

(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 re-

stricted 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; 62 FR 1296, Jan. 9, 1997; 67 FR 49755, July 31, 2002; 67 FR 61821, Oct. 2, 2002]

§ 383.5 Definitions.

As used in this part:

Administrator means the Federal Motor Carrier Safety Administrator, the chief executive of the Federal Motor Carrier Safety Administration, an agency within the Department of Transportation.

Alcohol or *alcoholic beverage* means: (a) Beer as defined in 26 U.S.C. 5052(a), of the Internal Revenue Code of 1954, (b) wine of not less than one-half of one per centum of alcohol by volume, or (c) distilled spirits as defined in section 5002(a)(8), of such Code.

Alcohol concentration (AC) means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

Alien means any person not a citizen or national of the United States.

CDL downgrade means either:

(1) A State allows the driver to change his or her self-certification to interstate, but operating exclusively in transportation or operation excepted

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from part 391, as provided in § 390.3(f), 391.2, 391.68 or 398.3 of this chapter;

(2) A State allows the driver to change his or her self-certification to intrastate only, if the driver qualifies under that State's physical qualification requirements for intrastate only;

(3) A State allows the driver to change his or her certification to intrastate, but operating exclusively in transportation or operations excepted from all or part of the State driver qualification requirements, or

(4) A State removes the CDL privilege from the driver license.

CDLIS driver record means the electronic record of the individual CDL driver's status and history stored by the State-of-Record as part of the Commercial Driver's License Information System (CDLIS) established under 49 U.S.C. 31309.

Commerce means (a) any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and (b) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (a) of this definition.

Commercial driver's license (CDL) means a license issued 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 FMCSA 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(s) 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 *hazardous materials* as defined in this section.

Controlled substance has the meaning such term has under 21 U.S.C. 802(6) and includes all substances listed on schedules I through V of 21 CFR 1308 (§§ 1308.11 through 1308.15), as they may be amended by the United States Department of Justice.

Conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated."

Disqualification means any of the following three actions:

(a) The suspension, revocation, or cancellation of a CDL by the State or jurisdiction of issuance.

(b) Any withdrawal of a person's privileges to drive a CMV by a State or other jurisdiction as the result of a violation of State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

(c) A determination by the FMCSA that a person is not qualified to operate a commercial motor vehicle under part 391 of this chapter.

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—

(a) Driving a CMV while the person's alcohol concentration is 0.04 or more;

(b) Driving under the influence of alcohol, as prescribed by State law; or

(c) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of §383.51(b) or §392.5(a)(2) of this subchapter.

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.

Fatality means the death of a person as a result of a motor vehicle accident.

Felony means an offense under State or Federal law that is punishable by death or imprisonment for a term exceeding 1 year.

Foreign means outside the fifty United States and the District of Columbia.

Gross combination weight rating (GCWR) means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle.

Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a

material listed as a select agent or toxin in 42 CFR part 73.

Imminent hazard means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

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 under either of the following two conditions:

(a) To an individual domiciled in a foreign country meeting the requirements of §383.23(b)(1).

(b) To an individual domiciled in another State meeting the requirements of §383.23(b)(2).

Non-CMV means a motor vehicle or combination of motor vehicles not defined by the term "commercial motor vehicle (CMV)" in this section.

Out-of-service order means a declaration by an authorized enforcement officer of a Federal, State, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation, is out-of-service pursuant to §§386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American Uniform Out-of-Service Criteria.

Representative vehicle means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate.

School bus means a CMV used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

Serious traffic violation means conviction of any of the following offenses when operating a CMV, except weight, defect and parking violations:

(a) Excessive speeding, involving any single offense for any speed of 15 miles

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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 CMV 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;

(e) A violation, arising in connection with a fatal accident, of State or local law relating to motor vehicle traffic control;

(f) Driving a CMV without obtaining a CDL;

(g) Driving a CMV without a CDL in the driver’s possession. Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense; or

(h) Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.

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; 62 FR 37151, July 11, 1997; 67 FR 49756, July 31, 2002; 68 FR 23849, May 5, 2003; 73 FR 73123, Dec. 1, 2008]

EFFECTIVE DATE NOTE: At 75 FR 59135, Sept. 27, 2010, §383.5 was amended by adding the definitions for *Electronic device*, and *Texting*, effective October 27, 2010. For the convenience of the user, the added text is set forth as follows:

§ 383.5 Definitions.

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Electronic device includes, but is not limited to, a cellular telephone; personal digital assistant; pager; computer; or any other device used to input, write, send, receive, or read text.

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Texting means manually entering alphanumeric text into, or reading text from, an electronic device.

(1) This action includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page, or engaging in any other form of electronic text retrieval or entry, for present or future communication.

(2) Texting does not include:

(i) Reading, selecting, or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call or using voice commands to initiate or receive a telephone call;

(ii) Inputting, selecting, or reading information on a global positioning system or navigation system; or

(iii) Using a device capable of performing multiple functions (e.g., fleet management systems, dispatching devices, smart phones, citizens band radios, music players, etc.) for a purpose that is not otherwise prohibited in this part.

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§ 383.7 Validity of CDL issued by de-certified State.

A CDL issued by a State prior to the date the State is notified by the Administrator, in accordance with the