

(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.

(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 \_\_\_\_\_,  
(signature of official)

[80 FR 32865, June 10, 2015]

## PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

## Subpart A—General Applicability and Definitions

Sec.

390.1 Purpose.

390.3 General applicability.

390.3T General applicability.

390.4 Delegations and redelegations of authority of FMCSA employees to perform assigned actions or duties.

390.5 Definitions.

390.5T Definitions.

390.6 Coercion prohibited.

**Federal Motor Carrier Safety Administration, DOT**

**Pt. 390**

- 390.7 Rules of construction.
- 390.8 Separation of functions.

**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 [Reserved]
- 390.17 Additional equipment and accessories.
- 390.19 Motor carrier identification reports for certain Mexico-domiciled motor carriers.
- 390.19T Motor carrier, hazardous material safety permit applicant/holder, and intermodal equipment provider identification reports.
- 390.21 Marking of self-propelled CMVs and intermodal equipment.
- 390.21T Marking of self-propelled CMVs and intermodal equipment.
- 390.23 Relief from regulations.
- 390.25 Extension of relief from regulations—emergencies.
- 390.27 Locations of motor carrier safety service centers.
- 390.29 Location of records or documents.
- 390.31 Copies of records and documents.
- 390.32 Electronic documents and signatures.
- 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.
- 390.39 Exemptions for “covered farm vehicles.”

**Subpart C—Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment**

- 390.40 What responsibilities do intermodal equipment providers have under the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399)?
- 390.40T What responsibilities do intermodal equipment providers have under the Federal Motor Carrier Safety Regulations (49 CFR parts 350 through 399)?
- 390.42 What are the responsibilities of drivers and motor carriers operating intermodal equipment?
- 390.44 What are the procedures to correct the safety record of a motor carrier or an intermodal equipment provider?
- 390.46 Are State and local laws and regulations on the inspection, repair, and main-

tenance of intermodal equipment preempted by the Federal Motor Carrier Safety Regulations?

**Subpart D—National Registry of Certified Medical Examiners**

- 390.101 Scope.
  - MEDICAL EXAMINER CERTIFICATION REQUIREMENTS
  - 390.103 Eligibility requirements for medical examiner certification.
  - 390.105 Medical examiner training programs.
  - 390.107 Medical examiner certification testing.
  - 390.109 Issuance of the FMCSA medical examiner certification credential.
  - 390.111 Requirements for continued listing on the National Registry of Certified Medical Examiners.
  - 390.113 Reasons for removal from the National Registry of Certified Medical Examiners.
  - 390.115 Procedure for removal from the National Registry of Certified Medical Examiners.

MEDICAL EXAMINER CERTIFICATION REQUIREMENTS FOR QUALIFIED DEPARTMENT OF VETERANS AFFAIRS EXAMINERS

- 390.123 Medical examiner certification for qualified Department of Veterans Affairs examiners.
- 390.125 Qualified VA examiner certification training.
- 390.127 Qualified VA examiner certification testing.
- 390.129 Issuance of the FMCSA medical examiner certification credential.
- 390.131 Requirements for continued listing of a certified VA medical examiner on the National Registry of Certified Medical Examiners.
- 390.133 Reasons for removal of a certified VA medical examiner from the National Registry of Certified Medical Examiners.
- 390.135 Procedure for removal of a certified VA medical examiner from the National Registry of Certified Medical Examiners.

**Subpart E—Unified Registration System**

- 390.201 USDOT Registration.
- 390.203 PRISM State registration/biennial updates.
- 390.205 Special requirements for registration.
- 390.207 Other governing regulations.
- 390.209 Pre-authorization safety audit.

**Subpart E—URS Online Application**

- 390.200T USDOT Registration.

**Subpart F [Reserved]****Subpart G—Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles**

390.401 Applicability.  
390.403 Lease and interchange requirements.

APPENDIX A TO PART 390—APPLICABILITY OF THE REGISTRATION, FINANCIAL RESPONSIBILITY, AND SAFETY REGULATIONS TO MOTOR CARRIERS OF PASSENGERS

AUTHORITY: 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

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 that transport property or passengers in interstate commerce.

(b) The rules in part 383 of this chapter, Commercial Driver's License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in § 383.5 of this subchapter, in interstate or intrastate commerce and to all employers of such persons.

(c) The rules in part 387 of this chapter, Minimum Levels of Financial Responsibility for Motor Carriers, are applicable to motor carriers as provided in §§ 387.3 or 387.27 of this chapter.

(d) *Additional requirements.* Nothing in subchapter B of this chapter shall be

construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(e) *Knowledge of and compliance with the regulations.* (1) Every employer shall be knowledgeable of and comply with all regulations contained in this subchapter that are applicable to that motor carrier's operations.

(2) Every driver and employee involved in motor carrier operations 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 chapter shall be maintained in compliance with all applicable performance and design criteria set forth in this subchapter.

(f) *Exceptions.* Unless otherwise specifically provided, the rules in this subchapter do not apply to—

(1) All school bus operations as defined in § 390.5, except for §§ 391.15(e) and (f), 392.15, 392.80, and 392.82 of this chapter;

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States;

(3) The occasional transportation of personal property by individuals not for compensation and not in the furtherance of a commercial enterprise;

(4) The transportation of human corpses or sick and injured persons;

(5) The operation of fire trucks and rescue vehicles while involved in emergency and related operations;

(6) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, except for the provisions of §§ 391.15(e) and (f), 392.80, and 392.82, and except that motor carriers operating such vehicles are required to comply with §§ 390.15, 390.21(a) and (b)(2), 390.201 and 390.205.

(7) Either a driver of a commercial motor vehicle used primarily in the transportation of propane winter heating fuel or a driver of a motor vehicle

used to respond to a pipeline emergency, if such regulations would prevent the driver from responding to an emergency condition requiring immediate response as defined in § 390.5.

(g) *Motor carriers that transport hazardous materials in intrastate commerce.* The rules in the following provisions of this subchapter apply to motor carriers that transport hazardous materials in intrastate commerce and to the motor vehicles that transport hazardous materials in intrastate commerce:

(1) Part 385, subparts A and E, for carriers subject to the requirements of § 385.403 of this subchapter.

(2) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings, of this subchapter.

(3) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in § 387.3 of this subchapter.

(4) Subpart E of this part, Unified Registration System, and § 390.21, Marking of CMVs, for carriers subject to the requirements of § 385.403 of this subchapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from § 390.201.

(h) *Intermodal equipment providers.* The rules in the following provisions of this subchapter apply to intermodal equipment providers:

(1) Subpart F, Intermodal Equipment Providers, of Part 385, Safety Fitness Procedures.

(2) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(3) Part 390, Federal Motor Carrier Safety Regulations; General, except § 390.15(b) concerning accident registers.

(4) Part 393, Parts and Accessories Necessary for Safe Operation.

(5) Part 396, Inspection, Repair, and Maintenance.

(i) *Brokers.* The rules in the following provisions of this subchapter apply to brokers that are required to register with the Agency pursuant to 49 U.S.C. chapter 139.

(1) Part 371, Brokers of Property.

(2) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment

Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(3) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in subpart C of that part.

(4) Section 390.6, prohibiting the coercion of drivers of commercial motor vehicles operating in interstate commerce to violate certain safety regulations, and subpart E of this part, Unified Registration System.

(j) *Freight forwarders.* The rules in the following provisions of this subchapter apply to freight forwarders that are required to register with the Agency pursuant to 49 U.S.C. chapter 139.

(1) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(2) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in subpart D of that part.

(3) Section 390.6, prohibiting the coercion of drivers of commercial motor vehicles operating in interstate commerce to violate certain safety regulations, and subpart E of this part, Unified Registration System.

(k) *Cargo tank facilities.* The rules in subpart E of this part, Unified Registration System, apply to each cargo tank and cargo tank motor vehicle manufacturer, assembler, repairer, inspector, tester, and design certifying engineer that is subject to registration requirements under 49 CFR 107.502 and 49 U.S.C. 5108.

(l) *Shippers, receivers, consignees, and transportation intermediaries.* The rules in 49 CFR 386.12(c) and 390.6 prohibiting the coercion of drivers of commercial motor vehicles operating in interstate commerce to violate certain safety regulations are applicable to shippers, receivers, and transportation intermediaries.

[80 FR 63710, Oct. 21, 2015, as amended at 83 FR 22877, May 17, 2018; 86 FR 55743, Oct. 7, 2021]

EFFECTIVE DATE NOTE: At 82 FR 5310, Jan. 17, 2017, § 390.3 was suspended, effective Jan. 14, 2017. At 86 FR 55743, Oct. 7, 2021, the suspension was lifted, § 390.3(f)(1) was revised, and the section was again suspended indefinitely, effective Nov. 8, 2021.

**§ 390.3T General applicability.**

(a)(1) The rules in this subchapter are applicable to all employers, employees, and commercial motor vehicles that transport property or passengers in interstate commerce.

(2) The rules in 49 CFR 386.12(c) and 390.6 prohibiting the coercion of drivers of commercial motor vehicles operating in interstate commerce:

(i) To violate certain safety regulations are applicable to all motor carriers, shippers, receivers, and transportation intermediaries; and

(ii) To violate certain commercial regulations are applicable to all operators of commercial motor vehicles.

(b) The rules in part 383 of this chapter, Commercial Driver's License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in §383.5 of this subchapter, in interstate or intrastate commerce and to all employers of such persons.

(c) The rules in part 387 of this chapter, Minimum Levels of Financial Responsibility for Motor Carriers, are applicable to motor carriers as provided in §387.3 or §387.27 of this subchapter.

(d) *Additional requirements.* Nothing in this subchapter shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(e) *Knowledge of and compliance with the regulations.* (1) Every employer shall be knowledgeable of and comply with all regulations contained in this subchapter which are applicable to that motor carrier's operations.

(2) Every driver and employee shall be instructed regarding, and shall comply with, all applicable regulations contained in this subchapter.

(3) All motor vehicle equipment and accessories required by this subchapter shall be maintained in compliance with all applicable performance and design criteria set forth in this subchapter.

(f) *Exceptions.* Unless otherwise specifically provided, the rules in this subchapter do not apply to—

(1) All school bus operations as defined in §390.5T, except for §§391.15(e) and (f), 392.15, 392.80, and 392.82 of this chapter;

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States;

(3) The occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise;

(4) The transportation of human corpses or sick and injured persons;

(5) The operation of fire trucks and rescue vehicles while involved in emergency and related operations;

(6) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, except that motor carriers and drivers operating such vehicles are required to comply with §§390.15, 390.19T, 390.21T(a) and (b)(2), 391.15(e) and (f), 392.80 and 392.82 of this chapter.

(7) Either a driver of a commercial motor vehicle used primarily in the transportation of propane winter heating fuel or a driver of a motor vehicle used to respond to a pipeline emergency, if such regulations would prevent the driver from responding to an emergency condition requiring immediate response as defined in §390.5T.

(g) *Motor carriers that transport hazardous materials in intrastate commerce.* The rules in the following provisions of this subchapter apply to motor carriers that transport hazardous materials in intrastate commerce and to the motor vehicles that transport hazardous materials in intrastate commerce:

(1) Part 385, subparts A and E, of this chapter for carriers subject to the requirements of §385.403 of this chapter.

(2) Part 386 of this chapter, Rules of practice for motor carrier, broker, freight forwarder, and hazardous materials proceedings.

(3) Part 387 of this chapter, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in §387.3 of this chapter.

(4) Section 390.19T, Motor carrier identification report, and §390.21T, Marking of CMVs, for carriers subject to the requirements of §385.403 of this

chapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from § 390.19T(a)(1).

(h) *Intermodal equipment providers.* The rules in the following provisions of this subchapter apply to intermodal equipment providers:

(1) Subpart F, Intermodal Equipment Providers, of part 385 of this chapter, Safety Fitness Procedures.

(2) Part 386 of this chapter, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(3) This part, Federal Motor Carrier Safety Regulations; General, except § 390.15(b) concerning accident registers.

(4) Part 393 of this chapter, Parts and Accessories Necessary for Safe Operation.

(5) Part 396 of this chapter, Inspection, Repair, and Maintenance.

[82 FR 5310, Jan. 17, 2017, as amended at 83 FR 22877, May 17, 2018; 86 FR 55743, Oct. 7, 2021; 86 FR 57072, Oct. 14, 2021]

**§ 390.4 Delegations and redelegations of authority of FMCSA employees to perform assigned actions or duties.**

(a) *General.* FMCSA may apply the guidelines and procedures of this section to delegate or redelegate the authority of FMCSA employees to perform assigned actions or duties under this chapter.

(b) *FMCSA Administrator authority to delegate and redelegate.* (1) The FMCSA Administrator is authorized to delegate and redelegate authority and authorize successive redelegations.

(2) The FMCSA Administrator retains concurrent authority to exercise or redelegate any authority that he or she has delegated to an employee in regulation, directive, or memorandum.

(c) *Redelegations by FMCSA employees.* Unless specifically prohibited by law, and in consultation with the FMCSA Office of the Chief Counsel, an FMCSA employee with delegated authority is authorized to—

(1) Redelegate that authority to another FMCSA employee, as appropriate; and

(2) Maintain concurrent authority to exercise or redelegate the authority he

or she has delegated to another FMCSA employee.

(d) *Exercise of delegated authority in special circumstances.* In consultation with the FMCSA Office of the Chief Counsel, if the FMCSA employee to whom a regulation assigns the authority to perform an action or a duty is unavailable or otherwise unable to perform such action or duty (*e.g.*, due to a conflict of interest or a vacancy in the position), a supervisor of the FMCSA employee may exercise that authority or redelegate such authority to another FMCSA employee, as appropriate.

(e) *Format of delegations and redelegations.* Delegations and redelegations authorized under this section must be in writing and may be made by regulation, directive, or memorandum.

(f) *Actions or duties performed under delegated or redelegated authority.* Each action or duty performed by any FMCSA employee pursuant to authority delegated or redelegated to him or her in accordance with this section, whether directly or by redelegation, shall be a valid exercise of that authority, notwithstanding any regulation that provides that such action or duty shall be performed by another FMCSA employee.

[86 FR 57072, Oct. 14, 2021]

**§ 390.5 Definitions.**

Unless specifically defined elsewhere, in this subchapter:

*Accident* means—

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

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

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

(2) The term accident does not include:

§ 390.5

49 CFR Ch. III (10–1–23 Edition)

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

(ii) An occurrence involving only the loading or unloading of cargo.

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

*Assistant Administrator* means the Assistant Administrator of the Federal Motor Carrier Safety Administration or an authorized delegee.

*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.

*Certified VA medical examiner* means a qualified VA examiner who has fulfilled the requirements for and is listed on the National Registry of Certified Medical Examiners.

*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.

*Coerce or Coercion* means either—

(1) A threat by a motor carrier, shipper, receiver, or transportation intermediary, or their respective agents, officers or representatives, to withhold business, employment or work opportunities from, or to take or permit any adverse employment action against, a driver in order to induce the driver to operate a commercial motor vehicle under conditions which the driver stated would require him or her to violate one or more of the regulations, which the driver identified at least generally, that are codified at 49 CFR parts 171–

173, 177–180, 380–383, or 390–399, or §§ 385.415 or 385.421, or the actual withholding of business, employment, or work opportunities or the actual taking or permitting of any adverse employment action to punish a driver for having refused to engage in such operation of a commercial motor vehicle; or

(2) A threat by a motor carrier, or its agents, officers or representatives, to withhold business, employment or work opportunities or to take or permit any adverse employment action against a driver in order to induce the driver to operate a commercial motor vehicle under conditions which the driver stated would require a violation of one or more of the regulations, which the driver identified at least generally, that are codified at 49 CFR parts 356, 360, or 365–379, or the actual withholding of business, employment or work opportunities or the actual taking or permitting of any adverse employment action to punish a driver for refusing to engage in such operation of a commercial motor vehicle.

*Commercial motor vehicle* means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

(2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

(3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

*Conviction* means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated

forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

*Covered farm vehicle—*

(1) Means a straight truck or articulated vehicle—

(i) Registered in a State with a license plate or other designation issued by the State of registration that allows law enforcement officials to identify it as a farm vehicle;

(ii) Operated by the owner or operator of a farm or ranch, or an employee or family member of an owner or operator of a farm or ranch;

(iii) Used to transport agricultural commodities, livestock, machinery or supplies to or from a farm or ranch; and

(iv) Not used in for-hire motor carrier operations; however, for-hire motor carrier operations do not include the operation of a vehicle meeting the requirements of paragraphs (1)(i) through (iii) of this definition by a tenant pursuant to a crop share farm lease agreement to transport the landlord's portion of the crops under that agreement.

(2) Meeting the requirements of paragraphs (1)(i) through (iv) of this definition:

(i) With a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, whichever is greater, of 26,001 pounds or less may utilize the exemptions in §390.39 anywhere in the United States; or

(ii) With a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, whichever is greater, of more than 26,001 pounds may utilize the exemptions in §390.39 anywhere in the State of registration or across State lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

*Crash—*See accident.

*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, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

*Direct compensation* means payment made to the motor carrier by the passengers or a person acting on behalf of the passengers for the transportation services provided, and not included in a total package charge or other assessment for highway transportation services.

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

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

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

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

(iii) Headlamp or taillight damage.

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

*Driveaway-towaway operation* means an operation in which an empty or unladen motor vehicle with one or more sets of wheels on the surface of the roadway is being transported:

(1) Between vehicle manufacturer's facilities;

(2) Between a vehicle manufacturer and a dealership or purchaser;

(3) Between a dealership, or other entity selling or leasing the vehicle, and a purchaser or lessee;

(4) To a motor carrier's terminal or repair facility for the repair of disabling damage (as defined in §390.5) following a crash; or

(5) To a motor carrier's terminal or repair facility for repairs associated with the failure of a vehicle component or system; or

**§ 390.5**

**49 CFR Ch. III (10–1–23 Edition)**

(6) By means of a saddle-mount or tow-bar.

*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 or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of Table 1 to §383.51 or §392.5(a)(2) of this subchapter.

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

*Electronic signature* means a method of signing an electronic communication that identifies and authenticates a particular person as the source of the electronic communication and indicates such person's approval of the information contained in the electronic communication, in accordance with the Government Paperwork Elimination Act (Pub. L. 105–277, Title XVII, Secs. 1701–1710, 44 U.S.C. 3504 note, 112 Stat. 2681–749).

*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 FMCSA; or by other Federal, State, or local government officials having authority to declare emergencies; or

(2) A request by a police officer for tow trucks to move wrecked or disabled motor vehicles.

*Emergency condition requiring immediate response* means any condition that, if left unattended, is reasonably likely to result in immediate serious bodily harm, death, or substantial damage to property. In the case of transportation of propane winter heating fuel, such conditions shall include (but are not limited to) the detection of gas odor, the activation of carbon monoxide alarms, the detection of carbon monoxide poisoning, and any real or suspected damage to a propane gas system following a severe storm or flooding. An "emergency condition requiring immediate response" does not include requests to refill empty gas tanks. In the case of a pipeline emergency, such conditions include (but are not limited to) indication of an abnormal pressure event, leak, release or rupture.

*Emergency relief* means an operation in which a motor carrier or driver of a commercial motor vehicle is providing direct assistance to supplement State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section.

*Employee* means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle), a mechanic, and a freight handler. Such term does not include an employee of the United States, any State, any political subdivision of a State, or any agency established under a compact between States and approved by the Congress of the United States who is acting within the course of such employment.

*Employer* means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it, but such terms does not include the United States, any State, any

political subdivision of a State, or an agency established under a compact between States approved by the Congress of the United States.

*Exempt intracity zone* means the geographic area of a municipality or the commercial zone of that municipality described in appendix A to part 372 of this chapter. The term “exempt intracity zone” does not include any municipality or commercial zone in the State of Hawaii. For purposes of § 391.62 of this chapter, a driver may be considered to operate a commercial motor vehicle wholly within an exempt intracity zone notwithstanding any common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone.

*Exempt motor carrier* means a person engaged in transportation exempt from economic regulation by the Federal Motor Carrier Safety Administration (FMCSA) under 49 U.S.C. chapter 135 but subject to the safety regulations set forth in this subchapter.

*Farm vehicle driver* means a person who drives only a commercial motor vehicle that is—

- (1) Controlled and operated by a farmer as a private motor carrier of property;
- (2) Being used to transport either—
  - (i) Agricultural products, or
  - (ii) Farm machinery, farm supplies, or both, to or from a farm;
- (3) Not being used in the operation of a for-hire motor carrier;
- (4) 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
- (5) 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—

- (1) Are owned by that person; or
- (2) 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 Motor Carrier Safety Administrator* means the chief executive of the Federal Motor Carrier Safety Adminis-

tration, an agency within the Department of Transportation.

*Field Administrator* means the head of an FMCSA Service Center who has been delegated authority to initiate compliance and enforcement actions on behalf of FMCSA or an authorized delegee.

*For-hire motor carrier* means a person engaged in the transportation of goods or passengers for compensation.

*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 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.

*Highway* means any road, street, or way, whether on public or private property, open to public travel. “Open to public travel” means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

*Interchange* means—

(1) The act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider, but it does not include the leasing of equipment to a motor carrier for primary use in the motor carrier’s freight hauling operations; or

(2) The act of providing a passenger-carrying commercial motor vehicle by one motor carrier of passengers to another such carrier, at a point which both carriers are authorized to serve, with which to continue a through movement.

(3) For property-carrying vehicles, see §376.2 of this subchapter.

*Intermodal equipment* means trailing equipment that is used in the intermodal transportation of containers over public highways in interstate commerce, including trailers and chassis.

*Intermodal equipment interchange agreement* means the Uniform Intermodal Interchange and Facilities Access Agreement (UIIFA) or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities and liabilities

of both parties with respect to the interchange of the intermodal equipment.

*Intermodal equipment provider* means any person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.

*Interstate commerce* means trade, traffic, or transportation in the United States—

(1) Between a place in a State and a place outside of such State (including a place outside of the United States);

(2) Between two places in a State through another State or a place outside of the United States; or

(3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

*Intrastate commerce* means any trade, traffic, or transportation in any State which is not described in the term “interstate commerce.”

*Lease*, as used in subpart G of this part, means a contract or agreement in which a motor carrier of passengers grants the use of a passenger-carrying commercial motor vehicle to another motor carrier, with or without a driver, for a specified period for the transportation of passengers, whether or not compensation for such use is specified or required, when one or more of the motor carriers of passengers is not authorized to operate in interstate commerce pursuant to 49 U.S.C. 13901–13902. The term *lease* includes an interchange, as defined in this section, or other agreement granting the use of a passenger-carrying commercial motor vehicle for a specified period, with or without a driver, whether or not compensation for such use is specified or required. For a definition of *lease* in the context of property-carrying vehicles, see §376.2 of this subchapter.

*Lessee*, as used in subpart G of this part, means the motor carrier obtaining the use of a passenger-carrying commercial motor vehicle, with or without the driver, from another motor carrier, through a *lease* as defined in this section. The term *lessee* includes a motor carrier obtaining the use of a passenger-carrying commercial motor

vehicle from another motor carrier under an interchange or other agreement, with or without a driver, whether or not compensation for such use is specified. For a definition of *lessee* in the context of property-carrying vehicles, see §376.2 of this subchapter.

*Lessor*, as used in subpart G of this part, means the motor carrier granting the use of a passenger-carrying commercial motor vehicle, with or without the driver, to another motor carrier, through a *lease* as defined in this section. The term *lessor* includes a motor carrier granting the use of a passenger-carrying commercial motor vehicle, with or without the driver, to another motor carrier under an interchange or other agreement, whether or not compensation for such use is specified. For a definition of *lessor* in the context of property-carrying vehicles, see §376.2 of this subchapter.

*Medical examiner* means an individual certified by FMCSA and listed on the National Registry of Certified Medical Examiners in accordance with subpart D of this part.

*Medical variance* means a driver has received one of the following from FMCSA that allows the driver to be issued a medical certificate:

- (1) An exemption letter permitting operation of a commercial motor vehicle pursuant to part 381, subpart C, of this chapter or §391.64 of this chapter;
- (2) A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to §391.49 of this chapter.

*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 carrier* means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of subchapter B, this definition

includes the terms *employer*, and *exempt motor carrier*.

*Motor vehicle* means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Federal Motor Carrier Safety Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

*Motor vehicle record* means the report of the driving status and history of a driver generated from the driver record that is provided to users, such as drivers or employers, and, for drivers licensed by a State, is subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721-2725.

*Multiple-employer driver* means a driver, who in any period of 7 consecutive days, is employed or used as a driver by more than one motor carrier.

*Operating authority* means the registration required by 49 U.S.C. 13902, 49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a.

*Operator*—See driver.

*Other terms*—Any other term used in this subchapter is used in its commonly accepted meaning, except where such other term has been defined elsewhere in this subchapter. In that event, the definition therein given shall apply.

*Out-of-service order* means a declaration by an authorized enforcement officer of a Federal, State, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 CFR 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible laws, or the North American Standard Out-of-Service Criteria.

*Person* means any individual, partnership, association, corporation, business trust, or any other organized group of individuals.

*Previous employer* means any DOT regulated person who employed the driver in the preceding 3 years, including any possible current employer.

*Principal place of business* means the single location designated by the motor carrier, normally its headquarters, for purposes of identification under this subchapter. The motor carrier must make records required by parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter available for inspection at this location within 48 hours (Saturdays, Sundays, and Federal holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Motor Carrier Safety Administration.

*Private motor carrier* means a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier.

*Private motor carrier of passengers (business)* means a private motor carrier engaged in the interstate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large.

*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).

*Qualified VA examiner* means an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional who is employed in the Department of Veterans Affairs; is licensed, certified, or registered in a State to perform physical examinations; is familiar with the standards for, and physical requirements of, an operator certified pursuant to 49 U.S.C. 31149; and has never, with respect to such section, been found to have acted fraudulently, including by fraudulently awarding a medical certificate.

*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.

*Receiver or consignee* means a person who takes delivery from a motor carrier or driver of a commercial motor vehicle of property transported in interstate commerce or hazardous materials transported in interstate or intrastate commerce.

*Regional Director of Motor Carriers* means the Field Administrator, Federal Motor Carrier Safety Administration, for a given geographical area of the United States.

*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.

*Shipper* means a person who tenders property to a motor carrier or driver of a commercial motor vehicle for transportation in interstate commerce, or who tenders hazardous materials to a motor carrier or driver of a commercial motor vehicle for transportation in interstate or intrastate commerce.

*Single-employer driver* means a driver who, in any period of 7 consecutive days, is employed or used as a driver

solely by a single motor carrier. This term includes a driver who operates a commercial motor vehicle on an intermittent, casual, or occasional basis.

*Special agent* See appendix B to subchapter B—Special agents.

*State* means a State of the United States and the District of Columbia and includes a political subdivision of a State.

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

(1) This action includes, but is not limited to, short message service, 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 subchapter.

*Trailer* includes:

(1) *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.

(2) *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 “boomied” 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 sus-

taining themselves as beams between the supporting connections.

(3) *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.

*Transportation intermediary* means a person who arranges the transportation of property or passengers by commercial motor vehicle in interstate commerce, or who arranges the transportation of hazardous materials by commercial motor vehicle in interstate or intrastate commerce, including but not limited to brokers and freight forwarders.

*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.

*Use a hand-held mobile telephone* means:

(1) Using at least one hand to hold a mobile telephone to conduct a voice communication;

(2) Dialing or answering a mobile telephone by pressing more than a single button, or

(3) Reaching for a mobile telephone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position, restrained by a seat belt that is installed in accordance with 49 CFR 393.93 and adjusted in accordance with the vehicle manufacturer’s instructions.

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

*Veteran operator* means an operator of a commercial motor vehicle who is a veteran enrolled in the health care system established under 38 U.S.C. 1705(a).

*Written or in writing* means printed, handwritten, or typewritten either on paper or other tangible medium, or by any method of electronic documentation that meets the requirements of 49 CFR 390.32.

[53 FR 18052, May 19, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 390.5, see the List of CFR Sections Affected, which appears in the

## § 390.5T

Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

EFFECTIVE DATE NOTE: At 82 FR 5311, Jan. 17, 2017, §390.5 was suspended, effective Jan. 14, 2017. At 84 FR 40293, Aug. 14, 2019, the suspension was lifted and amendments were made to §390.5. In that same document, §390.5 was again suspended indefinitely. At 86 FR 35642, July 7, 2021, the suspension was lifted and amendments were made to §390.5. In that same document, §390.5 was again suspended indefinitely. At 86 FR 57072, Oct. 14, 2021, the suspension was lifted and amendments were made to §390.5. In that same document, §390.5 was again suspended indefinitely. At 87 FR 13208, Mar. 9, 2022, the suspension was lifted and an amendment was made to §390.5. In that same document, §390.5 was again suspended indefinitely.

### § 390.5T Definitions.

Unless specifically defined elsewhere, in this subchapter:

*Accident* means—

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

- (i) A fatality;
- (ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- (iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

(2) The term accident does not include:

- (i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or
- (ii) An occurrence involving only the loading or unloading of cargo.

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

*Assistant Administrator* means the Assistant Administrator of the Federal Motor Carrier Safety Administration or an authorized delegee.

*Bus* means any motor vehicle designed, constructed, and/or used for the transportation of passengers, including taxicabs.

## 49 CFR Ch. III (10–1–23 Edition)

*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.

*Certified VA medical examiner* means a qualified VA examiner who has fulfilled the requirements for and is listed on the National Registry of Certified Medical Examiners.

*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.

*Coerce or Coercion* meanseither—

(1) A threat by a motor carrier, shipper, receiver, or transportation intermediary, or their respective agents, officers or representatives, to withhold business, employment or work opportunities from, or to take or permit any adverse employment action against, a driver in order to induce the driver to operate a commercial motor vehicle under conditions which the driver stated would require him or her to violate one or more of the regulations, which the driver identified at least generally, that are codified at 49 CFR parts 171 through 173, 177 through 180, 380 through 383, or 390 through 399, or §385.415 or §385.421T of this chapter, or the actual withholding of business, employment, or work opportunities or the actual taking or permitting of any adverse employment action to punish a driver for having refused to engage in such operation of a commercial motor vehicle; or

(2) A threat by a motor carrier, or its agents, officers or representatives, to withhold business, employment or work opportunities or to take or permit any adverse employment action against a driver in order to induce the driver to operate a commercial motor vehicle under conditions which the driver stated would require a violation

of one or more of the regulations, which the driver identified at least generally, that are codified at 49 CFR parts 356, 360, or 365 through 379, or the actual withholding of business, employment or work opportunities or the actual taking or permitting of any adverse employment action to punish a driver for refusing to engage in such operation of a commercial motor vehicle.

*Commercial motor vehicle* means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

(2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

(3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

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

*Covered farm vehicle* means—

(1) A straight truck or articulated vehicle—

(i) Registered in a State with a license plate or other designation issued by the State of registration that allows law enforcement officials to identify it as a farm vehicle;

(ii) Operated by the owner or operator of a farm or ranch, or an employee or family member of an owner or operator of a farm or ranch;

(iii) Used to transport agricultural commodities, livestock, machinery or supplies to or from a farm or ranch; and

(iv) Not used in for-hire motor carrier operations; however, for-hire motor carrier operations do not include the operation of a vehicle meeting the requirements of paragraphs (1)(i) through (iii) of this definition by a tenant pursuant to a crop share farm lease agreement to transport the landlord's portion of the crops under that agreement.

(2) Meeting the requirements of paragraphs (1)(i) through (iv) of this definition:

(i) With a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, whichever is greater, of 26,001 pounds or less may utilize the exemptions in §390.39 anywhere in the United States; or

(ii) With a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, whichever is greater, of more than 26,001 pounds may utilize the exemptions in §390.39 anywhere in the State of registration or across State lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

*Crash*. See accident.

*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, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

*Direct compensation* means payment made to the motor carrier by the passengers or a person acting on behalf of the passengers for the transportation services provided, and not included in a

§ 390.5T

49 CFR Ch. III (10-1-23 Edition)

total package charge or other assessment for highway transportation services.

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

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

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

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

(iii) Headlamp or taillight damage.

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

*Driveaway-towaway operation* means an operation in which an empty or unladen motor vehicle with one or more sets of wheels on the surface of the roadway is being transported:

(1) Between vehicle manufacturer's facilities;

(2) Between a vehicle manufacturer and a dealership or purchaser;

(3) Between a dealership, or other entity selling or leasing the vehicle, and a purchaser or lessee;

(4) To a motor carrier's terminal or repair facility for the repair of disabling damage (as defined in this section) following a crash; or

(5) To a motor carrier's terminal or repair facility for repairs associated with the failure of a vehicle component or system; or

(6) By means of a saddle-mount or tow-bar.

*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 or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of Table 1 to §383.51 or §392.5(a)(2) of this subchapter.

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

*Electronic signature* means a method of signing an electronic communication that identifies and authenticates a particular person as the source of the electronic communication and indicates such person's approval of the information contained in the electronic communication, in accordance with the Government Paperwork Elimination Act (Pub. L. 105-277, Title XVII, Secs. 1701-1710, 44 U.S.C. 3504 note, 112 Stat. 2681-749).

*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 FMCSA; or by other Federal, State, or local government officials having authority to declare emergencies; or

(2) A request by a police officer for tow trucks to move wrecked or disabled motor vehicles.

*Emergency condition requiring immediate response* means any condition that, if left unattended, is reasonably likely to result in immediate serious bodily harm, death, or substantial damage to property. In the case of transportation of propane winter heating fuel, such conditions shall include (but are not limited to) the detection of gas odor, the activation of carbon monoxide alarms, the detection of carbon monoxide poisoning, and any real or suspected damage to a propane gas system following a severe storm or

flooding. An “emergency condition requiring immediate response” does not include requests to refill empty gas tanks. In the case of a pipeline emergency, such conditions include (but are not limited to) indication of an abnormal pressure event, leak, release or rupture.

*Emergency relief* means an operation in which a motor carrier or driver of a commercial motor vehicle is providing direct assistance to supplement State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section.

*Employee* means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle), a mechanic, and a freight handler. Such term does not include an employee of the United States, any State, any political subdivision of a State, or any agency established under a compact between States and approved by the Congress of the United States who is acting within the course of such employment.

*Employer* means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it, but such terms does not include the United States, any State, any political subdivision of a State, or an agency established under a compact between States approved by the Congress of the United States.

*Exempt intracity zone* means the geographic area of a municipality or the commercial zone of that municipality described in appendix A to part 372 of this chapter. The term “exempt intracity zone” does not include any municipality or commercial zone in the State of Hawaii. For purposes of § 391.62 of this chapter, a driver may be considered to operate a commercial motor vehicle wholly within an exempt intracity zone notwithstanding any common control, management, or arrangement

for a continuous carriage or shipment to or from a point without such zone.

*Exempt motor carrier* means a person engaged in transportation exempt from economic regulation by the Federal Motor Carrier Safety Administration (FMCSA) under 49 U.S.C. 13506. “Exempt motor carriers” are subject to the safety regulations set forth in this subchapter.

*Farm vehicle driver* means a person who drives only a commercial motor vehicle that is—

(1) Controlled and operated by a farmer as a private motor carrier of property;

(2) Being used to transport either—

(i) Agricultural products; or

(ii) Farm machinery, farm supplies, or both, to or from a farm;

(3) Not being used in the operation of a for-hire motor carrier;

(4) 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

(5) 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—

(1) Are owned by that person; or

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

*Field Administrator* means the head of an FMCSA Service Center who has been delegated authority to initiate compliance and enforcement actions on behalf of FMCSA or an authorized delegee.

*For-hire motor carrier* means a person engaged in the transportation of goods or passengers for compensation.

*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

§ 390.5T

49 CFR Ch. III (10–1–23 Edition)

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 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 of this title, 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 of this title.

*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.

*Highway* means any road, street, or way, whether on public or private property, open to public travel. “Open to public travel” means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use with-

out restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

*Interchange* means—

(1) The act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider, but it does not include the leasing of equipment to a motor carrier for primary use in the motor carrier’s freight hauling operations; or

(2) The act of providing a passenger-carrying commercial motor vehicle by one motor carrier of passengers to another such carrier, at a point which both carriers are authorized to serve, with which to continue a through movement.

(3) For property-carrying vehicles, see §376.2 of this subchapter.

*Intermodal equipment* means trailing equipment that is used in the intermodal transportation of containers over public highways in interstate commerce, including trailers and chassis.

*Intermodal equipment interchange agreement* means the Uniform Intermodal Interchange and Facilities Access Agreement (UIIFA) or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities and liabilities of both parties with respect to the interchange of the intermodal equipment.

*Intermodal equipment provider* means any person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.

*Interstate commerce* means trade, traffic, or transportation in the United States—

(1) Between a place in a State and a place outside of such State (including a place outside of the United States);

(2) Between two places in a State through another State or a place outside of the United States; or

(3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

*Intrastate commerce* means any trade, traffic, or transportation in any State which is not described in the term “interstate commerce.”

*Lease*, as used in subpart G of this part, means a contract or agreement in which a motor carrier of passengers grants the use of a passenger-carrying commercial motor vehicle, with or without the driver, to another motor carrier, for a specified period for the transportation of passengers, whether or not compensation for such use is specified or required, when one or more of the motor carriers of passengers is not authorized to operate in interstate commerce pursuant to 49 U.S.C. 13901–13902. The term *lease* includes an interchange, as defined in this section, or other agreement granting the use of a passenger-carrying commercial motor vehicle, with or without the driver, for a specified period, whether or not compensation for such use is specified or required. For a definition of *lease* in the context of property-carrying vehicles, see §376.2 of this subchapter.

*Lessee*, as used in subpart G of this part, means the motor carrier obtaining the use of a passenger-carrying commercial motor vehicle, with or without the driver, from another motor carrier, through a *lease* as defined in this section. The term *lessee* includes a motor carrier obtaining the use of a passenger-carrying commercial motor vehicle, with or without the driver, from another motor carrier under an interchange or other agreement, whether or not compensation for such use is specified. For a definition of *lessee* in the context of property-carrying vehicles, see §376.2 of this subchapter.

*Lessor*, as used in subpart G of this part, means the motor carrier granting the use of a passenger-carrying commercial motor vehicle, with or without the driver, to another motor carrier, through a *lease* as defined in this section. The term *lessor* includes a motor carrier granting the use of a passenger-carrying commercial motor vehicle,

with or without the driver, to another motor carrier under an interchange or other agreement, whether or not compensation for such use is specified. For a definition of *lessor* in the context of property-carrying vehicles, see §376.2 of this subchapter.

*Medical examiner* means an individual certified by FMCSA and listed on the National Registry of Certified Medical Examiners in accordance with subpart D of this part.

*Medical variance* means a driver has received one of the following from FMCSA that allows the driver to be issued a medical certificate:

(1) An exemption letter permitting operation of a commercial motor vehicle pursuant to part 381, subpart C, of this chapter or §391.64 of this chapter;

(2) A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to §391.49 of this chapter.

*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 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 this subchapter, this definition includes the terms employer, and exempt motor carrier.

*Motor vehicle* means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Federal Motor Carrier Safety Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

*Motor vehicle record* means the report of the driving status and history of a driver generated from the driver record that is provided to users, such as drivers or employers, and, for drivers licensed by a State, is subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721–2725.

*Multiple-employer driver* means a driver, who in any period of 7 consecutive days, is employed or used as a driver by more than one motor carrier.

*Operating authority* means the registration required by 49 U.S.C. 13902, 49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a.

*Operator.* See driver.

*Other terms.* Any other term used in this subchapter is used in its commonly accepted meaning, except where such other term has been defined elsewhere in this subchapter. In that event, the definition therein given shall apply.

*Out-of-service order* means a declaration by an authorized enforcement officer of a Federal, State, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 CFR 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible laws, or the North American Standard Out-of-Service Criteria.

*Person* means any individual, partnership, association, corporation, business trust, or any other organized group of individuals.

*Previous employer* means any DOT regulated person who employed the driver in the preceding 3 years, including any possible current employer.

*Principal place of business* means the single location designated by the motor carrier, normally its headquarters, for purposes of identification under this subchapter. The motor carrier must make records required by parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter available for inspection at this location within 48 hours (Saturdays, Sundays, and Federal holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Motor Carrier Safety Administration.

*Private motor carrier* means a person who provides transportation of property or passengers, by commercial

motor vehicle, and is not a for-hire motor carrier.

*Private motor carrier of passengers (business)* means a private motor carrier engaged in the interstate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large.

*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).

*Qualified VA examiner* means an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional who is employed in the Department of Veterans Affairs; is licensed, certified, or registered in a State to perform physical examinations; is familiar with the standards for, and physical requirements of, an operator certified pursuant to 49 U.S.C. 31149; and has never, with respect to such section, been found to have acted fraudulently, including by fraudulently awarding a medical certificate.

*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, imperceptible by, and imperceptible to the driver while operating the commercial motor vehicle.

*Receiver or consignee* means a person who takes delivery from a motor carrier or driver of a commercial motor vehicle of property transported in

interstate commerce or hazardous materials transported in interstate or intrastate commerce.

*Regional Director of Motor Carriers* means the Field Administrator, Federal Motor Carrier Safety Administration, for a given geographical area of the United States.

*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.

*Shipper* means a person who tenders property to a motor carrier or driver of a commercial motor vehicle for transportation in interstate commerce, or who tenders hazardous materials to a motor carrier or driver of a commercial motor vehicle for transportation in interstate or intrastate commerce.

*Single-employer driver* means a driver who, in any period of 7 consecutive days, is employed or used as a driver solely by a single motor carrier. This term includes a driver who operates a commercial motor vehicle on an intermittent, casual, or occasional basis.

*Special agent*. See appendix B to this subchapter—Special agents.

*State* means a State of the United States and the District of Columbia and includes a political subdivision of a State.

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

(1) This action includes, but is not limited to, short message service, 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 subchapter.

*Trailer* includes:

(1) 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.

(2) 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.

(3) 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.

*Transportation intermediary* means a person who arranges the transportation of property or passengers by commercial motor vehicle in interstate commerce, or who arranges the transportation of hazardous materials by commercial motor vehicle in interstate or intrastate commerce, including but

## § 390.6

not limited to brokers and freight forwarders.

*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.

*Use a hand-held mobile telephone* means:

(1) Using at least one hand to hold a mobile telephone to conduct a voice communication;

(2) Dialing or answering a mobile telephone by pressing more than a single button; or

(3) Reaching for a mobile telephone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position, restrained by a seat belt that is installed in accordance with 49 CFR 393.93 and adjusted in accordance with the vehicle manufacturer's instructions.

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

*Veteran operator* means an operator of a commercial motor vehicle who is a veteran enrolled in the health care system established under 38 U.S.C. 1705(a).

*Written or in writing* means printed, handwritten, or typewritten either on paper or other tangible medium, or by any method of electronic documentation that meets the requirements of 49 CFR 390.32.

[82 FR 5311, Jan. 17, 2017, as amended at 83 FR 16226, Apr. 16, 2018; 83 FR 22878, May 17, 2018; 83 FR 24228, May 25, 2018; 83 FR 26860, June 11, 2018; 83 FR 48726, Sept. 27, 2018; 84 FR 40294, Aug. 14, 2019; 86 FR 35642, July 7, 2021; 86 FR 57073, Oct. 14, 2021; 87 FR 13208, Mar. 9, 2022]

### § 390.6 Coercion prohibited.

(a) *Prohibition.* (1) A motor carrier, shipper, receiver, or transportation intermediary, including their respective agents, officers, or representatives, may not coerce a driver of a commercial motor vehicle to operate such vehicle in violation of 49 CFR parts 171–173, 177–180, 380–383 or 390–399, or §§ 385.415 or 385.421;

(2) A motor carrier or its agents, officers, or representatives, may not coerce a driver of a commercial motor ve-

## 49 CFR Ch. III (10–1–23 Edition)

hicle to operate such vehicle in violation of 49 CFR parts 356, 360, or 365–379.

(b) *Complaint process.* (1) A driver who believes he or she was coerced to violate a regulation described in paragraph (a)(1) or (2) of this section may file a written complaint under § 386.12(c) of this subchapter.

(2) A complaint under paragraph (b)(1) of this section shall describe the action that the driver claims constitutes coercion and identify the regulation the driver was coerced to violate.

(3) A complaint under paragraph (b)(1) of this section may include any supporting evidence that will assist the Division Administrator in determining the merits of the complaint.

[80 FR 74710, Nov. 30, 2015, as amended at 81 FR 68348, Oct. 4, 2016]

### § 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) *Shall* is used in an imperative sense;

(3) *Must* is used in an imperative sense;

(4) *Should* is used in a recommendatory sense;

(5) *May* is used in a permissive sense; and

(6) *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; 83 FR 16226, Apr. 16, 2018]

### § 390.8 Separation of functions.

(a) An Agency employee who has taken an active part in investigating, prosecuting, advocating, or making an initial Agency determination in a proceeding under § 380.723, § 382.717, § 390.115, § 390.135, or § 391.47 of this chapter or section 5.4 to appendix A to subpart B of part 395 of this chapter

may not, in that case or a factually-related case, advise or assist the Agency official authorized to issue a final decision in the applicable proceeding.

(b) Nothing in this section shall preclude the Agency official authorized to issue a final decision or anyone advising that Agency official from taking part in a determination to launch an investigation or issue a complaint, or similar preliminary decision.

[86 FR 57073, Oct. 14, 2021]

### Subpart B—General Requirements and Information

#### § 390.9 State and local laws, effect on.

Except as otherwise specifically indicated, subchapter B of this chapter is not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto.

#### § 390.11 Motor carrier to require observance of driver regulations.

Whenever in part 325 of subchapter A or in this subchapter a duty is prescribed for a driver or a prohibition is imposed upon the driver, it shall be the duty of the motor carrier to require observance of such duty or prohibition. If the motor carrier is a driver, the driver shall likewise be bound.

#### § 390.13 Aiding or abetting violations.

No person shall aid, abet, encourage, or require a motor carrier or its employees to violate the rules of this chapter.

#### § 390.15 Assistance in investigations and special studies.

(a) Each motor carrier and intermodal equipment provider must do the following:

(1) Make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative, or authorized third party representative within such time as the request or investigation may specify.

(2) Give an authorized representative all reasonable assistance in the investigation of any accident, including providing a full, true, and correct response to any question of the inquiry.

(b) Motor carriers must maintain an accident register for 3 years after the date of each accident. Information placed in the accident register must contain at least the following:

(1) A list of accidents as defined at § 390.5 of this chapter containing for each accident:

- (i) Date of accident.
- (ii) City or town, or most near, where the accident occurred and the State where the accident occurred.
- (iii) Driver Name.
- (iv) Number of injuries.
- (v) Number of fatalities.
- (vi) Whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicle involved in the accident, were released.

(2) Copies of all accident reports required by State or other governmental entities or insurers.

(Approved by the Office of Management and Budget under control number 2126-0009)

[69 FR 16719, Mar. 30, 2004, as amended at 73 FR 76821, Dec. 17, 2008; 83 FR 22878, May 17, 2018]

#### § 390.16 [Reserved]

#### § 390.17 Additional equipment and accessories.

Nothing in this subchapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by this subchapter, provided such equipment and accessories do not decrease the safety of operation of the commercial motor vehicles on which they are used.

[53 FR 18052, May 19, 1988, as amended at 60 FR 38744, July 28, 1995. Redesignated at 65 FR 35296, June 2, 2000]

#### § 390.19 Motor carrier identification reports for certain Mexico-domiciled motor carriers.

(a) *Applicability.* A Mexico-domiciled motor carrier requesting authority to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United

**§ 390.19T**

**49 CFR Ch. III (10–1–23 Edition)**

States-Mexico international border must file Form MCS-150 with FMCSA as follows:

(b) *Filing schedule.* Each motor carrier must file the appropriate form under paragraph (a) of this section at the following times:

- (1) Before it begins operations; and
- (2) Every 24 months, according to the following schedule:

USDOT No. ending in	Must file by last day of
1 .....	January.
2 .....	February.
3 .....	March.
4 .....	April.
5 .....	May.
6 .....	June.
7 .....	July.
8 .....	August.
9 .....	September.
0 .....	October.

(3) If the next-to-last digit of its USDOT Number is odd, the motor carrier shall file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT Number is even, the motor carrier shall file its update in every even-numbered calendar year.

(4) A person that fails to complete biennial updates to the information pursuant to paragraph (b)(2) of this section is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B) or 49 U.S.C. 14901(a), as appropriate, and deactivation of its USDOT Number.

(c) *Availability of forms.* The Form MCS-150 and complete instructions are available from the FMCSA Web site at <http://www.fmcsa.dot.gov/urs>; from all FMCSA Service Centers and Division offices nationwide; or by calling 1-800-832-5660.

(d) *Where to file.* The Form MCS-150 must be filed with the FMCSA Office of Registration and Safety Information. The form may be filed electronically according to the instructions at the Agency's Web site, or it may be sent to Federal Motor Carrier Safety Administration, Office of Registration and Safety Information, MC-RS 1200 New Jersey Avenue SE., Washington, DC 20590.

(e) *Special instructions.* A motor carrier should submit the Form MCS-150 along with its application for operating authority (OP-1(MX)), to the appropriate address referenced on that form,

or may submit it electronically or by mail separately to the address mentioned in paragraph (d) of this section.

(f) Only the legal name or a single trade name of the motor carrier may be used on the Form MCS-150.

(g)(1) A motor carrier that fails to file the Form MCS-150 or furnishes misleading information or makes false statements upon the form, is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B).

(2) A motor carrier that fails to update the Form MCS-150 as required in paragraph (b) will have its USDOT Number deactivated and will be prohibited from conducting transportation.

(h)(1) Upon receipt and processing of the form described in paragraph (a) of this section, FMCSA will issue the motor carrier or intermodal equipment provider an identification number (USDOT Number).

(2) A Mexico-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border must pass the pre-authorization safety audit under §365.507 of this subchapter. The Agency will not issue a USDOT Number until expiration of the protest period provided in §365.115 of this chapter or—if a protest is received—after FMCSA denies or rejects the protest.

(3) The motor carrier must display the USDOT Number on each self-propelled CMV, as defined in §390.5, along with the additional information required by §390.21.

[80 FR 63711, Oct. 21, 2015]

EFFECTIVE DATE NOTE: At 82 FR 5316, Jan. 17, 2017, §390.19 was suspended, effective Jan. 14, 2017.

**§ 390.19T Motor carrier, hazardous material safety permit applicant/holder, and intermodal equipment provider identification reports.**

(a) *Applicability.* Each motor carrier and intermodal equipment provider must file Form MCS-150, Form MCS-150B or Form MCS-150C with FMCSA as follows:

**Federal Motor Carrier Safety Administration, DOT**

**§ 390.19T**

(1) A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce must file a Motor Carrier Identification Report, Form MCS-150.

(2) A motor carrier conducting operations in intrastate commerce and requiring a Safety Permit under 49 CFR part 385, subpart E, must file the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS-150B.

(3) Each intermodal equipment provider that offers intermodal equipment for transportation in interstate commerce must file an Intermodal Equipment Provider Identification Report, Form MCS-150C.

(b) *Filing schedule.* Each motor carrier or intermodal equipment provider must file the appropriate form under paragraph (a) of this section at the following times:

- (1) Before it begins operations; and
- (2) Every 24 months, according to the following schedule:

USDOT No. ending in	Must file by last day of
1 .....	January.
2 .....	February.
3 .....	March.
4 .....	April.
5 .....	May.
6 .....	June.
7 .....	July.
8 .....	August.
9 .....	September.
0 .....	October.

(3) If the next-to-last digit of its USDOT Number is odd, the motor carrier or intermodal equipment provider shall file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT Number is even, the motor carrier or intermodal equipment provider shall file its update in every even-numbered calendar year.

(4) A person that fails to complete biennial updates to the information pursuant to paragraph (b)(2) of this section is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B) or 49 U.S.C. 14901(a), as appropriate, and deactivation of its USDOT Number.

(c) *Availability of forms.* The forms described under paragraph (a) of this section and complete instructions are available from the FMCSA Web site at <http://www.fmcsa.dot.gov> (Keyword

“MCS-150,” or “MCS-150B,” or “MCS-150C”); from all FMCSA Service Centers and Division offices nationwide; or by calling 1-800-832-5660.

(d) *Where to file.* The required form under paragraph (a) of this section must be filed with the FMCSA Office of Registration and Safety Information. The form may be filed electronically according to the instructions at the Agency’s Web site, or it may be sent to Federal Motor Carrier Safety Administration, Office of Registration and Safety Information (MC-RS), 1200 New Jersey Avenue SE., Washington, DC 20590.

(e) *Special instructions for for-hire motor carriers.* A for-hire motor carrier should submit the Form MCS-150, or Form MCS-150B, along with its application for operating authority (Form OP-1, OP-1(MX), OP-1(NNA) or OP-2), to the appropriate address referenced on that form, or may submit it electronically or by mail separately to the address mentioned in paragraph (d) of this section.

(f) Only the legal name or a single trade name of the motor carrier or intermodal equipment provider may be used on the forms under paragraph (a) of this section (Form MCS-150, MCS-150B, or MCS-150C).

(g) A motor carrier or intermodal equipment provider that fails to file the form required under paragraph (a) of this section, or furnishes misleading information or makes false statements upon the form, is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B).

(h)(1) Upon receipt and processing of the form described in paragraph (a) of this section, FMCSA will issue the motor carrier or intermodal equipment provider an identification number (USDOT Number).

(2) The following applicants must additionally pass a pre-authorization safety audit as described below before being issued a USDOT Number:

(i) A Mexico-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones

## § 390.21

along the United States-Mexico international border must pass the pre-authorization safety audit under § 365.507T of this subchapter. The Agency will not issue a USDOT Number until expiration of the protest period provided in § 365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest.

(ii) A non-North America-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce within the United States must pass the pre-authorization safety audit under § 385.607T(c) of this subchapter. The Agency will not issue a USDOT Number until expiration of the protest period provided in § 365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest.

(3) The motor carrier must display the number on each self-propelled CMV, as defined in § 390.5T, along with the additional information required by § 390.21T.

(4) The intermodal equipment provider must identify each unit of interchanged intermodal equipment by its assigned USDOT number.

(i) A motor carrier that registers its vehicles in a State that participates in the Performance and Registration Information Systems Management (PRISM) program (authorized under section 4004 of the Transportation Equity Act for the 21st Century [Public Law 105-178, 112 Stat. 107]) is exempt from the requirements of this section, provided it files all the required information with the appropriate State office.

[82 FR 5316, Jan. 17, 2017, as amended at 83 FR 22878, May 17, 2018]

### **§ 390.21 Marking of self-propelled CMVs and intermodal equipment.**

(a) *General.* Every self-propelled CMV subject to subchapter B of this chapter must be marked as specified in paragraphs (b), (c), and (d) of this section, and each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject to subchapter B of this chapter must be marked as specified in paragraph (g) of this section.

## 49 CFR Ch. III (10-1-23 Edition)

(b) *Nature of marking.* The marking must display the following information:

(1) The legal name or a single trade name of the motor carrier operating the self-propelled CMV, as listed on the Form MCSA-1, the URS online application, or the motor carrier identification report (Form MCS-150) and submitted in accordance with § 390.201 or § 390.19, as appropriate.

(2) The identification number issued by FMCSA to the motor carrier or intermodal equipment provider, preceded by the letters “USDOT.”

(3) If the name of any person other than the operating carrier appears on the CMV, the name of the operating carrier must be followed by the information required by paragraphs (b)(1), and (2) of this section, and be preceded by the words “operated by.”

(4) Other identifying information may be displayed on the 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 CMV;

(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 (15.24 meters) while the CMV 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 CMV or may consist of a removable device, if that device meets the identification and legibility requirements of paragraph (c) of this section, and such marking must be maintained as required by paragraph (c)(4) of this section.

(e) *Rented CMVs and leased passenger-carrying CMVs.* A motor carrier operating a self-propelled CMV under a rental agreement or a passenger-carrying CMV under a lease, when the rental agreement or lease has a term not in excess of 30 calendar days, meets the requirements of this section if:

(1) The CMV is marked in accordance with the provisions of paragraphs (b) through (d) of this section; or

(2) Except as provided in paragraph (e)(2)(v) of this section, the CMV is marked as set forth in paragraphs (e)(2)(i) through (iv) of this section:

(i) The legal name or a single trade name of the lessor is displayed in accordance with paragraphs (c) and (d) of this section.

(ii) The lessor's identification number preceded by the letters "USDOT" is displayed in accordance with paragraphs (c) and (d) of this section; and

(iii) The rental agreement or lease as applicable entered into by the lessor and the renting motor carrier or lessee conspicuously contains the following information:

(A) The name and complete physical address of the principal place of business of the renting motor carrier or lessee;

(B) The identification number issued to the renting motor carrier or lessee by FMCSA, 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 information may be shown in a rental agreement:

(1) Whether the motor carrier is engaged in "interstate" or "intrastate" commerce; and

(2) Whether the renting motor carrier is transporting hazardous materials in the rented CMV;

(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 CMV"; and

(iv) The rental agreement or lease as applicable entered into by the lessor and the renting motor carrier or lessee is carried on the rental CMV or leased passenger-carrying CMV during the full term of the rental agreement or lease. See the property-carrying leasing regulations at 49 CFR part 376 and the passenger-carrying leasing regulations at subpart G of this part for information that should be included in all leasing documents.

(v) *Exception.* (A) The passenger-carrying CMV operating under the 48-hour

emergency exception pursuant to § 390.403(a)(2) of this part does not need to comply with paragraphs (e)(2)(iii) and (iv) of this section, provided the lessor and lessee comply with the requirements of § 390.403(a)(2).

(B) A motor carrier operating a self-propelled CMV under a lease subject to subpart G of this part (§§ 390.401 and 390.403) must begin complying with this paragraph (e) on January 1, 2021.

(f) *Driveaway services.* In driveaway services, a removable device may be affixed on both sides or at the rear of a single driven vehicle. In a combination driveaway operation, the device may be affixed on both sides of any one unit or at the rear of the last unit. The removable device must display the legal name or a single trade name of the motor carrier and the motor carrier's USDOT number.

(g) *Intermodal equipment.* (1) The requirements for marking intermodal equipment apply to each intermodal equipment provider, as defined in § 390.5, that interchanges or offers for interchange intermodal equipment to a motor carrier.

(2) Each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject to subchapter B of this chapter must identify the intermodal equipment provider.

(3) The intermodal equipment provider must be identified by its legal name or a single trade name and the identification number issued by FMCSA, preceded by the letters "USDOT."

(4) The intermodal equipment must be identified as follows, using any one of the following methods:

(i) The identification marking must appear on the curb side of the item of equipment. It must be in letters that contrast sharply in color with the background on which the letters are placed. The letters must be readily legible, during daylight hours, from a distance of 50 feet (15.24 meters) while the CMV is stationary; and be kept and maintained in a manner that retains this legibility; or

(ii) The identification marking must appear on a label placed upon the curb side of the item of equipment. The

## § 390.21T

label must be readily visible and legible to an inspection official during daylight hours when the vehicle is stationary. The label must be a color that contrasts sharply with the background on which it is placed, and the letters must also contrast sharply in color with the background of the label. The label must be kept and maintained in a manner that retains this legibility; or

(iii) The USDOT number of the intermodal equipment provider must appear on the interchange agreement so that it is clearly identifiable to an inspection official. The interchange agreement must include additional information to identify the specific item of intermodal equipment (such as the Vehicle Identification Number (VIN) and 4-character Standard Carrier Alpha Code (SCAC) code and 6-digit unique identifying number); or

(iv) The identification marking must be shown on a document placed in a weathertight compartment affixed to the frame of the item of intermodal equipment. The color of the letters used in the document must contrast sharply in color with the background of the document. The document must include additional information to identify the specific item of intermodal equipment (such as the VIN and 4-character SCAC code and 6-digit unique identifying number).

(v) The USDOT number of the intermodal equipment provider is maintained in a database that is available via real-time internet and telephonic access. The database must:

(A) Identify the name and USDOT number of the intermodal equipment provider responsible for the intermodal equipment, in response to an inquiry that includes:

- (i) SCAC plus trailing digits, or
- (ii) License plate number and State of license, or
- (iii) VIN of the item of intermodal equipment.

(B) Offer read-only access for inquiries on individual items of intermodal equipment, without requiring advance

## 49 CFR Ch. III (10–1–23 Edition)

user registration, a password, or a usage fee.

[65 FR 35296, June 2, 2000, as amended at 73 FR 76821, Dec. 17, 2008; 74 FR 68708, Dec. 29, 2009; 77 FR 59827, Oct. 1, 2012; 78 FR 58482, Sept. 24, 2013; 80 FR 30178, May 27, 2015; 80 FR 63712, Oct. 21, 2015; 84 FR 40294, Aug. 14, 2019]

EFFECTIVE DATE NOTE: At 82 FR 5316, Jan. 17, 2017, §390.21 was suspended, effective Jan. 14, 2017. At 84 FR 40294, Aug. 14, 2019, the suspension was lifted and amendments were made to §390.21. In that same document, §390.21 was again suspended indefinitely.

### § 390.21T Marking of self-propelled CMVs and intermodal equipment.

(a) *General.* Every self-propelled CMV subject to this subchapter must be marked as specified in paragraphs (b), (c), and (d) of this section, and each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject to this subchapter must be marked as specified in paragraph (g) of this section.

(b) *Nature of marking.* The marking must display the following information:

(1) The legal name or a single trade name of the motor carrier operating the self-propelled CMV, as listed on the motor carrier identification report (Form MCS-150) and submitted in accordance with §390.19T.

(2) The identification number issued by FMCSA to the motor carrier or intermodal equipment provider, preceded by the letters “USDOT.”

(3) If the name of any person other than the operating carrier appears on the CMV, the name of the operating carrier must be followed by the information required by paragraphs (b)(1) and (2) of this section, and be preceded by the words “operated by.”

(4) Other identifying information may be displayed on the vehicle if it is not inconsistent with the information required by this paragraph (b).

(c) *Size, shape, location, and color of marking.* The marking must—

(1) Appear on both sides of the self-propelled CMV;

(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 (15.24

meters) while the CMV 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 CMV or may consist of a removable device, if that device meets the identification and legibility requirements of paragraph (c) of this section, and such marking must be maintained as required by paragraph (c)(4) of this section.

(e) *Rented CMVs and leased passenger-carrying CMVs.* A motor carrier operating a self-propelled CMV under a rental agreement or a passenger-carrying CMV under a lease, when the rental agreement or lease has a term not in excess of 30 calendar days, meets the requirements of this section if:

(1) The CMV is marked in accordance with the provisions of paragraphs (b) through (d) of this section; or

(2) Except as provided in paragraph (e)(2)(v) of this section, the CMV is marked as set forth in paragraph (e)(2)(i) through (iv) of this section:

(i) The legal name or a single trade name of the lessor is displayed in accordance with paragraphs (c) and (d) of this section.

(ii) The lessor's identification number preceded by the letters "USDOT" is displayed in accordance with paragraphs (c) and (d) of this section; and

(iii) The rental agreement or lease as applicable entered into by the lessor and the renting motor carrier or lessee conspicuously contains the following information:

(A) The name and complete physical address of the principal place of business of the renting motor carrier or lessee;

(B) The identification number issued to the renting motor carrier or lessee by FMCSA, 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 information may be shown in a rental agreement:

(1) Whether the motor carrier is engaged in "interstate" or "intrastate" commerce; and

(2) Whether the renting motor carrier or lessee is transporting hazardous materials in the rented or leased CMV;

(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 or leased CMV"; and

(iv) The rental agreement or lease as applicable entered into by the lessor and the renting motor carrier or lessee is carried on the rental CMV or leased passenger-carrying CMV during the full term of the rental agreement or lease. See the property-carrying leasing regulations at 49 CFR part 376 and the passenger-carrying leasing regulations at subpart G of this part for information that should be included in all leasing documents.

(v) *Exception.* (A) A passenger-carrying CMV operating under the 48-hour emergency exception pursuant to § 390.403(a)(2) of this part does not need to comply with paragraphs (e)(2)(iii) and (iv) of this section, provided the lessor and lessee comply with the requirements of § 390.403(a)(2).

(B) A motor carrier operating a self-propelled CMV under a lease subject to subpart G of this part (§§ 390.401 and 390.403) must begin complying with this paragraph (e) on January 1, 2021.

(f) *Driveaway services.* In driveaway services, a removable device may be affixed on both sides or at the rear of a single driven vehicle. In a combination driveaway operation, the device may be affixed on both sides of any one unit or at the rear of the last unit. The removable device must display the legal name or a single trade name of the motor carrier and the motor carrier's USDOT number.

(g) *Intermodal equipment.* (1) The requirements for marking intermodal equipment apply to each intermodal equipment provider, as defined in § 390.5T, that interchanges or offers for interchange intermodal equipment to a motor carrier.

(2) Each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject to this subchapter must identify the intermodal equipment provider.

**§ 390.23**

(3) The intermodal equipment provider must be identified by its legal name or a single trade name and the identification number issued by FMCSA, preceded by the letters “USDOT.”

(4) The intermodal equipment must be identified as follows, using any one of the following methods:

(i) The identification marking must appear on the curb side of the item of equipment. It must be in letters that contrast sharply in color with the background on which the letters are placed. The letters must be readily legible, during daylight hours, from a distance of 50 feet (15.24 meters) while the CMV is stationary; and be kept and maintained in a manner that retains this legibility; or

(ii) The identification marking must appear on a label placed upon the curb side of the item of equipment. The label must be readily visible and legible to an inspection official during daylight hours when the vehicle is stationary. The label must be a color that contrasts sharply with the background on which it is placed, and the letters must also contrast sharply in color with the background of the label. The label must be kept and maintained in a manner that retains this legibility; or

(iii) The USDOT number of the intermodal equipment provider must appear on the interchange agreement so that it is clearly identifiable to an inspection official. The interchange agreement must include additional information to identify the specific item of intermodal equipment (such as the Vehicle Identification Number (VIN) and 4-character Standard Carrier Alpha Code (SCAC) code and 6-digit unique identifying number); or

(iv) The identification marking must be shown on a document placed in a weathertight compartment affixed to the frame of the item of intermodal equipment. The color of the letters used in the document must contrast sharply in color with the background of the document. The document must include additional information to identify the specific item of intermodal equipment (such as the VIN and 4-character SCAC code and 6-digit unique identifying number).

**49 CFR Ch. III (10–1–23 Edition)**

(v) The USDOT number of the intermodal equipment provider is maintained in a database that is available via real-time internet and telephonic access. The database must:

(A) Identify the name and USDOT number of the intermodal equipment provider responsible for the intermodal equipment, in response to an inquiry that includes:

- (i) SCAC plus trailing digits; or
- (ii) License plate number and State of license; or
- (iii) VIN of the item of intermodal equipment.

(B) Offer read-only access for inquiries on individual items of intermodal equipment, without requiring advance user registration, a password, or a usage fee.

[82 FR 5316, Jan. 17, 2017, as amended at 84 FR 40294, Aug. 14, 2019]

**§ 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) FMCSA has declared that a regional emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii)(A) Except as provided in paragraph (a)(1)(ii)(B) of this section and § 390.25, the 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 FMCSA, whichever is less.

(B) If a Governor who declares an emergency caused by a shortage of residential heating fuel (namely heating oil, natural gas, and propane), subsequently determines at the end of the 30-day period immediately following the declaration that the emergency

shortage has not ended, and extends the declaration of an emergency for up to 2 additional 30-day periods, this exemption shall remain in effect up to the end of such additional periods, not to exceed 60 additional days, for a motor carrier or driver providing residential heating fuel in the geographic area designated by the Governor's declaration of emergency.

(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) FMCSA 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 FMCSA, whichever is less.

(3) *Tow trucks responding to emergencies.* (i) The exemption provided by paragraph (a)(3) of this section is effective only when a request has been made by a Federal, State or local police officer for tow trucks to move wrecked or disabled motor vehicles.

(ii) This exemption shall not exceed the length of the motor carrier's or driver's direct assistance in providing emergency relief, or 24 hours from the time of the initial request for assistance by the Federal, State or local police officer, whichever is less.

(b) Upon termination of direct assistance to the regional or local emergency relief effort, the motor carrier or driver is subject to the requirements of parts 390 through 399 of this chapter, with the following exception: A driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with parts 390 through 399 of this chapter. However, a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least 10 consecutive hours off duty before the driver is required to return to such terminal or location. Hav-

ing 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 the driver has met the requirements of §§395.3(a) and (c) and 395.5(a) of this chapter.

[57 FR 33647, July 30, 1992, as amended at 60 FR 38744, July 28, 1995; 68 FR 22514, Apr. 28, 2003; 70 FR 50070, Aug. 25, 2005; 76 FR 81186, Dec. 27, 2011; 79 FR 63059, Oct. 22, 2014; 86 FR 57073, Oct. 14, 2021]

#### **§ 390.25 Extension of relief from regulations—emergencies.**

FMCSA 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 FMCSA 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. FMCSA 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 FMCSA 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, as amended at 86 FR 57073, Oct. 14, 2021]

**§ 390.27 Locations of motor carrier safety service centers.**

Service center	Territory included	Location of office
Eastern .....	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, United States Virgin Islands, Vermont, Virginia, West Virginia.	31 Hopkins Plaza, Suite 800, Baltimore, Maryland 21201.
Midwestern .....	Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin.	4749 Lincoln Mall Drive, Suite 300A, Matteson, Illinois 60443.
Southern .....	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee.	1800 Century Boulevard, Suite 1700, Atlanta, Georgia 30345–3220.
Western .....	Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Mariana Islands, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, Washington, Wyoming.	12600 West Colfax Avenue, Suite B–300, Lakewood, Colorado 80215.

**Note 1:** Canadian carriers—for information regarding proper service center, contact an FMCSA division (State) office in Alaska, Maine, Michigan, Montana, New York, North Dakota, Vermont, or Washington.

**Note 2:** Mexican carriers are handled through the four southern border divisions and the Western Service Center. For information regarding the proper service center, contact an FMCSA division (State) office in Arizona, California, New Mexico, or Texas.

[83 FR 22878, May 17, 2018]

**§ 390.29 Location of records or documents.**

(a) A motor carrier with multiple offices or terminals may maintain the records and documents required by this subchapter at its principal place of business, a regional office, or driver work-reporting location unless otherwise specified in this subchapter.

(b) All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location shall be made available for inspection upon request by a special agent or authorized representative of the Federal Motor Carrier Safety Administration at the motor carrier’s principal place of business or other location specified by the agent or representative within 48 hours after a request is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period of time.

[63 FR 33276, June 18, 1998]

**§ 390.31 Copies of records and documents.**

All records and documents required to be maintained under this subchapter must be maintained for the periods specified. Except as otherwise provided, copies that are legible and accurately reflect the information required to be contained in the record or docu-

ment may be maintained in lieu of originals.

[83 FR 16226, Apr. 16, 2018]

**§ 390.32 Electronic documents and signatures.**

(a) *Applicability.* This section applies to documents that entities or individuals are required to retain, regardless of whether FMCSA subsequently requires them to be produced or displayed to FMCSA staff or other parties entitled to access. This section does not apply to documents that must be submitted directly to FMCSA.

(b) *Electronic records or documents.* Any person or entity required to generate, maintain, or exchange documents to satisfy requirements in chapter III of subtitle B of title 49, Code of Federal Regulations (49 CFR 300–399) may use electronic methods to satisfy those requirements.

(c) *Electronic signatures.* (1) Any person or entity required to sign or certify a document to satisfy the requirements of chapter III of subtitle B of title 49, Code of Federal Regulations (49 CFR parts 300–399) may use an electronic signature, as defined in § 390.5T of this part.

(2) An electronic signature may be made using any available technology that otherwise satisfies FMCSA’s requirements.

(d) *Requirements.* Any person or entity may use documents signed, certified, generated, maintained, or exchanged using electronic methods if the documents accurately reflect the information otherwise required to be contained in them. Records, documents or signatures generated, maintained, or exchanged using electronic methods do not satisfy the requirements of this section if they are not capable of being retained, are not used for the purpose for which they were created, or cannot be accurately reproduced within required timeframes for reference by any party entitled to access. Records or documents generated electronically do not satisfy the requirements of this section if they do not include proof of consent to use electronically generated records or documents, as required by 15 U.S.C. 7001(c).

[83 FR 16226, Apr. 16, 2018]

**§ 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.

**§ 390.36 Harassment of drivers prohibited.**

(a) *Harass or harassment defined.* As used in this section, harass or harassment means an action by a motor carrier toward a driver employed by the motor carrier (including an independent contractor while in the course of operating a commercial motor vehicle on behalf of the motor carrier) involving the use of information available to the motor carrier through an ELD, as defined in § 395.2 of this chapter, or through other technology used in combination with and not separable from the ELD, that the motor carrier knew, or should have known, would result in the driver violating § 392.3 or part 395 of this subchapter.

(b) *Prohibition against harassment.* (1) No motor carrier may harass a driver.

(2) Nothing in paragraph (b)(1) of this section shall be construed to prevent a motor carrier from using technology allowed under this subchapter to monitor productivity of a driver provided that such monitoring does not result in harassment.

(c) *Complaint process.* A driver who believes he or she was the subject of harassment by a motor carrier may file a written complaint under § 386.12(b) of this subchapter.

[80 FR 78383, Dec. 16, 2015]

**§ 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.

**§ 390.38 Exemptions for pipeline welding trucks.**

(a) *Federal requirements.* A pipeline welding truck, as defined in paragraph (b) of this section, including the individuals operating such vehicle and the

### § 390.39

employer of such individual, is exempt from the following:

(1) Any requirement relating to registration as a motor carrier, including the requirement to obtain and display a Department of Transportation number, in 49 CFR part 365 or 390.

(2) Any requirement relating to driver qualifications in 49 CFR part 391.

(3) Any requirement relating to driving of commercial motor vehicles in 49 CFR part 392.

(4) Any requirement relating to parts and accessories and inspection, repair, and maintenance of commercial motor vehicles in 49 CFR parts 393 and 396.

(5) Any requirement relating to hours of service of drivers, including maximum driving and on duty time, found in 49 CFR part 395.

(b) *Definition.* “Pipeline welding truck” means a motor vehicle that is travelling in the State in which the vehicle is registered or another State, is owned by a welder, is a pick-up style truck, is equipped with a welding rig that is used in the construction or maintenance of pipelines, and has a gross vehicle weight and combination weight rating and weight of 15,000 pounds or less.

[81 FR 47720, July 22, 2016]

### § 390.39 Exemptions for “covered farm vehicles.”

(a) *Federal requirements.* A covered farm vehicle, as defined in §390.5, including the individual operating that vehicle, is exempt from the following:

(1) Any requirement relating to commercial driver’s licenses in 49 CFR Part 383 or controlled substances and alcohol use and testing in 49 CFR Part 382;

(2) Any requirement in 49 CFR Part 391, Subpart E, Physical Qualifications and Examinations.

(3) Any requirement in 49 CFR Part 395, Hours of Service of Drivers.

(4) Any requirement in 49 CFR Part 396, Inspection, Repair, and Maintenance.

(b) *State requirements*—(1) *In general.* Federal transportation funding to a State may not be terminated, limited, or otherwise interfered with as a result of the State exempting a covered farm vehicle, including the individual operating that vehicle, from—

### 49 CFR Ch. III (10–1–23 Edition)

(i) A requirement described in paragraph (a) of this section; or

(ii) Any other minimum standard provided by a State relating to the operation of that vehicle.

(2) *Exception.* Paragraph (b)(1) of this section does not apply with respect to a covered farm vehicle transporting hazardous materials that require a placard.

(c) *Other exemptions and exceptions.* The exemptions in paragraphs (a) and (b) of this section are in addition to, not in place of, the agricultural exemptions and exceptions in §§383.3(d)(1), 383.3(e), 383.3(f), 391.2(a), 391.2(b), 391.2(c), 391.67, 395.1(e)(1), 395.1(e)(2), 395.1(h), 395.1(i), and 395.1(k) of this chapter. Motor carriers and drivers may utilize any combination of these exemptions and exceptions, providing they comply fully with each separate exemption and exception.

[78 FR 16194, Mar. 14, 2013, as amended at 81 FR 47720, July 22, 2016]

### Subpart C—Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment

SOURCE: 73 FR 76822, Dec. 17, 2008, unless otherwise noted.

### § 390.40 What responsibilities do intermodal equipment providers have under the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399)?

An intermodal equipment provider must—

(a) Identify its operations to the FMCSA by filing the Form MCSA–1 required by §390.201.

(b) Mark its intermodal equipment with the USDOT number as required by §390.21 before tendering the equipment to a motor carrier.

(c) Systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, in a manner consistent with §396.3(a)(1), as applicable, all intermodal equipment intended for interchange with a motor carrier.

(d) Provide intermodal equipment intended for interchange that is in safe and proper operating condition.

(e) Maintain a system of driver vehicle inspection reports submitted to the intermodal equipment provider as required by §396.11 of this chapter.

(f) Maintain a system of inspection, repair, and maintenance records as required by §396.3(b)(3) of this chapter for equipment intended for interchange with a motor carrier.

(g) Periodically inspect equipment intended for interchange, as required under §396.17 of this chapter.

(h) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, have procedures in place, and provide sufficient space, for drivers to perform a pre-trip inspection of tendered intermodal equipment.

(i) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection, or replace the equipment, prior to the driver's departure. The repairs or replacement must be made after being notified by a driver of such damage, defects, or deficiencies.

(j) Refrain from placing intermodal equipment in service on the public highways if that equipment has been found to pose an imminent hazard, as defined in §386.72(b)(3) of this chapter.

[73 FR 76822, Dec. 17, 2008, as amended at 74 FR 68708, Dec. 29, 2009; 78 FR 58483, Sept. 24, 2013; 79 FR 59457, Oct. 2, 2014; 80 FR 63712, Oct. 21, 2015]

EFFECTIVE DATE NOTE: At 82 FR 5318, Jan. 17, 2017, §390.40 was suspended, effective Jan. 14, 2017.

**§ 390.40T What responsibilities do intermodal equipment providers have under the Federal Motor Carrier Safety Regulations (49 CFR parts 350 through 399)?**

An intermodal equipment provider must—

(a) Identify its operations to the FMCSA by filing the Form MCS-150C required by §390.19T.

(b) Mark its intermodal equipment with the USDOT number as required by

§390.21T before tendering the equipment to a motor carrier.

(c) Systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, in a manner consistent with §396.3(a)(1) of this chapter, as applicable, all intermodal equipment intended for interchange with a motor carrier.

(d) Provide intermodal equipment intended for interchange that is in safe and proper operating condition.

(e) Maintain a system of driver vehicle inspection reports submitted to the intermodal equipment provider as required by §396.11 of this chapter.

(f) Maintain a system of inspection, repair, and maintenance records as required by §396.3(b)(3) of this chapter for equipment intended for interchange with a motor carrier.

(g) Periodically inspect equipment intended for interchange, as required under §396.17 of this chapter.

(h) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, have procedures in place, and provide sufficient space, for drivers to perform a pre-trip inspection of tendered intermodal equipment.

(i) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection, or replace the equipment, prior to the driver's departure. The repairs or replacement must be made after being notified by a driver of such damage, defects, or deficiencies.

(j) Refrain from placing intermodal equipment in service on the public highways if that equipment has been found to pose an imminent hazard, as defined in §386.72(b)(3) of this chapter.

[82 FR 5318, Jan. 17, 2017]

**§ 390.42 What are the responsibilities of drivers and motor carriers operating intermodal equipment?**

(a) Before operating intermodal equipment over the road, the driver accepting the equipment must inspect the equipment components listed in §392.7(b) of this subchapter and be satisfied they are in good working order.

## § 390.44

(b) A driver or motor carrier transporting intermodal equipment must report to the intermodal equipment provider, or its designated agent, any known damage, defects, or deficiencies in the intermodal equipment at the time the equipment is returned to the provider or the provider's designated agent. The report must include, at a minimum, the items in § 396.11(b)(1) of this chapter.

[73 FR 76822, Dec. 17, 2008, as amended at 77 FR 34852, June 12, 2012; 77 FR 59828, Oct. 1, 2012; 80 FR 59074, Oct. 1, 2015]

### **§ 390.44 What are the procedures to correct the safety record of a motor carrier or an intermodal equipment provider?**

(a) *An intermodal equipment provider or its agent* may electronically file questions or concerns at <http://dataqs.fmcsa.dot.gov> about Federal and State data that reference the provider. This includes safety violations alleging that the components, parts, or accessories of intermodal chassis or trailers listed in § 392.7(b) of this chapter were not in good working order when inspected at roadside. An intermodal equipment provider should not be held responsible for such violations because a motor carrier indicated pursuant to § 392.7(b) that these components, parts, or accessories had no safety defects at the time of the pre-trip inspection.

(b) *A motor carrier or its agent* may electronically file questions or concerns at <http://dataqs.fmcsa.dot.gov> about Federal and State data that reference the motor carrier. This includes safety violations alleging that any components, parts, or accessories of intermodal chassis or trailers, except those listed in § 392.7(b) of this chapter, were not in good working order when inspected at roadside. Such violations will not be used by FMCSA in making a safety fitness determination of a motor carrier (unless there is evidence that the driver or motor carrier caused or substantially contributed to the violations) because the driver could not readily detect these violations during a pre-trip inspection performed in accordance with § 392.7(b).

(c) *An intermodal equipment provider, or its agent*, may request FMCSA to investigate a motor carrier believed to be

## 49 CFR Ch. III (10–1–23 Edition)

in noncompliance with responsibilities under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office.

(d) *A motor carrier or its agent* may request FMCSA to investigate an intermodal equipment provider believed to be in noncompliance with responsibilities under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office.

### **§ 390.46 Are State and local laws and regulations on the inspection, repair, and maintenance of intermodal equipment preempted by the Federal Motor Carrier Safety Regulations?**

(a) *General*. As provided by 49 U.S.C. 31151(d), a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization relating to the inspection, repair, and maintenance of intermodal equipment is preempted if such law, regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed by the Federal Motor Carrier Safety Regulations.

(b) *Pre-existing State requirements*—(1) *In general*. Pursuant to 49 U.S.C. 31151(e)(1), unless otherwise provided in paragraph (b)(2) of this section, a State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005, shall remain in effect only until June 17, 2009.

(2) *Nonpreemption determinations*—(i) *In general*. Pursuant to 49 U.S.C. 31151(e)(2), and notwithstanding paragraph (a) of this section, a State requirement described in paragraph (b)(1) of this section is not preempted if the Administrator determines that the State requirement is as effective as the FMCSA final rule and does not unduly burden interstate commerce.

(ii) *Application required*. Paragraph (b)(2)(i) of this section applies to a State requirement only if the State applies to the Administrator for a determination with respect to the requirement before the effective date of the final rule (June 17, 2009). The Administrator will make a determination with

respect to any such application within 6 months after the date on which the Administrator receives the application.

(iii) *Amended State requirements.* If a State amends a regulation for which it previously received a nonpreemption determination from the Administrator under paragraph (b)(2)(i) of this section, it must apply for a determination of nonpreemption for the amended regulation. Any amendment to a State requirement not preempted under this subsection because of a determination by the Administrator may not take effect unless it is submitted to the Agency before the effective date of the amendment, and the Administrator determines that the amendment would not cause the State requirement to be less effective than the FMCSA final rule on “Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment” and would not unduly burden interstate commerce.

#### Subpart D—National Registry of Certified Medical Examiners

SOURCE: 77 FR 24127, Apr. 20, 2012, unless otherwise noted.

##### § 390.101 Scope.

(a) The rules in this subpart establish the minimum qualifications for FMCSA certification of a medical examiner and for listing the examiner on FMCSA’s National Registry of Certified Medical Examiners. The National Registry of Certified Medical Examiners is designed to improve highway safety and operator health by requiring that medical examiners be trained and certified to determine effectively whether an operator meets FMCSA physical qualification standards under part 391 of this chapter. One component of the National Registry is the registry itself, which is a national database of names and contact information for medical examiners who are certified by FMCSA to perform medical examinations of operators.

(b) A qualified VA examiner, as defined in either § 390.5 or § 390.5T, may be listed on the National Registry of Certified Medical Examiners by satisfying the requirements for medical examiner

certification set forth in either § 390.103 or § 390.123.

[83 FR 26860, June 11, 2018]

#### MEDICAL EXAMINER CERTIFICATION REQUIREMENTS

##### § 390.103 Eligibility requirements for medical examiner certification.

(a) To receive medical examiner certification from FMCSA, a person must:

(1) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations. The applicant must be an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional authorized by applicable State laws and regulations to perform physical examinations.

(2) Register on the National Registry website and receive a National Registry number before taking the training that meets the requirements of § 390.105.

(3) Complete a training program that meets the requirements of § 390.105.

(4) Pass the medical examiner certification test provided by FMCSA and administered by a testing organization that meets the requirements of § 390.107 and that has electronically forwarded to FMCSA the applicant’s completed test information no more than 3 years after completion of the training program required by paragraph (a)(3) of this section.

(b) If a person has medical examiner certification from FMCSA, then to renew such certification the medical examiner must remain qualified under paragraph (a)(1) of this section and complete additional testing and training as required by § 390.111(a)(5).

[77 FR 24127, Apr. 20, 2012, as amended at 83 FR 26860, June 11, 2018]

##### § 390.105 Medical examiner training programs.

An applicant for medical examiner certification must complete a training program that:

(a) Is conducted by a training provider that:

(1) Is accredited by a nationally recognized medical profession accrediting

**§ 390.107**

**49 CFR Ch. III (10–1–23 Edition)**

organization to provide continuing education units; and

(2) Meets the following administrative requirements:

(i) Provides training participants with proof of participation.

(ii) Provides FMCSA point of contact information to training participants.

(b) Provides training to medical examiners on the following topics:

(1) Background, rationale, mission, and goals of the FMCSA medical examiner's role in reducing crashes, injuries, and fatalities involving commercial motor vehicles.

(2) Familiarization with the responsibilities and work environment of commercial motor vehicle operation.

(3) Identification of the operator and obtaining, reviewing, and documenting operator medical history, including prescription and over-the-counter medications.

(4) Performing, reviewing, and documenting the operator's medical examination.

(5) Performing, obtaining, and documenting additional diagnostic tests or medical opinion from a medical specialist or treating physician.

(6) Informing and educating the operator about medications and non-disqualifying medical conditions that require remedial care.

(7) Determining operator certification outcome and period for which certification should be valid.

(8) FMCSA reporting and documentation requirements.

Guidance on the core curriculum specifications for use by training providers is available from FMCSA.

**§ 390.107 Medical examiner certification testing.**

An applicant for medical examiner certification or recertification must apply, in accordance with the minimum specifications for application elements established by FMCSA, to a testing organization that meets the following criteria:

(a) The testing organization has documented policies and procedures that:

(1) Use secure protocols to access, process, store, and transmit all test items, test forms, test data, and candidate information and ensure access by authorized personnel only.

(2) Ensure testing environments are reasonably comfortable and have minimal distractions.

(3) Prevent to the greatest extent practicable the opportunity for a test taker to attain a passing score by fraudulent means.

(4) Ensure that test center staff who interact with and proctor examinees or provide technical support have completed formal training, demonstrate competency, and are monitored periodically for quality assurance in testing procedures.

(5) Accommodate testing of individuals with disabilities or impairments to minimize the effect of the disabilities or impairments while maintaining the security of the test and data.

(b) Testing organizations that offer testing of examinees not at locations that are operated and staffed by the organizations but by means of remote, computer-based systems must, in addition to the requirements of paragraph (a) of this section, ensure that such systems:

(1) Provide a means to authenticate the identity of the person taking the test.

(2) Provide a means for the testing organization to monitor the activity of the person taking the test.

(3) Do not allow the person taking the test to reproduce or record the contents of the test by any means.

(c) The testing organization has submitted its documented policies and procedures as defined in paragraph (a) of this section and, if applicable, paragraph (b) of this section to FMCSA and agreed to future reviews by FMCSA to ensure compliance with the criteria listed in this section.

(d) The testing organization administers only the currently authorized version of the medical examiner certification test developed and furnished by FMCSA.

[77 FR 24127, Apr. 20, 2012, as amended at 78 FR 58483, Sept. 24, 2013]

**§ 390.109 Issuance of the FMCSA medical examiner certification credential.**

Upon compliance with the requirements of § 390.103(a) or (b), FMCSA will issue to a medical examiner applicant

an FMCSA medical examiner certification credential and will add the medical examiner's name to the National Registry of Certified Medical Examiners. The certification credential will expire 10 years after the date of its issuance.

[77 FR 24127, Apr. 20, 2012, as amended at 83 FR 26860, June 11, 2018]

**§ 390.111 Requirements for continued listing on the National Registry of Certified Medical Examiners.**

(a) To continue to be listed on the National Registry of Certified Medical Examiners, each medical examiner must:

(1) Continue to meet the requirements of §§390.103 through 390.115 and the applicable requirements of part 391 of this chapter.

(2) Report to FMCSA any changes in the registration information submitted under §390.103(a)(2) within 30 days of the change.

(3) Continue to be licensed, certified, or registered, and authorized to perform physical examinations, in accordance with the applicable laws and regulations of each State in which the medical examiner performs examinations.

(4) Maintain documentation of State licensure, registration, or certification to perform physical examinations for each State in which the examiner performs examinations and maintain documentation of and completion of all training required by this section and §390.105. The medical examiner must make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(5) Maintain medical examiner certification by completing training and testing according to the following schedule:

(i) No sooner than 4 years and no later than 5 years after the date of issuance of the medical examiner certification credential, complete periodic training as specified by FMCSA.

(ii) No sooner than 9 years and no later than 10 years after the date of

issuance of the medical examiner certification credential:

(A) Complete periodic training as specified by FMCSA; and

(B) Pass the test required by §390.103(a)(4).

(b) FMCSA will issue a new medical examiner certification credential valid for 10 years to a medical examiner who complies with paragraphs (a)(1) through (4) of this section and who successfully completes the training and testing as required by paragraphs (a)(5)(i) and (ii) of this section.

[77 FR 24127, Apr. 20, 2012, as amended at 83 FR 26860, June 11, 2018]

**§ 390.113 Reasons for removal from the National Registry of Certified Medical Examiners.**

FMCSA may remove a medical examiner from the National Registry of Certified Medical Examiners when a medical examiner fails to meet or maintain the qualifications established by §§390.103 through 390.115, the requirements of other regulations applicable to the medical examiner, or otherwise does not meet the requirements of 49 U.S.C. 31149. The reasons for removal may include, but are not limited to:

(a) The medical examiner fails to comply with the requirements for continued listing on the National Registry of Certified Medical Examiners, as described in §390.111.

(b) FMCSA finds that there are errors, omissions, or other indications of improper certification by the medical examiner of an operator in either the completed Medical Examination Reports or the medical examiner's certificates.

(c) The FMCSA determines the medical examiner issued a medical examiner's certificate to an operator of a commercial motor vehicle who failed to meet the applicable standards at the time of the examination.

(d) The medical examiner fails to comply with the examination requirements in §391.43 of this chapter.

(e) The medical examiner falsely claims to have completed training in physical and medical examination standards as required by §§390.103 through 390.115.

[77 FR 24127, Apr. 20, 2012, as amended at 83 FR 26860, June 11, 2018]

**§ 390.115 Procedure for removal from the National Registry of Certified Medical Examiners.**

(a) *Voluntary removal.* To be voluntarily removed from the National Registry of Certified Medical Examiners, a medical examiner must submit a request to FMCSA, ATTN: Removal from National Registry of Certified Medical Examiners, 1200 New Jersey Ave. SE, Washington, DC 20590. On and after the date of issuance of a notice of proposed removal from the National Registry of Certified Medical Examiners, as described in paragraph (b) of this section, however, FMCSA will not approve the medical examiner's request for voluntary removal from the National Registry of Certified Medical Examiners.

(b) *Notice of proposed removal.* Except as provided by paragraphs (a) and (e) of this section, FMCSA initiates the process for removal of a medical examiner from the National Registry of Certified Medical Examiners by issuing a written notice of proposed removal to the medical examiner, stating the reasons that removal is proposed under § 390.113 and any corrective actions necessary for the medical examiner to remain listed on the National Registry of Certified Medical Examiners.

(c) *Response to notice of proposed removal and corrective action.* A medical examiner who has received a notice of proposed removal from the National Registry of Certified Medical Examiners must submit any written response to FMCSA no later than 30 days after the date of issuance of the notice of proposed removal. The response must indicate either that the medical examiner believes FMCSA has relied on erroneous reasons, in whole or in part, in proposing removal from the National Registry of Certified Medical Examiners, as described in paragraph (c)(1) of this section, or that the medical examiner will comply and take any corrective action specified in the notice of proposed removal, as described in paragraph (c)(2) of this section.

(1) *Opposing a notice of proposed removal.* If the medical examiner believes FMCSA has relied on an erroneous reason, in whole or in part, in proposing removal from the National Registry of Certified Medical Examiners, the med-

ical examiner must explain the basis for his or her belief that FMCSA relied on an erroneous reason in proposing the removal. FMCSA will review the explanation.

(i) If FMCSA finds it has wholly relied on an erroneous reason for proposing removal from the National Registry of Certified Medical Examiners, FMCSA will withdraw the notice of proposed removal and notify the medical examiner in writing of the determination. If FMCSA finds it has partly relied on an erroneous reason for proposing removal from the National Registry of Certified Medical Examiners, FMCSA will modify the notice of proposed removal and notify the medical examiner in writing of the determination. No later than 60 days after the date FMCSA modifies a notice of proposed removal, the medical examiner must comply with §§ 390.103 through 390.115 and correct any deficiencies identified in the modified notice of proposed removal as described in paragraph (c)(2) of this section.

(ii) If FMCSA finds it has not relied on an erroneous reason in proposing removal, FMCSA will affirm the notice of proposed removal and notify the medical examiner in writing of the determination. No later than 60 days after the date FMCSA affirms the notice of proposed removal, the medical examiner must comply with §§ 390.103 through 390.115 and correct the deficiencies identified in the notice of proposed removal as described in paragraph (c)(2) of this section.

(iii) If the medical examiner does not submit a written response within 30 days of the date of issuance of a notice of proposed removal, the removal becomes effective and the medical examiner is immediately removed from the National Registry of Certified Medical Examiners.

(2) *Compliance and corrective action.* (i) The medical examiner must comply with §§ 390.103 through 390.115 and complete the corrective actions specified in the notice of proposed removal no later than 60 days after either the date of issuance of the notice of proposed removal or the date FMCSA affirms or modifies the notice of proposed removal, whichever is later. The medical examiner must provide documentation

of compliance and completion of the corrective actions to FMCSA. FMCSA may conduct any investigations and request any documentation necessary to verify that the medical examiner has complied with §§ 390.103 through 390.115 and completed the required corrective action(s). FMCSA will notify the medical examiner in writing whether he or she has met the requirements to continue to be listed on the National Registry of Certified Medical Examiners.

(ii) If the medical examiner fails to complete the proposed corrective action(s) within the 60-day period, the removal becomes effective and the medical examiner is immediately removed from the National Registry of Certified Medical Examiners. FMCSA will notify the person in writing that he or she has been removed from the National Registry of Certified Medical Examiners.

(3) At any time before a notice of proposed removal from the National Registry of Certified Medical Examiners becomes final, the recipient of the notice of proposed removal and FMCSA may resolve the matter by mutual agreement.

(d) *Request for administrative review.* If a person has been removed from the National Registry of Certified Medical Examiners under paragraph (c)(1)(iii), (c)(2)(ii), or (e) of this section, that person may request an administrative review no later than 30 days after the date the removal becomes effective. The request must be submitted in writing to FMCSA, ATTN: National Registry of Certified Medical Examiners—Request for Administrative Review, 1200 New Jersey Ave. SE, Washington, DC 20590. The request must explain the error(s) committed in removing the medical examiner from the National Registry of Certified Medical Examiners, and include a list of all factual, legal, and procedural issues in dispute, and any supporting information or documents.

(1) *Additional procedures for administrative review.* FMCSA may ask the person to submit additional data or attend a conference to discuss the removal. If the person does not provide the information requested, or does not attend the scheduled conference, FMCSA may dismiss the request for administrative review.

(2) *Decision on administrative review.* FMCSA will complete the administrative review and notify the person in writing of the decision. The decision constitutes final Agency action. If FMCSA decides the removal was not valid, FMCSA will reinstate the person and reissue a certification credential to expire on the expiration date of the certificate that was invalidated under paragraph (g) of this section. The reinstated medical examiner must:

(i) Continue to meet the requirements of §§ 390.103 through 390.115 and the applicable requirements of part 391 of this chapter.

(ii) Report to FMCSA any changes in the registration information submitted under § 390.103(a)(2) within 30 days of the reinstatement.

(iii) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations.

(iv) Maintain documentation of State licensure, registration, or certification to perform physical examinations for each State in which the examiner performs examinations and maintains documentation of completion of all training required by §§ 390.105 and 390.111 of this part. The medical examiner must also make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(v) Complete periodic training as required by FMCSA.

(e) *Emergency removal.* In cases of either willfulness or in which public health, interest, or safety requires, the provisions of paragraph (b) of this section are not applicable and FMCSA may immediately remove a medical examiner from the National Registry of Certified Medical Examiners and invalidate the certification credential issued under § 390.109. A person who has been removed under the provisions of this paragraph may request an administrative review of that decision as described under paragraph (d) of this section.

## § 390.123

(f) *Reinstatement on the National Registry of Certified Medical Examiners.* No sooner than 30 days after the date of removal from the National Registry of Certified Medical Examiners, a person who has been voluntarily or involuntarily removed may apply to FMCSA to be reinstated. The person must:

(1) Continue to meet the requirements of §§390.103 through 390.115 and the applicable requirements of part 391 of this chapter.

(2) Report to FMCSA any changes in the registration information submitted under §390.103(a)(2).

(3) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations.

(4) Maintain documentation of State licensure, registration, or certification to perform physical examinations for each State in which the person performs examinations and maintains documentation of completion of all training required by §§390.105 and 390.111. The medical examiner must also make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The person must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(5) Complete training and testing as required by FMCSA.

(6) In the case of a person who has been involuntarily removed, provide documentation showing completion of any corrective actions required in the notice of proposed removal.

(g) *Effect of final decision by FMCSA.* If a person is removed from the National Registry of Certified Medical Examiners under paragraph (c) or (e) of this section, the certification credential issued under §390.109 is no longer valid. However, the removed person's information remains publicly available for 3 years, with an indication that the person is no longer listed on the National Registry of Certified Medical Examiners as of the date of removal.

[77 FR 24127, Apr. 20, 2012, as amended at 80 FR 59074, Oct. 1, 2015; 83 FR 22878, May 17, 2018; 83 FR 26860, June 11, 2018; 86 FR 57074, Oct. 14, 2021]

## 49 CFR Ch. III (10–1–23 Edition)

### MEDICAL EXAMINER CERTIFICATION REQUIREMENTS FOR QUALIFIED DEPARTMENT OF VETERANS AFFAIRS EXAMINERS

SOURCE: 83 FR 26861, June 11, 2018, unless otherwise noted.

#### § 390.123 Medical examiner certification for qualified Department of Veterans Affairs examiners.

(a) For a qualified VA examiner to receive medical examiner certification from FMCSA under §§390.123 through 390.135, a person must:

(1) Be an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional employed in the Department of Veterans Affairs;

(2) Be licensed, certified, or registered in a State to perform physical examinations;

(3) Register on the National Registry website and receive a National Registry number before taking the training that meets the requirements of §390.125;

(4) Be familiar with FMCSA's standards for, and physical requirements of, a commercial motor vehicle operator requiring medical certification, by completing the training program that meets the requirements of §390.125;

(5) Pass the medical examiner certification test provided by FMCSA, administered in accordance with §390.127, and has had his or her test information forwarded to FMCSA; and

(6) Never have been found to have acted fraudulently with respect to any certification of a commercial motor vehicle operator, including by fraudulently awarding a medical certificate.

(b) If a person becomes a certified VA medical examiner under §§390.123 through 390.135, then to renew such certification the certified VA medical examiner must remain qualified under paragraphs (a)(1) and (2) of this section and complete additional testing and training as required by §390.131(a)(5).

#### § 390.125 Qualified VA examiner certification training.

A qualified VA examiner applying for certification under §§390.123 through

390.135 must complete training developed and provided by FMCSA and delivered through a web-based training system operated by the Department of Veterans Affairs.

**§ 390.127 Qualified VA examiner certification testing.**

To receive medical examiner certification from FMCSA under §§ 390.123 through 390.135, a qualified VA examiner must pass the medical examiner certification test developed and provided by FMCSA and administered through a web-based system operated by the Department of Veterans Affairs.

**§ 390.129 Issuance of the FMCSA medical examiner certification credential.**

Upon compliance with the requirements of § 390.123(a) or (b), FMCSA will issue to a qualified VA examiner or certified VA medical examiner, as applicable, an FMCSA medical examiner certification credential and will add the certified VA medical examiner's name to the National Registry of Certified Medical Examiners. The certification credential will expire 10 years after the date of its issuance.

**§ 390.131 Requirements for continued listing of a certified VA medical examiner on the National Registry of Certified Medical Examiners.**

(a) To continue to be listed on the National Registry of Certified Medical Examiners, each certified VA medical examiner must:

(1) Continue to meet the requirements of §§ 390.123 through 390.135 and the applicable requirements of part 391 of this chapter.

(2) Report to FMCSA any changes in the registration information submitted under § 390.123(a)(3) within 30 days of the change.

(3) Continue to be licensed, certified, or registered, and authorized to perform physical examinations, in accordance with the laws and regulations of a State.

(4) Maintain documentation of licensure, registration, or certification in a State to perform physical examinations and maintain documentation of and completion of all training required by this section and § 390.125. The certified VA medical examiner must make

this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The certified VA medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(5) Maintain medical examiner certification by completing training and testing according to the following schedule:

(i) No sooner than 4 years and no later than 5 years after the date of issuance of the medical examiner certification credential, complete periodic training as specified by FMCSA.

(ii) No sooner than 9 years and no later than 10 years after the date of issuance of the medical examiner certification credential:

(A) Complete periodic training as specified by FMCSA; and

(B) Pass the test required by § 390.123(a)(5).

(b) FMCSA will issue a new medical examiner certification credential valid for 10 years to a certified VA medical examiner who complies with paragraphs (a)(1) through (4) of this section and who successfully completes the training and testing as required by paragraphs (a)(5)(i) and (ii) of this section.

(c) A certified VA medical examiner must report to FMCSA within 30 days that he or she is no longer employed in the Department of Veterans Affairs. Any certified VA medical examiner who is no longer employed in the Department of Veterans Affairs, but would like to remain listed on the National Registry, must, within 30 days of leaving employment in the Department of Veterans Affairs, meet the requirements of § 390.111. In particular, he or she must be licensed, certified, or registered, and authorized to perform physical examinations, in accordance with the applicable laws and regulations of each State in which the medical examiner performs examinations. The previously certified VA medical examiner's medical license(s) must be verified and accepted by FMCSA prior

### § 390.133

to conducting any physical examination of a commercial motor vehicle operator or issuing any medical examiner's certificates.

#### **§ 390.133 Reasons for removal of a certified VA medical examiner from the National Registry of Certified Medical Examiners.**

FMCSA may remove a certified VA medical examiner from the National Registry of Certified Medical Examiners when a certified VA medical examiner fails to meet or maintain the qualifications established by §§ 390.123 through 390.135, the requirements of other regulations applicable to the certified VA medical examiner, or otherwise does not meet the requirements of 49 U.S.C. 31149. The reasons for removal may include, but are not limited to:

(a) The certified VA medical examiner fails to comply with the requirements for continued listing on the National Registry of Certified Medical Examiners, as described in § 390.131.

(b) FMCSA finds that there are errors, omissions, or other indications of improper certification by the certified VA medical examiner of an operator in either the completed Medical Examination Reports or the medical examiner's certificates.

(c) The FMCSA determines the certified VA medical examiner issued a medical examiner's certificate to an operator of a commercial motor vehicle who failed to meet the applicable standards at the time of the examination.

(d) The certified VA medical examiner fails to comply with the examination requirements in § 391.43 of this chapter.

(e) The certified VA medical examiner falsely claims to have completed training in physical and medical examination standards as required by §§ 390.123 through 390.135.

#### **§ 390.135 Procedure for removal of a certified VA medical examiner from the National Registry of Certified Medical Examiners.**

(a) *Voluntary removal.* To be voluntarily removed from the National Registry of Certified Medical Examiners, a certified VA medical examiner must submit a request to FMCSA, ATTN: Removal from National Registry of

### 49 CFR Ch. III (10–1–23 Edition)

Certified Medical Examiners, 1200 New Jersey Ave. SE, Washington, DC 20590. Except as provided in paragraph (b) of this section, FMCSA will accept the request and the removal will become effective immediately. On and after the date of issuance of a notice of proposed removal from the National Registry of Certified Medical Examiners, as described in paragraph (b) of this section, however, FMCSA will not approve the certified VA medical examiner's request for voluntary removal from the National Registry of Certified Medical Examiners.

(b) *Notice of proposed removal.* Except as provided by paragraphs (a) and (e) of this section, FMCSA initiates the process for removal of a certified VA medical examiner from the National Registry of Certified Medical Examiners by issuing a written notice of proposed removal to the certified VA medical examiner, stating the reasons that removal is proposed under § 390.133 and any corrective actions necessary for the certified VA medical examiner to remain listed on the National Registry of Certified Medical Examiners.

(c) *Response to notice of proposed removal and corrective action.* A certified VA medical examiner who has received a notice of proposed removal from the National Registry of Certified Medical Examiners must submit any written response to the FMCSA no later than 30 days after the date of issuance of the notice of proposed removal. The response must indicate either that the certified VA medical examiner believes FMCSA has relied on erroneous reasons, in whole or in part, in proposing removal from the National Registry of Certified Medical Examiners, as described in paragraph (c)(1) of this section, or that the certified VA medical examiner will comply and take any corrective action specified in the notice of proposed removal, as described in paragraph (c)(2) of this section.

(1) *Opposing a notice of proposed removal.* If the certified VA medical examiner believes FMCSA has relied on an erroneous reason, in whole or in part, in proposing removal from the National Registry of Certified Medical Examiners, the certified VA medical examiner must explain the basis for his or her belief that FMCSA relied on an

erroneous reason in proposing the removal. FMCSA will review the explanation.

(i) If FMCSA finds it has wholly relied on an erroneous reason for proposing removal from the National Registry of Certified Medical Examiners, FMCSA will withdraw the notice of proposed removal and notify the certified VA medical examiner in writing of the determination. If FMCSA finds it has partly relied on an erroneous reason for proposing removal from the National Registry of Certified Medical Examiners, FMCSA will modify the notice of proposed removal and notify the certified VA medical examiner in writing of the determination. No later than 60 days after the date FMCSA modifies a notice of proposed removal, the certified VA medical examiner must comply with §§390.123 through 390.135 and correct any deficiencies identified in the modified notice of proposed removal as described in paragraph (c)(2) of this section.

(ii) If FMCSA finds it has not relied on an erroneous reason in proposing removal, FMCSA will affirm the notice of proposed removal and notify the certified VA medical examiner in writing of the determination. No later than 60 days after the date the FMCSA affirms the notice of proposed removal, the certified VA medical examiner must comply with §§390.123 through 390.135 and correct the deficiencies identified in the notice of proposed removal as described in paragraph (c)(2) of this section.

(iii) If the certified VA medical examiner does not submit a written response within 30 days of the date of issuance of a notice of proposed removal, the removal becomes effective and the certified VA medical examiner is immediately removed from the National Registry of Certified Medical Examiners.

(2) *Compliance and corrective action.* (i) The certified VA medical examiner must comply with §§390.123 through 390.135 and complete the corrective actions specified in the notice of proposed removal no later than 60 days after either the date of issuance of the notice of proposed removal or the date FMCSA affirms or modifies the notice of proposed removal, whichever is

later. The certified VA medical examiner must provide documentation of compliance and completion of the corrective actions to FMCSA. FMCSA may conduct any investigations and request any documentation necessary to verify that the certified VA medical examiner has complied with §§390.123 through 390.135 and completed the required corrective action(s). FMCSA will notify the certified VA medical examiner in writing whether he or she has met the requirements to continue to be listed on the National Registry of Certified Medical Examiners.

(ii) If the certified VA medical examiner fails to complete the proposed corrective action(s) within the 60-day period, the removal becomes effective and the certified VA medical examiner is immediately removed from the National Registry of Certified Medical Examiners. FMCSA will notify the person in writing that he or she has been removed from the National Registry of Certified Medical Examiners.

(3) At any time before a notice of proposed removal from the National Registry of Certified Medical Examiners becomes final, the recipient of the notice of proposed removal and FMCSA may resolve the matter by mutual agreement.

(d) *Request for administrative review.* If a person has been removed from the National Registry of Certified Medical Examiners under paragraph (c)(1)(iii), (c)(2)(ii), or (e) of this section, that person may request an administrative review no later than 30 days after the date the removal becomes effective. The request must be submitted in writing to FMCSA, ATTN: National Registry of Certified Medical Examiners—Request for Administrative Review, 1200 New Jersey Ave. SE, Washington, DC 20590. The request must explain the error(s) committed in removing the certified VA medical examiner from the National Registry of Certified Medical Examiners, and include a list of all factual, legal, and procedural issues in dispute, and any supporting information or documents.

(1) *Additional procedures for administrative review.* FMCSA may ask the person to submit additional data or attend a conference to discuss the removal. If

### § 390.135

the person does not provide the information requested, or does not attend the scheduled conference, FMCSA may dismiss the request for administrative review.

(2) *Decision on administrative review.* FMCSA will complete the administrative review and notify the person in writing of the decision. The decision constitutes final Agency action. If FMCSA decides the removal was not valid, FMCSA will reinstate the person and reissue a certification credential to expire on the expiration date of the certificate that was invalidated under paragraph (g) of this section. The reinstated certified VA medical examiner must:

(i) Continue to meet the requirements of §§ 390.123 through 390.135 and the applicable requirements of part 391 of this chapter.

(ii) Report to FMCSA any changes in the registration information submitted under § 390.123(a)(3) within 30 days of the reinstatement.

(iii) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations.

(iv) Maintain documentation of licensure, registration, or certification in a State to perform physical examinations and maintain documentation of and completion of all training required by §§ 390.125 and 390.131 of this part. The certified VA medical examiner must make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The certified VA medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(v) Complete periodic training as required by FMCSA.

(e) *Emergency removal.* In cases of either willfulness or in which public health, interest, or safety requires, the provisions of paragraph (b) of this section are not applicable and FMCSA may immediately remove a certified VA medical examiner from the National Registry of Certified Medical Examiners and invalidate the certification credential issued under § 390.129. A person who has been removed under

### 49 CFR Ch. III (10–1–23 Edition)

the provisions of this paragraph may request an administrative review of that decision as described under paragraph (d) of this section.

(f) *Reinstatement on the National Registry of Certified Medical Examiners.* No sooner than 30 days after the date of removal from the National Registry of Certified Medical Examiners, a person who has been voluntarily or involuntarily removed may apply to FMCSA to be reinstated. The person must:

(1) Continue to meet the requirements of §§ 390.123 through 390.135 and the applicable requirements of part 391 of this chapter.

(2) Report to FMCSA any changes in the registration information submitted under § 390.123(a)(3).

(3) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations.

(4) Maintain documentation of licensure, registration, or certification in a State to perform physical examinations and maintain documentation of and completion of all training required by §§ 390.125 and 390.131. The certified VA medical examiner must make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The certified VA medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(5) Complete training and testing as required by FMCSA.

(6) In the case of a person who has been involuntarily removed, provide documentation showing completion of any corrective actions required in the notice of proposed removal.

(g) *Effect of final decision by FMCSA.* If a person is removed from the National Registry of Certified Medical Examiners under paragraph (c) or (e) of this section, the certification credential issued under § 390.129 is no longer valid. However, the removed person's information remains publicly available for 3 years, with an indication that the

person is no longer listed on the National Registry of Certified Medical Examiners as of the date of removal.

[83 FR 26861, June 11, 2018, as amended at 86 FR 57074, Oct. 14, 2021]

**Subpart E—Unified Registration System**

SOURCE: 80 FR 63712, Oct. 21, 2015, unless otherwise noted.

EFFECTIVE DATE NOTE: At 82 FR 5318, Jan. 17, 2017, subpart E (§§ 390.201–390.209) was suspended, effective Jan. 14, 2017.

**§ 390.201 USDOT Registration.**

(a) *Purpose.* This section establishes who must register with FMCSA under the Unified Registration System, the filing schedule, and general information pertaining to persons subject to the Unified Registration System registration requirements.

(b) *Applicability.* (1) Except as provided in paragraph (g) of this section, each motor carrier (including a private motor carrier, an exempt for-hire motor carrier, a non-exempt for-hire motor carrier, and a motor carrier of passengers that participates in a through ticketing arrangement with one or more interstate for-hire motor carriers of passengers), intermodal equipment provider, broker and freight forwarder subject to the requirements of this subchapter must file Form MCSA–1, the URS online application, with FMCSA to:

- (i) Identify its operations with the Federal Motor Carrier Safety Administration for safety oversight, as applicable;
- (ii) Obtain operating authority required under 49 U.S.C. chapter 139, as applicable; and
- (iii) Obtain a hazardous materials safety permit as required under 49 U.S.C. 5109, as applicable.

(2) A cargo tank and cargo tank motor vehicle manufacturer, assembler, repairer, inspector, tester, and design certifying engineer that is subject to registration requirements under 49 CFR 107.502 and 49 U.S.C. 5108 must satisfy those requirements by electronically filing Form MCSA–1, the URS online application, with FMCSA.

(c) *General.* (1)(i) A person that fails to file Form MCSA–1, the URS online application, pursuant to paragraph (d)(1) of this section is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B) or 49 U.S.C. 14901(a), as appropriate.

(ii) A person that fails to complete biennial updates to the information pursuant to paragraph (d)(2) of this section is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B) or 49 U.S.C. 14901(a), as appropriate, and deactivation of its USDOT Number.

(iii) A person that furnishes misleading information or makes false statements upon Form MCSA–1, the URS online application, is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B), 49 U.S.C. 14901(a) or 49 U.S.C. 14907, as appropriate.

(2) Upon receipt and processing of Form MCSA–1, the URS online application, FMCSA will issue the applicant an inactive identification number (USDOT Number). FMCSA will activate the USDOT Number after completion of applicable administrative filings pursuant to § 390.205(a), unless the applicant is subject to § 390.205(b). An applicant may not begin operations nor mark a commercial motor vehicle with the USDOT Number until after the date of the Agency’s written notice that the USDOT Number has been activated.

(3) The motor carrier must display a valid USDOT Number on each self-propelled CMV, as defined in § 390.5, along with the additional information required by § 390.21.

(d) *Filing schedule.* Each person listed under § 390.201(b) must electronically file Form MCSA–1, the URS online application, at the following times:

- (1) Before it begins operations; and
- (2) Every 24 months as prescribed in paragraph (d)(3) of this section.

(3)(i) Persons assigned a USDOT Number must file an updated Form MCSA–1, the URS online application, every 24 months, according to the following schedule:

USDOT No. ending in . . .	Must file by last day of . . .
1 .....	January.
2 .....	February.
3 .....	March.
4 .....	April.

**§ 390.203**

**49 CFR Ch. III (10–1–23 Edition)**

USDOT No. ending in . . .	Must file by last day of . . .
5 .....	May.
6 .....	June.
7 .....	July.
8 .....	August.
9 .....	September.
0 .....	October.

(ii) If the next-to-last digit of its USDOT Number is odd, the person must file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT Number is even, the person must file its update in every even-numbered calendar year.

(4) *When there is a change in legal name, form of business, or address.* A registered entity must notify the Agency of a change in legal name, form of business, or address within 30 days of the change by filing an updated Form MCSA–1, the URS online application, reflecting the revised information. Notification of a change in legal name, form of business, or address does not relieve a registered entity from the requirement to file an updated Form MCSA–1 every 24 months in accordance with paragraph (d)(3) of this section.

(5) *When there is a transfer of operating authority.* (i) Both a person who obtains operating authority through a transfer, as defined in part 365, subpart D of this subchapter (transferee), and the person transferring its operating authority (transferor), must each notify the Agency of the transfer within 30 days of consummation of the transfer by filing:

(A) An updated Form MCSA–1, the URS online application, for the transferor, and for the transferee, if the transferee had an existing USDOT Number at the time of the transfer; or

(B) A new Form MCSA–1, the URS online application, if the transferee did not have an existing USDOT Number at the time of the transfer.

(C) A copy of the operating authority that is being transferred.

(ii) Notification of a transfer of operating authority does not relieve a registered entity from the requirement to file an updated Form MCSA–1, the URS online application, every 24 months in accordance with paragraph (d)(3) of this section.

(e) *Availability of form.* Form MCSA–1, the URS online application is avail-

able, including complete instructions, from the FMCSA Web site at <http://www.fmcsa.dot.gov/urs>.

(f) *Where to file.* Persons subject to the registration requirements under this subpart must electronically file Form MCSA–1, the URS online application, on the FMCSA Web site at <http://www.fmcsa.dot.gov/urs>.

(g) *Exception.* The rules in this subpart do not govern the application by a Mexico-domiciled motor carrier to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border. The applicable procedures governing transportation by Mexico-domiciled motor carriers are provided in § 390.19.

**§ 390.203 PRISM State registration/biennial updates.**

(a) A motor carrier that registers its vehicles in a State that participates in the Performance and Registration Information Systems Management (PRISM) program (authorized under section 4004 of the Transportation Equity Act for the 21st Century [Public Law 105–178, 112 Stat. 107]) alternatively may satisfy the requirements set forth in § 390.201 by electronically filing all the required USDOT registration and biennial update information with the State according to its policies and procedures, provided the State has integrated the USDOT registration/update capability into its vehicle registration program.

(b) If the State procedures do not allow a motor carrier to file the Form MCSA–1, the URS online application, or to submit updates within the period specified in § 390.201(d)(2), a motor carrier must complete such filings directly with FMCSA.

(c) A for-hire motor carrier, unless providing transportation exempt from the commercial registration requirements of 49 U.S.C. chapter 139, must obtain operating authority as prescribed under § 390.201(b) and part 365 of this subchapter before operating in interstate commerce.

**§ 390.205 Special requirements for registration.**

(a)(1) *General.* A person applying to operate as a motor carrier, broker, or freight forwarder under this subpart must make the additional filings described in paragraphs (a)(2) and (a)(3) of this section as a condition for registration under this subpart within 90 days of the date on which the application is filed:

(2) *Evidence of financial responsibility.*

(i) A person that registers to conduct operations in interstate commerce as a for-hire motor carrier, a broker, or a freight forwarder must file evidence of financial responsibility as required under part 387, subparts C and D of this subchapter.

(ii) A person that registers to transport hazardous materials as defined in 49 CFR 171.8 (or any quantity of a material listed as a select agent or toxin in 42 CFR part 73) in interstate commerce must file evidence of financial responsibility as required under part 387, subpart C of this subchapter.

(3) *Designation of agent for service of process.* All motor carriers (both private and for-hire), brokers and freight forwarders required to register under this subpart must designate an agent for service of process (a person upon whom court or Agency process may be served) following the rules in part 366 of this subchapter:

(b) If an application is subject to a protest period, the Agency will not activate a USDOT Number until expiration of the protest period provided in §365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest, as applicable.

**§ 390.207 Other governing regulations.**

(a) *Motor carriers.* (1) A motor carrier granted registration under this part must successfully complete the applicable New Entrant Safety Assurance Program as described in paragraphs (a)(1)(i) through (a)(1)(iii) of this section as a condition for permanent registration:

(i) A U.S.- or Canada-domiciled motor carrier is subject to the new entrant safety assurance program under part 385, subpart D, of this subchapter.

(ii) A Mexico-domiciled motor carrier is subject to the safety monitoring pro-

gram under part 385, subpart B of this subchapter.

(iii) A Non-North America-domiciled motor carrier is subject to the safety monitoring program under part 385, subpart I of this subchapter.

(2) Only the legal name or a single trade name of the motor carrier may be used on the Form MCSA-1, the URS online application.

(b) *Brokers, freight forwarders and non-exempt for-hire motor carriers.* (1) A broker or freight forwarder must obtain operating authority pursuant to part 365 of this chapter as a condition for obtaining USDOT Registration.

(2) A motor carrier registering to engage in transportation that is not exempt from economic regulation by FMCSA must obtain operating authority pursuant to part 365 of this subchapter as a condition for obtaining USDOT Registration.

(c) *Intermodal equipment providers.* An intermodal equipment provider is subject to the requirements of subpart C of this part.

(1) Only the legal name or a single trade name of the intermodal equipment provider may be used on the Form MCSA-1, the URS online application.

(2) The intermodal equipment provider must identify each unit of interchanged intermodal equipment by its assigned USDOT Number.

(d) *Hazardous materials safety permit applicants.* A person who applies for a hazardous materials safety permit is subject to the requirements of part 385, subpart E, of this subchapter.

(e) *Cargo tank facilities.* A cargo tank facility is subject to the requirements of 49 CFR part 107, subpart F, 49 CFR part 172, subpart H, and 49 CFR part 180.

**§ 390.209 Pre-authorization safety audit.**

A non-North America-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce within the United States must pass the pre-authorization safety audit under §385.607(c) of this subchapter as a condition for receiving registration under this part.

**Subpart E—URS Online Application****§ 390.200T USDOT Registration.**

(a) *Purpose.* This section establishes who must register with FMCSA using the Form MCSA-1, the URS online application, beginning January 14, 2017.

(b) *Applicability.* Notwithstanding any other provisions of this part or 49 CFR 385.305T(b)(2), a new applicant private motor carrier or new applicant exempt for-hire motor carrier subject to the requirements of this subchapter must file Form MCSA-1 with FMCSA to identify its operations with the Federal Motor Carrier Safety Administration for safety oversight. Form MCSA-1 is the URS online application, and both the application and its instructions are available from the FMCSA Web site at <http://www.fmcsa.dot.gov/urs>.

(c) *Definition.* For purposes of this section, a “new applicant” is an entity applying for operating authority registration and a USDOT number who does not at the time of application have an active registration or USDOT, Motor Carrier (MC), Mexican owned or controlled (MX), or Freight Forwarder (FF) number, and who has never had an active registration or USDOT, MC, MX, or FF number.

[82 FR 5318, Jan. 17, 2017]

**Subpart F [Reserved]****Subpart G—Lease and Interchange of Passenger-Carrying Commercial Motor Vehicles**

SOURCE: 84 FR 40295, Aug. 14, 2019, unless otherwise noted.

**§ 390.401 Applicability.**

(a) *General.* Beginning on January 1, 2021, and except as provided in paragraphs (b)(1) and (2) of this section, this subpart applies to the following actions, irrespective of duration, or the presence or absence of compensation, by motor carriers operating commercial motor vehicles to transport passengers:

(1) The lease of passenger-carrying commercial motor vehicles; and

(2) The interchange of passenger-carrying commercial motor vehicles between motor carriers.

(b) *Exceptions—(1) Contracts and agreements between motor carriers of passengers with active passenger carrier operating authority registrations.* This subpart does not apply to contracts and agreements between motor carriers of passengers that have active passenger carrier operating authority registrations with the Federal Motor Carrier Safety Administration when one such motor carrier acquires transportation service(s) from another such motor carrier(s).

(2) *Financial leases.* This subpart does not apply to a contract (however designated, *e.g.*, lease, closed-end lease, hire purchase, lease purchase, purchase agreement, installment plan, demonstration or loaner vehicle, etc.) between a motor carrier and a bank or similar financial organization or a manufacturer or dealer of passenger-carrying commercial motor vehicles allowing the motor carrier to use the passenger-carrying commercial motor vehicle.

(c) *Penalties.* If the use of a passenger-carrying commercial motor vehicle is conferred on one motor carrier subject to this subpart by another such motor carrier without a lease or interchange agreement, or pursuant to a lease or interchange agreement that fails to meet all applicable requirements of subpart G, both motor carriers shall be subject to a civil penalty.

**§ 390.403 Lease and interchange requirements.**

Beginning on January 1, 2021, and except as provided in § 390.401(b) of this section, a motor carrier may transport passengers in a leased or interchanged commercial motor vehicle only under the following conditions:

(a) *In general—(1) Lease or agreement required.* There shall be in effect either:

(i) A lease granting the use of the passenger-carrying commercial motor vehicle and meeting the conditions of paragraphs (b) and (c) of this section. The provisions of the lease shall be adhered to and performed by the lessee; or

(ii) An agreement meeting the conditions of paragraphs (b) and (c) of this

section and governing the interchange of passenger-carrying commercial motor vehicles between motor carriers of passengers conducting service on a route or series of routes. The provisions of the interchange agreement shall be adhered to and performed by the lessee.

(2) *Exception.* When an event occurs (e.g., a crash, the vehicle is disabled) that requires a motor carrier of passengers immediately to obtain a replacement vehicle from another motor carrier of passengers, the two carriers may postpone the writing of the lease or written agreement for the replacement vehicle for up to 48 hours after the time the lessee takes exclusive possession and control of the replacement vehicle. However, during that 48-hour period, until the lease or agreement is written and provided to the driver, the driver must carry, and produce upon demand of an enforcement official, a document signed and dated by the lessee's driver or available company official stating: "[Carrier A, USDOT number, telephone number] has leased this vehicle to [Carrier B, USDOT number, telephone number] pursuant to 49 CFR 390.403(a)(2)."

(b) *Contents of the lease.* The lease or interchange agreement required by paragraph (a) of this section shall contain:

(1) *Vehicle identification information.* The name of the vehicle manufacturer, the year of manufacture, and at least the last 6 digits of the Vehicle Identification Number (VIN) of each passenger-carrying commercial motor vehicle transferred between motor carriers pursuant to the lease or interchange agreement.

(2) *Parties.* The legal name, USDOT number, and telephone number of the motor carrier providing passenger transportation in a commercial motor vehicle (lessee) and the legal name, USDOT number, and telephone number of the motor carrier providing the equipment (lessor), and signatures of both parties or their authorized representatives.

(3) *Specific duration.* The time and date when, and the location where, the lease or interchange agreement begins and ends.

(4) *Exclusive possession and responsibilities.* (i) A clear statement that the motor carrier obtaining the passenger-carrying commercial motor vehicle (the lessee) has exclusive possession, control, and use of the passenger-carrying commercial motor vehicle for the duration of the agreement, and assumes complete responsibility for operation of the vehicle and compliance with all applicable Federal regulations for the duration of the agreement.

(ii) In the event of a sublease between motor carriers, all of the requirements of this section shall apply to a sublease.

(c) *Copies of the lease.* A copy shall be on the passenger-carrying commercial motor vehicle during the period of the lease or interchange agreement, and both the lessee and lessor shall retain a copy of the lease or interchange agreement for 1 year after the expiration date.

#### APPENDIX A TO PART 390—APPLICABILITY OF THE REGISTRATION, FINANCIAL RESPONSIBILITY, AND SAFETY REGULATIONS TO MOTOR CARRIERS OF PASSENGERS

##### I. FMCSA'S JURISDICTION

The Federal Motor Carrier Safety Regulations (FMCSRs) comprise parts 350 through 399 of title 49, Code of Federal Regulations (CFR). These regulations set minimum safety standards for motor carriers, vehicles, and drivers operating in interstate commerce. The areas covered include motor carrier registration, financial responsibility requirements, driver qualifications, licensing, hours of driving and on duty time, vehicle safety equipment, operating condition, inspection, and maintenance. In some areas, Congress has enacted exemptions for certain categories of vehicles or operations. Accordingly, the Agency does not exercise regulatory authority over some operators who meet the definition of a *motor carrier, vehicle, or driver* operating in interstate commerce.

The jurisdictional thresholds of the statutes FMCSA administers and the corresponding regulations are not uniform. First, for most of the FMCSRs, the Agency's jurisdiction is based upon the definition of *commercial motor vehicle* (CMV) in the Motor Carrier Safety Act of 1984 (MCSA), codified at 49 U.S.C. 31132(1) and §§390.5T and 390.5. Under that definition, a passenger vehicle is a *commercial motor vehicle* if it is designed or

used to transport 9 or more passengers for compensation or 16 or more passengers regardless of compensation status. Larger passenger vehicles also qualify as CMVs irrespective of their passenger capacity if they have a gross vehicle weight (GVW) or gross vehicle weight rating (GVWR) (whichever is greater) of 10,001 pounds or more. The Agency's safety jurisdiction, however, does not include passenger-carrying vehicles that meet all of the following criteria: (1) designed and used to transport 8 or fewer passengers, (2) have a GVWR and GVW of 10,000 pounds or less, and (3) are not transporting hazardous materials in a quantity that requires placarding. If a passenger-carrying vehicle exceeds even one of these three thresholds, however, FMCSA has safety jurisdiction over the vehicle.

A second CMV definition, based on the statutory definition in the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) codified at 49 U.S.C. 31301(4), governs the commercial driver's license (CDL) program and the corresponding drug and alcohol testing requirements (49 CFR parts 383 and 382, respectively), which apply to CMV operations both in interstate and intrastate commerce. For the purposes of determining which passenger carrier operations require a CDL, the jurisdiction conferring *commercial motor vehicle* definition in parts 383 and 382 includes any motor vehicle that has a GVWR or GVW of 26,001 pounds or more and is used to transport passengers, regardless of the number of passengers that the vehicle is designed to or actually does transport. This *commercial motor vehicle* definition also includes any vehicle designed or used to transport 16 or more passengers, including the driver, and any vehicle used to transport certain hazardous materials.

Third, with some exceptions, those portions of the FMCSRs based on Title 49, Subtitle IV, Part B, and frequently referred to as the "commercial regulations," are applicable (among others) to for-hire interstate transportation of passengers in any vehicle, no matter the GVW, GVWR, or passenger capacity (49 U.S.C. 13102(14), 13902 and 49 CFR part 365). The level of insurance required to operate as a for-hire passenger carrier is governed by the number of passengers the vehicle is designed to transport (49 CFR part 387, subpart B). The required level of insurance is \$1.5 million if the carrier's largest vehicle has a seating capacity of 15 or fewer passengers or \$5 million if the largest vehicle has a seating capacity of 16 passengers or more. (49 CFR 387.33T). These are also the levels of insurance for which evidence is required to be maintained on file with FMCSA for a passenger carrier to obtain and retain for-hire operating authority registration under 49 U.S.C. 13902. There is an exception to some Federal insurance/financial responsibility requirements for passenger carriers

that receive certain grants from the Federal Transit Administration. (49 U.S.C. 31138(e)(4)).

To determine the extent to which specific FMCSRs apply to an operation, it is first necessary to evaluate whether the operations are within the scope of any of the definitions outlined above. If the operations are within FMCSA's jurisdiction, then it is necessary to determine whether any specific regulatory or statutory exemptions apply to the operation.

## II. JURISDICTIONAL LIMITATIONS AND EXEMPTIONS

There are specific statutory exemptions and regulatory exceptions applicable to part or all of FMCSA's jurisdiction. Most exemptions from FMCSA's commercial authority are codified in 49 U.S.C. 13506. Some of these exemptions applicable to passenger carrier operations are discussed in detail in below. The exemptions or exceptions from FMCSA's safety regulations are codified primarily in 49 CFR 390.3 and 390.3T. Specific examples of applicability questions FMCSA frequently receives are presented in question and answer format. The Agency's analytical framework is straightforward: (1) does the operation generally fall within FMCSA's jurisdiction, and, (2) if so, does any statutory or regulatory exemption or exception limit the applicability of the FMCSRs?

### *Transportation of Passengers to and From Airports and Other Points of Interstate Departure/Arrival*

In 1938, Congress amended section 203(b) of the Motor Carrier Act of 1935 (1935 Act) to exempt from the requirement to obtain operating authority registration "the transportation of persons or property by motor vehicle when incidental to transportation by aircraft" (Civil Aeronautics Act of 1938, Sec. 1107(j), Chap. 601, 52 Stat. 973, 1029, June 23, 1938). Section 203(b)(7a) of the 1935 Act is now codified at 49 U.S.C. 13506(a)(8)(A) and implemented by 49 CFR 372.117(a).

In 1964, the Interstate Commerce Commission (ICC) reaffirmed its longstanding position that the exemption for incidental-to-air transportation did not require passengers to hold a through ticket when it addressed the following question:

... whether the transportation of airline passengers by motor vehicle which is incidental to transportation by air must be confined to situations in which the air and motor movements are provided pursuant to some common arrangement for through passage, that is, on a through ticket or at the request and at the expense of the air carrier. In dealing with the transportation of property . . . we have found that a bona fide terminal area pickup and delivery service must entail through air-motor billing. A similar

condition has never been considered essential where the transportation of passengers is concerned, and our reexamination of this aspect of the overall problem convinces us that no change is warranted in this regard. . . . Nor do we think that a requirement applicable to the transportation of freight must necessarily be appropriate to the transportation of passengers (95 M.C.C. at 535).

FMCSA agrees with the Commission's position that through-ticketing is not required for the exemption from commercial operating authority registration for transportation incidental to air travel in 49 U.S.C. 13506(a)(8)(A) to apply. However, prearranged motor vehicle transportation, secured by an advance guarantee demonstrating an obligation by the passenger to take the service, and by the motor carrier to provide the service immediately prior or subsequent to aircraft transportation across State lines, is part of a continuous movement in interstate commerce. This understanding is the most consistent means for determining the passenger's fixed and persisting intent to continue in interstate transportation to a final destination absent a through ticket, or bill of lading one would have when shipping property. Motor carriers performing intrastate movements of interstate air passengers thus do not need operating authority registration if they operate only within the radius specified as "incidental to transportation by aircraft" in §372.117(a), but they are nevertheless operating in interstate commerce and are subject to the FMCSRs unless they are otherwise exempt.

The parties who commented on the ICC's passenger rulemaking in the 1960s reported that "in virtually no case is it the practice of the airlines to issue . . . through tickets" (95 M.C.C. 532). That has not changed. Package deals combining ground and air transportation may be offered by travel agents or online ticketing services, but airlines themselves only rarely offer such arrangements. FMCSA sees no reason to change the ICC's common-sense conclusion that motor carriers offering transportation of passengers to or from an airport are eligible for the exemption in current 49 U.S.C. 13506(a)(8)(A) even though the passengers are not traveling on a single ticket that includes both ground and aircraft transportation.

As discussed below, however, 49 U.S.C. 13506(a)(8)(A) does not confer an exemption from applicable safety regulations. Prearranged motor vehicle transportation, secured by an advance guarantee demonstrating an obligation by the passenger to take the service and the motor carrier to provide the service, immediately prior or subsequent to aircraft transportation across State lines is part of a continuous movement in interstate commerce, as demonstrated by

the passenger's fixed and persisting intent. Motor carriers performing intrastate movements of interstate air passengers by CMV thus do not need operating authority registration if they operate only within the radius specified as "incidental to transportation by aircraft" in §372.117(a), but if the transportation is prearranged, they are nevertheless operating in interstate commerce and are subject to the Federal safety regulations unless they are otherwise exempt.

#### *Prearrangement of Passenger Transportation*

The Federal courts have long held that "[t]he characterization of transportation between two points within a single state as interstate or intrastate depends on the essential character of the shipment involved . . ." The crucial factor in determining the essential character of a shipment is "the shipper's fixed and persisting intent at the time of shipment." *Central Freight Lines v. Interstate Commerce Commission*, 899 F.2d 413, 419 (5th Cir. 1990) (citing, among other cases, *Baltimore & O.S.W.R. Co. v. Settle*, 260 U.S. 166, 170-71 (1922)); see also *Southerland v. St. Croix Taxicab Ass'n*, 315 F.2d 364 (3rd Cir. 1963) (holding that intrastate transportation of passengers in the Virgin Islands pursuant to prearranged packages covering both lodging and travel was interstate commerce). The key inquiry is whether, before or at the time the trip begins, the shipper has manifested his/her intent to ship something in interstate commerce. In the case of passenger transportation, the "shipper" is the passenger, and the fixed intent to travel in interstate commerce is best demonstrated by pre-arranging the interstate air (or water or rail) transportation and the intrastate ground transportation by CMV at more or less the same time, and substantially before the interstate trip begins.

For example, reserving a seat via the internet, with an advanced guarantee obligating the passenger to take the service and the motor carrier to provide the service, in a limousine for transportation to or from an airport about the same time of booking an interstate flight that will occur multiple weeks in the future would demonstrate a fixed and persisting intent to travel in interstate commerce, placing the limousine segment of the trip in the stream of interstate commerce. On the other hand, deciding on the day of a trip to take a taxicab to or from the airport before or after the flight would not involve prearrangement and would not amount to interstate commerce. In any case, evidence of a traveler's intent is normally based on documentation, not assumptions.

The same kind of analysis applies to passengers boarding or disembarking from a cruise ship. Prior arrangement of CMV ground transportation—for example via tour

bus from a port of call to some inland destination—made in conjunction with cruise-ship reservations would demonstrate the fixed intent of the passenger to travel by motor vehicle as part of an interstate or international trip. In some cases, cruise lines may even sell through-tickets that cover both maritime and land transportation which clearly demonstrate both prearrangement and the fixed intent of the travelers to use multiple modes of transportation on an interstate or international trip.

In 1963, the Third Circuit held that intrastate transportation of passengers in the Virgin Islands pursuant to prearranged packages covering both lodging and travel was interstate commerce (*Southerland v. St. Croix Taxicab Ass'n*, 315 F.2d 364 (3rd Cir. 1963)). Federal court decisions have increasingly expanded this line of analysis and found ground transportation to be in the stream of interstate commerce where, even in the absence of packaged travel arrangements, the traveler separately booked the air and ground portions of a trip. See *Abel v. Southern Shuttle Services, Inc.*, 631 F.3d 1210 (11th Cir. 2011); *Executive Town & Country Services v. City of Atlanta*, 789 F.2d 1523 (11th Cir. 1986); *Charter Limousine, Inc. v. Dade County Board of County Commissioners*, 678 F.2d 586 (5th Cir. 1982); *East West Resort Transportation, LLC, v. Binz*, 494 F.Supp.2d 1197 (D. Col. 2007).

FMCSA has been asked if its commercial and safety jurisdiction over a motor carrier of passengers requires some threshold ratio of interstate to intrastate trips. Many motor carriers have a mixture of interstate and intrastate passenger transportation operations. To answer this question, we look back to a case interpreting the Fair Labor Standards Act of 1938. In this case, only 3 to 4 percent of a carrier's trips were interstate in nature, and the Supreme Court held that, under the 1935 Act, the ICC had authority to impose its hours of service rules on all of the company's drivers because they were randomly assigned to handle interstate trips, even though 2 out of about 40 drivers had not made a single interstate trip during the 21 months at issue in that case (*Morris v. McComb*, 332 U.S. 422 (1947)). The Court said “[w]e hold that the Commission has the power to establish qualifications and maximum hours of service, pursuant to the provisions of §204 of the Motor Carrier Act [of 1935], for the entire classification of petitioner's drivers and ‘mechanics’ and it is the existence of that power (rather than the precise terms of the requirements actually established by the Commission in the exercise of that power) that Congress has made the test as to whether or not [the overtime requirement of] §7 of the Fair Labor Standards Act is applicable to these employees.” *Ibid.* at 434.

FMCSA's authority over interstate operations under the MCSA is in most ways even

broader than the ICC's authority under the 1935 Act because it includes fewer statutory exemptions and is equally or more focused on highway safety. The Agency may, therefore, require compliance with the FMCSRs by passenger carriers with interstate operations no more extensive than those previously described in *Morris v. McComb*, providing those operations are undertaken with CMVs, as defined in §§390.5T and 390.5.

A related question is whether relatively infrequent operations in interstate commerce make a motor carrier permanently subject to FMCSA jurisdiction. For an answer, we again look at the 1935 Act and to Federal Highway Administration (FHWA) precedent. The FHWA, FMCSA's predecessor agency, said in a 1981 notice of interpretation that “[e]vidence of driving in interstate commerce or being subject to being used in interstate commerce should be accepted as proof that the driver is subject to [the hours-of-service requirements in 49 U.S.C. 31502(b)] for a 4-month period from the date of the proof” 46 FR 37902, 37903 (July 23, 1981).

FHWA replaced the 4-month rule with a 14/15-day “rule” in 1999. (More information about this matter can be found in Question 24 under regulatory guidance for §390.3 on the FMCSA website, <https://www.fmcsa.dot.gov/regulations/49-cfr-ss-3903t-general-applicability-question-24>.) However, the Agency's Acting Deputy Administrator explained in a letter of August 21, 2001, to the Department of Labor that “[t]he 14/15-day rule is a prudential limitation on the use of FMCSA authority, not an interpretation of FMCSA jurisdiction.” The letter also noted that “[b]ecause most of the case law interpreting the provisions of the [1935 Act] has been generated by Fair Labor Standards Act litigation, the courts have dealt only with agency authority to enforce the hours of service limits. The [1935 Act], however, authorizes regulations addressing a wider variety of safety problems, and we believe that the jurisdictional principles set forth by the courts would apply to them as well, e.g., to the medical qualifications of drivers.”

FMCSA takes this occasion to reaffirm the view expressed in the Acting Deputy Administrator's 2001 letter that the Agency has jurisdiction over motor carriers, vehicles, and drivers for a 4-month period after a trip in interstate commerce. However, records must be retained for whatever period is required by the FMCSRs, even if that period exceeds 4 months.

Later in this interpretive rule, FMCSA explains the applicability of existing statutes and regulations in a question and answer format to clarify the conditions under which highway transportation of passengers by CMV within a single State would constitute interstate commerce if the passengers are beginning a trip to, or completing a trip from, a point outside the State by another

mode of transportation (e.g., aircraft, railroad, or vessel). It is FMCSA's legal position for purposes of enforcement jurisdiction and motor carrier registration requirements, that, if a passenger plans a trip involving more than one mode of transportation that begins and ends in different States or a place outside the United States and has prearranged the CMV portion of the trip, as demonstrated by an advance guarantee for the service, all transportation during the trip is in interstate commerce, because the passenger prearranged the transportation with persistent intent of continuous interstate movement throughout the trip. Additional prearranged side trips or excursions made before the trip begins or while traveling in interstate commerce are included as part of the flow of interstate commerce. However, if the passenger has made no arrangement for transportation and upon arriving at an airport, port, or railway station, makes arrangements for transportation, that later-arranged transportation is not a continuation of the trip and is not in interstate commerce. Prearrangement in multimodal transportation of a passenger is an important consideration in determining interstate commerce because it can establish the passenger's intent about travel and provide a clear linkage of continual transportation segments. When one such segment is interstate in nature, all linked transportation segments are in the stream of interstate commerce.

*"For Compensation" and "For-Hire"*

FMCSA's safety jurisdiction, except in the CDL regulations, is circumscribed by the definition of *commercial motor vehicle* in 49 U.S.C. 31132(1). Under section 31132(1), a *commercial motor vehicle* is defined, in part, as a vehicle used to transport passengers or property in interstate commerce that when transporting passengers has either been designed or is actually used to transport more than 8 passengers and payment is received. The statute also includes in the commercial motor vehicle definition any passenger carrying vehicle designed or actually used to transport more than 15 passengers regardless of whether compensation is received. In each definition, the total number of passengers always includes the driver. (49 U.S.C. 31132(1)(B)-(C)). Furthermore, a motor carrier registering for commercial operating authority under 49 U.S.C. 13902 is governed by the definition of *motor carrier* in 49 U.S.C. 13102(14), i.e., a person providing motor vehicle transportation for compensation.

The FMCSRs incorporate "compensation" into the definition of *for-hire motor carrier*, which the rules treat as "a person engaged in the transportation of goods or passengers for compensation" (§§ 390.5T and 390.5). In a notice of interpretation published on May 7,

1993, FHWA provided an expansive interpretation of "compensation," stating that compensation includes both direct and indirect payment. In addition, FHWA said certain nonbusiness organizations, including churches and charities, operate as for-hire passenger carriers when they engage in chartered operations, charging a fee (58 FR 27328, 27329). The notice clarified that certain businesses, including hotels and car rental agencies operating shuttle bus services, and outdoor recreation operations such as white-water rafting outfits and scuba diving schools transporting patrons to or from a recreation site, constitute for-hire motor carriage of passengers. "Compensation" as used in the context of a business enterprise includes both direct and indirect payment for the transportation service provided. It need not mean "for profit."

This policy was repeated in slightly different form in regulatory guidance published on November 17, 1993 (58 FR 60734, 60745) and April 4, 1997 (62 FR 16370, 16407). (More information about this matter can be found in Question 10 under regulatory guidance for § 390.5 on the FMCSA website, <https://www.fmcsa.dot.gov/regulations/does-fmcsa-de-fine-hire-transportation-passengers-same-former-icc-did-0>.) This position was also reiterated in a final rule on private motor carriers of passengers (59 FR 8748, Feb. 23, 1994), which adopted certain exceptions for "private motor carriers of passengers (business)" (now codified at 49 CFR 391.69) and "private motor carriers of passengers (nonbusiness)" (49 CFR 391.68).

"Compensation," as used in the definition of *for-hire motor carrier* in §§ 390.5T and 390.5, includes both direct and indirect payments. Companies providing intercity motorcoach service are directly compensated, while hotels, car rental companies, parking facilities, and other businesses that offer shuttle bus service are indirectly compensated because they add the cost of that service to their room rates, car rental rates, etc. By statute, most taxicab service is not subject to the requirement to obtain commercial operating authority registration (49 U.S.C. 13506(a)(2)) or to maintain minimum levels of financial responsibility (49 U.S.C. 31138(e)(2), § 387.27(b)(2)). In addition, most taxis are not subject to the FMCSRs because their designed passenger capacity is below nine and their GVW is too low to make them CMVs under §§ 390.5T and 390.5.

Passenger transportation is either for-hire or private. Unless exempted by statute or regulation, for-hire motor carriers must obtain operating authority registration under 49 U.S.C. 13902 before engaging in interstate transportation. While a passenger carrier may provide both for-hire and private transportation, a specific trip is either for-hire or private depending upon the presence or absence of direct or indirect compensation.

Though private passenger transportation is not available to the public at large, for-hire transportation service may or may not be available to the general public. Compensation is the primary factor that determines for-hire transportation. An entity that is nonbusiness, nonprofit, or not-for-profit, is nevertheless engaged in for-hire passenger transportation when it receives compensation for such transportation. Compensation may come in many forms including donations, gifts, gas money, offerings, etc. received for transportation. The question of whether an operation is for-hire should not be conflated, however, with the distinction required to determine whether a private passenger carrier's operation is business or non-business. In those cases, the Agency has already determined that the operation is not for-hire.

#### *Vanpools*

In an interim final rule published on September 3, 1999 (64 FR 48510), FHWA qualified its previous expansive interpretation of “compensation” as applied to vanpools. In short, FHWA took the position that Congress never intended for commuter vanpools arranged and operated by groups of people trying to get to work, not attempting to start a commuter transportation side business, to be subject to federal regulation. Accordingly, FHWA affirmatively stated that the Agency had no intention to regulate vanpools created for the convenience of the passengers, not for financial gain in running a commuter transportation business. Because FHWA considered the term “for compensation” to be equivalent to “for hire”, the Agency recognized that payments passengers made into a vanpool to cover vehicle expenses could be considered compensation subjecting the vanpool operator to government regulation. FHWA ultimately decided that as long as funds contributed to the vanpool were not used as a source of income or to grow a commuter transportation business, then the operation should not be regulated as a for-hire motor carrier of passengers. (See 64 FR 48514).

A few months later, Sec. 212 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748, 1766, Dec. 9, 1999) established FMCSA and directed the Agency to decide whether all motor carriers operating, smaller vehicles designed or used for 9 to 15 passengers, receiving payment for transportation should be covered by all of the FMCSRs. But the statute added another provision specifically directing FMCSA *not* to exempt all motor carrier operations in smaller vehicles, those designed or used for 9 to 15 passengers, for hire when making its decision about the scope of FMCSR applicability. (113 Stat. 1766). In the preamble of the notice of proposed rule-

making (NPRM) to implement that mandate, published on January 11, 2001 (66 FR 2767), FMCSA proposed to focus on small passenger carriers operating for direct compensation, stating that these operators were “identified as having significant deficiencies in their safety management controls for their drivers and vehicles” and pose “a serious safety risk to the motoring public” (66 FR 2768). The final rule reaffirmed this position and adopted the regulatory changes from the NPRM largely as proposed. (68 FR 47860, Aug. 12, 2003).

In view of the varied and sometimes inconsistent<sup>3</sup> regulatory guidance on “compensation” issued in the past, FMCSA takes this opportunity to clarify and explain its implementation of the statutory and regulatory requirements applicable to operations conducted in vehicles designed or used to transport between 9 and 15 passengers. Pursuant to 49 U.S.C. 31132(1)(B) and (C), a vehicle designed or used to transport between 9 and 15 passengers (counting the driver as a passenger) may not be a CMV for purposes of the FMCSRs unless it is used to transport passengers “for compensation” or has a GVW or GVWR of 10,001 pounds or greater. Similarly, under 49 U.S.C. 31132(1)(C), a vehicle designed or used to transport more than 15 passengers (including the driver) is a CMV even if it is “not used to transport passengers for compensation.” The term “compensation” is, therefore, jurisdictional. If a vehicle is designed and used to transport more than 8, but fewer than 16 passengers, and has a GVW and GVWR of less than 10,001 pounds, without “compensation,” it is not a CMV, and FMCSA has no safety jurisdiction over it.

This issue is particularly critical for vanpools. Although payment is compensation, FMCSA decided that the intent of Congress is not to recognize the money collected in a vanpool as compensation unless the revenue amount is required to be reported to the Internal Revenue Service (IRS), pursuant to 26 U.S.C. 1402(b) and 132(f). It is also important to recognize that although previously characterized as an exemption in policy and preamble statements, Congress never promulgated, and the Agency never adopted, a regulatory exemption for vanpool operations.

Consistent with prior statements regarding the applicability of the FMCSRs, and to remain consistent with congressional intent, the Agency is not changing its position.

<sup>3</sup>Cf. 66 FR 2756, 2761 (final rule revising § 390.3(f)(6), among other changes) and 66 FR 2767, 2768 (NPRM proposing revisions to § 390.3(f)(6), among other changes), both Jan. 11, 2001 (providing different interpretations of how direct and indirect compensation apply to the exception in § 390.3(f)(6)).

Therefore, FMCSA will not pursue enforcement against commuter vanpool operations when all the following conditions are met: (1) the motor vehicle is operated by individuals traveling to and from work transporting other individuals as part of a daily commute to and from work in an interstate, single daily round trip; (2) the motor vehicle is designed and used to carry no more than 15 individuals (including the driver); (3) the GVW and GVWR is less than 10,001 pounds; and (4) the money received by the vanpool operator for transportation is not reported to the IRS, pursuant to 26 U.S.C. 1402(b) and 132(f), or is not deemed reportable by an IRS investigation under the same provisions.

FMCSA recognizes that this guidance has compliance implications for motor carriers that previously considered themselves not subject to certain Agency requirements because such carriers mistakenly believed their passenger transportation operations were in intrastate commerce only, not for-hire, and/or otherwise exempt. It should be emphasized, however, that while for-hire motor carriers operating in interstate commerce must obtain both commercial operating authority registration (no matter how small or light the vehicle(s) used, unless exempted), and safety registration under 49 U.S.C. 31134,<sup>4</sup> the safety regulations apply only to motor carriers (private and for-hire) operating in interstate commerce that use vehicles that qualify as *commercial motor vehicles*, as defined in 49 U.S.C. 31132(1) and §§ 390.5T and 390.5.

The following examples show the real-world implications and interactions of “interstate commerce,” “CMV,” “compensation,” “for-hire,” and “private” carriage, and a variety of regulatory exemptions and exceptions. These examples are arranged in topical categories. The first provides guidance on the meaning of “interstate commerce.” All subsequent examples provide guidance in three regulatory applicability contexts, specifically (1) operating authority registration, (2) minimum level of financial responsibility, and (3) general safety regulatory jurisdiction.

### III. SPECIFIC EXAMPLE SCENARIOS

In determining the scope of FMCSA’s jurisdiction for each of the following specific scenarios the analytical framework described early in this notice is employed. Specifically, for each scenario, the Agency considered whether the operation falls within FMCSA’s jurisdiction based on the various statutory definitions, and, if so, whether any statutory or regulatory exemption limits the

applicability of the FMCSRs. Again, should new scenarios arise in the future, the same analytical framework would be employed to determine whether a specific operation is subject to FMCSA’s oversight.

In this section, FMCSA demonstrates the applicability of the FMCSRs to motor carriers of passengers operating in interstate commerce by providing example scenarios grouped into six categories below. Some of the analysis provided in response to these example scenarios cites to regulatory sections that FMCSA designated as temporary sections in a final rule published on January 17, 2017 (82 FR 5292). FMCSA notes that, to the extent the language between the suspended section and the temporary section is substantively the same, this guidance would also apply to the corresponding language in the suspended section once the suspension is lifted and the temporary section is eliminated, just as the pre-existing guidance for the now-suspended sections was applied to the corresponding language of the temporary sections that were substantively the same.

#### *Passengers Using Multiple Transportation Modes*

*Scenario 1:* A couple plans an interstate trip, for vacation. They hire a limousine to transport them from their residence to an airport, with a final destination out of state. This highway transportation is within a single State. The aircraft transports the couple to another State. After landing and obtaining checked baggage, the couple boards a mini-bus, which they reserved while planning the trip from their home, that transports them within the second State to a waterway port. The couple boards a cruise ship that transports them to foreign island countries.

*Guidance:* This scenario describes for-hire transportation by motor vehicle as a part of continuous interstate movement. Because the transportation was prearranged, both the limousine operator and the mini-bus operator may be required to comply with some if not all of the FMCSRs. Assuming prearrangement, both operators would require operating authority registration under 49 CFR part 365, subpart A, unless the “incident to air travel” exemption at 49 U.S.C. 13506(a)(8)(A) and § 372.117(a) applied. (See Scenario 3 below.) If the vehicles are CMVs under either the MCSA or the CMVSA, then the respective safety regulations, including the registration and applicable safety requirements in 49 CFR parts 390 through 399, and/or the CDL and drug and alcohol testing regulations in parts 382 and 383, would apply to the operations.

If a passenger plans a trip involving more than one mode of transportation that begins and ends in different States or a place outside the United States, and has prearranged the CMV portion of the trip, secured by an

<sup>4</sup>All initial registrations by new applicants must use the Unified Registration System online registration application. See <https://portal.fmcsa.dot.gov/UrsRegistrationWizard/>.

advance guarantee demonstrating an obligation by the passenger to take the service and the motor carrier to provide the service, all transportation during the trip is in interstate commerce because the passenger prearranged the transportation with fixed and persistent intent of continuous interstate movement throughout the trip. Additional prearranged side trips or excursions made before the trip begins or while traveling in interstate commerce are included as part of the flow of interstate commerce. However, if the passenger has made no arrangement for transportation upon arriving at an airport, waterway port, or railway station, and then makes arrangements for transportation, that transportation is not a continuation of the trip and is not in interstate commerce.

*Scenario 2:* A company offering sightseeing tours operates buses designed to transport more than 15 passengers including the driver. It picks up cruise ship passengers at a port of call, takes them to nearby attractions, and returns them to the ship. The bus tour does not cross State lines, but all cruises originate in another State or foreign country. The cruise passengers book and pay for the bus tour before starting, or during, the cruise. The passenger transportation is not confined to a commercial zone.

*Guidance:* This scenario describes for-hire transportation by a commercial motor vehicle as a part of continuous interstate movement. FMCSA's position is that the company is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399, and it must have registered by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. In addition, the company is operating a CMV, as defined in §383.5, designed to transport 16 or more passengers. The bus driver must therefore hold a valid CDL with the applicable endorsement(s) and must comply with the drug and alcohol testing regulations in part 382.

In this instance, it is clear that the passengers prearranged the sightseeing tour and intended to continue in interstate transportation. Because the company is operating a commercial motor vehicle, a for-hire passenger vehicle with a seating capacity of at least 16 in interstate commerce, the company is required under §§387.33T and 387.33 to obtain and maintain \$5 million of financial responsibility and to file evidence of the same with FMCSA.

Prearranged intrastate highway transportation occurring during an interstate trip is in the stream of interstate commerce, exactly like prearranged highway transportation immediately before or after an interstate trip. The fixed and persistent intent of the cruise ship passengers to travel by bus as part of the interstate cruise was demonstrated by their advance booking of the bus tour.

*Scenario 3:* While planning a trip, a person goes online, books an airline flight to a city in another State, and reserves a rental car in that city. The car rental company is located near the airport, and it offers shuttle bus service between the terminal and the facility where its customers can pick up and drop off cars. The shuttle does not require a reservation. The car rental company always has at least one shuttle vehicle circulating between the airport and its parking lot during business hours. All shuttle vehicles have a GVWR of 10,001 pounds or more and are designed to transport 16 or more passengers (including the driver). All shuttle operations are (1) conducted on roads and highways that are open to public travel, and (2) confined to a zone encompassed by a 25-mile radius of the boundary of the airport.

*Guidance:* This scenario describes for-hire transportation by a CMV as a part of continuous interstate movement, though limited exemptions apply. The company operates CMVs, as defined in §§390.5T and 390.5, for hire in interstate commerce, and the company is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399, and it must register by following the procedures in 49 CFR part 390 subpart E. In addition, the company is operating a passenger-carrying CMV designed to transport 16 or more passengers, as defined in §383.5. The bus driver must hold a valid CDL with the applicable endorsement(s) and comply with the drug and alcohol testing regulations in 49 CFR part 382.

Nonetheless, the company is not required to obtain operating authority registration. The shuttle service qualifies for the exemption from operating authority in 49 U.S.C. 13506(a)(8)(A) and §372.117(a) for the transportation of passengers by motor vehicle that is (1) incidental to the transportation by aircraft, (2) limited to the transportation of passengers who have had or will have an immediately prior or subsequent movement by air, and (3) confined to a zone encompassed by a 25-mile radius of the boundary of the airport. Although the shuttle service, unlike the airline or rental car reservation, is not explicitly prearranged, it is in the stream of interstate commerce because customers expect and intend to utilize the service wherever a rental facility is not within walking distance of the airport terminal.

Though operating authority registration is not required, the company is operating passenger vehicles with a seating capacity of at least 16 for hire in interstate commerce and, accordingly, is required under §§387.33T and 387.33 to maintain \$5 million of financial responsibility.

#### *Hotel Related Passenger Transportation*

*Scenario 1:* A hotel in Cincinnati, OH offers a courtesy van to take its guests to and from

the Cincinnati/Northern Kentucky International Airport in KY. The van is designed to transport 15 passengers, including the driver, and has a GVW and GVWR of less than 10,000 pounds. All passenger transportation occurs within a zone encompassed by a 25-mile radius of the boundary of the airport.

*Guidance:* This scenario describes for-hire transportation by a CMV as a part of continuous interstate movement, though some exemptions apply. Though the safety regulations apply to transportation in a CMV within a single State if the transportation is a continuation of interstate transportation, the hotel's van operation is eligible for the limited exception to safety regulation applicability in §§390.3T(f)(6) and 390.3(f)(6) based on the size of the vehicle and how compensation is received. The hotel's van is designed and used to transport 9 to 15 passengers (including the driver), and payment for transportation is not received directly. If the hotel complies with the applicable provisions listed in §§390.3T(f)(6) and 390.3(f)(6), then this passenger transportation is compliant with the safety regulations contained in 49 CFR parts 350 through 399. Because the vehicle is a CMV under §390.5 and the limited exception does not exempt the hotel from USDOT registration requirements, the hotel must register by following the procedures in 49 CFR part 390 subpart E. The hotel's 15-passenger van is not a CMV under §383.5, therefore drivers of these vehicles are not required to have CDLs and are not subject to the drug and alcohol testing regulations in 49 CFR part 382.

Operating authority registration under 49 CFR part 365, subpart A, however, is not required. The hotel is providing service subject to the exemption in 49 U.S.C. 13506(a)(8)(A) and §372.117(a). The hotel's shuttle transportation of passengers is (1) incidental to transportation by aircraft, (2) limited to the transportation of passengers who have had an immediately prior or will have an immediately subsequent movement by air, and (3) confined to a zone encompassed by a 25-mile radius of the boundary of the airport at which the passengers arrive or depart. The hotel does not meet the exemption requirements of 49 U.S.C. 13506(a)(3) for a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the "local station of a carrier." The definition of carrier within this exemption means motor carrier, water carrier and freight forwarder but does not include air carrier. 49 U.S.C. 13102(3). However, the hotel only needs to meet the requirements of one exemption to not be subject to operating authority registration.

The hotel is providing indirectly compensated, for-hire transportation of passengers in interstate commerce in a vehicle with a seating capacity of 15 and is required

under §§387.33T and 387.33 to maintain \$1.5 million of financial responsibility.

*Scenario 2:* A hotel in Winchester, VA, located 12 miles outside of the zone encompassed by a 25-mile radius of the boundary of Washington Dulles International Airport, offers a courtesy van to take its guests to and from the airport in Dulles, VA. The van is designed to transport 15 passengers, including the driver, and has a GVW and GVWR of less than 10,000 pounds.

*Guidance:* This scenario describes for-hire transportation by a CMV as a part of continuous interstate movement, though some exemptions apply. Though the hotel is providing interstate transportation in a CMV, a 9 to 15 passenger vehicle operated for compensation, the hotel's van operation is eligible for the limited exception to regulatory applicability in §§390.3T(f)(6) and 390.3(f)(6).

This exemption does not relieve the hotel of the requirements in 49 CFR part 365 for operating authority registration. The hotel is providing interstate for-hire transportation (the costs for operating the shuttle van are included in the cost of the room, as an amenity) outside the zone that would qualify it for the incidental to air travel exemption within 49 U.S.C. 13506(a)(8)(A) and §372.117(a). Also, the hotel's transportation does not meet the exemption requirements of 49 U.S.C. 13506(a)(3) for a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a carrier. The definition of carrier applicable to this exemption, at 49 U.S.C. 13102(3), does not include air carrier. The hotel must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. The hotel is also required under §§387.33T and 387.33 to obtain, file, and maintain \$1.5 million of financial responsibility.

The hotel's 15-passenger van is not a CMV under §383.5. Therefore, drivers of these vehicles are not required to have CDLs and are not subject to the drug and alcohol testing regulations in 49 CFR part 382.

#### *Employer Related Passenger Transportation*

*Scenario 1:* A commercial building cleaning company owns and operates 15-passenger vans to transport its employees to client locations to perform cleaning services. The employer is located close to a State boundary, and employees are transported into a neighboring State. When employees are transported outside a specified distance from the company's single office location, the employer provides the transportation free of charge. However, when employees are transported wholly within the specified distance, the employer charges each employee a transportation fee and deducts that amount from the employee's pay. Most of this employee transportation is outside the commercial

zone of the municipality where the company's office is located and where passenger transportation originates. All of the company's drivers and vehicles are at some point involved in interstate passenger transportation outside the commercial zone.

*Guidance:* This scenario describes for-hire transportation by a CMV as a part of continuous interstate movement, though some exemptions apply. The company is operating 15-passenger vans for compensation in interstate commerce, satisfying the definition of a CMV under §390.5. Accordingly, the company must comply with the applicable regulations in 49 CFR parts 350 through 399. Because the employer charges each employee a transportation fee and deducts that amount from the employee's pay, the compensation is direct, and the company therefore does not qualify for the limited exception in §§390.3T(f)(6) and 390.3(f)(6) for 9 to 15 passenger-carrying CMVs operated not for direct compensation.

There are no exemptions to the commercial regulatory requirements for this interstate, for-hire motor vehicle operation. The company must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. The company is also required to obtain, maintain, and file financial responsibility of \$1.5 million, as required under §§387.33T and 387.33.

The drivers of these 15-passenger vans, however, are not required to have CDLs and are not subject to employer conducted controlled substances and alcohol testing because the vehicles are not CMVs as defined in §383.5. Although the drivers are not required to hold a valid CDL, they are subject to the general driver qualification regulations in part 391, including the requirements to be medically examined and certified in accordance with §§391.41, 391.43, and 391.45.

*Scenario 2:* A construction company owns and operates a bus designed to transport more than 15 passengers including the driver. The bus transports employees to work sites and does not charge a fee for the transportation. At the request of its employees, the company uses the bus on a Saturday during the summer to provide round-trip transportation for interested employees to an amusement park in a neighboring State. This trip is open only to employees and people the employees invite. The company collects money from each passenger. The transportation is not confined within a commercial zone.

*Guidance:* This scenario describes for-hire interstate transportation by a CMV as defined in §§390.5T and 390.5. The transportation is subject to all the applicable regulations in 49 CFR parts 350 through 399. The company must register for operating authority registration and USDOT number registration by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. In addition, the bus is also a CMV as de-

defined in 49 CFR 383.5, and the driver must hold a valid CDL with a Passenger endorsement and must comply with the drug and alcohol testing regulations in 49 CFR part 382.

If the company operates its CMV in interstate commerce only on rare occasions, FMCSA has jurisdiction over the company, such vehicle, and the driver of such vehicle for a 4-month period after a trip in interstate commerce. However, records must be retained for whatever period is required by the FMCSRs, even if that period exceeds 4 months.

Operating authority registration is required in this scenario only because the construction company provided a trip for compensation to the amusement park in another State. Operating authority registration would not be necessary if the company limited its transportation to the free transportation provided for employees to travel to work sites.

Finally, because the company operates passenger vehicles with a seating capacity of at least 16 in interstate commerce, it must maintain financial responsibility of at least \$5 million, as required under §§387.33T and 387.33. As long as the company is engaged in for-hire operations, evidence of financial responsibility must be maintained on file with FMCSA.

#### *Education-Related Passenger Transportation*

*Scenario 1:* A non-profit organization conducts educational tours with 15-passenger vans. All tours can be booked as part of a classroom course, or as a stand-alone tour. Each tour crosses either a State or international border, beyond a commercial zone. Passengers pay a single, inclusive of transportation fee whether they book a tour or a tour combined with a classroom lecture. The 15-passenger vans have a GVWR and actual GVW under 10,000 pounds.

*Guidance:* This scenario describes for-hire transportation by a CMV as defined in §§390.5T and 390.5, as a part of continuous interstate movement. The vans used by this organization are CMVs under §§390.5T and 390.5 because they have a passenger capacity of more than eight and are used to transport passengers for compensation in interstate commerce. However, the organization is eligible for the limited exception to regulatory applicability in §§390.3T(f)(6) and 390.3(f)(6) because (1) the vans are designed or used to transport between 9 and 15 passengers, (2) the organization does not receive direct compensation, and (3) the vans meet none of the alternative definitions of a CMV such as a GVW or GVWR of 10,001 pounds or more. The drivers of these vans do not need CDLs because the vehicles are not CMVs under §383.5; both their passenger capacity and weight are below the applicable thresholds. For the same reasons, the drivers of these vans are not subject to the drug and alcohol

testing regulations in 49 CFR part 382. The organization must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E because the operations clearly included interstate transportation for compensation in a motor vehicle and no exemptions from FMCSA's commercial regulatory authority apply.

The organization transports passengers across State lines and includes the cost of transportation in a flat rate fee. Its non-profit status is irrelevant. A carrier that receives compensation, even indirect compensation, is providing for-hire service, and, because the carrier operates beyond a commercial zone, it must obtain operating authority registration from FMCSA. This organization is not a youth or family camp, and the statutory exemption from operating authority registration for such camps that provide recreational or educational activities therefore does not apply. Further, the organization is engaged only in educational activities. Therefore, the exemption for providers of recreational activities does not apply.

Because the organization operates passenger vehicles with a seating capacity of 15 or fewer for hire in interstate commerce, the organization is required under §§387.33T and 387.33 to obtain, maintain, and file evidence of, \$1.5 million of financial responsibility.

*Scenario 2:* A school bus contractor is hired by a school district to transport high school athletes, faculty, and volunteers to and from an athletic competition in another State on a single day. During the following week, the same school bus contractor is hired by the same school district to transport elementary school students and faculty to and from a historic site in another State for an educational tour. The school bus used by the contractor is designed to transport more than 15 passengers including the driver.

*Guidance:* This scenario describes for-hire interstate transportation by a CMV as defined in §§390.5T and 390.5, however, some exemptions may apply. The contractor is not eligible for the exception for "school bus operations" in §§390.3T(f)(1) and 390.3(f)(1) because the operations are defined in §§390.5T and 390.5 as the transportation of school children and/or personnel "from home to school and from school to home." In this scenario, the students and faculty gather at the school and are transported, not from and to home, but from the school premises to out-of-State venues and then back to the school premises. The school bus contractor must obtain safety registration and a USDOT number under 49 U.S.C. 31134. The contractor must register by following the procedures in 49 CFR part 390 subpart E. In addition, the contractor is operating a school bus with a passenger capacity of at least 16, which also meets the definition of CMV under §383.5. The drivers of the school buses must therefore hold CDLS

with the applicable endorsements, and the employer of such drivers must administer a drug and alcohol testing program in compliance with part 382.

Although both examples of the school bus contractor's passenger transportation are for-hire in interstate commerce, the contractor is not required to obtain operating authority registration. In this scenario the contractor is engaged in transportation to or from school, and the transportation is organized, sponsored, and paid for by the school district. The regulatory exception in §372.103 and the statutory exemption in 49 U.S.C. 13506(a)(1) both apply to each type of passenger transportation conducted by the school bus contractor in this scenario.

Likewise, the school bus contractor qualifies for the exception in §387.27(b)(4) because it is a motor carrier operating under contract providing transportation of preprimary, primary, and secondary students for extra-curricular trips organized, sponsored, and paid for by a school district. Accordingly, the contractor is not required to comply with Federal financial responsibility requirements.

*Scenario 3:* A private university transports only student athletes and university employees to games, sometimes in other States, in university-owned buses, which are designed to transport more than 15 passengers including the driver. The passenger transportation is financed by an allotment in the university athletic department's budget.

*Guidance:* This scenario describes interstate transportation by a CMV as defined in §§390.5T and 390.5, however, some exemptions may apply. The private university is a private motor carrier of passengers (business) operating CMVs, as defined in §§390.5T and 390.5, in interstate commerce. The private university fits within this definition because the financing of passenger transportation comes from a university budget source, not from payments or charges for transportation either directly or embedded in other tuition and fees. The transportation is only available to students and university employees, not the public at large. Private universities typically operate as commercial enterprises, as the passenger transportation to sporting events is in furtherance of the university's business and are an element of the institution's operations. Thus, transportation of students and faculty is in furtherance of its commercial purpose. The possible absence of ticket sales to sporting event spectators does not affect the commercial nature of the enterprise.

Except as noted in the next paragraph, the transportation is subject to the requirements of 49 CFR parts 350 through 399 relevant to passenger carrier operations. The university must register by following the procedures in 49 CFR part 390 subpart E. In addition, the private university's bus is a

CMV as defined in § 383.5, and the driver must hold a valid CDL with a Passenger endorsement and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

There is a regulatory exception in § 391.69, however, from certain driver qualification requirements relating to applications for employment, investigations and inquiries, and road tests for single-employer drivers employed by a private motor carrier of passengers (business). Additionally, private motor carriers of passengers (business) may also continue to operate older buses manufactured before Federal fuel system requirements were adopted, provided the fuel system is maintained to the original manufacturer's standards (§ 393.67(a)(6)).

Because the private university is operating as a private motor carrier of passengers (business) it is not required to have operating authority registration. The operation is not for-hire because the private university does not receive payment for transportation services. Though in this scenario the transportation is not for-hire, it is important to reiterate that an entity's tax-exempt or non-profit status does not determine whether its passenger transportation is for-hire or private. Currently, Federal financial responsibility requirements do not apply to operations by private motor carriers of passengers (business).

*Scenario 4:* A private high school owns and operates buses to transport students, baseball team members, and faculty to games in another State. One vehicle is a school bus with a capacity of 48 passengers. Two other vehicles are mini-buses designed to transport 26 passengers including the driver, and one other vehicle is a van designed to transport 15 passengers including the driver. The school does not transport students from home to school or vice versa. The passenger transportation is financed by an allotment in the school's athletic department budget.

*Guidance:* This scenario describes some interstate transportation by a CMV as defined in §§ 390.5T and 390.5, however, some exemptions may apply. This scenario also describes some transportation outside the scope of FMCSA jurisdiction. The private high school is a private motor carrier of passengers (business) operating CMVs, as defined in §§ 390.5T and 390.5, in interstate commerce. The private high school fits within this definition because the financing of passenger transportation is from a general high school budget source, so there is no compensation for the transportation. The transportation is only available to students and school employees, not the public at large. Private schools typically operate as commercial enterprises as the passenger transportation to sporting events is in furtherance of the school's business, including its athletic activities which are an element of

the institution's operations. Thus, transportation of students and faculty is in furtherance of its commercial purpose. The possible absence of ticket sales to sporting event spectators does not affect the commercial nature of the enterprise.

The transportation in larger vehicles is subject to the requirements of 49 CFR parts 350 through 399 relevant to passenger carrier operations. The school must register by following the procedures in 49 CFR part 390 subpart E. Because the private high school is a private motor carrier of passengers (business), not providing interstate transportation for compensation, it is not required to have operating authority registration under 49 CFR part 365. Whether the private high school is tax-exempt or has a non-profit status does not determine whether its passenger transportation is for-hire or private. The school is not required to comply with Federal financial responsibility requirements.

In addition, other than the van, the private high school's vehicles are CMVs as defined in 49 CFR 383.5, and the drivers of these vehicles must have CDLs with Passenger endorsements and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

The van is not a CMV because it is designed to transport 15 passengers including the driver and it is not transporting passengers for compensation. A vehicle is considered a CMV only if it is used to transport 16 or more passengers in interstate commerce, regardless of the nature of compensation; or if it is used to transport 9 to 15 passengers including the driver for compensation in interstate commerce.

There is a regulatory exception in § 391.69, however, from certain driver qualification requirements relating to applications for employment, investigations and inquiries, and road tests for single-employer drivers employed by a private motor carrier of passengers (business). Additionally, private motor carriers of passengers (business) may continue to operate older buses manufactured before Federal fuel system requirements were adopted, provided the fuel system is maintained to the original manufacturer's standards (§ 393.67(a)(6)).

#### *Faith-Based Organizations and Passenger Transportation*

FMCSA frequently receives questions from religious and secular organizations regarding passenger-carrying vehicles the organizations own and use to transport their members and guests. The scenarios presented below are illustrative examples; the same principles apply to secular groups with similar operations.

*Scenario 1:* To raise funds, a faith-based organization organizes a one-time trip to an amusement park in a neighboring State. The organization advertises the trip on its

website and in various public places such as grocery stores, libraries, etc., making the trip open to the public. A per-person fee will cover admission to the amusement park and round-trip transportation. The faith-based organization will use its own bus, which is designed to transport more than 15 passengers including the driver. A group member is the volunteer bus driver. The passenger transportation is not confined to a commercial zone.

*Guidance:* This scenario describes for-hire interstate transportation by a CMV. The faith-based organization's bus is a CMV, as defined in §§390.5T and 390.5, operating for-hire in interstate commerce, and the organization is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in §383.5 because it is designed to transport 16 or more passengers; the driver of the organization's bus must therefore hold a valid CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

The organization must register by following the procedures in 49 CFR part 365 subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration, because it is receiving compensation for transportation in interstate commerce. No exemptions apply to this operation.

The faith-based organization is operating a passenger vehicle with a seating capacity of at least 16, for-hire in interstate commerce and is therefore required under §§387.33T and 387.33 to maintain \$5 million of financial responsibility.

*Scenario 2:* A faith-based organization owns a bus which it uses to transport some of its members to an associated organization in another State. It suggests participating members contribute money to help cover the fuel expense. The bus is designed to transport more than 15 passengers including the driver. The transportation of the faith-based organization members is not confined to a commercial zone.

*Guidance:* This scenario describes for-hire interstate transportation by a CMV. The faith-based organization's bus is a CMV, as defined in §§390.5T and 390.5, operating in interstate commerce, and the organization is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in §383.5 because it is designed to transport 16 or more passengers; the driver of the organization's bus must therefore hold a valid CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

The money provided from the organization's members for the trip constitutes di-

rect compensation. Any type of compensation for providing a passenger transportation service makes the faith-based organization a for-hire motor carrier of passengers. The organization must register by following the procedures in 49 CFR part 365 subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration.

The faith-based organization is using a bus with a seating capacity of 16 or more to transport passengers for hire in interstate commerce and is thus required under §§387.33T and 387.33 to maintain financial responsibility of at least \$5 million. The monetary contribution requested of each passenger constitutes compensation, making the faith-based organization a for-hire motor carrier.

*Scenario 3:* A faith-based organization sponsors a trip for its members to an amusement park in a neighboring State. The trip is announced in the organization's newsletters, but not advertised to the general public. Group members may invite friends and family, including non-members, to join. An event fee paid by all trip participants covers transportation, lodging, food, and admission to the amusement park. The organization's bus that will be used for the trip is designed to transport more than 15 passengers, including the driver. The trip will extend beyond the commercial zone of the city where the organization is located.

*Guidance:* This scenario describes for-hire, interstate transportation by a CMV. The faith-based organization's bus is a CMV, as defined in §§390.5T and 390.5, operating in interstate commerce, and the faith-based organization is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in §383.5 because it is designed to transport 16 or more passengers; the driver of the bus must therefore hold a valid CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

The organization is providing interstate motor vehicle transportation for compensation indirectly through the event fee, thus it must register by following the procedures in 49 CFR part 365 subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration. The organization is a for-hire motor carrier even though the trip is not available to the public at large.

The organization is an interstate for-hire motor carrier of passengers compensated indirectly through the event fee. Because there is no applicable exception, it must maintain the \$5 million of financial responsibility required to operate a vehicle with a seating capacity of at least 16 passengers (§§387.33T and 387.33).

*Scenario 4:* A high school cheerleading team wants to travel to a neighboring State to participate in a cheerleading competition. A parent of one cheerleader is a member of a faith-based organization that owns a bus designed to transport more than 15 passengers including the driver. The parent persuades the faith-based organization to take the team to the competition. The cheerleaders and their parents give the faith-based organization money for use of the bus, and the faith-based organization pays one of its members to drive it. The trip is not confined to a commercial zone.

*Guidance:* This scenario describes for-hire interstate transportation of passengers by a CMV. The faith-based organization's bus is a CMV, as defined in §390.5, operating for hire in interstate commerce, and the organization is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in §383.5 because it is designed to transport 16 or more passengers; the driver of the faith-based organization's bus must hold a valid CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

This is for hire interstate transportation of passengers by motor vehicle because the families pay the organization to use the bus and no exemptions apply to the operation. Thus, operating authority registration is required. The organization must register by following the procedures in 49 CFR part 365 subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration.

Likewise, because the faith-based organization is operating a passenger vehicle with a seating capacity of at least 16, for-hire in interstate commerce, it is required under §§387.33T and 387.33 to maintain \$5 million of financial responsibility.

*Scenario 5:* A faith-based organization with many charitable operations provides transportation to a variety of passengers—both members of the organization and nonmembers—for a variety of events. For example, paid and volunteer collectors are sent to donation sites, the faith-based organization's employees are taken to and from the location of coat and food drives, donors are transported to fundraising events, children in daycare are taken on trips, and various individuals are provided transportation for job training programs. The faith-based organization's daycare center charges a fee for its services which include interstate passenger transportation. The faith-based organization uses different types of vehicles to transport its passengers. Some have a seating capacity of 16 or more passengers, and others have a seating capacity of 15 or fewer passengers. All passenger-carrying vehicles are used throughout the faith-based organization's

various transportation operations. In addition, all of the faith-based organization's drivers operate a vehicle with a seating capacity of 16 or more passengers to transport the daycare children on interstate trips on at least an occasional basis. All of the various passengers are transported into another State.

*Guidance:* The daycare center-related transportation is for-hire interstate transportation of passengers by CMV. The organization operates CMVs, as defined in §§390.5T and 390.5, in interstate commerce as a for-hire motor carrier of passengers and is subject to the applicable FMCSRs in parts 350 through 399. The faith-based organization receives compensation through the collection of fees for services, including transportation, paid for the daycare, and all drivers and vehicles provide at least some transportation for the daycare. While some of the transportation operations are not for-hire, because all of the drivers and vehicles are used in all of the operations, the Agency considers the organization to be engaged in for-hire, interstate passenger transportation as well as private, interstate passenger transportation. While there is a limited exception from the safety regulations in parts 390 through 399 for smaller vehicles in §§390.3T(f)(6) and 390.3(f)(6), it does not apply to the organization because some of the organization's passenger-carrying vehicles are designed or used to transport 16 or more passengers in interstate commerce. In addition, because some of the vehicles are designed to transport 16 or more passengers, and all of the drivers operate all of the different vehicles on occasion, all the drivers must have CDLs with Passenger endorsements, and the faith-based organization must comply with the drug and alcohol testing regulations in part 382.

Because the faith-based organization receives indirect compensation through the fees charged for the daycare center, it is operating as an interstate, for-hire motor carrier of passengers. No exemption from operating authority registration requirements applies. The organization must register, therefore, by following the procedures in 49 CFR part 365 subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration.

Because the faith-based organization operates some passenger vehicles with a seating capacity of at least 16, for-hire in interstate commerce, it is required under §§387.33T and 387.33 to maintain \$5 million of financial responsibility.

*Scenario 6:* A religiously-affiliated group of singers and musicians travels to various locations to perform at events and ceremonies. The group owns and operates multiple vehicles to transport its members and their equipment. Each vehicle has a GVWR and GVW of 10,001 to 26,000 pounds and is designed to transport more than 15 passengers

including the driver. All the vehicles are driven between multiple States for performances. The hosting organizations ask event participants for donations which are provided to the musical group. Sometimes the musical group sells T-shirts, souvenirs, or other merchandise at the events.

*Guidance:* This scenario describes interstate transportation by CMV, but some exemptions may apply. The musical group is a private motor carrier of passengers (business) and is operating CMVs, as defined in §§390.5T and 390.5, in interstate commerce. The transportation is thus subject to 49 CFR parts 350 through 399 relevant to passenger carrier operations. The group is considered a private motor carrier of passengers (business) because the passenger transportation is not available to the public at large; but the receipt of money for a musical performance constitutes a business transaction, and a part of the furtherance of the musical group's commercial enterprise. Thus, the transportation of members and equipment has a commercial purpose. The possible absence of merchandise sales does not affect the commercial nature of the enterprise, as the primary purpose is promotion of the group's music, for which the group receives compensation. Whether a musical group is tax-exempt or has a non-profit status does not determine whether it is a business or nonbusiness. Finally, the transportation of passengers and equipment is an essential element of the group's operations, and such transportation is in furtherance of its commercial enterprise. All of the donations received may be used to cover the cost of fuel, maintenance, depreciation and insurance on the vehicle, but the transportation nevertheless furthers a commercial purpose.

Accordingly, the musical group must register by following the procedures in 49 CFR part 390 subpart E regarding USDOT number registration. In addition, because the musical group's vehicles are designed to transport more than 15 passengers including the driver, the drivers of these vehicles must have CDLs with a Passenger endorsement and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

There is a regulatory exception in §391.69, however, from certain driver qualification requirements relating to applications for employment, investigations and inquiries, and road tests for single-employer drivers employed by a private motor carrier of passengers (business). Additionally, private motor carriers of passengers (business) may also continue to operate older buses manufactured before Federal fuel system requirements were adopted, provided the fuel system is maintained to the original manufacturer's standards (§393.67(a)(6)).

The musical group's interstate transportation of its members is in furtherance of a commercial enterprise, but the group is not

receiving compensation for providing transportation. The compensation received is for their musical performance. The members of the group likewise do not pay a fee for their transportation. The musical group is thus a private motor carrier of passengers (business), and such carriers are not required to obtain operating authority registration.

The musical group is a private motor carrier of passengers (business), therefore, currently the group is not required to maintain evidence of financial responsibility on file with FMCSA.

Private motor carriers of passengers are not required to obtain operating authority registration and are not subject to the financial responsibility requirements.

#### *Miscellaneous Passenger Transportation*

*Scenario 1:* An assisted living apartment community is a commercial business that owns and operates a bus designed to transport more than 15 passengers, including the driver. The drivers are employees of the apartment community. The bus is used to transport residents to medical appointments, shopping centers, theaters, etc. Routine local transportation within the State is financed by general fees paid by all community residents. The community office assesses a special charge for entertainment-related transportation. The general public is not allowed to use the bus service. Some trips to shopping centers and theaters go into a neighboring State, but all transportation remains in the commercial zone of the community.

*Guidance:* This scenario describes for-hire interstate transportation by commercial motor vehicle, but some exemptions apply. The community is operating a CMV, as defined in §§390.5T and 390.5, in interstate commerce. The fact that all passenger transportation is entirely within a commercial zone is irrelevant for purposes of the "interstate commerce" component of the definition of CMV under §§390.5T and 390.5. The transportation is subject to all of the provisions in 49 CFR parts 350 through 399 relevant to passenger carrier operations. In addition, the 16-passenger van is also a CMV as defined in §383.5, and the driver therefore must hold a valid CDL with a Passenger endorsement and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

Although the community is an interstate for-hire motor carrier of passengers assessing special charges for entertainment trips to a neighboring State, operating authority registration is not required because the transportation is wholly within the commercial zone where the community is located (49 U.S.C. 13506(b)(1)). However, the community must register by following the procedures in 49 CFR part 390 subpart E regarding USDOT number registration because the community

operates a CMV, as defined in §§390.5T and 390.5, in interstate commerce.

Under §§387.33T and 387.33, the community must obtain and maintain \$5 million of financial responsibility because it is a for-hire motor carrier of passengers operating in interstate commerce and at least one of its vehicles has seating for 16 or more passengers. The general fees paid by the community residents cover a multitude of services including local transportation. This indirect compensation arrangement for transportation is service for-hire. The special charge for entertainment-related transportation is direct compensation and is also a for-hire service.

*Scenario 2:* A youth camp transports campers in 15-passenger vans from an airport to the camp site and back, from the camp site to parks and other locations in neighboring States, and to facilities for medical care, etc. Trips to and from the airport extend beyond a 25-mile radius from the boundary of the airport and the commercial zone of the municipality that falls within the 25-mile radius of the airport. Other trips also extend beyond a commercial zone. Campers and camp employees are the only transported passengers. The vans have a GVW and GVWR below 10,001 pounds. The camp collects payment for the participating youth with a total package fee.

*Guidance:* If a single fee covers all services provided by the camp including transportation, most of the safety regulations would not apply to the camp. Although the camp operates CMVs as defined in §§390.5T and 390.5 in interstate commerce (more than 8 passengers, for compensation), it would qualify for the exception in §§390.3T(f)(6) and 390.3(f)(6) for CMVs designed or used to transport between 9 and 15 passengers not for direct compensation, and its vans meet none of the alternative definitions of a CMV (such as a GVW or GVWR of 10,001 pounds or more). The organization would therefore be required to comply only with those requirements specified in §§390.3T(f)(6) and 390.3(f)(6). Furthermore, the camp must register by following the procedures in 49 CFR part 390 subpart E regarding USDOT number registration.

However, if the camp collects a specific fee for passenger transportation, it is then receiving direct compensation and does not qualify for the limited exception in §§390.3T(f)(6) and 390.3(f)(6). If direct compensation occurs, the camp must comply with the applicable regulations in 49 CFR parts 350 through 399 including motor carrier registration in accordance with §390.201. In the case of direct compensation, the drivers of these 15-passenger vans with a GVW and GVWR below 10,001 pounds are not required to hold a CDL and are not subject to employer conducted controlled substances and alcohol testing because such vehicles are not

CMVs as defined in §383.5. Although the drivers are not required to hold a CDL, they must be medically examined and certified in accordance with §§391.41, 391.43, and 391.45, and they are subject to the general driver qualification regulations in part 391 because such vehicles are CMVs as defined in §§390.5T and 390.5.

Though the camp is engaged in for-hire interstate transportation of passengers by motor vehicle, there is an exemption from operating authority registration requirements in 49 U.S.C. 13506(a)(16). This camp falls within the exemption, which limits the Agency's jurisdiction over the transportation of passengers by 9- to 15-passenger motor vehicles operated by youth or family camps that provide recreational or educational activities.

Nonetheless, because the camp is an interstate for-hire motor carrier of passengers compensated indirectly through camp fees, it must maintain \$1.5 million of financial responsibility (§§387.33T and 387.33). The camp is not required to maintain evidence of financial responsibility on file with FMCSA.

[87 FR 68372, Nov. 15, 2022]

## PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

### Subpart A—General

Sec.

391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.

391.2 General exceptions.

### Subpart B—Qualification and Disqualification of Drivers

391.11 General qualifications of drivers.

391.13 Responsibilities of drivers.

391.15 Disqualification of drivers.

### Subpart C—Background and Character

391.21 Application for employment.

391.23 Investigation and inquiries.

391.25 Annual inquiry and review of driving record.

391.27 [Reserved]

### Subpart D—Tests

391.31 Road test.

391.33 Equivalent of road test.

### Subpart E—Physical Qualifications and Examinations

391.41 Physical qualifications for drivers.