino Road, thence east along West Casino Road to the western boundary of the Everett facilities of the Boeing Co. at or near 4th Avenue West, thence along the western, northern and eastern boundaries of the facilities of the Boeing Co. to West Casino Road, thence east along West Casino Road to its junction with U.S. Highway 99, thence south along U.S. Highway 99 to 112th Street, thence easterly along 112th Street to its junction with Interstate Highway 5, thence southerly along Interstate Highway 5 to its intersection with the present zone limits, including all points on the named routes.

(e) All of any municipality any part of which is within the limits set forth in (b) above.

(f) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the city of Seattle or by any municipality included under the terms of (b) above.

Sec. 25 Albany, N.Y.

For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of Albany, N.Y., in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt under section 203(b)(8) of the act (49 U.S.C. 303(b)(8)) from regulations, is hereby determined to include, and to be comprised of, the following:

(a) The municipality of Albany itself,

(b) All points within a line drawn 5 miles beyond the municipal limits of Albany,

(c) All points in that area more than 5 miles beyond the municipal limits of Albany bounded by a line as follows: Beginning at that point on Swatling Road (in the Town of Colonie) where it crosses the line described in (b) above and extending northerly along such road to the municipal limits of Cohoes, thence along the western and northern boundary of Cohoes to the Mohawk River, thence along such river to the northern boundary of the Town of Waterford, thence along the northern and eastern boundaries of the Town of Waterford to the northern boundary of the City of Troy (all of which city is included under the next following provision),

(d) All of any municipality any part of which is within the limits of the combined areas defined in (b) and (c) above, and

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Albany or by any other municipality included under the terms of (d) above.

Sec. 26 Minneapolis-St. Paul, Minn.

The zone adjacent to and commercially a part of Minneapolis-St. Paul, Minn, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and it is comprised of all as follows:

Beginning at the intersection of Minnesota Highway 36 and the Minnesota River and extending along the Minnesota River to the southwest corner of the city of Bloomington, thence north along the western boundaries of the city of Bloomington and the village of Edina to the southern boundary of the city of Hopkins, thence along the southern, western, and northern boundaries of the city of Hopkins to the western boundary of the city of St. Louis Park, thence north along the western boundaries of the city of St. Louis Park and the village of Golden Valley to the southeast corner of the village of Plymouth, thence west along the southern boundary of Plymouth to Interstate Highway 494, thence north along Interstate Highway 494 to Minnesota Highway 55, thence southeast along Minnesota Highway 55 to the western boundary of the village of Golden Valley, thence north along the western boundaries of the villages of Golden Valley and New Hope to the northwestern corner of the village of New Hope, thence east along the northern boundary of the village of New Hope and the city of Crystal to the western boundary of the village of Brooklyn Center, thence north along the western boundary of the village of Brooklyn Center to its northern boundary, thence east along such northern boundary to the Hennepin County-Anoka County line, thence north along such county line to the northwestern corner of the village of Spring Lake Park in Anoka County, thence east along the northern boundary of the village of Spring Lake Park to the northwest corner of Mounds View Township in Ramsey County,

thence east and south along the northern and eastern boundaries of Mounds View Township to the northwestern corner of the village of Little Canada, thence east and south along the northern and eastern boundaries of Little Canada to the northwest corner of the village of Maplewood, thence east and south along the northern and eastern boundaries of the village of Maplewood to the northeastern corner of the village of North St. Paul, thence south along the eastern boundary of the village of North St. Paul to the southeast corner of such village, thence south along the eastern boundary of the village of Maplewood to the northeastern corner of the village of Newport, thence south and west along the eastern and southern boundaries of the village of Newport to U.S. Highway 61, thence southeasterly along U.S. Highway 61, to the eastern boundary of the village of St. Paul Park, thence along the eastern, southern, and western boundaries of the village of St. Paul Park to a point on the Mississippi River opposite the southeast corner of the original village of Inver Grove, thence westerly across the river and along the southern and western boundaries of the original village of Inver Grove to the northwest corner of such village, thence due north to the southern boundary of South St. Paul, thence north and west along the western and southern boundaries of South St. Paul to the southeastern corner of West St. Paul, thence west along the southern boundary of West St. Paul to County Highway 63, thence south along County Highway 63 to its junction with County Highway 63A, thence west along County Highway 63A to its junction with Minnesota Highway 49, thence north along Minnesota Highway 49 to its junction with County Highway 28, thence west along County Highway 28 to its junction with Minnesota Highway 13, thence southwest along Minnesota Highway 13 to its junction with Minnesota Highway 36, thence north and northwest along Minnesota Highway 36 to the Minnesota River, the point of beginning.

Sec. 27 New Orleans, La.

The zone adjacent to and commercially a part of New Orleans, La., within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), includes and is comprised of all points in the area bounded as follows:

Commencing at a point on the shore of Lake Pontchartrain where it is crossed by the Jefferson Parish-Orleans Parish line; thence easterly along the shore of Lake Pontchartrain to the Rigolets; thence through the Rigolets in an easterly direction to Lake Borgne; thence southwesterly along the shore of Lake Borgne to the Bayou Bienvenue; thence in a general westerly direction along the Bayou Bienvenue (which also constitutes the Orleans Parish-St. Bernard Parish line) to Paris Road; thence in a southerly direction along Paris Road to the Back Protection Levee; thence in a southeasterly direction along the Back Protection Levee (across Lake Borgne Canal) to a point 1 mile north of Louisiana Highway 46; thence in an easterly direction 1 mile north of Louisiana Highway 46 to longitude 89°50′ W.; thence south along longitude line 89°50′ W. (crossing Louisiana Highway 46 approximately three-eighths of a mile east of Toca) to Forty Arpent Canal; thence westerly, northwesterly, and southerly along Forty Arpent Canal to Scarsdale Canal; thence northwesterly along Scarsdale Canal and beyond it in the same direction to the middle of the Mississippi River; thence southerly along the middle of the Mississippi River to the Augusta Canal; thence in a westerly direction along the Augusta Canal to the Gulf Intracoastal Waterway; thence in a northerly direction along the middle of the Gulf Intracoastal Waterway (Harvey Canal) to the point where Lapalco Boulevard runs perpendicular to the Gulf Intracoastal Waterway (Harvey Canal); thence in a westerly direction along Lapalco Boulevard to its junction with Barataria Boulevard; thence north on Barartaria Boulevard to a point approximately 2 miles south of the Mississippi River where a high tension transmission line crosses Barataria Boulevard; thence in a westerly direction following such transmission line to the intersection thereof with U.S. Highway 90; thence westerly along U.S. Highway 90 to the Jefferson Parish-St. Charles Parish line; thence north along such parish line to the middle of the Mississippi River; thence westerly along the middle of the Mississippi River to a point south of Almedia Road; thence north to Almedia Road; thence in a northerly direction along Almedia Road to its junction with Highway 61; thence north to the shore of Lake Pontchartrain; thence along the shore of Lake Pontchartrain in an easterly direction to the Jefferson Parish-Orleans Parish line, the point of beginning.

Sec. 28 Pittsburgh, Pa.

For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of Pittsburgh, Pa., in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt under section 203(b)(8) of the

act (49 U.S.C. 303(b)(8)) from regulation, is hereby determined to include, and to be comprised of, the following:

(a) All points in Allegheny County, Pa., except Forward, Elizabeth, South Versailles, Marshall (including the Borough of Bradford Woods), Pine Richland, West Deer and Fawn Townships and that part of Frazer Township north of a line made by extending easterly in a straight line the southern boundary of West Deer Township.

(b) Borough of Trafford situated in both Alleghency and Westmoreland Counties;

(c) Borough of Ambridge and Harmony Township located in Beaver County; and

(d) The City of New Kensington and Borough of Arnold in Westmoreland County.

Sec. 29 *Portland, Oreg.*

For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of Portland, Oreg., in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt under section 203(b)(8) of the act (49 U.S.C. 303(b)(8)) from regulation, is hereby determined to include, and to be comprised of, the following:

(a) The municipality itself.

(b) All points in Oregon within a line drawn 5 miles beyond the corporate limits of Portland.

(c) All of any municipality any part of which is within the line described in (b) above.

(d) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the city of Portland or by any municipality included under the terms of (c) above.

Sec. 30 *Vancouver, Wash.*

For the purpose of administration and enforcement of Part II of the Interstate Commerce Act, the zone adjacent to and commercially a part of Vancouver, Wash., in which transportation by motor vehicle in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt under section 203(b)(8) of the act (49 U.S.C. 303(b)(8)) from regulation, is hereby determined to include, and to be comprised of, the following:

(a) The municipality itself.

(b) All points in Washington within a line drawn 4 miles beyond the corporate limits of Vancouver.

(c) All of any municipality any part of which is within the line described in (b) above.

(d) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the City of Vancouver or by any municipality included under the terms of (c) above.

Sec. 31 *Charleston, S.C.*

The zone adjacent to and commercially a part of Charleston, S.C., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), from regulation, includes and is comprised of, all points and places as follows:

(a) The municipality of Charleston itself.

(b) All points within a line drawn 4 miles beyond the boundaries of Charleston.

(c) All points in that area north of the line described in paragraph (b) of this section, bounded by a line as follows: Beginning at the point where the line described in paragraph (b) of this section crosses Cooper River and extending in a northerly direction along the center of Cooper River to Goose Creek; thence north and west along the center of Goose Creek to the dam of the reservoir of the Charleston waterworks; thence northwesterly along the west bank of the Charleston waterworks reservoir for approximately one mile to an unnamed creek; thence westerly along the center of this unnamed creek for approximately one mile to U.S. Highway 52; thence northerly along U.S. Highway 52 to junction South Carolina Highway S–10–75; thence westerly along South Carolina Highway S–10–75 approximately one and one half miles to a point one quarter mile west of the track of the Southern Railway Company; thence southeasterly along a line one quarter of a mile west of, and parallel to, the track of the Southern Railway Company to the junction thereof with the line described in paragraph (b) of this section.

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (1) and (c) of this section.

(e) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the city of Charleston or by any municipality included under the terms of paragraph (d) of this section.

Sec. 32 *Charleston, W. Va.*

That zone adjacent to and commercially a part of Charleston, W. Va., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement

for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), from regulation, includes, and is comprised of, all points and places as follows:

(a) The municipality of Charleston, W. Va., itself.

(b) All points within a line drawn 4 miles beyond the corporate limits of Charleston, W. Va.

(c) All points in that area northwest of those described in (b) above, bounded by a line as follows: Beginning at a point on the line described in (b) above, one-half mile south of U.S. Highway 60 west of Charleston, thence westerly along a line one-half mile south of the junction of U.S. Highway 60 with West Virginia Highway 17 near 2¾ Mile Creek, thence westerly along a line one-half mile south of and parallel to West Virginia Highway 17 to the Coal River, thence north along the center of the Coal River to West Virginia Highway 17, thence northerly along West Virginia Highway 17 to Scary Creek, near Scary, W. Va., thence east along Scary Creek to the center of the Kanawha River, thence northerly along the center of the Kanawha River to a point opposite the mouth of Blake Creek (between Nitro and Poca, W. Va.), thence easterly along a straight line drawn through the junction of U.S. Highway 35 and West Virginia Highway 25 to a point one-half mile beyond said junction, thence southerly along a line one-half mile northeast of and parallel to West Virginia Highway 25 to the junction of the line described in (b) above.

(d) All points in that area southeast of those described in (b) above, bounded by a line as follows: Beginning at a point on the line described in (b) above one-half mile south of the Kanawha River, thence easterly along a line one-half mile south of, and parallel to, the Kanawha River to junction with a straight line intersecting the highway bridge at Chelyan, W. Va., thence northerly along said straight line across the Kanawha River to a point one-half mile north of the Kanawha River, thence westerly along a line one-half mile north of and parallel to the Kanawha River to the junction of the line described in (b) above.

(e) All of any municipality any part of which is within the limits of the combined areas defined in (b), (c), and (d) above.

Sec. 33 *Memphis, Tenn.*

That zone adjacent to and commercially a part of Memphis, Tenn., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) from regulation, includes, and is comprised of, all points as follows:

(a) The municipality of Memphis, Tenn., itself.

(b) All points within a line drawn 5 miles beyond the corporate limits of Memphis, Tenn.

(c) All points in that part of Shelby County, Tenn., north of the line described in paragraph (b) of this section, bounded by a line as follows: Beginning at the intersection of the line described in paragraph (b) of this section and U.S. Highway 51 north of Memphis, thence northeasterly along U.S. Highway 51 for approximately 3 miles to its intersection with Lucy Road, thence easterly along Lucy Road for approximately 1.4 miles to its intersection with Chase Road, thence northerly along Chase Road for approximately 0.6 mile to its intersection with Lucy Road thence easterly along Lucy Road for approximately 0.8 mile to its intersection with Main Road, thence southeasterly along Main Road approximately 0.3 mile to its intersection with Amherst Road, thence southerly and easterly along Amherst Road for approximately 0.8 mile to its intersection with Raleigh-Millington Road, thence southerly along Raleigh-Millington Road for approximately 2 miles to its intersection with the line described in paragraph (b) of this section north of Memphis;

(d) All of any municipality any part of which is within the limits of the combined areas described in paragraphs (b) and (c) of this section.

Sec. 34 *Houston, Tex.*

The zone adjacent to, and commercially a part of Houston, Tex., and contiguous municipalities in which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, will be partially exempt under section 203(b)(8) of the act from regulation, is hereby defined to include the area which would result by application of the general formula promulgated in §1048.101, and in addition thereto, the municipalities of Baytown, La Porte and Lomax, Tex.

Sec. 35 *Pueblo, Colo.*

The zone adjacent to and commercially a part of Pueblo, Colo., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)), includes and is comprised of all points as follows:

(a) the municipality of Pueblo, Colo., itself;

(b) All points within a line drawn 4 miles beyond the corporate limits of Pueblo, Colo.:

(c) All of the area known as the Pueblo Memorial Airport, consisting of about 3,500 acres, not within 4 miles of the corporate limits of Pueblo, Colo., and within an area located on the East of Pueblo, the nearest point being about 3.80 miles from the city limits of Pueblo, and bounded on the south by the tracks of the Santa Fe Railroad and the Missouri Pacific Railroad, and a public highway known as Baxter Road and designated as U.S. Highway 50 Bypass and Colorado Highway 96, with such property extending north, west, and east of the described southern base line.

Sec. 36 *Warren, Ohio.*

The zone adjacent to and commercially a part of Warren, Ohio, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt, under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) from regulation includes, and is comprised of, all points as follows:

(a) The municipality of Warren, Ohio, itself.

(b) All points within a line drawn 4 miles beyond the corporate limits of Warren, Ohio.

(c) All points in that area, south of the line in paragraph (b) of this section, bounded by a line as follows: Beginning at the point where the line described in paragraph (b) of this section intersects Ellsworth-Baily Road, thence south along Ellsworth-Baily Road to the Ohio Turnpike, thence southeast along the Ohio Turnpike to New Hallock-Young Road, thence northeast along New Hallock-Young Road to Hallock-Young Road, thence east along Hallock-Young Road to junction Ohio Highway 45 (Salem-Warren Road), thence north along Ohio Highway 45 (Salem-Warren Road) to its intersection with the line described in paragraph (b) of this section.

Sec. 37 *Louisville, Ky.*

The zone adjacent to and commercially a part of Louisville, Ky., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The municipality of Louisville, Ky., itself;

(b) All other municipalities and unincorporated areas within 5 miles of the corporate limits of Louisville, Ky., and all of any municipality any part of which lies within 5 miles of such corporate limits; and

(c) Those points not within 5 miles of the corporate limits of Louisville, Ky., and within an area bounded by a line beginning at the junction of Kentucky Highway 146 (LaGrange Road) and Kentucky Highway 1447 (Westport Road), thence over Kentucky Highway 146 to the junction of Kentucky Highway 146 and Kentucky Highway 841 (Jefferson Freeway), thence over Kentucky Highway 841 to the junction of Kentucky Highway 841 and Kentucky Highway 1447, thence over Kentucky Highway 1447 to junction Kentucky Highway 1447 and Kentucky Highway 146, the point of beginning, all within Jefferson County, Ky.

Sec. 38 *Sioux City, Iowa.*

The zone adjacent to and commercially a part of Sioux City, Iowa, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The area which would result by application of the general formula promulgated in § 1048.101; and, in addition thereto,

(b) That area bounded by a line beginning at the intersection of Interstate Highway 29 and the line described in paragraph (a) of this section, and extending southeasterly along Interstate Highway 29 to its intersection with the Liberty-Lakeport Township, Iowa, line, thence westerly along the Liberty-Lakeport Township, Iowa, line to the Missouri River, thence northerly along the east bank of the Missouri River to its intersection with the line described in paragraph (a) of this section, thence along the line described in paragraph (a) of this section, to the point of beginning.

Sec. 39 *Beaumont, Tex.*

The zone adjacent to and commercially a part of Beaumont, Tex., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond such zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The areas which would result by application of the general formula promulgated in

§ 1048.101 for Beaumont, Tex.; and in addition thereto,

(b) That area bounded by a line beginning at that point where the west bank of Hillebrandt Bayou intersects the line described in paragraph (a) of this section; thence along the west bank of Hillebrandt Bayou to its confluence with Taylors Bayou: thence in a southeasterly direction along the west and south banks of Taylors Bayou to its confluence with the Intracoastal Waterway; thence along the west and north banks of the Intra-coastal Waterway to its confluence with Sabine River and Sabine Lake at a point immediately east of Groves; thence in a northeasterly direction along the north and west banks of Sabine Lake and Sabine River to the Orange-Newton County line; thence westerly along said county line to the west right-of-way line of State Highway 87; thence southerly along the west right-of-way line of State Highway 87 to the north right-of-way line of Interstate Highway 10; thence westerly along the north right-of-way line of Interstate Highway 10 to intersection with the line described in paragraph (a) of this section; thence along the line described in paragraph (a) of this section, to the point of beginning.

Sec. 40 *Metropolitian Government of Nashville and Davidson County, Tenn.*

The zone adjacent to and commercially a part of the Metropolitan Government of Nashville and Davidson County, Tenn, within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) The Metropolitan Government of Nashville and Davidson County itself.

(b) All of any municipality wholly surrounded, or so surrounded except for a water boundary, by the Metropolitan Government of Nashville and Davidson County.

Sec. 41 *Consolidated City of Indianapolis, Ind.*

The zone adjacent to and commercially a part of the Consolidated City of Indianapolis, Ind., within which transportation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8) includes and is comprised of all points as follows:

(a) The Consolidated City of Indianapolis, Ind., itself.

(b) All of any municipality wholly surrounded or so surrounded except for a water boundary, by the Consolidated City of Indianapolis.

Sec. 42 *Lexington-Fayette Urban County, Ky.*

The zone adjacent to and commercially a part of Lexington-Fayette Urban County, Ky., within which transporation by motor vehicle, in interstate or foreign commerce, not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point beyond the zone, is partially exempt from regulation under section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) includes and is comprised of all points as follows:

(a) Lexington-Fayette Urban County, Ky., itself.

(b) All other municipalities and unincorporated areas within 5 miles of the intersection of U.S. Highway 27 (Nicholasville Road) with the corporate boundary line between Jessamine County, Ky., and Lexington-Fayette Urban County, Ky.

Sec. 43 *Definitions.*

For the purposes of this part, the following terms are defined:

(a) ''Municipality'' means any city, town, village, or borough which has been created by special legislative act or which has been, otherwise, individually incorporated or chartered pursuant to general State laws, or which is recognized as such, under the Constitution or by the laws of the State in which located, and which has a local government. It does not include a town of the township or New England type.

(b) ''Contiguous municipalities'' means municipalities, as defined in paragraph (a) of this section, which have at some point a common municipal or corporate boundary.

(c) ''Unincorporated area'' means any area not within the corporate or municipal boundaries of any municipality as defined in paragraph (a) of this section.

Sec. 44 *Commercial zones determined generally, with exceptions.*

The commercial zone of each municipality in the United States, with the exceptions indicated in the note at the end of this section, within which the transportation of passengers or property, in interstate or foreign commerce, when not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone, is exempt from all provisions of Part II, Interstate Commerce Act, except the provisions of section 204 relative to the qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be deemed to consist of:

(a) The municipality itself, hereinafter called the base municipality;

(b) All municipalities which are contiguous to the base municipality;

(c) All other municipalities and all unincorporated area within the United States which are adjacent to the base municipality as follows:

(1) When the base municipality has a population less than 2,500 all unincorporated areas within two miles of its corporate limits and all of any other municipality any part of which is within two miles of the corporate limits of the base municipality,

(2) When the base municipality has a population of 2,500 but less than 25,000, all unincorporated areas within 3 miles of its corporate limits and all of any other municipality any part of which is within 3 miles of the corporate limits of the base municipality,

(3) When the base municipality has a population of 25,000 but less than 100,000, all unincorporated areas within 4 miles of its corporate limits and all of any other municipality any part of which is within 4 miles of the corporate limits of the base municipality, and

(4) When the base municipality has a population of 100,000 or more, all unincorporated areas within 5 miles of its corporate limits and all of any other municipality any part of which is within 5 miles of the corporate limits of the base municipality, and

(d) All municipalities wholly surrounded, or so surrounded except for a water boundary, by the base municipality, by any municipality contiguous thereto, or by any municipality adjacent thereto which is included in the commercial zone of such base municipality under the provisions of paragraph (c) of this section.

NOTE: Except: Municipalities the commercial zones of which have been or are hereafter individually or specially determined.

Sec. 45 *Controlling distances and population data.*

In the application of §1048.101:

(a) Air-line distances or mileages about corporate limits of municipalities shall be used.

(b) The population of any municipality shall be deemed to be the highest figure shown for that municipality in any decennial census since (and including) the 1940 decennial census.

[53 FR 18058, May 19, 1988]

APPENDIX G TO SUBCHAPTER B—MINIMUM PERIODIC INSPECTION STANDARDS

A vehicle does not pass an inspection if it has one of the following defects or deficiencies:

1. *Brake System.*

a. *Service brakes.*—(1) Absence of braking action on any axle required to have brakes upon application of the service brakes (such as missing brakes or brake shoe(s) failing to move upon application of a wedge, S-cam, cam, or disc brake).

(2) Missing or broken mechanical components including: shoes, lining, pads, springs, anchor pins, spiders, cam rollers, push-rods, and air chamber mounting bolts.

(3) Loose brake components including air chambers, spiders, and cam shaft support brackets.

(4) Audible air leak at brake chamber (Example-ruptured diaphragm, loose chamber clamp, etc.).

(5) Readjustment limits. The maximum stroke at which brakes should be readjusted is given below. Any brake ¼″ or more past the readjustment limit or any two brakes less than ¼″ beyond the readjustment limit shall be cause for rejection. Stroke shall be measured with engine off and reservoir pressure of 80 to 90 psi with brakes fully applied.

BOLT TYPE BRAKE CHAMBER DATA

Type	Effective area (sq. in.)	Outside dia. (in.)	Maximum stroke at which brakes should be readjusted
A	12	6 15/16	1 3/8
B	24	9 3/16	1 3/4
C	16	8 1/16	1 3/4
D	6	5 1/4	1 1/4
E	9	6 3/16	1 3/8
F	36	11	2 1/4
G	30	9 7/8	2

ROTOCHAMBER DATA

Type	Effective area (sq. in.)	Outside dia. (in.)	Maximum stroke at which brakes should be readjusted
9	9	4 9/32	1 1/2
12	12	4 13/16	1 1/2
16	16	5 13/32	2
20	20	5 15/16	2
24	24	6 13/32	2
30	30	7 1/16	2 1/4
36	36	7 5/8	2 3/4
50	50	8 7/8	3

CLAMP TYPE BRAKE CHAMBER DATA

Type	Effective area (sq. in.)	Outside dia. (in.)	Maximum stroke at which brakes should be readjusted
6	6	4 1/2	1 1/4
9	9	5 1/4	1 3/8
12	12	5 11/16	1 3/8
16	16	6 3/8	1 3/4

CLAMP TYPE BRAKE CHAMBER DATA—Continued

Type	Effective area (sq. in.)	Outside dia. (in.)	Maximum stroke at which brakes should be readjusted
20	20	6 25/32	1 3/4
24	24	7 7/32	[1] 1 3/4
30	30	8 3/32	2
36	36	9	2 1/4

[1] (2″ for long stroke design).

Wedge Brake Data.—Movement of the scribe mark on the lining shall not exceed 1/16 inch.

(6) Brake linings or pads.

(a) Lining or pad is not firmly attached to the shoe;

(b) Saturated with oil, grease, or brake fluid; or

(c) Non-steering axles: Lining with a thickness less than 1/4 inch at the shoe center for air drum brakes, 1/16 inch or less at the shoe center for hydraulic and electric drum brakes, and less than 1/8 inch for air disc brakes.

(d) Steering axles: Lining with a thickness less than 1/4 inch at the shoe center for drum brakes, less than 1/8 inch for air disc brakes and 1/16 inch or less for hydraulic disc and electric brakes.

(7) Missing brake on any axle required to have brakes.

(8) Mismatch across any power unit steering axle of:

(a) Air chamber sizes.

(b) Slack adjuster length.

b. *Parking Brake System.* No brakes on the vehicle or combination are applied upon actuation of the parking brake control, including driveline hand controlled parking brakes.

c. *Brake Drums or Rotors.*

(1) With any external crack or cracks that open upon brake application (do not confuse short hairline heat check cracks with flexural cracks).

(2) Any portion of the drum or rotor missing or in danger of falling away.

d. *Brake Hose.*

(1) Hose with any damage extending through the outer reinforcement ply. (Rubber impregnated fabric cover is not a reinforcement ply). (Thermoplastic nylon may have braid reinforcement or color difference between cover and inner tube. Exposure of second color is cause for rejection.

(2) Bulge or swelling when air pressure is applied.

(3) Any audible leaks.

(4) Two hoses improperly joined (such as a splice made by sliding the hose ends over a piece of tubing and clamping the hose to the tube).

(5) Air hose cracked, broken or crimped.

e. *Brake Tubing.*

(1) Any audible leak.

(2) Tubing cracked, damaged by heat, broken or crimped.

f. *Low Pressure Warning Device* missing, inoperative, or does not operate at 55 psi and below, or 1/2 the governor cut-out pressure, whichever is less.

g. *Tractor Protection Valve.* Inoperable or missing tractor protection valve(s) on power unit.

h. *Air Compressor.*

(1) Compressor drive belts in condition of impending or probable failure.

(2) Loose compressor mounting bolts.

(3) Cracked, broken or loose pulley.

(4) Cracked or broken mounting brackets, braces or adapters.

i. *Electric Brakes.*

(1) Absence of braking action on any wheel required to have brakes.

(2) Missing or inoperable breakaway braking device.

j. *Hydraulic Brakes. (Including Power Assist Over Hydraulic and Engine Drive Hydraulic Booster).*

(1) Master cylinder less than 1/4 full.

(2) No pedal reserve with engine running except by pumping pedal.

(3) Power assist unit fails to operate.

(4) Seeping or swelling brake hose(s) under application of pressure.

(5) Missing or inoperative check valve.

(6) Has any visually observed leaking hydraulic fluid in the brake system.

(7) Has hydraulic hose(s) abraded (chafed) through outer cover-to-fabric layer.

(8) Fluid lines or connections leaking, restricted, crimped, cracked or broken.

(9) Brake failure or low fluid warning light on and/or inoperative.

k. *Vacuum Systems.* Any vacuum system which:

(1) Has insufficient vacuum reserve to permit one full brake application after engine is shut off.

(2) Has vacuum hose(s) or line(s) restricted, abraded (chafed) through outer cover to cord ply, crimped, cracked, broken or has collapse of vacuum hose(s) when vacuum is applied.

(3) Lacks an operative low-vacuum warning device as required.

2. *Coupling devices.*

a. *Fifth Wheels.*

(1) Mounting to frame.

(a) Any fasteners missing or ineffective.

(b) Any movement between mounting components.

(c) Any mounting angle iron cracked or broken.

(2) Mounting plates and pivot brackets.

(a) Any fasteners missing or ineffective.

(b) Any welds or parent metal cracked.

(c) More than 3/8 inch horizontal movement between pivot bracket pin and bracket.

(d) Pivot bracket pin missing or not secured.

(3) Sliders.

(a) Any latching fasteners missing or ineffective.
(b) Any fore or aft stop missing or not securely attached.
(c) Movement more than ⅜ inch between slider bracket and slider base.
(d) Any slider component cracked in parent metal or weld.
(4) Lower coupler.
(a) Horizontal movement between the upper and lower fifth wheel halves exceeds ½ inch.
(b) Operating handle not in closed or locked position.
(c) Kingpin not properly engaged.
(d) Separation between upper and lower coupler allowing light to show through from side to side.
(e) Cracks in the fifth wheel plate.
Exceptions: Cracks in fifth wheel approach ramps and casting shrinkage cracks in the ribs of the body of a cast fifth wheel.
(f) Locking mechanism parts missing, broken, or deformed to the extent the kingpin is not securely held.
b. *Pintle Hooks.*
(1) Mounting to frame.
(a) Any missing or ineffective fasteners (a fastener is not considered missing if there is an empty hole in the device but no corresponding hole in the frame or vice versa).
(b) Mounting surface cracks extending from point of attachment (e.g., cracks in the frame at mounting bolt holes).
(c) Loose mounting.
(d) Frame cross member providing pintle hook attachment cracked.
(2) Integrity.
(a) Cracks anywhere in pintle hook assembly.
(b) Any welded repairs to the pintle hook.
(c) Any part of the horn section reduced by more than 20%.
(d) Latch insecure.
c. *Drawbar/Towbar Eye.*
(1) Mounting.
(a) Any cracks in attachment welds.
(b) Any missing or ineffective fasteners.
(2) Integrity.
(a) Any cracks.
(b) Any part of the eye reduced by more than 20%.
d. *Drawbar/Towbar Tongue.*
(1) Slider (power or manual).
(a) Ineffective latching mechanism
(b) Missing or ineffective stop.
(c) Movement of more than ¼ inch between slider and housing.
(d) Any leaking, air or hydraulic cylinders, hoses, or chambers (other than slight oil weeping normal with hydraulic seals).
(2) Integrity.
(a) Any cracks.
(b) Movement of ¼ inch between subframe and drawbar at point of attachment.
e. *Safety Devices.*
(1) Safety devices missing.
(2) Unattached or incapable of secure attachment.
(3) Chains and hooks.
(a) Worn to the extent of a measurable reduction in link cross section.
(b) Improper repairs including welding, wire, small bolts, rope and tape.
(4) Cable.
(a) Kinked or broken cable strands.
(b) Improper clamps or clamping.
f. *Saddle-Mounts.*
(1) Method of attachment.
(a) Any missing or ineffective fasteners.
(b) Loose mountings.
(c) Any cracks or breaks in a stress or load bearing member.
(d) Horizontal movement between upper and lower saddle-mount halves exceeds ¼ inch.
3. *Exhaust System.*
a. Any exhaust system determined to be leaking at a point forward of or directly below the driver/sleeper compartment.
b. A bus exhaust system leaking or discharging to the atmosphere:
(1) Gasoline powered—excess of 6 inches forward of the rearmost part of the bus.
(2) Other than gasoline powered—in excess of 15 inches forward of the rearmost part of the bus.
(3) Other than gasoline powered—forward of a door or window designed to be opened. (exception: Emergency exits).
c. No part of the exhaust system of any motor vehicle shall be so located as would be likely to result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.
4. *Fuel System.*
a. A fuel system with a visable leak at any point.
b. A fuel tank filler cap missing.
c. A fuel tank not securely attached to the motor vehicle by reason of loose, broken or missing mounting bolts or brackets (some fuel tanks use springs or rubber bushings to permit movement).
5. *Lighting Devices.* All lighting devices and reflectors required by Section 393 shall be operable.
6. *Safe Loading.*
a. Part(s) of vehicle or condition of loading such that the spare tire or any part of the load or dunnage can fall onto the roadway.
b. Protection Against Shifting Cargo—Any vehicle without a front-end structure or equivalent device as required.
7. *Steering Mechanism.*
a. *Steering Wheel Free Play (on vehicles equipped with power steering the engine must be running).*

Steering wheel diameter	Manual steering system	Power steering system
16″	2″	4½″

Steering wheel diameter	Manual steering system	Power steering system
18″	2¼″	4¾″
20″	2½″	5¼″
22″	2¾″	5¾″

b. *Steering Column.*

(1) Any absence or looseness of U-bolt(s) or positioning part(s).

(2) Worn, faulty or obviously repair welded universal joint(s).

(3) Steering wheel not properly secured.

c. *Front Axle Beam and All Steering Components Other Than Steering Column.*

(1) Any crack(s).

(2) Any obvious welded repair(s).

d. *Steering Gear Box.*

(1) Any mounting bolt(s) loose or missing.

(2) Any crack(s) in gear box or mounting brackets.

e. *Pitman Arm.* Any looseness of the pitman arm on the steering gear output shaft.

f. *Power Steering.* Auxiliary power assist cylinder loose.

g. *Ball and Socket Joints.*

(1) Any movement under steering load of a stud nut.

(2) Any motion, other than rotational, between any linkage member and its attachment point of more than ¼ inch.

h. *Tie Rods and Drag Links.*

(1) Loose clamp(s) or clamp bolt(s) on tie rods or drag links.

(2) Any looseness in any threaded joint.

i. *Nuts.* Nut(s) loose or missing on tie rods, pitman arm, drag link, steering arm or tie rod arm.

j. *Steering System.* Any modification or other condition that interferes with free movement of any steering component.

8. *Suspension.*

a. Any U-bolt(s), spring hanger(s), or other axle positioning part(s) cracked, broken, loose or missing resulting in shifting of an axle from its normal position. (After a turn, lateral axle displacement is normal with some suspensions. Forward or rearward operation in a straight line will cause the axle to return to alignment).

b. *Spring Assembly.*

(1) Any leaves in a leaf spring assembly broken or missing.

(2) Any broken main leaf in a leaf spring assembly. (Includes assembly with more than one main spring).

(3) Coil spring broken.

(4) Rubber spring missing.

(5) One or more leaves displaced in a manner that could result in contact with a tire, rim, brake drum or frame.

(6) Broken torsion bar spring in a torsion bar suspension.

(7) Deflated air suspension, i.e., system failure, leak, etc.

c. *Torque, Radius or Tracking Components.* Any part of a torque, radius or tracking component assembly or any part used for attaching the same to the vehicle frame or axle that is cracked, loose, broken or missing. (Does not apply to loose bushings in torque or track rods.)

9. *Frame.*

a. *Frame Members.*

(1) Any cracked, broken, loose, or sagging frame member.

(2) Any loose or missing fasteners including fasteners attaching functional component such as engine, transmission, steering gear, suspension, body parts, and fifth wheel.

b. *Tire and Wheel Clearance.* Any condition, including loading, that causes the body or frame to be in contact with a tire or any part of the wheel assemblies.

c. (1) *Adjustable Axle Assemblies (Sliding Subframes).* Adjustable axle assembly with locking pins missing or not engaged.

10. *Tires.*

a. Any tire on any steering axle of a power unit.

(1) With less than 4/32 inch tread when measured at any point on a major tread groove.

(2) Has body ply or belt material exposed through the tread or sidewall.

(3) Has any tread or sidewall separation.

(4) Has a cut where the ply or belt material is exposed.

(5) Labeled ''Not for Highway Use'' or displaying other marking which would exclude use on steering axle.

(6) A tube-type radial tire without radial tube stem markings. These markings include a red band around the tube stem, the word ''radial'' embossed in metal stems, or the word ''radial'' molded in rubber stems.

(7) Mixing bias and radial tires on the same axle.

(8) Tire flap protrudes through valve slot in rim and touches stem.

(9) Regrooved tire except motor vehicles used solely in urban or suburban service (see exception in 393.75(e).

(10) Boot, blowout patch or other ply repair.

(11) Weight carried exceeds tire load limit. This includes overloaded tire resulting from low air pressure.

(12) Tire is flat or has noticeable (e.g., can be heard or felt) leak.

(13) Any bus equipped with recapped or retreaded tire(s).

(14) So mounted or inflated that it comes in contact with any part of the vehicle.

b. All tires other than those found on the steering axle of a power unit:

(1) Weight carried exceeds tire load limit. This includes overloaded tire resulting from low air pressure.

(2) Tire is flat or has noticeable (e.g., can be heard or felt) leak.

(3) Has body ply or belt material exposed through the tread or sidewall.

(4) Has any tread or sidewall separation.

(5) Has a cut where ply or belt material is exposed.

(6) So mounted or inflated that it comes in contact with any part of the vehicle. (This includes a tire that contacts its mate.)

(7) Is marked ''Not for highway use'' or otherwise marked and having like meaning.

(8) With less than 2/32 inch tread when measured at any point on a major tread groove.

11. *Wheels and Rims.*

a. *Lock or Side Ring.* Bent, broken, cracked, improperly seated, sprung or mismatched ring(s).

b. *Wheels and rims.* Cracked or broken or has elongated bolt holes.

c. *Fasteners (both spoke and disc wheels).* Any loose, missing, broken, cracked, stripped or otherwise ineffective fasteners.

d. *Welds.*

(1) Any cracks in welds attaching disc wheel disc to rim.

(2) Any crack in welds attaching tubeless demountable rim to adapter.

(3) Any welded repair on aluminum wheel(s) on a steering axle.

(4) Any welded repair other than disc to rim attachment on steel disc wheel(s) mounted on the steering axle.

12. *Windshield Glazing.* (Not including a 2 inch border at the top, a 1 inch border at each side and the area below the topmost portion of the steering wheel.) Any crack, discoloration or vision reducing matter except: (1) coloring or tinting applied at time of manufacture; (2) any crack not over ¼ inch wide, if not intersected by any other crack; (3) any damaged area not more than ¾ inch in diameter, if not closer than 3 inches to any other such damaged area; (4) labels, stickers, decalcomania, etc. (see 393.60 for exceptions).

13. *Windshield Wipers.* Any power unit that has an inoperative wiper, or missing or damaged parts that render it ineffective.

Comparison of Appendix G, and the new North American Uniform Driver-Vehicle Inspection Procedure (North American Commercial Vehicle Critical Safety Inspection Items and Out-Of-Service Criteria)

The vehicle portion of the FHWA's North American Uniform Driver-Vehicle Inspection Procedure (NAUD–VIP) requirements, CVSA's North American Commercial Vehicle Critical Safety Inspection Items and Out-Of-Service Criteria and Appendix G of subchapter B are similar documents and follow the same inspection procedures. The same items are required to be inspected by each document. FHWA's and CVSA's out-of-service criteria are intended to be used in random roadside inspections to identify critical vehicle inspection items and provide criteria for placing a vehicle(s) out-of-service. A vehicle(s) is placed out-of-service only when by reason of its mechanical condition or loading it is determined to be so imminently hazardous as to likely cause an accident or breakdown, or when such condition(s) would likely contribute to loss of control of the vehicle(s) by the driver. A certain amount of flexibility is given to the inspecting official whether to place the vehicle out-of-service at the inspection site or if it would be less hazardous to allow the vehicle to proceed to a repair facility for repair. The distance to the repair facility must not exceed 25 miles. The roadside type of inspection, however, does not necessarily mean that a vehicle has to be defect-free in order to continue in service.

In contrast, the Appendix G inspection procedure requires that all items required to be inspected are in proper adjustment, are not defective and function properly prior to the vehicle being placed in service.

Differences Between the Out-of-Service Criteria & FHWA's Annual Inspection

1. *Brake System.*

The Appendix G criteria rejects vehicles with any defective brakes, any air leaks, etc. The out-of-service criteria allows 20% defective brakes on non-steering axles and a certain latitude on air leaks before placing a vehicle out-of-service.

2. *Coupling Devices.*

Appendix G rejects vehicles with any fifth wheel mounting fastener missing or ineffective. The out-of-service criteria allows up to 20% missing or ineffective fasteners on frame mountings and pivot bracket mountings and 25% on slider latching fasteners. The out-of-service criteria also allows some latitude on cracked welds.

3. *Exhaust System.*

Appendix G follows Section 393.83 verbatim. The CVSA out-of-service criteria allows vehicles to exhaust forward of the dimensions given in Section 393.83 as long as the exhaust does not leak or exhaust under the chassis.

4. *Fuel System.*

Same for Appendix G and the out-of-service criteria.

5. *Lighting Devices.*

Appendix G requires all lighting devices required by Section 393 to be operative at all times. The out-of-service criteria only requires one stop light and functioning turn signals on the rear most vehicle of a combination vehicle to be operative at all times. In addition one operative head lamp and tail lamp are required during the hours of darkness.

6. *Safe Loading.*

Same for both Appendix G and the out-of-service criteria.

7. *Steering Mechanism*

Steering lash requirements of Appendix G follows the new requirements of §393.209.

8. *Suspension*

Appendix G follows the new requirements of §393.207 which does not allow any broken

leaves in a leaf spring assembly. The out-of-service criteria allows up to 25% broken or missing leaves before being placed out-of-service.

9. *Frame*

The out-of-service criteria allows a certain latitude in frame cracks before placing a vehicle out-of-service. Appendix G follows the new requirements of 393.201 which does not allow any frame cracks.

10. *Tires*

Appendix G follows the requirements of 393.75 which requires a tire tread depth of 4/32 inch on power unit steering axles and 2/32 inch on all other axles. The out-of-service criteria only requires 2/32 inch tire tread depth on power unit steering axles and 1/32 inch on all other axles.

11. *Wheel and Rims*

The out-of-service criteria allows a certain amount latitude for wheel and rim cracks and missing or defective fasteners. Appendix G meets the requirements of the new 393.205 which does not allow defective wheels and rims non-effective nuts and bolts.

12. *Windshield Glazing*

The out-of-service criteria places in a restricted service condition any vehicle that has a crack or discoloration in the windshield area lying within the sweep of the wiper on the drivers side and does not address the remaining area of the windshield. Appendix G addresses requirements for the whole windshield as specified in 393.60.

13. *Windshield Wipers*

Appendix G requires windshield wipers to be operative at all times. The out-of-service criteria only requires that the windshield wiper on the driver's side to be inspected during inclement weather.

[53 FR 49411, Dec. 7, 1988; 53 FR 49968, Dec. 12, 1988]

APPENDIX H TO SUBCHAPTER B—STATE ENFORCEMENT AND LIENS

EFFECTIVE DATE NOTE: At 59 FR 67556, Dec. 29, 1994, appendix H to subchapter B was added, effective June 27, 1995. At 60 FR 26002, May 16, 1995, the effective date was extended to Sept. 27, 1995. At 60 FR 40761, Aug. 10, 1995, the effective date was further extended to Sept. 1, 1996. At 61 FR 42822, Aug. 19, 1996, the effective date was further extended to Jan. 2, 1997.

This appendix reprints for informational purposes those portions of sec. 2 of the Intermodal Safe Container Transportation Act of 1992 (Pub. L. 102–548, 106 Stat. 3646) which enacted 49 U.S.C. 5904, 5905, and 5906, concerning State enforcement and liens, and amended 49 U.S.C. 5901 by adding the definition of *beneficial owner.*

The text of 49 U.S.C. 5901(2) reads:

(2) ''beneficial owner'' means a person not having title to property but having ownership rights in the property, including a trustee of property in transit from an overseas place of origin that is domiciled or doing business in the United States, except that a carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouser, or terminal operator is not a beneficial owner only because of providing or arranging for any part of the intermodal transportation of property.

The text of 49 U.S.C. 5904, State enforcement, reads:

(a) GENERAL.—A State may enact a law to permit the State or a political subdivision of the State—

(1) to impose a fine or penalty, for a violation of a State highway weight law or regulation by a tractor-trailer combination carrying a loaded container or trailer for which a certification is required by section 5902(b) of this title, against the person tendering the loaded container or trailer to the first carrier if the violation results from the person's having provided erroneous information in the certification in violation of section 5903(a) of this title; and

(2) to impound the container or trailer until the fine or penalty has been paid by the owner or beneficial owner of the contents of the container or trailer or the person tendering the loaded container or trailer to the first carrier.

(b) LIMITATION.—This chapter does not require a person tendering a loaded container or trailer to the first carrier to ensure that the first carrier or any other carrier involved in the intermodal transportation will comply with any State highway weight law or regulation, other than as required by this chapter.

The text of 49 U.S.C. 5905, Liens, reads:

(a) GENERAL.—If a person involved in the intermodal transportation of a loaded container or trailer for which a certification is required by section 5902(b) of this title is required under State law to post a bond or pay any fine, penalty, cost, or interest resulting from providing erroneous information in the certification to the first carrier in violation of section 5903(a) of this title, the person has a lien against the contents equal to the amount of the bond, fine, penalty, cost, or interest incurred, until the person receives a payment of that amount from the owner or beneficial owner of the contents or from the person responsible for making the certification.

(b) LIMITATIONS.—(1) A lien under this section does not authorize a person to dispose of the contents of a loaded container or trailer until the person who tendered the container or trailer to the first carrier is given a reasonable opportunity to establish responsibility for the bond, fine, penalty, cost, or interest.

(2) In this section, an owner or beneficial owner of the contents of a container or trailer or a person tendering a container or trailer to the first carrier is deemed not to be a person involved in the intermodal transportation of the container or trailer.

The text of 49 U.S.C. 5906, Perishable agricultural commodities, reads:

Sections 5904(a)(2) and 5905 of this title do not apply to a container or trailer the contents of which are perishable agricultural commodities (as defined in the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a et seq.)).

[59 FR 67556, Dec. 29, 1994]