

other insurance or security, filed with and accepted by the FMCSA for such fiduciary. After the coverage shall have been in effect 30 days, it may be cancelled or withdrawn within the succeeding 30 days by the insurer, the insured, the surety, or the principal 10 days after the FMCSA receives written notice. After such coverage has been in effect 60 days, it may be cancelled or withdrawn only in accordance with § 387.413(d).

[55 FR 11201, Mar. 27, 1990. Redesignated at 61 FR 54710, Oct. 21, 1996, as amended at 62 FR 49942, Sept. 24, 1997]

§ 387.419 Electronic filing of surety bonds, certificates of insurance and cancellations.

Insurers must electronically file certificates of insurance, surety bonds, and other securities and agreements and notices of cancellation in accordance with the requirements and procedures set forth at § 387.323.

[80 FR 63710, Oct. 21, 2015]

EFFECTIVE DATE NOTE: At 82 FR 5310, Jan. 17, 2017, § 387.419 was suspended, effective Jan. 14, 2017.

§ 387.419T Electronic filing of surety bonds, certificates of insurance and cancellations.

Insurers may, at their option and in accordance with the requirements and procedures set forth at § 387.323T, file certificates of insurance, surety bonds, and other securities and agreements electronically.

[82 FR 5310, Jan. 17, 2017]

APPENDIX A TO PART 387—APPLICABILITY OF THE REGISTRATION, FINANCIAL RESPONSIBILITY, AND SAFETY REGULATIONS TO MOTOR CARRIERS OF PASSENGERS

For additional guidance on the application of financial responsibility regulations to motor carriers of passengers, refer to appendix A to part 390 of this subchapter.

[87 FR 68372, Nov. 15, 2022]

PART 388 [RESERVED]

PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

Subpart A—General

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- 389.33 Processing of petition.
- 389.35 Petitions for reconsideration.
- 389.37 Proceedings on petitions for reconsideration.
- 389.39 Direct final rulemaking procedures

APPENDIX A TO PART 389

AUTHORITY: 49 U.S.C. 113, 501 *et seq.*, subchapters I and III of chapter 311, chapter 313, and 31502; sec. 5204 of Pub. L. 114-94, 129 Stat. 1312, 1536; 42 U.S.C. 4917; and 49 CFR 1.87

SOURCE: 35 FR 9209, June 12, 1970, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 389 appear at 66 FR 49873, Oct. 1, 2001.

Subpart A—General

§ 389.1 Applicability.

This part prescribes rulemaking procedures that apply to the issuance, amendment and revocation of rules under an Act.

[62 FR 37152, July 11, 1997]

§ 389.3 Definitions.

Act means statutes granting the Secretary authority to regulate motor carrier safety or commercial activity.

Administrator means the Federal Motor Carrier Safety Administrator.

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Confidential business information means trade secrets or commercial or financial information that is privileged or confidential, as described in 5 U.S.C. 552(b)(4). Commercial or financial information is considered confidential if it was voluntarily submitted and is the type of information that is customarily not released to the general public by the person or entity from whom it was obtained.

Major rule means—

(1) Any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in:

(i) An annual effect on the economy of \$100,000,000 or more;

(ii) A major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; or

(iii) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

(2) The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

Petition means a request for:

(1) A new regulation;

(i) A regulatory interpretation or clarification; or

(ii) A determination made by the Administrator that a regulation should be modified or eliminated because it is:

(A) No longer:

(1) Consistent and clear;

(2) Current with the operational realities of the motor carrier industry; or

(3) Uniformly enforced;

(B) Ineffective; or

(C) Overly burdensome.

Written or in writing means printed, handwritten, typewritten either on paper or other tangible medium, or by any method of electronic documentation such as electronic mail.

[62 FR 37152, July 11, 1997, as amended at 80 FR 32864, June 10, 2015; 85 FR 86848, Dec. 31, 2020; 88 FR 80183, Nov. 17, 2023]

§ 389.5 Regulatory docket.

(a) Information and data deemed relevant by the Administrator relating to rulemaking actions, including notices of proposed rulemaking; comments received in response to notices; petitions for rulemaking and reconsideration; denials of petitions for rulemaking and reconsideration; records of additional rule making proceedings under § 389.25; and final rules are maintained at headquarters, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(b) Except for material ordered withheld from the public under section 552(b) of title 5 of the United States Code, any person may examine docketed material in the Department of Transportation Docket Management Facility in the following ways:

(1) At headquarters at any time during regular business hours. Copies may be obtained upon payment of a fee.

(2) On the website *regulations.gov*, at any time, by using the uniform resources locator (URL) <https://www.regulations.gov>. Copies may be downloaded or printed.

[72 FR 55702, Oct. 1, 2007, as amended at 88 FR 80183, Nov. 17, 2023]

§ 389.7 Records.

Records of the Administrator relating to rulemaking 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; 85 FR 86848, Dec. 31, 2020]

§ 389.9 Treatment of confidential business information submitted under confidential class determinations.

(a) *Purpose.* This section establishes the standards and procedures by which the Agency will solicit and receive certain confidential commercial or financial information, as that term is used in the Freedom of Information Act (5 U.S.C. 552(b)(4)), categorically referred to below as “confidential business information,” and the manner in which

the Agency will protect such information from public disclosure in accordance with 5 U.S.C. 552(b)(4), when it is submitted in accordance with paragraph (f) of this section.

(b) *Confidential class determinations.* The Administrator may make and issue a class determination, which shall pertain to a specified rulemaking and shall clearly identify categories of information included within the class. Information submitted under the class determination and conforming to the characteristics of the class will be treated as presumptively confidential and accorded the non-disclosure protections described in paragraph (h) of this section. The Administrator may establish a class upon finding that:

(1) FMCSA seeks to obtain related items of commercial or financial information as described in 5 U.S.C. 552(b)(4);

(2) The class determination would facilitate the voluntary submission of information necessary to inform the rulemaking; and

(3) One or more characteristics common to each item of information in the class will necessarily result in identical treatment, and that it is therefore appropriate to treat all such items as a class under this section.

(c) *Frequency and content of class determinations.* Class determinations may be defined by the Administrator on an as needed basis and shall include substantive criteria established in accordance with the informational needs of the particular rulemaking.

(d) *Modification or amendment.* The Administrator may amend or modify any class determination established under this section.

(e) *Publication.* Once the Administrator has made a class determination, the Agency shall publish the class determination in the *FEDERAL REGISTER*. If the Administrator amends or modifies any class determination established and published in accordance with this section, such changes will be published in the *FEDERAL REGISTER*.

(f) *Submission of confidential business information.* Persons wishing to submit information in accordance with a class determination established under authority of this section must complete and sign, under penalties of perjury, an

Affidavit in Support of Request for Confidentiality (Affidavit), as set forth in Appendix A to this part. In the event that information is submitted under more than one designated class, each submission must include an executed Affidavit, asserting, among other factors, that:

(1) The information is submitted to the Agency voluntarily;

(2) The information is of a type customarily not disclosed to the public by the submitter;

(3) The information, to the best of the submitter's knowledge and belief, has not been disclosed to the public; and

(4) The information satisfies the substantive criteria for the class as established by the Administrator under authority of paragraph (b) of this section.

(g) *Submission of comments not containing confidential business information.* If a submitter elects to provide commentary in addition to the confidential business information submitted under one or more classes designated under this section, any portion of a submitter's additional commentary that does not contain confidential business information shall be filed in the public docket in the form and manner set forth in the rulemaking.

(h) *Non-disclosure of confidential business information.* In accordance with the provisions of 5 U.S.C. 552(b)(4), information submitted under this section shall not be available for inspection in the public docket, nor shall such information be provided by the Agency in response to any request for the information submitted to the Agency under 5 U.S.C. 552, except as provided for in paragraph (j) of this section.

(1) If a requester brings suit to compel the disclosure of information submitted under this section, the Agency shall promptly notify the submitter.

(2) The submitter may be joined as a necessary party in any suit brought against the Department of Transportation or FMCSA for non-disclosure.

(i) *Use of confidential business information.* To the extent that the Agency relies upon confidential business information submitted under paragraph (f) of this section in formulating a particular rule, the Agency shall, in the preamble of the final rule, disclose its

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receipt of such information under a designated class and shall describe the information in a de-identified form, including by summary, aggregation or other means, as necessary, to sufficiently explain the Agency's reasoning while maintaining the confidentiality of the information.

(j) *Disclosure of confidential business information.* (1) If the Administrator finds that information submitted to the Agency under paragraph (f) of this section fails to satisfy the requirements set forth in paragraphs (f)(2), (3) or (4), or that the Affidavit accompanying the information submitted under paragraph (f) is false or misleading in any material respect, the Agency shall disclose the non-conforming information by placing it in the public docket for the particular rulemaking, within 20 days following written notice to the submitter of its decision to do so, except that:

(i) Submitters may, within 10 days of receipt of such notice, provide the Agency with a written statement explaining why the submitted information conforms to the requirements of paragraph (f) of this section and thus, should not be disclosed. The Agency shall continue to withhold the information from the public docket until completing its review of the submitter's statement. The Agency may, following timely review of the submitter's statement, determine that disclosure is not required under this paragraph. In any event, the Agency shall advise the submitter in writing of its decision concerning whether the information shall be disclosed in the public docket.

(ii) [Reserved]

(2) Notice of the Agency's intention to disclose the submitted information is not required if the Administrator determines that the entity submitting such information has authorized its disclosure to the public.

(3) If, at the time the Administrator determines that the submitted information fails to comply with the requirements set forth in paragraph (f), such information is the subject of a FOIA request, the requirements of 49 CFR 7.29 shall apply.

[80 FR 32864, June 10, 2015, as amended at 84 FR 51434, Sept. 30, 2019]

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Subpart B—Procedures for Adoption of Rules

§ 389.11 General.

Except as provided in § 389.39, Direct final rulemaking procedures, unless the Administrator, for good cause, finds a rule is impractical, unnecessary, or contrary to the public interest, and incorporates such a finding and a brief statement for the reason for it in the rule, a notice of proposed rulemaking must be issued, and interested persons are invited to participate in the rulemaking proceedings involving rules under an Act.

[75 FR 29916, May 28, 2010]

§ 389.13 Initiation of rulemaking.

(a) The Administrator may recommend the initiation of a rulemaking to the Office of the Secretary 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.

(b) If a proposed rule regarding commercial motor vehicle safety is likely to lead to the promulgation of a major rule, the Administrator, before publishing such proposed rule, shall—

(1) Issue an advance notice of proposed rulemaking that:

(i) Identifies the need for a potential regulatory action;

(ii) Identifies and requests public comment on the best available science or technical information relevant to analyzing potential regulatory alternatives;

(iii) Requests public comment on the available data, benefits, and costs with respect to regulatory alternatives reasonably likely to be considered as part of the rulemaking; and

(iv) Requests public comment on available alternatives to regulation; or

(2) Proceed with a negotiated rulemaking.

(c) Paragraph (b) of this section does not apply to a proposed rule if the Administrator, for good cause, finds (and incorporates the finding and a brief statement of reasons for such finding in the proposed or final rule) that an advance notice of proposed rulemaking

is impracticable, unnecessary, or contrary to the public interest. A proposed rule subject to paragraph (b) of this section should also be evaluated to determine the applicability of 49 CFR 5.17.

[85 FR 86848, Dec. 31, 2020, as amended at 86 FR 17296, Apr. 2, 2021]

§ 389.15 Contents of notices of proposed rulemaking.

(a) Each notice of proposed rulemaking 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 rulemaking 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.

[35 FR 9209, June 12, 1970, as amended at 85 FR 86849, Dec. 31, 2020]

§ 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 Submission of written comments.

(a) You may submit comments identified by the docket number provided in the rulemaking document using any of the following methods. To avoid duplication, please use only one of these four methods.

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

(2) *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

(3) *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

(4) *Fax:* (202) 493-2251.

(b) All written comments must be submitted in English and include copies of any material that the commenter refers to within the comment.

[85 FR 86849, Dec. 31, 2020]

§ 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 rulemaking proceedings.

The Administrator may initiate any further rulemaking proceedings that he/she finds necessary or desirable. For 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

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the Administrator at which a transcript or minutes are kept, or to participate in any other proceeding to assure informed administrative action and to protect the public interest.

[78 FR 58482, Sept. 24, 2013]

§ 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, non-adversary, 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 Motor Carrier Safety 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 from all relevant offices of FMCSA. The final rule is then submitted to the Administrator for his/her consideration and forwarded, as necessary, to the Office of the Secretary for review and approval. Once approved by the Office of the Secretary, and, if necessary, by the Office of Management and Budget's Office of Information and Regulatory Affairs, the final rule is signed by the Administrator. All final rules must be published in the *FEDERAL REGISTER*, unless all persons subject to the final rule are named and personally served with a copy of it.

[85 FR 86849, Dec. 31, 2020]

§ 389.31 Petitions for rulemaking.

(a) Any interested person may petition the Administrator to establish, amend, interpret, clarify, or withdraw a rule.

(b) Each petition filed under this section must:

(1) Be submitted in writing by mail to the Administrator, Federal Motor Carrier Safety Administration, 1200

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New Jersey Ave. SE, Washington, DC 20590-0001 or electronically at www.regulations.gov, using the general petitions for rulemaking docket listed on FMCSA's website at www.FMCSA.dot.gov.

(2) Set forth the text or substance of the rule or amendment proposed, or specify the rule that the petitioner seeks to have interpreted, clarified or withdrawn, as the case may be;

(3) Explain the interest of the petitioner in the action requested;

(4) Contain any information, data, research studies, and arguments available to the petitioner to support the action sought.

[85 FR 86849, Dec. 31, 2020, as amended 88 FR 80183, Nov. 17, 2023]

§ 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 for reconsideration must be in English and submitted to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590-0001, or electronically submitted using the docket for the rulemaking at www.regulations.gov, and received not

later than thirty (30) days after publication of the rule in the FEDERAL REGISTER. Petitions for reconsideration filed after that time will be considered as petitions for rulemakings filed under § 389.31 of this part. The petition for reconsideration 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; 72 FR 55702, Oct. 1, 2007; 80 FR 59073, Oct. 1, 2015; 85 FR 86849, Dec. 31, 2020]

§ 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]

§ 389.39 Direct final rulemaking procedures.

A direct final rule makes regulatory changes and states that those changes will take effect on a specified date unless FMCSA receives an adverse comment by the date specified in the direct

final rule published in the FEDERAL REGISTER.

(a) *Types of actions appropriate for direct final rulemaking.* Rules that the Administrator determines to be non-controversial and unlikely to result in adverse public comments may be published in the final rule section of the FEDERAL REGISTER as direct final rules. These include non-controversial rules that:

(1) Make non-substantive clarifications or corrections to existing rules;

(2) Incorporate by reference the latest or otherwise updated versions of technical or industry standards;

(3) Affect internal FMCSA procedures such as filing requirements and rules governing inspection and copying of documents;

(4) Update existing forms; and

(5) Make minor changes to rules regarding statistics and reporting requirements, such as a change in reporting period (for example, from quarterly to annually) or eliminating a type of data collection no longer necessary.

(b) *Adverse comment.* An adverse comment is a comment that FMCSA judges to be critical of the rule, to suggest that the rule should not be adopted, or to suggest that a change should be made to the rule. Under the direct final rule process, FMCSA does not consider the following types of comments to be adverse:

(1) Comments recommending another rule change, unless the commenter states that the direct final rule will be ineffective without the change;

(2) Comments outside the scope of the rule and comments suggesting that the rule's policy or requirements should or should not be extended to other Agency programs outside the scope of the rule;

(3) Comments in support of the rule; or

(4) Comments requesting clarification.

(c) *Confirmation of effective date.* FMCSA will publish a confirmation rule document in the FEDERAL REGISTER, if it has not received an adverse comment by the date specified in the direct final rule. The confirmation rule document tells the public the effective date of the rule.

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(d) *Withdrawal of a direct final rule.* (1) If FMCSA receives an adverse comment within the comment period, it will either publish a document withdrawing the direct final rule before it becomes effective and may issue an NPRM, or proceed by any other means permitted under the Administrative Procedure Act.

(2) If FMCSA withdraws a direct final rule because of an adverse comment, the Agency may issue a notice of proposed rulemaking if it decides to pursue the rulemaking.

[75 FR 29916, May 28, 2010, as amended at 84 FR 71733, Dec. 27, 2019; 86 FR 17296, Apr. 2, 2021]

APPENDIX A TO PART 389

**AFFIDAVIT IN SUPPORT OF REQUEST
FOR CONFIDENTIALITY**

I, _____, pursuant to the provisions of 49 CFR part 389, section 389.9, state as follows:

(1) I am [insert official's name, title] and I am authorized by [insert name of entity] to execute this Affidavit on its behalf;

(2) I certify that the information contained in the document(s) attached to this Affidavit is submitted voluntarily, with the claim that the information is entitled to confidential treatment under 5 U.S.C. 552(b)(4);

(3) I certify that the information contained in the documents attached to this Affidavit is of a type not customarily disclosed to the general public by [insert name of entity];

(4) I certify that, to the best of my knowledge, information and belief, the information contained in the documents attached to this Affidavit, for which confidential treatment is claimed, has never been released to the general public or been made available to any unauthorized person outside [insert name of entity];

(5) I certify that this information satisfies the substantive criteria set forth in the notice published in the **FEDERAL REGISTER** on _____ [insert date of rule-specific publication in month/day/year format] under FMCSA Docket Number [insert docket number].

(6) I make no representations beyond those made in this Affidavit, and, in particular, I make no representations as to whether this information may become available outside [insert name of entity] due to unauthorized or inadvertent disclosure; and

(7) I certify under penalties of perjury that the foregoing statements are true and correct.

Executed on this _____ day of _____.

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_____ (signature of official)

[80 FR 32865, June 10, 2015]

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

Subpart A—General Applicability and Definitions

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- 390.21T Marking of self-propelled CMVs and intermodal equipment.
- 390.23 Automatic relief from regulations.
- 390.25 Extension or Modification of relief from regulations—emergencies.
- 390.27 Locations of motor carrier safety service centers.
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- 390.31 Copies of records and documents.
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- 390.33 Commercial motor vehicles used for purposes other than defined.
- 390.35 Certificates, reports, and records: Falsification, reproduction, or alteration.
- 390.36 Harassment of drivers prohibited.
- 390.37 Violation and penalty.
- 390.38 Exemptions for pipeline welding trucks.