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(ii) Clearly marked with a ''flammable'' or ''combustible'' placard, as appropriate.

[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; 78 FR 16194, Mar. 14, 2013; 78 FR 58479, Sept. 24, 2013; 81 FR 47720, July 22, 2016; 81 FR 68346, Oct. 4, 2016; 81 FR 71016, Oct. 14, 2016; 86 FR 35640, July 7, 2021; 87 FR 59036, Sept. 29, 2022]

§ 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:

(1) Beer as defined in 26 U.S.C. 5052(a), of the Internal Revenue Code of 1954,

(2) Wine of not less than one-half of one per centum of alcohol by volume, or

(3) Distilled spirits as defined in section 5002(a)(8), of such Code.

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

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

CDL downgrade means either:

(1) A State allows the driver to change his or her self-certification to interstate, but operating exclusively in transportation or operation excepted from part 391, as provided in §390.3(f), §391.2, §391.68 or §398.3 of this chapter;

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

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

(4) A State removes the CLP or CDL privilege from the driver's license.

CDL driver means a person holding a CDL or a person required to hold a CDL.

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

Commerce means:

(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; or

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

Commercial driver's license (CDL) means a license issued to an individual by a State or other jurisdiction of domicile, in accordance with the standards contained in this part, which authorizes the individual to operate a class of a commercial motor vehicle.

Commercial driver's license information system (CDLIS) means the CDLIS established by FMCSA pursuant to section 12007 of the Commercial Motor Vehicle Safety Act of 1986.

Commercial learner's permit (CLP) means a permit issued to an individual by a State or other jurisdiction of domicile, in accordance with the standards contained in this part, which, when carried with a valid driver's license issued by the same State or jurisdiction, authorizes the individual to operate a class of a commercial motor vehicle when accompanied by a holder of a valid CDL for purposes of behind-the-wheel training. When issued to a CDL holder, a CLP serves as authorization for accompanied behind-the-wheel training in a CMV for which the holder's current CDL is not valid.

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

(1) Combination Vehicle (Group A)—having a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle

weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or

(2) Heavy Straight Vehicle (Group B)—having a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or

(3) Small Vehicle (Group C) that does not meet Group A or B requirements but that either—

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

(ii) 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:

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

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

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

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

Driver's license means a license issued by a State or other jurisdiction, to an individual which authorizes the individual to operate a motor vehicle on the highways.

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV—

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

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

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

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

Eligible unit of local government means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law which has a total population of 3,000 individuals or less.

Employee means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly employed by or under lease to an employer.

Employer means any person (including the United States, a State, District of Columbia or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns employees to operate such a vehicle.

Endorsement means an authorization to an individual's CLP or CDL required to permit the individual to operate certain types of commercial motor vehicles.

Evidence of lawful immigration status for purposes of subpart B of this part, means:

(1) For applicants domiciled in a foreign jurisdiction (except Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands):

(i) An unexpired foreign passport; and

(ii) An unexpired Form I–94/94A issued by the U.S. Department of Homeland Security indicating one of the following classifications: H–2A—Temporary Agricultural Workers, H–2B—Temporary Non-Agricultural Workers, or E–2—Treaty Investors.

(2) For applicants domiciled in Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands: any of the documents specified in Table 1 of section 383.71.

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

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

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

Foreign commercial driver means an individual licensed to operate a commercial motor vehicle by an authority outside the United States, or a citizen of a foreign country who operates a commercial motor vehicle in the United States.

Gross combination weight rating (GCWR) is the greater of:

(1) A value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration, or

(2) The sum of the gross vehicle weight ratings (GVWRs) or the gross vehicle weights (GVWs) of the power unit and the towed unit(s), or any combination thereof, that produces the highest value. Exception: The GCWR of the power unit will not be used to define a commercial motor vehicle when the power unit is not towing another vehicle.

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

Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

Imminent hazard means the existence of any condition of vehicle, employee, or commercial motor vehicle operations that substantially increases the likelihood of serious injury or death if not discontinued immediately; or a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

Manual transmission (also known as a stick shift, stick, straight drive or standard transmission) means a transmission utilizing a driver-operated clutch that is activated by a pedal or lever and a gear-shift mechanism operated either by hand or foot. All other transmissions, whether semi-automatic or automatic, will be considered automatic for the purposes of the standardized restriction code.

Military service member means a member of the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, and their associated reserve, and National Guard units.

Military services means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, and their associated reserve and National Guard units.

Mobile telephone means a mobile communication device that falls under or uses any commercial mobile radio service, as defined in regulations of the Federal Communications Commission, 47 CFR 20.3. It does not include two-way or Citizens Band Radio services.

Motor vehicle means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, except that such term does not include a vehicle, machine, tractor, trailer, semitrailer operated exclusively on a rail.

Non-CDL means any other type of motor vehicle license, such as an automobile driver's license, a chauffeur's license, or a motorcycle license.

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

Non-domiciled CLP or Non-domiciled CDL means a CLP or CDL, respectively, issued by a State or other jurisdiction under either of the following two conditions:

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

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

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

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

School bus means a CMV used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include operations of a for-hire motor carrier.

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

State of domicile means that State where a person has his/her true, fixed, and permanent home and principal residence and to which he/she has the intention of returning whenever he/she is absent.

Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

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, emailing, instant messaging, a command or request to access a World Wide Web page, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any other form of electronic text retrieval or entry, for present or future communication.

(2) Texting does not include:

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

(ii) Pressing a single button to initiate or terminate a voice communication using a mobile telephone; 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.

Third-party skills test examiner means a person employed by a third-party tester who is authorized by the State to administer the CDL skills tests specified in subparts G and H of this part.

Third-party tester means a person (including, but not limited to, another State, a motor carrier, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government) authorized by the State to employ skills test examiners to administer the CDL skills tests specified in subparts G and H of this part.

TWIC means Transportation Worker Identification Credential as that term is defined in 49 CFR 1570.3, which is the transportation security card issued by TSA under the authority of 46 U.S.C. 70105.

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]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 383.5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.