

ORIGINAL

Pipeline and Hazardous Materials Safety Admin., DOT

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on the non-protected side of the plate indicate a plate temperature in excess of 427 °C (800 °F).

(6) A minimum of three consecutive successful simulation fire tests must be performed for each thermal protection system.

3. *Simulated torch fire test.*

a. A torch-fire environment must be simulated in the following manner:

(1) The source of the simulated torch must be a hydrocarbon fuel with a flame temperature of 1,204 °C (2,200 °F), plus-or-minus 37.8 °C (100 °F), throughout the duration of the test. Furthermore, torch velocities must be 64.4 km/h ±16 km/h (40 mph ±10 mph) throughout the duration of the test.

(2) A square bare plate with thermal properties equivalent to the material of construction of the tank car must be used. The plate dimensions must be at least four feet by four feet by nominal 1.6 cm (0.625 inch) thick. The bare plate must be instrumented with not less than nine thermocouples to record the thermal response of the plate. The thermocouples must be attached to the surface not exposed to the simulated torch and must be divided into nine equal squares with a thermocouple placed in the center of each square.

(3) The bare plate holder must be constructed in such a manner that the only heat transfer to the back side of the plate is by heat conduction through the plate and not by other heat paths. The apex of the flame must be directed at the center of the plate.

(4) Before exposure to the simulated torch, none of the temperature recording devices may indicate a plate temperature in excess of 37.8 °C (100 °F) or less than 0 °C (32 °F).

(5) A minimum of two thermocouples must indicate 427 °C (800 °F) in four minutes, plus-or-minus 30 seconds, of torch simulation exposure.

b. A thermal protection system must be tested in the simulated torch-fire environment described in paragraph 3a of this appendix in the following manner:

(1) The thermal protection system must cover one side of the bare plate identical to that used to simulate a torch fire under paragraph 3a(2) of this appendix.

(2) The back of the bare plate must be instrumented with not less than nine thermocouples placed as described in paragraph 3a(2) of this appendix to record the thermal response of the material.

(3) Before exposure to the simulated torch, none of the thermocouples on the back side of the thermal protection system configuration may indicate a plate temperature in excess of 37.8 °C (100 °F) nor less than 0 °C (32 °F).

(4) The entire outside surface of the thermal protection system must be exposed to the simulated torch-fire environment.

(5) A torch-simulation test must be run for a minimum of 30 minutes. The thermal pro-

tection system must retard the heat flow to the plate so that none of the thermocouples on the backside of the bare plate indicate a plate temperature in excess of 427 °C (800 °F).

(6) A minimum of two consecutive successful torch-simulation tests must be performed for each thermal protection system.

[Amdt. 179-50, 60 FR 49078, Sept. 21, 1995, as amended at 75 FR 53597, Sept. 1, 2010]

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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AUTHORITY: 49 U.S.C. 5101-5128; 49 CFR 1.53.

SOURCE: Amdt. 180-2, 54 FR 25032, June 12, 1989, unless otherwise noted.

Subpart A—General

§ 180.1 Purpose and scope.

This part prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and testing of packagings, and any other function having an effect on the continuing qualification and use of a packaging under the requirements of this subchapter.

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§ 180.2 Applicability.

(a) Any person who performs a function prescribed in this part shall perform that function in accordance with this part.

(b) Any person who performs a function prescribed in this part is considered subject to the regulations of this subchapter when that person—

(1) Makes any representation indicating compliance with one or more of the requirements of this part; or

(2) Reintroduces into commerce a packaging that bears markings indicating compliance with this part.

[Amdt. 180-2, 54 FR 25032, June 12, 1989, as amended by Amdt. 180-2, 56 FR 27877, June 17, 1991]

§ 180.3 General requirements.

(a) No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this part, or a special permit pertaining to this part issued under subchapter A of this chapter, whether or not the packaging or container is intended to be used for the transportation of a hazardous material, unless it is marked, maintained, reconditioned, repaired, or retested, as appropriate, in accordance with this part, an approval issued thereunder, or a special permit issued under subchapter A of this chapter.

(b) The representations, markings, and certifications subject to the prohibitions of paragraph (a) of this section include:

(1) Identifications that include the letters "DOT", "MC", "ICC", or "UN";

(2) Special permit, approval, and registration numbers that include the letters "DOT";

(3) Test dates displayed in association with specification, registration, approval, or exemption markings indicating conformance to a test or retest requirement of this subchapter, an approval issued thereunder, or a special permit issued under subchapter A of this chapter;

(4) Documents indicating conformance to the testing, inspection, maintenance or other continuing qualification requirements of this part; and

(5) Sales literature, including advertising, indicating that the packaging

or container represented therein conforms to requirements contained in subchapter A or C of this chapter.

[Amdt. 180-2, 54 FR 25032, June 12, 1989, as amended by Amdt. 180-3, 58 FR 33306, June 16, 1993; 70 FR 73166, Dec. 9, 2005]

Subpart B [Reserved]

Subpart C—Qualification, Maintenance and Use of Cylinders

SOURCE: 67 FR 51660, Aug. 8, 2002, unless otherwise noted.

§ 180.201 Applicability.

This subpart prescribes requirements, in addition to those contained in parts 107, 171, 172, 173, and 178 of this chapter, for the continuing qualification, maintenance, or periodic requalification of DOT specification and exemption cylinders and UN pressure receptacles.

[71 FR 33894, June 12, 2006]

§ 180.203 Definitions.

As used in this section, the word "cylinder" includes UN pressure receptacles. In addition to the definitions contained in §171.8 of this subchapter, the following definitions apply to this subpart:

Commercially free of corrosive components means a hazardous material having a dew point at or below minus 46.7 °C (minus 52 °F) at 101kPa (1 atmosphere) and free of components that will adversely react with the cylinder (e.g. chemical stress corrosion).

Condemn means a determination that a cylinder is unserviceable for the continued transportation of hazardous materials in commerce and that the cylinder may not be restored by repair, rebuilding, requalification, or any other procedure.

Defect means an imperfection requiring removal of a cylinder from service.

Elastic expansion means a temporary increase in a cylinder's volume, due to application of pressure, that is lost when pressure is released (elastic expansion = total expansion minus permanent expansion).

Filled or charged means an introduction or presence of a hazardous material in a cylinder.

Non-corrosive service means a hazardous material that, in the presence of moisture, is not corrosive to the materials of construction of a cylinder (including valve, pressure relief device, etc.).

Over-heated means a condition in which the temperature of any portion of an aluminum cylinder has reached 176 °C (350 °F) or higher, or in which the temperature of any portion of a steel or nickel cylinder has reached 343 °C (650 °F) or higher.

Permanent expansion means a permanent increase in a cylinder's volume after the test pressure is released.

Proof pressure test means a pressure test by interior pressurization without the determination of a cylinder's expansion.

Rebuild means the replacement of a pressure part (e.g. a wall, head, or pressure fitting) by welding.

Rejected cylinder means a cylinder that cannot be used for the transportation of a hazardous material in commerce without repair, rebuilding, and requalification.

Repair means a procedure for correction of a rejected cylinder that may involve welding.

Requalification means the completion of a visual inspection and/or the test(s) required to be performed on a cylinder to determine its suitability for continued service.

Requalification identification number or RIN means a code assigned by DOT to uniquely identify a cylinder requalification, repair, or rebuilding facility.

Test pressure means the pressure used for the requalification of a cylinder.

Total expansion means the total increase in a cylinder's volume due to application of the test pressure.

Visual inspection means an internal or external visual examination, or both, performed as part of the cylinder requalification process.

Volumetric expansion test means a pressure test to determine the total and permanent expansion of a cylinder at a given pressure. The *volumetric expansion test* is conducted using the water jacket or direct expansion methods:

(1) *Water jacket method* means a volumetric expansion test to determine a

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cylinder's total and permanent expansion by measuring the difference between the volume of water the cylinder externally displaces at test pressure and the volume of water the cylinder externally displaces at ambient pressure.

(2) *Direct expansion method* means a volumetric expansion test to calculate a cylinder's total and permanent expansion by measuring the amount of water forced into a cylinder at test pressure, adjusted for the compressibility of water, as a means of determining the expansion.

[67 FR 51660, Aug. 8, 2002, as amended at 71 FR 33894, June 12, 2006]

§ 180.205 General requirements for requalification of specification cylinders.

(a) *General.* Each cylinder used for the transportation of hazardous materials must be an authorized packaging. To qualify as an authorized packaging, each cylinder must conform to this subpart, the applicable requirements specified in part 173 of this subchapter, and the applicable requirements of subpart C of part 178 of this subchapter.

(b) *Persons performing requalification functions.* No person may represent that a repair or requalification of a cylinder has been performed in accordance with the requirements in this subchapter unless that person holds a current approval issued under the procedural requirements prescribed in subpart I of part 107 of this chapter. No person may mark a cylinder with a RIN and a requalification date or otherwise represent that a DOT specification or special permit cylinder has been requalified unless all applicable requirements of this subpart have been met. A person who requalifies cylinders must maintain the records prescribed in § 180.215 at each location at which it inspects, tests, or marks cylinders.

(c) *Periodic requalification of cylinders.* Each cylinder bearing a DOT specification marking must be requalified and marked as specified in the Requalification Table in this subpart. Each cylinder bearing a DOT special permit number must be requalified and marked in conformance with this section and the terms of the applicable special permit. No cylinder may be

filled with a hazardous material and offered for transportation in commerce unless that cylinder has been successfully requalified and marked in accordance with this subpart. A cylinder may be requalified at any time during or before the month and year that the requalification is due. However, a cylinder filled before the requalification becomes due may remain in service until it is emptied. A cylinder with a specified service life may not be refilled and offered for transportation after its authorized service life has expired.

(1) Each cylinder that is requalified in accordance with the requirements specified in this section must be marked in accordance with § 180.213.

(2) Each cylinder that fails requalification must be:

(i) Rejected and may be repaired or rebuilt in accordance with § 180.211 or § 180.212, as appropriate; or

(ii) Condemned in accordance with paragraph (i) of this section.

(3) For DOT specification cylinders, the marked service pressure may be changed upon approval of the Associate Administrator and in accordance with written procedures specified in the approval.

(4) For a specification 3, 3A, 3AA, 3AL, 3AX, 3AXX, 3B, 3BN, or 3T cylinder filled with gases in other than Division 2.2, from the first requalification due on or after December 31, 2003, the burst pressure of a CG-1, CG-4, or CG-5 pressure relief device must be at test pressure with a tolerance of plus zero to minus 10%. An additional 5% tolerance is allowed when a combined rupture disc is placed inside a holder. This requirement does not apply if a CG-2, CG-3 or CG-9 thermally activated relief device or a CG-7 reclosing pressure valve is used on the cylinder.

(d) *Conditions requiring test and inspection of cylinders.* Without regard to any other periodic requalification requirements, a cylinder must be tested and inspected in accordance with this section prior to further use if—

(1) The cylinder shows evidence of dents, corrosion, cracked or abraded areas, leakage, thermal damage, or any other condition that might render it unsafe for use in transportation;

(2) The cylinder has been in an accident and has been damaged to an extent that may adversely affect its lading retention capability;

(3) The cylinder shows evidence of or is known to have been over-heated; or

(4) The Associate Administrator determines that the cylinder may be in an unsafe condition.

(e) *Cylinders containing Class 8 (corrosive) liquids.* A cylinder previously containing a Class 8 (corrosive) liquid may not be used to transport a Class 2 material in commerce unless the cylinder is—

(1) Visually inspected, internally and externally, in accordance with paragraph (f) of this section and the inspection is recorded as prescribed in §180.215;

(2) Requalified in accordance with this section, regardless of the date of the previous requalification;

(3) Marked in accordance with §180.213; and

(4) Decontaminated to remove all significant residue or impregnation of the Class 8 material.

(f) *Visual inspection.* Except as otherwise provided in this subpart, each time a cylinder is pressure tested, it must be given an internal and external visual inspection.

(1) The visual inspection must be performed in accordance with the following CGA Pamphlets: C-6 for steel and nickel cylinders (IBR, see §171.7 of this subchapter); C-6.1 for seamless aluminum cylinders (IBR, see §171.7 of this subchapter); C-6.2 for fiber reinforced composite special permit cylinders (IBR, see §171.7 of this subchapter); C-6.3 for low pressure aluminum cylinders (IBR, see §171.7 of this subchapter); C-8 for DOT 3HT cylinders (IBR, see §171.7 of this subchapter); and C-13 for DOT 8 series cylinders (IBR, see §171.7 of this subchapter).

(2) For each cylinder with a coating or attachments that would inhibit inspection of the cylinder, the coating or attachments must be removed before performing the visual inspection.

(3) Each cylinder subject to visual inspection must be approved, rejected, or condemned according to the criteria in the applicable CGA pamphlet.

(4) In addition to other requirements prescribed in this paragraph (f), each specification cylinder manufactured of aluminum alloy 6351-T6 and used in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), or oxygen service must be inspected for sustained load cracking in accordance with Appendix C of this part at the first scheduled 5-year requalification period after January 1, 2007, and every five years thereafter.

(g) *Pressure test.* (1) Unless otherwise provided, each cylinder required to be retested under this subpart must be retested by means suitable for measuring the expansion of the cylinder under pressure. Bands and other removable attachments must be loosened or removed before testing so that the cylinder is free to expand in all directions.

(2) The pressure indicating device of the testing apparatus must permit reading of pressures to within 1% of the minimum prescribed test pressure of each cylinder tested, except that for an analog device, interpolation to ½ of the marked gauge divisions is acceptable. The expansion-indicating device of the testing apparatus must also permit incremental reading of the cylinder expansion to 1% of the total expansion of each cylinder tested or 0.1 cc, whichever is larger. Midpoint visual interpolation is permitted.

(3) Each day before retesting, the retester shall confirm, by using a calibrated cylinder or other method authorized in writing by the Associate Administrator, that:

(i) The pressure-indicating device, as part of the retest apparatus, is accurate within ±1.0% of the prescribed test pressure of any cylinder tested that day. The pressure indicating device, itself, must be certified as having an accuracy of ±0.5%, or better, of its full range, and must permit readings of pressure from 90%-110% of the minimum prescribed test pressure of the cylinder to be tested. The accuracy of the pressure indicating device within the test system can be demonstrated at any point within 500 psig of the actual test pressure for test pressures at or above 3000 psig, or 10% of the actual test pressure for test pressures below 3000 psig.

(ii) The expansion-indicating device, as part of the retest apparatus, gives a stable reading of expansion and is accurate to $\pm 1.0\%$ of the total expansion of any cylinder tested or 0.1 cc, whichever is larger. The expansion-indicating device itself must have an accuracy of $\pm 0.5\%$, or better, of its full scale.

(4) The test equipment must be verified to be accurate within $\pm 1.0\%$ of the calibrated cylinder's pressure and corresponding expansion values. This may be accomplished by bringing the pressure to a value shown on the calibration certificate for the calibrated cylinder used and verifying that the resulting total expansion is within $\pm 1.0\%$ of the total expansion shown on the calibration certificate. Alternatively, calibration may be demonstrated by bringing the total expansion to a known value on the calibration certificate for the calibrated cylinder used and verifying that the resulting pressure is within $\pm 1.0\%$ of the pressure shown on the calibration certificate. The calibrated cylinder must show no permanent expansion. The retester must demonstrate calibration in conformance with this paragraph (g) to an authorized inspector on any day that it retests cylinders. A retester must maintain calibrated cylinder certificates in conformance with § 180.215(b)(4).

(5) Minimum test pressure must be maintained for at least 30 seconds, and as long as necessary for complete expansion of the cylinder. A system check may be performed at or below 90% of test pressure prior to the retest. In the case of a malfunction of the test equipment, the test may be repeated at a pressure increased by 10% or 100 psig, whichever is less. This paragraph (g) does not authorize retest of a cylinder otherwise required to be condemned under paragraph (i) of this section.

(6) Training materials may be used for training persons who requalify cylinders using the volumetric expansion test method.

(h) *Cylinder rejection.* A cylinder must be rejected when, after a visual inspection, it meets a condition for rejection under the visual inspection requirements of paragraph (f) of this section.

(1) Except as provided in paragraphs (h)(3) and (h)(4) of this section, a cyl-

inder that is rejected may not be marked as meeting the requirements of this section.

(2) The requalifier must notify the cylinder owner, in writing, that the cylinder has been rejected.

(3) Unless the cylinder is requalified in conformance with requirements in § 180.211, it may not be filled with a hazardous material and offered for transportation in commerce where use of a specification packaging is required.

(4) A rejected cylinder with a service pressure of less than 900 psig may be requalified and marked if the cylinder is repaired or rebuilt and subsequently inspected and tested in conformance with—

(i) The visual inspection requirements of paragraph (f) of this section;

(ii) Part 178 of this subchapter and this part;

(iii) Any special permit covering the manufacture, requalification, and/or use of that cylinder; and

(iv) Any approval required under § 180.211.

(i) *Cylinder condemnation.* (1) A cylinder must be condemned when—

(i) The cylinder meets a condition for condemnation under the visual inspection requirements of paragraph (f) of this section.

(ii) The cylinder leaks through its wall.

(iii) Evidence of cracking exists to the extent that the cylinder is likely to be weakened appreciably.

(iv) For a DOT specification cylinder, other than a DOT 4E aluminum cylinder or a special permit cylinder, permanent expansion exceeds 10 percent of total expansion.

(v) For a DOT 3HT cylinder—

(A) The pressure test yields an elastic expansion exceeding the marked rejection elastic expansion (REE) value.

(B) The cylinder shows evidence of denting or bulging.

(C) The cylinder bears a manufacture or an original test date older than twenty-four years or after 4380 pressurizations, whichever occurs first. If a cylinder is refilled, on average, more than once every other day, an accurate record of the number of rechargings must be maintained by the cylinder owner or the owner's agent.

(vi) For a DOT 4E aluminum cylinder, permanent expansion exceeds 12 percent of total expansion.

(vii) For a DOT special permit cylinder, permanent expansion exceeds the limit in the applicable special permit, or the cylinder meets another criterion for condemnation in the applicable special permit.

(viii) For an aluminum or an aluminum-lined composite special permit cylinder, the cylinder is known to have been or shows evidence of having been over-heated.

(2) When a cylinder must be condemned, the requalifier must—

(i) Stamp a series of X's over the DOT specification number and the marked pressure or stamp "CONDEMNED" on the shoulder, top head, or neck using a steel stamp;

(ii) For composite cylinders, securely affix to the cylinder a label with the word "CONDEMNED" overcoated with epoxy near, but not obscuring, the original cylinder manufacturer's label; or

(iii) As an alternative to the stamping or labeling as described in this paragraph (i)(2), at the direction of the owner, the requalifier may render the cylinder incapable of holding pressure.

(3) No person may remove or obliterate the "CONDEMNED" marking. In addition, the requalifier must notify the cylinder owner, in writing, that the cylinder is condemned and may not be filled with hazardous material and offered for transportation in commerce where use of a specification packaging is required.

[67 FR 51660, Aug. 8, 2002, as amended at 68 FR 24662, May 8, 2003; 68 FR 75764, Dec. 31, 2003; 70 FR 34077, June 13, 2005; 70 FR 73166, Dec. 9, 2005; 71 FR 51128, Aug. 29, 2006; 73 FR 4720, Jan. 28, 2008; 75 FR 53597, Sept. 1, 2010]

§ 180.207 Requirements for requalification of UN pressure receptacles.

(a) *General.* (1) Each UN pressure receptacle used for the transportation of hazardous materials must conform to the requirements prescribed in paragraphs (a), (b) and (d) in §180.205.

(2) No pressure receptacle due for requalification may be filled with a hazardous material and offered for transportation in commerce unless that pressure receptacle has been successfully requalified and marked in accordance with this subpart. A pressure receptacle may be requalified at any time during or before the month and year that the requalification is due. However, a pressure receptacle filled before the requalification becomes due may remain in service until it is emptied.

(3) No person may requalify a UN composite pressure receptacle for continued use beyond its 15-years authorized service life. A pressure receptacle with a specified service life may not be refilled and offered for transportation after its authorized service life has expired unless approval has been obtained in writing from the Associate Administrator.

(b) *Periodic requalification of UN pressure receptacles.* (1) Each pressure receptacle that is successfully requalified in accordance with the requirements specified in this section must be marked in accordance with §180.213. The requalification results must be recorded in accordance §180.215.

(2) Each pressure receptacle that fails requalification must be rejected or condemned in accordance with the applicable ISO requalification standard.

(c) *Requalification interval.* Each UN pressure receptacle that becomes due for periodic requalification must be requalified at the interval specified in the following table:

TABLE 1—REQUALIFICATION INTERVALS OF UN PRESSURE RECEPTACLES

Interval (years)	UN pressure receptacles/hazardous materials
10	Pressure receptacles for all hazardous materials except as noted below (also for dissolved acetylene, see paragraph (d)(3) of this section);
5	Composite pressure receptacles.
5	Pressure receptacles used for: All Division 2.3 materials. UN1013, Carbon dioxide.

TABLE 1—REQUALIFICATION INTERVALS OF UN PRESSURE RECEPTACLES—Continued

Interval (years)	UN pressure receptacles/hazardous materials
	UN1043, Fertilizer ammoniating solution with free ammonia. UN1051, Hydrogen cyanide, stabilized containing less than 3% water. UN1052, Hydrogen fluoride, anhydrous. UN1745, Bromine pentafluoride. UN1746, Bromine trifluoride. UN2073, Ammonia solution. UN2495, Iodine pentafluoride. UN2983, Ethylene Oxide and Propylene oxide mixture, not more than 30% ethylene oxide.

(d) *Requalification procedures.* Each UN pressure receptacle that becomes due for requalification must be requalified at the interval prescribed in paragraph (c) of this section and in accordance with the procedures contained in the following standard, as applicable. When a pressure test is performed on a UN pressure receptacle, the test must be a water jacket volumetric expansion test suitable for the determination of the cylinder expansion or a hydraulic proof pressure test. The test equipment must conform to the accuracy requirements in § 180.205(g). Alternative methods (e.g., acoustic emission) or requalification procedures may be performed if prior approval has been obtained in writing from the Associate Administrator.

(1) *Seamless steel:* Each seamless steel UN pressure receptacle, including MEGC's pressure receptacles, must be requalified in accordance with ISO 6406 (IBR, see § 171.7 of this subchapter). However, UN cylinders with a tensile strength greater than or equal to 950 MPa must be requalified by ultrasonic examination in accordance with ISO 6406.

(2) *Seamless UN aluminum:* Each seamless aluminum UN pressure recep-

tacle must be requalified in accordance with ISO 10461 (IBR, see § 171.7 of this subchapter).

(3) *Dissolved acetylene UN cylinders:* Each dissolved acetylene cylinder must be requalified in accordance with ISO 10462 (IBR, see § 171.7 of this subchapter). The porous mass and the shell must be requalified no sooner than 3 years, 6 months, from the date of manufacture. Thereafter, subsequent requalifications of the porous mass and shell must be performed at least once every ten years.

(4) *Composite UN cylinders:* Each composite cylinder must be inspected and tested in accordance with ISO 11623 (IBR, see § 171.7 of this subchapter).

[71 FR 33894, June 12, 2006, as amended at 71 FR 54397, Sept. 14, 2006]

§ 180.209 Requirements for requalification of specification cylinders.

(a) *Periodic qualification of cylinders.* Each specification cylinder that becomes due for periodic requalification, as specified in the following table, must be requalified and marked in conformance with the requirements of this subpart. Requalification records must be maintained in accordance with § 180.215. Table 1 follows:

TABLE 1—REQUALIFICATION OF CYLINDERS¹

Specification under which cylinder was made	Minimum test pressure (psig) ²	Requalification period (years)
DOT 3	3000 psig	5
DOT 3A, 3AA	5/3 times service pressure, except non-corrosive service (see § 180.209(g)).	5, 10, or 12 (see § 180.209(b), (f), (h), and (j))
DOT 3AL	5/3 times service pressure	5 or 12 (see § 180.209(j) and § 180.209(m) ³).
DOT 3AX, 3AAX	5/3 times service pressure	5
3B, 3BN	2 times service pressure (see § 180.209(g)).	5 or 10 (see § 180.209(f))
3E	Test not required.	
3HT	5/3 times service pressure	3 (see §§ 180.209(k) and 180.213(c))
3T	5/3 times service pressure	5
4AA480	2 times service pressure (see § 180.209(g)).	5 or 10 (see § 180.209(h))

TABLE 1—REQUALIFICATION OF CYLINDERS ¹—Continued

Specification under which cylinder was made	Minimum test pressure (psig) ²	Requalification period (years)
4B, 4BA, 4BW, 4B–240ET	2 times service pressure, except non-corrosive service (see § 180.209(g)).	5, 10, or 12 (see § 180.209(e), (f), and (j))
4D, 4DA, 4DS	2 times service	5
DOT 4E	2 times service pressure, except non-corrosive (see § 180.209(g)).	5
4L	Test not required.	
8, 8AL		10 or 20 (see § 180.209(i))
Exemption or special permit cylinder	See current exemption or special permit	See current exemption or special permit
Foreign cylinder (see § 173.301(j) of this subchapter for restrictions on use).	As marked on cylinder, but not less than 5/3 of any service or working pressure marking.	5 (see §§ 180.209(l) and 180.213(d)(2))

¹ Any cylinder not exceeding 2 inches outside diameter and less than 2 feet in length is excepted from volumetric expansion test.

² For cylinders not marked with a service pressure, see § 173.301a(b) of this subchapter.

(b) *DOT 3A or 3AA cylinders.* (1) A cylinder conforming to specification DOT 3A or 3AA with a water capacity of 56.7 kg (125 lb) or less that is removed from any cluster, bank, group, rack, or vehicle each time it is filled, may be requalified every ten years instead of every five years, provided the cylinder conforms to all of the following conditions:

(i) The cylinder was manufactured after December 31, 1945.

(ii) The cylinder is used exclusively for air; argon; cyclopropane; ethylene; helium; hydrogen; krypton; neon; nitrogen; nitrous oxide; oxygen; sulfur hexafluoride; xenon; chlorinated hydrocarbons, fluorinated hydrocarbons, liquefied hydrocarbons, and mixtures thereof that are commercially free from corroding components; permitted mixtures of these gases (see § 173.301(d) of this subchapter); and permitted mixtures of these gases with up to 30 percent by volume of carbon dioxide, provided the gas has a dew point at or below minus (52 °F) at 1 atmosphere.

(iii) Before each refill, the cylinder is removed from any cluster, bank, group, rack or vehicle and passes the hammer test specified in CGA Pamphlet C-6 (IBR, see § 171.7 of this subchapter).

(iv) The cylinder is dried immediately after hydrostatic testing to remove all traces of water.

(v) The cylinder is not used for underwater breathing.

(vi) Each cylinder is stamped with a five-pointed star at least one-fourth of an inch high immediately following the test date.

(2) If, since the last required requalification, a cylinder has not been used exclusively for the gases specifically identified in paragraph (b)(1)(ii) of this section, but currently conforms with all other provisions of paragraph (b)(1) of this section, it may be requalified every 10 years instead of every five years, provided it is first requalified and examined as prescribed by § 173.302a(b) (2), (3) and (4) of this subchapter.

(3) Except as specified in paragraph (b)(2) of this section, if a cylinder, marked with a star, is filled with a compressed gas other than as specified in paragraph (b)(1)(ii) of this section, the star following the most recent test date must be obliterated. The cylinder must be requalified five years from the marked test date, or prior to the first filling with a compressed gas, if the required five-year requalification period has passed.

(c) *DOT 4-series cylinders.* A DOT 4-series cylinder, except a 4L cylinder, that at any time shows evidence of a leak or of internal or external corrosion, denting, bulging or rough usage to the extent that it is likely to be weakened appreciably, or that has lost five percent or more of its official tare weight must be requalified before being refilled and offered for transportation. (Refer to CGA Pamphlet C-6 or C-6.3, as applicable, regarding cylinder weakening.) After testing, the actual tare weight must be recorded as the new tare weight.

(d) *Cylinders 5.44 kg (12 lb) or less with service pressures of 300 psig or less.* A cylinder of 5.44 (12 lb) or less water capacity authorized for service pressure of 300 psig or less must be given a complete external visual inspection at the time periodic requalification becomes due. External visual inspection must be in accordance with CGA Pamphlet C-6 or C-6.1 (IBR, see §171.7 of this subchapter). The cylinder may be proof pressure tested. The test is successful if the cylinder, when examined under test pressure, does not display a defect described in §180.205(i)(1) (ii) or (iii). Upon successful completion of the test and inspection, the cylinder must be marked in accordance with §180.213.

(e) *Proof pressure test* A cylinder made in conformance with specifications DOT 4B, 4BA, 4BW, or 4E used exclusively for: liquefied petroleum gas that meets the detail requirement limits in Table I of ASTM D 1835, "Standard Specification for Liquefied Petroleum (LP) Gases" (IBR see §171.7 of this subchapter) or an equivalent standard containing the same limits; anhydrous dimethylamine; anhydrous methylamine; anhydrous trimethylamine; methyl chloride; methylacetylene-propadiene stabilized; or dichlorodifluoromethane, difluoroethane, difluorochloroethane, chlorodifluoromethane, chlorotetrafluoroethane, trifluorochloroethylene, or mixture thereof, or mixtures of one or more with trichlorofluoromethane; and commercially free from corroding components and protected externally by a suitable corrosion-resistant coating (such as galvanizing or painting) may be requalified by volumetric expansion testing every 12 years instead of every five years. As an alternative, the cylinder may be subjected to a proof pressure test at least two times the marked service pressure, but this latter type of test must be repeated every seven years after expiration of the first 12-year period. When subjected to a proof pressure test, the cylinder must be carefully examined under test pressure and removed from service if a leak or defect is found.

(f) *Poisonous materials.* A cylinder conforming to specification DOT 3A, 3AA, 3B, 4BA, or 4BW having a service pressure of 300 psig or less and used ex-

clusively for methyl bromide, liquid; mixtures of methyl bromide and ethylene dibromide, liquid; mixtures of methyl bromide and chlorpicrin, liquid; mixtures of methyl bromide and petroleum solvents, liquid; or methyl bromide and nonflammable, nonliquefied compressed gas mixtures, liquid; commercially free of corroding components, and protected externally by a suitable corrosion resistant coating (such as galvanizing or painting) and internally by a suitable corrosion resistant lining (such as galvanizing) may be tested every 10 years instead of every five years, provided a visual internal and external examination of the cylinder is conducted every five years in accordance with CGA Pamphlet C-6. The cylinder must be examined at each filling, and rejected if a dent, corroded area, leak or other condition indicates possible weakness.

(g) *Visual inspections.* A cylinder conforming to a specification listed in the table in this paragraph and used exclusively in the service indicated may, instead of a periodic hydrostatic test, be given a complete external visual inspection at the time periodic requalification becomes due. External visual inspection must be in accordance with CGA Pamphlet C-6 or C-6.3, as applicable (IBR, see §171.7 of this subchapter). When this inspection is used instead of hydrostatic pressure testing, subsequent inspections are required at five-year intervals after the first inspection. After May 31, 2004, inspections must be made only by persons holding a current RIN and the results recorded and maintained in accordance with §180.215. Records must include: date of inspection (month and year); DOT specification number; cylinder identification (registered symbol and serial number, date of manufacture, and owner); type of cylinder protective coating (including statement as to need of refinishing or recoating); conditions checked (e.g., leakage, corrosion, gouges, dents or digs in shell or heads, broken or damaged footing or protective ring or fire damage); disposition of cylinder (returned to service, returned to cylinder manufacturer for repairs or condemned). A cylinder passing requalification by the external visual inspection must be marked in accordance

with §180.213. Specification cylinders must be in exclusive service as shown in the following table:

Cylinders conforming to—	Used exclusively for—
DOT 3A, DOT 3AA, DOT 3A480X, DOT 4AA480	Anhydrous ammonia of at least 99.95% purity.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW.	Butadiene, inhibited, that is commercially free from corroding components.
DOT 3A, DOT 3A480X, DOT 3AA, DOT 3B, DOT 4AA480, DOT 4B, DOT 4BA, DOT 4BW.	Cyclopropane that is commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Chlorinated hydrocarbons and mixtures thereof that are commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Fluorinated hydrocarbons and mixtures thereof that are commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Liquefied hydrocarbon gas that is commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3A480X, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Liquefied petroleum gas that meets the detail requirements limits in Table 1 of ASTM 1835, Standard Specification for Liquefied Petroleum (LP) Gases (incorporated by reference; see § 171.7 of this subchapter) or an equivalent standard containing the same limits.
DOT 3A, DOT 3AA, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Methylacetylene-propadiene, stabilized, that is commercially free from corroding components.
DOT 3A, DOT 3AA, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW ..	Anhydrous mono, di, trimethylamines that are commercially free from corroding components.
DOT 4B240, DOT 4BW240	Ethyleneimine, stabilized.

(h) *Cylinders containing anhydrous ammonia.* A cylinder conforming to specification DOT 3A, 3A480X, or 4AA480 used exclusively for anhydrous ammonia, commercially free from corroding components, and protected externally by a suitable corrosion-resistant coating (such as paint) may be requalified every 10 years instead of every five years.

(i) *Requalification of DOT-8 series cylinders.* (1) Each owner of a DOT-8 series cylinder used to transport acetylene must have the cylinder shell and the porous filler requalified in accordance with CGA Pamphlet C-13 (IBR, see §171.7 of this subchapter). Requalification must be performed in accordance with the following schedule:

Date of cylinder manufacture	Shell (visual inspection) requalification		Porous filler requalification	
	Initial	Subsequent	Initial	Subsequent
Before January 1, 1991	Before January 1, 2001	10 years	Before January 1, 2011	Not required.
On or after January 1, 1991.	10 years ¹	10 years	5 to 20 years ²	Not required.

¹ Years from the date of cylinder manufacture.

² No sooner than 5 years, and no later than 20 years from the date of manufacture.

(2) Unless requalified and marked in accordance with CGA Pamphlet C-13 before October 1, 1994, an acetylene cylinder must be requalified by a person who holds a current RIN.

(3) If a cylinder valve is replaced, a cylinder valve of the same weight must be used or the tare weight of the cylinder must be adjusted to compensate for valve weight differential.

(4) The person performing a visual inspection or requalification must record the results as specified in § 180.215.

(5) The person performing a visual inspection or requalification must mark the cylinder as specified in § 180.213.

(j) *Cylinder used as a fire extinguisher.* Only a DOT specification cylinder used as a fire extinguisher and meeting Special Provision 18 in § 172.102(c)(1) of this subchapter may be requalified in accordance with this paragraph (j).

(1) A DOT 4B, 4BA, 4B240ET or 4BW cylinder may be tested as follows:

(i) For a cylinder with a water capacity of 5.44 kg (12 lb) or less, by volumetric expansion test using the water jacket method or by proof pressure

test. A requalification must be performed by the end of 12 years after the original test date and at 12-year intervals thereafter.

(ii) For a cylinder having a water capacity over 5.44 kg (12 lb)—

(A) *By proof pressure test.* A requalification must be performed by the end of 12 years after the original test date and at 7-year intervals; or

(B) *By volumetric expansion test using the water jacket method.* A requalification must be performed 12 years after the original test date and at 12-year intervals thereafter.

(2) A DOT 3A, 3AA, or 3AL cylinder must be requalified by volumetric expansion test using the water jacket method. A requalification must be performed 12 years after the original test date and at 12-year intervals thereafter.

(k) *3HT cylinders.* In addition to the other requirements of this section, a cylinder marked DOT-3HT must be requalified in accordance with CGA C-8 (IBR, see § 171.7 of this subchapter).

(l) *Requalification of foreign cylinders filled for export.* A cylinder manufactured outside the United States, other than as provided in §§ 171.12(a) and 171.23(a) of this subchapter, that has not been manufactured, inspected, tested and marked in accordance with part 178 of this subchapter may be filled with compressed gas in the United

States, and shipped solely for export if it meets the following requirements, in addition to other requirements of this subchapter:

(1) It has been inspected, tested and marked (with only the month and year of test) in conformance with the procedures and requirements of this subpart or the Associate Administrator has authorized the filling company to fill foreign cylinders under an alternative method of qualification; and

(2) It is offered for transportation in conformance with the requirements of § 171.12(a)(4) or § 171.23(a)(4) of this subchapter.

(m) *DOT-3AL cylinders manufactured of 6351-T6 aluminum alloy.* In addition to the periodic requalification and marking described in § 180.205, each cylinder manufactured of aluminum alloy 6351-T6 used in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), or oxygen service must be requalified and inspected for sustained load cracking in accordance with the non-destructive examination method described in the following table. Each cylinder with sustained load cracking that has expanded into the neck threads must be condemned in accordance with § 180.205(i). This provision does not apply to cylinders used for carbon dioxide, fire extinguisher or other industrial gas service.

REQUALIFICATION AND INSPECTION OF DOT-3AL CYLINDERS MADE OF ALUMINUM ALLOY 6351-T6

Requalification requirement	Examination procedure ¹	Sustained Load Cracking Condemnation Criteria ²	Requalification period (years)
Eddy current examination combined with visual inspection.	Eddy current—In accordance with Appendix C of this part. Visual inspection—In accordance with CGA Pamphlet C-6.1 (IBR; see § 171.7 of this subchapter).	Any crack in the neck or shoulder of 2 thread lengths or more.	5

¹ The requalifier performing eddy current must be familiar with the eddy current equipment and must standardize (calibrate) the system in accordance with the requirements provided in Appendix C to this part.

² The eddy current must be applied from the inside of the cylinder's neck to detect any sustained load cracking that has expanded into the neck threads.

[67 FR 51660, Aug. 8, 2002, as amended at 68 FR 24662, May 8, 2003; 68 FR 55544, Sept. 26, 2003; 68 FR 48572, Aug. 14, 2003; 68 FR 75764, Dec. 31, 2003; 70 FR 73166, Dec. 9, 2005; 71 FR 51128, Aug. 29, 2005; 72 FR 55696, Oct. 1, 2007; 74 FR 53189, Oct. 16, 2009]

EDITORIAL NOTE: The following amendment could not be incorporated into § 180.209 because of the inaccurate amendatory instruc-

tion. For the convenience of the user the amendatory instruction and text is set forth as follows:

At 71 FR 54397, Sept. 14, 2006, § 180.209 was amended in paragraph (a)(1), the first and third entries in Table 1 were revised to read as follows:

§ 180.209 Requirements for requalification of specification cylinders. (1) * * *

(a) * * *

TABLE 1—REQUALIFICATION OF CYLINDERS

Specification under which cylinder was made	Minimum test pressure (psig) ²	Requalification period (years)
4B, 4BA, 4BW, 4B240ET	2 times service pressure, except non-corrosive (see § 180.209(g)).	5, 7, 10, or 12 (see § 180.209(e), (f), and (j)).
DOT 4E	2 times service pressure, except non-corrosive (see § 180.209(g)).	5 or 7 (see § 180.209(e)).

§ 180.211 Repair, rebuilding and reheat treatment of DOT-4 series specification cylinders.

(a) *General requirements for repair and rebuilding.* Any repair or rebuilding of a DOT 4-series cylinder must be performed by a person holding an approval as specified in §107.805 of this chapter. A person performing a rebuild function is considered a manufacturer subject to the requirements of §178.2(a)(2) and subpart C of part 178 of this subchapter. The person performing a repair, rebuild, or reheat treatment must record the test results as specified in §180.215. Each cylinder that is successfully repaired or rebuilt must be marked in accordance with § 180.213.

(b) *General repair requirements.* Each repair of a DOT 4-series cylinder must be made in accordance with the following conditions:

(1) The repair and the inspection of the work performed must be made in accordance with the requirements of the cylinder specification.

(2) The person performing the repair must use the procedure, equipment, and filler metal or brazing material as authorized by the approval issued under §107.805 of this chapter.

(3) Welding and brazing must be performed on an area free from contaminants.

(4) A weld defect, such as porosity in a pressure retaining seam, must be completely removed before re-welding. Puddling may be used to remove a weld defect only by the tungsten inert gas shielded arc process.

(5) After removal of a non-pressure attachment and before its replacement,

the cylinder must be given a visual inspection in accordance with §180.205(f).

(6) Reheat treatment of DOT 4B, 4BA or 4BW specification cylinders after replacement of non-pressure attachments is not required when the total weld material does not exceed 20.3 cm (8 inches). Individual welds must be at least 7.6 cm (3 inches) apart.

(7) After repair of a DOT 4B, 4BA or 4BW cylinder, the weld area must be leak tested at the service pressure of the cylinder.

(8) Repair of weld defects must be free of cracks.

(9) When a non-pressure attachment with the original cylinder specification markings is replaced, all markings must be transferred to the attachment on the repaired cylinder.

(10) Walls, heads or bottoms of cylinders with defects or leaks in base metal may not be repaired, but may be replaced as provided for in paragraph (d) of this section.

(c) *Additional repair requirements for 4L cylinders.* (1) Repairs to a DOT 4L cylinder must be performed in accordance with paragraphs (a) and (b) of this section and are limited to the following:

(i) The removal of either end of the insulation jacket to permit access to the cylinder, piping system, or neck tube.

(ii) The replacement of the neck tube. At least a 13 mm (0.51 inch) piece of the original neck tube must be protruding above the cylinder's top end. The original weld attaching the neck tube to the cylinder must be sound and the replacement neck tube must be

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welded to this remaining piece of the original neck tube.

(iii) The replacement of material such as, but not limited to, the insulating material and the piping system within the insulation space is authorized. The replacement material must be equivalent to that used at the time of original manufacture.

(iv) Other welding procedures that are permitted by CGA Pamphlet C-3 (IBR, see §171.7 of this subchapter), and not excluded by the definition of "re-build," are authorized.

(2) After repair, the cylinder must be—

(i) Pressure tested in accordance with the specifications under which the cylinder was originally manufactured;

(ii) Leak tested before and after assembly of the insulation jacket using a mass spectrometer detection system; and

(iii) Tested for heat conductivity requirements.

(d) *General rebuilding requirements.* (1) The rebuilding of a DOT 4-series cylinder must be made in accordance with the following requirements:

(i) The person rebuilding the cylinder must use the procedures and equipment as authorized by the approval issued under §107.805 of this chapter.

(ii) After removal of a non-pressure component and before replacement of any non-pressure component, the cylinder must be visually inspected in accordance with CGA Pamphlet C-6 (IBR, see §171.7 of this subchapter).

(iii) The rebuilder may rebuild a DOT 4B, 4BA or 4BW cylinder having a water capacity of 9.07 kg (20 lb) or greater by replacing a head of the cylinder using a circumferential joint. When this weld joint is located at other than an original welded joint, a notation of this modification must be shown on the Manufacturer's Report of Rebuilding in §180.215(c)(2). The weld joint must be on the cylindrical section of the cylinder.

(iv) Any welding and the inspection of the rebuilt cylinder must be in accordance with the requirements of the applicable cylinder specification and the following requirements:

(A) Rebuilding of any cylinder involving a joint subject to internal pres-

sure may only be performed by fusion welding;

(B) Welding must be performed on an area free from contaminants; and

(C) A weld defect, such as porosity in a pressure retaining seam, must be completely removed before re-welding. Puddling may be used to remove a weld defect only by using the tungsten inert gas shielded arc process.

(2) Any rebuilt cylinder must be—

(i) Heat treated in accordance with paragraph (f) of this section;

(ii) Subjected to a volumetric expansion test on each cylinder. The results of the tests must conform to the applicable cylinder specification;

(iii) Inspected and have test data reviewed to determine conformance with the applicable cylinder specification; and

(iv) Made of material conforming to the specification. Determination of conformance shall include chemical analysis, verification, inspection and tensile testing of the replaced part. Tensile tests must be performed on the replaced part after heat treatment by lots defined in the applicable specification.

(3) For each rebuilt cylinder, an inspector's report must be prepared to include the information listed in §180.215(c).

(4) Rebuilding a cylinder with brazed seams is prohibited.

(5) When an end with the original cylinder specification markings is replaced, all markings must be transferred to the rebuilt cylinder.

(e) *Additional rebuilding requirements for DOT 4L cylinders.* (1) The rebuilding of a DOT 4L cylinder must be performed in accordance with paragraph (d) of this section. Rebuilding of a DOT 4L cylinder is:

(i) Substituting or adding material in the insulation space not identical to that used in the original manufacture of that cylinder;

(ii) Making a weld repair not to exceed 150 mm (5.9 inches) in length on the longitudinal seam of the cylinder or 300 mm (11.8 inches) in length on a circumferential weld joint of the cylinder; or

(iii) Replacing the outer jacket.

(2) Reheat treatment of cylinders is prohibited.

(3) After rebuilding, each inner containment vessel must be proof pressure tested at 2 times its service pressure. Each completed assembly must be leak-tested using a mass spectrometer detection system.

(f) *Reheat treatment.* (1) Prior to reheat treatment, each cylinder must be given a visual inspection, internally and externally, in accordance with § 180.205(f).

(2) Cylinders must be segregated in lots for reheat treatment. The reheat treatment and visual inspection must be performed in accordance with the specification for the cylinders except as provided in paragraph (f)(4) of this section.

(3) After reheat treatment, each cylinder in the lot must be subjected to a volumetric expansion test and meet the acceptance criteria in the applicable specification or be scrapped.

(4) After all welding and heat treatment, a test of the new weld must be performed as required by the original specification. The test results must be recorded in accordance with § 180.215.

[67 FR 51660, Aug. 8, 2002, as amended at 68 FR 24664, May 8, 2003; 68 FR 75764, Dec. 31, 2003; 71 FR 54398, Sept. 14, 2006]

§ 180.212 Repair of seamless DOT 3-series specification cylinders and seamless UN pressure receptacles.

(a) *General requirements for repair of DOT 3-series cylinders and UN pressure receptacles.* (1) No person may repair a DOT 3-series cylinder or a seamless UN pressure receptacle unless—

(i) The repair facility holds an approval issued under the provisions in § 107.805 of this chapter; and

(ii) Except as provided in paragraph (b) of this section, the repair and the inspection is performed under the provisions of an approval issued under subpart H of Part 107 of this chapter and conform to the applicable cylinder specification or ISO standard contained in part 178 of this chapter.

(2) The person performing the repair must prepare a report containing, at a minimum, the results prescribed in § 180.215.

(b) *Repairs not requiring prior approval.* Approval is not required for the following specific repairs:

(1) The removal and replacement of a neck ring or foot ring on a DOT 3A, 3AA or 3B cylinder or a UN pressure receptacle that does not affect a pressure part of the cylinder when the repair is performed by a repair facility or a cylinder manufacturer of these types of cylinders. The repair may be made by welding or brazing in conformance with the original specification. After removal and before replacement, the cylinder must be visually inspected and any defective cylinder must be rejected. The heat treatment, testing and inspection of the repair must be performed under the supervision of an inspector and must be performed in accordance with the original specification.

(2) External re-threading of DOT 3AX, 3AAX or 3T specification cylinders or a UN pressure receptacle mounted in a MEGC; or the internal re-threading of a DOT-3 series cylinder or a seamless UN pressure receptacle when performed by a cylinder manufacturer of these types of cylinders. The repair work must be performed under the supervision of an independent inspection agency. Upon completion of the re-threading, the threads must be gauged in accordance with Federal Standard H-28 or an equivalent standard containing the same specification limits. The re-threaded cylinder must be stamped clearly and legibly with the words "RETHREAD" on the shoulder, top head, or neck. No DOT specification cylinder or UN cylinder may be re-threaded more than one time without approval of the Associate Administrator.

[71 FR 33895, June 12, 2006, as amended at 71 FR 54398, Sept. 14, 2006; 72 FR 55697, Oct. 1, 2007]

§ 180.213 Requalification markings.

(a) *General.* Each cylinder or UN pressure receptacle requalified in accordance with this subpart with acceptable results must be marked as specified in this section. Required specification markings may not be altered or removed.

(b) *Placement of markings.* Each cylinder must be plainly and permanently marked on the metal of the cylinder as permitted by the applicable specification. Unless authorized by the cylinder

specification, marking on the cylinder sidewall is prohibited.

(1) Requalification and required specification markings must be legible so as to be readily visible at all times. Illegible specification markings may be remarked on the cylinder as provided by the original specification. Requalification markings may be placed on any portion of the upper end of the cylinder excluding the sidewall, as provided in this section. Requalification and required specification markings that are illegible may be reproduced on a metal plate and attached as provided by the original specification.

(2) Previous requalification markings may not be obliterated, except that, when the space originally provided for requalification dates becomes filled, additional dates may be added as follows:

(i) All preceding requalification dates may be removed by peening provided that—

(A) Permission is obtained from the cylinder owner;

(B) The minimum wall thickness is maintained in accordance with manufacturing specifications for the cylinder; and

(C) The original manufacturing test date is not removed.

(ii) When the cylinder is fitted with a footing, additional dates may be marked on the external surface of the footing.

(c) *Requalification marking method.* The depth of requalification markings may not be greater than specified in the applicable specification. The markings must be made by stamping, engraving, scribing or other method that produces a legible, durable mark.

(1) A cylinder used as a fire extinguisher (§180.209(j)) may be marked by using a pressure sensitive label.

(2) For a DOT 3HT cylinder, the test date and RIN must be applied by low-stress steel stamps to a depth no greater than that prescribed at the time of manufacture. Stamping on the sidewall is not authorized.

(3) For a composite cylinder, the requalification markings must be applied on a pressure sensitive label, securely affixed in a manner prescribed by the cylinder manufacturer, near the original manufacturer's label. Stamping of

the composite surface is not authorized.

(d) *Requalification markings.* Each cylinder successfully passing requalification must be marked with the RIN set in a square pattern, between the month and year of the requalification date. The first character of the RIN must appear in the upper left corner of the square pattern; the second in the upper right; the third in the lower right; and the fourth in the lower left. Example: A cylinder requalified in September 2006, and approved by a person who has been issued RIN "A123", would be marked plainly and permanently into the metal of the cylinder in accordance with location requirements of the cylinder specification or on a metal plate permanently secured to the cylinder in accordance with paragraph (b) of this section. An example of the markings prescribed in this paragraph (d) is as follows:

A	1		
9		06	X
	32		

Where:

"9" is the month of requalification

"A123" is the RIN

"06" is the year of requalification, and

"X" represents the symbols described in paragraphs (f)(2) through (f)(8) of this section.

(1) Upon written request, variation from the marking requirement may be approved by the Associate Administrator.

(2) Exception. A cylinder subject to the requirements of §171.23(a)(4) of this subchapter may not be marked with a RIN.

(e) *Size of markings.* The size of the markings must be at least 6.35 mm (¼ in.) high, except RIN characters must be at least 3.18 mm (⅛ in.) high.

(f) *Marking illustrations.* Examples of required requalification markings for DOT specification and special permit cylinders are illustrated as follows:

(1) For designation of the 5-year volumetric expansion test, 10-year volumetric expansion test for UN cylinders and cylinders conforming to §180.209(f)

and (h), or 12-year volumetric expansion test for fire extinguishers conforming to §173.309(b) of this subchapter and cylinders conforming to §180.209(e) and 180.209(g), the marking is as illustrated in paragraph (d) of this section.

(2) For designation of the 10-year volumetric expansion test for cylinders conforming to §180.209(b), the marking is as illustrated in paragraph (d) of this section, except that the "X" is replaced with a five-point star.

(3) For designation of special filling limits up to 10% in excess of the marked service pressure for cylinders conforming to §173.302a(b) of this subchapter, the marking is as illustrated in paragraph (d) of this section, except that the "X" is replaced with a plus sign "+".

(4) For designation of the proof pressure test, the marking is as illustrated in paragraph (d) of this section, except that the "X" is replaced with the letter "S".

(5) For designation of the 5-year external visual inspection for cylinders conforming to §180.209(g), the marking is as illustrated in paragraph (d) of this section, except that the "X" is replaced with the letter "E".

(6) For designation of DOT 8 series cylinder shell requalification only, the marking is as illustrated in paragraph (d) of this section, except that the "X" is replaced with the letter "S".

(7) For designation of DOT 8 series and UN cylinder shell and porous filler requalification, the marking is as illustrated in paragraph (d) of this section, except that the "X" is replaced with the letters "FS."

(8) For designation of a non-destructive examination combined with a visual inspection, the marking is as illustrated in paragraph (d) of this section, except that the "X" is replaced with the type of test performed, for example the letters "AE" for acoustic emission or "UE" for ultrasonic examination.

(9) For designation of the eddy current examination combined with a visual inspection, the marking is as illustrated in paragraph (d) of this section,

except the "X" is replaced with the letters "VE."

[67 FR 51660, Aug. 8, 2002, as amended at 70 FR 73166, Dec. 9, 2005; 71 FR 33896, June 12, 2006; 71 FR 51128, Aug. 29, 2006; 71 FR 78635, Dec. 29, 2006; 75 FR 53597, Sept. 1, 2010]

§ 180.215 Reporting and record retention requirements.

(a) *Facility records.* A person who requalifies, repairs or rebuilds cylinders must maintain the following records where the requalification is performed:

(1) Current RIN issuance letter;

(2) If the RIN has expired and renewal is pending, a copy of the renewal request;

(3) Copies of notifications to Associate Administrator required under §107.805 of this chapter;

(4) Current copies of those portions of this subchapter applicable to its cylinder requalification and marking activities at that location;

(5) Current copies of all special permits governing exemption cylinders requalified or marked by the requalifier at that location; and

(6) The information contained in each applicable CGA or ASTM standard incorporated by reference in §171.7 of this subchapter applicable to the requalifier's activities. This information must be the same as contained in the edition incorporated by reference in §171.7 of this subchapter.

(b) *Requalification records.* Daily records of visual inspection, pressure test, and ultrasonic examination if permitted under a special permit, as applicable, must be maintained by the person who performs the requalification until either the expiration of the requalification period or until the cylinder is again requalified, whichever occurs first. A single date may be used for each test sheet, provided each test on the sheet was conducted on that date. Ditto marks or a solid vertical line may be used to indicate repetition of the preceding entry for the following entries only: date; actual dimensions; manufacturer's name or symbol, if present; owner's name or symbol, if present; and test operator. Blank spaces may not be used to indicate repetition of a prior entry. The records must include the following information:

(1) *Calibration test records.* For each test to demonstrate calibration, the date; serial number of the calibrated cylinder; calibration test pressure; total, elastic and permanent expansions; and legible identification of test operator. The test operator must be able to demonstrate that the results of the daily calibration verification correspond to the hydrostatic tests performed on that day. The daily verification of calibration(s) may be recorded on the same sheets as, and with, test records for that date.

(2) *Pressure test and visual inspection records.* The date of requalification; serial number; DOT specification or special permit number; marked pressure; actual dimensions; manufacturer's name or symbol; owner's name or symbol, if present; result of visual inspection; actual test pressure; total, elastic and permanent expansions; percent permanent expansion; disposition, with reason for any repeated test, rejection or condemnation; and legible identification of test operator. For each cylinder marked pursuant to §173.302a(b)(5) of this subchapter, the test sheet must indicate the method by which any average or maximum wall stress was computed. Records must be kept for all completed, as well as unsuccessful tests. The entry for a second test after a failure to hold test pressure must indicate the date of the earlier test.

(3) *Wall stress.* Calculations of average and maximum wall stress pursuant to §173.302a(b)(3) of this subchapter, if performed.

(4) *Calibration certificates.* The most recent certificate of calibration must be maintained for each calibrated cylinder.

(c) *Repair, rebuilding or reheat treatment records.* (1) Records covering welding or brazing repairs, rebuilding or reheat treating shall be retained for a minimum of fifteen years by the approved facility.

(2) A record of rebuilding, in accordance with §180.211(d), must be completed for each cylinder rebuilt. The record must be clear, legible, and contain the following information:

(i) Name and address of test facility, date of test report, and name of original manufacturer;

(ii) Marks stamped on cylinder to include specification number, service pressure, serial number, symbol of manufacturer, inspector's mark, and other marks, if any;

(iii) Cylinder outside diameter and length in inches;

(iv) Rebuild process (welded, brazed, type seams, etc.);

(v) Description of assembly and any attachments replaced (e.g., neckrings, footrings);

(vi) Chemical analysis of material for the cylinder, including seat and Code No., type of analysis (ladle, check), chemical components (Carbon (C), Phosphorous (P), Sulfur (S), Silicon (Si), Manganese (Mn), Nickel (Ni), Chromium (Cr), Molybdenum (Mo), Copper (Cu), Aluminum (Al), Zinc (Zn)), material manufacturer, name of person performing the analysis, results of physical tests of material for cylinder (yield strength (psi), tensile strength (psi), elongation percentage (inches), reduction in area percentage, weld bend, tensile bend, name of inspector);

(vii) Results of proof pressure test on cylinder, including test method, test pressure, total expansion, permanent expansion, elastic expansion, percent permanent expansion (permanent expansion may not exceed ten percent (10%) of total expansion), and volumetric capacity (volumetric capacity of a rebuilt cylinder must be within $\pm 3\%$ of the calculated capacity);

(viii) Each report must include the following certification statement: "I certify that this rebuilt cylinder is accurately represented by the data above and conforms to all of the requirements in Subchapter C of Chapter I of Title 49 of the Code of Federal Regulations." The certification must be signed by the rebuild technician and principal, officer, or partner of the rebuild facility.

[67 FR 51660, Aug. 8, 2002, as amended at 68 FR 24664, May 8, 2003; 70 FR 73166, Dec. 9, 2005; 71 FR 54398, Sept. 14, 2006; 72 FR 55697, Oct. 1, 2007]

§ 180.217 Requalification requirements for MEGCs.

(a) *Periodic inspections.* Each MEGC must be given an initial visual inspection and test in accordance with

§178.75(i) of this subchapter before being put into service for the first time. After the initial inspection, a MEGC must be inspected at least once every five years.

(1) The 5-year periodic inspection must include an external examination of the structure, the pressure receptacles and the service equipment, as follows:

(i) The pressure receptacles are inspected externally for pitting, corrosion, abrasions, dents, distortions, defects in welds or any other conditions, including leakage, that might render the MEGC unsafe for transport.

(ii) The piping, valves, and gaskets are inspected for corroded areas, defects, and other conditions, including leakage, that might render the MEGC unsafe for filling, discharge or transport.

(iii) Missing or loose bolts or nuts on any flanged connection or blank flange are replaced or tightened.

(iv) All emergency devices and valves are free from corrosion, distortion and any damage or defect that could prevent their normal operation. Remote closure devices and self-closing stop valves must be operated to demonstrate proper operation.

(v) Required markings on the MEGC are legible in accordance with the applicable requirements.

(vi) The framework, the supports and the arrangements for lifting the MEGC are in satisfactory condition.

(2) The MEGC's pressure receptacles and piping must be periodically requalified as prescribed in §180.207(c), at the interval specified in Table 1 in §180.207.

(b) *Exceptional inspection and test.* If a MEGC shows evidence of damaged or corroded areas, leakage, or other conditions that indicate a deficiency that could affect the integrity of the MEGC, an exceptional inspection and test must be performed, regardless of the last periodic inspection and test. The extent of the exceptional inspection and test will depend on the amount of damage or deterioration of the MEGC. As a minimum, an exceptional inspection of a MEGC must include inspection as specified in paragraph (a)(1) of this section.

(c) *Correction of unsafe condition.* When evidence of any unsafe condition is discovered, the MEGC may not be returned to service until the unsafe condition has been corrected and the MEGC has been requalified in accordance with the applicable tests and inspection.

(d) *Repairs and modifications to MEGCs.* No person may perform a modification to an approved MEGC that may affect conformance to the applicable ISO standard or safe use, and that involve a change to the design type or affect its ability to retain the hazardous material in transportation. Before making any modification changes to an approved MEGC, the owner must obtain approval from the Associate Administrator as prescribed in §178.74 of this subchapter. The repair of a MEGC's structural equipment is authorized provided such repairs are made in accordance with the requirements prescribed for its approved design and construction. Any repair to the pressure receptacles of a MEGC must meet the requirements of §180.212.

(e) *Requalification markings.* Each MEGC must be durably and legibly marked in English, with the year and month, and the type of the most recent periodic requalification performed (e.g., 2004-05 AE/UE, where "AE" represents acoustic emission and "UE" represents ultrasonic examination) followed by the stamp of the approval agency who performed or witnessed the most recent test.

(f) *Records.* The owner of each MEGC or the owner's authorized agent must retain a written record of the date and results of all repairs and required inspections and tests. The report must contain the name and address of the person performing the inspection or test. The periodic test and inspection records must be retained until the next inspection or test is completed. Repair records and the initial exceptional inspection and test records must be retained during the period the MEGC is in service and for one year thereafter. These records must be made available for inspection by a representative of the Department on request.

[71 FR 33896, June 12, 2006]

Subpart D—Qualification and Maintenance of IBCs

§ 180.350 Applicability and definitions.

This subpart prescribes requirements, in addition to those contained in parts 107, 171, 172, 173 and 178 of this subchapter, applicable to any person responsible for the continuing qualification, maintenance, or periodic retesting of an IBC. The following definitions apply:

(a) *Remanufactured IBCs* are metal, rigid plastic or composite IBCs produced as a UN type from a non-UN type, or are converted from one UN design type to another UN design type. Remanufactured IBCs are subject to the same requirements of this subchapter that apply to new IBCs of the same type (also see § 178.801(c)(1) of this subchapter for design type definition).

(b) *Repaired IBCs* are metal, rigid plastic or composite IBCs that, as a result of impact or for any other cause (such as corrosion, embrittlement or other evidence of reduced strength as compared to the design type), are restored so as to conform to the design type and to be able to withstand the design type tests. For the purposes of this subchapter, the replacement of the rigid inner receptacle of a composite IBC with a receptacle conforming to the original manufacturer's specification is considered repair. Routine maintenance of IBCs (see definition in paragraph (c) of this section) is not considered repair. The bodies of rigid plastic IBCs and the inner receptacles of composite IBCs are not repairable.

(c) Routine maintenance of IBCs is the routine performance on:

(1) Metal, rigid plastic or composite IBCs of operations such as:

(i) Cleaning;

(ii) Removal and reinstallation or replacement of body closures (including associated gaskets), or of service equipment conforming to the original manufacturer's specifications provided that the leaktightness of the IBC is verified; or

(iii) Restoration of structural equipment not directly performing a hazardous material containment or discharge pressure retention function so as to conform to the design type (for example, the straightening of legs or

lifting attachments), provided the containment function of the IBC is not affected.

(2) Plastics or textile flexible IBCs of operations, such as:

(i) Cleaning; or

(ii) Replacement of non-integral components, such as non-integral liners and closure ties, with components conforming to the original manufacturer's specification; provided that these operations do not adversely affect the containment function of the flexible IBC or alter the design type.

[68 FR 45042, July 31, 2003, as amended at 69 FR 76186, Dec. 20, 2004]

§ 180.351 Qualification of IBCs.

(a) *General.* Each IBC used for the transportation of hazardous materials must be an authorized packaging.

(b) *IBC specifications.* To qualify as an authorized packaging, each IBC must conform to this subpart, the applicable requirements specified in part 173 of this subchapter, and the applicable requirements of subparts N and O of part 178 of this subchapter.

[Amdt. 180-5, 59 FR 38079, July 26, 1994, as amended at 66 FR 45391, Aug. 28, 2001]

§ 180.352 Requirements for retest and inspection of IBCs.

(a) *General.* Each IBC constructed in accordance with a UN standard for which a test or inspection specified in paragraphs (b)(1), (b)(2) and (b)(3) of this section is required may not be filled and offered for transportation or transported until the test or inspection has been successfully completed. This paragraph does not apply to any IBC filled prior to the test or inspection due date. The requirements in this section do not apply to DOT 56 and 57 portable tanks.

(b) *Test and inspections for metal, rigid plastic, and composite IBCs.* Each IBC is subject to the following test and inspections:

(1) Each IBC intended to contain solids that are loaded or discharged under pressure or intended to contain liquids must be tested in accordance with the leakproofness test prescribed in § 178.813 of this subchapter prior to its first use in transportation and every 2.5 years thereafter, starting from the

date of manufacture or the date of a repair conforming to paragraph (d)(1) of this section. For this test, the IBC is not required to have its closures fitted.

(2) An external visual inspection must be conducted initially after production and every 2.5 years starting from the date of manufacture or the date of a repair conforming to paragraph (d)(1) of this section to ensure that:

(i) The IBC is marked in accordance with requirements in §178.703 of this subchapter. Missing or damaged markings, or markings difficult to read must be restored or returned to original condition.

(ii) Service equipment is fully functional and free from damage which may cause failure. Missing, broken, or damaged parts must be repaired or replaced.

(iii) The IBC is capable of withstanding the applicable design qualification tests. The IBC must be externally inspected for cracks, warpage, corrosion or any other damage which might render the IBC unsafe for transportation. An IBC found with such defects must be removed from service or repaired in accordance with paragraph (d) of this section. The inner receptacle of a composite IBC must be removed from the outer IBC body for inspection unless the inner receptacle is bonded to the outer body or unless the outer body is constructed in such a way (e.g., a welded or riveted cage) that removal of the inner receptacle is not possible without impairing the integrity of the outer body. Defective inner receptacles must be replaced in accordance with paragraph (d) of this section or the entire IBC must be removed from service. For metal IBCs, thermal insulation must be removed to the extent necessary for proper examination of the IBC body.

(3) Each metal, rigid plastic and composite IBC must be internally inspected at least every five years to ensure that the IBC is free from damage and to ensure that the IBC is capable of withstanding the applicable design qualification tests.

(i) The IBC must be internally inspected for cracks, warpage, and corrosion or any other defect that might render the IBC unsafe for transport-

tation. An IBC found with such defects must be removed from hazardous materials service until restored to the original design type of the IBC.

(ii) Metal IBCs must be inspected to ensure the minimum wall thickness requirements in §178.705(c)(1)(iv) of this subchapter are met. Metal IBCs not conforming to minimum wall thickness requirements must be removed from hazardous materials service.

(c) *Visual inspection for flexible, fiberboard, or wooden IBCs.* Each IBC must be visually inspected prior to first use and permitted reuse, by the person who places hazardous materials in the IBC, to ensure that:

(1) The IBC is marked in accordance with requirements in §178.703 of this subchapter. Additional marking allowed for each design type may be present. Required markings that are missing, damaged or difficult to read must be restored or returned to original condition.

(2) Proper construction and design specifications have been met.

(i) Each flexible IBC must be inspected to ensure that:

(A) Lifting straps if used, are securely fastened to the IBC in accordance with the design type.

(B) Seams are free from defects in stitching, heat sealing or gluing which would render the IBC unsafe for transportation of hazardous materials. All stitched seam-ends must be secure.

(C) Fabric used to construct the IBC is free from cuts, tears and punctures. Additionally, fabric must be free from scoring which may render the IBC unsafe for transport.

(ii) Each fiberboard IBC must be inspected to ensure that:

(A) Fluting or corrugated fiberboard is firmly glued to facings.

(B) Seams are creased and free from scoring, cuts, and scratches.

(C) Joints are appropriately overlapped and glued, stitched, taped or stapled as prescribed by the design. Where staples are used, the joints must be inspected for protruding staple-ends which could puncture or abrade the inner liner. All such ends must be protected before the IBC is authorized for hazardous materials service.

(iii) Each wooden IBC must be inspected to ensure that:

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(A) End joints are secured in the manner prescribed by the design.

(B) IBC walls are free from defects in wood. Inner protrusions which could puncture or abrade the liner must be covered.

(d) *Requirements applicable to repair of IBCs.* (1) Except for flexible and fiberboard IBCs and the bodies of rigid plastic and composite IBCs, damaged IBCs may be repaired and the inner receptacles of composite packagings may be replaced and returned to service provided:

(i) The repaired IBC conforms to the original design type, is capable of withstanding the applicable design qualification tests, and is retested and inspected in accordance with the applicable requirements of this section;

(ii) An IBC intended to contain liquids or solids that are loaded or discharged under pressure is subjected to a leakproofness test as specified in §178.813 of this subchapter and is marked with the date of the test; and

(iii) The IBC is subjected to the internal and external inspection requirements as specified in paragraph (b) of this section.

(iv) The person performing the tests and inspections after the repair must durably mark the IBC near the manufacturer's UN design type marking to show the following:

(A) The country in which the tests and inspections were performed;

(B) The name or authorized symbol of the person performing the tests and inspections; and

(C) The date (month, year) of the tests and inspections.

(v) Retests and inspections performed in accordance with paragraphs (d)(1)(i) and (ii) of this section may be used to satisfy the requirements for the 2.5 and five year periodic tests and inspections required by paragraph (b) of this section, as applicable.

(2) Except for flexible and fiberboard IBCs, the structural equipment of an IBC may be repaired and returned to service provided:

(i) The repaired IBC conforms to the original design type and is capable of withstanding the applicable design qualification tests; and

(ii) The IBC is subjected to the internal and external inspection require-

ments as specified in paragraph (b) of this section.

(3) Service equipment may be replaced provided:

(i) The repaired IBC conforms to the original design type and is capable of withstanding the applicable design qualification tests;

(ii) The IBC is subjected to the external visual inspection requirements as specified in paragraph (b) of this section; and

(iii) The proper functioning and leak tightness of the service equipment, if applicable, is verified.

(e) *Requirements applicable to routine maintenance of IBCs.* Except for routine maintenance of metal, rigid plastics and composite IBCs performed by the owner of the IBC, whose State and name or authorized symbol is durably marked on the IBC, the party performing the routine maintenance shall durably mark the IBC near the manufacturer's UN design type marking to show the following:

(1) The country in which the routine maintenance was carried out; and

(2) The name or authorized symbol of the party performing the routine maintenance.

(f) *Retest date.* The date of the most recent periodic retest must be marked as provided in §178.703(b) of this subchapter.

(g) *Record retention.* (1) The owner or lessee of the IBC must keep records of periodic retests, initial and periodic inspections, and tests performed on the IBC if it has been repaired or remanufactured.

(2) Records must include design types and packaging specifications, test and inspection dates, name and address of test and inspection facilities, names or name of any persons conducting test or inspections, and test or inspection specifics and results.

(3) Records must be kept for each packaging at each location where periodic tests are conducted, until such tests are successfully performed again or for at least 2.5 years from the date of the last test. These records must be

made available for inspection by a representative of the Department on request.

[Amdt. 180-5, 59 FR 38079, July 26, 1994, as amended at 64 FR 10782, Mar. 5, 1999; 65 FR 58632, Sept. 29, 2000; 66 FR 45186, 45391, Aug. 28, 2001; 68 FR 45042, July 31, 2003; 69 FR 76186, Dec. 20, 2004; 70 FR 34399, June 14, 2005; 70 FR 56099, Sept. 23, 2005; 71 FR 78635, Dec. 29, 2006]

Subpart E—Qualification and Maintenance of Cargo Tanks

§ 180.401 Applicability.

This subpart prescribes requirements, in addition to those contained in parts 107, 171, 172, 173 and 178 of this subchapter, applicable to any person responsible for the continuing qualification, maintenance or periodic testing of a cargo tank.

[Amdt. 180-2, 54 FR 25032, June 12, 1989, as amended at 55 FR 37065, Sept. 7, 1990]

§ 180.403 Definitions.

In addition to the definitions contained in §§ 171.8, 178.320(a) and 178.345-1 of this subchapter, the following definitions apply to this subpart:

Corroded or abraded means any visible reduction in the material thickness of the cargo tank wall or valve due to pitting, flaking, gouging, or chemical reaction to the material surface that effects the safety or serviceability of the cargo tank. The term does not include cosmetic or minor surface degradation that does not effect the safety or serviceability of the cargo tank.

Corrosive to the tank or valve means that the lading has been shown through experience or test data to reduce the thickness of the material of construction of the tank wall or valve.

Delivery hose assembly means a liquid delivery hose and its attached couplings.

Modification means any change to the original design and construction of a cargo tank or a cargo tank motor vehicle that affects its structural integrity or lading retention capability including changes to equipment certified as part of an emergency discharge control system required by § 173.315(n)(2) of this subchapter. Any modification that involves welding on the cargo tank wall must also meet all requirements for

“Repair” as defined in this section. Excluded from this category are the following:

(1) A change to motor vehicle equipment such as lights, truck or tractor power train components, steering and brake systems, and suspension parts, and changes to appurtenances, such as fender attachments, lighting brackets, ladder brackets; and

(2) Replacement of components such as valves, vents, and fittings with a component of a similar design and of the same size.

Owner means the person who owns a cargo tank motor vehicle used for the transportation of hazardous materials, or that person’s authorized agent.

Piping system means any component of a cargo tank delivery system, other than a delivery hose assembly, that contains product during loading or unloading.

Rebarrelling means replacing more than 50 percent of the combined shell and head material of a cargo tank.

Repair means any welding on a cargo tank wall done to return a cargo tank or a cargo tank motor vehicle to its original design and construction specification, or to a condition prescribed for a later equivalent specification in effect at the time of the repair. Excluded from this category are the following:

(1) A change to motor vehicle equipment such as lights, truck or tractor power train components, steering and brake systems, and suspension parts, and changes to appurtenances, such as fender attachments, lighting brackets, ladder brackets; and

(2) Replacement of components such as valves, vents, and fittings with a component of a similar design and of the same size.

(3) Replacement of an appurtenance by welding to a mounting pad.

Replacement of a barrel means to replace the existing tank on a motor vehicle chassis with an unused (new) tank. For the definition of *tank*, see § 178.320, § 178.345, or § 178.338-1 of this subchapter, as applicable.

Stretching means any change in length, width or diameter of the cargo tank, or any change to a cargo tank motor vehicle’s undercarriage that

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may affect the cargo tank's structural integrity.

[Amdt. 180-2, 54 FR 25032, June 12, 1989, as amended at 55 FR 37065, Sept. 7, 1990; Amdt. 180-3, 57 FR 45466, Oct. 1, 1992; Amdt. 180-7, 59 FR 55177, Nov. 3, 1994; 60 FR 17402, Apr. 5, 1995; Amdt. 180-10, 61 FR 51342, Oct. 1, 1996; 63 FR 52850, Oct. 1, 1998; 64 FR 28050, May 24, 1999; 68 FR 19286, Apr. 18, 2003; 69 FR 54047, Sept. 7, 2004]

§ 180.405 Qualification of cargo tanks.

(a) *General.* Unless otherwise provided in this subpart, each cargo tank used for the transportation of hazardous material must be an authorized packaging.

(b) *Cargo tank specifications.* (1) To qualify as an authorized packaging, each cargo tank must conform to this subpart, the applicable requirements specified in part 173 of this subchapter for the specific lading, and where a DOT specification cargo tank is required, an applicable specification in effect on the date initial construction began: MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330, MC 331, MC 338, DOT 406, DOT 407, or DOT 412 (§§ 178.337, 178.338, 178.345, 178.346, 178.347, 178.348 of this subchapter). However, except as provided in paragraphs (b)(2), (d), (e), (f)(5), and (f)(6) of this section, no cargo tank may be marked or certified after August 31, 1995, to the applicable MC 306, MC 307, MC 312, MC 331, or MC 338 specification in effect on December 30, 1990.

(2) *Exception.* A cargo tank originally manufactured to the MC 306, MC 307, or MC 312 specification may be recertified to the original specification provided:

(i) Records are available verifying the cargo tank was originally manufactured to the specification;

(ii) If the cargo tank was stretched, rebarrelled, or modified, records are available verifying that the stretching, rebarrelling, or modification was performed in accordance with the National Board Inspection Code and this part;

(iii) A Design Certifying Engineer or Registered Inspector verifies the cargo tank conforms to all applicable requirements of the original specification and furnishes to the owner written documentation that verifies the tank

conforms to the original structural design requirements in effect at the time the tank was originally constructed;

(iv) The cargo tank meets all applicable tests and inspections required by § 180.407(c); and

(v) The cargo tank is recertified to the original specification in accordance with the reporting and record retention provisions of § 180.417. The certification documents required by § 180.417(a)(3) must include both the date the cargo tank was originally certified to the specification and the date it was recertified. The specification plate on the cargo tank or the cargo tank motor vehicle must display the date the cargo tank was originally certified to the specification.

(c) *Cargo tank specifications no longer authorized for construction.* (1) A cargo tank made to a specification listed in column 1 of table 1 or table 2 of this paragraph (c)(1) may be used when authorized in this part, provided—

(i) The cargo tank initial construction began on or before the date listed in table 1, column 2, as follows:

TABLE 1

Column 1	Column 2
MC 300	Sept. 2, 1967
MC 301	June 12, 1961
MC 302, MC 303, MC 304, MC 305, MC 310, MC 311.	Sept. 2, 1967
MC 330	May 15, 1967

(ii) The cargo tank was marked or certified before the date listed in table 2, column 2, as follows:

TABLE 2

Column 1	Column 2
MC 306, MC 307, MC 312	Sept. 1, 1995

(2) A cargo tank of a specification listed in paragraph (c)(1) of this section may have its pressure relief devices and outlets modified as follows:

(i) A Specification MC 300, MC 301, MC 302, MC 303, or MC 305 cargo tank, to conform with a Specification MC 306 or DOT 406 cargo tank (See §§ 178.346-3 and 178.346-4 of this subchapter).

(ii) A Specification MC 306 cargo tank to conform to a Specification DOT 406 cargo tank (See §§ 178.346-3 and 178.346-4 of this subchapter).

(iii) A Specification MC 304 cargo tank, to conform with a Specification MC 307 or DOT 407 cargo tank (See §§ 178.347-4 and 178.345-11 of this subchapter).

(iv) A Specification MC 307 cargo tank, to conform with a Specification DOT 407 cargo tank (See §§ 178.347-4 and 178.345-11 of this subchapter).

(v) A Specification MC 310 or MC 311 cargo tank, to conform with a Specification MC 312 or DOT 412 cargo tank (See §§ 178.348-4 and 178.345-11 of this subchapter).

(vi) A Specification MC 312 cargo tank, to conform with a Specification DOT 412 cargo tank (See §§ 178.348-4 and 178.345-11 of this subchapter).

(vii) A Specification MC 330 cargo tank, to conform with a Specification MC 331 cargo tank, except as specifically required by § 173.315 of this subchapter (see §§ 178.337-8 and 178.337-9 of this subchapter).

(d) *MC 338 cargo tank.* The owner of a cargo tank that conforms to and was used under the terms of an exemption issued before October 1, 1984, that authorizes the transportation of a cryogenic liquid shall remove the exemption number stenciled on the cargo tank and stamp the specification plate (or a plate placed adjacent to the specification plate) "DOT MC 338" followed by the exemption number, for example, "DOT MC 338-E * * * *". (Asterisks to be replaced by the exemption number). The cargo tank must be remarked prior to the expiration date of the exemption. During the period the cargo tank is in service, the owner of a cargo tank that is remarked in this manner must retain at its principal place of business a copy of the last exemption in effect. No new construction of cargo tanks pursuant to such exemption is authorized.

(1) The holding time must be determined, as required in § 178.338-9 of this subchapter, on each cargo tank or on at least one cargo tank of each design. Any subsequent cargo tank manufactured to the same design type (see § 178.320), if not individually tested, must have the optional test regimen performed during the first shipment (see § 178.338-9 (b) and (c) of this subchapter).

(2) The holding time determined by test for one authorized cryogenic liquid may be used as the basis for establishing the holding time for other authorized cryogenic liquids.

(e) *MC 331 cargo tanks.* The owner of a MC 331 (§ 178.337 of this subchapter) cargo tank that conforms to and was used under an exemption issued before October 1, 1984, that authorizes the transportation of ethane, refrigerated liquid; ethane-propane mixture, refrigerated liquid; or hydrogen chloride, refrigerated liquid shall remove the exemption number stenciled on the cargo tank and stamp the exemption number on the specification plate (or a plate placed adjacent to the specification plate), immediately after the DOT Specification, for example, "DOT MC 331-E * * * *". (Asterisks to be replaced by the exemption number.) The cargo tank must be remarked prior to the expiration date of the exemption. During the period the cargo tank is in service, the owner of a cargo tank that is remarked in this manner must retain at the owner's principal place of business a copy of the last exemption in effect.

(f) *MC 306, MC 307, MC 312 cargo tanks.* Either a Registered Inspector or a Design Certifying Engineer and the owner of a MC 306, MC 307 or MC 312 cargo tank motor vehicle constructed in accordance with and used under an exemption issued before December 31, 1990, that authorizes a condition specified in this paragraph shall examine the cargo tank motor vehicle and its design to determine if it meets the requirements of the applicable MC 306, MC 307 or MC 312 specification in effect at the time of manufacture, except as specified herein.

(1) A cargo tank motor vehicle constructed after August 1, 1981, or the date specified in the applicable exemption, in conformance with the following conditions that apply, may be remarked and certified in accordance with paragraphs (f) (5) and (6) of this section:

(i) A vacuum-loaded cargo tank must have an ASME Code stamped specification plate marked with a minimum internal design pressure of 25 psig, and be designed for a minimum external design pressure of 15 psig.

(ii) An outlet equipped with a self-closing system which includes an external stop-valve must have the stop valve and associated piping protected within the vehicle's rear-end tank protection device, vehicle frame or an equally adequate accident damage protection device (See §178.345-8 of this subchapter.) The self-closing system (See §178.345-11 of this subchapter) must be equipped with a remotely actuated means of closure as follows:

(A) For a cargo tank used in other than corrosive service, the remote means of closure must be activated for closure by manual or mechanical means and, in case of fire, by an automatic heat activated means.

(B) For a cargo tank used in corrosive service, the remote means of closure may be actuated by manual or mechanical means only.

(iii) A cargo tank having an unreinforced portion of the shell exceeding 60 inches must have the circumferential reinforcement located so that the thickness and tensile strength of shell material in combination with the frame and circumferential reinforcement produces a structural integrity at least equal to that prescribed in §178.345-3 of this subchapter or the specification in effect at time of manufacture.

(iv) A cargo tank having a projection from the tank shell or head that may contain lading in any tank position is authorized, provided such projection is as strong as the tank shell or head and is located within the motor vehicle's rear-end tank protection or other appropriate accident damage protection device.

(v) A cargo tank may be constructed of nickel, titanium, or other ASME sheet or plate materials in accordance with an exemption.

(2) A vacuum-loaded cargo tank constructed after August 1, 1981, or the date specified in the applicable exemption, in conformance with paragraph (f)(1) of this section, except that an outlet equipped with an external valve which is not part of a self-closing system:

(i) Must be equipped with a self-closing system prior to September 1, 1993.

(ii) May be remarked and certified in accordance with paragraphs (f)(5) and

(6) of this section after the cargo tank motor vehicle has been equipped with the self-closing system.

(3) A vacuum-loaded cargo tank constructed prior to August 1, 1981, in conformance with paragraph (f)(1) of this section, except for paragraph (f)(1)(i), may be remarked and certified in accordance with paragraphs (f) (5) and (6) of this section.

(4) A vacuum-loaded cargo tank constructed prior to August 1, 1981, in conformance with paragraph (f)(1) of this section, except for paragraph (f)(1)(i) of this section, and except that an outlet is equipped with an external valve which is not part of a self-closing system:

(i) Must be equipped with a self-closing system prior to September 1, 1993.

(ii) May be remarked and certified in accordance with paragraphs (f)(5) and (6) of this section after the cargo tank motor vehicle has been equipped with the self-closing system.

(5) The owner of a cargo tank for which a determination has been made that the cargo tank is in conformance with paragraph (f) (1), (2), (3), or (4) of this section shall complete a written certification, in English, signed by the owner and containing at least the following information:

(i) A statement certifying that each cargo tank conforms to §180.405 (f) (1), (2), (3), or (4);

(ii) The applicable DOT exemption number, the applicable specification number and the owner's and manufacturer's serial number for the cargo tank;

(iii) A statement setting forth any modifications made to bring the cargo tank into conformance with §180.405(f) (1), (2), (3), or (4), or the applicable specification;

(iv) A statement identifying the person certifying the cargo tank and the date of certification.

(6) The owner of a certified cargo tank shall remove the exemption number stenciled on the cargo tank and shall durably mark the specification plate (or a plate placed adjacent to the specification plate) "MC +++-E ****###" (where "+++" is to be replaced by the applicable specification number, " * * * " by the exemption number and "# # # #" by the alloy.)

(7) A cargo tank remarked and certified in conformance with this paragraph (f) is excepted from the provisions of §180.405(c).

(8) During the period the cargo tank is in service, and for one year thereafter, the owner of a cargo tank that is certified and remarked in this manner must retain on file at its principal place of business a copy of the certificate and the last exemption in effect.

(g) *Cargo tank manhole assemblies.* (1) MC 306, MC 307, and MC 312 cargo tanks marked or certified after December 30, 1990, and DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles must be equipped with manhole assemblies conforming with §178.345-5 of this subchapter.

(2) On or before August 31, 1995, each owner of a cargo tank marked or certified before December 31, 1990, authorized for the transportation of a hazardous material, must have the cargo tank equipped with manhole assemblies conforming with §178.345-5, except for the dimensional requirements in §178.345-5(a), the hydrostatic testing requirements in §178.345-5(b), and the marking requirements in §178.345-5(e) of this subchapter. A manhole assembly meeting one of the following provisions is considered to be in compliance with this paragraph:

(i) Manhole assemblies on MC 300, MC 301, MC 302, MC 303, MC 305, MC 306, MC 310, MC 311, and MC 312 cargo tanks that are marked or certified in writing as conforming to §178.345-5 of this subchapter or TTMA RP No. 61-98 (incorporated by reference; see §171.7 of this subchapter), or are tested and certified in accordance with TTMA TB No. 107 (incorporated by reference; see §171.7 of this subchapter).

(ii) Manhole assemblies on MC 304 and MC 307 cargo tanks.

(iii) Manhole assemblies on MC 310, MC 311, and MC 312 cargo tanks with a test pressure of 36 psig or greater.

(3) [Reserved]

(h) *Pressure relief system.* Properly functioning reclosing pressure relief valves and frangible or fusible vents need not be replaced. However, replacement of reclosing pressure relief valves on MC-specification cargo tanks is authorized subject to the following requirements:

(1) Until August 31, 1998, the owner of a cargo tank may replace a reclosing pressure relief device with a device which is in compliance with the requirements for pressure relief devices in effect at the time the cargo tank specification became superseded. If the pressure relief device is installed as an integral part of a manhole cover assembly, the manhole cover must comply with the requirements of paragraph (g) of this section.

(2) After August 31, 1998, replacement for any reclosing pressure relief valve must be capable of reseating to a leak-tight condition after a pressure surge, and the volume of lading released may not exceed 1 L. Specific performance requirements for these pressure relief valves are set forth in §178.345-10(b)(3) of this subchapter.

(3) As provided in paragraph (c)(2) of this section, the owner of a cargo tank may elect to modify reclosing pressure relief devices to more recent cargo tank specifications. However, replacement devices constructed to the requirements of §178.345-10 of this subchapter must provide the minimum venting capacity required by the original specification to which the cargo tank was designed and constructed.

(i) *Flammable cryogenic liquids.* Each cargo tank used to transport a flammable cryogenic liquid must be examined after each shipment to determine its actual holding time (See §173.318(g)(3) of this subchapter.)

(j) *Withdrawal of certification.* A specification cargo tank that for any reason no longer meets the applicable specification may not be used to transport hazardous materials unless the cargo tank is repaired and retested in accordance with §§180.413 and 180.407 prior to being returned to hazardous materials service. If the cargo tank is not in conformance with the applicable specification requirements, the specification plate on the cargo tank must be removed, obliterated or securely covered. The details of the conditions necessitating withdrawal of the certification must be recorded and signed on the written certificate for that cargo tank. The vehicle owner shall retain the certificate for at least 1 year after withdrawal of the certification.

(k) *DOT-specification cargo tank with no marked design pressure or a marked design pressure of less than 3 psig.* The owner of an MC 300, MC 301, MC 302, MC 303, MC 305, MC 306, or MC 312 cargo tank with a pressure relief system set at 3 psig, must mark or remark the cargo tank with an MAWP or design pressure of not less than 3 psig.

(1) *MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 cargo tank—Rear accident damage protection.* (1) Notwithstanding the requirements in § 180.405(b), the applicable specification requirement for a rear bumper or rear-end tank protection device on MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306 cargo tanks does not apply to a cargo tank truck (power unit) until July 1, 1992, if the cargo tank truck—

(i) Was manufactured before July 1, 1989;

(ii) Is used to transport gasoline or any other petroleum distillate product; and

(iii) Is operated in combination with a cargo tank full trailer. However, an empty cargo tank truck, without a cargo tank full trailer attached, may be operated without the required rear bumper or rear-end tank protection device on a one-time basis while being transported to a repair facility for installation of a rear bumper or rear-end protection device.

(2) Each cargo tank shall be provided with a rear accident damage protection device to protect the tank and piping in the event of a rear-end collision and reduce the likelihood of damage which could result in the loss of lading. The rear-end protection device must be in the form of a rear-end tank protection device meeting the requirements of § 178.345–8(d) or a rear bumper meeting the following:

(i) The bumper shall be located at least 6 inches to the rear of any vehicle component used for loading or unloading or that may contain lading while the vehicle is in transit.

(ii) The dimensions of the bumper shall conform to § 393.86 of this title.

(iii) The structure of the bumper must be designed in accordance with § 178.345–8(d)(3) of this subchapter.

(m) *Specification MC 330, MC 331 cargo tank motor vehicles, and nonspecification cargo tank motor vehicles conforming to*

§ 173.315(k) of this subchapter, intended for use in the transportation of liquefied compressed gases. (1) No later than the date of its first scheduled pressure test after July 1, 2001, each specification MC 330 and MC 331 cargo tank motor vehicle, and each nonspecification cargo tank motor vehicle conforming to § 173.315(k) of this subchapter, marked and certified before July 1, 2001, that is used to transport a Division 2.1 material, a Division 2.2 material with a subsidiary hazard, a Division 2.3 material, or anhydrous ammonia must have an emergency discharge control capability as specified in § 173.315(n) of this subchapter. Each passive shut-off system installed prior to July 1, 2001, must be certified by a Design Certifying Engineer that it meets the requirements of § 173.315(n)(2) of this subchapter.

(2) The requirement in paragraph (m)(1) of this section does not apply to a cargo tank equal to or less than 13,247.5 L (3,500 gallons) water capacity transporting in metered delivery service a Division 2.1 material, a Division 2.2 material with a subsidiary hazard, or anhydrous ammonia equipped with an off-truck remote shut-off device that was installed prior to July 1, 2000. The device must be capable of stopping the transfer of lading by operation of a transmitter carried by a qualified person attending unloading of the cargo tank. The device is subject to the requirement in § 177.840(o) of this subchapter for a daily test at 45.72 meters (150 feet).

(3) Each specification MC 330 and MC 331 cargo tank in metered delivery service of greater than 13,247.5 L (3,500 gallons) water capacity transporting a Division 2.1 material, a Division 2.2 material with a subsidiary hazard, or anhydrous ammonia, marked and certified before July 1, 1999, must have an emergency discharge control capability as specified in §§ 173.315(n) and 177.840 of this subchapter no later than the date of its first scheduled pressure test after July 1, 2001, or July 1, 2003, whichever is earlier.

(n) *Thermal activation.* No later than the date of its first scheduled leakage test after July 1, 1999, each specification MC 330 or MC 331 cargo tank

motor vehicle and each nonspecification cargo tank motor vehicle conforming to §173.315(k) of this subchapter, marked and certified before July 1, 1999, that is used to transport a liquefied compressed gas, other than carbon dioxide and chlorine, that has a water capacity of 13,247.5 L (3,500 gallons) or less must be equipped with a means of thermal activation for the internal self-closing stop valve as specified in §178.337-8(a)(4) of this subchapter.

(o) *On-truck remote control of self-closing stop valves—MC 330, MC 331, and MC 338.* On or before October 2, 2006—

(1) Each owner of an MC 330 or MC 331 cargo tank motor vehicle marked or certified before January 1, 1995, must equip the cargo tank with an on-vehicle remote means of closure of the internal self-closing stop valve in conformance with §178.337-8(a)(4) of this subchapter. This requirement does not apply to cargo tanks used only for carbon dioxide and marked "For carbon dioxide only" or intended for use in chlorine service only.

(2) Each owner of an MC 338 cargo tank motor vehicle marked or certified before January 1, 1995, must equip each remotely controlled shutoff valve with an on-vehicle remote means of automatic closure in conformance with §178.338-11(c) of this subchapter. This requirement does not apply to cargo tanks used for the transportation of argon, carbon dioxide, helium, krypton, neon, nitrogen, or xenon, or mixtures thereof.

[Amdt. 180-2, 54 FR 25032, June 12, 1989]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 180.405, see the List of CFR Sections Affected which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 180.407 Requirements for test and inspection of specification cargo tanks.

(a) *General.* (1) A cargo tank constructed in accordance with a DOT specification for which a test or inspection specified in this section has become due, may not be filled and offered for transportation or transported until the test or inspection has been successfully completed. This paragraph does

not apply to any cargo tank filled prior to the test or inspection due date.

(2) Except during a pressure test, a cargo tank may not be subjected to a pressure greater than its design pressure or MAWP.

(3) A person witnessing or performing a test or inspection specified in this section must meet the minimum qualifications prescribed in § 180.409.

(4) Each cargo tank must be evaluated in accordance with the acceptable results of tests and inspections prescribed in § 180.411.

(5) Each cargo tank which has successfully passed a test or inspection specified in this section must be marked in accordance with § 180.415.

(6) A cargo tank which fails a prescribed test or inspection must:

(i) Be repaired and retested in accordance with § 180.413; or

(ii) Be removed from hazardous materials service and the specification plate removed, obliterated or covered in a secure manner.

(b) *Conditions requiring test and inspection of cargo tanks.* Without regard to any other test or inspection requirements, a specification cargo tank must be tested and inspected in accordance with this section prior to further use if:

(1) The cargo tank shows evidence of dents, cuts, gouges, corroded or abraded areas, leakage, or any other condition that might render it unsafe for hazardous materials service. At a minimum, any area of a cargo tank showing evidence of dents, cuts, digs, gouges, or corroded or abraded areas must be thickness tested in accordance with the procedures set forth in paragraphs (i)(2), (i)(3), (i)(5), and (i)(6) of this section and evaluated in accordance with the criteria prescribed in § 180.411. Any signs of leakage must be repaired in accordance with § 180.413. The suitability of any repair affecting the structural integrity of the cargo tank must be determined either by the testing required in the applicable manufacturing specification or in paragraph (g)(1)(iv) of this section.

(2) The cargo tank has sustained damage to an extent that may adversely affect its lading retention capability. A damaged cargo tank must be pressure tested in accordance with the

procedures set forth in paragraph (g) of this section.

(3) The cargo tank has been out of hazardous materials transportation service for a period of one year or more. Each cargo tank that has been out of hazardous materials transportation service for a period of one year or more must be pressure tested in accordance with §180.407(g) prior to further use.

(4) [Reserved]

(5) The Department so requires based on the existence of probable cause that

the cargo tank is in an unsafe operating condition.

(c) *Periodic test and inspection.* Each specification cargo tank must be tested and inspected as specified in the following table by an inspector meeting the qualifications in §180.409. The retest date shall be determined from the specified interval identified in the following table from the most recent inspection or the CTMV certification date.

COMPLIANCE DATES—INSPECTIONS AND TEST UNDER § 180.407(C)

Test or inspection (cargo tank specification, configuration, and service)	Date by which first test must be completed (see note 1)	Interval period after first test
External Visual Inspection:		
All cargo tanks designed to be loaded by vacuum with full opening rear heads.	September 1, 1991	6 months.
All other cargo tanks	September 1, 1991	1 year.
Internal Visual Inspection:		
All insulated cargo tanks, except MC 330, MC 331, MC 338 (see Note 4).	September 1, 1991	1 year.
All cargo tanks transporting lading corrosive to the tank	September 1, 1991	1 year.
All other cargo tanks, except MC 338	September 1, 1995	5 years.
Lining Inspection:		
All lined cargo tanks transporting lading corrosive to the tank	September 1, 1991	1 year.
Leakage Test:		
MC 330 and MC 331 cargo tanks in chlorine service	September 1, 1991	2 years.
All other cargo tanks except MC 338	September 1, 1991	1 year.
Pressure Test:		
(Hydrostatic or pneumatic) (See Notes 2 and 3) .....	.....	.....
All cargo tanks which are insulated with no manhole or insulated and lined, except MC 338.	September 1, 1991	1 year.
All cargo tanks designed to be loaded by vacuum with full opening rear heads.	September 1, 1992	2 years.
MC 330 and MC 331 cargo tanks in chlorine service	September 1, 1992	2 years.
All other cargo tanks	September 1, 1995	5 years.
Thickness Test:		
All unlined cargo tanks transporting material corrosive to the tank, except MC 338.	September 1, 1992	2 years.

NOTE 1: If a cargo tank is subject to an applicable inspection or test requirement under the regulations in effect on December 30, 1990, and the due date (as specified by a requirement in effect on December 30, 1990) for completing the required inspection or test occurs before the compliance date listed in table I, the earlier date applies.

NOTE 2: Pressure testing is not required for MC 330 and MC 331 cargo tanks in dedicated sodium metal service.

NOTE 3: Pressure testing is not required for uninsulated lined cargo tanks, with a design pressure or MAWP 15 psig or less, which receive an external visual inspection and lining inspection at least once each year.

NOTE 4: Insulated cargo tanks equipped with manholes or inspection openings may perform either an internal visual inspection in conjunction with the external visual inspection or a hydrostatic or pneumatic pressure-test of the cargo tank.

(d) *External visual inspection and testing.* The following applies to the external visual inspection and testing of cargo tanks:

(1) Where insulation precludes a complete external visual inspection as required by paragraphs (d)(2) through (d)(6) of this section, the cargo tank also must be given an internal visual inspection in accordance with paragraph (e) of this section. If external visual inspection is precluded because

any part of the cargo tank wall is externally lined, coated, or designed to prevent an external visual inspection, those areas of the cargo tank must be internally inspected. If internal visual inspection is precluded because the cargo tank is lined, coated, or designed so as to prevent access for internal inspection, the tank must be hydrostatically or pneumatically tested in accordance with paragraph (g)(1)(iv) of this section. Those items

able to be externally inspected must be externally inspected and noted in the inspection report.

(2) The external visual inspection and testing must include as a minimum the following:

(i) The tank shell and heads must be inspected for corroded or abraded areas, dents, distortions, defects in welds and any other conditions, including leakage, that might render the tank unsafe for transportation service;

(ii) The piping, valves, and gaskets must be carefully inspected for corroded areas, defects in welds, and other conditions, including leakage, that might render the tank unsafe for transportation service;

(iii) All devices for tightening manhole covers must be operative and there must be no evidence of leakage at manhole covers or gaskets;

(iv) All emergency devices and valves including self-closing stop valves, excess flow valves and remote closure devices must be free from corrosion, distortion, erosion and any external damage that will prevent safe operation. Remote closure devices and self-closing stop valves must be functioned to demonstrate proper operation;

(v) Missing bolts, nuts and fusible links or elements must be replaced, and loose bolts and nuts must be tightened;

(vi) All markings on the cargo tank required by parts 172, 178 and 180 of this subchapter must be legible;

(vii) [Reserved]

(viii) All major appurtenances and structural attachments on the cargo tank including, but not limited to, suspension system attachments, connecting structures, and those elements of the upper coupler (fifth wheel) assembly that can be inspected without dismantling the upper coupler (fifth wheel) assembly must be inspected for any corrosion or damage which might prevent safe operation;

(ix) For cargo tanks transporting lading corrosive to the tank, areas covered by the upper coupler (fifth wheel) assembly must be inspected at least once in each two year period for corroded and abraded areas, dents, distortions, defects in welds, and any other condition that might render the tank unsafe for transportation service. The

upper coupler (fifth wheel) assembly must be removed from the cargo tank for this inspection.

(3) All reclosing pressure relief valves must be externally inspected for any corrosion or damage which might prevent safe operation. All reclosing pressure relief valves on cargo tanks carrying lading corrosive to the valve must be removed from the cargo tank for inspection and testing. Each reclosing pressure relief valve required to be removed and tested must open at no less than the required set pressure and no more than 110 percent of the required set pressure, and must reseal to a leak-tight condition at no less than 90 percent of the start-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification.

(4) Ring stiffeners or other appurtenances, installed on cargo tanks constructed of mild steel or high-strength, low-alloy steel, that create air cavities adjacent to the tank shell that do not allow for external visual inspection must be thickness tested in accordance with paragraphs (i)(2) and (i)(3) of this section, at least once every 2 years. At least four symmetrically distributed readings must be taken to establish an average thickness for the ring stiffener or appurtenance. If any thickness reading is less than the average thickness by more than 10%, thickness testing in accordance with paragraphs (i)(2) and (i)(3) of this section must be conducted from the inside of the cargo tank on the area of the tank wall covered by the appurtenance or ring stiffener.

(5) Corroded or abraded areas of the cargo tank wall must be thickness tested in accordance with the procedures set forth in paragraphs (i)(2), (i)(3), (i)(5) and (i)(6) of this section.

(6) The gaskets on any full opening rear head must be:

(i) Visually inspected for cracks or splits caused by weather or wear; and

(ii) Replaced if cuts or cracks which are likely to cause leakage, or are of a depth one-half inch or more, are found.

(7) The inspector must record the results of the external visual examination as specified in §180.417(b).

(e) *Internal visual inspection.* (1) When the cargo tank is not equipped with a manhole or inspection opening, or the cargo tank design precludes an internal

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inspection, the tank shall be hydrostatically or pneumatically tested in accordance with 180.407(c) and (g).

(2) The internal visual inspection must include as a minimum the following:

(i) The tank shell and heads must be inspected for corroded and abraded areas, dents, distortions, defects in welds, and any other condition that might render the tank unsafe for transportation service.

(ii) Tank liners must be inspected as specified in §180.407(f).

(3) Corroded or abraded areas of the cargo tank wall must be thickness tested in accordance with paragraphs (i)(2), (i)(3), (i)(5) and (i)(6) of this section.

(4) The inspector must record the results of the internal visual inspection as specified in §180.417(b).

(f) *Lining inspection.* The integrity of the lining on all lined cargo tanks, when lining is required by this subchapter, must be verified at least once each year as follows:

(1) Rubber (elastomeric) lining must be tested for holes as follows:

(i) Equipment must consist of:

(A) A high frequency spark tester capable of producing sufficient voltage to ensure proper calibration;

(B) A probe with an "L" shaped 2.4 mm (0.09 inch) diameter wire with up to a 30.5 cm (12-inch) bottom leg (end bent to a 12.7 mm (0.5 inch) radius), or equally sensitive probe; and

(C) A steel calibration coupon 30.5 cm × 30.5 cm (12 inches × 12 inches) covered with the same material and thickness as that to be tested. The material on the coupon shall have a test hole to the metal substrate made by puncturing the material with a 22 gauge hypodermic needle or comparable piercing tool.

(ii) The probe must be passed over the surface of the calibration coupon in a constant uninterrupted manner until the hole is found. The hole is detected by the white or light blue spark formed. (A sound lining causes a dark blue or purple spark.) The voltage must be adjusted to the lowest setting that will produce a minimum 12.7 mm (0.5 inch) spark measured from the top of the lining to the probe. To assure that the setting on the probe has not

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changed, the spark tester must be calibrated periodically using the test calibration coupon, and the same power source, probe, and cable length.

(iii) After calibration, the probe must be passed over the lining in an uninterrupted stroke.

(iv) Holes that are found must be repaired using equipment and procedures prescribed by the lining manufacturer or lining installer.

(2) Linings made of other than rubber (elastomeric material) must be tested using equipment and procedures prescribed by the lining manufacturer or lining installer.

(3) Degraded or defective areas of the cargo tank liner must be removed and the cargo tank wall below the defect must be inspected. Corroded areas of the tank wall must be thickness tested in accordance with paragraphs (i)(2), (i)(3), (i)(5) and (i)(6) of this section.

(4) The inspector must record the results of the lining inspection as specified in §180.417(b).

(g) *Pressure test.* All components of the cargo tank wall, as defined in §178.320(a) of this subchapter, must be pressure tested as prescribed by this paragraph.

(1) *Test Procedure*—(i) As part of the pressure test, the inspector must perform an external and internal visual inspection, except that on an MC 338 cargo tank, or a cargo tank not equipped with a manhole or inspection opening, an internal inspection is not required.

(ii) All self-closing pressure relief valves, including emergency relief vents and normal vents, must be removed from the cargo tank for inspection and testing.

(A) Each self-closing pressure relief valve that is an emergency relief vent must open at no less than the required set pressure and no more than 110 percent of the required set pressure, and must reseal to a leak-tight condition at no less than 90 percent of the start-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification.

(B) Normal vents (1 psig vents) must be tested according to the testing criteria established by the valve manufacturer.

(C) Self-closing pressure relief devices not tested or failing the tests in this paragraph (g)(1)(ii) must be repaired or replaced.

(iii) Except for cargo tanks carrying lading corrosive to the tank, areas covered by the upper coupler (fifth wheel) assembly must be inspected for corroded and abraded areas, dents, distortions, defects in welds, and any other condition that might render the tank unsafe for transportation service. The upper coupler (fifth wheel) assembly must be removed from the cargo tank for this inspection.

(iv) Each cargo tank must be tested hydrostatically or pneumatically to the internal pressure specified in the following table. At no time during the pressure test may a cargo tank be subject to pressures that exceed those identified in the following table:

Specification	Test pressure
MC 300, 301, 302, 303, 305, 306.	20.7 kPa (3 psig) or design pressure, whichever is greater.
MC 304, 307	275.8 kPa (40 psig) or 1.5 times the design pressure, whichever is greater.
MC 310, 311, 312	20.7 kPa (3 psig) or 1.5 times the design pressure, whichever is greater.
MC 330, 331	1.5 times either the MAWP or the re-rated pressure, whichever is applicable.
MC 338	1.25 times either the MAWP or the re-rated pressure, whichever is applicable.
DOT 406	34.5 kPa (5 psig) or 1.5 times the MAWP, whichever is greater.
DOT 407	275.8 kPa (40 psig) or 1.5 times the MAWP, whichever is greater.
DOT 412	1.5 times the MAWP.

(v) [Reserved]

(vi) Each cargo tank of a multi-tank cargo tank motor vehicle must be tested with the adjacent cargo tanks empty and at atmospheric pressure.

(vii) All closures except pressure relief devices must be in place during the test. All prescribed loading and unloading venting devices rated at less than test pressure may be removed during the test. If retained, the devices must be rendered inoperative by clamps, plugs, or other equally effective restraining devices. Restraining devices may not prevent detection of leaks or damage the venting devices and must

be removed immediately after the test is completed.

(viii) *Hydrostatic test method.* Each cargo tank, including its domes, must be filled with water or other liquid having similar viscosity, at a temperature not exceeding 100 °F. The cargo tank must then be pressurized to not less than the pressure specified in paragraph (g)(1)(iv) of this section. The cargo tank, including its closures, must hold the prescribed test pressure for at least 10 minutes during which time it shall be inspected for leakage, bulging or any other defect.

(ix) *Pneumatic test method.* Pneumatic testing may involve higher risk than hydrostatic testing. Therefore, suitable safeguards must be provided to protect personnel and facilities should failure occur during the test. The cargo tank must be pressurized with air or an inert gas. The pneumatic test pressure in the cargo tank must be reached by gradually increasing the pressure to one-half of the test pressure. Thereafter, the pressure must be increased in steps of approximately one-tenth of the test pressure until the required test pressure has been reached. The test pressure must be held for at least 5 minutes. The pressure must then be reduced to the MAWP, which must be maintained during the time the entire cargo tank surface is inspected. During the inspection, a suitable method must be used for detecting the existence of leaks. This method must consist either of coating the entire surface of all joints under pressure with a solution of soap and water, or using other equally sensitive methods.

(2) When testing an insulated cargo tank, the insulation and jacketing need not be removed unless it is otherwise impossible to reach test pressure and maintain a condition of pressure equilibrium after test pressure is reached, or the vacuum integrity cannot be maintained in the insulation space. If an MC 338 cargo tank used for the transportation of a flammable gas or oxygen, refrigerated liquid is opened for any reason, the cleanliness must be verified prior to closure using the procedures contained in §178.338-15 of this subchapter.

(3) Each MC 330 and MC 331 cargo tank constructed of quenched and tempered steel in accordance with Part UHT in Section VIII of the ASME Code (IBR, see §171.7 of this subchapter), or constructed of other than quenched and tempered steel but without postweld heat treatment, used for the transportation of anhydrous ammonia or any other hazardous materials that may cause corrosion stress cracking, must be internally inspected by the wet fluorescent magnetic particle method immediately prior to and in conjunction with the performance of the pressure test prescribed in this section. Each MC 330 and MC 331 cargo tank constructed of quenched and tempered steel in accordance with Part UHT in Section VIII of the ASME Code and used for the transportation of liquefied petroleum gas must be internally inspected by the wet fluorescent magnetic particle method immediately prior to and in conjunction with the performance of the pressure test prescribed in this section. The wet fluorescent magnetic particle inspection must be in accordance with Section V of the ASME Code and CGA Technical Bulletin TB-2 (IBR, see §171.7 of this subchapter). This paragraph does not apply to cargo tanks that do not have manholes. (See §180.417(c) for reporting requirements.)

(4) All pressure bearing portions of a cargo tank heating system employing a medium such as, but not limited to, steam or hot water for heating the lading must be hydrostatically pressure tested at least once every 5 years. The test pressure must be at least the maximum system design operating pressure and must be maintained for five minutes. A heating system employing flues for heating the lading must be tested to ensure against lading leakage into the flues or into the atmosphere.

(5) *Exceptions.* (i) Pressure testing is not required for MC 330 and MC 331 cargo tanks in dedicated sodium metal service.

(ii) Pressure testing is not required for uninsulated lined cargo tanks, with a design pressure or MAWP of 15 psig or less, which receive an external visual inspection and a lining inspection at least once each year.

(6) *Acceptance criteria.* A cargo tank that leaks, fails to retain test pressure or pneumatic inspection pressure, shows distortion, excessive permanent expansion, or other evidence of weakness that might render the cargo tank unsafe for transportation service, may not be returned to service, except as follows: A cargo tank with a heating system which does not hold pressure may remain in service as an unheated cargo tank if:

(i) The heating system remains in place and is structurally sound and no lading may leak into the heating system, and

(ii) The specification plate heating system information is changed to indicate that the cargo tank has no working heating system.

(7) The inspector must record the results of the pressure test as specified in §180.417(b).

(h) *Leakage test.* The following requirements apply to cargo tanks requiring a leakage test:

(1) Each cargo tank must be tested for leaks in accordance with paragraph (c) of this section. The leakage test must include testing product piping with all valves and accessories in place and operative, except that any venting devices set to discharge at less than the leakage test pressure must be removed or rendered inoperative during the test. All internal or external self-closing stop valves must be tested for leak tightness. Each cargo tank of a multi-cargo tank motor vehicle must be tested with adjacent cargo tanks empty and at atmospheric pressure. Test pressure must be maintained for at least 5 minutes. Cargo tanks in liquefied compressed gas service must be externally inspected for leaks during the leakage test. Suitable safeguards must be provided to protect personnel should a failure occur. Cargo tanks may be leakage tested with hazardous materials contained in the cargo tank during the test. Leakage test pressure must be no less than 80% of MAWP marked on the specification plate except as follows:

(i) A cargo tank with an MAWP of 690 kPa (100 psig) or more may be leakage tested at its maximum normal operating pressure provided it is in dedicated service or services; or

(ii) An MC 330 or MC 331 cargo tank in dedicated liquified petroleum gas service may be leakage tested at not less than 414 kPa (60 psig).

(iii) An operator of a specification MC 330 or MC 331 cargo tank, and a nonspecification cargo tank authorized under §173.315(k) of this subchapter, equipped with a meter may check leak tightness of the internal self-closing stop valve by conducting a meter creep test. (See appendix B to this part.)

(iv) An MC 330 or MC 331 cargo tank in dedicated service for anhydrous ammonia may be leakage tested at not less than 414 kPa (60 psig).

(v) A non-specification cargo tank required by §173.8(d) of this subchapter to be leakage tested, must be leakage tested at not less than 16.6 kPa (2.4 psig), or as specified in paragraph (h)(2) of this section.

(2) Cargo tanks used to transport petroleum distillate fuels that are equipped with vapor collection equipment may be leak tested in accordance with the Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," as set forth in Appendix A to 40 CFR part 60. Test methods and procedures and maximum allowable pressure and vacuum changes are in 40 CFR 63.425(e). The hydrostatic test alternative, using liquid in Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," may not be used to satisfy the leak testing requirements of this paragraph. The test must be conducted using air.

(3) A cargo tank that fails to retain leakage test pressure may not be returned to service as a specification cargo tank, except under conditions specified in §180.411(d).

(4) After July 1, 2000, Registered Inspectors of specification MC 330 and MC 331 cargo tanks, and nonspecification cargo tanks authorized under §173.315(k) of this subchapter must visually inspect the delivery hose assembly and piping system while the assembly is under leakage test pressure utilizing the rejection criteria listed in §180.416(g). Delivery hose assemblies not permanently attached to the cargo

tank motor vehicle may be inspected separately from the cargo tank motor vehicle. In addition to a written record of the inspection prepared in accordance with §180.417(b), the Registered Inspector conducting the test must note the hose identification number, the date of the test, and the condition of the hose assembly and piping system tested.

(5) The inspector must record the results of the leakage test as specified in §180.417(b).

(i) *Thickness testing.* (1) The shell and head thickness of all unlined cargo tanks used for the transportation of materials corrosive to the tank must be measured at least once every 2 years, except that cargo tanks measuring less than the sum of the minimum prescribed thickness, plus one-fifth of the original corrosion allowance, must be tested annually.

(2) Measurements must be made using a device capable of accurately measuring thickness to within ± 0.002 of an inch.

(3) Any person performing thickness testing must be trained in the proper use of the thickness testing device used in accordance with the manufacturer's instruction.

(4) Thickness testing must be performed in the following areas of the cargo tank wall, as a minimum:

(i) Areas of the tank shell and heads and shell and head area around any piping that retains lading;

(ii) Areas of high shell stress such as the bottom center of the tank;

(iii) Areas near openings;

(iv) Areas around weld joints;

(v) Areas around shell reinforcements;

(vi) Areas around appurtenance attachments;

(vii) Areas near upper coupler (fifth wheel) assembly attachments;

(viii) Areas near suspension system attachments and connecting structures;

(ix) Known thin areas in the tank shell and nominal liquid level lines; and

(x) Connecting structures joining multiple cargo tanks of carbon steel in a self-supporting cargo tank motor vehicle.

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(5) Minimum thicknesses for MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 cargo tanks are determined based on the definition of minimum thickness found in §178.320(a) of this subchapter. The following Tables I and II identify the "In-Service Minimum Thickness" values to be used to determine the minimum thickness for the referenced cargo tanks. The column headed "Minimum Manufactured Thickness" indicates the minimum values required for new construction of DOT 400 series cargo tanks, found in Tables I and II of §§178.346-2, 178.347-2, and 178.348-2 of this subchapter. In-Service Minimum Thicknesses for MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 cargo tanks are based on 90 percent of the manufactured thickness specified in the DOT specification, rounded to three places.

TABLE I—IN-SERVICE MINIMUM THICKNESS FOR MC 300, MC 303, MC 304, MC 306, MC 307, MC 310, MC 311, AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF STEEL AND STEEL ALLOYS

Minimum manufactured thickness (US gauge or inches)	Nominal decimal equivalent for (inches)	In-service minimum thickness reference (inches)
19	0.0418	0.038
18	0.0478	0.043
17	0.0538	0.048
16	0.0598	0.054
15	0.0673	0.061
14	0.0747	0.067
13	0.0897	0.081
12	0.1046	0.094
11	0.1196	0.108
10	0.1345	0.121
9	0.1495	0.135
8	0.1644	0.148
7	0.1793	0.161
3/16	0.1875	0.169
1/4	0.2500	0.225
5/16	0.3125	0.281
3/8	0.3750	0.338

TABLE II—IN-SERVICE MINIMUM THICKNESS FOR MC 301, MC 302, MC 304, MC 305, MC 306, MC 307, MC 311, AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF ALUMINUM AND ALUMINUM ALLOYS

Minimum manufactured thickness	In-service minimum thickness (inches)
0.078	0.070

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TABLE II—IN-SERVICE MINIMUM THICKNESS FOR MC 301, MC 302, MC 304, MC 305, MC 306, MC 307, MC 311, AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF ALUMINUM AND ALUMINUM ALLOYS—Continued

Minimum manufactured thickness	In-service minimum thickness (inches)
0.087	0.078
0.096	0.086
0.109	0.098
0.130	0.117
0.141	0.127
0.151	0.136
0.172	0.155
0.173	0.156
0.194	0.175
0.216	0.194
0.237	0.213
0.270	0.243
0.360	0.324
0.450	0.405
0.540	0.486

(6) An owner of a cargo tank that no longer conforms to the minimum thickness prescribed for the design as manufactured may use the cargo tank to transport authorized materials at reduced maximum weight of lading or reduced maximum working pressure, or combinations thereof, provided the following conditions are met:

(i) A Design Certifying Engineer must certify that the cargo tank design and thickness are appropriate for the reduced loading conditions by issuance of a revised manufacturer's certificate, and

(ii) The cargo tank motor vehicle's nameplate must reflect the revised service limits.

(7) An owner of a cargo tank that no longer conforms with the minimum thickness prescribed for the specification may not return the cargo tank to hazardous materials service. The tank's specification plate must be removed, obliterated or covered in a secure manner.

(8) The inspector must record the results of the thickness test as specified in §180.417(b).

(9) For MC 331 cargo tanks constructed before October 1, 2003, minimum thickness shall be determined by the thickness indicated on the U1A form minus any corrosion allowance. For MC 331 cargo tanks constructed after October 1, 2003, the minimum

thickness will be the value indicated on the specification plate. If no corrosion allowance is indicated on the UIA form then the thickness of the tank shall be the thickness of the material of construction indicated on the UIA form with no corrosion allowance.

(10) For 400-series cargo tanks, minimum thickness is calculated according to tables in each applicable section of this subchapter for that specification: §178.346-2 for DOT 406 cargo tanks, §178.347-2 for DOT 407 cargo tanks, and §178.348-2 for DOT 412 cargo tanks.

[Amdt. 180-2, 54 FR 25032, June 12, 1989]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §180.407, see the List of CFR Sections Affected which appears in the Finding Aids section of the printed volume and on GPO Access.

§180.409 Minimum qualifications for inspectors and testers.

(a) Except as otherwise provided in this section, any person performing or witnessing the inspections and tests specified in §180.407(c) must—

(1) Be registered with the Federal Motor Carrier Safety Administration in accordance with part 107, subpart F of this chapter,

(2) Be familiar with DOT-specification cargo tanks and trained and experienced in use of the inspection and testing equipment needed, and

(3) Have the training and experience required to meet the definition of "Registered Inspector" in §171.8 of this chapter.

(b) A person who only performs annual external visual inspections and leakage tests on a cargo tank motor vehicle, owned or operated by that person, with a capacity of less than 13,250 L (3,500 gallons) used exclusively for flammable liquid petroleum fuels, is not required to meet the educational and years of experience requirements set forth in the definition of "Registered Inspector" in §171.8 of this subchapter. Although not required to meet the educational and years of experience requirements, a person who performs visual inspections or leakage tests or signs the inspection reports must have the knowledge and ability to perform such inspections and tests and must perform them as required by this sub-

chapter, and must register with the Department as required by subpart F of part 107 of this chapter.

(c) A person who performs only annual external visual inspections and leakage tests on a permanently mounted non-bulk tank, owned or operated by that person, for petroleum products as authorized by §173.8(c) of this subchapter, is not required to be registered in accordance with subpart F of part 107 of this chapter. In addition the person who signs the inspection report required by §180.417(b) of this subpart for such non-bulk tanks is not required to be registered. Although not required to register, a person who performs visual inspections or leakage tests or signs the inspection reports must have the knowledge and ability to perform such inspections and tests and must perform them as required by this subchapter.

(d) A motor carrier or cargo tank owner who meets the requirements of paragraph (a) of this section may use an employee who is not a Registered Inspector to perform a portion of the pressure retest required by §180.407(g). External and internal visual inspections must be accomplished by a Registered Inspector, but the hydrostatic or pneumatic pressure test, as set forth in §180.407(g)(1)(viii) and (ix), respectively, may be done by an employee who is not a Registered Inspector provided that—

(1) The employee is familiar with the cargo tank and is trained and experienced in the use of the inspection and testing equipment used;

(2) The employer submits certification that such employee meets the qualification requirements to the Associate Administrator, Attn: (PHH-32), Pipeline and Hazardous Materials Safety Administration, Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590; and

(3) The employer retains a copy of the tester's qualifications with the documents required by §180.417(b).

[Amdt. 180-2, 55 FR 37069, Sept. 7, 1990, as amended by Amdt. 180-3, 56 FR 66287, Dec. 20, 1991; 57 FR 45466, Oct. 1, 1992; Amdt. 180-11, 62 FR 1217, Jan. 8, 1997; 66 FR 45391, Aug. 28, 2001; 68 FR 19288, Apr. 18, 2003; 70 FR 56100, Sept. 23, 2005; 72 FR 55697, Oct. 1, 2007]

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§ 180.411 Acceptable results of tests and inspections.

(a) *Corroded or abraded areas.* The minimum thickness may not be less than that prescribed in the applicable specification.

(b) *Dents, cuts, digs and gouges.* For evaluation procedures, see CGA C-6 (IBR, see § 171.7 of this subchapter).

(1) For dents at welds or that include a weld, the maximum allowable depth is ½ inch. For dents away from welds, the maximum allowable depth is ¼ of the greatest dimension of the dent, but in no case may the depth exceed one inch.

(2) The minimum thickness remaining beneath a cut, dig, or gouge may not be less than that prescribed in the applicable specification.

(c) *Weld or structural defects.* Any cargo tank with a weld defect such as a crack, pinhole, or incomplete fusion, or a structural defect must be taken out of hazardous materials service until repaired.

(d) *Leakage.* All sources of leakage must be properly repaired prior to returning a tank to hazardous materials service.

(e) *Relief valves.* Any pressure relief valve that fails to open and reclose at the prescribed pressure must be repaired or replaced.

(f) *Liner integrity.* Any defect shown by the test must be properly repaired.

(g) *Pressure test.* Any tank that fails to meet the acceptance criteria found in the individual specification that applies must be properly repaired.

[Amdt. 180-2, 54 FR 25032, June 12, 1989, as amended at 68 FR 75764, Dec. 31, 2003]

§ 180.413 Repair, modification, stretching, rebarrelling, or mounting of specification cargo tanks.

(a) *General.* Any repair, modification, stretching, rebarrelling, or mounting of a cargo tank must be performed in conformance with the requirements of this section.

(1) Except as otherwise provided in this section, each repair, modification, stretching, or rebarrelling of a specification cargo tank must be performed by a repair facility holding a valid National Board Certificate of Authorization for use of the National Board "R" stamp and must be made in accordance

with the edition of the National Board Inspection Code in effect at the time the work is performed.

(i) Repairs, modifications, stretchings, and rebarrellings performed on non-ASME stamped specification cargo tanks may be performed by:

(A) A cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME "U" stamp using the quality control procedures used to obtain the Certificate of Authorization; or

(B) A repair facility holding a valid National Board Certificate of Authorization for use of the National Board "R" stamp using the quality control procedures used to obtain the Certificate of Authorization.

(ii) A repair, modification, stretching, or rebarrelling of a non-ASME stamped cargo tank may be done without certification by an Authorized Inspector, completion of the R-1 form, or being stamped with the "R" stamp.

(2) Prior to each repair, modification, stretching, rebarrelling, or mounting, the cargo tank motor vehicle must be emptied of any hazardous material lading. In addition, cargo tank motor vehicles used to transport flammable or toxic lading must be sufficiently cleaned of residue and purged of vapors so any potential hazard is removed, including void spaces between double bulkheads, piping and vapor recovery systems.

(3) Each person performing a repair, modification, stretching, rebarrelling or mounting of a DOT specification cargo tank must be registered in accordance with subpart F of part 107 of this chapter.

(b) *Repair.* The suitability of each repair affecting the structural integrity or lading retention capability of the cargo tank must be determined by the testing required either in the applicable manufacturing specification or in § 180.407(g)(1)(iv). Each repair of a cargo tank involving welding on the shell or head must be certified by a Registered Inspector. The following provisions apply to specific cargo tank repairs:

(1) DOT 406, DOT 407, and DOT 412 cargo tanks must be repaired in accordance with the specification requirements in effect at the time of repair;

(2) MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306 cargo tanks must be repaired in accordance with either the most recent revision of the original specification or with the DOT 406 specification in effect at the time of repair;

(3) MC 304 and MC 307 cargo tanks must be repaired in accordance with either the most recent revision of the original specification or with the DOT 407 specification in effect at the time of repair;

(4) MC 310, MC 311, and MC 312 cargo tanks must be repaired in accordance with either the most recent revision of the original specification or with the DOT 412 specification in effect at the time of repair;

(5) MC 338 cargo tanks must be repaired in accordance with the specification requirements in effect at the time of repair; and

(6) MC 330 and MC 331 cargo tanks must be repaired in accordance with the repair procedures described in CGA Technical Bulletin TB-2 (IBR, see §171.7 of this subchapter) and the National Board Inspection Code (IBR, see §171.7 of this subchapter). Each cargo tank having cracks or other defects requiring welded repairs must meet all inspection, test, and heat treatment requirements in §178.337-16 of this subchapter in effect at the time of the repair, except that postweld heat treatment after minor weld repairs is not required. When a repair is made of defects revealed by the wet fluorescent magnetic particle inspection, including those repaired by grinding, the affected area of the cargo tank must again be examined by the wet fluorescent magnetic particle method after hydrostatic testing to assure that all defects have been removed.

(c) *Maintenance or replacement of piping, valves, hoses, or fittings.* After each repair, maintenance or replacement of a pipe, valve, hose, or fitting on a cargo tank, that component must be installed in accordance with the provisions of the applicable specification before the cargo tank is returned to service.

(1) After maintenance or replacement that does not involve welding on the cargo tank wall, the repaired or replaced piping, valve, hose, or fitting must be tested for leaks. This requirement is met when the piping, valve, hose, or fitting is tested after installation in accordance with §180.407(h)(1). A hose may be tested before or after installation on the cargo tank.

(2) After repair or replacement of piping, valves, or fittings that involves welding on the cargo tank wall, the cargo tank must be pressure tested in accordance with the applicable manufacturing specification or §180.407(g)(1)(iv). In addition, the affected piping, valve, or fitting must be tested in accordance with paragraph (c)(1) of this section.

(3) Hoses on cargo tanks in dedicated liquefied compressed gas, except carbon dioxide, service are excepted from these testing requirements, but must be tested in accordance with §180.416(f).

(d) *Modification, stretching, or rebarrelling.* Modification, stretching or rebarrelling of a cargo tank motor vehicle must conform to the following provisions:

(1) The design of the modified, stretched, or rebarrelled cargo tank motor vehicle must be certified in writing by a Design Certifying Engineer as meeting the structural integrity and accident damage protection requirements of the applicable specification.

(2) Except as provided in paragraph (d)(2)(v) of this section, all new material and equipment affected by modification, stretching, or rebarrelling must meet the requirements of the specification in effect at the time such work is performed, and all applicable structural integrity requirements (§178.337-3, §178.338-3, or §178.345-3 of this subchapter). The work must conform to the requirements of the applicable specification as follows:

(i) For specification MC 300, MC 301, MC 302, MC 303, MC 305 and MC 306 cargo tanks, the provisions of either specification MC 306 or DOT 406 until August 31, 1995 and, thereafter to specification DOT 406 only;

(ii) For specification MC 304 and MC 307 cargo tanks, the provisions of either specification MC 307 or DOT 407

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until August 31, 1995 and, thereafter to specification DOT 407 only;

(iii) For specification MC 310, MC 311, and MC 312 cargo tanks, the provisions of either specification MC 312 or DOT 412 until August 31, 1995 and, thereafter to specification DOT 412 only;

(iv) For specification MC 330 cargo tanks, the provisions of specification MC 331; and

(v) For specification MC 338 cargo tanks, the provisions of specification MC 338. However, structural modifications to MC 338 cargo tanks authorized under § 180.405(d) may conform to applicable provisions of the ASME Code instead of specification MC 338, provided the structural integrity of the modified cargo tank is at least equivalent to that of the original cargo tank.

(3) The person performing the modification, stretching, or rebarrelling must:

(i) Have knowledge of the original design concept, particularly with respect to structural design analysis, material and welding procedures.

(ii) Assure compliance of the rebuilt cargo tank's structural integrity, venting, and accident damage protection with the applicable specification requirements.

(iii) Assure compliance with all applicable Federal Motor Carrier Safety Regulations for all newly installed safety equipment.

(iv) Assure the suitability of each modification, stretching and rebarrelling that affects the lading retention capability of the cargo tank by performing the tests required in the applicable specification or § 180.407(g)(1)(iv).

(v) Any modification that changes information displayed on the specification plate requires the installation of a supplemental specification plate, nameplate, or both containing the information that reflects the cargo tank as modified, stretched or rebarrelled. The plate must include the name of the person or facility doing the work, DOT registration number, date work is completed, retest information, and any other information that differs from the original plate. The supplemental plates must be installed immediately adjacent to the existing plate or plates.

(vi) On a variable specification cargo tank, install a supplemental or new

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variable specification plate, and replace the specification listed on the original specification plate with the words “see variable specification plate.”

(4) A Registered Inspector must certify that the modified, stretched, or rebarrelled cargo tank conforms to the requirements of this section and the applicable specification by issuing a supplemental certificate of compliance. The registration number of the Registered Inspector must be entered on the certificate.

(e) *Mounting of cargo tanks.* Mounting a cargo tank on a cargo tank motor vehicle must be:

(1) Performed as required by paragraph (d)(2) of this section and certified by a Design Certifying Engineer if the mounting of a cargo tank on a motor vehicle chassis involves welding on the cargo tank head or shell or any change or modification of the methods of attachment; or

(2) In accordance with the original specification for attachment to the chassis or the specification for attachment to the chassis in effect at the time of the mounting, and performed under the supervision of a Registered Inspector if the mounting of a cargo tank on a motor vehicle chassis does not involve welding on the cargo tank head or shell or a change or modification of the methods of attachment.

(f) *Records.* Each owner of a cargo tank motor vehicle must retain at the owner's principal place of business all records of repair, modification, stretching, or rebarrelling, including notation of any tests conducted to verify the suitability of the repair, modification, stretching, or rebarrelling made to each cargo tank during the time the cargo tank motor vehicle is in service and for one year thereafter. Copies of these records must be retained by a motor carrier, if not the owner of the cargo tank motor vehicle, at its principal place of business during the period the cargo tank motor vehicle is in the carrier's service.

[68 FR 19288, Apr. 18, 2003; 68 FR 52372, Sept. 3, 2003, as amended at 68 FR 75764, Dec. 31, 2003]

§ 180.415 Test and inspection markings.

(a) Each cargo tank successfully completing the test and inspection requirements contained in §180.407 must be marked as specified in this section.

(b) Each cargo tank must be durably and legibly marked, in English, with the date (month and year) and the type of test or inspection performed, subject to the following provisions:

(1) The date must be readily identifiable with the applicable test or inspection.

(2) The markings must be in letters and numbers at least 32 mm (1.25 inches) high, near the specification plate or anywhere on the front head.

(3) The type of test or inspection may be abbreviated as follows:

(i) V for external visual inspection and test;

(ii) I for internal visual inspection;

(iii) P for pressure test;

(iv) L for lining inspection;

(v) T for thickness test; and

(vi) K for leakage test for a cargo tank tested under §180.407, except §180.407(h)(2); and

(vii) K-EPA27 for a cargo tank tested under §180.407(h)(2) after October 1, 2004.

Examples to paragraph (b). The markings "10-99 P, V, L" represent that in October 1999 a cargo tank passed the prescribed pressure test, external visual inspection and test, and the lining inspection. The markings "2-00 K-EPA27" represent that in February 2000 a cargo tank passed the leakage test under §180.407(h)(2). The markings "2-00 K, K-EPA27" represent that in February 2000 a cargo tank passed the leakage test under both §180.407(h)(1) and under EPA Method 27 in §180.407(h)(2).

(c) For a cargo tank motor vehicle composed of multiple cargo tanks constructed to the same specification, which are tested and inspected at the same time, one set of test and inspection markings may be used to satisfy the requirements of this section. For a cargo tank motor vehicle composed of multiple cargo tanks constructed to different specifications, which are tested and inspected at different intervals, the test and inspection markings must appear in the order of the cargo tank's

corresponding location, from front to rear.

[Amdt. 180-2, 56 FR 27879, June 17, 1991, as amended by Amdt. 180-3, 56 FR 66287, Dec. 20, 1991; 57 FR 45466, Oct. 1, 1992; Amdt. 180-6, 59 FR 49135, Sept. 26, 1994; Amdt. 180-10, 61 FR 51343, Oct. 1, 1996; 68 FR 19290, Apr. 18, 2003; 68 FR 52372, Sept. 3, 2003]

§ 180.416 Discharge system inspection and maintenance program for cargo tanks transporting liquefied compressed gases.

(a) *Applicability.* This section is applicable to an operator using specification MC 330, MC 331, and nonspecification cargo tanks authorized under §173.315(k) of this subchapter for transportation of liquefied compressed gases other than carbon dioxide. Paragraphs (b), (c), (d)(1), (d)(5), (e), (f), and (g)(1) of this section, applicable to delivery hose assemblies, apply only to hose assemblies installed or carried on the cargo tank.

(b) *Hose identification.* By July 1, 2000, the operator must assure that each delivery hose assembly is permanently marked with a unique identification number and maximum working pressure.

(c) *Post-delivery hose check.* After each unloading, the operator must visually check that portion of the delivery hose assembly deployed during the unloading.

(d) *Monthly inspections and tests.* (1) The operator must visually inspect each delivery hose assembly at least once each calendar month the delivery hose assembly is in service.

(2) The operator must visually inspect the piping system at least once each calendar month the cargo tank is in service. The inspection must include fusible elements and all components of the piping system, including bolts, connections, and seals.

(3) At least once each calendar month a cargo tank is in service, the operator must actuate all emergency discharge control devices designed to close the internal self-closing stop valve to assure that all linkages operate as designed. appendix A to this part outlines acceptable procedures that may be used for this test.

(4) The operator of a cargo tank must check the internal self-closing stop valve in the liquid discharge opening

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for leakage through the valve at least once each calendar month the cargo tank is in service. On cargo tanks equipped with a meter, the meter creep test as outlined in appendix B to this part or a test providing equivalent accuracy is acceptable. For cargo tanks that are not equipped with a meter, appendix B to this part outlines one acceptable method that may be used to check internal self-closing stop valves for closure.

(5) After July 1, 2000, the operator must note each inspection in a record. That record must include the inspection date, the name of the person performing the inspection, the hose assembly identification number, the company name, the date the hose was assembled and tested, and an indication that the delivery hose assembly and piping system passed or failed the tests and inspections. A copy of each test and inspection record must be retained by the operator at its principal place of business or where the vehicle is housed or maintained until the next test of the same type is successfully completed.

(e) *Annual hose leakage test.* The owner of a delivery hose assembly that is not permanently attached to a cargo tank motor vehicle must ensure that the hose assembly is annually tested in accordance with § 180.407(h)(4).

(f) *New or repaired delivery hose assemblies.* Each operator of a cargo tank must ensure each new and repaired delivery hose assembly is tested at a minimum of 120 percent of the hose maximum working pressure.

(1) The operator must visually examine the delivery hose assembly while it is under pressure.

(2) Upon successful completion of the pressure test and inspection, the operator must assure that the delivery hose assembly is permanently marked with the month and year of the test.

(3) After July 1, 2000, the operator must complete a record documenting the test and inspection, including the date, the signature of the inspector, the hose owner, the hose identification number, the date of original delivery hose assembly and test, notes of any defects observed and repairs made, and an indication that the delivery hose assembly passed or failed the tests and

inspections. A copy of each test and inspection record must be retained by the operator at its principal place of business or where the vehicle is housed or maintained until the next test of the same type is successfully completed.

(g) *Rejection criteria.* (1) No operator may use a delivery hose assembly determined to have any condition identified below for unloading liquefied compressed gases. An operator may remove and replace damaged sections or correct defects discovered. Repaired hose assemblies may be placed back in service if retested successfully in accordance with paragraph (f) of this section.

(i) Damage to the hose cover that exposes the reinforcement.

(ii) Wire braid reinforcement that has been kinked or flattened so as to permanently deform the wire braid.

(iii) Soft spots when not under pressure, bulging under pressure, or loose outer covering.

(iv) Damaged, slipping, or excessively worn hose couplings.

(v) Loose or missing bolts or fastenings on bolted hose coupling assemblies.

(2) No operator may use a cargo tank with a piping system found to have any condition identified in this paragraph (g)(2) for unloading liquefied compressed gases.

(i) Any external leak identifiable without the use of instruments.

(ii) Bolts that are loose, missing, or severely corroded.

(iii) Manual stop valves that will not actuate.

(iv) Rubber hose flexible connectors with any condition outlined in paragraph (g)(1) of this section.

(v) Stainless steel flexible connectors with damaged reinforcement braid.

(vi) Internal self-closing stop valves that fail to close or that permit leakage through the valve detectable without the use of instruments.

(vii) Pipes or joints that are severely corroded.

[64 FR 28051, May 24, 1999]

§ 180.417 Reporting and record retention requirements.

(a) *Vehicle certification.* (1) Each owner of a specification cargo tank must retain the manufacturer's certificate, the manufacturer's ASME U1A

data report, where applicable, and related papers certifying that the specification cargo tank identified in the documents was manufactured and tested in accordance with the applicable specification. This would include any certification of emergency discharge control systems required by §173.315(n) of this subchapter or §180.405(m). The owner must retain the documents throughout his ownership of the specification cargo tank and for one year thereafter. In the event of a change in ownership, the prior owner must retain non-fading photo copies of these documents for one year.

(2) Each motor carrier who uses a specification cargo tank motor vehicle must obtain a copy of the manufacturer's certificate and related papers or the alternative report authorized by paragraph (a)(3)(i) or (ii) of this section and retain the documents as specified in this paragraph (a)(2). A motor carrier who is not the owner of a cargo tank motor vehicle must also retain a copy of the vehicle certification report for as long as the cargo tank motor vehicle is used by that carrier and for one year thereafter. The information required by this section must be maintained at the company's principal place of business or at the location where the vehicle is housed or maintained. The provisions of this section do not apply to a motor carrier who leases a cargo tank for less than 30 days.

(3) *DOT Specification cargo tanks manufactured before September 1, 1995*—(i) *Non-ASME Code stamped cargo tanks*—If an owner does not have a manufacturer's certificate for a cargo tank and he wishes to certify it as a specification cargo tank, the owner must perform appropriate tests and inspections, under the direct supervision of a Registered Inspector, to determine if the cargo tank conforms with the applicable specification. Both the owner and the Registered Inspector must certify that the cargo tank fully conforms to the applicable specification. The owner must retain the certificate, as specified in this section.

(ii) *ASME Code Stamped cargo tanks*. If the owner does not have the manufacturer's certificate required by the specification and the manufacturer's data report required by the ASME, the

owner may contact the National Board for a copy of the manufacturer's data report, if the cargo tank was registered with the National Board, or copy the information contained on the cargo tank's identification and ASME Code plates. Additionally, both the owner and the Registered Inspector must certify that the cargo tank fully conforms to the specification. The owner must retain such documents, as specified in this section.

(b) *Test or inspection reporting*. Each person performing a test or inspection as specified in §180.407 must prepare a written report, in English, in accordance with this paragraph.

(1) Each test or inspection report must include the following information:

(i) Owner's and manufacturer's unique serial number for the cargo tank;

(ii) Name of cargo tank manufacturer;

(iii) Cargo tank DOT or MC specification number;

(iv) MAWP of the cargo tank;

(v) Minimum thickness of the cargo tank shell and heads when the cargo tank is thickness tested in accordance with § 180.407(d)(4), § 180.407(e)(3), § 180.407(f)(3), or § 180.407(i);

(vi) Indication of whether the cargo tank is lined, insulated, or both; and

(vii) Indication of special service of the cargo tank (e.g., transports material corrosive to the tank, dedicated service, etc.)

(2) Each test or inspection report must include the following specific information as appropriate for each individual type of test or inspection:

(i) Type of test or inspection performed;

(ii) Date of test or inspection (month and year);

(iii) Listing of all items tested or inspected, including information about pressure relief devices that are removed, inspected and tested or replaced, when applicable (type of device, set to discharge pressure, pressure at which device opened, pressure at which device re-seated, and a statement of disposition of the device (e.g., reinstalled, repaired, or replaced)); information regarding the inspection of

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upper coupler assemblies, when applicable (visually examined in place, or removed for examination); and, information regarding leakage and pressure testing, when applicable (pneumatic or hydrostatic testing method, identification of the fluid used for the test, test pressure, and holding time of test);

(iv) Location of defects found and method of repair;

(v) ASME or National Board Certificate of Authorization number of facility performing repairs, if applicable;

(vi) Name and address of person performing test;

(vii) Registration number of the facility or person performing the test;

(viii) Continued qualification statement, such as “cargo tank meets the requirements of the DOT specification identified on this report” or “cargo tank fails to meet the requirements of the DOT specification identified on this report”;

(ix) DOT registration number of the registered inspector; and

(x) Dated signature of the registered inspector and the cargo tank owner.

(3) The owner and the motor carrier, if not the owner, must each retain a copy of the test and inspection reports until the next test or inspection of the same type is successfully completed. This requirement does not apply to a motor carrier leasing a cargo tank for fewer than 30 days.

(c) *Additional requirements for Specification MC 330 and MC 331 cargo tanks.*

(1) After completion of the pressure test specified in §180.407(g)(3), each motor carrier operating a Specification MC 330 or MC 331 cargo tank in anhydrous ammonia, liquefied petroleum gas, or any other service that may cause stress corrosion cracking, must make a written report containing the following information:

(i) Carrier’s name, address of principal place of business, and telephone number;

(ii) Complete identification plate data required by Specification MC 330 or MC 331, including data required by ASME Code;

(iii) Carrier’s equipment number;

(iv) A statement indicating whether or not the tank was stress relieved after fabrication;

(v) Name and address of the person performing the test and the date of the test;

(vi) A statement of the nature and severity of any defects found. In particular, information must be furnished to indicate the location of defects detected, such as in weld, heat-affected zone, the liquid phase, the vapor phase, or the head-to-shell seam. If no defect or damage was discovered, that fact must be reported;

(vii) A statement indicating the methods employed to make repairs, who made the repairs, and the date they were completed. Also, a statement of whether or not the tank was stress relieved after repairs and, if so, whether full or local stress relieving was performed;

(viii) A statement of the disposition of the cargo tank, such as “cargo tank scrapped” or “cargo tank returned to service”; and

(ix) A statement of whether or not the cargo tank is used in anhydrous ammonia, liquefied petroleum gas, or any other service that may cause stress corrosion cracking. Also, if the cargo tank has been used in anhydrous ammonia service since the last report, a statement indicating whether each shipment of ammonia was certified by its shipper as containing 0.2 percent water by weight.

(2) A copy of the report must be retained by the carrier at its principal place of business during the period the cargo tank is in the carrier’s service and for one year thereafter. Upon a written request to, and with the approval of, the Field Administrator, Regional Service Center, Federal Motor Carrier Safety Administration for the region in which a motor carrier has its principal place of business, the carrier may maintain the reports at a regional or terminal office.

(3) The requirement in paragraph (c)(1) of this section does not apply to a motor carrier leasing a cargo tank for less than 30 days.

(d) *Supplying certificates and reports.* Each person offering a DOT-specification cargo tank for sale or lease must provide the purchaser or lessee a copy of the cargo tank certificate of compliance, records of repair, modification, stretching, or rebarrelling; and the

most recent inspection and test reports made under this section. Copies of such reports must be provided to the lessee if the cargo tank is leased for more than 30 days.

[Amdt. 180-2, 54 FR 25032, June 12, 1989, as amended at 55 FR 21038, May 22, 1990; 55 FR 37069, Sept. 7, 1990; 56 FR 27879, June 17, 1991; 58 FR 12905, Mar. 8, 1993; Amdt. 180-2, 59 FR 1786, Jan. 12, 1994; Amdt. 180-10, 61 FR 51343, Oct. 1, 1996; 63 FR 52850, Oct. 1, 1998; 64 FR 28052, May 24, 1999; 65 FR 50463, Aug. 18, 2000; 67 FR 61016, Sept. 27, 2002; 68 FR 19290, Apr. 18, 2003; 68 FR 52372, Sept. 3, 2003; 69 FR 54047, Sept. 7, 2004; 70 FR 34077, June 13, 2005]

Subpart F—Qualification and Maintenance of Tank Cars

SOURCE: Amdt. 180-8, 60 FR 49079, Sept. 21, 1995, unless otherwise noted.

§ 180.501 Applicability.

(a) This subpart prescribes requirements, in addition to those contained in parts 107, 171, 172, 173, and 179 of this subchapter, applicable to any person who manufactures, fabricates, marks, maintains, repairs, inspects, or services tank cars to ensure continuing qualification.

(b) Any person who performs a function prescribed in this part shall perform that function in accordance with this part.

[Amdt. 180-8, 60 FR 49079, Sept. 21, 1995, as amended by Amdt. 179-50, 61 FR 33256, June 26, 1996]

§ 180.503 Definitions.

The definitions contained in §§171.8 and 179.2 of this subchapter apply.

§ 180.505 Quality assurance program.

The quality assurance program requirements of §179.7 of this subchapter apply.

§ 180.507 Qualification of tank cars.

(a) Each tank car marked as meeting a "DOT" specification or any other tank car used for the transportation of a hazardous material must meet the requirements of this subchapter or the applicable specification to which the tank was constructed.

(b) *Tank car specifications no longer authorized for construction.* (1) Tank cars prescribed in the following table

are authorized for service provided they conform to all applicable safety requirements of this subchapter:

Specification prescribed in the current regulations	Other specifications permitted	Notes
105A200W	105A100W	1
105A200ALW	105A100ALW	1
105A300W	ICC-105, 105A300.	
105A400W	105A400.	
105A500W	105A500.	
105A600W	105A600.	
106A500X	ICC-27, BE-27, 106A500.	
106A800X	106A800.	
107A * * * * .....	.....	2

NOTE 1: Tanks built as Specification DOT 105A100W or DOT 105A100ALW may be altered and converted to DOT 105A200W and DOT 105A200ALW, respectively.

NOTE 2: The test pressures of tanks built in the United States between January 1, 1941 and December 31, 1955, may be increased to conform to Specification 107A. Original and revised test pressure markings must be indicated and may be shown on the tank or on a plate attached to the bulkhead of the car. Tanks built before 1941 are not authorized.

(2) For each tank car conforming to and used under an exemption issued before October 1, 1984, which authorized the transportation of a cryogenic liquid in a tank car, the owner or operator shall remove the exemption number stenciled on the tank car and stamp the tank car with the appropriate Class DOT-113 specification followed by the applicable exemption number. For example: DOT-113D60W-E * * * * (asterisks to be replaced by the exemption number). The owner or operator marking a tank car in this manner shall retain on file a copy of the last exemption in effect during the period the tank car is in service. No person may modify a tank car marked under this paragraph unless the modification is in compliance with an applicable requirement or provision of this subchapter.

(3) Specification DOT-113A175W, DOT-113C60W, DOT-113D60W, and DOT-113D120W tank cars may continue in use, but new construction is not authorized.

(4) Class DOT 105A and 105S tank cars used to transport hydrogen chloride, refrigerated liquid under the terms of DOT-E 3992 may continue in service, but new construction is not authorized.

(5) Specification DOT-103A-ALW, 103AW, 103ALW, 103ANW, 103BW, 103CW, 103DW, 103EW, and 104W tank

cars may continue in use, but new construction is not authorized.

[Amdt. 180–8, 60 FR 49079, Sept. 21, 1995, as amended at 68 FR 48572, Aug. 14, 2003]

§ 180.509 Requirements for inspection and test of specification tank cars.

(a) *General.* (1) Each tank car facility shall evaluate a tank car according to the requirements specified in § 180.511.

(2) Each tank car that successfully passes a periodic inspection and test must be marked as prescribed in § 180.515.

(3) A written report as specified in § 180.517(b) must be prepared for each tank car that is inspected and tested under this section.

(b) *Conditions requiring inspection and test of tank cars.* Without regard to any other periodic inspection and test requirements, a tank car must have an appropriate inspection and test according to the type of defect and the type of maintenance or repair performed if:

(1) The tank car shows evidence of abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition that makes the tank car unsafe for transportation. An example is if maintenance is performed to replace a fitting, then only a leakage pressure test needs to be performed.

(2) The tank car was in an accident and damaged to an extent that may adversely affect its capability to retain its contents.

(3) The tank bears evidence of damage caused by fire.

(4) The Associate Administrator for Safety, FRA, requires it based on the existence of probable cause that a tank car or a class or design of tank cars may be in an unsafe operating condition.

(c) *Frequency of inspection and tests.* Each tank car shall have an inspection and test according to the requirements of this paragraph.

(1) For Class 107 tank cars and tank cars of riveted construction, the tank car must have a hydrostatic pressure test and visual inspection conforming to the requirements in effect prior to July 1, 1996, for the tank specification.

(2) For Class DOT 113 tank cars, see § 173.319(e) of this subchapter.

(3) For fusion welded tank cars, each tank car must have an inspection and

test in accordance with paragraphs (d) through (k) of this section.

(i) For cars transporting materials not corrosive to the tank, every 10 years for the tank and service equipment (i.e., filling and discharge, venting, safety, heating, and measuring devices).

(ii) For non-lined or non-coated tank cars transporting materials corrosive to the tank, an interval based on the following formula, but in no case shall the interval exceed 10 years for the tank and 5 years for service equipment:

$$i = \frac{t_1 - t_2}{r}$$

Where:

i is the inspection and test interval.

t₁ is the actual thickness.

t₂ is the allowable minimum thickness under paragraph (g) of this section.

r is the corrosion rate per year.

(iii) For lined or coated tank cars transporting a material corrosive to the tank, every 10 years for the tank, 5 years for the service equipment.

(A) When a lining or coating is applied to protect the tank shell from the lading, the owner of the lining or coating shall determine the periodic inspection interval, test technique, and acceptance criteria for the lining or coating. The owner must maintain at its principal place of business all supporting documentation used to make such a determination, such as the lining or coating manufacturer's recommended inspection interval, test technique, and acceptance criteria. The supporting documentation must be made available to FRA upon request.

(B) The owner of the lining or coating shall provide the periodic inspection interval, test technique, and acceptance criteria for the lining or coating to the person responsible for qualifying the lining and coating.

(d) *Visual inspection.* At a minimum, each tank car facility must visually inspect the tank externally and internally as follows:

(1) An internal inspection of the tank shell and heads for abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition that makes the tank car unsafe for transportation, and except in the areas

where insulation or a thermal protection system precludes it, an external inspection of the tank shell and heads for abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition that makes the tank car unsafe for transportation;

(2) An inspection of the piping, valves, fittings, and gaskets for indications of corrosion and other conditions that make the tank car unsafe for transportation;

(3) An inspection for missing or loose bolts, nuts, or elements that make the tank car unsafe for transportation;

(4) An inspection of all closures on the tank car for proper securement in a tool tight condition and an inspection of the protective housings for proper securement;

(5) An inspection of excess flow valves having threaded seats for tightness; and

(6) An inspection of the required markings on the tank car for legibility.

(e) *Structural integrity inspections and tests.* At a minimum, each tank car facility shall inspect the tank car for structural integrity as specified in this section. The structural integrity inspection and test shall include all transverse fillet welds greater than 0.64 cm (0.25 inch) within 121.92 cm (4 feet) of the bottom longitudinal center line; the termination of longitudinal fillet welds greater than 0.64 cm (0.25 inch) within 121.92 cm (4 feet) of the bottom longitudinal center line; and all tank shell butt welds within 60.96 cm (2 feet) of the bottom longitudinal center line by one or more of the following inspection

and test methods to determine that the welds are in proper condition:

(1) Dye penetrant test;

(2) Radiography test;

(3) Magnetic particle test;

(4) Ultrasonic test; or

(5) Optically-aided visual inspection (e.g., magnifiers, fiberscopes, borescopes, and machine vision technology).

(f) *Thickness tests.* (1) Each tank car facility shall measure the thickness of the tank car shell, heads, sumps, domes, and nozzles on each tank car by using a device capable of accurately measuring the thickness to within ±0.05 mm (±0.002 inch).

(2) After repairs, alterations, conversions or modifications of a tank car that result in a reduction to the tank car shell thickness, the tank car facility shall measure the thickness of the tank car shell in the area of reduced shell thickness to ensure that the shell thickness conforms to paragraph (g) of this section.

(g) *Service life shell thickness allowance.* (1) A tank car found with a shell thickness below the required minimum thickness after forming for its specification, as stated in part 179 of this subchapter, may continue in service if:

(i) Construction of the tank car shell and heads is from carbon steel, stainless steel, aluminum, nickel, or manganese-molybdenum steel; and

(ii) Any reduction in the required minimum thickness of the tank shell or head is not more than that provided in the following table:

ALLOWABLE SHELL THICKNESS REDUCTIONS

Damage type	Class DOT 103, 104, 111, and 115 tank cars		Class DOT 105, 109, 112, and 114 tank cars	
	Top shell and tank head	Bottom shell	Top shell and tank head	Bottom shell
Corrosion	3.17 mm (0.125 inch)	1.58 mm (0.063 inch)	0.79 mm (0.031 inch)	0.79 mm (0.031 inch).
Corrosion and mechanical	3.17 mm (0.125 inch)	1.58 mm (0.063 inch)	0.79 mm (0.031 inch)	0.79 mm (0.031 inch).
Corrosion, local	4.76 mm (0.188 inch)	3.17 mm (0.125 inch)	1.58 mm (0.063 inch)	1.58 mm (0.063 inch).
Mechanical, local	3.17 mm (0.125 inch)	1.58 mm (0.063 inch)	1.58 mm (0.063 inch)	1.58 mm (0.063 inch).
Corrosion and mechanical, local.	4.76 mm (0.188 inch)	3.17 mm (0.125 inch)	1.58 mm (0.063 inch)	1.58 mm (0.063 inch).

NOTES: 1. The perimeter for a local reduction may not exceed a 60.96 cm (24 inch) perimeter. Local reductions in the top shell must be separated from other reductions in the top shell by at least 40.64 cm (16 inches). The cumulative perimeter for local reductions in the bottom shell may not exceed 182.88 cm (72 inches).

2. Any reduction in the tank car shell may not affect the structural strength of the tank car so that the tank car shell no longer conforms to Section 6.2 of the AAR Specifications for Tank Cars (IBR, see §171.7 of this subchapter).

3. Any reduction applies only to the outer shell for Class DOT 115 tank cars.

4. For Class DOT 103 and 104 tank cars, the inside diameter may not exceed 243.84 cm (96 inches).

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(h) *Safety system inspections.* At a minimum, each tank car facility must inspect:

(1) Tank car thermal protection systems, tank head puncture resistance systems, coupler vertical restraint systems, and systems used to protect discontinuities (i.e., skid protection and protective housings) to ensure their integrity.

(2) Reclosing pressure relief devices by:

(i) Removing the reclosing pressure relief device from the tank car for inspection; and

(ii) Testing the reclosing pressure relief device with air or another gas to ensure that it conforms to the start-to-discharge pressure for the specification or hazardous material in this subchapter.

(i) *Lining and coating inspection and test.* When this subchapter requires a lining or coating, at a minimum, each tank car facility must inspect the lining or coating installed on the tank car according to the inspection interval test technique, and acceptance criteria established by the owner of the lining or coating in accordance with paragraph (c)(3)(iii) of this section.

(j) *Leakage pressure test.* (1) After re-assembly of a tank car or service equipment, a tank car facility must perform a leak test on the tank or service equipment to detect leakage, if any, between manway covers, cover plates, and service equipment. The test may be conducted with the hazardous material in the tank. When the test pressure exceeds the start-to-discharge or burst pressure of a pressure relief device, the device must be rendered inoperative. The written procedures and test method for leak testing must ensure for the sensitivity and reliability of the test method and for the serviceability of components to prevent premature failure.

(2) Interior heater systems must be tested hydrostatically at 13.87 Bar (200 psig) and must show no signs of leakage.

(k) *Alternative inspection and test procedures.* In lieu of the other requirements of this section, a person may use an alternative inspection and test procedure or interval based on a damage-tolerance fatigue evaluation (that in-

cludes a determination of the probable locations and modes of damage due to fatigue, corrosion, or accidental damage), when the evaluation is examined by the Association of American Railroads Tank Car Committee and approved by the Associate Administrator for Safety, FRA.

(1) *Inspection and test compliance date for tank cars.* (1) After July 1, 2000, each tank car with a metal jacket or with a thermal protection system shall have an inspection and test conforming to this section no later than the date the tank car requires a periodic hydrostatic pressure test (i.e., the marked due date on the tank car for the hydrostatic test).

(2) After July 1, 1998, each tank car without a metal jacket shall have an inspection and test conforming to this section no later than the date the tank car requires a periodic hydrostatic pressure test (i.e., the marked due date on the tank car for the hydrostatic test).

(3) For tank cars on a 20-year periodic hydrostatic pressure test interval (i.e., Class DOT 103W, 104W, 111A60W1, 111A100W1, and 111A100W3 tank cars), the next inspection and test date is the midpoint between the compliance date in paragraph (1)(1) or (2) of this section and the remaining years until the tank would have had a hydrostatic pressure test.

[Amdt. 180–8, 60 FR 49079, Sept. 21, 1995, as amended by Amdt. 179–50, 61 FR 33256, June 26, 1996; 62 FR 51561, Oct. 1, 1997; 63 FR 52851, Oct. 1, 1998; 66 FR 45391, Aug. 28, 2001; 68 FR 75765, Dec. 31, 2003; 71 FR 54398, Sept. 14, 2006]

§ 180.511 Acceptable results of inspections and tests.

Provided it conforms with other applicable requirements of this subchapter, a tank car is qualified for use if it successfully passes the following inspections and tests conducted in accordance with this subpart:

(a) *Visual inspection.* A tank car successfully passes the visual inspection when the inspection shows no structural defect that may cause leakage from or failure of the tank before the next inspection and test interval.

(b) *Structural integrity inspection and test.* A tank car successfully passes the structural integrity inspection and test

when it shows no structural defect that may initiate cracks or propagate cracks and cause failure of the tank before the next inspection and test interval.

(c) *Service life shell thickness.* A tank car successfully passes the service life shell thickness inspection when the tank shell and heads show no thickness reduction below that allowed in § 180.509(g).

(d) *Safety system inspection.* A tank car successfully passes the safety system inspection when each thermal protection system, tank head puncture resistance system, coupler vertical restraint system, and system used to protect discontinuities (e.g., breakage grooves on bottom outlets and protective housings) on the tank car conform to this subchapter.

(e) *Lining and coating inspection.* A tank car successfully passes the lining and coating inspection and test when the lining or coating conforms to the owner's acceptance criteria.

(f) *Leakage pressure test.* A tank car successfully passes the leakage pressure test when all product piping, fittings and closures show no indication of leakage.

(g) *Hydrostatic test.* A Class 107 tank car or a riveted tank car successfully passes the hydrostatic test when it shows no leakage, distortion, excessive permanent expansion, or other evidence of weakness that might render the tank car unsafe for transportation service.

[Amdt. 180-8, 60 FR 49079, Sept. 21, 1995, as amended by Amdt. 179-50, 61 FR 33256, June 26, 1996; 66 FR 45187, Aug. 28, 2001]

§ 180.513 Repairs, alterations, conversions, and modifications.

(a) In order to repair tank cars, the tank car facility must comply with the requirements of appendix R of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter).

(b) Unless the exterior tank car shell or interior tank car jacket has a protective coating, after a repair that requires the complete removal of the tank car jacket, the exterior tank car shell and the interior tank car jacket must have a protective coating applied

to prevent the deterioration of the tank shell and tank jacket.

[Amdt. 180-2, 54 FR 25032, June 12, 1989, as amended at 68 FR 75765, Dec. 31, 2003]

§ 180.515 Markings.

(a) When a tank car passes the required inspection and test with acceptable results, the tank car facility shall mark the date of the inspection and test and the due date of the next inspection and test on the tank car in accordance with appendix C of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter). When a tank car facility performs multiple inspection and test at the same time, one date may be used to satisfy the requirements of this section. One date also may be shown when multiple inspection and test have the same due date.

(b) Pressure converted tank cars must have the new specification and conversion date permanently marked in letters and figures at least 0.95 cm (0.375 inch) high on the outside of the manway nozzle or the edge of the manway nozzle flange on the left side of the car. The marking may have the last numeral of the specification number omitted (e.g., "DOT 111A100W" instead of "DOT 111A100W1").

(c) When pressure tested within six months of installation and protected from deterioration, the test date marking of a reclosing pressure relief device is the installation date on the tank car.

[Amdt. 180-8, 60 FR 49079, Sept. 21, 1995, as amended by Amdt. 179-50, 61 FR 33256, June 26, 1996; 63 FR 52851, Oct. 1, 1998; 66 FR 45391, Aug. 28, 2001; 68 FR 75765, Dec. 31, 2003]

§ 180.517 Reporting and record retention requirements.

(a) *Certification and representation.* Each owner of a specification tank car shall retain the certificate of construction (AAR Form 4-2) and related papers certifying that the manufacture of the specification tank car identified in the documents is in accordance with the applicable specification. The owner shall retain the documents throughout the period of ownership of the specification tank car and for one year thereafter. Upon a change of ownership, the requirements in Section 1.3.15

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of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter) apply.

(b) *Inspection and test reporting.* Each tank car that is inspected as specified in § 180.509 must have a written report, in English, prepared according to this paragraph. The owner must retain a copy of the inspection and test reports until successfully completing the next inspection and test of the same type. The inspection and test report must include the following:

- (1) Type of inspection and test performed (a checklist is acceptable);
- (2) The results of each inspection and test performed;
- (3) Owner's reporting mark;
- (4) DOT Specification;
- (5) Inspection and test date (month and year);
- (6) Location and description of defects found and method used to repair each defect;
- (7) The name and address of the tank car facility and the signature of inspector.

[Amdt. 180-2, 54 FR 25032, June 12, 1989, as amended at 68 FR 75765, Dec. 31, 2003]

§ 180.519 Periodic retest and inspection of tank cars other than single-unit tank car tanks.

(a) *General.* Unless otherwise provided in this subpart, tanks designed to be removed from cars for filling and emptying and tanks built to a Class DOT 107A specification and their safety relief devices must be retested periodically as specified in Retest Table 1 of

paragraph (b)(5) of this section. Retests may be made at any time during the calendar year the retest falls due.

(b) *Pressure test.* (1) Each tank must be subjected to the specified hydrostatic pressure and its permanent expansion determined. Pressure must be maintained for 30 seconds and for as long as necessary to secure complete expansion of the tank. Before testing, the pressure gauge must be shown to be accurate within 1 percent at test measure. The expansion gauge must be shown to be accurate, at test pressure, to within 1 percent. Expansion must be recorded in cubic cm. Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure and the tank must not leak or show evidence of distress.

(2) Each tank, except tanks built to specification DOT 107A, must also be subjected to interior air pressure test of at least 100 psig under conditions favorable to detection of any leakage. No leaks may appear.

(3) Safety relief valves must be retested by air or gas, must start-to-discharge at or below the prescribed pressure and must be vapor tight at or above the prescribed pressure.

(4) Rupture discs and fusible plugs must be removed from the tank and visually inspected.

(5) Tanks must be retested as specified in Retest Table 1 of this paragraph (b)(5), and before returning to service after repairs involving welding or heat treatment:

RETEST TABLE 1

Specification	Retest interval—years		Minimum Retest pressure—psig		Pressure relief valve pressure—psig	
	Tank	Pressure relief devices ^d	Tank hydrostatic expansion ^e	Tank air test	Start-to-discharge	Vapor tight
DOT 27	5	2	500	100	375	300
106A500	5	2	500	100	375	300
106A500X	5	2	500	100	375	300
106A800	5	2	800	100	600	480
106A800X	5	2	800	100	600	480
106A800NCI	5	2	800	100	600	480
107A * * * *	*5	*2	(^b)	None	None	None
110A500-W	5	2	500	100	375	300
110A600-W	5	2	600	100	500	360
110A800-W	5	2	800	100	600	480
110A1000-W	5	2	1,000	100	750	600
BE-27	5	2	500	100	375	300

NOTES:

^aIf DOT 107A**** tanks are used for transportation of flammable gases, one rupture disc from each car must be burst at the interval prescribed. The sample disc must burst at a pressure not exceeding the marked test pressure of the tank and not less than 70 percent of the marked test pressure. If the sample disc does not burst within the prescribed limits, all discs on the car must be replaced.

^bThe hydrostatic expansion test pressure must at least equal the marked test pressure.

^cSee § 180.519(b)(1).

^dSafety relief valves of the spring-loaded type on tanks used exclusively for fluorinated hydrocarbons and mixtures thereof which are free from corroding components may be retested every 5 years.

(6) The month and year of test, followed by a "V" if visually inspected as described in paragraph (c) of this section, must be plainly and permanently stamped into the metal of one head or chime of each tank with successful test results; for example, 01-90 for January 1990. On DOT 107A**** tanks, the date must be stamped into the metal of the marked end, except that if all tanks mounted on a car have been tested, the date may be stamped into the metal of a plate permanently applied to the bulkhead on the "A" end of the car. Dates of previous tests and all prescribed markings must be kept legible.

(c) *Visual inspection.* Tanks of Class DOT 106A and DOT 110A-W specifications (§§ 179.300 and 179.301 of this subchapter) used exclusively for transporting fluorinated hydrocarbons and mixtures thereof, and that are free from corroding components, may be given a periodic complete internal and external visual inspection in place of the periodic hydrostatic retest. Visual inspections shall be made only by competent persons. The tank must be accepted or rejected in accordance with the criteria in CGA C-6 (IBR, see § 171.7 of this subchapter).

(d) *Written records.* The results of the pressure test and visual inspection must be recorded on a suitable data sheet. Completed copies of these reports must be retained by the owner and by the person performing the pressure test and visual inspection as long as the tank is in service. The information to be recorded and checked on these data sheets are: Date of test and inspection; DOT specification number; tank identification (registered symbol and serial number, date of manufacture and ownership symbol); type of protective coating (painted, etc., and statement as to need for refinishing or re-coating); conditions checked (leakage, corrosion, gouges, dents or digs, broken or damaged chime or protective ring, fire, fire damage, internal condition); test pressure; results of tests; and dis-

position of tank (returned to service, returned to manufacturer for repair, or scrapped); and identification of the person conducting the retest or inspection.

[Amdt. 180-8, 60 FR 49079, Sept. 21, 1995, as amended by Amdt. 179-50, 61 FR 33257, June 26, 1996; 65 FR 58633, Sept. 29, 2000; 66 FR 45187, 45392, Aug. 28, 2001; 68 FR 75765, Dec. 31, 2003]

Subpart G—Qualification and Maintenance of Portable Tanks

SOURCE: 66 FR 33453, June 21, 2001, unless otherwise noted.

§ 180.601 Applicability.

This subpart prescribes requirements, in addition to those contained in parts 107, 171, 172, 173, and 178 of this subchapter, applicable to any person responsible for the continuing qualification, maintenance or periodic retesting of a portable tank.

§ 180.603 Qualification of portable tanks.

(a) Each portable tank used for the transportation of hazardous materials must be an authorized packaging.

(b) To qualify as an authorized packaging, each portable tank must conform to the requirements of this subchapter and the applicable design specification to which the portable tank was constructed.

(c) The following portable tanks are authorized for use provided they conform to all applicable safety requirements of this subchapter: 51, 56, 57, 60, IM 101, IM 102 and UN portable tanks.

(d) A portable tank that also meets the definition of "container" in 49 CFR 450.3(a)(3) must conform to the requirements in parts 450 through 453 of this title for compliance with Annex II of the Convention for Safe Containers (CSC).

(e) *Exemption portable tanks based on DOT 51 portable tanks.* The owner of a

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portable tank constructed in accordance with and used under an exemption issued prior to August 31, 1996, which was in conformance with the requirements for Specification DOT 51 portable tanks with the exception of the location of fill and discharge outlets, shall examine the portable tank and its design to determine if it meets the outlet requirements in effect on October 1, 1996. If the owner determines that the portable tank is in compliance with all requirements of the DOT 51 specification, the exemption number stenciled on the portable tank shall be removed and the specification plate (or a plate placed adjacent to the specification plate) shall be durably marked "DOT 51-E*****" (where ***** is to be replaced by the exemption number). During the period the portable tank is in service, and for one year thereafter, the owner of the portable tank must retain on file, at its principal place of business, a copy of the last exemption in effect.

§ 180.605 Requirements for periodic testing, inspection and repair of portable tanks.

(a) A portable tank constructed in accordance with a DOT specification for which a test or inspection specified in this subpart has become due, must be tested or inspected prior to being returned for transportation.

(b) *Conditions requiring test and inspection of portable tanks.* Without regard to any other test or inspection requirements, a Specification or UN portable tank must be tested and inspected in accordance with this section prior to further use if any of the following conditions exist:

(1) The portable tank shows evidence of dents, corroded or abraded areas, leakage, or any other condition that might render it unsafe for transportation service.

(2) The portable tank has been in an accident and has been damaged to an extent that may adversely affect its ability to retain the hazardous material.

(3) The portable tank has been out of hazardous materials transportation service for a period of one year or more.

(4) The portable tank has been modified from its original design specification.

(5) The portable tank is in an unsafe operating condition based on the existence of probable cause.

(c) *Schedule for periodic inspections and tests.* Each Specification portable tank must be tested and inspected in accordance with the following schedule:

(1) Each IM or UN portable tank must be given an initial inspection and test before being placed into service, a periodic inspection and test at least once every 5 years, and an intermediate periodic inspection and test at least every 2.5 years following the initial inspection and the last 5 year periodic inspection and test.

(2) Each Specification 51 portable tank must be given a periodic inspection and test at least once every five years.

(3) Each Specification 56 or 57 portable tank must be given a periodic inspection and test at least once every 2.5 years.

(4) Each Specification 60 portable tank must be given a periodic inspection and test at the end of the first 4-year period after the original test; at least once every 2 years thereafter up to a total of 12 years of service; and at least once annually thereafter. Retesting is not required on a rubber-lined tank except before each relining.

(d) *Intermediate periodic inspection and test.* For IM and UN portable tanks the intermediate 2.5 year periodic inspection and test must include at least an internal and external examination of the portable tank and its fittings taking into account the hazardous materials intended to be transported; a leakage test; and a test of the satisfactory operation of all service equipment. Sheathing, thermal insulation, etc. need only be removed to the extent required for reliable appraisal of the condition of the portable tank. For portable tanks intended for the transportation of a single hazardous material, the internal examination may be waived if it is leakage tested in accordance with the procedures in paragraph (h) of this section prior to each filling,

or if approved by the Associate Administrator. Portable tanks used for dedicated transportation of refrigerated liquefied gases that are not fitted with inspection openings are excepted from the internal inspection requirement.

(e) *Periodic inspection and test.* The 5 year periodic inspection and test must include an internal and external examination and, unless excepted, a pressure test as specified in this section. Sheathing, thermal insulation, etc. need only to be removed to the extent required for reliable appraisal of the condition of the portable tank. Except for DOT Specification 56 and 57 portable tanks, reclosing pressure relief devices must be removed from the tank and tested separately unless they can be tested while installed on the portable tank. For portable tanks where the shell and equipment have been pressure-tested separately, after assembly they must be subjected together to a leakage test and effectively tested and inspected for corrosion. Portable tanks used for the transportation of refrigerated, liquefied gases are excepted from the requirement for internal inspection and the hydraulic pressure test during the 5-year periodic inspection and test, if the portable tanks were pressure tested to a minimum test pressure of 1.3 times the design pressure using an inert gas as prescribed in §178.338-16(a) and (b) of this subchapter before putting the portable tank into service initially and after any exceptional inspections and tests specified in paragraph (f) of this section.

(f) *Exceptional inspection and test.* The exceptional inspection and test is necessary when a portable tank shows evidence of damaged or corroded areas, or leakage, or other conditions that indicate a deficiency that could affect the integrity of the portable tank. The extent of the exceptional inspection and test must depend on the amount of damage or deterioration of the portable tank. It must include at least the inspection and a pressure test according to paragraph (e) of this section. Pressure relief devices need not be tested or replaced unless there is reason to believe the relief devices have been affected by the damage or deterioration.

(g) *Internal and external examination.* The internal and external examinations must ensure that:

(1) The shell is inspected for pitting, corrosion, or abrasions, dents, distortions, defects in welds or any other conditions, including leakage, that might render the portable tank unsafe for transportation;

(2) The piping, valves, and gaskets are inspected for corroded areas, defects, and other conditions, including leakage, that might render the portable tank unsafe for filling, discharge or transportation;

(3) Devices for tightening manhole covers are operative and there is no leakage at manhole covers or gaskets;

(4) Missing or loose bolts or nuts on any flanged connection or blank flange are replaced or tightened;

(5) All emergency devices and valves are free from corrosion, distortion and any damage or defect that could prevent their normal operation. Remote closure devices and self-closing stop-valves must be operated to demonstrate proper operation;

(6) Required markings on the portable tank are legible and in accordance with the applicable requirements; and

(7) The framework, the supports and the arrangements for lifting the portable tank are in satisfactory condition.

(h) *Pressure test procedures for specification 51, 56, 57, 60, IM or UN portable tanks.* (1) Each Specification 57 portable tank must be leak tested by a minimum sustained air pressure of at least 3 psig applied to the entire tank. Each Specification 51 or 56 portable tank must be tested by a minimum pressure (air or hydrostatic) of at least 2 psig or at least one and one-half times the design pressure (maximum allowable working pressure, or re-rated pressure) of the tank, whichever is greater. The leakage test for portable tanks used for refrigerated liquefied gas must be performed at 90% of MAWP. Leakage tests for all other portable tanks must be at a pressure of at least 25% of MAWP. During each air pressure test, the entire surface of all joints under pressure must be coated with or immersed in a solution of soap and water, heavy oil, or other material suitable for the purpose of detecting leaks. The pressure must be held for a

period of time sufficiently long to assure detection of leaks, but in no case less than five minutes. During the air or hydrostatic test, relief devices may be removed, but all the closure fittings must be in place and the relief device openings plugged. Lagging need not be removed from a lagged tank if it is possible to maintain the required test pressure at constant temperature with the tank disconnected from the source of pressure.

(2) Each Specification 60 portable tank must be retested by completely filling the tank with water or other liquid having a similar viscosity, the temperature of the liquid must not exceed 37.7 °C (100 °F) during the test, and applying a pressure of 60 psig. The portable tank must be capable of holding the prescribed pressure for at least 10 minutes without leakage, evidence of impending failure, or failure. All closures shall be in place while the test is made and the pressure shall be gauged at the top of the tank. Safety devices and/or vents shall be plugged during this test.

(3) Each Specification IM or UN portable tank, except for UN portable tanks used for non-refrigerated and refrigerated liquefied gases, and all piping, valves and accessories, except pressure relief devices, must be hydrostatically tested with water, or other liquid of similar density and viscosity, to a pressure not less than 150% of its maximum allowable working pressure. UN portable tanks used for the transportation of non-refrigerated liquefied gases must be hydrostatically tested with water, or other liquid of similar density and viscosity, to a pressure not less than 130% of its maximum allowable working pressure. UN portable tanks used for the transportation of refrigerated liquefied gases may be tested hydrostatically or pneumatically using an inert gas to a pressure not less than 1.3 times the design pressure. For pneumatic testing, due regard for protection of all personnel must be taken because of the potential hazard involved in such a test. The pneumatic test pressure in the portable tank must be reached by gradually increasing the pressure to one-half of the test pressure. Thereafter, the test pressure must be increased in steps of ap-

proximately one-tenth of the test pressure until the required test pressure has been reached. The pressure must then be reduced to a value equal to four-fifths of the test pressure and held for a sufficient time to permit inspection of the portable tank for leaks. The minimum test pressure for a portable tank is determined on the basis of the hazardous materials that are intended to be transported in the portable tanks. For liquid, solid and non-refrigerated liquefied gases, the minimum test pressure for specific hazardous materials are specified in the applicable T Codes assigned to a particular hazardous material in the §172.101 Table of this subchapter. While under pressure the tank shall be inspected for leakage, distortion, or any other condition which might render the tank unsafe for service. A portable tank fails to meet the requirements of the pressure test if, during the test, there is permanent distortion of the tank exceeding that permitted by the applicable specification; if there is any leakage; or if there are any deficiencies that would render the portable tank unsafe for transportation. Any portable tank that fails must be rejected and may not be used again for the transportation of a hazardous material unless the tank is adequately repaired, and, thereafter, a successful test is conducted in accordance with the requirements of this paragraph. An approval agency shall witness the hydrostatic or pneumatic test. Any damage or deficiency that might render the portable tank unsafe for service shall be repaired to the satisfaction of the witnessing approval agency. The repaired tank must be retested to the original pressure test requirements. Upon successful completion of the hydrostatic or pneumatic test, as applicable, the witnessing approval agency shall apply its name, identifying mark or identifying number in accordance with paragraph (k) of this section.

(i) *Rejection criteria.* When evidence of any unsafe condition is discovered, the portable tank may not be returned to service until it has been repaired and the pressure test is repeated and passed.

(j) *Repair.* The repair of a portable tank is authorized, provided such repairs are made in accordance with the requirements prescribed in the specification for the tank's original design and construction. In addition to any other provisions of the specification, no portable tank may be repaired so as to cause leakage or cracks or so as to increase the likelihood of leakage or cracks near areas of stress concentration due to cooling metal shrinkage in welding operations, sharp fillets, reversal of stresses, or otherwise. No field welding may be done except to non-pressure parts. Any cutting, burning or welding operations on the shell of an IM or UN portable tank must be done with the approval of the approval agency and be done in accordance with the requirements of this subchapter, taking into account the pressure vessel code used for the construction of the shell. A pressure test to the original test pressure must be performed after the work is completed.

(k) *Inspection and test markings.* (1) Each IM or UN portable tank must be durably and legibly marked, in English, with the date (month and year) of the last pressure test, the identification markings of the approval agency witnessing the test, when required, and the date of the last visual inspection. The marking must be placed on or near the metal identification plate, in letters and numerals of not less than 3 mm (0.118 inches) high when on the metal identification plate, and 12 mm (0.47 inches) high when on the portable tank.

(2) Each Specification DOT 51, 56, 57 or 60 portable tank must be durably and legibly marked, in English, with the date (month and year) of the most recent periodic retest. The marking must be placed on or near the metal certification plate and must be in accordance with § 178.3 of this subchapter. The letters and numerals must not be less than 3 mm (0.118 inches) high when on the metal certification plate, and 12 mm (0.47 inches) high when on the portable tank, except that a portable tank manufactured under a previously authorized specification may continue to be marked with smaller markings if originally authorized under that speci-

fication (for example, DOT Specification 57 portable tanks).

(l) *Record retention.* The owner of each portable tank or his authorized agent shall retain a written record of the date and results of all required inspections and tests, including an ASME manufacturer's date report, if applicable, and the name and address of the person performing the inspection or test, in accordance with the applicable specification. The manufacturer's data report, including a certificate(s) signed by the manufacturer, and the authorized design approval agency, as applicable, indicating compliance with the applicable specification of the portable tank, must be retained in the files of the owner, or his authorized agent, during the time that such portable tank is used for such service, except for Specifications 56 and 57 portable tanks.

[Amdt. 180-2, 54 FR 25032, June 12, 1989, as amended at 67 FR 15744, Apr. 3, 2002; 68 FR 45042, July 31, 2003; 74 FR 53189, Oct. 16, 2009]

APPENDIX A TO PART 180—INTERNAL SELF-CLOSING STOP VALVE EMERGENCY CLOSURE TEST FOR LIQUEFIED COMPRESSED GASES

1. In performing this test, all internal self-closing stop valves must be opened. Each emergency discharge control remote actuator (on-truck and off-truck) must be operated to ensure that each internal self-closing stop valve's lever, piston, or other valve indicator has moved to the closed position.

2. On pump-actuated pressure differential internal valves, the three-way toggle valve handle or its cable attachment must be activated to verify that the toggle handle moves to the closed position.

[64 FR 28052, May 24, 1999, as amended at 67 FR 15744, Apr. 3, 2002]

APPENDIX B TO PART 180—ACCEPTABLE INTERNAL SELF-CLOSING STOP VALVE LEAKAGE TESTS FOR CARGO TANKS TRANSPORTING LIQUEFIED COMPRESSED GASES

For internal self-closing stop valve leakage testing, leakage is defined as any leakage through the internal self-closing valve or to the atmosphere that is detectable when the valve is in the closed position. On some valves this will require the closure of the pressure by-pass port.

(a) Meter Creep Test.

1. An operator of a cargo tank equipped with a calibrated meter may check the internal self-closing stop valve for leakage through the valve seat using the meter as a flow measurement indicator. The test is initiated by starting the delivery process or returning product to the cargo tank through the delivery system. This may be performed at an idle. After the flow is established, the operator closes the internal self-closing stop valve and monitors the meter flow. The meter flow must stop within 30 seconds with no meter creep within 5 seconds after the meter stops.

2. On pump-actuated pressure differential internal self-closing stop valves, the valve must be closed with the remote actuator to assure that it is functioning. On other types of internal self-closing stop valves, the valve(s) may be closed using either the normal valve control or the discharge control system (e.g., remote).

3. Rejection criteria: Any detectable meter creep within the first five seconds after initial meter stoppage.

(b) Internal Self-Closing Stop Valve Test.

An operator of a cargo tank that is not equipped with a meter may check the internal self-closing stop valve(s) for leakage as follows:

1. The internal self-closing stop valve must be in the closed position.

2. All of the material in the downstream piping must be evacuated, and the piping must be returned to atmospheric temperature and pressure.

3. The outlet must be monitored for 30 seconds for detectable leakage.

4. Rejection criteria. Any detectable leakage is considered unacceptable.

[64 FR 28052, May 24, 1999]

APPENDIX C TO PART 180—EDDY CURRENT EXAMINATION WITH VISUAL INSPECTION FOR DOT 3AL CYLINDERS MANUFACTURED OF ALUMINUM ALLOY 6351-T6

1. *Examination Procedure.* Each facility performing eddy current examination with visual inspection must develop, update, and maintain a written examination procedure applicable to the test equipment it uses to perform eddy current examinations.

2. *Visual examinations.* Visual examinations of the neck and shoulder area of the cylinder must be conducted in accordance with CGA pamphlet C-6.1 (IBR; see §171.7 of this subchapter).

3. *Eddy Current Equipment.* A reference ring and probe for each DOT-3AL cylinder manufactured of aluminum alloy 6351-T6 to be inspected must be available at the examina-

tion facility. Eddy current equipment must be capable of accurately detecting the notches on the standard reference ring.

4. *Eddy Current Reference Ring.* The reference ring must be produced to represent each cylinder to be tested. The reference ring must include artificial notches to simulate a neck crack. The size of the artificial notch (depth and length) must have a depth less than or equal to $\frac{1}{3}$ of the wall thickness of the neck and a length greater than or equal to two threads. The standard reference must have a drawing that includes the diameter of the ring, and depth and length of each notch.

5. *Condemnation Criteria.* A cylinder must be condemned if the eddy current examination combined with visual examination reveals any crack in the neck or shoulder of 2 thread lengths or more.

6. *Examination equipment records.* Records of eddy current inspection equipment shall contain the following information:

(i) Equipment manufacturer, model number and serial number.

(ii) Probe description and unique identification (e.g., serial number, part number, etc.).

7. *Eddy current examination reporting and record retention requirements.* Daily records of eddy current examinations must be maintained by the person who performs the requalification until either the expiration of the requalification period or until the cylinder is again requalified, whichever occurs first. These records shall be made available for inspection by a representative of the Department on request. Eddy current examination records shall contain the following information:

(i) Specification of each standard reference ring used to perform the eddy current examination.

(ii) DOT specification or exemption number of the cylinder; manufacturer's name or symbol; owner's name or symbol, if present; serial number; and, date of manufacture.

(iii) Name of test operator performing the eddy current examination.

(iv) Date of eddy current examination.

(v) Acceptance/condemnation results (e.g. pass or fail).

(vi) Retester identification number.

8. *Personnel Qualification Requirements.* Each person who performs eddy current and visual examinations, and evaluates and certifies retest results must be certified by the employer that he/she has been properly trained and tested in the eddy current and visual examination procedures.

9. *Training Records.* A record of current training must be maintained for each employee who performs eddy current and visual examinations in accordance with §172.704(d).

[71 FR 51129, Aug. 29, 2006]

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controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by §382.303(d);

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under part 40, subpart O, of this title;

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

(c) *Optional provision.* The materials supplied to drivers may also include information on additional employer policies with respect to the use of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(d) *Certificate of receipt.* Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the original of the signed certificate and

may provide a copy of the certificate to the driver.

§ 382.603 Training for supervisors.

Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under §382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required.

§ 382.605 Referral, evaluation, and treatment.

The requirements for referral, evaluation, and treatment must be performed in accordance with 49 CFR part 40, Subpart O.

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

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AUTHORITY: 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106-159, 113 Stat. 1766, 1767; sec. 1012(b) of Pub. L. 107-56; 115 Stat. 397; sec. 4140 of Pub. L. 109-59, 119 Stat. 1144, 1726; and 49 CFR 1.73.

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

EDITORIAL NOTE: Nomenclature changes to part 383 appear at 66 FR 49872, Oct. 1, 2001.

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Subpart A—General

§ 383.1 Purpose and scope.

(a) The purpose of this part is to help reduce or prevent truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner.

(b) This part:

(1) Prohibits a commercial motor vehicle driver from having more than one commercial motor vehicle driver's license;

(2) Requires a driver to notify the driver's current employer and the driver's State of domicile of certain convictions;

(3) Requires that a driver provide previous employment information when applying for employment as an operator of a commercial motor vehicle;

(4) Prohibits an employer from allowing a person with a suspended license to operate a commercial motor vehicle;

(5) Establishes periods of disqualification and penalties for those persons convicted of certain criminal and other offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges;

(6) Establishes testing and licensing requirements for commercial motor vehicle operators;

(7) Requires States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard;

(8) Sets forth commercial motor vehicle groups and endorsements;

(9) Sets forth the knowledge and skills test requirements for the motor vehicle groups and endorsements;

(10) Sets forth the Federal standards for procedures, methods, and minimum passing scores for States and others to use in testing and licensing commercial motor vehicle operators; and

(11) Establishes requirements for the State issued commercial license documentation.

[52 FR 20587, June 1, 1987, as amended at 53 FR 27648, July 21, 1988; 54 FR 40787, Oct. 3, 1989]

§ 383.3 Applicability.

(a) The rules in this part apply to every person who operates a commercial motor vehicle (CMV) in interstate, foreign, or intrastate commerce, to all employers of such persons, and to all States.

(b) The exceptions contained in § 390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in § 390.3(f) must comply with the requirements of this part, unless otherwise provided in this section.

(c) *Exception for certain military drivers.* Each State must exempt from the requirements of this part individuals who operate CMVs for military purposes. This exception is applicable to active duty military personnel; members of the military reserves; member of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty U.S. Coast Guard personnel. This exception is not applicable to U.S. Reserve technicians.

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

(1) Operators of a farm vehicle which is:

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

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

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

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

(2) Firefighters and other persons who operate CMVs which are necessary to the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals and are not

subject to normal traffic regulation. These vehicles include fire trucks, hook and ladder trucks, foam or water transport trucks, police SWAT team vehicles, ambulances, or other vehicles that are used in response to emergencies.

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

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

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

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

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

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

(ii) All the skills test requirements; and

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

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

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

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

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

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

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

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

(i) Agri-chemical businesses;

(ii) Custom harvesters;

(iii) Farm retail outlets and suppliers;

(iv) Livestock feeders.

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

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

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

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

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

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

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

(E) Has not had *any* conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault.

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

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

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

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

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

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

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

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

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

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

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

(3) A restricted CDL issued pursuant to this paragraph shall meet all the requirements of this part, except those specifically identified. A restricted CDL issued pursuant to this paragraph shall be accorded the same reciprocity as a CDL meeting all of the requirements of this part. The restrictions imposed upon the issuance of this re-

stricted CDL shall not limit a person's use of the CDL in a non-CMV during either validated or non-validated periods, nor shall the CDL affect a State's power to administer its driver licensing program for operators of vehicles other than CMVs.

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

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

[61 FR 9564, Mar. 8, 1996, as amended at 61 FR 14679, Apr. 3, 1996; 62 FR 1296, Jan. 9, 1997; 67 FR 49755, July 31, 2002; 67 FR 61821, Oct. 2, 2002]

§ 383.5 Definitions.

As used in this part:

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

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

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

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

CDL downgrade means either:

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

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

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

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

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

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

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

Commercial driver's license (CDL) means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR part 383, to an individual which authorizes the individual to operate a class of a commercial motor vehicle.

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

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

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

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

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

(d) Is of any size and is used in the transportation of *hazardous materials* as defined in this section.

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

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

Disqualification means any of the following three actions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Nonresident CDL means a CDL issued by a State under either of the following two conditions:

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

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

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

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

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

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

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

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

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per hour or more above the posted speed limit;

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

(c) Improper or erratic traffic lane changes;

(d) Following the vehicle ahead too closely;

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

(f) Driving a CMV without obtaining a CDL;

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

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

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

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

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

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

Vehicle means a motor vehicle unless otherwise specified.

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

[52 FR 20587, June 1, 1987, as amended at 53 FR 27648, July 21, 1988; 53 FR 39050, Oct. 4, 1988; 54 FR 40787, Oct. 3, 1989; 59 FR 26028, May 18, 1994; 61 FR 9566, Mar. 8, 1996; 61 FR 14679, Apr. 3, 1996; 62 FR 37151, July 11, 1997; 67 FR 49756, July 31, 2002; 68 FR 23849, May 5, 2003; 73 FR 73123, Dec. 1, 2008]

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

§ 383.5 Definitions.

* * * * *

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.

* * * * *

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

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

(2) Texting does not include:

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

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

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

* * * * *

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

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

provisions of §384.405 of this subchapter, that the State is prohibited from issuing CDLs, will remain valid until its stated expiration date.

[67 FR 49756, July 31, 2002]

Subpart B—Single License Requirement

§ 383.21 Number of drivers' licenses.

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

[64 FR 48110, Sept. 2, 1999]

§ 383.23 Commercial driver's license.

(a) *General rule.* (1) Effective April 1, 1992, no person shall operate a commercial motor vehicle unless such person has taken and passed written and driving tests which meet the Federal standards contained in subparts F, G, and H of this part for the commercial motor vehicle that person operates or expects to operate.

(2) Except as provided in paragraph (b) of this section, no person may legally operate a CMV unless such person possesses a CDL which meets the standards contained in subpart J of this part, issued by his/her State or jurisdiction of domicile.

(b) *Exception.* (1) If a CMV operator is not domiciled in a foreign jurisdiction which the Administrator has determined tests drivers and issues CDLs in accordance with, or under standards similar to, the standards contained in subparts F, G, and H of this part, the person may obtain a Nonresident CDL from a State which does comply with the testing and licensing standards contained in such subparts F, G, and H of this part.¹

¹Effective December 29, 1988, the Administrator determined that commercial drivers' licenses issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code are in accordance with the standards of this part. Effective November 21, 1991, the Administrator determined that the new *Licencias Federales de Conductor* issued by the United Mexican States are in accordance with the standards of this part. Therefore, under the single license provision of §383.21, a driver holding a commercial driver's license issued under the Canadian National Safety Code or a new *Licencia*

(2) If an individual is domiciled in a State while that State is prohibited from issuing CDLs in accordance with §384.405 of this subchapter, that individual is eligible to obtain a Nonresident CDL from any State that elects to issue a Nonresident CDL and which complies with the testing and licensing standards contained in subparts F, G, and H of this part.

(c) *Learner's permit.* State learners' permits, issued for limited time periods according to State requirements, shall be considered valid commercial drivers' licenses for purposes of behind-the-wheel training on public roads or highways, if the following minimum conditions are met:

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

(2) He/she either holds a valid automobile driver's license, or has passed such vision, sign/symbol, and knowledge tests as the State issuing the learner's permit ordinarily administers to applicants for automotive drivers' licenses; and

(3) He/she does not operate a commercial motor vehicle transporting hazardous materials as defined in §383.5.

[53 FR 27649, July 21, 1988, as amended at 54 FR 22285, May 23, 1989; 57 FR 31457, July 16, 1992; 67 FR 49756, July 31, 2002; 68 FR 23849, May 5, 2003]

Subpart C—Notification Requirements and Employer Responsibilities

§ 383.31 Notification of convictions for driver violations.

(a) Each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a State or jurisdiction, and who is convicted of violating, in any type of motor vehicle, a State or local law relating to motor vehicle traffic control (other than a parking violation) in a State or jurisdiction other than the one which issued his/her license, shall notify an official designated by the

Federal de Conductor issued by Mexico is prohibited from obtaining nonresident CDL, or any other type of driver's license, from a State or other jurisdiction in the United States.

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State or jurisdiction which issued such license, of such conviction. The notification must be made within 30 days after the date that the person has been convicted.

(b) Each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a State or jurisdiction, and who is convicted of violating, in any type of motor vehicle, a State or local law relating to motor vehicle traffic control (other than a parking violation), shall notify his/her current employer of such conviction. The notification must be made within 30 days after the date that the person has been convicted. If the driver is not currently employed, he/she must notify the State or jurisdiction which issued the license according to § 383.31(a).

(c) *Notification.* The notification to the State official and employer must be made in writing and contain the following information:

- (1) Driver's full name;
- (2) Driver's license number;
- (3) Date of conviction;
- (4) The specific criminal or other offense(s), serious traffic violation(s), and other violation(s) of State or local law relating to motor vehicle traffic control, for which the person was convicted and any suspension, revocation, or cancellation of certain driving privileges which resulted from such conviction(s);
- (5) Indication whether the violation was in a commercial motor vehicle;
- (6) Location of offense; and
- (7) Driver's signature.

[52 FR 20587, June 1, 1987, as amended at 54 FR 40787, Oct. 3, 1989]

§ 383.33 Notification of driver's license suspensions.

Each employee who has a driver's license suspended, revoked, or canceled by a State or jurisdiction, who loses the right to operate a commercial motor vehicle in a State or jurisdiction for any period, or who is disqualified from operating a commercial motor vehicle for any period, shall notify his/her current employer of such suspension, revocation, cancellation, lost privilege, or disqualification. The notification must be made before the end of the business day following the day the

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employee received notice of the suspension, revocation, cancellation, lost privilege, or disqualification.

[54 FR 40788, Oct. 3, 1989]

§ 383.35 Notification of previous employment.

(a) Any person applying for employment as an operator of a commercial motor vehicle shall provide at the time of application for employment, the information specified in paragraph (c) of this section.

(b) All employers shall request the information specified in paragraph (c) of this section from all persons applying for employment as a commercial motor vehicle operator. The request shall be made at the time of application for employment.

(c) The following employment history information for the 10 years preceding the date the application is submitted shall be presented to the prospective employer by the applicant:

- (1) A list of the names and addresses of the applicant's previous employers for which the applicant was an operator of a commercial motor vehicle;
- (2) The dates the applicant was employed by these employers; and
- (3) The reason for leaving such employment.

(d) The applicant shall certify that all information furnished is true and complete.

(e) An employer may require an applicant to provide additional information.

(f) Before an application is submitted, the employer shall inform the applicant that the information he/she provides in accordance with paragraph (c) of this section may be used, and the applicant's previous employers may be contacted for the purpose of investigating the applicant's work history.

§ 383.37 Employer responsibilities.

No employer may knowingly allow, require, permit, or authorize a driver to operate a CMV in the United States:

- (a) During any period in which the driver has a CMV driver's license suspended, revoked, or canceled by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV;

(b) During any period in which the driver has more than one CMV driver's license;

(c) During any period in which the driver, or the CMV he or she is driving, or the motor carrier operation, is subject to an out-of-service order; or

(d) In violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings.

[64 FR 48110, Sept. 2, 1999]

Subpart D—Driver Disqualifications and Penalties

§ 383.51 Disqualification of drivers.

(a) *General.* (1) A driver or holder of a CDL who is disqualified must not drive a CMV.

(2) An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.

(3) A driver is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder of a CDL drives a CMV or non-CMV and is convicted of the violations.

(4) Determining first and subsequent violations. For purposes of determining

first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.

(5) Reinstatement after lifetime disqualification. A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to § 383.51) after 10 years if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to § 383.51) must not be reinstated.

(b) *Disqualification for major offenses.* Table 1 to § 383.51 contains a list of the offenses and periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 1 TO § 383.51

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CDL and CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .
(1) Being under the influence of alcohol as prescribed by State law * * *.	1 year	1 year	3 years	Life	Life.
(2) Being under the influence of a controlled substance * * *.	1 year	1 year	3 years	Life	Life.
(3) Having an alcohol concentration of 0.04 or greater while operating a CMV * * *.	1 year	Not applicable ...	3 years	Life	Not applicable.

TABLE 1 TO § 383.51—Continued

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CDL and CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .
(4) Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in § 383.72 of this part * * *.	1 year	1 year	3 years	Life	Life.
(5) Leaving the scene of an accident * * *.	1 year	1 year	3 years	Life	Life.
(6) Using the vehicle to commit a felony, other than a felony described in paragraph (b)(9) of this table * * *.	1 year	1 year	3 years	Life	Life.
(7) Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV.	1 year	Not applicable ...	3 years	Life	Not applicable.
(8) Causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.	1 year	Not applicable ...	3 years	Life	Not applicable.
(9) Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance * * *.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.

(c) *Disqualification for serious traffic violations.* Table 2 to § 383.51 contains a list of the offenses and the periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 2 TO § 383.51

If the driver operates a motor vehicle and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .
(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit.	60 days	60 days	120 days	120 days.
(2) driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property.	60 days	60 days	120 days	120 days.
(3) making improper or erratic traffic lane changes.	60 days	60 days	120 days	120 days.
(4) following the vehicle ahead too closely.	60 days	60 days	120 days	120 days.
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident.	60 days	60 days	120 days	120 days.
(6) driving a CMV without obtaining a CDL.	60 days	Not applicable	120 days	Not applicable.
(7) driving a CMV without a CDL in the driver's possession ¹ .	60 days	Not applicable	120 days	Not applicable.
(8) driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.	60 days	Not applicable	120 days	Not applicable.

¹Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense.

(d) *Disqualification for railroad-highway grade crossing offenses.* Table 3 to § 383.51 contains a list of the offenses and the periods for which a driver must

be disqualified, when the driver is operating a CMV at the time of the violation, as follows:

TABLE 3 TO § 383.51

If the driver is convicted of operating a CMV in violation of a Federal, State or local law because . . .	For a first conviction a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(1) The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(2) The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(3) The driver is always required to stop, but fails to stop before driving onto the crossing * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(4) The driver fails to have sufficient space to drive completely through the crossing without stopping * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(5) The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(6) The driver fails to negotiate a crossing because of insufficient undercarriage clearance * * *.	No less than 60 days	No less than 120 days	No less than 1 year.

(e) *Disqualification for violating out-of-service orders.* Table 4 to § 383.51 contains a list of the offenses and periods for which a driver must be disqualified when the driver is operating a CMV at the time of the violation, as follows:

TABLE 4 TO § 383.51

If a driver operates a CMV and is convicted of . . .	For a first conviction while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(1) Violating a driver or vehicle out-of-service order while transporting nonhazardous materials.	No less than 180 days or more than 1 year.	No less than 2 years or more than 5 years.	No less than 3 years or more than 5 years.
(2) Violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under part 172, subpart F of this title, or while operating a vehicle designed to transport 16 or more passengers, including the driver.	No less than 180 days or more than 2 years.	No less than 3 years or more than 5 years.	No less than 3 years or more than 5 years.

[67 FR 49756, July 31, 2002, as amended at 68 FR 4396, Jan. 29, 2003; 72 FR 36787, July 5, 2007]

EFFECTIVE DATE NOTE: At 75 FR 59134, Sept. 27, 2010, § 383.51 was amended by adding paragraph (c)(9), effective October 27, 2010. For the convenience of the user, the added text is set forth as follows:

§ 383.51 Disqualifications of Drivers.

* * * * *

(c) * * *

TABLE 2 TO § 383.51

If the driver operates a motor vehicle and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .
(9) Violating a State or local law or ordinance on motor vehicle traffic control prohibiting texting while driving. ²	60 days	Not applicable	120 days	Not applicable.

² Driving, for the purpose of this disqualification, means operating a commercial motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver has moved the vehicle to the side of, or off, a highway, as defined in 49 CFR 390.5, and has halted in a location where the vehicle can safely remain stationary.

* * * * *

§ 383.52 Disqualification of drivers determined to constitute an imminent hazard.

(a) The Assistant Administrator or his/her designee must disqualify from operating a CMV any driver whose driving is determined to constitute an imminent hazard, as defined in § 383.5.

(b) The period of the disqualification may not exceed 30 days unless the FMCSA complies with the provisions of paragraph (c) of this section.

(c) The Assistant Administrator or his/her delegate may provide the driver an opportunity for a hearing after issuing a disqualification for a period of 30 days or less. The Assistant Ad-

ministrators or his/her delegate must provide the driver notice of a proposed disqualification period of more than 30 days and an opportunity for a hearing to present a defense to the proposed disqualification. A disqualification imposed under this paragraph may not exceed one year in duration. The driver, or a representative on his/her behalf, may file an appeal of the disqualification issued by the Assistant Administrator's delegate with the Assistant Administrator, Adjudications Counsel (MC-CC), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

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(d) Any disqualification imposed in accordance with the provisions of this section must be transmitted by the FMCSA to the jurisdiction where the driver is licensed and must become a part of the driver's record maintained by that jurisdiction.

(e) A driver who is simultaneously disqualified under this section and under other provisions of this subpart, or under State law or regulation, shall serve those disqualification periods concurrently.

[67 FR 49759, July 31, 2002, as amended at 72 FR 55700, Oct. 1, 2007]

§ 383.53 Penalties.

(a) *General rule.* Any person who violates the rules set forth in subparts B and C of this part may be subject to civil or criminal penalties as provided for in 49 U.S.C. 521(b).

(b) *Special penalties pertaining to violation of out-of-service orders—(1) Driver violations.* A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than \$2,500 for a first conviction and not less than \$5,000 for a second or subsequent conviction, in addition to disqualification under § 383.51(e).

(2) *Employer violations.* An employer who is convicted of a violation of § 383.37(c) shall be subject to a civil penalty of not less than \$2,750 nor more than \$25,000.

(c) *Special penalties pertaining to railroad-highway grade crossing violations.* An employer who is convicted of a violation of § 383.37(d) must be subject to a civil penalty of not more than \$10,000.

[59 FR 26028, May 18, 1994, as amended at 64 FR 48111, Sept. 2, 1999; 67 FR 49759, July 31, 2002; 72 FR 36788, July 5, 2007]

Subpart E—Testing and Licensing Procedures

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

§ 383.71 Driver application procedures.

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

(1)(i) *Initial Commercial Driver's License applications submitted prior to January 30, 2012.* Any person applying for a

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CDL prior to January 30, 2012, must meet the requirements set forth in paragraphs (a)(2) through (a)(9) of this section, and make the following applicable certification in paragraph (a)(1)(i)(A) or (B) of this section:

(A) A person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to 49 CFR part 391, must certify that he/she meets the qualification requirements contained in part 391 of this title; or

(B) A person who operates or expects to operate entirely in intrastate commerce and is not subject to part 391, is subject to State driver qualification requirements and must certify that he/she is not subject to part 391.

(ii) *Initial Commercial Driver's License applications submitted on or after January 30, 2012.* Any person applying for a CDL on or after January 30, 2012, must meet the requirements set forth in paragraphs (a)(2) through (a)(9), and (h) of this section, and make one of the following applicable certifications in paragraph (a)(ii)(A), (B), (C), or (D) of this section:

(A) *Non-excepted interstate.* A person must certify that he or she operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR part 391, and is required to obtain a medical examiner's certificate by § 391.45 of this chapter;

(B) *Excepted interstate.* A person must certify that he or she operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 CFR 390.3(f), 391.2, 391.68 or 398.3 from all or parts of the qualification requirements of 49 CFR part 391, and is, therefore, not required to obtain a medical examiner's certificate by 49 CFR 391.45 of this chapter;

(C) *Non-excepted intrastate.* A person must certify that he or she operates only in intrastate commerce and, therefore, is subject to State driver qualification requirements; or

(D) *Excepted intrastate.* A person must certify that he or she operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the State driver qualification requirements.

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

(3) Pass a driving or skills test in accordance with the standards contained in Subparts G and H of this part taken in a motor vehicle which is representative of the type of motor vehicle the person operates or expects to operate; or provide evidence that he/she has successfully passed a driving test administered by an authorized third party;

(4) Certify that the motor vehicle in which the person takes the driving skills test is representative of the type of motor vehicle that person operates or expects to operate;

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

(6) Certify that he/she is not subject to any disqualification under § 383.51, or

any license suspension, revocation, or cancellation under State law, and that he/she does not have a driver's license from more than one State or jurisdiction;

(7) Surrender the applicant's non-CDL driver's licenses to the State; and

(8) Provide the names of all States where the applicant was previously licensed to drive any type of motor vehicle during the previous 10 years.

(9) If applying for a hazardous materials endorsement, comply with Transportation Security Administration requirements codified in 49 CFR Part 1572, and provide proof of citizenship or immigration status as specified in Table 1 to this section. A lawful permanent resident of the United States requesting a hazardous materials endorsement must additionally provide his or her Bureau of Citizenship and Immigration Services (BCIS) Alien registration number.

TABLE 1 TO § 383.71—LIST OF ACCEPTABLE PROOFS OF CITIZENSHIP OR IMMIGRATION

Status	Proof of status
U.S. Citizen	<ul style="list-style-type: none"> • U.S. Passport. • Certificate of birth that bears an official seal and was issued by a State, county, municipal authority, or outlying possession of the United States. • Certification of Birth Abroad issued by the U.S. Department of State (Form FS-545 or DS 1350). • Certificate of Naturalization (Form N-550 or N-570). • Certificate of U.S. Citizenship (Form N-560 or N-561).
Lawful Permanent Resident	<ul style="list-style-type: none"> • Permanent Resident Card, Alien Registration Receipt Card (Form I-551). • Temporary I-551 stamp in foreign passport. • Temporary I-551 stamp on Form I-94, Arrival/Departure Record, with photograph of the bearer. • Reentry Permit (Form I-327).

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

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

(2) Provide to the new State of domicile updated information as specified in subpart J of this part;

(3) If the applicant wishes to retain a hazardous materials endorsement, he/she must comply with the requirements for such endorsement specified

in § 383.71(a)(9) and State requirements as specified in § 383.73(b)(4);

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

(5) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

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

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

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

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(3) If a person wishes to retain a hazardous materials endorsement, he/she must comply with the requirements specified in §383.71(a)(9) and pass the test specified in §383.121 for such endorsement.

(4) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

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

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

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

(3) To obtain a hazardous materials endorsement, comply with the requirements for such endorsement specified in §383.71(a)(9).

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

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

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

(f) If a State uses the alternative method described in §383.73(i) to achieve the objectives of the certifications in §383.71(a), then the driver

applicant shall satisfy such alternative methods as are applicable to him/her with respect to initial licensing, license transfer, license renewal, and license upgrades.

(g) *Existing CDL holder's self-certification.* Every person who holds a CDL must provide to the State on or after January 30, 2012, but not later than January 30, 2014 the certification contained in §383.71(a)(1)(ii).

(h) *Medical certification documentation required by the State.* An applicant or CDL holder who certifies to non-excepted, interstate driving operations according to §383.71(a)(1)(ii)(A) must comply with applicable requirements in paragraphs (h)(1) through (3) of this section:

(1) *New CDL applicants.* After January 30, 2012, a new CDL applicant who certifies that he or she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of a medical examiner's certificate prepared by a medical examiner, as defined in §390.5 of this chapter, and the State will post a certification status of "certified" on the Commercial Driver's License Information System (CDLIS) driver record for the driver;

(2) *Existing CDL holders.* By January 30, 2014, provide the State with an original or copy (as required by the State) of a current medical examiner's certificate prepared by a medical examiner, as defined in 49 CFR 390.5, and the State will post a certification status of "certified" on CDLIS driver record for the driver. If the non-excepted, interstate CDL holder fails to provide the State with a current medical examiner's certificate, the State will post a certification status of "not-certified" in the CDLIS driver record for the driver, and initiate a CDL downgrade following State procedures in accordance with section 383.73(j)(4); and

(3) *Maintaining the medical certification status of "certified."* In order to maintain a medical certification status of "certified," after January 30, 2012, a CDL holder who certifies that he or she will operate CMVs in non-excepted, interstate commerce must provide the

State with an original or copy (as required by the State) of each subsequently issued medical examiner's certificate.

[53 FR 27649, July 21, 1988, as amended at 67 FR 49759, July 31, 2002; 68 FR 23849, May 5, 2003; 73 FR 73123, Dec. 1, 2008; 75 FR 28500, May 21, 2010]

§ 383.72 Implied consent to alcohol testing.

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

[66 FR 49872, Oct. 1, 2001]

§ 383.73 State procedures.

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

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

(2) Check that the vehicle in which the applicant takes his/her test is representative of the vehicle group the applicant has certified that he/she operates or expects to operate;

(3) Initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law, and that the person does not have a driver's license from more than one State or jurisdiction. The record check must include, but is not limited to, the following:

(i) A check of the applicant's driving record as maintained by his/her current State of licensure, if any;

(ii) A check with the CDLIS to determine whether the driver applicant already has been issued a CDL, whether the applicant's license has been suspended, revoked, or canceled, or if the applicant has been disqualified from operating a commercial motor vehicle;

(iii) A check with the National Driver Register (NDR) to determine whether the driver applicant has:

(A) Been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) Had a license (other than CDL) suspended, revoked, or canceled for cause in the 3-year period ending on the date of application; or

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

(iv) A request for the applicant's complete driving record from all States where the applicant was previously licensed over the last 10 years to drive any type of motor vehicle. *Exception:* A State is only required to make the driving record check specified in this paragraph (a)(3) for drivers renewing a CDL for the first time after September 30, 2002, provided a notation is made on the driver's record confirming that the driver record check required by this paragraph (a)(3) has been made and noting the date it was done; and

(v) Beginning January 30, 2012, a check that the medical certification status of a driver that self-certified according to § 383.71(a)(1)(ii)(A) (non-excepted interstate) is "certified;"

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

(5) Beginning January 30, 2012, for drivers who certified their type of driving according to § 383.71(a)(1)(ii)(A) (non-excepted interstate) and, if the driver submits a current medical examiner's certificate, date-stamp the medical examiner's certificate, and post all required information from the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (j) of this section.

(6) For persons applying for a hazardous materials endorsement, require compliance with the standards for such endorsement specified in § 383.71(a)(9).

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

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

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

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

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(4) If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §383.71(a)(9) and ensure that the driver has, within the 2 years preceding the transfer, either:

(i) Passed the test for such endorsement specified in §383.121; or

(ii) Successfully completed a hazardous materials test or training that is given by a third party and that is deemed by the State to substantially cover the same knowledge base as that described in §383.121;

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

(6)(i) Beginning January 30, 2012, verify from the CDLIS driver record that that the medical certification status of driver is "certified" for those who certified according to §383.71(a)(1)(ii)(A).

(ii) *Exception.* A driver who certified according to §383.71(a)(1)(ii)(A) that he or she plans to operate in non-excepted interstate commerce may present a current medical examiner's certificate issued prior to January 30, 2012. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

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

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

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

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

(4) If such applicant wishes to retain a hazardous materials endorsement, require the driver to pass the test specified in §383.121 and comply with the standards specified in §383.71(a)(9) for such endorsement; and

(5)(i) Beginning January 30, 2012, verify from the CDLIS driver record that the medical certification status is "certified" for drivers who self-certified according to §383.71(a)(1)(ii)(A).

(ii) *Exception.* A driver who certified according to §383.71(a)(1)(ii)(A) may present a current medical examiner's

certificate issued prior to January 30, 2012. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

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

(1) Require such driver applicant to provide certifications, pass tests, and meet applicable hazardous materials standards specified in §383.71(d);

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

(3)(i) Beginning January 30, 2012, verify from the CDLIS driver record that the medical certification status is "certified" for drivers who self-certified according to §383.71(a)(1)(ii)(A).

(ii) *Exception.* A driver who certified according to §383.71(a)(1)(ii)(A) may present a current medical examiner's certificate issued prior to January 30, 2012. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

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

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

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

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

CDL were a CDL issued to a resident of the State.

(f) *License issuance.* After the State has completed the procedures described in § 383.73 (a), (b), (c), (d) or (e), it may issue a CDL to the driver applicant. The State shall notify the operator of the CDLIS of such issuance, transfer, renewal, or upgrade within the 10-day period beginning on the date of license issuance.

(g) *Penalties for false information.* If a State determines, in its check of an applicant's license status and record prior to issuing a CDL, or at any time after the CDL is issued, that the applicant falsified information contained in subpart J of this part, in any of the certifications required in § 383.71(a) or (g), or in any of the documents required to be submitted by § 383.71(h), the State shall at a minimum suspend, cancel, or revoke the person's CDL or his/her pending application, or disqualify the person from operating a commercial motor vehicle for a period of at least 60 consecutive days.

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

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

(j) *Medical recordkeeping*—(1) Status of CDL Holder. Beginning January 30, 2012, for each operator of a commercial motor vehicle required to have a commercial driver's license, the current licensing State must:

(i) Post the driver's self-certification of type of driving under § 383.71(a)(1)(ii),

(ii) Retain the original or a copy of the medical certificate of any driver required to provide documentation of physical qualification for 3 years beyond the date the certificate was issued, and

(iii) Post the information from the medical examiner's certificate within 10 calendar days to the CDLIS driver record, including:

(A) Medical examiner's name;

(B) Medical examiner's telephone number;

(C) Date of medical examiner's certificate issuance;

(D) Medical Examiner's license number and the State that issued it;

(E) Medical examiner's National Registry identification number (if the National Registry of Medical Examiners, mandated by 49 U.S.C. 31149(d), requires one);

(F) The indicator of medical certification status, i.e., "certified" or "not-certified";

(G) Expiration date of the medical examiner's certificate;

(H) Existence of any medical variance on the medical certificate, such as an exemption, Skill Performance Evaluation (SPE) certification, or grandfather provisions;

(I) Any restrictions (e.g., corrective lenses, hearing aid, required to have possession of an exemption letter or SPE certificate while on-duty, etc.); and

(J) Date the medical examiner's certificate information was posted to the CDLIS driver record.

(2) *Status update.* Beginning January 30, 2012, the State must, within 10 calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, update the medical certification status of that driver as "not-certified."

(3) *Variance update.* Beginning January 30, 2012, within 10 calendar days of receiving information from FMCSA regarding issuance or renewal of a medical variance for a driver, the State must update the CDLIS driver record to include the medical variance information provided by FMCSA.

(4) *Downgrade.* (i) Beginning January 30, 2012, if a driver's medical certification or medical variance expires, or FMCSA notifies the State that a medical variance was removed or rescinded, the State must:

(A) Notify the CDL holder of his or her CDL "not-certified" medical certification status and that the CDL privilege will be removed from the driver license unless the driver submits a current medical certificate and/or medical variance, or changes his or her

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self-certification to driving only in exempted or intrastate commerce (if permitted by the State);

(B) Initiate established State procedures for downgrading the license. The CDL downgrade must be completed and recorded within 60 days of the driver's medical certification status becoming "not-certified" to operate a CMV.

(ii) Beginning January 30, 2014, if a driver fails to provide the State with the certification contained in § 383.71(a)(1)(ii), or a current medical examiner's certificate if the driver self-certifies according to 383.71(a)(1)(ii)(A) that he or she is operating in non-exempted interstate commerce as required by § 383.71(h), the State must mark that CDLIS driver record as "not-certified" and initiate a CDL downgrade following State procedures in accordance with paragraph (j)(4)(i)(B) of this section.

(5) FMCSA Medical Programs is designated as the keeper of the list of State contacts for receiving medical variance information from FMCSA. Beginning January 30, 2012, States are responsible for insuring their medical variance contact information is always up-to-date with FMCSA's Medical Programs.

[53 FR 27649, July 21, 1988, as amended at 54 FR 40788, Oct. 3, 1989; 67 FR 49760, July 31, 2002; 68 FR 23850, May 5, 2003; 73 FR 73124, Dec. 1, 2008, 75 FR 28501, May 21, 2010]

§ 383.75 Third party testing.

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

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

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

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

(ii) Require the State to conduct on-site inspections at least annually;

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

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

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

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

§ 383.77 Substitute for driving skills tests.

At the discretion of a State, the driving skill test as specified in § 383.113 may be waived for a CMV operator who is currently licensed at the time of his/her application for a CDL, and substituted with either an applicant's driving record and previous passage of an acceptable skills test, or an applicant's driving record in combination with certain driving experience. The State shall impose conditions and limitations to restrict the applicants from whom a State may accept alternative requirements for the skills test described in § 383.113. Such conditions must require at least the following:

(a) An applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she:

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

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

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

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

(5) Has not had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault; and

(b) An applicant must provide evidence and certify that:

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

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

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

[53 FR 27649, July 21, 1988, as amended at 55 FR 25606, June 22, 1990; 67 FR 49760, July 31, 2002]

Subpart F—Vehicle Groups and Endorsements

SOURCE: 53 FR 27651, July 21, 1988, unless otherwise noted.

§ 383.91 Commercial motor vehicle groups.

(a) Vehicle group descriptions. Each driver applicant must possess and be tested on his/her knowledge and skills, described in subpart G of this part, for the commercial motor vehicle group(s) for which he/she desires a CDL. The commercial motor vehicle groups are as follows:

(1) Combination vehicle (Group A)—Any combination of vehicles with a gross combination weight rating (GCWR) of 11,794 kilograms or more

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

(2) Heavy Straight Vehicle (Group B)—Any single vehicle with a GVWR of 11,794 kilograms or more (26,001 pounds or more), or any such vehicle towing a vehicle not in excess of 4,536 kilograms (10,000 pounds) GVWR.

(3) Small Vehicle (Group C)—Any single vehicle, or combination of vehicles, that meets neither the definition of Group A nor that of Group B as contained in this section, but that either is designed to transport 16 or more passengers including the driver, or is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

(b) *Representative vehicle.* For purposes of taking the driving test in accordance with § 383.113, a representative vehicle for a given vehicle group contained in § 383.91(a), is any commercial motor vehicle which meets the definition of that vehicle group.

(c) *Relation between vehicle groups.* Each driver applicant who desires to operate in a different commercial motor vehicle group from the one which his/her CDL authorizes shall be required to retake and pass all related tests, except the following:

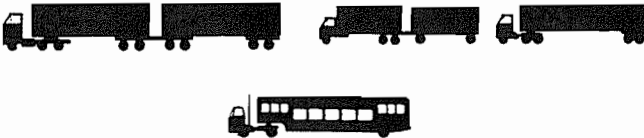
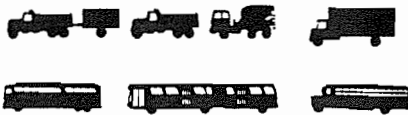

(1) A driver who has passed the knowledge and skills tests for a combination vehicle (Group A) may operate a heavy straight vehicle (Group B) or a small vehicle (Group C), provided that he/she possesses the requisite endorsement(s); and

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

(d) *Vehicle group illustration.* Figure 1 illustrates typical vehicles within each of the vehicle groups defined in this section.

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

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

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

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

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

§ 383.93 Endorsements.

(a) *General.* In addition to taking and passing the knowledge and skills tests described in subpart G of this part, all persons who operate or expect to operate the type(s) of motor vehicles described in paragraph (b) of this section shall take and pass specialized tests to obtain each endorsement. The State shall issue CDL endorsements only to drivers who successfully complete the tests.

(b) *Endorsement descriptions.* An operator must obtain State-issued endorsements to his/her CDL to operate commercial motor vehicles which are:

- (1) Double/triple trailers;
- (2) Passenger vehicles;
- (3) Tank vehicles;
- (4) Used to transport hazardous materials as defined in § 383.5, or
- (5) School buses.

(c) *Endorsement testing requirements.* The following tests are required for the endorsements contained in paragraph (b) of this section:

- (1) *Double/Triple Trailers*—a knowledge test;
- (2) *Passenger*—a knowledge and a skills test;
- (3) *Tank vehicle*—a knowledge test;
- (4) *Hazardous Materials*—a knowledge test; and
- (5) *School bus*—a knowledge and a skills test.

[53 FR 27651, July 21, 1988, as amended at 67 FR 49760, July 31, 2002; 68 FR 23850, May 5, 2003]

§ 383.95 Restrictions.

(a) *Air brake restrictions.* (1) If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the State must indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.

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

(b) *Medical variance restrictions.* If the State is notified according to § 383.73(j)(3) that the driver has been issued a medical variance, the State must indicate the existence of such a medical variance on the CDLIS driver

record and the CDL document, if issued, using the restriction code "V" indicating there is information about a medical variance on the CDLIS driver record. NOTE: In accordance with the agreement between Canada and the United States (see footnote to § 391.41), drivers with a medical variance restriction code on their commercial driver license are restricted from operating a CMV in the other country.

[73 FR 73125, Dec. 1, 2008]

Subpart G—Required Knowledge and Skills

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

§ 383.110 General requirement.

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

§ 383.111 Required knowledge.

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

(a) *Safe operations regulations.* Driver-related elements of the regulations contained in 49 CFR parts 382, 391, 392, 393, 395, 396, and 397, such as: Motor vehicle inspection, repair, and maintenance requirements; procedures for safe vehicle operations; the effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation; the types of motor vehicles and cargoes subject to the requirements; and the effects of alcohol and drug use upon safe commercial motor vehicle operations.

(b) *Commercial motor vehicle safety control systems.* Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The effect of undiscovered malfunctions upon safety.

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

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

(5) Reporting findings.

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

(g) *Air brake knowledge as follows*:

(1) Air brake system nomenclature;

(2) The dangers of contaminated air supply;

(3) Implications of severed or disconnected air lines between the power unit and the trailer(s);

(4) Implications of low air pressure readings;

(5) Procedures to conduct safe and accurate pre-trip inspections.

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

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

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

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

[53 FR 27654, July 21, 1988, as amended at 62 FR 37151, July 11, 1997]

§ 383.113 Required skills.

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

(b) *Safe driving skills*. All applicants for a CDL must possess and demonstrate the safe driving skills for their vehicle group. These skills should include proper visual search methods, appropriate use of signals, speed control for weather and traffic conditions,

and ability to position the motor vehicle correctly when changing lanes or turning.

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

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

(i) Locate and verbally identify air brake operating controls and monitoring devices;

(ii) Determine the motor vehicle's brake system condition for proper adjustments and that air system connections between motor vehicles have been properly made and secured;

(iii) Inspect the low pressure warning device(s) to ensure that they will activate in emergency situations;

(iv) Ascertain, with the engine running, that the system maintains an adequate supply of compressed air;

(v) Determine that required minimum air pressure build up time is within acceptable limits and that required alarms and emergency devices automatically deactivate at the proper pressure level; and

(vi) Operationally check the brake system for proper performance.

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

(d) *Test area.* Skills tests shall be conducted in on-street conditions or under a combination of on-street and off-street conditions.

(e) *Simulation technology.* A State may utilize simulators to perform skills testing, but under no circumstances as a substitute for the required testing in on-street conditions.

§ 383.115 Requirements for double/triple trailers endorsement.

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

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

(b) Proper placement of heaviest trailer;

(c) Handling and stability characteristics including off-tracking, response

to steering, sensory feedback, braking, oscillatory sway, rollover in steady turns, yaw stability in steady turns; and

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

§ 383.117 Requirements for passenger endorsement.

An applicant for the passenger endorsement must satisfy both of the following additional knowledge and skills test requirements.

(a) *Knowledge test.* All applicants for the passenger endorsement must have knowledge covering at least the following topics:

(1) Proper procedures for loading/unloading passengers;

(2) Proper use of emergency exits, including push-out windows;

(3) Proper responses to such emergency situations as fires and unruly passengers;

(4) Proper procedures at railroad crossings and drawbridges; and

(5) Proper braking procedures.

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

§ 383.119 Requirements for tank vehicle endorsement.

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

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

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

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

(d) Differences in tank vehicle type and construction;

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

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

(g) Proper use of emergency systems; and

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

§ 383.121 Requirements for hazardous materials endorsement.

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

(a) Hazardous materials regulations including:

- (1) Hazardous materials table;
- (2) Shipping paper requirements;
- (3) Marking;
- (4) Labeling;
- (5) Placarding requirements;
- (6) Hazardous materials packaging;
- (7) Hazardous materials definitions and preparation;
- (8) Other regulated material (e.g., ORM-D);
- (9) Reporting hazardous materials accidents; and
- (10) Tunnels and railroad crossings.

(b) Hazardous materials handling including:

- (1) Forbidden Materials and Packages;
- (2) Loading and Unloading Materials;
- (3) Cargo Segregation;
- (4) Passenger Carrying Buses and Hazardous Materials;
- (5) Attendance of Motor Vehicles;
- (6) Parking;
- (7) Routes;
- (8) Cargo Tanks; and
- (9) "Safe Havens."

(c) Operation of emergency equipment including:

- (1) Use of equipment to protect the public;
- (2) Special precautions for equipment to be used in fires;
- (3) Special precautions for use of emergency equipment when loading or unloading a hazardous materials laden motor vehicle; and
- (4) Use of emergency equipment for tank vehicles.

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(d) Emergency response procedures including:

- (1) Special care and precautions for different types of accidents;
- (2) Special precautions for driving near a fire and carrying hazardous materials, and smoking and carrying hazardous materials;
- (3) Emergency procedures; and
- (4) Existence of special requirements for transporting Class A and B explosives.

§ 383.123 Requirements for a school bus endorsement.

(a) An applicant for a school bus endorsement must satisfy the following three requirements:

(1) Qualify for passenger vehicle endorsement. Pass the knowledge and skills test for obtaining a passenger vehicle endorsement.

(2) Knowledge test. Must have knowledge covering at least the following three topics:

(i) Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights and other warning and passenger safety devices required for school buses by State or Federal law or regulation.

(ii) Emergency exits and procedures for safely evacuating passengers in an emergency.

(iii) State and Federal laws and regulations related to safely traversing highway rail grade crossings.

(3) Skills test. Must take a driving skills test in a school bus of the same vehicle group (see § 383.91(a)) as the school bus applicant will drive.

(4) *Exception.* Knowledge and skills tests administered before September 30, 2002 and approved by FMCSA as meeting the requirements of this section, meet the requirements of paragraphs (a)(2) and (a)(3) of this section.

(b) *Substitute for driving skills test.* (1) At the discretion of a State, the driving skills test required in paragraph (a)(3) of this section may be waived for an applicant who is currently licensed, has experience driving a school bus, has a good driving record, and meets the conditions set forth in paragraph (b)(2) of this section.

(2) An applicant must certify and the State must verify that, during the two-

year period immediately prior to applying for the school bus endorsement, the applicant:

(i) Held a valid CDL with a passenger vehicle endorsement to operate a school bus representative of the group he or she will be driving;

(ii) Has not had his or her driver's license or CDL suspended, revoked or canceled or been disqualified from operating a CMV;

(iii) Has not been convicted of any of the disqualifying offenses in §383.51(b) while operating a CMV or of any offense in a non-CMV that would be disqualifying under §383.51(b) if committed in a CMV;

(iv) Has not had more than one conviction of any of the serious traffic violations defined in §383.5, while operating any type motor vehicle;

(v) Has not had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident;

(vi) Has not been convicted of any motor vehicle traffic violation that resulted in an accident; and

(vii) Has been regularly employed as a school bus driver, has operated a school bus representative of the group the applicant seeks to drive, and provides evidence of such employment.

(3) After September 30, 2006, the provisions in paragraph (b) of this section do not apply.

[67 FR 49760, July 31, 2002, as amended at 70 FR 56593, Sept. 28, 2005]

APPENDIX TO SUBPART G OF PART 383—
REQUIRED KNOWLEDGE AND SKILLS—
SAMPLE GUIDELINES

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

EXAMPLES OF SPECIFIC KNOWLEDGE ELEMENTS

(a) *Safe operations regulations.* Driver-related elements of the following regulations:

(1) Motor vehicle inspection, repair, and maintenance requirements as contained in parts 393 and 396 of this title;

(2) Procedures for safe vehicle operations as contained in part 392 of this title;

(3) The effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation as contained in parts 391, 392, and 395 of this title;

(4) The types of motor vehicles and cargoes subject to the requirements contained in part 397 of this title; and

(5) The effects of alcohol and drug use upon safe commercial motor vehicle operations as contained in parts 391 and 395 of this title.

(b) *Commercial motor vehicle safety control systems.* Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions. Commercial motor vehicle drivers shall have knowledge on the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.

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

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

(i) Starting, warming up, and shutting down the engine;

(ii) Putting the vehicle in motion and stopping;

(iii) Backing in a straight line; and

(iv) Turning the vehicle, e.g., basic rules, off-tracking, right/left turns and right curves.

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

(i) Key elements of shifting, e.g., controls, when to shift and double clutching;

(ii) Shift patterns and procedures; and

(iii) Consequences of improper shifting.

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

(i) Backing principles and rules; and

(ii) Basic backing maneuvers, e.g., straight-line backing, and backing on a curved path.

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

(i) Seeing ahead and to the sides;

(ii) Use of mirrors; and

(iii) Seeing to the rear.

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

(i) Signaling intent, e.g., signaling when changing speed or direction in traffic;

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

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

- (i) Speed and stopping distance;
- (ii) Speed and surface conditions;
- (iii) Speed and the shape of the road;
- (iv) Speed and visibility; and
- (v) Speed and traffic flow.

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

- (i) The importance of space management;
- (ii) Space cushions, e.g., controlling space ahead/to the rear;
- (iii) Space to the sides; and
- (iv) Space for traffic gaps.

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

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

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

- (i) Adverse weather;
- (ii) Hot weather; and
- (iii) Mountain driving.

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

- (i) Importance of hazards recognition;
- (ii) Road characteristics; and
- (iii) Road user activities.

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

- (i) Evasive steering;
- (ii) Emergency stop;
- (iii) Off-road recovery;
- (iv) Brake failure; and
- (v) Blowouts.

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

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

- (1) The importance of proper cargo handling, e.g., consequences of improperly secured cargo, drivers' responsibilities, Federal/State and local regulations.
- (2) Principles of weight distribution.
- (3) Principles and methods of cargo securement.

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

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

(2) The effect of undiscovered malfunctions upon safety.

(3) What safety-related parts to look for when inspecting vehicles, e.g., fluid leaks, interference with visibility, bad tires, wheel and rim defects, braking system defects, steering system defects, suspension system defects, exhaust system defects, coupling system defects, and cargo problems.

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

(5) Reporting findings.

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

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

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

(g) *Air brake knowledge as follows:*

(1) General air brake system nomenclature;

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

(3) Implications of severed or disconnected air lines between the power unit and the trailer(s);

(4) Implications of low air pressure readings;

(5) Procedures to conduct safe and accurate pre-trip inspections, including knowledge about:

- (i) Automatic fail-safe devices;
- (ii) System monitoring devices; and
- (iii) Low pressure warning alarms.

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

(i) Tests which indicate the amount of air loss from the braking system within a specified period, with and without the engine running; and

(ii) Tests which indicate the pressure levels at which the low air pressure warning devices and the tractor protection valve should activate.

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

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

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

EXAMPLES OF SPECIFIC SKILLS ELEMENTS

These examples relate to paragraphs (a) and (b) of § 383.113 only.

(a) *Basic vehicle control skills.* All applicants for a CDL must possess and demonstrate the following basic motor vehicle control skills for each vehicle group which the driver operates or expects to operate. These skills shall include:

- (1) Ability to start, warm-up, and shut down the engine;
- (2) Ability to put the motor vehicle in motion and accelerate smoothly, forward and backward;
- (3) Ability to bring the motor vehicle to a smooth stop;
- (4) Ability to back the motor vehicle in a straight line, and check path and clearance while backing;
- (5) Ability to position the motor vehicle to negotiate and then make left and right turns;
- (6) Ability to shift as required and select appropriate gear for speed and highway conditions;
- (7) Ability to back along a curved path; and
- (8) Ability to observe the road and the behavior of other motor vehicles, particularly before changing speed and direction.

(b) *Safe driving skills.* All applicants for a CDL must possess and demonstrate the following safe driving skills for any vehicle group. These skills shall include:

- (1) Ability to use proper visual search methods.
- (2) Ability to signal appropriately when changing speed or direction in traffic.
- (3) Ability to adjust speed to the configuration and condition of the roadway, weather and visibility conditions, traffic conditions, and motor vehicle, cargo and driver conditions;
- (4) Ability to choose a safe gap for changing lanes, passing other vehicles, as well as for crossing or entering traffic;
- (5) Ability to position the motor vehicle correctly before and during a turn to prevent other vehicles from passing on the wrong side as well as to prevent problems caused by off-tracking;
- (6) Ability to maintain a safe following distance depending on the condition of the road, on visibility, and on vehicle weight; and
- (7) Ability to adjust operation of the motor vehicle to prevailing weather conditions including speed selection, braking, direction changes and following distance to maintain control.

Subpart H—Tests

SOURCE: 53 FR 27657, July 21, 1988, unless otherwise noted.

§ 383.131 Test procedures.

(a) *Driver information manuals.* Information on how to obtain a CDL and endorsements shall be included in manuals and made available by States to CDL applicants. All information provided to the applicant shall include the following:

(1) Information on the requirements described in § 383.71, the implied consent to alcohol testing described in § 383.72, the procedures and penalties, contained in § 383.51(b) to which a CDL holder is exposed for refusal to comply with such alcohol testing, State procedures described in § 383.73, and other appropriate driver information contained in subpart E of this part;

(2) Information on vehicle groups and endorsements as specified in subpart F of this part;

(3) The substance of the knowledge and skills which drivers shall have as outlined in subpart G of this part for the different vehicle groups and endorsements;

(4) Details of testing procedures, including the purpose of the tests, how to respond, any time limits for taking the test, and any other special procedures determined by the State of issuance; and

(5) Directions for taking the tests.

(b) *Examiner procedures.* A State shall provide to test examiners details on testing and any other State-imposed requirements in the examiner's manual, and shall ensure that examiners are qualified to administer tests on the basis of training and/or other experience. States shall provide standardized scoring sheets for the skills tests, as well as standardized driving instructions for the applicants. Such examiners' manuals shall contain the following:

(1) Information on driver application procedures contained in § 383.71, State procedures described in § 383.73, and other appropriate driver information contained in subpart E of this part;

(2) Details on information which must be given to the applicant;

(3) Details on how to conduct the tests;

(4) Scoring procedures and minimum passing scores;

(5) Information for selecting driving test routes;

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- (6) List of the skills to be tested;
- (7) Instructions on where and how the skills will be tested;
- (8) How performance of the skills will be scored; and
- (9) Causes for automatic failure of skills tests.

[53 FR 27657, July 21, 1988, as amended at 53 FR 39051, Oct. 4, 1988]

§ 383.133 Testing methods.

(a) All tests shall be constructed in such a way as to determine if the applicant possesses the required knowledge and skills contained in subpart G of this part for the type of motor vehicle or endorsement the applicant wishes to obtain.

(b) States shall develop their own specifications for the tests for each vehicle group and endorsement which must be at least as stringent as the Federal standards.

(c) States shall determine specific methods for scoring the knowledge and skills tests.

(d) Passing scores must meet those standards contained in § 383.135.

(e) Knowledge and skills tests shall be based solely on the information contained in the driver manuals referred to in § 383.131(a).

(f) Each knowledge test shall be valid and reliable so as to assure that driver applicants possess the knowledge required under § 383.111.

(g) Each basic knowledge test, i.e., the test covering the areas referred to in § 383.111 for the applicable vehicle group, shall contain at least 30 items, exclusive of the number of items testing air brake knowledge. Each endorsement knowledge test, and the air brake component of the basic knowledge test as described in § 383.111(g), shall contain a number of questions that is sufficient to test the driver applicant's knowledge of the required subject matter with validity and reliability.

(h) The skills tests shall have administrative procedures, designed to achieve interexaminer reliability, that are sufficient to ensure fairness of pass/fail rates.

§ 383.135 Minimum passing scores.

(a) The driver applicant must correctly answer at least 80 percent of the questions on each knowledge test in

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order to achieve a passing score on such knowledge test.

(b) To achieve a passing score on the skills test, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in § 383.113.

(c) If the driver applicant does not obey traffic laws, or causes an accident during the test, he/she shall automatically fail the test.

(d) The scoring of the basic knowledge and skills tests shall be adjusted as follows to allow for the air brake restriction (§ 383.95):

(1) If the applicant scores less than 80 percent on the air brake component of the basic knowledge test as described in § 383.111(g), the driver will have failed the air brake component and, if the driver is issued a CDL, an air brake restriction shall be indicated on the license; and

(2) If the applicant performs the skills test in a vehicle not equipped with air brakes, the driver will have omitted the air brake component as described in § 383.113(c) and, if the driver is issued a CDL, the air brake restriction shall be indicated on the license.

Subpart I—Requirement for Transportation Security Administration approval of hazardous materials endorsement issuances

§ 383.141 General.

(a) *Applicability date.* Beginning on the date(s) listed in 49 CFR 1572.13(b), this section applies to State agencies responsible for issuing hazardous materials endorsements for a CDL, and applicants for such endorsements.

(b) *Prohibition.* A State may not issue, renew, upgrade, or transfer a hazardous materials endorsement for a CDL to any individual authorizing that individual to operate a commercial motor vehicle transporting a hazardous material in commerce unless the Transportation Security Administration has determined that the individual does not pose a security risk warranting denial of the endorsement.

(c) *Individual notification.* At least 60 days prior to the expiration date of the

CDL or hazardous materials endorsement, a State must notify the holder of a hazardous materials endorsement that the individual must pass a Transportation Security Administration security threat assessment process as part of any application for renewal of the hazardous materials endorsement. The notice must advise a driver that, in order to expedite the security screening process, he or she should file a renewal application as soon as possible, but not later than 30 days before the date of expiration of the endorsement. An individual who does not successfully complete the Transportation Security Administration security threat assessment process referenced in paragraph (b) of this section may not be issued a hazardous materials endorsement.

(d) *Hazardous materials endorsement renewal cycle.* Each State must require that hazardous materials endorsements be renewed every 5 years or less so that individuals are subject to a Transportation Security Administration security screening requirement referenced in paragraph (b) of this section at least every 5 years.

[68 FR 24850, May 5, 2003, as amended at 68 FR 63033, Nov. 7, 2003; 69 FR 51393, Aug. 19, 2004; 70 FR 22271, Apr. 29, 2005]

Subpart J—Commercial Driver's License Document

SOURCE: 53 FR 27657, July 21, 1988, unless otherwise noted.

§ 383.151 General.

The CDL shall be a document that is easy to recognize as a CDL. At a minimum, the document shall contain information specified in § 383.153.

§ 383.153 Information on the document and application.

(a) All CDLs shall contain the following information:

(1) The prominent statement that the license is a "Commercial Driver's License" or "CDL," except as specified in § 383.153(b).

(2) The full name, signature, and mailing address of the person to whom such license is issued;

(3) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height;

(4) Color photograph of the driver;

(5) The driver's State license number;

(6) The name of the State which issued the license;

(7) The date of issuance and the date of expiration of the license;

(8) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:

(i) A for Combination Vehicle;

(ii) B for Heavy Straight Vehicle; and

(iii) C for Small Vehicle.

(9) The endorsement(s) for which the driver has qualified, if any, indicated as follows:

(i) T for double/triple trailers;

(ii) P for passenger;

(iii) N for tank vehicle;

(iv) H for hazardous materials;

(v) X for a combination of tank vehicle and hazardous materials endorsements;

(vi) S for school bus; and

(vii) At the discretion of the State, additional codes for additional groupings of endorsements, as long as each such discretionary code is fully explained on the front or back of the CDL document.

(b) If the CDL is a Nonresident CDL, it shall contain the prominent statement that the license is a "Nonresident Commercial Driver's License" or "Nonresident CDL." The word "Nonresident" must be conspicuously and unmistakably displayed, but may be noncontiguous with the words "Commercial Driver's License" or "CDL."

(c) If the State has issued the applicant an air brake restriction as specified in § 383.95, that restriction must be indicated on the license.

(d) Except in the case of a Nonresident CDL:

(1) A driver applicant must provide his/her Social Security Number on the application of a CDL; and

(2) The State must provide the Social Security Number to the CDLIS.

(e) If the State has been notified that the applicant has been issued a medical variance as specified in § 383.95(b), the

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restriction code "V" must be indicated on the license.

[53 FR 27657, July 21, 1988, as amended at 67 FR 49760, July 31, 2002; 75 FR 28502, May 21, 2010]

§ 383.155 Tamperproofing requirements.

States shall make the CDL tamperproof to the maximum extent practicable. At a minimum, a State shall use the same tamperproof method used for noncommercial drivers' licenses.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

Subpart A—General

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- 384.101 Purpose and scope.
- 384.103 Applicability.
- 384.105 Definitions.
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Subpart B—Minimum Standards for Substantial Compliance by States

- 384.201 Testing program.
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- 384.206 State record checks.
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- 384.226 Prohibition on masking convictions.
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- 384.232 Required timing of record checks.
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Subpart C—Procedures for Determining State Compliance

- 384.301 Substantial compliance—general requirement.
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- 384.307 FMCSA program reviews of State compliance.
- 384.309 Results of compliance determination.

Subpart D—Consequences of State Noncompliance

- 384.401 Withholding of funds based on non-compliance.
- 384.403 Period of availability; effect of compliance and noncompliance.
- 384.405 Decertification of State CDL program.
- 384.407 Emergency CDL grants.

AUTHORITY: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1753, 1767; and 49 CFR 1.73.

SOURCE: 59 FR 26039, May 18, 1994, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 384 appear at 66 FR 49872, Oct. 1, 2001.

Subpart A—General

§ 384.101 Purpose and scope.

(a) *Purpose.* The purpose of this part is to ensure that the States comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)).

(b) *Scope.* This part:

(1) Includes the minimum standards for the actions States must take to be in substantial compliance with each of the 22 requirements of 49 U.S.C. 31311(a);

(2) Establishes procedures for determinations to be made of such compliance by States; and

(3) Specifies the consequences of State noncompliance.

[62 FR 37152, July 11, 1997]

§ 384.103 Applicability.

The rules in this part apply to all States.

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rate for the transportation or service. Departing, or offering to depart, from that published or filed rate is a violation of 49 U.S.C. 14902 and 14903.

(21) A person—

(i) Who knowingly and willfully fails, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods in interstate commerce for which charges have been estimated by the motor carrier transporting such goods, and for which the shipper has tendered a payment in accordance with part 375, subpart G of this chapter, is liable for a civil penalty of not less than \$10,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(ii) Who is a carrier or broker and is found to be subject to the civil penalties in paragraph (i) of this appendix may also have his or her carrier and/or broker registration suspended for not less than 12 months and not more than 36 months under 49 U.S.C. chapter 139. Such suspension of a carrier or broker shall extend to and include any carrier or broker having the same ownership or operational control as the suspended carrier or broker.

(h) *Copying of records and access to equipment, lands, and buildings.* A person subject to 49 U.S.C. chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI of title 49 U.S.C. who fails to allow promptly, upon demand, the Federal Motor Carrier Safety Administration or an employee designated by the Federal Motor Carrier Safety Administration to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property, in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b), is subject to a civil penalty of not more than \$1,000 for each offense. Each day of a continuing violation constitutes a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed \$10,000.

[63 FR 12414, Mar. 13, 1998, as amended at 65 FR 7756, Feb. 16., 2000; 67 FR 61821, Oct. 2, 2002; 68 FR 15383, Mar. 31, 2003; 69 FR 39371, June 30, 2004; 70 FR 28486, May 18, 2005; 72 FR 36789, July 5, 2007; 72 FR 55102, Sept. 28, 2007]

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

Subpart A—Motor Carriers of Property

- Sec.
- 387.1 Purpose and scope.
- 387.3 Applicability.
- 387.5 Definitions.
- 387.7 Financial responsibility required.

- 387.9 Financial responsibility, minimum levels.
- 387.11 State authority and designation of agent.
- 387.13 Fiduciaries.
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Subpart B—Motor Carriers of Passengers

- 387.25 Purpose and scope.
- 387.27 Applicability.
- 387.29 Definitions.
- 387.31 Financial responsibility required.
- 387.33 Financial responsibility, minimum levels.
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Subpart C—Surety Bonds and Policies of Insurance for Motor Carriers and Property Brokers

- 387.301 Surety bond, certificate of insurance, or other securities.
- 387.303 Security for the protection of the public: Minimum limits.
- 387.305 Combination vehicles.
- 387.307 Property broker surety bond or trust fund.
- 387.309 Qualifications as a self-insurer and other securities or agreements.
- 387.311 Bonds and certificates of insurance.
- 387.313 Forms and procedures.
- 387.315 Insurance and surety companies.
- 387.317 Refusal to accept, or revocation by the FMCSA of surety bonds, etc.
- 387.319 Fiduciaries.
- 387.321 Operations in foreign commerce.
- 387.323 Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.

Subpart D—Surety Bonds and Policies of Insurance for Freight Forwarders

- 387.401 Definitions.
- 387.403 General requirements.
- 387.405 Limits of liability.
- 387.407 Surety bonds and certificates of insurance.
- 387.409 Insurance and surety companies.
- 387.411 Qualifications as a self-insurer and other securities or agreements.
- 387.413 Forms and procedure.
- 387.415 Acceptance and revocation by the FMCSA.
- 387.417 Fiduciaries.
- 387.419 Electronic filing of surety bonds, certificates of insurance and cancellations.

AUTHORITY: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, 31139, and 31144; and 49 CFR 1.73.

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EDITORIAL NOTE: Nomenclature changes to part 387 appear at 66 FR 49873, Oct. 1, 2001.

Subpart A—Motor Carriers of Property

§ 387.1 Purpose and scope.

This subpart prescribes the minimum levels of financial responsibility required to be maintained by motor carriers of property operating motor vehicles in interstate, foreign, or intrastate commerce. The purpose of these regulations is to create additional incentives to motor carriers to maintain and operate their vehicles in a safe manner and to assure that motor carriers maintain an appropriate level of financial responsibility for motor vehicles operated on public highways.

[46 FR 30982, June 11, 1981, as amended at 48 FR 52683, Nov. 21, 1983]

§ 387.3 Applicability.

(a) This subpart applies to for-hire motor carriers operating motor vehicles transporting property in interstate or foreign commerce.

(b) This subpart applies to motor carriers operating motor vehicles transporting hazardous materials, hazardous substances, or hazardous wastes in interstate, foreign, or intrastate commerce.

(c) *Exception.* (1) The rules in this part do not apply to a motor vehicle that has a gross vehicle weight rating (GVWR) of less than 10,001 pounds. This exception does not apply if the vehicle is used to transport any quantity of a Division 1.1, 1.2, or 1.3 material, any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A, or to a highway route controlled quantity of a Class 7 material as it is defined in 49 CFR 173.403, in interstate or foreign commerce.

(2) The rules in this part do not apply to the transportation of non-bulk oil, non-bulk hazardous materials, substances, or wastes in intrastate commerce, except that the rules in this part do apply to the transportation of a highway route controlled quantity of a

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Class 7 material as defined in 49 CFR 173.403, in intrastate commerce.

[46 FR 30982, June 11, 1981; 46 FR 45612, Sept. 14, 1981, as amended at 48 FR 5559, Feb. 7, 1983; 48 FR 52683, Nov. 21, 1983; 49 FR 38290, Sept. 28, 1984; 59 FR 63923, Dec. 12, 1994; 73 FR 76496, Dec. 16, 2008]

§ 387.5 Definitions.

As used in this subpart—

Accident includes continuous or repeated exposure to the same conditions resulting in public liability which the insured neither expected nor intended.

Bodily injury means injury to the body, sickness, or disease including death resulting from any of these.

Cancellation of insurance the withdrawal of insurance coverage by either the insurer or the insured.

Endorsement an amendment to an insurance policy.

Environmental restoration restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measure taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Evidence of security a surety bond or a policy of insurance with the appropriate endorsement attached.

Financial responsibility the financial reserves (e.g., insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this subpart covering public liability.

For-hire carriage means the business of transporting, for compensation, the goods or property of another.

In bulk—the transportation, as cargo, of property, except Division 1.1, 1.2, or 1.3 materials, and Division 2.3, Hazard Zone A gases, in containment systems with capacities in excess of 3500 water gallons.

In bulk (Division 1.1, 1.2, and 1.3 explosives)—the transportation, as cargo, of any Division 1.1, 1.2, or 1.3 materials in any quantity.

In bulk (Division 2.3, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A materials)—the transportation,

as cargo, of any Division 2.3, Hazard Zone A, or Division 6.1, packing Group I, Hazard Zone A material, in any quantity.

Insured and principal—the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.

Insurance premium the monetary sum an insured pays an insurer for acceptance of liability for public liability claims made against the insured.

Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes, but is not limited to, a motor carrier's agent, officer, or representative; an employee responsible for hiring, supervising, training, assigning, or dispatching a driver; or an employee concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

Property damage means damage to or loss of use of tangible property.

Public liability liability for bodily injury or property damage and includes liability for environmental restoration.

State means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

[46 FR 30982, June 11, 1981; 46 FR 45612, Sept. 14, 1981; 47 FR 12801, Mar. 25, 1982, as amended at 48 FR 52683, Nov. 21, 1983; 51 FR 33856, Sept. 23, 1986; 53 FR 12160, Apr. 13, 1988; 59 FR 63923, Dec. 12, 1994; 62 FR 16709, Apr. 8, 1997; 63 FR 33275, June 18, 1998]

§ 387.7 Financial responsibility required.

(a) No motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in § 387.9 of this subpart.

(b)(1) Policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated. Cancellation may be effected by the insurer or the insured motor carrier giving 35 days' notice in writing to the other. The 35 days' notice shall commence to run from the date the notice is mailed. Proof of mailing shall be sufficient proof of notice.

(2) *Exception.* Policies of insurance and surety bonds may be obtained for a finite period of time to cover any lapse in continuous compliance.

(3) *Exception.* A Mexico-domiciled motor carrier operating solely in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities with a Certificate of Registration issued under part 368 may meet the minimum financial responsibility requirements of this subpart by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurers that meet the requirements of § 387.11 of this subpart. A Mexican motor carrier so insured must have available for inspection in each of its vehicles copies of the following documents:

(i) The Certificate of Registration;

(ii) The required insurance endorsement (Form MCS-90); and

(iii) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the temporary insurance coverage authorized by this exception.

Mexican motor carriers insured under this exception are also exempt from the notice of cancellation requirements stated on Form MCS-90.

(c) Policies of insurance and surety bonds required under this section may be replaced by other policies of insurance or surety bonds. The liability of the retiring insurer or surety, as to events after the termination date, shall be considered as having terminated on the effective date of the replacement policy of insurance or surety bond or at the end of the 35 day cancellation period required in paragraph (b) of this section, whichever is sooner.

(d) Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business. The proof shall consist of—

(1) "Endorsement(s) for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980" (Form MCS-90) issued by an insurer(s);

(2) A "Motor Carrier Surety Bond for Public Liability Under Section 30 of the Motor Carrier Act of 1980" (Form MCS-82) issued by a surety; or

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(3) A written decision, order, or authorization of the Federal Motor Carrier Safety Administration authorizing a motor carrier to self-insure under § 387.309, provided the motor carrier maintains a satisfactory safety rating as determined by the Federal Motor Carrier Safety Administration under part 385 of this chapter.

(e)(1) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

(2) In addition to maintaining proof of financial responsibility as required by paragraph (d) of this section, non-North America-domiciled private and for-hire motor carriers shall file evidence of financial responsibility with FMCSA in accordance with the requirements of subpart C of this part.

(f) All vehicles operated within the United States by motor carriers domiciled in a contiguous foreign country, shall have on board the vehicle a legible copy, in English, of the proof of the required financial responsibility (Form MCS-90 or MCS-82) used by the motor carrier to comply with paragraph (d) of this section.

(g) Any motor vehicle in which there is no evidence of financial responsibility required by paragraph (f) of this section shall be denied entry into the United States.

[46 FR 30982, June 11, 1981; 46 FR 45612, Sept. 14, 1981, as amended at 48 FR 5559, Feb. 7, 1983; 48 FR 52683, Nov. 21, 1983; 51 FR 22083, June 18, 1986; 54 FR 49092, Nov. 29, 1989; 59 FR 63923, Dec. 12, 1994; 67 FR 12661, Mar. 19, 2002; 73 FR 76496, Dec. 16, 2008]

§ 387.9 Financial responsibility, minimum levels.

The minimum levels of financial responsibility referred to in § 387.7 of this subpart are hereby prescribed as follows:

SCHEDULE OF LIMITS—PUBLIC LIABILITY

Type of carriage	Commodity transported	January 1, 1985
(1) For-hire (in interstate or foreign commerce, with a gross vehicle weight rating of 10,001 or more pounds).	Property (nonhazardous)	\$750,000
(2) For-hire and Private (in interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,001 or more pounds).	Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2 and 1.3 materials. Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403.	5,000,000
(3) For-hire and Private (in interstate or foreign commerce, in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,001 or more pounds).	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials, and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	1,000,000
(4) For-hire and Private (in interstate or foreign commerce, with a gross vehicle weight rating of less than 10,001 pounds).	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	5,000,000

[73 FR 76946, Dec. 16, 2008]

§ 387.11 State authority and designation of agent.

A policy of insurance or surety bond does not satisfy the financial responsibility requirements of this subpart unless the insurer or surety furnishing the policy or bond is—

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates; or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and is willing to designate a person upon

whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

(d) A Canadian insurance company legally authorized to issue a policy of insurance in the Province or Territory of Canada in which the Canadian motor carrier has its principal place of business or domicile, and that is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction over the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

[46 FR 30982, June 11, 1981, as amended at 48 FR 52683, Nov. 21, 1983; 75 FR 38430, July 2, 2010]

§387.13 Fiduciaries.

The coverage of fiduciaries shall attach at the moment of succession of such fiduciaries.

[46 FR 30982, June 11, 1981]

§387.15 Forms.

Endorsements for policies of insurance (Illustration I) and surety bonds (Illustration II) must be in the form prescribed by the FMCSA and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated, as required in §387.7 of this subpart. The continuous coverage requirement does not apply to Mexican motor carriers insured under §387.7(b)(3) of this subpart. The endorsement and surety bond shall be issued in the exact name of the motor carrier.

ILLUSTRATION I

Form MCS-90 (3/82)
Form Approved
OMB No. 2125-0074

ENDORSEMENT FOR MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY UNDER SECTIONS 29 AND 30 OF THE MOTOR CARRIER ACT OF 1980

Issued to _____
of _____
Dated at _____
this _____ day of _____,
19____
Amending Policy No. _____
Effective Date _____
Name of Insurance Company _____
Countersigned by _____
Authorized Company Representative

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "X", for the limits shown:

- This insurance is primary and the company shall not be liable for amounts in excess of \$ _____ for each accident.
- This insurance is excess and the company shall not be liable for amounts in excess of \$ _____ for each accident in excess of the underlying limit of \$ _____ for each accident.

Whenever required by the FMCSA the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the policy is in force as of a particular date. The telephone number to call is: _____

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's jurisdiction, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, DC).

DEFINITIONS AS USED IN THIS ENDORSEMENT

Accident includes continuous or repeated exposure to conditions which results in bodily injury, property damage, or environmental damage which the insured neither expected or intended.

Motor Vehicle means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Environmental Restoration means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Property Damage means damage to or loss of use of tangible property.

Public Liability means liability for bodily injury, property damage, and environmental restoration.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Administration.

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the

policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

ILLUSTRATION II

Form MCS-82 (4/83)

(Form approved by Office of Management and Budget under control no. 2125-0075)

MOTOR CARRIER PUBLIC LIABILITY SURETY BOND UNDER SECTIONS 29 AND 30 OF THE MOTOR CARRIER ACT OF 1980

Parties	Surety company and principal place of business address	Motor carrier principal, FMCSA Docket No. and principal place of business
.....
.....
.....
.....

Purpose—This is an agreement between the Surety and the Principal under which the Surety, its successors and assignees, agree to be responsible for the payment of any final judgment or judgments against the Principal for public liability, property damage, and environmental restoration liability claims in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing provisions—(1) Sections 29 and 30 of the Motor Carrier Act of 1980 (49 U.S.C. 13906).

(2) Rules and regulations of the Federal Motor Carrier Safety Administration.

Conditions—The Principal is or intends to become a motor carrier of property subject to the applicable governing provisions relating to financial responsibility for the protection of the public.

This bond assures compliance by the Principal with the applicable governing provisions, and shall inure to the benefit of any person or persons who shall recover a final judgment or

judgments against the Principal for public liability, property damage, or environmental restoration liability claims (excluding injury to or death of the Principal's employees while engaged in the course of their employment, and loss of or damage to property of the principal, and the cargo transported by the Principal). If every final judgment shall be paid for such claims resulting from the negligent operation, maintenance, or use of motor vehicles in transportation subject to the applicable governing provisions, then this obligation shall be void, otherwise it will remain in full effect.

Within the limits described herein, the Surety extends to such losses regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the Principal or elsewhere.

The liability of the Surety on each motor vehicle subject to the financial responsibility requirements of Section's 29 and 30 of the Motor Carrier Act of 1980 for each accident shall not exceed \$ _____, and shall be a continuing one notwithstanding any recovery hereunder.

The surety agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the surety bond is in force as of a particular date. The telephone number is:

This bond is effective from _____ (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described herein. The principal or the Surety may at any time terminate this bond by giving (1) thirty five (35) days notice in writing to the other party (said 35 day notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the Principal is subject to the FMCSA's jurisdiction, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date notice is received by the FMCSA at its office in Washington, DC). The Surety shall not be liable for the payment of any judgment or judgments against the Principal for public liability, property damage, or environmental restoration

claims resulting from accidents which occur after the termination of this bond as described herein, but such termination shall not affect the liability of the Surety for the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

(AFFIX CORPORATE SEAL)

Date _____
 Surety _____
 City _____
 State _____
 By _____

ACKNOWLEDGEMENT OF SURETY

State of _____
 County of _____

On this _____ day of _____, 19____, before me personally came _____, who, being by me duly sworn, did depose and say that he/she resides in _____; that he/she is the _____ of the _____,

the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the board of directors of said corporation, that he/she signed his/her name thereto by like order, and he/she duly acknowledged to me that he/she executed the same for and on behalf of said corporation.

(OFFICIAL SEAL)

Title of official administering oath _____
 Surety Company File No. _____

[46 FR 30982, June 11, 1981, as amended at 48 FR 52683, Nov. 21, 1983; 49 FR 27292, July 2, 1984; 49 FR 38290, Sept. 28, 1984; 51 FR 33856, Sept. 23, 1986; 53 FR 12160, Apr. 13, 1988; 54 FR 49092, Nov. 29, 1989; 59 FR 63924, Dec. 12, 1994]

§ 387.17 Violation and penalty.

Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for civil penalty of no more than \$11,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the FMCSA's Administrator, by written notice. In determining the amount of such penalty, the Administrator, or his/her authorized delegate shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found

§ 387.25

to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

[59 FR 63924, Dec. 12, 1994]

Subpart B—Motor Carriers of Passengers

SOURCE: 48 FR 52683, Nov. 21, 1983, unless otherwise noted.

§ 387.25 Purpose and scope.

This subpart prescribes the minimum levels of financial responsibility required to be maintained by for-hire motor carriers of passengers operating motor vehicles in interstate or foreign commerce. The purpose of these regulations is to create additional incentives to carriers to operate their vehicles in a safe manner and to assure that they maintain adequate levels of financial responsibility.

§ 387.27 Applicability.

(a) This subpart applies to for-hire motor carriers transporting passengers in interstate or foreign commerce.

(b) *Exception.* The rules in this subpart do not apply to—

(1) A motor vehicle transporting only school children and teachers to or from school;

(2) A motor vehicle providing taxicab service and having a seating capacity of less than 7 passengers and not operated on a regular route or between specified points;

(3) A motor vehicle carrying less than 16 individuals in a single daily round trip to commute to and from work; and

(4) A motor vehicle operated by a motor carrier under contract providing transportation of preprimary, primary, and secondary students for extracurricular trips organized, sponsored, and paid by a school district.

[48 FR 52683, Nov. 21, 1983, as amended at 63 FR 33275, June 18, 1998]

§ 387.29 Definitions.

As used in this subpart—

Accident includes continuous or repeated exposure to the same conditions

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resulting in public liability which the insured neither expected nor intended.

Bodily injury means injury to the body, sickness, or disease including death resulting from any of these.

Endorsement an amendment to an insurance policy.

Financial responsibility the financial reserves (e.g., insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this subpart covering public liability.

For-hire carriage means the business of transporting, for compensation, passengers and their property, including any compensated transportation of the goods or property or another.

Insured and principal the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.

Insurance premium the monetary sum an insured pays an insurer for acceptance of liability for public liability claims made against the insured.

Motor carrier means a for-hire motor carrier. The term includes, but is not limited to, a motor carrier's agent, officer, or representative; an employee responsible for hiring, supervising, training, assigning, or dispatching a driver; or an employee concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

Property damage means damage to or loss of use of tangible property.

Public liability liability for bodily injury or property damage.

Seating capacity any plan view location capable of accommodating a person at least as large as a 5th percentile adult female, if the overall seat configuration and design and vehicle design is such that the position is likely to be used as a seating position while the vehicle is in motion, except for auxiliary seating accommodations such as temporary or folding jump seats. Any bench or split bench seat in a passenger car, truck or multi-purpose passenger vehicle with a gross vehicle weight rating less than 10,000 pounds, having greater than 50 inches of hip room (measured in accordance with SEA Standards J1100(a)) shall have not less than three designated seating positions, unless the seat design or vehicle

design is such that the center position cannot be used for seating.

[48 FR 52683, Nov. 21, 1983, as amended at 63 FR 33276, June 18, 1998]

§ 387.31 Financial responsibility required.

(a) No motor carrier shall operate a motor vehicle transporting passengers until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in § 387.33 of this subpart.

(b) Policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated.

(1) Cancellation may be effected by the insurer or the insured motor carrier giving 35 days notice in writing to the other. The 35 days notice shall commence to run from the date the notice is mailed. Proof of mailing shall be sufficient proof of notice.

(2) *Exception.* Policies of insurance and surety bonds may be obtained for a finite period of time to cover any lapse in continuous compliance.

(3) *Exception.* Mexican motor carriers may meet the minimum financial responsibility requirements of this subpart by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurers that meet the requirements of § 387.35 of this subpart. A Mexican motor carrier so insured must have available for inspection in each of its vehicles copies of the following documents:

(i) The required insurance endorsement (Form MCS-90B); and

(ii) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the temporary insurance coverage authorized by this exception.

Mexican motor carriers insured under this exception are also exempt from the notice of cancellation requirements stated on Form MCS-90B.

(c) Policies of insurance and surety bonds required under this section may be replaced by other policies of insurance or surety bonds. The liability of retiring insurer or surety, as to events after the termination date, shall be considered as having terminated on the effective date of the replacement pol-

icy of insurance or surety bond or at the end or the 35 day cancellation period required in paragraph (b) of this section, whichever is sooner.

(d) Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business. The proof shall consist of—

(1) "Endorsement(s) for Motor Carriers of Passengers Policies of Insurance for Public Liability Under Section 18 of the Bus Regulatory Reform Act of 1982" (Form MCS-90B) issued by an insurer(s); or

(2) A "Motor Carrier of Passengers Surety Bond for Public Liability Under Section 18 of the Bus Regulatory Reform Act of 1982" (Form MCS-82B) issued by a surety.

(e)(1) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

(2) In addition to maintaining proof of financial responsibility as required by paragraph (d) of this section, non-North America-domiciled private and for-hire motor carriers shall file evidence of financial responsibility with FMCSA in accordance with the requirements of subpart C of this part.

(f) All passenger carrying vehicles operated within the United States by motor carriers domiciled in a contiguous foreign country, shall have on board the vehicle a legible copy, in English, of the proof of the required financial responsibility (Forms MCS-90B or MCS-82B) used by the motor carrier to comply with paragraph (d) of this section.

(g) Any motor vehicle in which there is no evidence of financial responsibility required by paragraph (f) of this section shall be denied entry into the United States.

[48 FR 52683, Nov. 21, 1983, as amended at 50 FR 7062, Feb. 20, 1985; 54 FR 49092, Nov. 29, 1989; 60 FR 38743, July 28, 1995; 73 FR 76496, Dec. 16, 2008]

§ 387.33 Financial responsibility, minimum levels.

The minimum levels of financial responsibility referred to in § 387.31 of this subpart are hereby prescribed as follows:

§ 387.35

SCHEDULE OF LIMITS

Public Liability

For-hire motor carriers of passengers operating in interstate or foreign commerce.

Vehicle seating capacity	Effective dates	
	Nov. 19, 1983	Nov. 19, 1985
(1) Any vehicle with a seating capacity of 16 passengers or more	\$2,500,000	\$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less ¹	750,000	1,500,000

¹ Except as provided in § 387.27(b).

§ 387.35 State authority and designation of agent.

A policy of insurance or surety bond does not satisfy the financial responsibility requirements of this subpart unless the insurer or surety furnishing the policy or bond is—

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates, or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of

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the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

(d) A Canadian insurance company legally authorized to issue a policy of insurance in the Province or Territory of Canada in which a Canadian motor carrier has its principal place of business or domicile, and that is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction over the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

[48 FR 52683, Nov. 21, 1983, as amended at 75 FR 38430, July 2, 2010]

§ 387.37 Fiduciaries.

The coverage of fiduciaries shall attach at the moment of succession of such fiduciaries.

§ 387.39 Forms.

Endorsements for policies of insurance (Illustration I) and surety bonds (Illustration II) must be in the form prescribed by the FMCSA and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated, as required in § 387.31 of this subpart. The continuous coverage requirement does not apply to Mexican motor carriers insured under § 387.31(b)(3) of this subpart. The endorsement and surety bond shall be issued in the exact name of the motor carrier.



U.S. Department
of Transportation
Federal Motor Carrier
Safety Administration

**ENDORSEMENT FOR
MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY
UNDER SECTION 18 OF THE BUS REGULATORY REFORM ACT OF 1982**

Form Approved:
OMB No.: 2126-0008

Issued to _____ of _____
Dated at _____ this _____ day of _____, 20____
Amending Policy No. _____ Effective Date _____
Name of Insurance Company _____

Countersigned by _____
Authorized Company Representative

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "[X]," for the limits shown:

[] This insurance is primary and the company shall not be liable for amounts in excess of \$ _____ for each accident.

[] This insurance is excess and the company shall not be liable for amounts in excess of \$ _____ for each accident in excess of the underlying limit of \$ _____ for each accident.

Whenever required by the Federal Motor Carrier Safety Administration (FMCSA), the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the policy is in force as of a particular date. The telephone number to call is: _____

Cancellation of this endorsement may be effected by the company of the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's registration requirements, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, D.C.).

DEFINITIONS AS USED IN THIS ENDORSEMENT

Accident includes continuous or repeated exposure to conditions which result in Public Liability which the insured neither expected nor intended.
Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Motor Carrier means a for-hire carrier of passengers by motor vehicle.
Property Damage means damage to or loss of use of tangible property
Public Liability means liability for bodily injury or property damage.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a for-hire motor carrier of passengers with Section 18 of the Bus Regulatory Reform Act of 1982 and the rules and regulations of the Federal Motor Carrier Safety Administration.

However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment received against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to financial responsibility requirements of Section 18 of the Bus Regulatory Reform Act of 1982 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

The Bus Regulatory Reform Act of 1982 requires limits of financial responsibility according to vehicle seating capacity, it is the MOTOR CARRIER'S obligation to obtain the required limits of financial responsibility. THE SCHEDULE OF LIMITS SHOWN ON THE REVERSE SIDE DOES NOT PROVIDE COVERAGE. The limits shown in the schedule are for information purposes only.

SCHEDULE OF LIMITS

PUBLIC LIABILITY

For-hire motor carriers of passengers operating in interstate or foreign commerce

Vehicle Seating Capacity	Effective Dates	
	Nov. 19, 1983	Nov. 19, 1985
(1) Any vehicle with a seating capacity of 16 passengers or more.	\$2,500,000	\$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less.	\$ 750,000	\$1,500,000

Form MCS-90B
(6/2003)

U.S. Department of Transportation
Federal Motor Carrier Safety Administration

Form Approved
OMB No. 2125-0009

**MOTOR CARRIER PUBLIC LIABILITY SURETY BOND
UNDER SECTION 18 OF THE BUS REGULATORY REFORM ACT OF 1982**

PARTIES Surety Company and Principal
Place of Business Address _____
Motor Carrier Principal, FMCSA Docket No. _____
and Principal Place of Business Address _____

PURPOSE This is an agreement between the Surety and the Principal under which the Surety, its successors and assignees, agree to be responsible for the payment of any final judgment or judgments against the Principal for public liability and property damage claims in the sums prescribed herein, subject to the governing provisions and following conditions.

GOVERNING PROVISIONS (1) Section 18 of the Bus Regulatory Reform Act of 1982
(2) Rules and regulations of the Federal Motor Carrier Safety Administration (FMCSA)

CONDITIONS The Principal is or intends to become a motor carrier of passengers subject to the applicable governing provisions relating to financial responsibility for the protection of the public.

This bond assures compliance by the Principal with the applicable governing provisions, and shall inure to the benefit of any person or persons who shall recover a final judgment or judgments against the Principal for public liability or property damage claims (excluding injury to or death of the Principal's employees while engaged in the course of their employment, and loss of or damage to property of the Principal, and the cargo transported by the Principal). If every final judgment shall be paid for such claims resulting from the negligent operation, maintenance, or use of motor vehicles in transportation subject to the applicable governing provisions, then this obligation shall be void, otherwise it will remain in full effect.

Within the limits described herein, the Surety extends to such losses regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the Principal or elsewhere.

The liability of the Surety for each motor vehicle subject to the applicable governing provisions for each accident shall not exceed \$ _____ and shall be a continuing one notwithstanding any recovery thereunder.

The surety agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the surety bond is in force as of a particular date. The telephone number to call is _____.

This bond is effective from _____ (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described herein. The Principal or the Surety may at any time terminate this bond by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the Principal is subject to the FMCSA's registration requirements, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date notice is received by the FMCSA at its office in Washington, D.C.). The Surety shall not be liable for the payment of any judgment or judgments against the Principal for public liability or property damage claims resulting from accidents which occur after the termination of this bond as described herein, but such termination shall not affect the liability of the Surety from the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

Date
[AFFIX CORPORATE SEAL] _____
Surety

City State
By _____

ACKNOWLEDGMENT OF SURETY
STATE OF _____ COUNTY OF _____

On this _____ day of _____, 20____, before me personally came _____, that he/she who, being by me duly sworn, did depose and say that he resides in _____ of the _____ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the board of directors of said corporation; that he signed his name thereto by like order, and he duly acknowledged to me that he executed the same for and on behalf of said corporation.

[OFFICIAL SEAL]
Surety Company File No. _____
Form MCS-420
(6/2003)

Title of official administering oath

(Approved by the Office of Management and Budget under control number 2125-0518)
[48 FR 52683, Nov. 21, 1983, as amended at 49 FR 22326, May 29, 1984; 54 FR 49093, Nov. 29, 1989; 67 FR 61821, 61822, Oct. 2, 2002]

§ 387.41 Violation and penalty.

Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for civil penalty of no more than \$11,000 for each violation, and if any such viola-

tion is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the Administrator or his/her designee, by written notice. In determining the amount of such penalty, the Administrator or his/her designee shall take into account the

nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

[53 FR 47543, Nov. 23, 1988]

Subpart C—Surety Bonds and Policies of Insurance for Motor Carriers and Property Brokers

CROSS REFERENCE: Prescribed forms relating to this part are listed in 49 CFR part 1003.

SOURCE: 32 FR 20032, Dec. 20, 1967, unless otherwise noted. Redesignated at 61 FR 54709, Oct. 21, 1996.

§ 387.301 Surety bond, certificate of insurance, or other securities.

(a) *Public liability.* (1) No common or contract carrier or foreign (Mexican) motor private carrier or foreign motor carrier transporting exempt commodities subject to Subtitle IV, part B, chapter 135 of title 49 of the U.S. Code shall engage in interstate or foreign commerce, and no certificate or permit shall be issued to such a carrier or remain in force unless and until there shall have been filed with and accepted by the FMCSA surety bonds, certificates of insurance, proof of qualifications as self-insurer, or other securities or agreements, in the amounts prescribed in § 387.303, conditioned to pay any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance or use of motor vehicles in transportation subject to Subtitle IV, part B, chapter 135 of title 49 of the U.S. Code, or for loss of or damage to property of others, or, in the case of motor carriers of property operating freight vehicles described in § 387.303(b)(2) of this part, for environmental restoration.

(2) Motor Carriers of property which are subject to the conditions set forth in paragraph (a)(1) of this section and transport the commodities described in § 387.303(b)(2), are required to obtain se-

curity in the minimum limits prescribed in § 387.303(b)(2).

(b) *Common carriers-cargo insurance; exempt commodities.* No common carrier by motor vehicle subject to Subtitle IV, part B, chapter 135 of title 49 of the U.S. Code nor any foreign (Mexican) common carrier of exempt commodities shall engage in interstate or foreign commerce, nor shall any certificate be issued to such a carrier or remain in force unless and until there shall have been filed with and accepted by the FMCSA, a surety bond, certificate of insurance, proof of qualifications as a self-insurer, or other securities or agreements in the amounts prescribed in § 387.303, conditioned upon such carrier making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of such carrier in connection with its transportation service: *Provided*, That the requirements of this paragraph shall not apply in connection with the transportation of the following commodities:

Agricultural ammonium nitrate.
 Agricultural nitrate of soda.
 Anhydrous ammonia—used as a fertilizer only.
 Ashes, wood or coal.
 Bituminous concrete (also known as blacktop or amosite), including mixtures of asphalt paving.
 Cement, dry, in containers or in bulk.
 Cement, building blocks.
 Charcoal.
 Chemical fertilizer.
 Cinder blocks.
 Cinders, coal.
 Coal.
 Coke.
 Commercial fertilizer.
 Concrete materials and added mixtures.
 Corn cobs.
 Cottonseed hulls.
 Crushed stone.
 Drilling salt.
 Dry fertilizer.
 Fish scrap.
 Fly ash.
 Forest products; viz: Logs, billets, or bolts, native woods, Canadian wood or Mexican pine; pulpwood, fuel wood, wood kindling; and wood sawdust or shavings (shingle tow) other than jewelers' or paraffined.
 Foundry and factory sweepings.
 Garbage.
 Gravel, other than bird gravel.
 Hardwood and parquet flooring.
 Haydite.

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Highway construction materials, when transported in dump trucks and unloaded at destination by dumping.
 Ice.
 Iron ore.
 Lime and limestone.
 Liquid fertilizer solutions, in bulk, in tank vehicles.
 Lumber.
 Manure.
 Meat scraps.
 Mud drilling salt.
 Ores, in bulk, including ore concentrates.
 Paving materials, unless contain oil hauled in tank vehicles.
 Peat moss.
 Peeler cores.
 Plywood.
 Poles and piling, other than totem poles.
 Potash, used as commercial fertilizer.
 Pumice stone, in bulk in dump vehicles.
 Salt, in bulk or in bags.
 Sand, other than asbestos, bird, iron, monazite, processed, or tobacco sand.
 Sawdust.
 Scoria stone.
 Scrap iron.
 Scrap steel.
 Shells, clam, mussel, or oyster.
 Slag, other than slag with commercial value for the further extraction of metals.
 Slag, derived aggregates—cinders.
 Slate, crushed or scrap.
 Slurry, as waste material.
 Soil, earth or marl, other than infusorial, diatomaceous, tripoli, or inoculated soil or earth.
 Stone, unglazed and unmanufactured, including ground agricultural limestone.
 Sugar beet pulp.
 Sulphate of ammonia, bulk, used as fertilizer.
 Surfactants.
 Trap rock.
 Treated poles.
 Veneer.
 Volcanic scoria.
 Waste, hazardous and nonhazardous, transported solely for purposes of disposal.
 Water, other than mineral or prepared—water.
 Wood chips, not processed.
 Wooden pallets, unassembled.
 Wreck or disabled motor vehicles.
 Other materials or commodities of low value, upon specific application to and approval by the FMCSA.

(c) *Continuing compliance required.* Such security as is accepted by the FMCSA in accordance with the requirements of section 13906 of title 49 of the

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U.S. Code, shall remain in effect at all times.

[48 FR 51780, Nov. 14, 1983, as amended at 60 FR 63981, Dec. 13, 1995; 62 FR 49941, Sept. 24, 1997]

EFFECTIVE DATE NOTE: At 75 FR 35328, June 22, 2010, §387.301 was amended by revising paragraph (b), effective March 21, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 387.301 Surety bond, certificate of insurance, or other securities.

* * * * *

(b) *Household goods motor carriers-cargo insurance.* No household goods motor carrier subject to subtitle IV, part B, chapter 135 of title 49 of the U.S. Code shall engage in interstate or foreign commerce, nor shall any certificate be issued to such a household goods motor carrier or remain in force unless and until there shall have been filed with and accepted by the FMCSA, a surety bond, certificate of insurance, proof of qualifications as a self-insurer, or other securities or agreements in the amounts prescribed in §387.303, conditioned upon such carrier making compensation to individual shippers for all property belonging to individual shippers and coming into the possession of such carrier in connection with its transportation service. The terms “household goods motor carrier” and “individual shipper” are defined in part 375 of this subchapter.

* * * * *

§ 387.303 Security for the protection of the public: Minimum limits.

(a) *Definitions.* (1) *Primary security* means public liability coverage provided by the insurance or surety company responsible for the first dollar of coverage.

(2) *Excess security* means public liability coverage above the primary security, or above any additional underlying security, up to and including the required minimum limits set forth in paragraph (b)(2) of this section.

(b)(1) Motor carriers subject to §387.301(a)(1) are required to have security for the required minimum limits as follows:

Passenger Carriers: Kind of Equipment	
Vehicle seating capacity	Minimum limit
(i) Any vehicle with a seating capacity of 16 passengers or more	\$5,000,000

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Passenger Carriers: Kind of Equipment	
Vehicle seating capacity	Minimum limit
(ii) Any vehicle designed or used to transport more than 8 passengers (including the driver) for compensation	1,500,000

(2) Motor carriers subject to § 387.301(a)(2) are required to have security for the required minimum limits as follows:

Kind of equipment	Commodity transported	July 1, 1983*	July 1, 1984*
(a) Freight Vehicles of 10,001 Pounds or More GVWR.	Property (non-hazardous)	\$500,000	\$750,000
(b) Freight Vehicles of 10,001 Pounds or More GVWR.	Hazardous substances, as defined in § 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons, or in bulk Class A or B explosives, poison gas (Poison A) liquefied compressed gas or compressed gas, or highway route controlled quantity radioactive materials as defined in § 173.455.	1,000,000	5,000,000
(c) Freight Vehicles of 10,001 Pounds or More GVWR.	Oil listed in § 172.101; hazardous waste, hazardous materials and hazardous substances defined in § 171.8 and listed in § 172.101, but not mentioned in (b) above or (d) below.	500,000	1,000,000
(d) Freight Vehicles Under 10,001 Pounds GVWR.	Any quantity of Class A or B explosives; any quantity of poison gas (Poison A); or highway route controlled quantity radioactive materials as defined in § 173.455.	1,000,000	5,000,000

*NOTE: The effective date of the current required minimum limit in § 387.303(b)(2) was January 6, 1983, in accordance with the requirements of Pub. L. 97-424, 96 Stat. 2097.

(3) Motor carriers subject to the minimum limits governed by this section, which are also subject to Department of Transportation limits requirements, are at no time required to have security for more than the required minimum limits established by the Secretary of Transportation in the applicable provisions of 49 CFR Part 387—Minimum Levels of Financial Responsibility for Motor Carriers.

(4) *Foreign motor carriers and foreign motor private carriers.* Foreign motor carriers and foreign motor private carriers (Mexican), subject to the requirements of 49 U.S.C. 13902(c) and 49 CFR part 368 regarding obtaining certificates of registration from the FMCSA, must meet our minimum financial responsibility requirements by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurance or surety companies, that meet the requirements of 49 CFR 387.315. These carriers must have available for inspection, in each vehicle operating in the United States, copies of the following documents:

- (i) The certificate of registration;
- (ii) The required insurance endorsement (Form MCS-90); and
- (iii) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both

the effective date and the expiration date of the insurance coverage.

Notwithstanding the provisions of § 387.301(a)(1), the filing of evidence of insurance is not required as a condition to the issuance of a certificate of registration. Further, the reference to continuous coverage at § 387.313(a)(6) and the reference to cancellation notice at § 387.313(d) are not applicable to these carriers.

(c) *Motor common carriers: Cargo liability.* Security required to compensate shippers or consignees for loss or damage to property belonging to shippers or consignees and coming into the possession of motor carriers in connection with their transportation service, (1) for loss of or damage to property carried on any one motor vehicle—\$5,000, (2) for less of or damage to or aggregate of losses or damages of or to property occurring at any one time and place—\$10,000.

[47 FR 55944, Dec. 14, 1982, as amended at 48 FR 43333, Sept. 23, 1983; 48 FR 45775, Oct. 7, 1983; 48 FR 51780, Nov. 14, 1983; 49 FR 1991, Jan. 17, 1984; 49 FR 27767, July 6, 1984; 50 FR 40030, Oct. 1, 1985; 53 FR 36984, Sept. 23, 1988; 54 FR 52034, Dec. 20, 1989; 55 FR 47338, Nov. 13, 1990; 62 FR 49941, Sept. 24, 1997; 67 FR 61824, Oct. 2, 2002; 68 FR 56198, Sept. 30, 2003; 72 FR 55701, Oct. 1, 2007]

EFFECTIVE DATE NOTE: At 75 FR 35328, June 22, 2010, § 387.303 was amended by revising

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paragraph (c), effective March 21, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 387.303 Security for the protection of the public: Minimum limits.

* * * * *

(c) Household goods motor carriers: Cargo liability. Security required to compensate individual shippers for loss or damage to property belonging to them and coming into the possession of household goods motor carriers in connection with their transportation service;

(1) For loss of or damage to household goods carried on any one motor vehicle—\$5,000.

(2) For loss of or damage to or aggregate of losses or damages of or to household goods occurring at any one time and place—\$10,000.

§ 387.305 Combination vehicles.

The following combinations will be regarded as one motor vehicle for purposes of this part, (a) a tractor and trailer or semitrailer when the tractor is engaged solely in drawing the trailer or semitrailer, and (b) a truck and trailer when both together bear a single load.

§ 387.307 Property broker surety bond or trust fund.

(a) Security. A property broker must have a surety bond or trust fund in effect for \$10,000. The FMCSA will not issue a property broker license until a surety bond or trust fund for the full limits of liability prescribed herein is in effect. The broker license shall remain valid or effective only as long as a surety bond or trust fund remains in effect and shall ensure the financial responsibility of the broker.

(b) Evidence of Security. Evidence of a surety bond must be filed using the FMCSA's prescribed Form BMC 84. Evidence of a trust fund with a financial institution must be filed using the FMCSA's prescribed Form BMC 85. The surety bond or the trust fund shall ensure the financial responsibility of the broker by providing for payments to shippers or motor carriers if the broker fails to carry out its contracts, agreements, or arrangements for the supplying of transportation by authorized motor carriers.

(c) Financial Institution—when used in this section and in forms prescribed

under this section, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, shall mean—Each agent, agency, branch or office within the United States of any person, as defined by the ICC Termination Act, doing business in one or more of the capacities listed below:

(1) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));

(2) A commercial bank or trust company;

(3) An agency or branch of a foreign bank in the United States;

(4) An insured institution (as defined in section 401(a) of the National Housing Act (12 U.S.C. 1724(a));

(5) A thrift institution (savings bank, building and loan association, credit union, industrial bank or other);

(6) An insurance company;

(7) A loan or finance company; or

(8) A person subject to supervision by any state or federal bank supervisory authority.

(d) Forms and Procedures—(1) Forms for broker surety bonds and trust agreements. Form BMC-84 broker surety bond will be filed with the FMCSA for the full security limits under subsection (a); or Form BMC-85 broker trust fund agreement will be filed with the FMCSA for the full security limits under paragraph (a) of this section.

(2) Broker surety bonds and trust fund agreements in effect continuously. Surety bonds and trust fund agreements shall specify that coverage thereunder will remain in effect continuously until terminated as herein provided.

(i) Cancellation notice. The surety bond and the trust fund agreement may be cancelled as only upon 30 days' written notice to the FMCSA, on prescribed Form BMC 36, by the principal or surety for the surety bond, and on prescribed Form BMC 85, by the trustor/broker or trustee for the trust fund agreement. The notice period commences upon the actual receipt of the notice at the FMCSA's Washington, DC office.

(ii) Termination by replacement. Broker surety bonds or trust fund agreements which have been accepted by the FMCSA under these rules may be replaced by other surety bonds or

trust fund agreements, and the liability of the retiring surety or trustee under such surety bond or trust fund agreements shall be considered as having terminated as of the effective date of the replacement surety bond or trust fund agreement. However, such termination shall not affect the liability of the surety or the trustee hereunder for the payment of any damages arising as the result of contracts, agreements or arrangements made by the broker for the supplying of transportation prior to the date such termination becomes effective.

(3) *Filing and copies.* Broker surety bonds and trust fund agreements must be filed with the FMCSA in duplicate.

[53 FR 10396, Mar. 31, 1988]

§ 387.309 Qualifications as a self-insurer and other securities or agreements.

(a) *As a self-insurer.* The FMCSA will consider and will approve, subject to appropriate and reasonable conditions, the application of a motor carrier to qualify as a self-insurer, if the carrier furnishes a true and accurate statement of its financial condition and other evidence that establishes to the satisfaction of the FMCSA the ability of the motor carrier to satisfy its obligation for bodily injury liability, property damage liability, or cargo liability. Application Guidelines: In addition to filing Form BMC 40, applicants for authority to self-insure against bodily injury and property damage claims should submit evidence that will allow the FMCSA to determine:

(1) The adequacy of the tangible net worth of the motor carrier in relation to the size of operations and the extent of its request for self-insurance authority. Applicant should demonstrate that it will maintain a net worth that will ensure that it will be able to meet its statutory obligations to the public to indemnify all claimants in the event of loss.

(2) *The existence of a sound self-insurance program.* Applicant should demonstrate that it has established, and will maintain, an insurance program that will protect the public against all claims to the same extent as the minimum security limits applicable to applicant under § 387.303 of this part. Such

a program may include, but not be limited to, one or more of the following: Irrevocable letters of credit; irrevocable trust funds; reserves; sinking funds; third-party financial guarantees, parent company or affiliate sureties; excess insurance coverage; or other similar arrangements.

(3) *The existence of an adequate safety program.* Applicant must submit evidence of a current "satisfactory" safety rating by the United States Department of Transportation. Non-rated carriers need only certify that they have not been rated. Applications by carriers with a less than satisfactory rating will be summarily denied. Any self-insurance authority granted by the FMCSA will automatically expire 30 days after a carrier receives a less than satisfactory rating from DOT.

(4) *Additional information.* Applicant must submit such additional information to support its application as the FMCSA may require.

(b) *Other securities or agreements.* The FMCSA also will consider applications for approval of other securities or agreements and will approve any such application if satisfied that the security or agreement offered will afford the security for protection of the public contemplated by 49 U.S.C. 13906.

[48 FR 51780, Nov. 14, 1983 and 51 FR 15008, Apr. 22, 1986, as amended at 52 FR 3815, Feb. 6, 1987; 62 FR 49941, Sept. 24, 1997; 68 FR 56199, Sept. 30, 2003]

§ 387.311 Bonds and certificates of insurance.

(a) *Public liability.* Each Form BMC 82 surety bond filed with the FMCSA must be for the full limits of liability required under § 387.303(b)(1). Form MCS-82 surety bonds and other forms of similar import prescribed by the Department of Transportation, may be aggregated to comply with the minimum security limits required under § 387.303(b)(1) or § 387.303(b)(2). Each Form BMC 91 certificate of insurance filed with the FMCSA will always represent the full security minimum limits required for the particular carrier, while it remains in force, under § 387.303(b)(1) or § 387.303(b)(2), whichever is applicable. Any previously executed Form BMC 91 filed before the current revision which is left on file

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with the FMCSA after the effective date of this regulation, and not canceled within 30 days of that date will be deemed to certify the same coverage limits as would the filing of a revised Form BMC 91. Each Form BMC 91X certificate of insurance filed with the FMCSA will represent the full security limits under §387.303(b)(1) or §387.303(b)(2) or the specific security limits of coverage as indicated on the face of the form. If the filing reflects aggregation, the certificate must show clearly whether the insurance is primary or, if excess coverage, the amount of underlying coverage as well as amount of the maximum limits of coverage.* Each Form BMC 91MX certificate of insurance filed with the FMCSA will represent the security limits of coverage as indicated on the face of the form. The Form BMC 91MX must show clearly whether the insurance is primary or, if excess coverage, the amount of underlying coverage as well as amount of the maximum limits of coverage.

(b) *Cargo liability.* Each form BMC 83 surety bond filed with the FMCSA must be for the full limits of liability required under §387.303(c). Each Form BMC 34 certificate of insurance filed with the FMCSA will represent the full security limits under §387.303(c) or the specific security limits of coverage as indicated on the face of the form. If the filing reflects aggregation, the certificate must show clearly whether the insurance is primary or, if excess coverage, the amount of underlying coverage as well as amount of the maximum limits of coverage.

(c) Each policy of insurance in connection with the certificate of insurance which is filed with the FMCSA, shall be amended by attachment of the appropriate endorsement prescribed by the FMCSA and the certificate of in-

*NOTE: Aggregation to meet the requirement of §387.303(b)(1) will not be allowed until the completion of our rulemaking in Ex Parte No. MC-5 (Sub-No. 2), *Motor Carrier and Freight Forwarder Insurance Procedures and Minimum Amounts of Liability*.

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surance filed must accurately reflect that endorsement.

[47 FR 55944, Dec. 14, 1982, as amended at 48 FR 43332, Sept. 23, 1983; 48 FR 51781, Nov. 14, 1983; 50 FR 40030, Oct. 1, 1985; 62 FR 49941, Sept. 24, 1997; 68 FR 56199, Sept. 30, 2003]

§ 387.313 Forms and procedures.

(a) *Forms for endorsements, certificates of insurance and others—(1) In form prescribed.* Endorsements for policies of insurance and surety bonds, certificates of insurance, applications to qualify as a self-insurer, or for approval of other securities or agreements, and notices of cancellation must be in the form prescribed and approved by the FMCSA.

(2) *Aggregation of Insurance.*** When insurance is provided by more than one insurer in order to aggregate security limits for carriers operating only freight vehicles under 10,000 pounds Gross Vehicle Weight Rating, as defined in §387.303(b)(1), a separate *Form BMC 90*, with the specific amounts of underlying and limits of coverage shown thereon or appended thereto, and *Form BMC 91X* certificate is required of each insurer.

For aggregation of insurance for all other carriers to cover security limits under §387.303 (b)(1) or (b)(2), a separate Department of Transportation prescribed form endorsement and *Form BMC 91X* certificate is required of each insurer. When insurance is provided by more than one insurer to aggregate coverage for security limits under §387.303(c) a separate Form BMC 32 endorsement and Form BMC 34 certificate of insurance is required for each insurer.

For aggregation of insurance for foreign motor private carriers of nonhazardous commodities to cover security limits under §387.303(b)(4), a separate Form BMC 90 with the specific amounts of underlying and limits of

**NOTE: See NOTE for Rule 387.311. Also, it should be noted that DOT is considering prescribing adaptations of the Form MCS 90 endorsement and the Form MCS 82 surety bond for use by passenger carriers and Rules §§387.311 and 387.313 have been written sufficiently broad to provide for this contingency when new forms are prescribed by that Agency.

coverage shown thereon or appended thereto, or Department of Transportation prescribed form endorsement, and Form BMC 91MX certificate is required for each insurer.

(3) *Use of Certificates and Endorsements in BMC Series.* Form BMC 91 certificates of insurance will be filed with the FMCSA for the full security limits under § 387.303 (b)(1) or (b)(2).

Form BMC 91X certificate of insurance will be filed to represent full coverage or any level of aggregation for the security limits under § 387.303 (b)(1) or (b)(2).

Form BMC 90 endorsement will be used with each filing of Form BMC 91 or Form 91X certificate with the FMCSA which certifies to coverage not governed by the requirements of the Department of Transportation. Form BMC 32 endorsement and Form BMC 34 certificate of insurance and Form BMC 83 surety bonds are used for the limits of cargo liability under § 387.303(c).

Form BMC 91MX certificate of insurance will be filed to represent any level of aggregation for the security limits under § 387.303(b)(4).

(4) *Use of Endorsements in MCS Series.* When Security limits certified under § 387.303 (b)(1) or (b)(2) involves coverage also required by the Department of Transportation a Form MCS endorsement prescribed by the Department of Transportation such as, and including, the Form MCS 90 endorsement is required.

(5) *Surety bonds.* When surety bonds are used rather than certificates of insurance, Form BMC 82 is required for the security limits under § 387.303(b)(1) not subject to regulation by the Department of Transportation, and Form MCS 82, or any form of similar import prescribed by the Department of Transportation, is used for the security limits subject also to minimum coverage requirements of the Department of Transportation.

(6) *Surety bonds and certificates in effect continuously.* Surety bonds and certificates of insurance shall specify that coverage thereunder will remain in effect continuously until terminated as herein provided, except: (1) When filed expressly to fill prior gaps or lapses in coverage or to cover grants of emer-

gency temporary authority of unusually short duration and the filing clearly so indicates, or (2) in special or unusual circumstances, when special permission is obtained for filing certificates of insurance or surety bonds on terms meeting other particular needs of the situation.

(b) *Filing and copies.* Certificates of insurance, surety bonds, and notices of cancellation must be filed with the FMCSA in triplicate.

(c) *Name of insured.* Certificates of insurance and surety bonds shall be issued in the full and correct name of the individual, partnership, corporation or other person to whom the certificate, permit, or license is, or is to be, issued. In the case of a partnership, all partners shall be named.

(d) *Cancellation notice.* Except as provided in paragraph (e) of this section, surety bonds, certificates of insurance and other securities or agreements shall not be cancelled or withdrawn until 30 days after written notice has been submitted to the FMCSA at its offices in Washington, DC, on the prescribed form (Form BMC-35, Notice of Cancellation Motor Carrier Policies of Insurance under 49 U.S.C. 13906, and BMC-36, Notice of Cancellation Motor Carrier and Broker Surety Bonds, as appropriate) by the insurance company, surety or sureties, motor carrier, broker or other party thereto, as the case may be, which period of thirty (30) days shall commence to run from the date such notice on the prescribed form is actually received by the FMCSA.

(e) *Termination by replacement.* Certificates of insurance or surety bonds which have been accepted by the FMCSA under these rules may be replaced by other certificates of insurance, surety bonds or other security, and the liability of the retiring insurer or surety under such certificates of insurance or surety bonds shall be considered as having terminated as of the effective date of the replacement certificate of insurance, surety bond or other security, provided the said replacement certificate, bond or other security is acceptable to the FMCSA

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under the rules and regulations in this part.

[47 FR 55944, Dec. 14, 1982, as amended at 48 FR 43334, Sept. 23, 1983; 48 FR 51781, Nov. 14, 1983; 50 FR 40030, Oct. 1, 1985; 51 FR 34623, Sept. 30, 1986; 62 FR 49941, Sept. 24, 1997]

EFFECTIVE DATE NOTE: At 75 FR 35328, June 22, 2010, § 387.313 was amended by adding paragraph (f), effective March 21, 2011. For the convenience of the user, the added text is set forth as follows:

§ 387.313 Forms and procedures.

* * * * *

(f) *Termination of Forms BMC-32 and BMC-34 for motor carriers transporting property other than household goods.* Form BMC-32 endorsements and Form BMC-34 certificates of insurance issued to motor carriers transporting property other than household goods that have been accepted by the FMCSA under these rules will expire on March 21, 2011.

§ 387.315 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the FMCSA unless issued by an insurance or surety company that is authorized (licensed or admitted) to issue bonds or underlying insurance policies:

(a) In each state in which the motor carrier is authorized by the FMCSA to operate, or

(b) In the state in which the motor carrier has its principal place of business or domicile, and will designate in writing upon request by the FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any state in which the carrier operates, or

(c) In any state, and is eligible as an excess or surplus lines insurer in any state in which business is written, and will make the designation of process agent described in paragraph (b) of this section.

(d) In the Province or Territory of Canada in which a Canadian motor carrier has its principal place of business or domicile, and will designate in writing upon request by FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any pro-

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ceeding at law or equity brought in any State in which the carrier operates.

[56 FR 28111, June 19, 1991, as amended at 75 FR 38430, July 2, 2010]

§ 387.317 Refusal to accept, or revocation by the FMCSA of surety bonds, etc.

The FMCSA may, at any time, refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements if, in its judgment such security does not comply with these sections or for any reason fails to provide satisfactory or adequate protection for the public. Revocation of acceptance of any certificate of insurance, surety bond or other security shall not relieve the motor carrier from compliance with § 387.301(d).

[47 FR 55945, Dec. 14, 1982, as amended at 62 FR 49942, Sept. 24, 1997]

§ 387.319 Fiduciaries.

(a) *Definitions.* The terms “insured” and “principal” as used in a certificate of insurance, surety bond, and notice of cancellation, filed by or for a motor carrier, include the motor carrier and its fiduciary as of the moment of succession. The term “fiduciary” means any person authorized by law to collect and preserve property of incapacitated, financially disabled, bankrupt, or deceased holders of operating rights, and assignees of such holders.

(b) *Insurance coverage in behalf of fiduciaries to apply concurrently.* The coverage furnished under the provisions of this section on behalf of fiduciaries shall not apply subsequent to the effective date of other insurance, or other security, filed with and approved by the FMCSA in behalf of such fiduciaries. After the coverage provided in this section shall have been in effect thirty (30) days, it may be cancelled or withdrawn within the succeeding period of thirty (30) days by the insurer, the insured, the surety, or the principal upon ten (10) days' notice in writing to the FMCSA at its office in Washington, DC, which period of ten (10) days shall commence to run from the date such notice is actually received by the FMCSA. After such coverage has been in effect for a total of sixty (60)

days, it may be cancelled or withdrawn only in accordance with § 1043.7.

[32 FR 20032, Dec. 20, 1967, as amended at 47 FR 49596, Nov. 1, 1982; 47 FR 55945, Dec. 14, 1982; 55 FR 11197, Mar. 27, 1990]

§ 387.321 Operations in foreign commerce.

No motor carrier may operate in the United States in the course of transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country unless and until there shall have been filed with and accepted by the FMCSA a certificate of insurance, surety bond, proof of qualifications as a self-insurer, or other securities or agreements in the amount prescribed in § 387.303(b), conditioned to pay any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles in transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country, insofar as such transportation takes place in the United States, or for loss of or damage to property of others. The security for the protection of the public required by this section shall be maintained in effect at all times and shall be subject to the provisions of §§ 387.309 through 387.319. The requirements of § 387.315(a) shall be satisfied if the insurance or surety company, in addition to having been approved by the FMCSA, is legally authorized to issue policies or surety bonds in at least one of the States in the United States, or one of the Provinces in Canada, and has filed with the FMCSA the name and address of a person upon whom legal process

may be served in each State in or through which the motor carrier operates. Such designation may from time to time be changed by like designation similarly filed, but shall be maintained during the effectiveness of any certificate of insurance or surety bond issued by the company, and thereafter with respect to any claims arising during the effectiveness of such certificate or bond. The term "motor carrier" as used in this section shall not include private carriers or carriers operating under the partial exemption from regulation in 49 U.S.C. 13503 and 13506.

[47 FR 55945, Dec. 14, 1982, as amended at 62 FR 49942, Sept. 24, 1997]

§ 387.323 Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.

(a) Insurers may, at their option and in accordance with the requirements and procedures set forth in paragraphs (a) through (d) of this section, file forms BMC 34, BMC 35, BMC 36, BMC 82, BMC 83, BMC 84, BMC 85, BMC 91, and BMC 91X electronically, in lieu of using the prescribed printed forms.

(b) Each insurer must obtain authorization to file electronically by registering with the FMCSA. An individual account number and password for computer access will be issued to each registered insurer.

(c) Filings may be transmitted online via the Internet at: <http://fhwa-li.volpe.dot.gov> or via American Standard Code Information Interchange (ASCII). All ASCII transmission must be in fixed format, i.e., all records must have the same number of fields and same length. The record layouts for ASCII electronic transactions are described in the following table:

ELECTRONIC INSURANCE FILING TRANSACTIONS

Field name	Number of positions	Description	Required F=filing C=cancel B=both	Start field	End field
Record type	1 Numeric	1=Filing 2=Cancellation	B	1	1
Insurer number	8 Text	FMCSA Assigned Insurer Number (Home Office) With Suffix (Issuing Office), If Different, e.g. 12345-01.	B	2	9

ELECTRONIC INSURANCE FILING TRANSACTIONS—Continued

Field name	Number of positions	Description	Required F=filing C=cancel B=both	Start field	End field
Filing type	1 Numeric	1 = BI&PD 2 = Cargo 3 = Bond 4 = Trust Fund	B	10	10
FMCSA docket number	8 Text	FMCSA Assigned MC or FF Number, e.g., MC000045.	B	11	18
Insured legal name	120 Text	Legal Name	B	19	138
Insured d/b/a name	60 Text	Doing Business As Name If Different From Legal Name.	B	139	198
Insured address	35 Text	Either street or mailing address	B	199	233
Insured city	30 Text .....	.....	B	234	263
Insured state	2 Text .....	.....	B	264	265
Insured zip code	9 Numeric	(Do not include dash if using 9 digit code).	B	266	274
Insured country	2 Text	(Will default to US)	B	275	276
Form code	10 Text	BMC-91, BMC-91X, BMC-34, BMC-35, etc.	B	277	286
Full, primary or excess coverage.	1 Text	If BMC-91X, P or E = indicator of primary or excess policy; 1 = Full under § 387.303(b)(1); 2 = Full under § 387.303(b)(2).	F	287	287
Limit of liability	5 Numeric	\$ in Thousands	F	288	292
Underlying limit of liability.	5 Numeric	\$ in Thousands (will default to \$000 if Primary).	F	293	297
Effective date	8 Text	MM/DD/YY Format for both Filing or Cancellation.	B	298	305
Policy number	25 Text	Surety companies may enter bond number.	B	306	330

(d) All registered insurers agree to furnish upon request to the FMCSA a duplicate original of any policy (or policies) and all endorsements, surety bond, trust fund agreement, or other filing.

[60 FR 16810, Apr. 3, 1995, as amended at 62 FR 49942, Sept. 24, 1997; 66 FR 49873, Oct. 1, 2001]

Subpart D—Surety Bonds and Policies of Insurance for Freight Forwarders

SOURCE: 55 FR 11201, Mar. 27, 1990, unless otherwise noted. Redesignated at 61 FR 54710, Oct. 21, 1996.

§ 387.401 Definitions.

(a) *Freight forwarder* means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business:

(1) Performs or provides for assembling, consolidating, break-bulk, and distribution of shipments; and

(2) Assumes responsibility for transportation from place of receipt to destination; and

(3) Uses for any part of the transportation a carrier subject to FMCSA jurisdiction.

(b) *Household goods freight forwarder* (HHGFF) means a freight forwarder of household goods, unaccompanied baggage, or used automobiles.

(c) *Motor vehicle* means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used to transport property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails. The following combinations will be regarded as one motor vehicle:

(1) A tractor that draws a trailer or semitrailer; and

(2) A truck and trailer bearing a single load.

§ 387.403 General requirements.

(a) *Cargo.* A freight forwarder (including a HHGFF) may not operate until it has filed with the FMCSA an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 387.405, for loss of or damage to property.

(b) *Public liability.* A HHGFF may not perform transfer, collection, and delivery service until it has filed with the FMCSA an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 387.405, conditioned to pay any final judgment recovered against such HHGFF for bodily injury to or the death of any person, or loss of or damage to property (except cargo) of others, or, in the case of freight vehicles described at 49 CFR 387.303(b)(2), for environmental restoration, resulting from the negligent operation, maintenance, or use of motor vehicles operated by or under its control in performing such service.

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

EFFECTIVE DATE NOTE: At 75 FR 35328, June 22, 2010, § 387.403 was amended by revising paragraph (a), effective March 21, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 387.403 General requirements.

(a) *Cargo.* A household goods freight forwarder may not operate until it has filed with FMCSA an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed in § 387.405, for loss of or damage to household goods.

* * * * *

§ 387.405 Limits of liability.

The minimum amounts for cargo and public liability security are identical to those prescribed for motor carriers at 49 CFR 387.303.

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

§ 387.407 Surety bonds and certificates of insurance.

(a) The limits of liability under § 387.405 may be provided by aggregation under the procedures at 49 CFR part 387, subpart C.

(b) Each policy of insurance used in connection with a certificate of insurance filed with the FMCSA shall be amended by attachment of the appropriate endorsement prescribed by the FMCSA (or the Department of Transportation, where applicable).

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

§ 387.409 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the FMCSA unless issued by an insurance or surety company that is authorized (licensed or admitted) to issue bonds or underlying insurance policies:

(a) In each state in which the freight forwarder is authorized by the FMCSA to perform service, or

(b) In the state in which the freight forwarder has its principal place of business or domicile, and will designate in writing upon request by the FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any state in which the freight forwarder performs service; or

(c) In any state, and is eligible as an excess or surplus lines insurer in any state in which business is written, and will make the designation of process agent prescribed in paragraph (b) of this section.

(d) In the Province or Territory of Canada in which a Canadian freight forwarder has its principal place of business or domicile, and will designate in writing upon request by FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any State in which the freight forwarder operates.

[56 FR 28111, June 19, 1991, as amended at 75 FR 38430, July 2, 2010]

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§ 387.411 Qualifications as a self-insurer and other securities or agreements.

(a) *Self-insurer.* The FMCSA will approve the application of a freight forwarder to qualify as a self-insurer if it is able to meet its obligations for bodily-injury, property-damage, and cargo liability without adversely affecting its business.

(b) *Other securities and agreements.* The FMCSA will grant applications for approval of other securities and agreements if the public will be protected as contemplated by 49 U.S.C. 13906(c).

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

§ 387.413 Forms and procedure.

(a) *Forms.* Endorsements for policies of insurance, surety bonds, certificates of insurance, applications to qualify as a self-insurer or for approval of other securities or agreements, and notices of cancellation must be in the form prescribed at 49 CFR part 387, subpart C.

(b) *Procedure.* Certificates of insurance, surety bonds, and notices of cancellation must be filed with the FMCSA in triplicate.

(c) *Names.* Certificates of insurance and surety bonds shall be issued in the full name (including any trade name) of the individual, partnership (all partners named), corporation, or other person holding or to be issued the permit.

(d) *Cancellation.* Except as provided in paragraph (e) of this section, certificates of insurance, surety bonds, and other securities and agreements shall not be cancelled or withdrawn until 30 days after the FMCSA receives written notice from the insurance company, surety, freight forwarder, or other party, as the case may be.

(e) *Termination by replacement.* Certificates of insurance or surety bonds may be replaced by other certificates of insurance, surety bonds, or other security, and the liability of the retiring insurer or surety shall be considered as having terminated as of the replace-

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ment's effective date, if acceptable to the FMCSA.

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

EFFECTIVE DATE NOTE: At 75 FR 35329, June 22, 2010, §387.413 was amended by adding paragraph (f), effective March 21, 2011. For the convenience of the user, the added text is set forth as follows:

§ 387.413 Forms and procedures.

* * * * *

(f) *Termination of Forms BMC-32 and BMC-34 for freight forwarders of property other than household goods.* Form BMC-32 endorsements and Form BMC-34 certificates of insurance issued to freight forwarders of property other than household goods that have been accepted by the FMCSA under these rules will expire on March 21, 2011.

§ 387.415 Acceptance and revocation by the FMCSA.

The FMCSA may at any time refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, qualifications as a self-insurer, or other security or agreement that does not comply with these rules or fails to provide adequate public protection.

§ 387.417 Fiduciaries.

(a) *Interpretations.* The terms "insured" and "principal" as used in a certificate of insurance, surety bond, and notice of cancellation, filed by or for a freight forwarder, include the freight forwarder and its fiduciary (as defined at 49 CFR 387.319(a)) as of the moment of succession.

(b) *Span of security coverage.* The coverage furnished for a fiduciary shall not apply after the effective date of other insurance or security, filed with and accepted by the FMCSA for such fiduciary. After the coverage shall have been in effect 30 days, it may be cancelled or withdrawn within the succeeding 30 days by the insurer, the insured, the surety, or the principal 10 days after the FMCSA receives written notice. After such coverage has been in effect 60 days, it may be cancelled or

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withdrawn only in accordance with § 387.413(d).

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

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

Insurers may, at their option and in accordance with the requirements and procedures set forth at 49 CFR 387.323, file certificates of insurance, surety bonds, and other securities and agreements electronically.

[60 FR 16811, Apr. 3, 1995, as amended at 62 FR 49942, Sept. 24, 1997]

PART 388—COOPERATIVE AGREEMENTS WITH STATES

Sec.

- 388.1 Eligibility.
- 388.2 Extent of acceptance.
- 388.3 Cancellation.
- 388.4 Exchange of information.
- 388.5 Requests for assistance.
- 388.6 Joint investigation, inspection, or examination.
- 388.7 Joint administrative activities related to enforcement of safety and hazardous materials laws and regulations.
- 388.8 Supplemental agreements.

AUTHORITY: 49 U.S.C. 113 and 502; 49 CFR 1.73.

SOURCE: 33 FR 19725, Dec. 25, 1968, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 388 appear at 66 FR 49873, Oct. 1, 2001.

§ 388.1 Eligibility.

Any State may agree with the Federal Motor Carrier Safety Administration to enforce the safety laws and regulations of said State and the United States concerning motor carrier transportation by filing with the Administrator at Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001, a written acceptance of the terms herein.

[33 FR 19725, Dec. 25, 1968, as amended at 72 FR 55702, Oct. 1, 2007]

§ 388.2 Extent of acceptance.

The written acceptance may be in letter form, signed by competent authority of said State charged with reg-

ulations of motor carrier safety and hazardous materials transportation and shall specify the terms herein pertaining to the obligations of a State in which said State will participate. To the extent that a State agrees to participate in the terms herein, officials of the Federal Motor Carrier Safety Administration will reciprocate.

§ 388.3 Cancellation.

Cancellation or withdrawal, in whole or in part, from any agreement made under this chapter may be effected by written notice from either party indicating the effective date of said cancellation or withdrawal.

§ 388.4 Exchange of information.

(a) *Federal Motor Carrier Safety Administration furnishing information to State.* Information that comes to the attention of an employee of the Federal Motor Carrier Safety Administration in the course of his/her official duties of investigation, inspection, or examination of the property, equipment, and records of a motor carrier or others, pursuant to 49 U.S.C. 504(c), and that is believed to be a violation of any law or regulation of the State pertaining to unsafe motor carrier operations and practices, shall be communicated to the appropriate State authority by an official of the Federal Motor Carrier Safety Administration.

(b) *State furnishing information to Federal Motor Carrier Safety Administration.* Information that comes to the attention of a duly authorized agent of the State in the course of his/her official duties of investigation, inspection, or examination of the property, equipment, and records of a motor carrier or others, and that is believed to be a violation of any provision of the safety or hazardous materials laws of the United States concerning highway transportation or the regulations of the Federal Motor Carrier Safety Administration thereunder, shall be communicated to the Field Administrator.

[51 FR 12621, Apr. 14, 1986, as amended at 67 FR 61824, Oct. 2, 2002]

§ 388.5 Requests for assistance.

(a) *State request for Federal Motor Carrier Safety Administration assistance.*

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he/she may provide such opportunity to submit comment or information and data as he/she deems appropriate. Whenever the Administrator determines that a petition should be granted or denied, he/she prepares a notice of the grant or denial of a petition for reconsideration, for issuance to the petitioner, and issues it to the petitioner. The Administrator may consolidate petitions relating to the same rule.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.39 Direct final rulemaking procedures

A direct final rule makes regulatory changes and states that those changes will take effect on a specified date unless FMCSA receives an adverse comment or notice of intent to file an adverse comment by the date specified in the direct final rule published in the FEDERAL REGISTER.

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

- (1) Make non-substantive clarifications or corrections to existing rules;
- (2) Incorporate by reference the latest or otherwise updated versions of technical or industry standards;
- (3) Affect internal FMCSA procedures such as filing requirements and rules governing inspection and copying of documents;
- (4) Update existing forms; and
- (5) Make minor changes to rules regarding statistics and reporting requirements, such as a change in reporting period (for example, from quarterly to annually) or eliminating a type of data collection no longer necessary.

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

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

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

(3) Comments in support of the rule; or

(4) Comments requesting clarification.

(c) *Confirmation of effective date.* FMCSA will publish a confirmation rule document in the FEDERAL REGISTER, if it has not received an adverse comment or notice of intent to file 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 or a notice of intent to file an adverse comment within the comment period, it will publish a rule document in the FEDERAL REGISTER, before the effective date of the direct final rule, advising the public and withdrawing the direct final rule.

(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]

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

Subpart A—General Applicability and Definitions

- Sec.
- 390.1 Purpose.
 - 390.3 General applicability.
 - 390.5 Definitions.
 - 390.7 Rules of construction.

Subpart B—General Requirements and Information

- 390.9 State and local laws, effect on.
- 390.11 Motor carrier to require observance of driver regulations.
- 390.13 Aiding or abetting violations.
- 390.15 Assistance in investigations and special studies.

- 390.16 [Reserved]
- 390.17 Additional equipment and accessories.
- 390.19 Motor carrier, hazardous material shipper, and intermodal equipment provider identification reports.
- 390.21 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 or documents.
- 390.33 Commercial motor vehicles used for purposes other than defined.
- 390.35 Certificates, reports, and records: Falsification, reproduction, or alteration.
- 390.37 Violation and penalty.

Subpart C—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)?
- 390.42 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 maintenance of intermodal equipment preempted by the Federal Motor Carrier Safety Regulations?

AUTHORITY: 49 U.S.C. 508, 13301, 13902, 31132, 31133, 31136, 31144, 31151, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745 and 49 CFR 1.73.

SOURCE: 53 FR 18052, May 19, 1988, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 390 appear at 66 FR 49873, Oct. 1, 2001.

Subpart A—General Applicability and Definitions

§ 390.1 Purpose.

This part establishes general applicability, definitions, general requirements and information as they pertain to persons subject to this chapter.

§ 390.3 General applicability.

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

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

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

(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 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 § 390.5;

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

(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;

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(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 operating such vehicles are required to comply with §§ 390.15, 390.19, and 390.21(a) and (b)(2).

(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 subchapter B of this chapter 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 chapter.

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

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

(4) Section 390.19, Motor carrier identification report, and § 390.21, 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 § 390.19(a)(1).

(h) *Intermodal equipment providers.* On and after December 17, 2009, the rules in the following provisions of subchapter B of this chapter 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.

[53 FR 18052, May 19, 1988, as amended at 54 FR 12202, Mar. 24, 1989; 58 FR 33776, June 21, 1993; 59 FR 8752, Feb. 23, 1994; 59 FR 67554, Dec. 29, 1994; 62 FR 1296, Jan. 9, 1997; 63 FR 33276, June 18, 1998; 64 FR 48516, Sept. 3, 1999; 66 FR 2766, Jan. 11, 2001; 68 FR 47875, Aug. 12, 2003; 69 FR 39372, June 30, 2004; 72 FR 36790, July 5, 2007; 73 FR 76820, Dec. 17, 2008; 75 FR 5002, Feb. 1, 2010]

EFFECTIVE DATE NOTE: At 75 FR 59135, Sept. 27, 2010, § 390.3 was amended by revising paragraph (f)(1) and (6), effective October 27, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 390.3 General applicability.

* * * * *

(f) * * *

(1) All school bus operations as defined in § 390.5 except for the provisions of §§ 391.15(e) and 392.80;

* * * * *

(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 texting provisions of §§ 391.15(e) and 392.80, and except that motor carriers operating such vehicles are required to comply with §§ 390.15, 390.19, and 390.21(a) and (b)(2).

* * * * *

§ 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:

(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.

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

Business district means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

Charter transportation of passengers means transportation, using a bus, of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin.

Commercial motor vehicle means any self-propelled or towed 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.

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

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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

(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.

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, med-

ical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in:

(1) A declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the FMCSA Field Administrator for the geographical area in which the occurrence happens; or by other Federal, State or local government officials having authority to declare emergencies, or

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

Emergency 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 F to subchapter B of this chapter. The term "exempt intracity zone" does not include any municipality or commercial zone in the State of Hawaii. For purposes of § 391.62, 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—

- (a) Controlled and operated by a farmer as a private motor carrier of property;
- (b) Being used to transport either—
 - (1) Agricultural products, or
 - (2) Farm machinery, farm supplies, or both, to or from a farm;
- (c) Not being used in the operation of a for-hire motor carrier;
- (d) Not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be plac-

arded in accordance with § 177.823 of this subtitle; and

(e) Being used within 150 air-miles of the farmer's farm.

Farmer means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which—

- (a) Are owned by that person; or
- (b) Are under the direct control of that person.

Fatality means any injury which results in the death of a person at the time of the motor vehicle accident or within 30 days of the accident.

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

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

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

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

Hazardous material means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

Hazardous substance means a material, and its mixtures or solutions, that is identified in the appendix to § 172.101, List of Hazardous Substances and Reportable Quantities, of this title when offered for transportation in one package, or in one transport motor vehicle if not packaged, and when the quantity of the material therein equals or exceeds the reportable quantity (RQ). This definition does not apply to petroleum products that are lubricants or fuels, or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table

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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 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.

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."

Medical examiner means a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to perform physical examinations. The term includes but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic.

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.

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, provided to users, such as, drivers or employers, and 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).

Radar detector means any device or mechanism to detect the emission of radio microwaves, laser beams or any other future speed measurement technology employed by enforcement personnel to measure the speed of commercial motor vehicles upon public roads and highways for enforcement purposes. Excluded from this definition are radar detection devices that meet both of the following requirements:

(1) Transported outside the driver's compartment of the commercial motor vehicle. For this purpose, the driver's compartment of a passenger-carrying CMV shall include all space designed to accommodate both the driver and the passengers; and

(2) Completely inaccessible to, inoperable by, and imperceptible to the driver while operating the commercial motor vehicle.

Regional Director of Motor Carriers means the 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.

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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.

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.

Trailer includes:

(a) *Full trailer* means any motor vehicle other than a pole trailer which is designed to be drawn by another motor vehicle and so constructed that no part of its weight, except for the towing device, rests upon the self-propelled towing motor vehicle. A semitrailer equipped with an auxiliary front axle (converter dolly) shall be considered a full trailer.

(b) *Pole trailer* means any motor vehicle which is designed to be drawn by another motor vehicle and attached to the towing motor vehicle by means of a “reach” or “pole,” or by being “boomed” or otherwise secured to the towing motor vehicle, for transporting long or irregularly shaped loads such as poles, pipes, or structural members, which generally are capable of sustaining themselves as beams between the supporting connections.

(c) *Semitrailer* means any motor vehicle, other than a pole trailer, which is designed to be drawn by another motor vehicle and is constructed so that some part of its weight rests upon the self-propelled towing motor vehicle.

Truck means any self-propelled commercial motor vehicle except a truck tractor, designed and/or used for the transportation of property.

Truck tractor means a self-propelled commercial motor vehicle designed and/or used primarily for drawing other vehicles.

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

[53 FR 18052, May 19, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 390.5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

EFFECTIVE DATE NOTE: At 75 FR 59135, Sept. 27, 2010, § 390.5 was amended by adding definitions for *Electronic device*, and *Texting*, effective October 27, 2010. For the convenience of the user, the added text is set forth as follows:

§ 390.5 Definitions.

* * * * *

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.

* * * * *

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

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

(2) Texting does not include:

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

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

(iii) Using a device capable of performing multiple functions (e.g., fleet management systems, dispatching devices, smart phones, citizens band radios, music players, etc.) for a purpose that is not otherwise prohibited in part 392.

* * * * *

§ 390.7 Rules of construction.

(a) In part 325 of subchapter A and in this subchapter, unless the context requires otherwise:

(1) Words imparting the singular include the plural;

(2) Words imparting the plural include the singular;

(3) Words imparting the present tense include the future tense.

(b) In this subchapter the word—

(1) *Officer* includes any person authorized by law to perform the duties of the office;

(2) *Writing* includes printing and typewriting;

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

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

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

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

(7) *Includes* is used as a word of inclusion, not limitation.

[53 FR 18052, May 19, 1988, as amended at 60 FR 38744, July 28, 1995]

Subpart B—General Requirements and Information**§ 390.9 State and local laws, effect on.**

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

§ 390.11 Motor carrier to require observance of driver regulations.

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

§ 390.13 Aiding or abetting violations.

No person shall aid, abet, encourage, or require a motor carrier or its em-

ployees 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) For accidents that occur after April 29, 2003, motor carriers must maintain an accident register for three years after the date of each accident. For accidents that occurred on or prior to April 29, 2003, motor carriers must maintain an accident register for a period of one year 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]

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§ 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, hazardous material shipper, 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:

(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 of this chapter 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 number ending in	Must file by last day of
1	January.
2	February.
3	March.
4	April.
5	May.
6	June.

USDOT number ending in	Must file by last day of
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.

(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 FMCSA Office of Information Management. 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 Information Management, MC-RIO, 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 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 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 §385.607(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 §390.5, along with the additional information required by §390.21.

(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 infor-

mation with the appropriate State office.

[73 FR 76821, Dec. 17, 2008]

§ 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.

(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 §390.19.

(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.

(5) Each motor carrier shall meet the following requirements pertaining to its operation:

(i) All CMVs that are part of a motor carrier's existing fleet on July 3, 2000, and which are marked with an ICCMC number must come into compliance with paragraph (b)(2) of this section by July 3, 2002.

(ii) All CMVs that are part of a motor carrier's existing fleet on July 3, 2000, and which are not marked with the legal name or a single trade name on both sides of their CMVs, as shown on the Motor Carrier Identification Report, Form MCS-150, must come into compliance with paragraph (b)(1) of this section by July 5, 2005.

(iii) All CMVs added to a motor carrier's fleet on or after July 3, 2000, must meet the requirements of this section before being put into service and operating on public ways.

(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.* A motor carrier operating a self-propelled CMV under a rental agreement having 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) 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 entered into by the lessor and the renting motor carrier conspicuously contains the following information:

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

(B) The identification number issued the renting motor carrier by the 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 may be shown in the rental agreement:

(1) Information which indicates whether the motor carrier is engaged in "interstate" or "intrastate" commerce; and

(2) Information which indicates 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 entered into by the lessor and the renting motor carrier is carried on the rental CMV during the full term of the rental agreement. See the leasing regulations at 49 CFR 376 for information that should be included in all leasing documents.

(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 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 VIN and 4-character 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) Standard Carrier Alpha Code (SCAC) plus trailing digits, or

(ii) License plate number and State of license, or

(iii) Vehicle Identification Number (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.

[65 FR 35296, June 2, 2000, as amended at 73 FR 76821, Dec. 17, 2008; 74 FR 68708, Dec. 29, 2009]

§ 390.23 Relief from regulations.

(a) Parts 390 through 399 of this chapter shall not apply to any motor carrier or driver operating a commercial motor vehicle to provide emergency relief during an emergency, subject to the following time limits:

(1) *Regional emergencies.* (i) The exemption provided by paragraph (a)(1) of this section is effective only when:

(A) An emergency has been declared by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; or

(B) The FMCSA Field Administrator has declared that a regional emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) Except as provided in § 390.25, this exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 30 days from the date of the initial declaration of the emergency or the exemption from the regulations by the FMCSA Field Administrator, whichever is less.

(2) *Local emergencies.* (i) The exemption provided by paragraph (a)(2) of this section is effective only when:

(A) An emergency has been declared by a Federal, State or local government official having authority to declare an emergency; or

(B) The FMCSA Field Administrator 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

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emergency or the exemption from the regulations by the FMCSA Field Administrator, 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. Having returned to the terminal or other location, the driver must be relieved of all duty and responsibilities. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches such driver or commercial motor vehicle to another location to begin operations in commerce.

(c) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to a regional or local emergency relief effort, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive in commerce until:

(1) The driver has met the requirements of §§ 395.3(a) and 395.5(a) of this chapter; and

(2) The driver has had at least 34 consecutive hours off-duty when:

(i) The driver has been on duty for more than 60 hours in any 7 consecutive days at the time the driver is relieved of all duty if the employing motor carrier does not operate every day in the week, or

(ii) The driver has been on duty for more than 70 hours in any 8 consecutive days at the time the driver is relieved of all duty if the employing motor carrier operates every day in the week.

[57 FR 33647, July 30, 1992, as amended at 60 FR 38744, July 28, 1995; 68 FR 22514, Apr. 28, 2003; 70 FR 50070, Aug. 25, 2005]

§ 390.25 Extension of relief from regulations—emergencies.

The FMCSA Field Administrator may extend the 30-day time period of the exemption contained in § 390.23(a)(1), but not the 5-day time period contained in § 390.23(a)(2) or the 24-hour period contained in § 390.23(a)(3). Any motor carrier or driver seeking to extend the 30-day limit shall obtain approval from the FMCSA Field Administrator in the region in which the motor carrier's principal place of business is located before the expiration of the 30-day period. The motor carrier or driver shall give full details of the additional relief requested. The FMCSA Field Administrator shall determine if such relief is necessary taking into account both the severity of the ongoing emergency and the nature of the relief services to be provided by the carrier or driver. If the FMCSA Field Administrator approves an extension of the exemption, he or she shall establish a new time limit and place on the motor carrier or driver any other restrictions deemed necessary.

[57 FR 33647, July 30, 1992]

§ 390.27 Locations of motor carrier safety service centers.

Service center	Territory included	Location of office
Eastern	CT, DC, DE, MA, MD, ME, NJ, NH, NY, PA, PR, RI, VA, VT, Virgin Islands, WV.	802 Cromwell Park Drive, Suite N, Glen Burnie, MD 21061.

Service center	Territory included	Location of office
Midwestern	IA, IL, IN, KS, MI, MO, MN, NE, OH, WI	19900 Governors Drive, Suite 210, Olympia Fields, IL 60461-1021.
Southern	AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX	1800 Century Boulevard, Suite 1700, Atlanta, GA 30345-3220.
Western	American Samoa, AK, AZ, CA, CO, Guam, HI, ID, Mariana Islands, MT, ND, NM, NV, OR, SD, UT, WA, WY.	Golden Hills Office Centre, 12600 West Colfax Avenue, Suite B-300, Lakewood, CO 80215.

NOTE 1: Canadian carriers, for information regarding proper service center, contact a FMCSA division (State) office in AK, ME, MI, MT, NY, ND, VT, or WA.

NOTE 2: Mexican carriers, for information regarding proper service center, contact a FMCSA division (State) office in AZ, CA, NM, or TX.

[65 FR 35297, June 2, 2000, as amended at 67 FR 61824, Oct. 2, 2002; 67 FR 63019, Oct. 9, 2002; 72 FR 55702, Oct. 1, 2007]

§ 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 or documents.

(a) All records and documents required to be maintained under this subchapter must be preserved in their original form for the periods specified, unless the records and documents are suitably photographed and the microfilm is retained in lieu of the original record for the required retention period.

(b) To be acceptable in lieu of original records, photographic copies of records must meet the following minimum requirements:

(1) Photographic copies shall be no less readily accessible than the original record or document as normally filed or preserved would be and suitable means or facilities shall be available to locate, identify, read, and reproduce such photographic copies.

(2) Any significant characteristic, feature or other attribute of the original record or document, which photography in black and white will not preserve, shall be clearly indicated before the photograph is made.

(3) The reverse side of printed forms need not be copied if nothing has been added to the printed matter common to all such forms, but an identified specimen of each form shall be on the film for reference.

(4) Film used for photographing copies shall be of permanent record-type meeting in all respects the minimum specifications of the National Bureau of Standards, and all processes recommended by the manufacturer shall be observed to protect it from deterioration or accidental destruction.

(5) Each roll of film shall include a microfilm of a certificate or certificates stating that the photographs are direct or facsimile reproductions of the original records. Such certificate(s) shall be executed by a person or persons having personal knowledge of the material covered thereby.

(c) All records and documents required to be maintained under this subchapter may be destroyed after they have been suitably photographed for preservation.

(d) *Exception.* All records except those requiring a signature may be maintained through the use of computer

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technology provided the motor carrier can produce, upon demand, a computer printout of the required data.

§ 390.33 Commercial motor vehicles used for purposes other than defined.

Whenever a commercial motor vehicle of one type is used to perform the functions normally performed by a commercial motor vehicle of another type, the requirements of this subchapter and part 325 of subchapter A shall apply to the commercial motor vehicle and to its operation in the same manner as though the commercial motor vehicle were actually a commercial motor vehicle of the latter type. *Example:* If a commercial motor vehicle other than a bus is used to perform the functions normally performed by a bus, the regulations pertaining to buses and to the transportation of passengers shall apply to that commercial motor vehicle.

[53 FR 18052, May 19, 1988, as amended at 60 FR 38744, July 28, 1995]

§ 390.35 Certificates, reports, and records: Falsification, reproduction, or alteration.

No motor carrier, its agents, officers, representatives, or employees shall make or cause to make—

(a) A fraudulent or intentionally false statement on any application, certificate, report, or record required by part 325 of subchapter A or this subchapter;

(b) A fraudulent or intentionally false entry on any application, certificate, report, or record required to be used, completed, or retained, to comply with any requirement of this subchapter or part 325 of subchapter A; or

(c) A reproduction, for fraudulent purposes, of any application, certificate, report, or record required by this subchapter or part 325 of subchapter A.

§ 390.37 Violation and penalty.

Any person who violates the rules set forth in this subchapter or part 325 of subchapter A may be subject to civil or criminal penalties.

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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 MCS-150C required by § 390.19.

(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 § 396.12 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)(1) of this chapter.

[73 FR 76822, Dec. 17, 2008, as amended at 74 FR 68708, Dec. 29, 2009]

§ 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.

(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. If no damage, defects, or deficiencies are discovered by the driver, the report shall so indicate. The report must include, at a minimum, the items in § 396.11(a)(2) of this chapter.

§ 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 con-

cerns 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 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

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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.

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.

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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 Record of violations.

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.
- 391.43 Medical examination; certificate of physical examination.
- 391.45 Persons who must be medically examined and certified.
- 391.47 Resolution of conflicts of medical evaluation.
- 391.49 Alternative physical qualification standards for the loss or impairment of limbs.

Subpart F—Files and Records

- 391.51 General requirements for driver qualification files.
- 391.53 Driver investigation history file
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Subpart G—Limited Exemptions

- 391.61 Drivers who were regularly employed before January 1, 1971.
- 391.62 Limited exemptions for intra-city zone drivers.
- 391.63 Multiple-employer drivers.
- 391.64 Grandfathering for certain drivers participating in vision and diabetes waiver study programs.
- 391.65 Drivers furnished by other motor carriers.
- 391.67 Farm vehicle drivers of articulated commercial motor vehicles.
- 391.68 Private motor carrier of passengers (nonbusiness).
- 391.69 Private motor carrier of passengers (business).
- 391.71 [Reserved]

AUTHORITY: 49 U.S.C. 322, 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1767; and 49 CFR 1.73.

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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.

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.

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Subpart B—Qualification and Disqualification of Drivers

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Subpart C—Background and Character

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Subpart G—Limited Exemptions

- 391.61 Drivers who were regularly employed before January 1, 1971.
- 391.62 Limited exemptions for intra-city zone drivers.
- 391.63 Multiple-employer drivers.
- 391.64 Grandfathering for certain drivers participating in vision and diabetes waiver study programs.
- 391.65 Drivers furnished by other motor carriers.
- 391.67 Farm vehicle drivers of articulated commercial motor vehicles.
- 391.68 Private motor carrier of passengers (nonbusiness).
- 391.69 Private motor carrier of passengers (business).
- 391.71 [Reserved]

AUTHORITY: 49 U.S.C. 322, 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1767; and 49 CFR 1.73.

SOURCE: 35 FR 6460, Apr. 22, 1970, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 391 appear at 66 FR 49873, Oct. 1, 2001.

Subpart A—General

§ 391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.

(a) The rules in this part establish minimum qualifications for persons who drive commercial motor vehicles as, for, or on behalf of motor carriers. The rules in this part also establish minimum duties of motor carriers with respect to the qualifications of their drivers.

(b) A motor carrier who employs himself/herself as a driver must comply with both the rules in this part that apply to motor carriers and the rules in this part that apply to drivers.

[35 FR 6460, Apr. 22, 1970, as amended at 53 FR 18057, May 19, 1988; 60 FR 38744, July 28, 1995]

§ 391.2 General exceptions.

(a) *Farm custom operation.* The rules in this part do not apply to a driver who drives a commercial motor vehicle controlled and operated by a person engaged in custom-harvesting operations, if the commercial motor vehicle is used to—

(1) Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or

(2) Transport custom-harvested crops to storage or market.

(b) *Apiarian industries.* The rules in this part do not apply to a driver who is operating a commercial motor vehicle controlled and operated by a beekeeper engaged in the seasonal transportation of bees.

(c) *Certain farm vehicle drivers.* The rules in this part do not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) commercial motor vehicle, as defined in § 390.5. (For limited exemptions for farm vehicle drivers of

articulated commercial motor vehicles, see § 391.67.)

[36 FR 24219, Dec. 22, 1971, as amended at 37 FR 26112, Dec. 8, 1972; 54 FR 12202, Mar. 24, 1989; 60 FR 38745, July 28, 1995; 61 FR 13346, Mar. 26, 1996; 61 FR 17253, Apr. 19, 1996]

EFFECTIVE DATE NOTE: At 75 FR 59135, Sept. 27, 2010, § 391.2 was revised, effective October 27, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 391.2 General exceptions.

(a) *Farm custom operation.* The rules in this part except for § 391.15(e) do not apply to a driver who drives a commercial motor vehicle controlled and operated by a person engaged in custom-harvesting operations, if the commercial motor vehicle is used to—

(1) Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or

(2) Transport custom-harvested crops to storage or market.

(b) *Apiarian industries.* The rules in this part except for § 391.15(e) do not apply to a driver who is operating a commercial motor vehicle controlled and operated by a beekeeper engaged in the seasonal transportation of bees.

(c) *Certain farm vehicle drivers.* The rules in this part except for § 391.15(e) do not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) commercial motor vehicle, as defined in § 390.5. For limited exemptions for farm vehicle drivers of articulated commercial motor vehicles, see § 391.67.

Subpart B—Qualification and Disqualification of Drivers

§ 391.11 General qualifications of drivers.

(a) A person shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle. Except as provided in § 391.63, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle.

(b) Except as provided in subpart G of this part, a person is qualified to drive a motor vehicle if he/she—

(1) Is at least 21 years old;

(2) Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official

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inquiries, and to make entries on reports and records;

(3) Can, by reason of experience, training, or both, safely operate the type of commercial motor vehicle he/she drives;

(4) Is physically qualified to drive a commercial motor vehicle in accordance with subpart E—Physical Qualifications and Examinations of this part;

(5) Has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction;

(6) Has prepared and furnished the motor carrier that employs him/her with the list of violations or the certificate as required by § 391.27;

(7) Is not disqualified to drive a commercial motor vehicle under the rules in § 391.15; and

(8) Has successfully completed a driver's road test and has been issued a certificate of driver's road test in accordance with § 391.31, or has presented an operator's license or a certificate of road test which the motor carrier that employs him/her has accepted as equivalent to a road test in accordance with § 391.33.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 35 FR 19181, Dec. 18, 1970; 36 FR 222, Jan. 7, 1971, 36 FR 24220, Dec. 22, 1971; 45 FR 46424, July 10, 1980; 52 FR 20589, June 1, 1987; 59 FR 60323, Nov. 23, 1994; 60 FR 38744, 38745, July 28, 1995; 63 FR 33276, June 18, 1998]

§ 391.13 Responsibilities of drivers.

In order to comply with the requirements of § 392.9(a) and § 393.9 of this subchapter, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless the person—

(a) Can, by reason of experience, training, or both, determine whether the cargo he/she transports (including baggage in a passenger-carrying commercial motor vehicle) has been properly located, distributed, and secured in or on the commercial motor vehicle he/she drives;

(b) Is familiar with methods and procedures for securing cargo in or on the commercial motor vehicle he/she drives.

[63 FR 33277, June 18, 1998]

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§ 391.15 Disqualification of drivers.

(a) *General.* A driver who is disqualified shall not drive a commercial motor vehicle. A motor carrier shall not require or permit a driver who is disqualified to drive a commercial motor vehicle.

(b) *Disqualification for loss of driving privileges.* (1) A driver is disqualified for the duration of the driver's loss of his/her privilege to operate a commercial motor vehicle on public highways, either temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege, until that operator's license, permit, or privilege is restored by the authority that revoked, suspended, withdrew, or denied it.

(2) A driver who receives a notice that his/her license, permit, or privilege to operate a commercial motor vehicle has been revoked, suspended, or withdrawn shall notify the motor carrier that employs him/her of the contents of the notice before the end of the business day following the day the driver received it.

(c) *Disqualification for criminal and other offenses—*(1) *General rule.* A driver who is convicted of (or forfeits bond or collateral upon a charge of) a disqualifying offense specified in paragraph (c)(2) of this section is disqualified for the period of time specified in paragraph (c)(3) of this section, if—

(i) The offense was committed during on-duty time as defined in § 395.2(a) of this subchapter or as otherwise specified; and

(ii) The driver is employed by a motor carrier or is engaged in activities that are in furtherance of a commercial enterprise in interstate, intrastate, or foreign commerce;

(2) *Disqualifying offenses.* The following offenses are disqualifying offenses:

(i) Driving a commercial motor vehicle while under the influence of alcohol. This shall include:

(A) Driving a commercial motor vehicle while the person's alcohol concentration is 0.04 percent or more;

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

(C) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of § 391.15(c)(2)(i) (A) or (B), or § 392.5(a)(2).

(ii) Driving a commercial motor vehicle under the influence of a 21 CFR 1308.11 *Schedule I* identified controlled substance, an amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug;

(iii) Transportation, possession, or unlawful use of a 21 CFR 1308.11 *Schedule I* identified controlled substance, amphetamines, narcotic drugs, formulations of an amphetamine, or derivatives of narcotic drugs while the driver is on duty, as the term on-duty time is defined in § 395.2 of this subchapter;

(iv) Leaving the scene of an accident while operating a commercial motor vehicle; or

(v) A felony involving the use of a commercial motor vehicle.

(3) *Duration of disqualification—(i) First offenders.* A driver is disqualified for 1 year after the date of conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, the driver was not convicted of, or did not forfeit bond or collateral upon a charge of an offense that would disqualify the driver under the rules of this section. Exemption. The period of disqualification is 6 months if the conviction or forfeiture of bond or collateral solely concerned the transportation or possession of substances named in paragraph (c)(2)(iii) of this section.

(ii) *Subsequent offenders.* A driver is disqualified for 3 years after the date of his/her conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, he/she was convicted of, or forfeited bond or collateral upon a charge of, an offense that would disqualify him/her under the rules in this section.

(d) *Disqualification for violation of out-of-service orders—(1) General rule.* A driver who is convicted of violating an out-of-service order is disqualified for the period of time specified in paragraph (d)(2) of this section.

(2) *Duration of disqualification for violation of out-of-service orders—(i) First violation.* A driver is disqualified for not less than 90 days nor more than one

year if the driver is convicted of a first violation of an out-of-service order.

(ii) *Second violation.* A driver is disqualified for not less than one year nor more than five years if, during any 10-year period, the driver is convicted of two violations of out-of-service orders in separate incidents.

(iii) *Third or subsequent violation.* A driver is disqualified for not less than three years nor more than five years if, during any 10-year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents.

(iv) *Special rule for hazardous materials and passenger offenses.* A driver is disqualified for a period of not less than 180 days nor more than two years if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et seq.*), or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver. A driver is disqualified for a period of not less than three years nor more than five years if, during any 10-year period, the driver is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver.

[37 FR 24902, Nov. 23, 1972, as amended at 49 FR 44215, Nov. 5, 1984; 51 FR 8200, Mar. 10, 1986; 53 FR 18057, May 19, 1988; 53 FR 39051, Oct. 4, 1988; 54 FR 40788, Oct. 3, 1989; 59 FR 26028, May 18, 1994; 60 FR 38744, 38745, July 28, 1995; 62 FR 37152, July 11, 1997; 63 FR 33277, June 18, 1998]

EFFECTIVE DATE NOTE: At 75 FR 59136, Sept. 27, 2010, § 391.15 was amended by adding paragraph (e), effective October 27, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(e) Disqualification for violation of prohibition of texting while driving a commercial motor vehicle—

(1) *General rule.* A driver who is convicted of violating the prohibition of texting in §392.80(a) of this chapter is disqualified for the period of time specified in paragraph (e)(2) of this section.

(2) *Duration.* Disqualification for violation of prohibition of texting while driving a commercial motor vehicle—

(i) *Second violation.* A driver is disqualified for 60 days if the driver is convicted of two violations of §392.80(a) of this chapter in separate incidents during any 3-year period.

(ii) *Third or subsequent violation.* A driver is disqualified for 120 days if the driver is convicted of three or more violations of §392.80(a) of this chapter in separate incidents during any 3-year period.

Subpart C—Background and Character

§ 391.21 Application for employment.

(a) Except as provided in subpart G of this part, a person shall not drive a commercial motor vehicle unless he/she has completed and furnished the motor carrier that employs him/her with an application for employment that meets the requirements of paragraph (b) of this section.

(b) The application for employment shall be made on a form furnished by the motor carrier. Each application form must be completed by the applicant, must be signed by him/her, and must contain the following information:

(1) The name and address of the employing motor carrier;

(2) The applicant's name, address, date of birth, and social security number;

(3) The addresses at which the applicant has resided during the 3 years preceding the date on which the application is submitted;

(4) The date on which the application is submitted;

(5) The issuing State, number, and expiration date of each unexpired commercial motor vehicle operator's license or permit that has been issued to the applicant;

(6) The nature and extent of the applicant's experience in the operation of motor vehicles, including the type of equipment (such as buses, trucks, truck tractors, semitrailers, full trailers, and pole trailers) which he/she has operated;

(7) A list of all motor vehicle accidents in which the applicant was involved during the 3 years preceding the date the application is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused;

(8) A list of all violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the 3 years preceding the date the application is submitted;

(9) A statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to the applicant, or a statement that no such denial, revocation, or suspension has occurred;

(10)(i) A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted,

(ii) The dates he or she was employed by that employer,

(iii) The reason for leaving the employ of that employer,

(iv) After October 29, 2004, whether the (A) Applicant was subject to the FMCSRs while employed by that previous employer,

(B) Job was designated as a safety sensitive function in any DOT regulated mode subject to alcohol and controlled substances testing requirements as required by 49 CFR part 40;

(11) For those drivers applying to operate a commercial motor vehicle as defined by part 383 of this subchapter, a list of the names and addresses of the applicant's employers during the 7-year period preceding the 3 years contained in paragraph (b)(10) of this section for which the applicant was an operator of a commercial motor vehicle, together with the dates of employment and the reasons for leaving such employment; and

(12) The following certification and signature line, which must appear at the end of the application form and be signed by the applicant:

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.

(Date)

(Applicant's signature)

(c) A motor carrier may require an applicant to provide information in addition to the information required by paragraph (b) of this section on the application form.

(d) Before an application is submitted, the motor carrier must inform the applicant that the information he/she provides in accordance with paragraph (b)(10) of this section may be used, and the applicant's previous employers will be contacted, for the purpose of investigating the applicant's safety performance history information as required by paragraphs (d) and (e) of § 391.23. The prospective employer must also notify the driver in writing of his/her due process rights as specified in § 391.23(i) regarding information received as a result of these investigations.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 52 FR 20589, June 1, 1987; 60 FR 38744, July 28, 1995; 69 FR 16719, Mar. 30, 2004]

§ 391.23 Investigation and inquiries.

(a) Except as provided in subpart G of this part, each motor carrier shall make the following investigations and inquiries with respect to each driver it employs, other than a person who has been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971:

(1) An inquiry to each State where the driver held or holds a motor vehicle operator's license or permit during the preceding 3 years to obtain that driver's motor vehicle record.

(2) An investigation of the driver's safety performance history with Department of Transportation regulated employers during the preceding three years.

(b) A copy of the motor vehicle record(s) obtained in response to the inquiry or inquiries to each State required by paragraph (a)(1) of this section must be placed in the driver qualification file within 30 days of the date the driver's employment begins and be retained in compliance with § 391.51. If no motor vehicle record is received from the State or States required to

submit this response, the motor carrier must document a good faith effort to obtain such information, and certify that no record exists for that driver in that State or States. The inquiry to the State driver licensing agency or agencies must be made in the form and manner each agency prescribes.

(c)(1) Replies to the investigations of the driver's safety performance history required by paragraph (a)(2) of this section, or documentation of good faith efforts to obtain the investigation data, must be placed in the driver investigation history file, after October 29, 2004, within 30 days of the date the driver's employment begins. Any period of time required to exercise the driver's due process rights to review the information received, request a previous employer to correct or include a rebuttal, is separate and apart from this 30-day requirement to document investigation of the driver safety performance history data.

(2) The investigation may consist of personal interviews, telephone interviews, letters, or any other method for investigating that the carrier deems appropriate. Each motor carrier must make a written record with respect to each previous employer contacted, or good faith efforts to do so. The record must include the previous employer's name and address, the date the previous employer was contacted, or the attempts made, and the information received about the driver from the previous employer. Failures to contact a previous employer, or of them to provide the required safety performance history information, must be documented. The record must be maintained pursuant to § 391.53.

(3) Prospective employers should report failures of previous employers to respond to an investigation to the FMCSA following procedures specified at § 386.12 of this chapter and keep a copy of such reports in the Driver Investigation file as part of documenting a good faith effort to obtain the required information.

(4) *Exception.* For drivers with no previous employment experience working for a DOT regulated employer during the preceding three years, documentation that no investigation was possible

must be placed in the driver history investigation file, after October 29, 2004, within the required 30 days of the date the driver's employment begins.

(d) The prospective motor carrier must investigate, at a minimum, the information listed in this paragraph from all previous employers of the applicant that employed the driver to operate a CMV within the previous three years. The investigation request must contain specific contact information on where the previous motor carrier employers should send the information requested.

(1) General driver identification and employment verification information.

(2) The data elements as specified in § 390.15(b)(1) of this chapter for accidents involving the driver that occurred in the three-year period preceding the date of the employment application.

(i) Any accidents as defined by § 390.5 of this chapter.

(ii) Any accidents the previous employer may wish to provide that are retained pursuant to § 390.15(b)(2), or pursuant to the employer's internal policies for retaining more detailed minor accident information.

(e) In addition to the investigations required by paragraph (d) of this section, the prospective motor carrier employers must investigate the information listed below in this paragraph from all previous DOT regulated employers that employed the driver within the previous three years from the date of the employment application, in a safety-sensitive function that required alcohol and controlled substance testing specified by 49 CFR part 40.

(1) Whether, within the previous three years, the driver had violated the alcohol and controlled substances prohibitions under subpart B of part 382 of this chapter, or 49 CFR part 40.

(2) Whether the driver failed to undertake or complete a rehabilitation program prescribed by a substance abuse professional (SAP) pursuant to § 382.605 of this chapter, or 49 CFR part 40, subpart O. If the previous employer does not know this information (*e.g.*, an employer that terminated an employee who tested positive on a drug test), the prospective motor carrier

must obtain documentation of the driver's successful completion of the SAP's referral directly from the driver.

(3) For a driver who had successfully completed a SAP's rehabilitation referral, and remained in the employ of the referring employer, information on whether the driver had the following testing violations subsequent to completion of a § 382.605 or 49 CFR part 40, subpart O referral:

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

(ii) Verified positive drug tests;

(iii) Refusals to be tested (including verified adulterated or substituted drug test results).

(f) A prospective motor carrier employer must provide to the previous employer the driver's written consent meeting the requirements of § 40.321(b) for the release of the information in paragraph (e) of this section. If the driver refuses to provide this written consent, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle for that motor carrier.

(g) After October 29, 2004, previous employers must:

(1) Respond to each request for the DOT defined information in paragraphs (d) and (e) of this section within 30 days after the request is received. If there is no safety performance history information to report for that driver, previous motor carrier employers are nonetheless required to send a response confirming the non-existence of any such data, including the driver identification information and dates of employment.

(2) Take all precautions reasonably necessary to ensure the accuracy of the records.

(3) Provide specific contact information in case a driver chooses to contact the previous employer regarding correction or rebuttal of the data.

(4) Keep a record of each request and the response for one year, including the date, the party to whom it was released, and a summary identifying what was provided.

(5) *Exception.* Until May 1, 2006, carriers need only provide information for accidents that occurred after April 29, 2003.

(h) The release of information under this section may take any form that reasonably ensures confidentiality, including letter, facsimile, or e-mail. The previous employer and its agents and insurers must take all precautions reasonably necessary to protect the driver safety performance history records from disclosure to any person not directly involved in forwarding the records, except the previous employer's insurer, except that the previous employer may not provide any alcohol or controlled substances information to the previous employer's insurer.

(i)(1) The prospective employer must expressly notify drivers with Department of Transportation regulated employment during the preceding three years—via the application form or other written document prior to any hiring decision—that he or she has the following rights regarding the investigative information that will be provided to the prospective employer pursuant to paragraphs (d) and (e) of this section:

(i) The right to review information provided by previous employers;

(ii) The right to have errors in the information corrected by the previous employer and for that previous employer to re-send the corrected information to the prospective employer;

(iii) The right to have a rebuttal statement attached to the alleged erroneous information, if the previous employer and the driver cannot agree on the accuracy of the information.

(2) Drivers who have previous Department of Transportation regulated employment history in the preceding three years, and wish to review previous employer-provided investigative information must submit a written request to the prospective employer, which may be done at any time, including when applying, or as late as 30 days after being employed or being notified of denial of employment. The prospective employer must provide this information to the applicant within five (5) business days of receiving the written request. If the prospective employer has not yet received the requested information from the previous employer(s), then the five-business days deadline will begin when the prospective employer receives the requested

safety performance history information. If the driver has not arranged to pick up or receive the requested records within thirty (30) days of the prospective employer making them available, the prospective motor carrier may consider the driver to have waived his/her request to review the records.

(j)(1) Drivers wishing to request correction of erroneous information in records received pursuant to paragraph (i) of this section must send the request for the correction to the previous employer that provided the records to the prospective employer.

(2) After October 29, 2004, the previous employer must either correct and forward the information to the prospective motor carrier employer, or notify the driver within 15 days of receiving a driver's request to correct the data that it does not agree to correct the data. If the previous employer corrects and forwards the data as requested, that employer must also retain the corrected information as part of the driver's safety performance history record and provide it to subsequent prospective employers when requests for this information are received. If the previous employer corrects the data and forwards it to the prospective motor carrier employer, there is no need to notify the driver.

(3) Drivers wishing to rebut information in records received pursuant to paragraph (i) of this section must send the rebuttal to the previous employer with instructions to include the rebuttal in that driver's safety performance history.

(4) After October 29, 2004, within five business days of receiving a rebuttal from a driver, the previous employer must:

(i) Forward a copy of the rebuttal to the prospective motor carrier employer;

(ii) Append the rebuttal to the driver's information in the carrier's appropriate file, to be included as part of the response for any subsequent investigating prospective employers for the duration of the three-year data retention requirement.

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(5) The driver may submit a rebuttal initially without a request for correction, or subsequent to a request for correction.

(6) The driver may report failures of previous employers to correct information or include the driver's rebuttal as part of the safety performance information, to the FMCSA following procedures specified at § 386.12.

(k)(1) The prospective motor carrier employer must use the information described in paragraphs (d) and (e) of this section only as part of deciding whether to hire the driver.

(2) The prospective motor carrier employer, its agents and insurers must take all precautions reasonably necessary to protect the records from disclosure to any person not directly involved in deciding whether to hire the driver. The prospective motor carrier employer may not provide any alcohol or controlled substances information to the prospective motor carrier employer's insurer.

(1)(1) No action or proceeding for defamation, invasion of privacy, or interference with a contract that is based on the furnishing or use of information in accordance with this section may be brought against—

(i) A motor carrier investigating the information, described in paragraphs (d) and (e) of this section, of an individual under consideration for employment as a commercial motor vehicle driver,

(ii) A person who has provided such information; or

(iii) The agents or insurers of a person described in paragraph (1)(1)(i) or (ii) of this section, except insurers are not granted a limitation on liability for any alcohol and controlled substance information.

(2) The protections in paragraph (1)(1) of this section do not apply to persons who knowingly furnish false information, or who are not in compliance with the procedures specified for these investigations.

(m)(1) The motor carrier must obtain an original or copy of the medical examiner's certificate issued in accordance with § 391.43, and any medical variance on which the certification is based, and place the records in the

driver qualification file, before allowing the driver to operate a CMV.

(2) *Exception.* For drivers required to have a commercial driver's license under part 383 of this chapter:

(i) Beginning January 30, 2012, using the CDLIS motor vehicle record obtained from the current licensing State, the motor carrier must verify and document in the driver qualification file the following information before allowing the driver to operate a CMV:

(A) The type of operation the driver self-certified that he or she will perform in accordance with §§ 383.71(a)(1)(ii) and 383.71(g) of this chapter, and

(B) *Exception.* If the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with § 383.73(a)(5) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

(ii) Until January 30, 2014, if a driver operating in non-excepted, interstate commerce has no medical certification status information on the CDLIS MVR obtained from the current State driver licensing agency, the employing motor carrier may accept a medical examiner's certificate issued to that driver prior to January 30, 2012, and place a copy of it in the driver qualification file before allowing the driver to operate a CMV in interstate commerce.

(Approved by the Office of Management and Budget under control number 2126-0004)

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 69 FR 16720, Mar. 30, 2004; 72 FR 55703, Oct. 1, 2007; 73 FR 73126, Dec. 1, 2008; 75 FR 28502, May 21, 2010]

§ 391.25 Annual inquiry and review of driving record.

(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, make an inquiry to obtain the motor vehicle record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.

(b) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, review the motor vehicle record of each driver it employs to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive a commercial motor vehicle pursuant to § 391.15.

(1) The motor carrier must consider any evidence that the driver has violated any applicable Federal Motor Carrier Safety Regulations in this subchapter or Hazardous Materials Regulations (49 CFR chapter I, subchapter C).

(2) The motor carrier must consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and must give great weight to violations, such as speeding, reckless driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public.

(c) *Recordkeeping.* (1) A copy of the motor vehicle record required by paragraph (a) of this section shall be maintained in the driver's qualification file.

(2) A note, including the name of the person who performed the review of the driving record required by paragraph (b) of this section and the date of such review, shall be maintained in the driver's qualification file.

[63 FR 33277, June 18, 1998, as amended at 73 FR 73127, Dec. 1, 2008]

§ 391.27 Record of violations.

(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, require each driver it employs to prepare and furnish it with a list of all violations of motor vehicle traffic laws and ordinances (other than violations involving only parking) of which the driver has been convicted or on account of which he/she has forfeited bond or collateral during the preceding 12 months.

(b) Each driver shall furnish the list required in accordance with paragraph (a) of this section. If the driver has not been convicted of, or forfeited bond or collateral on account of, any violation which must be listed, he/she shall so certify.

(c) The form of the driver's list or certification shall be prescribed by the motor carrier. The following form may be used to comply with this section:

DRIVER'S CERTIFICATION

I certify that the following is a true and complete list of traffic violations (other than parking violations) for which I have been convicted or forfeited bond or collateral during the past 12 months.

Date of conviction	Offense
Location	Type of motor vehicle operated

If no violations are listed above, I certify that I have not been convicted or forfeited bond or collateral on account of any violation required to be listed during the past 12 months.

(Date of certification) (Driver's signature)

(Motor carrier's name)

(Motor carrier's address)

(Reviewed by: Signature) (Title)

(d) The motor carrier shall retain the list or certificate required by this section, or a copy of it, in its files as part of the driver's qualification file.

(e) Drivers who have provided information required by § 383.31 of this subchapter need not repeat that information in the annual list of violations required by this section.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 52 FR 20589, June 1, 1987; 60 FR 38745, July 28, 1995]

Subpart D—Tests

§ 391.31 Road test.

(a) Except as provided in subpart G, a person shall not drive a commercial motor vehicle unless he/she has first successfully completed a road test and has been issued a certificate of driver's road test in accordance with this section.

(b) The road test shall be given by the motor carrier or a person designated by it. However, a driver who is a motor carrier must be given the test by a person other than himself/herself. The test shall be given by a person who is competent to evaluate and determine whether the person who takes the test has demonstrated that he/she is capable of operating the commercial motor vehicle, and associated equipment, that the motor carrier intends to assign him/her.

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(c) The road test must be of sufficient duration to enable the person who gives it to evaluate the skill of the person who takes it at handling the commercial motor vehicle, and associated equipment, that the motor carriers intends to assign to him/her. As a minimum, the person who takes the test must be tested, while operating the type of commercial motor vehicle the motor carrier intends to assign him/her, on his/her skill at performing each of the following operations:

- (1) The pretrip inspection required by §392.7 of this subchapter;
- (2) Coupling and uncoupling of combination units, if the equipment he/she may drive includes combination units;
- (3) Placing the commercial motor vehicle in operation;
- (4) Use of the commercial motor vehicle's controls and emergency equipment;
- (5) Operating the commercial motor vehicle in traffic and while passing other motor vehicles;
- (6) Turning the commercial motor vehicle;
- (7) Braking, and slowing the commercial motor vehicle by means other than braking; and
- (8) Backing and parking the commercial motor vehicle.

(d) The motor carrier shall provide a road test form on which the person who gives the test shall rate the performance of the person who takes it at each operation or activity which is a part of the test. After he/she completes the form, the person who gave the test shall sign it.

(e) If the road test is successfully completed, the person who gave it shall complete a certificate of driver's road test in substantially the form prescribed in paragraph (f) of this section.

(f) The form for the certificate of driver's road test is substantially as follows:

CERTIFICATION OF ROAD TEST

Driver's name _____
 Social Security No _____
 Operator's or Chauffeur's License No _____
 State _____
 Type of power unit _____ Type of trailer(s) _____
 If passenger carrier, type of bus _____

This is to certify that the above-named driver was given a road test under my super-

vision on _____, 20____, consisting of approximately _____ miles of driving.

It is my considered opinion that this driver possesses sufficient driving skill to operate safely the type of commercial motor vehicle listed above.

(Signature of examiner)

(Title)

(Organization and address of examiner)

(g) A copy of the certificate required by paragraph (e) of this section shall be given to the person who was examined. The motor carrier shall retain in the driver qualification file of the person who was examined—

- (1) The original of the signed road test form required by paragraph (d) of this section; and
- (2) The original, or a copy of, the certificate required by paragraph (e) of this section.

[35 FR 6460, Apr. 22, 1970, as amended at 36 FR 223, Jan. 7, 1971; 59 FR 8752, Feb. 23, 1994; 60 FR 38744, July 28, 1995]

§ 391.33 Equivalent of road test.

(a) In place of, and as equivalent to, the road test required by §391.31, a person who seeks to drive a commercial motor vehicle may present, and a motor carrier may accept—

- (1) A valid Commercial Driver's License as defined in §383.5 of this subchapter, but not including double/triple trailer or tank vehicle endorsements, which has been issued to him/her to operate specific categories of commercial motor vehicles and which, under the laws of that State, licenses him/her after successful completion of a road test in a commercial motor vehicle of the type the motor carrier intends to assign to him/her; or
- (2) A copy of a valid certificate of driver's road test issued to him/her pursuant to §391.31 within the preceding 3 years.

(b) If a driver presents, and a motor carrier accepts, a license or certificate as equivalent to the road test, the motor carrier shall retain a legible copy of the license or certificate in its files as part of the driver's qualification file.

(c) A motor carrier may require any person who presents a license or certificate as equivalent to the road test to take a road test or any other test of

his/her driving skill as a condition to his/her employment as a driver.

[35 FR 6460, Apr. 22, 1970, as amended at 60 FR 38744, July 28, 1995; 63 FR 33277, June 18, 1998]

Subpart E—Physical Qualifications and Examinations

§ 391.41 Physical qualifications for drivers.

(a)(1)(i) A person subject to this part must not operate a commercial motor vehicle unless he or she is medically certified as physically qualified to do so, and, except as provided in paragraph (a)(2) of this section, when on-duty has on his or her person the original, or a copy, of a current medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle. NOTE: Effective December 29, 1991, the FMCSA Administrator determined that the new Licencia Federal de Conductor issued by the United Mexican States is recognized as proof of medical fitness to drive a CMV. The United States and Canada entered into a Reciprocity Agreement, effective March 30, 1999, recognizing that a Canadian commercial driver's license is proof of medical fitness to drive a CMV. Therefore, Canadian and Mexican CMV drivers are not required to have in their possession a medical examiner's certificate if the driver has been issued, and possesses, a valid commercial driver license issued by the United Mexican States, or a Canadian Province or Territory and whose license and medical status, including any waiver or exemption, can be electronically verified. Drivers from any of the countries who have received a medical authorization that deviates from the mutually accepted compatible medical standards of the resident country are not qualified to drive a CMV in the other countries. For example, Canadian drivers who do not meet the medical fitness provisions of the Canadian National Safety Code for Motor Carriers, but are issued a waiver by one of the Canadian Provinces or Territories, are not qualified to drive a CMV in the United States. In addition, U.S. drivers who received a medical variance from FMCSA are not qualified to drive a CMV in Canada.

(ii) A person who qualifies for the medical examiner's certificate by virtue of having obtained a medical variance from FMCSA, in the form of an exemption letter or a skill performance evaluation certificate, must have on his or her person a copy of the variance documentation when on-duty.

(2) *CDL exception.* (i) Beginning January 30, 2012, a driver required to have a commercial driver's license under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with § 383.71(h) of this chapter documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy. If there is no medical certification information on that driver's CDLIS motor vehicle record defined at 49 CFR 384.105, a current medical examiner's certificate issued prior to January 30, 2012, will be accepted until January 30, 2014. After January 30, 2014, a driver may use a copy of the current medical examiner's certificate that was submitted to the State for up to 15 days after the date it was issued as proof of medical certification.

(ii) A CDL holder required by § 383.71(h) to obtain a medical examiner's certificate, who obtained such by virtue of having obtained a medical variance from FMCSA, must continue to have in his or her possession the original or copy of that medical variance documentation at all times when on-duty.

(3) A person is physically qualified to drive a commercial motor vehicle if:

(i) That person meets the physical qualification standards in paragraph (b) of this section and has complied with the medical examination requirements in § 391.43; or

(ii) That person obtained from FMCSA a medical variance from the physical qualification standards in paragraph (b) of this section and has complied with the medical examination requirement in § 391.43.

(b) A person is physically qualified to drive a commercial motor vehicle if that person—

(1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a skill

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performance evaluation certificate pursuant to § 391.49;

(2) Has no impairment of:

(i) A hand or finger which interferes with prehension or power grasping; or

(ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a skill performance evaluation certificate pursuant to § 391.49.

(3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(4) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

(5) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his/her ability to control and drive a commercial motor vehicle safely;

(6) Has no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a commercial motor vehicle safely;

(7) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his/her ability to control and operate a commercial motor vehicle safely;

(8) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle;

(9) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his/her ability to drive a commercial motor vehicle safely;

(10) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen)

or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber;

(11) First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

(12)(i) Does not use a controlled substance identified in 21 CFR 1308.11 *Schedule I*, an amphetamine, a narcotic, or any other habit-forming drug.

(ii) *Exception.* A driver may use such a substance or drug, if the substance or drug is prescribed by a licensed medical practitioner who:

(A) Is familiar with the driver's medical history and assigned duties; and

(B) Has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle; and

(13) Has no current clinical diagnosis of alcoholism.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 36 FR 223, Jan. 7, 1971; 36 FR 12857, July 8, 1971; 43 FR 56900, Dec. 5, 1978; 55 FR 3554, Feb. 1, 1990; 60 FR 38744, July 28, 1995; 62 FR 37152, July 11, 1997; 65 FR 59369, Oct. 5, 2000; 67 FR 61824, Oct. 2, 2002; 73 FR 73127, Dec. 1, 2008, 75 FR 28502, May 21, 2010]

§ 391.43 Medical examination; certificate of physical examination.

(a) Except as provided by paragraph (b) of this section, the medical examination shall be performed by a licensed medical examiner as defined in § 390.5 of this subchapter.

(b) A licensed optometrist may perform so much of the medical examination as pertains to visual acuity, field of vision, and the ability to recognize colors as specified in paragraph (10) of § 391.41(b).

(c) Medical examiners shall:

(1) Be knowledgeable of the specific physical and mental demands associated with operating a commercial motor vehicle and the requirements of this subpart, including the medical advisory criteria prepared by the FMCSA as guidelines to aid the medical examiner in making the qualification determination; and

(2) Be proficient in the use of and use the medical protocols necessary to adequately perform the medical examination required by this section.

(d) Any driver authorized to operate a commercial motor vehicle within an exempt intracity zone pursuant to § 391.62 of this part shall furnish the examining medical examiner with a copy of the medical findings that led to the issuance of the first certificate of medical examination which allowed the driver to operate a commercial motor vehicle wholly within an exempt intracity zone.

(e) Any driver operating under a limited exemption authorized by § 391.64 shall furnish the medical examiner with a copy of the annual medical findings of the endocrinologist, ophthalmologist or optometrist, as required under that section. If the medical examiner finds the driver qualified under the limited exemption in § 391.64, such fact shall be noted on the Medical Examiner's Certificate.

(f) The medical examination shall be performed, and its results shall be recorded, substantially in accordance with the following instructions and examination form. Existing forms may be used until current printed supplies are depleted or until September 30, 2004, whichever occurs first.

INSTRUCTIONS FOR PERFORMING AND RECORDING PHYSICAL EXAMINATIONS

The medical examiner must be familiar with 49 CFR 391.41, Physical qualifications for drivers, and should review these instructions before performing the physical examination. Answer each question "yes" or "no" and record numerical readings where indicated on the physical examination form.

The medical examiner must be aware of the rigorous physical, mental, and emotional demands placed on the driver of a commercial motor vehicle. In the interest of public safety, the medical examiner is required to certify that the driver does not have any physical, mental, or organic condition that

might affect the driver's ability to operate a commercial motor vehicle safely.

General information. The purpose of this history and physical examination is to detect the presence of physical, mental, or organic conditions of such a character and extent as to affect the driver's ability to operate a commercial motor vehicle safely. The examination should be conducted carefully and should at least include all of the information requested in the following form. History of certain conditions may be cause for rejection. Indicate the need for further testing and/or require evaluation by a specialist. Conditions may be recorded which do not, because of their character or degree, indicate that certification of physical fitness should be denied. However, these conditions should be discussed with the driver and he/she should be advised to take the necessary steps to insure correction, particularly of those conditions which, if neglected, might affect the driver's ability to drive safely.

General appearance and development. Note marked overweight. Note any postural defect, perceptible limp, tremor, or other conditions that might be caused by alcoholism, thyroid intoxication or other illnesses.

Head-eyes. When other than the Snellen chart is used, the results of such test must be expressed in values comparable to the standard Snellen test. If the driver wears corrective lenses for driving, these should be worn while driver's visual acuity is being tested. If contact lenses are worn, there should be sufficient evidence of good tolerance of and adaptation to their use. Indicate the driver's need to wear corrective lenses to meet the vision standard on the Medical Examiner's Certificate by checking the box, "Qualified only when wearing corrective lenses." In recording use distance vision use 20 feet as normal. Report all vision as a fraction with 20 as the numerator and the smallest type read at 20 feet as the denominator. Monocular drivers are not qualified to operate commercial motor vehicles in interstate commerce.

Ears. Note evidence of any ear disease, symptoms of aural vertigo, or Meniere's Syndrome. When recording hearing, record distance from patient at which a forced whispered voice can first be heard. For the whispered voice test, the individual should be stationed at least 5 feet from the examiner with the ear being tested turned toward the examiner. The other ear is covered. Using the breath which remains after a normal expiration, the examiner whispers words or random numbers such as 66, 18, 23, etc. The examiner should not use only sibilants (s-sounding test materials). The opposite ear should be tested in the same manner. If the individual fails the whispered voice test, the audiometric test should be administered. For the audiometric test, record decibel loss at 500 Hz, 1,000 Hz, and 2,000 Hz. Average the

decibel loss at 500 Hz, 1,000 Hz and 2,000 Hz and record as described on the form. If the individual fails the audiometric test and the whispered voice test has not been administered, the whispered voice test should be performed to determine if the standard applicable to that test can be met.

Throat. Note any irremediable deformities likely to interfere with breathing or swallowing.

Heart. Note murmurs and arrhythmias, and any history of an enlarged heart, congestive heart failure, or cardiovascular disease that is accompanied by syncope, dyspnea, or collapse. Indicate onset date, diagnosis, medication, and any current limitation. An electrocardiogram is required when findings so indicate.

Blood pressure (BP). If a driver has hypertension and/or is being medicated for hypertension, he or she should be recertified more frequently. An individual diagnosed with Stage 1 hypertension (BP is 140/90-159/99) may be certified for one year. At recertification, an individual with a BP equal to or less than 140/90 may be certified for one year; however, if his or her BP is greater than 140/90 but less than 160/100, a one-time certificate for 3 months can be issued. An individual diagnosed with Stage 2 (BP is 160/100-179/109) should be treated and a one-time certificate for 3-month certification can be issued. Once the driver has reduced his or her BP to equal to or less than 140/90, he or she may be recertified annually thereafter. An individual diagnosed with Stage 3 hypertension (BP equal to or greater than 180/110) should not be certified until his or her BP is reduced to 140/90 or less, and may be recertified every 6 months.

Lungs. Note abnormal chest wall expansion, respiratory rate, breath sounds including wheezes or alveolar rales, impaired respiratory function, dyspnea, or cyanosis. Abnormal finds on physical exam may require further testing such as pulmonary tests and/or x-ray of chest.

Abdomen and Viscera. Note enlarged liver, enlarged spleen, abnormal masses, bruits, hernia, and significant abdominal wall muscle weakness and tenderness. If the diagnosis suggests that the condition might interfere with the control and safe operation of a commercial motor vehicle, further testing and evaluation is required.

Genital-urinary and rectal examination. A urinalysis is required. Protein, blood or sugar in the urine may be an indication for further testing to rule out any underlying medical problems. Note hernias. A condition causing discomfort should be evaluated to determine the extent to which the condition might interfere with the control and safe operation of a commercial motor vehicle.

Neurological. Note impaired equilibrium, coordination, or speech pattern; paresthesia;

asymmetric deep tendon reflexes; sensory or positional abnormalities; abnormal patellar and Babinski's reflexes; ataxia. Abnormal neurological responses may be an indication for further testing to rule out an underlying medical condition. Any neurological condition should be evaluated for the nature and severity of the condition, the degree of limitation present, the likelihood of progressive limitation, and the potential for sudden incapacitation. In instances where the medical examiner has determined that more frequent monitoring of a condition is appropriate, a certificate for a shorter period should be issued.

Spine, musculoskeletal. Previous surgery, deformities, limitation of motion, and tenderness should be noted. Findings may indicate additional testing and evaluation should be conducted.

Extremities. Carefully examine upper and lower extremities and note any loss or impairment of leg, foot, toe, arm, hand, or finger. Note any deformities, atrophy, paralysis, partial paralysis, clubbing, edema, or hypotonia. If a hand or finger deformity exists, determine whether prehension and power grasp are sufficient to enable the driver to maintain steering wheel grip and to control other vehicle equipment during routine and emergency driving operations. If a foot or leg deformity exists, determine whether sufficient mobility and strength exist to enable the driver to operate pedals properly. In the case of any loss or impairment to an extremity which may interfere with the driver's ability to operate a commercial motor vehicle safely, the medical examiner should state on the medical certificate "medically unqualified unless accompanied by a Skill Performance Evaluation Certificate." The driver must then apply to the Field Service Center of the FMCSA, for the State in which the driver has legal residence, for a Skill Performance Evaluation Certificate under § 391.49.

Laboratory and Other Testing. Other test(s) may be indicated based upon the medical history or findings of the physical examination.

Diabetes. If insulin is necessary to control a diabetic driver's condition, the driver is not qualified to operate a commercial motor vehicle in interstate commerce. If mild diabetes is present and it is controlled by use of an oral hypoglycemic drug and/or diet and exercise, it should not be considered disqualifying. However, the driver must remain under adequate medical supervision.

Upon completion of the examination, the medical examiner must date and sign the form, provide his/her full name, office address and telephone number. The completed medical examination form shall be retained on file at the office of the medical examiner.

649-F (6045)

**Medical Examination Report
FOR COMMERCIAL DRIVER FITNESS DETERMINATION**

1. DRIVER'S INFORMATION Driver completes this section

Driver's Name (Last, First, Middle) _____ Social Security No. _____ Birthdate _____ Age _____ Sex M F New Certification M F Follow-up Date of Exam _____

Address _____ City, State, Zip Code _____ Driver License No. _____ License Class A B C D Other _____

Work Tel: () _____ Home Tel: () _____

2. HEALTH HISTORY Driver completes this section, but medical examiner is encouraged to discuss with driver.

Yes <input type="checkbox"/> No <input type="checkbox"/> Any illness or injury in the last 5 years? Head/brain injuries, disorders or illnesses Seizures, epilepsy _____ medication	Yes <input type="checkbox"/> No <input type="checkbox"/> Lung disease, emphysema, asthma, chronic bronchitis Kidney disease, dialysis Liver disease Digestive problems Diabetes or elevated blood sugar controlled by: diet <input type="checkbox"/> pills <input type="checkbox"/> insulin <input type="checkbox"/> medication _____ Nervous or psychiatric disorders, e.g., severe depression _____ Loss of, or altered consciousness	Yes <input type="checkbox"/> No <input type="checkbox"/> Fainting, dizziness Sleep apnea, snoring, breathing while asleep, daytime sleepiness, loud snoring Stroke or parosmia Missing or impaired hand, arm, foot, leg, finger, toe Spinal injury or disease Chronic low back pain Regular, frequent alcohol use Narcotic or habit forming drug use
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For any YES answer, indicate onset date, diagnosis, treating physician's name and address, and any current limitation. List all medications (including over-the-counter medications) used regularly or recently.

I certify that the above information is complete and true. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate.

_____ Date _____

_____ Driver's Signature _____

Medical Examiner's Comments on Health History (The medical examiner must review and discuss with the driver any "yes" answers and potential hazards of medications, including over-the-counter medications, while driving. This discussion must be documented below.)

TESTING (Medical Examiner completes Section 3 through 7) Name: Last, First, Middle,

3. VISION Standard: At least 20/40 acuity (Snellen) in each eye with or without correction. At least 70 degrees peripheral in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate.

INSTRUCTIONS: When other than the Snellen chart is used, give test results in Snellen-comparable values. In recording distance vision, use 20 feet as normal. Report visual acuity as a ratio with 20 as numerator and the smallest type read as denominator. If the applicant wears corrective lenses, these should be worn while visual acuity is being tested. If the driver habitually wears contact lenses, or intends to do so while driving, sufficient evidence of good tolerance and adaptation to their use must be obvious. Monocular drivers are not qualified.

Numerical readings must be provided.

Table with columns: ACUITY, UNCORRECTED, CORRECTED, HORIZONTAL FIELD OF VISION. Rows for Right Eye, Left Eye, Both Eyes.

Applicant can recognize and distinguish among traffic control signals and devices showing standard red, green, and amber colors? Yes No

Applicant meets visual acuity requirement only when wearing: Corrective Lenses

Monocular Vision: Yes No

Complete next line only if vision testing is done by an ophthalmologist or optometrist

Date of Examination Name of Ophthalmologist or Optometrist (print) Tel. No. License No./ State of issue Signature

4. HEARING Standard: a) Must first perceive forced whispered voice > 5 ft., with or without hearing aid, or b) average hearing loss in better ear <= 40 dB. Check if hearing aid used for tests. Check if hearing aid required to meet standard.

INSTRUCTIONS: To convert audiometric test results from ISO to ANSI, -14 dB from ISO for 500Hz, -10dB for 1,000 Hz, -8.5 dB for 2000 Hz. To average, add the readings for 3 frequencies tested and divide by 3.

Numerical readings must be recorded. a) Record distance from individual at which forced whispered voice can first be heard. Right ear Left ear (Feet) (Feet)

Table for hearing test results with columns for Right Ear and Left Ear at 500 Hz, 1000 Hz, 2000 Hz, and Average.

5. BLOOD PRESSURE/PULSE RATE Numerical readings must be recorded. Medical Examiner should take at least two readings to confirm BP.

Table for Blood Pressure and Pulse Rate with columns for Systolic, Diastolic, Driver qualified if <=140/90, Pulse Rate (Regular/Irregular), Record Pulse Rate.

Table for Recertification with columns for Reading, Category, Expiration Date, Recertification.

6. LABORATORY AND OTHER TEST FINDINGS Numerical readings must be recorded.

Urinalysis is required. Protein, blood or sugar in the urine may be an indication for further testing to rule out any underlying medical problem. Other Testing (Describe and record)

Table for Urine Specimen, SP, GR, PROTEIN, BLOOD, SUGAR.

7. **PHYSICAL EXAMINATION** Height: _____ (in.) Weight: _____ (lbs.) Name: Last, _____ First, _____ Middle, _____

The presence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen or is readily amenable to treatment. Even if a condition does not disqualify a driver, the medical examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible particularly if the condition, if neglected, could result in more serious illness that might affect driving.

Check YES if there are any abnormalities. Check NO if the body system is normal. Discuss any YES answers in detail in the space below, and indicate whether it would affect the driver's ability to operate a commercial motor vehicle safely. Enter applicable item number before each comment. If organic disease is present, note that it has been compensated for. See *Instructions to the Medical Examiner* for guidance.

BODY SYSTEM	CHECK FOR:		BODY SYSTEM		CHECK FOR:		YES* NO		
	YES	NO	YES	NO	YES	NO	YES	NO	
1. General Appearance			Marked overweight, tremor, signs of alcoholism, problem drinking, or drug abuse.		7. Abdomen and Viscera		Enlarged liver, enlarged spleen, masses, bruits, hernia, significant abdominal wall muscle weakness.		
2. Eyes			Pupillary equality, reaction to light, accommodation, ocular motility, ocular muscle imbalance, extraocular movement, nystagmus, exophthalmos. Ask about retinopathy, cataracts, aphakia, glaucoma, macular degeneration and refer to a specialist if appropriate.		8. Vascular System		Abnormal pulse and amplitude, carotid or arterial bruits, varicose veins.		
3. Ears			Scarring of tympanic membrane, occlusion of external canal, perforated eardrums.		9. Genito-urinary System		Hemias.		
4. Mouth and Throat			Irremediable deformities likely to interfere with breathing or swallowing.		10. Extremities- Limb		Loss or impairment of leg, foot, toe, arm, hand, finger, Perceptible limp, deformities, atrophy, weakness, paralysis, clubbing, edema, hypohemia. Insufficient grasp and prehension in upper limb to maintain steering wheel grip. Insufficient mobility and strength in lower limb to operate pedals properly.		
5. Heart			Murmurs, extra sounds, enlarged heart, pacemaker, implantable defibrillator.		11. Spine, other musculoskeletal		Previous surgery, deformities, limitation of motion, tenderness.		
6. Lungs and chest, not including breast examination			Abnormal chest wall expansion, abnormal respiratory rate, abnormal breath sounds including wheezes or alveolar rales, impaired respiratory function, cyanosis. Abnormal findings on physical exam may require further testing such as pulmonary tests and/ or x-ray of chest.		12. Neurological		Impaired equilibrium, coordination of speech pattern, asymmetric deep tendon reflexes, sensory or positional abnormalities, abnormal patellar and Babinski's reflexes, ataxia.		

*COMMENT: _____

Note certification status here. See *Instructions to the Medical Examiner* for guidance.

Meets standards in 49 CFR 391.41; qualifies for 2 year certificate
 Does not meet standards
 Meets standards, but periodic monitoring required due to _____
 Driver qualified only for _____ months 6 months 1 year Other _____

Temporarily disqualified due to (condition or medication): _____
 Return to medical examiner's office for follow up on _____

Medical Examiner's signature: _____
 Address: _____
 Telephone Number: _____

If meets standards, complete a Medical Examiner's Certificate as stated in 49 CFR 391.43(n). (Driver must carry certificate when operating a commercial vehicle.)

49 CFR 391.41 Physical Qualifications for Drivers

THE DRIVER'S ROLE

Responsibilities, work schedules, physical and emotional demands, and lifestyles among commercial drivers vary by the type of driving that they do. Some of the main types of drivers include the following: turn around or short relay (drivers return to their home base each evening); long relay (drivers drive 9-11 hours and then have at least a 10-hour off-duty period); straight through haul (cross country drivers); and team drivers (drivers share the driving by alternating their 5-hour driving periods and 5-hour rest periods.)

The following factors may be involved in a driver's performance of duties: abrupt schedule changes and rotating work schedules, which may result in irregular sleep patterns and a driver beginning a trip in a fatigued condition; long hours; extended time away from family and friends, which may result in lack of social support; tight pickup and delivery schedules, with irregularity in work, rest, and eating patterns, adverse road, weather and traffic conditions, which may cause delays and lead to hurriedly loading or unloading cargo in order to compensate for the lost time; and environmental conditions such as excessive vibration, noise, and extremes in temperature. Transporting passengers or hazardous materials may add to the demands on the commercial driver.

There may be duties in addition to the driving task for which a driver is responsible and needs to be fit. Some of these responsibilities are: coupling and uncoupling trailer(s) from the tractor, loading and unloading trailer(s) (sometimes a driver may lift a heavy load or unload as much as 50,000 lbs. of freight after sitting for a long period of time without any stretching period); inspecting the operating condition of tractor and/or trailer(s) before, during and after delivery of cargo; lifting, installing, and removing heavy tire chains; and, lifting heavy tarpaulins to cover open top trailers. The above tasks demand agility, the ability to bend and stoop, the ability to maintain a crouching position to inspect the underside of the vehicle, frequent entering and exiting of the cab, and the ability to climb ladders on the tractor and/or trailer(s). In addition, a driver must have the perceptual skills to monitor a sometimes complex driving situation, the judgment skills to make quick decisions, when necessary, and the manipulative skills to control an oversize steering wheel, shift gears using a manual transmission, and maneuver a vehicle in crowded areas.

§391.45 PHYSICAL QUALIFICATIONS FOR DRIVERS

(a) A person shall not drive a commercial motor vehicle unless he is physically qualified to do so and, except as provided in §391.67, has on his person the original, or a photographic copy, of a medical examiner's certificate that he is physically qualified to drive a commercial motor vehicle.

(b) A person is physically qualified to drive a motor vehicle if that person:

- (1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a Skill Performance Evaluation (SPE) Certificate (formerly Limb Waiver Program) pursuant to §391.49.
- (2) Has no impairment of: (i) A hand or finger which interferes with prehension or power grasping; or (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a SPE Certificate pursuant to §391.49.
- (3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;
- (4) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure;
- (5) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his ability to control and drive a commercial motor vehicle safely.
- (6) Has no current clinical diagnosis of high blood pressure likely to interfere with his ability to operate a commercial motor vehicle safely.

(7) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his ability to control and operate a commercial motor vehicle safely.

(8) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle;

(9) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his ability to drive a commercial motor vehicle safely;

(10) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green and amber.

(11) First perceives a forced whispered voice in the better ear not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz and 2,000 Hz with or without a hearing device when the audiometric device is calibrated to the American National Standard (formerly ASA Standard) Z24.5-1951;

(12) (i) Does not use a controlled substance identified in 21 CFR 1308.11, Schedule I, an amphetamine, a narcotic, or any other habit-forming drug. (ii) Exception: A driver may use such a substance or drug, if the substance or drug is prescribed by a licensed medical practitioner who: (A) is familiar with the driver's medical history and assigned duties; and (B) Has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle; and (13) Has no current clinical diagnosis of alcoholism.

INSTRUCTIONS TO THE MEDICAL EXAMINER

General Information

The purpose of this examination is to determine a driver's physical qualification to operate a commercial motor vehicle (CMV) in interstate commerce according to the requirements in 49 CFR 391.41-49. Therefore, the medical examiner must be knowledgeable of these requirements and guidelines developed by the FMCSA to assist the medical examiner in making the qualification determination. The medical examiner should be familiar with the driver's responsibilities and work environment and is referred to the section on the form, **The Driver's Role**.

In addition to reviewing the **Health History** section with the driver and conducting the physical examination, the medical examiner should discuss common prescriptions and over-the-counter medications relative to the side effects and hazards of these medications while driving. Educate the driver to read warning labels on all medications. History or certain conditions may be cause for rejection, particularly if required by regulation, or may indicate the need for additional laboratory tests or more stringent examination perhaps by a medical specialist. These decisions are usually made by the medical examiner in light of the driver's job responsibilities, work schedule and potential for the conditions to render the driver unsafe.

Medical conditions should be recorded even if they are not cause for denial, and they should be discussed with the driver to encourage appropriate remedial care. This advice is especially needed when a condition, if neglected, could develop into a serious illness that could affect driving.

If the medical examiner determines that the driver is fit to drive and is also able to perform non-driving responsibilities as may be required, the medical examiner signs the medical certificate which the driver must carry with his/her license. The certificate must be dated. Under current regulations, the certificate is valid for two years, unless the driver has a medical condition that does not prohibit driving but does require more frequent monitoring. In such situations, the medical certificate should be issued for a shorter length of time. The physical examination should be done carefully and at least as complete as is indicated by the attached form. Contact the FMCSA at (202) 366-1790 for further information (a vision exemption, qualifying drivers under 49 CFR 391.64, etc.).

Interpretation of Medical Standards

Since the issuance of the regulations for physical qualifications of commercial drivers, the Federal Motor Carrier Safety Administration (FMCSA) has published recommendations called Advisory Criteria to help medical examiners in determining whether a driver meets the physical qualifications for commercial driving. These recommendations have been condensed to provide information to medical examiners that (1) is directly relevant to the physical examination and (2) is not already included in the medical examination form. The specific regulation is printed in *italics* and its reference by section is highlighted.

Federal Motor Carrier Safety Regulations
-Advisory Criteria-

Loss of Limb:

§ 391.41(b)(1).
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no loss of a foot, leg, hand or an arm, or has been granted a Skill Performance Evaluation (SPE) Certificate pursuant to Section 391.49.

Limb Impairment:

§ 391.41(b)(2).
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no impairment of: (i) A hand or finger which interferes with prehension or power grasping; or (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or (iii) Any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or (iv) Has been granted a Skill Performance Evaluation (SPE) Certificate pursuant to Section 391.49, whose limb impairment in any way interferes with the safe performance of normal tasks associated with operating a commercial motor vehicle is subject to the Skill Performance Evaluation, Certification Program pursuant to section 391.49, assuming the person is otherwise qualified.
With the advancement of technology, medical aids and equipment modifications have been developed to compensate for certain disabilities. The SPE Certification Program (formerly the Limb Waiver Program) was designed to allow persons with the loss of a foot or limb or with functional impairment to qualify under the Federal Motor Carrier Safety Regulations (FMCSRs) by use of prosthetic devices or equipment modifications which enable them to safely operate a commercial motor vehicle. Since there are no medical aids equivalent to the original body or limb, certain risks are present, and thus the conditions may be indicated on individual SPE forms. The FMCSA determines whether the FMCSA determines they are necessary to be consistent with safety and public interest.

If the driver is found otherwise medically qualified (391.41(b)(3) through (13)), the medical examiner must check on the medical certificate that the driver is qualified only if accompanied by a SPE certificate. The driver and the employing motor carrier are subject to appropriate penalty if the driver operates a motor vehicle in interstate or foreign commerce without a current SPE certificate for his/her physical disability.

Diabetes

§ 391.41(b)(3).
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

Diabetes mellitus is a disease which, on occasion, can result in a loss of consciousness or disorientation in time and space. Individuals who require insulin for control have conditions which can get out of control by the use of too much or too little insulin, or food intake not consistent with the insulin dosage. Incapacitation may occur from symptoms of hyperglycemic or hypoglycemic reactions (drowsiness, semiconsciousness, diabetic coma or insulin shock). The administration of insulin is, within itself, a complicated process requiring insulin, syringe, needle, alcohol sponge and a sterile technique. Factors related to long-haul commercial motor vehicle operations, such as fatigue, lack of sleep, poor diet, emotional conditions, stress, and concomitant illness, compound the dangers. The FMCSA has consistently held that a diabetic who uses insulin for control does not meet the minimum physical requirements of the FMCSRs.

Hypoglycemic drugs, taken orally, are sometimes prescribed for diabetic individuals to help stimulate natural body production of insulin. If the condition can be controlled by the use of oral medication and diet, then an individual may be qualified under the present rule. CMV drivers who do not meet the Federal diabetes standard may call (202) 366-1790 for an application for a diabetes waiver. (See Conference Report on Diabetic Disorders and Commercial Drivers and Insulin-Using Commercial Motor Vehicle Drivers at: <http://www.fmcsa.dot.gov/rulesregs/imedreports.htm>)

Cardiovascular Condition

§ 391.41(b)(4).
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis or any other cardiovascular disease of a variety known to be accompanied by syncope, dizziness, collapse or congestive cardiac failure.
The term "has no current clinical diagnosis of" is specific to the term "has no current clinical diagnosis of" or (1) a current cardiovascular condition or (2) a cardiovascular condition which has not fully stabilized regardless of the time limit. The term "known to be

on maximal or near-maximal doses of 2-3 pharmacologic agents. Some causes of secondary hypertension may be amenable to surgical intervention or specific pharmacologic disease. (See Cardiovascular Advisory Panel Guidelines for the Medical Examination of Commercial Motor Vehicle Drivers at: <http://www.fmcsa.dot.gov/rulesregs/mredreports.htm>)

Rheumatic, Arthritic, Orthopedic, Muscular, Neuromuscular or Vascular Disease §391.41(b)(7)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease which interferes with the ability to control and operate a commercial motor vehicle safely.

Certain diseases are known to have acute episodes of transient muscle weakness, poor muscular coordination (ataxia), abnormal sensations (paresthesia), decreased muscular tone (hypotonia), visual disturbances and pain which may be suddenly incapacitating. With each recurring episode, these symptoms may become more pronounced and remain for longer periods of time. Other diseases have more insidious onsets and display symptoms of muscle wasting (atrophy), swelling and paresthesia which may not suddenly incapacitate a person but may restrict his/her movements and eventually interfere with the ability to safely operate a motor vehicle. In many instances these diseases are degenerative in nature or may result in deterioration of the involved area.

Once the individual has been diagnosed as having a rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease, when he/she has an established history of that disease. The physician, in examining an individual, should consider the following: (1) the nature and severity of the individual's condition (such as sensory loss or loss of strength); (2) the degree of limitation present (such as range of motion); (3) the likelihood of progressive limitation (not always present initially but may manifest itself over time); and (4) the likelihood of sudden incapacitation. If severe functional impairment exists, the driver does not qualify. In cases where more frequent monitoring is required, a certificate for a shorter period of time may be issued. (See Conference on Neurological Disorders and Commercial Drivers at: <http://www.fmcsa.dot.gov/rulesregs/mredreports.htm>)

(See Conference on Pulmonary/Respiratory Disorders and Commercial Drivers at: <http://www.fmcsa.dot.gov/rulesregs/mredreports.htm>)

Hypertension §391.41(b)(6)

A person is physically qualified to drive a commercial motor vehicle if that person:
Has no current clinical diagnosis of high blood pressure which interferes with ability to operate a commercial motor vehicle safely.

Hypertension alone is unlikely to cause sudden collapse; however, the likelihood increases when target organ damage, particularly cerebral vascular disease, is present. This regulatory criteria is based on FMCSA's

Cardiovascular Advisory Guidelines for the Examination of CMV Drivers, which used the Sixth Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure (1987).

Stage 1 hypertension corresponds to a systolic BP of 140-159 mmHg and/or a diastolic BP of 90-99 mmHg. The driver with a BP in this range is at low risk for hypertension-related acute incapacitation and may be medically certified to drive for a period of 6 months. Certification should be extended only if the driver's blood pressure thereafter should be at or less than 140/90. If less than 160/100, certification may be extended one time for 3 months.

A blood pressure of 160-179 systolic and/or 100-109 diastolic is considered Stage 2 hypertension, and the driver is not necessarily unqualified during evaluation and institution of treatment. The driver is given a one time certification of three months to reduce his or her blood pressure to less than or equal to 140/90. A blood pressure in this range is an absolute indication for anti-hypertensive drug therapy. Provided treatment is well tolerated and the driver demonstrates a BP value of 140/90 or less, he or she may be certified for the initial exam.

The driver is certified usually thereafter.
A blood pressure at or greater than 180 (systolic) and 110 (diastolic) is considered Stage 3, high risk for an acute BP-related event. The driver may not be qualified, even temporarily, until reduced to 140/90 or less and treatment is well tolerated. The driver may be certified for 6 months and biannually (every 6 months) thereafter if at recheck BP is 140/90 or less.

Annual recertification is recommended if the medical examiner does not know the severity of hypertension prior to treatment.

An elevated blood pressure finding should be confirmed by at least two subsequent measurements on different days.

Treatment includes nonpharmacologic and pharmacologic modalities as well as counseling to reduce other risk factors. Most antihypertensive medications also have side effects, the importance of which must be judged on an individual basis. Individuals must be alerted to the hazards of these medications while driving. Side effects of tolerance or syncope are particularly undesirable in commercial drivers.

Secondary hypertension is based on the above stages. Evaluation is warranted if patient is persistently hypertensive

accompanied by" is designed to include a clinical diagnosis of a cardiovascular disease (1) which is accompanied by symptoms of syncope, dyspnea, collapse or congestive cardiac failure; and/or (2) which is likely to cause syncope, dyspnea, collapse or congestive cardiac failure.

It is the intent of the FMCSRs to render unqualified, a driver who has a current cardiovascular disease which is accompanied by and/or likely to cause symptoms of syncope, dyspnea, collapse, or congestive cardiac failure. However, the subjective decision of whether the nature and severity of an individual's condition will likely cause incapacitation or syncope is based on the medical examiner's individual basis and qualification rests with the medical examiner and the motor carrier. In those cases where there is an occurrence of cardiovascular insufficiency (myocardial infarction, thrombosis, etc.), it is suggested before a driver is certified that he or she have a normal resting and stress electrocardiogram (ECG), no residual complications and no physical limitations, and is taking no medication likely to interfere with safe driving.

Coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not unqualifying. Implantable cardioverter defibrillators are disqualifying due to risk of syncope. Coumadin is a medical treatment which can improve the health and safety of the driver should not, by its use, unduly restrict the driver's ability to drive. The driver should be on the underlying medical condition(s) which require treatment and the general health of the driver. The FMCSA should be contacted at (202) 366-1750 for additional recommendations regarding the physical qualification of drivers on coumadin.

(See Cardiovascular Advisory Panel Guidelines for the Medical Examination of Commercial Motor Vehicle Drivers at: <http://www.fmcsa.dot.gov/rulesregs/mredreports.htm>)

Respiratory Dysfunction

§391.41(b)(5)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with ability to control and drive a commercial motor vehicle safely.

Since a driver must be alert at all times, any change in his or her mental state is in direct conflict with highway safety. Even the slightest impairment in respiratory function under emergency conditions (when greater oxygen supply is necessary for performance) may be detrimental to safe driving.

There are many conditions that interfere with oxygen exchange and may result in incapacitation, including emphysema, chronic asthma, carcinoma, tuberculosis, chronic bronchitis and sleep apnea. If the medical examiner determines that a driver's condition in any way is likely to interfere with the driver's ability to safely control and drive a commercial motor vehicle, the driver must be referred to a specialist for further evaluation and therapy. Anticoagulation therapy for deep vein thrombosis and/or pulmonary thromboembolism is not unqualifying once optimum dose is achieved, provided lower extremity venous examinations remain normal and the treating physician gives a favorable recommendation.

Epilepsy
§391.41(b)(6)
 A person is physically qualified to drive a commercial motor vehicle if that person:
 Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or seizure;
 Has no chronic functional disease characterized by seizures or episodes that occur without warning, resulting in loss of voluntary control which may lead to loss of consciousness and/or seizures. Therefore, the following drivers cannot be qualified: (1) a driver who has a medical history of epilepsy; (2) a driver who has a current clinical diagnosis of epilepsy; or (3) a driver who is taking antiseizure medication.
 If an individual has had a sudden episode of a nonepileptic seizure or loss of consciousness of unknown cause which did not require antiseizure medication, the decision as to whether that individual is qualified to drive a commercial motor vehicle is determined by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6 month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and antiseizure medication is not required, then the driver may be qualified.
 In those individual cases where a driver has a seizure or an episode of consciousness lost from a known medical condition (e.g., hypoglycemia, infectious disease, dehydration or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition and has no existing residual complications, and not taking antiseizure medication.
 Drivers with a history of epileptic/seizures off antiseizure medication and seizure-free for 10 years may be qualified to drive a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off antiseizure medication. (See Conference on Neurological Disorders and Commercial Drivers at: <http://www.fmcsa.dot.gov/rulesregs/medreports.htm>)

Mental Disorders
§391.41(b)(9)
 A person is physically qualified to drive a commercial motor vehicle if that person:
 Has no mental, nervous, organic or functional disease or psychiatric disorder likely to interfere with ability to drive a motor vehicle safely;
 Emotional or adjustment problems contribute directly to an individual's level of memory, reasoning, attention, and judgment. These problems often underlie physical disorders. A variety of functional disorders can cause drowsiness, dizziness, confusion, weakness or paralysis that may lead to incoordination, inattention, loss of functional control and susceptibility to accidents while driving. Physical fatigue, headache, impaired coordination, recurring physical ailments and chronic "ragging" pain may be present to such a degree that certification for commercial driving is inadvisable. Somatic and psychosomatic complaints should be thoroughly examined and documented. Disorders of a periodically incapacitating nature, even in the early stages of development, may warrant disqualification.
 Many bus and truck drivers have documented that "nervous trouble" related to neurotic, personality, or emotional or adjustment problems is responsible for a significant fraction of their preventable accidents. The degree to which an individual is able to appreciate, evaluate and adequately respond to environmental strain and emotional stress is critical when assessing an individual's mental alertness and flexibility to cope with emergencies.
 When examining the driver, it should be kept in mind that individuals who live under chronic emotional upsets may have deeply ingrained maladaptive or erratic behavior patterns. Excessively antagonistic, instinctive, impulsive, openly aggressive, paranoid or severely depressed behavior greatly interfere with the driver's ability to drive safely. Those individuals who are highly susceptible to frequent states of emotional instability (schizophrenia, affective psychoses, paranoia, anxiety or depressive neuroses) may warrant certification determination. See Psychiatric Conference Report for specific recommendations on the use of medications and potential hazards for driving. (See Conference on Psychiatric Disorders and Commercial Drivers at: <http://www.fmcsa.dot.gov/rulesregs/medreports.htm>)

Vision
§391.41(b)(10)
 A person is physically qualified to drive a commercial motor vehicle if that person:
 Has distant visual acuity of at least 20/40 (Snellen) in each eye with or without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, and near visual acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;
 Has no refractive error or degrees in the horizontal meridian in each eye and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.
 The term "ability to recognize the colors of" is interpreted to mean if a person can recognize and distinguish among traffic control signals and devices showing standard red, green and amber, he or she meets the minimum standard, even though he or she may have some type of color perception deficiency. If certain color perception tests are administered, (such as Anshar, Pseudoisochromatic, Tamy) and double findings are observed, the driver should be referred to a specialist who amber devices may be employed to determine the driver's ability to recognize these colors.
 Contact lenses are permissible if there is sufficient evidence to indicate that the driver has good tolerance and is well adapted to their use. Use of a contact lens in one eye for distance visual acuity and another lens in the other eye for near vision is not acceptable, nor telescopic lenses acceptable for the driving of commercial motor vehicles.
 An individual may be qualified to drive a CMV with the use of glasses or contact lenses, the latter situation shall be that of the Medical Examiner's Certificate. "Qualified only if wearing corrective lenses."
 CMV drivers who do not meet the Federal vision standard may call (202) 366-1790 for an application for a vision exemption. (See Visual Disorders and Commercial Drivers at: <http://www.fmcsa.dot.gov/rulesregs/medreports.htm>)

Hearing
§391.41(b)(11)
 A person is physically qualified to drive a commercial motor vehicle if that person:
 First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ADA Standard) Z24.5-1954; CSES is the preferred method for hearing tests. The Federal Motor Carrier American Standards Association (ANSI) may be used to convert the audiometric results from the ISO standard to the ANSI standard. Instructions are included on the Medical Examination report form.
 If an individual meets the criteria by using a hearing aid, the driver must wear that hearing aid and have it in operation at all times while driving. Also, the driver must be in possession of a spare power source for the hearing aid.
 For the whispered voice test, the individual should be standing with the back to the examiner. The other ear is covered using the breath which remains after a normal expiration, the examiner whispers words or random numbers such as 66, 18,

23, etc. The examiner should not use only sibilants (s sounding materials). The opposite ear should be tested in the same manner. If the individual fails the whispered voice test, the audiometric test should be administered.

If an individual meets the criteria by the use of a hearing aid, the following statement must appear on the Medical Examiner's Certificate "Qualified only when wearing a hearing aid."

(See Hearing Disorders and Commercial Motor Vehicle Drivers at: <http://www.fmcsa.dot.gov/rulesregaffairs/medrpts.htm>)

Drug Use
§ 391.41(b)(12)
 A person is physically qualified to drive a commercial motor vehicle if that person:
Does not use a controlled substance identified in 21 CFR 1308.11, Schedule I, an amphetamine, a narcotic, or any other habit-forming drug.
Exception: A driver may use such a substance or drug, if the substance or drug is prescribed by a licensed medical practitioner who is familiar with the driver's medical history, and the driver is not aware of any other substance or drug that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

This exception does not apply to methadone. The intent of the medical certification process is to medically evaluate a driver to ensure that the driver has no medical condition which interferes with the safe performance of driving a commercial motor vehicle. A driver on a Schedule I drug or other substance (amphetamine, narcotic, or any other habit-forming drug), it may be cause for the driver to be found medically unqualified. Motor carriers are encouraged to obtain a practitioner's written statement about the effects on transportation safety of the use of a particular drug.

A test for controlled substances is not required as part of this biennial certification process. The FMCSA or the driver's employer should be notified if a driver uses any prohibited substance and alcohol testing under Part 392 of the FMCSRs.

The term "uses" is designed to encompass instances of prohibited drug use determined by a physician through established medical means. This may or may not involve body fluid testing. If body fluid testing takes place, positive test results should be confirmed by a second test of greater specificity. The use of monitoring devices to include breath-alcohol or medication therapy required capability of being used, which may impair the user's ability to operate a commercial motor vehicle safely.

The driver is medically unqualified for the duration of the prohibited drug(s) use and until a second examination shows the driver is free from the prohibited drug(s) use. Recertification may involve a substance abuse evaluation, the substance abuse treatment program, and a reexamination test suit. A driver who fails the certification program is normally two years. The examiner has the option to certify for a period of less than 2 years if this examiner determines more frequent monitoring is required.

(See Conference on Neurological Disorders and Commercial Drivers and Conference on Psychiatric Disorders and Commercial Drivers at: <http://www.fmcsa.dot.gov/rulesregaffairs/medrpts.htm>)

Alcoholism
§ 391.41(b)(13)
 A person is physically qualified to drive a commercial motor vehicle if that person:
Has no current clinical diagnosis of alcoholism.
The term "current clinical diagnosis of alcoholism" is specifically designed to encompass a current alcoholic illness or those instances where the individual's physical condition has not fully stabilized, regardless of the time element. If an individual shows signs of having an alcohol-use problem, he or she should be referred to a specialist. After counseling and/or treatment, he or she may be considered for certification.

(g)(1) If the medical examiner finds that the person examined is physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b), the medical examiner should complete a certificate in the form prescribed in paragraph (h) of this section and furnish the original to the person who was examined. The examiner may provide a copy to a prospective or cur-

rent employing motor carrier who requests it.

(2) For all drivers examined, the medical examiner should retain a copy of the Medical Examination Report at least 3 years from the date of the examination. If the driver was certified as physically qualified, then the medical examiner should also retain the medical certificate as well for at least

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3-years from the date the certificate was issued.

(h) The medical examiner's certificate shall be substantially in accord-

ance with the following form. Existing forms may be used until current printed supplies are depleted or until November 6, 2001, whichever occurs first.

MEDICAL EXAMINER'S CERTIFICATE

I certify that I have examined _____ in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) and with knowledge of the driving duties, I find this person is qualified, and, if applicable, only when:

wearing corrective lenses _____ driving within an exempt intracity zone (49 CFR 391.62)

wearing hearing aid _____ accompanied by a Skill Performance Evaluation Certificate (SPE)

accompanied by a _____ waiver/exemption _____ Qualified by operation of 49 CFR 391.64

The information I have provided regarding this physical examination is true and complete. A complete examination form with any attachment embodies my findings completely and correctly, and is on file in my office.

SIGNATURE OF MEDICAL EXAMINER _____ TELEPHONE _____ DATE _____

MEDICAL EXAMINER'S NAME (PRINT) _____ MD DO Chiropractor
 Physician Assistant Advanced Practice Nurse

MEDICAL EXAMINER'S LICENSE OR CERTIFICATE NO. / ISSUING STATE _____

SIGNATURE OF DRIVER _____ DRIVER'S LICENSE NO. _____ STATE _____

ADDRESS OF DRIVER _____

MEDICAL CERTIFICATE EXPIRATION DATE _____

[35 FR 6460, Apr. 22, 1970]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 391.43, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 391.45 Persons who must be medically examined and certified.

Except as provided in § 391.67, the following persons must be medically examined and certified in accordance with § 391.43 as physically qualified to operate a commercial motor vehicle:

(a) Any person who has not been medically examined and certified as physically qualified to operate a commercial motor vehicle;

(b)(1) Any driver who has not been medically examined and certified as qualified to operate a commercial motor vehicle during the preceding 24 months; or

(2) Any driver authorized to operate a commercial motor vehicle only with an exempt intracity zone pursuant to § 391.62, or only by operation of the exemption in § 391.64, if such driver has not been medically examined and certified as qualified to drive in such zone during the preceding 12 months; and

(c) Any driver whose ability to perform his/her normal duties has been impaired by a physical or mental injury or disease.

[35 FR 6460, Apr. 22, 1970, as amended at 36 FR 223, Jan. 7, 1971; 54 FR 12202, Mar. 24, 1989; 61 FR 13347, Mar. 26, 1996]

§ 391.47 Resolution of conflicts of medical evaluation.

(a) *Applications.* Applications for determination of a driver's medical qualifications under standards in this part will only be accepted if they conform to the requirements of this section.

(b) *Content.* Applications will be accepted for consideration only if the following conditions are met.

(1) The application must contain the name and address of the driver, motor carrier, and all physicians involved in the proceeding.

(2) The applicant must submit proof that there is a disagreement between the physician for the driver and the physician for the motor carrier concerning the driver's qualifications.

(3) The applicant must submit a copy of an opinion and report including results of all tests of an impartial medical specialist in the field in which the medical conflict arose. The specialist should be one agreed to by the motor carrier and the driver.

(i) In cases where the driver refuses to agree on a specialist and the applicant is the motor carrier, the applicant must submit a statement of his/her agreement to submit the matter to an impartial medical specialist in the field, proof that he/she has requested the driver to submit to the medical specialist, and the response, if any, of the driver to his/her request.

(ii) In cases where the motor carrier refuses to agree on a medical specialist, the driver must submit an opinion and test results of an impartial medical specialist, proof that he/she has requested the motor carrier to agree to submit the matter to the medical specialist and the response, if any, of the motor carrier to his/her request.

(4) The applicant must include a statement explaining in detail why the decision of the medical specialist identified in paragraph (b)(3) of this section, is unacceptable.

(5) The applicant must submit proof that the medical specialist mentioned in paragraph (b)(3) of this section was provided, prior to his/her determination, the medical history of the driver and an agreed-upon statement of the work the driver performs.

(6) The applicant must submit the medical history and statement of work provided to the medical specialist under paragraph (b)(5) of this section.

(7) The applicant must submit all medical records and statements of the physicians who have given opinions on the driver's qualifications.

(8) The applicant must submit a description and a copy of all written and documentary evidence upon which the party making application relies in the form set out in 49 CFR 386.37.

(9) The application must be accompanied by a statement of the driver that he/she intends to drive in interstate commerce not subject to the commercial zone exemption or a statement of the carrier that he/she has used or intends to use the driver for such work.

(10) The applicant must submit three copies of the application and all records.

(c) *Information.* The Director, Office of Bus and Truck Standards and Operations (MC-PSDPSD) may request further information from the applicant if

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he/she determines that a decision cannot be made on the evidence submitted. If the applicant fails to submit the information requested, the Director may refuse to issue a determination.

(d)(1) *Action.* Upon receiving a satisfactory application the Director, Office of Bus and Truck Standards and Operations (MC-PSDPSD) shall notify the parties (the driver, motor carrier, or any other interested party) that the application has been accepted and that a determination will be made. A copy of all evidence received shall be attached to the notice.

(2) *Reply.* Any party may submit a reply to the notification within 15 days after service. Such reply must be accompanied by all evidence the party wants the Director, Office of Bus and Truck Standards and Operations (MC-PSDPSD) to consider in making his/her determination. Evidence submitted should include all medical records and test results upon which the party relies.

(3) *Parties.* A party for the purposes of this section includes the motor carrier and the driver, or anyone else submitting an application.

(e) *Petitions to review, burden of proof.* The driver or motor carrier may petition to review the Director's determination. Such petition must be submitted in accordance with § 386.13(a) of this chapter. The burden of proof in such a proceeding is on the petitioner.

(f) *Status of driver.* Once an application is submitted to the Director, Office of Bus and Truck Standards and Operations (MC-PSDPSD), the driver shall be deemed disqualified until such time as the Director, Office of Bus and Truck Standards and Operations (MC-PSDPSD) makes a determination, or until the Director, Office of Bus and Truck Standards and Operations (MC-PSDPSD) orders otherwise.

(49 U.S.C. 304, 322; 18 U.S.C. 831-835; Pub. L. 93-633, 88 Stat. 8156 (49 U.S.C. 1801, *et seq.*); 49 CFR 1.48, 301.60)

[42 FR 18081, Apr. 5, 1977, as amended at 42 FR 53966, Oct. 4, 1977; 60 FR 38746, July 28, 1995]

§ 391.49 Alternative physical qualification standards for the loss or impairment of limbs.

(a) A person who is not physically qualified to drive under § 391.41(b)(1) or (b)(2) and who is otherwise qualified to drive a commercial motor vehicle, may drive a commercial motor vehicle, if the Division Administrator, FMCSA, has granted a Skill Performance Evaluation (SPE) Certificate to that person.

(b) *SPE certificate—(1) Application.* A letter of application for an SPE certificate may be submitted jointly by the person (driver applicant) who seeks an SPE certificate and by the motor carrier that will employ the driver applicant, if the application is accepted.

(2) *Application address.* The application must be addressed to the applicable field service center, FMCSA, for the State in which the co-applicant motor carrier's principal place of business is located. The address of each, and the States serviced, are listed in § 390.27 of this chapter.

(3) *Exception.* A letter of application for an SPE certificate may be submitted unilaterally by a driver applicant. The application must be addressed to the field service center, FMCSA, for the State in which the driver has legal residence. The driver applicant must comply with all the requirements of paragraph (c) of this section except those in (c)(1)(i) and (iii). The driver applicant shall respond to the requirements of paragraphs (c)(2)(i) to (v) of this section, if the information is known.

(c) A letter of application for an SPE certificate shall contain:

(1) Identification of the applicant(s):

(i) Name and complete address of the motor carrier coapplicant;

(ii) Name and complete address of the driver applicant;

(iii) The U.S. DOT Motor Carrier Identification Number, if known; and

(iv) A description of the driver applicant's limb impairment for which SPE certificate is requested.

(2) Description of the type of operation the driver will be employed to perform:

(i) State(s) in which the driver will operate for the motor carrier co-applicant (if more than 10 States, designate general geographic area only);

(ii) Average period of time the driver will be driving and/or on duty, per day;

(iii) Type of commodities or cargo to be transported;

(iv) Type of driver operation (*i.e.*, sleeper team, relay, owner operator, etc.); and

(v) Number of years experience operating the type of commercial motor vehicle(s) requested in the letter of application and total years of experience operating all types of commercial motor vehicles.

(3) Description of the commercial motor vehicle(s) the driver applicant intends to drive:

(i) Truck, truck tractor, or bus make, model, and year (if known);

(ii) Drive train;

(A) Transmission type (automatic or manual—if manual, designate number of forward speeds);

(B) Auxiliary transmission (if any) and number of forward speeds; and

(C) Rear axle (designate single speed, 2 speed, or 3 speed).

(iii) Type of brake system;

(iv) Steering, manual or power assisted;

(v) Description of type of trailer(s) (*i.e.*, van, flatbed, cargo tank, drop frame, lowboy, or pole);

(vi) Number of semitrailers or full trailers to be towed at one time;

(vii) For commercial motor vehicles designed to transport passengers, indicate the seating capacity of commercial motor vehicle; and

(viii) Description of any modification(s) made to the commercial motor vehicle for the driver applicant; attach photograph(s) where applicable.

(4) Otherwise qualified:

(i) The coapplicant motor carrier must certify that the driver applicant is otherwise qualified under the regulations of this part;

(ii) In the case of a unilateral application, the driver applicant must certify that he/she is otherwise qualified under the regulations of this part.

(5) Signature of applicant(s):

(i) Driver applicant's signature and date signed;

(ii) Motor carrier official's signature (if application has a coapplicant), title, and date signed. Depending upon the motor carrier's organizational structure (corporation, partnership, or proprietorship), the signer of the application shall be an officer, partner, or the proprietor.

(d) The letter of application for an SPE certificate shall be accompanied by:

(1) A copy of the results of the medical examination performed pursuant to § 391.43;

(2) A copy of the medical certificate completed pursuant to § 391.43(h);

(3) A medical evaluation summary completed by either a board qualified or board certified physiatrist (doctor of physical medicine) or orthopedic surgeon. The coapplicant motor carrier or the driver applicant shall provide the physiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant will be required to perform;

(i) The medical evaluation summary for a driver applicant disqualified under § 391.41(b)(1) shall include:

(A) An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle; and

(B) A statement by the examiner that the applicant is capable of demonstrating precision prehension (*e.g.*, manipulating knobs and switches) and power grasp prehension (*e.g.*, holding and maneuvering the steering wheel) with each upper limb separately. This requirement does not apply to an individual who was granted a waiver, absent a prosthetic device, prior to the publication of this amendment.

(ii) The medical evaluation summary for a driver applicant disqualified under § 391.41(b)(2) shall include:

(A) An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;

(B) An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and

(C) A statement by the examiner that the applicant is capable of demonstrating precision prehension (*e.g.*, manipulating knobs and switches) and power grasp prehension (*e.g.*, holding and maneuvering the steering wheel) with each upper limb separately. This requirement does not apply to an individual who was granted an SPE certificate, absent an orthotic device, prior to the publication of this amendment.

(4) A description of the driver applicant's prosthetic or orthotic device worn, if any;

(5) Road test:

(i) A copy of the driver applicant's road test administered by the motor carrier coapplicant and the certificate issued pursuant to §391.31(b) through (g); or

(ii) A unilateral applicant shall be responsible for having a road test administered by a motor carrier or a person who is competent to administer the test and evaluate its results.

(6) Application for employment:

(i) A copy of the driver applicant's application for employment completed pursuant to §391.21; or

(ii) A unilateral applicant shall be responsible for submitting a copy of the last commercial driving position's employment application he/she held. If not previously employed as a commercial driver, so state.

(7) A copy of the driver applicant's SPE certificate of certain physical defects issued by the individual State(s), where applicable; and

(8) A copy of the driver applicant's State Motor Vehicle Driving Record for the past 3 years from each State in which a motor vehicle driver's license or permit has been obtained.

(e) *Agreement.* A motor carrier that employs a driver with an SPE certificate agrees to:

(1) File promptly (within 30 days of the involved incident) with the Medical Program Specialist, FMCSA service center, such documents and information as may be required about driving activities, accidents, arrests, license suspensions, revocations, or withdrawals, and convictions which involve the driver applicant. This applies whether the driver's SPE certificate is a unilateral one or has a coapplicant motor carrier;

(i) A motor carrier who is a coapplicant must file the required documents with the Medical Program Specialist, FMCSA for the State in which the carrier's principal place of business is located; or

(ii) A motor carrier who employs a driver who has been issued a unilateral SPE certificate must file the required documents with the Medical Program Specialist, FMCSA service center, for the State in which the driver has legal residence.

(2) Evaluate the driver with a road test using the trailer the motor carrier intends the driver to transport or, in lieu of, accept a certificate of a trailer road test from another motor carrier if the trailer type(s) is similar, or accept the trailer road test done during the Skill Performance Evaluation if it is a similar trailer type(s) to that of the prospective motor carrier. Job tasks, as stated in paragraph (e)(3) of this section, are not evaluated in the Skill Performance Evaluation;

(3) Evaluate the driver for those non-driving safety related job tasks associated with whatever type of trailer(s) will be used and any other nondriving safety related or job related tasks unique to the operations of the employing motor carrier; and

(4) Use the driver to operate the type of commercial motor vehicle defined in the SPE certificate only when the driver is in compliance with the conditions and limitations of the SPE certificate.

(f) The driver shall supply each employing motor carrier with a copy of the SPE certificate.

(g) The State Director, FMCSA, may require the driver applicant to demonstrate his or her ability to safely operate the commercial motor vehicle(s) the driver intends to drive to an agent of the State Director, FMCSA. The SPE certificate form will identify the power unit (bus, truck, truck tractor) for which the SPE certificate has been granted. The SPE certificate forms will also identify the trailer type used in the Skill Performance Evaluation; however, the SPE certificate is not limited to that specific trailer type. A driver may use the SPE certificate with other trailer types if a successful trailer road test is completed in accordance with paragraph (e)(2) of this

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may be found necessary. This certificate may be renewed upon submission of a renewal application. Continuation of this certificate is dependent upon strict adherence by the above-named driver to the provisions set forth below and compliance with the FMCSRs. Any failure to comply with provisions herein may be cause for cancellation.

CONDITIONS: As a condition of this certificate, reports of all accidents, arrests, suspensions, revocations, withdrawals of driver licenses or permits, and convictions involving the above-named driver shall be reported in writing to the Issuing Agency by the EMPLOYING MOTOR CARRIER within 30 days after occurrence.

LIMITATIONS:

- 1. Vehicle Type (power unit):* _____
2. Vehicle modification(s): _____
3. Prosthetic or Orthotic device(s) (Required to be Worn While Driving): _____
4. Additional Provision(s): _____

NOTICE: To all MOTOR CARRIERS employing a driver with an SPE certificate. This certificate is granted for the operation of the power unit only. It is the responsibility of the employing motor carrier to evaluate the driver with a road test using the trailer type(s) the motor carrier intends the driver to transport, or in lieu of, accept the trailer road test done during the SPE if it is a similar trailer type(s) to that of the prospective motor carrier. Also, it is the responsibility of the employing motor carrier to evaluate the driver for those non-driving safety-related job tasks associated with the type of trailer(s) utilized, as well as, any other non-driving safety-related or job-related tasks unique to the operations of the employing motor carrier.

The SPE of the above named driver was given by a Skill Performance Evaluation Program Specialist. It was successfully completed utilizing the above named power unit and _____ (trailer, if applicable)

The tractor or truck had a _____ transmission.

Please read the NOTICE paragraph above.

Name: _____
Signature: _____
Title: _____
Date: _____

(k) The State Director, FMCSA, may revoke an SPE certificate after the person to whom it was issued is given notice of the proposed revocation and has been allowed a reasonable opportunity to appeal.

(l) Falsifying information in the letter of application, the renewal application, or falsifying information required

by this section by either the applicant or motor carrier is prohibited.

[65 FR 25287, May 1, 2000, as amended at 65 FR 59380, Oct. 5, 2000; 67 FR 61824, Oct. 2, 2002]

Subpart F—Files and Records

§ 391.51 General requirements for driver qualification files.

(a) Each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with his/her personnel file.

(b) The qualification file for a driver must include:

(1) The driver's application for employment completed in accordance with § 391.21;

(2) A copy of the motor vehicle record received from each State record pursuant to § 391.23(a)(1);

(3) The certificate of driver's road test issued to the driver pursuant to § 391.31(e), or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to § 391.33;

(4) The motor vehicle record received from each State driver licensing agency to the annual driver record inquiry required by § 391.25(a);

(5) A note relating to the annual review of the driver's driving record as required by § 391.25(c)(2);

(6) A list or certificate relating to violations of motor vehicle laws and ordinances required by § 391.27;

(7)(i) The medical examiner's certificate as required by § 391.43(g) or a legible copy of the certificate.

(ii) Exception. For CDL holders, beginning January 30, 2012, if the CDLIS motor vehicle record contains medical certification status information, the motor carrier employer must meet this requirement by obtaining the CDLIS motor vehicle record defined at § 384.105 of this chapter. That record must be obtained from the current licensing State and placed in the driver qualification file. After January 30, 2014, a non-excepted, interstate CDL holder without medical certification status information on the CDLIS motor vehicle record is designated "not-certified" to operate a CMV in interstate commerce. After January 30, 2014, a motor carrier may use a copy of the driver's

current medical examiner's certificate that was submitted to the State for up to 15 days from the date it was issued as proof of medical certification.

(iii) If that driver obtained the medical certification based on having obtained a medical variance from FMCSA, the motor carrier must also include a copy of the medical variance documentation in the driver qualification file in accordance with § 391.51(b)(8); and

(8) A Skill Performance Evaluation Certificate obtained from a Field Administrator, Division Administrator, or State Director issued in accordance with § 391.49; or the Medical Exemption document, issued by a Federal medical program in accordance with part 381 of this chapter.

(c) Except as provided in paragraph (d) of this section, each driver's qualification file shall be retained for as long as a driver is employed by that motor carrier and for three years thereafter.

(d) The following records may be removed from a driver's qualification file three years after the date of execution:

(1) The motor vehicle record received from each State driver licensing agency to the annual driver record inquiry required by § 391.25(a);

(2) The note relating to the annual review of the driver's driving record as required by § 391.25(c)(2);

(3) The list or certificate relating to violations of motor vehicle laws and ordinances required by § 391.27;

(4) The medical examiner's certificate required by § 391.43(g), a legible copy of the certificate, or for CDL drivers any CDLIS MVR obtained as required by § 391.51(b)(7)(ii); and

(5) Any medical variance issued by FMCSA, including a Skill Performance Evaluation Certificate issued in accordance with § 391.49; or the Medical Exemption letter issued by a Federal medical program in accordance with part 381 of this chapter.

(Approved by the Office of Management and Budget under control number 2126-004)

[63 FR 33277, June 18, 1998, as amended at 69 FR 16721, Mar. 30, 2004; 73 FR 73127, Dec. 1, 2008; 75 FR 28502, May 21, 2010]

§ 391.53 Driver investigation history file.

(a) After October 29, 2004, each motor carrier must maintain records relating to the investigation into the safety performance history of a new or prospective driver pursuant to paragraphs (d) and (e) of § 391.23. This file must be maintained in a secure location with controlled access.

(1) The motor carrier must ensure that access to this data is limited to those who are involved in the hiring decision or who control access to the data. In addition, the motor carrier's insurer may have access to the data, except the alcohol and controlled substances data.

(2) This data must only be used for the hiring decision.

(b) The file must include:

(1) A copy of the driver's written authorization for the motor carrier to seek information about a driver's alcohol and controlled substances history as required under § 391.23(d).

(2) A copy of the response(s) received for investigations required by paragraphs (d) and (e) of § 391.23 from each previous employer, or documentation of good faith efforts to contact them. The record must include the previous employer's name and address, the date the previous employer was contacted, and the information received about the driver from the previous employer. Failures to contact a previous employer, or of them to provide the required safety performance history information, must be documented.

(c) The safety performance histories received from previous employers for a driver who is hired must be retained for as long as the driver is employed by that motor carrier and for three years thereafter.

(d) A motor carrier must make all records and information in this file available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative, or an authorized third party, upon request or as

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part of any inquiry within the time period specified by the requesting representative.

(Approved by the Office of Management and Budget under control number 2126-004)

[69 FR 16721, Mar. 30, 2004]

§ 391.55 LCV Driver-Instructor qualification files.

(a) Each motor carrier must maintain a qualification file for each LCV driver-instructor it employs or uses. The LCV driver-instructor qualification file may be combined with his/her personnel file.

(b) The LCV driver-instructor qualification file must include the information in paragraphs (b)(1) and (b)(2) of this section for a skills instructor or the information in paragraph (b)(1) of this section for a classroom instructor, as follows:

(1) Evidence that the instructor has met the requirements of 49 CFR 380.301 or 380.303;

(2) A photographic copy of the individual's currently valid CDL with the appropriate endorsements.

[69 FR 16738, Mar. 30, 2004; 69 FR 28846, May 19, 2004]

Subpart G—Limited Exemptions

§ 391.61 Drivers who were regularly employed before January 1, 1971.

The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), and § 391.33 (relating to road tests) do not apply to a driver who has been a single-employer driver (as defined in § 390.5 of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he/she continues to be a single-employer driver of that motor carrier.

[63 FR 33278, June 18, 1998]

§ 391.62 Limited exemptions for intracity zone drivers.

The provisions of §§ 391.11(b)(1) and 391.41(b)(1) through (b)(11) do not apply to a person who:

(a) Was otherwise qualified to operate and operated a commercial motor vehicle in a municipality or exempt intracity zone thereof throughout the

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one-year period ending November 18, 1988;

(b) Meets all the other requirements of this section;

(c) Operates wholly within the exempt intracity zone (as defined in 49 CFR 390.5);

(d) Does not operate a vehicle used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under 49 U.S.C. chapter 51.; and

(e) Has a medical or physical condition which:

(1) Would have prevented such person from operating a commercial motor vehicle under the Federal Motor Carrier Safety Regulations contained in this subchapter;

(2) Existed on July 1, 1988, or at the time of the first required physical examination after that date; and

(3) The examining physician has determined this condition has not substantially worsened since July 1, 1988, or at the time of the first required physical examination after that date.

[61 FR 13346, Mar. 26, 1996; 61 FR 17253, Apr. 19, 1996]

§ 391.63 Multiple-employer drivers.

(a) If a motor carrier employs a person as a multiple-employer driver (as defined in § 390.5 of this subchapter), the motor carrier shall comply with all requirements of this part, except that the motor carrier need not—

(1) Require the person to furnish an application for employment in accordance with § 391.21;

(2) Make the investigations and inquiries specified in § 391.23 with respect to that person;

(3) Perform the annual driving record inquiry required by § 391.25(a);

(4) Perform the annual review of the person's driving record required by § 391.25(b); or

(5) Require the person to furnish a record of violations or a certificate in accordance with § 391.27.

(b) Before a motor carrier permits a multiple-employer driver to drive a commercial motor vehicle, the motor carrier must obtain his/her name, his/her social security number, and the identification number, type and issuing

State of his/her commercial motor vehicle operator's license. The motor carrier must maintain this information for three years after employment of the multiple-employer driver ceases.

(Approved by the Office of Management and Budget under control number 2125-0081)

[63 FR 33278, June 18, 1998]

§ 391.64 Grandfathering for certain drivers participating in vision and diabetes waiver study programs.

(a) The provisions of § 391.41(b)(3) do not apply to a driver who was a participant in good standing on March 31, 1996, in a waiver study program concerning the operation of commercial motor vehicles by insulin-controlled diabetic drivers; *provided*:

(1) The driver is physically examined every year, including an examination by a board-certified/eligible endocrinologist attesting to the fact that the driver is:

- (i) Otherwise qualified under § 391.41;
- (ii) Free of insulin reactions (an individual is free of insulin reactions if that individual does not have severe hypoglycemia or hypoglycemia unawareness, and has less than one documented, symptomatic hypoglycemic reaction per month);
- (iii) Able to and has demonstrated willingness to properly monitor and manage his/her diabetes; and
- (iv) Not likely to suffer any diminution in driving ability due to his/her diabetic condition.

(2) The driver agrees to and complies with the following conditions:

- (i) A source of rapidly absorbable glucose shall be carried at all times while driving;
- (ii) Blood glucose levels shall be self-monitored one hour prior to driving and at least once every four hours while driving or on duty prior to driving using a portable glucose monitoring device equipped with a computerized memory;
- (iii) Submit blood glucose logs to the endocrinologist or medical examiner at the annual examination or when otherwise directed by an authorized agent of the FMCSA;
- (iv) Provide a copy of the endocrinologist's report to the medical examiner at the time of the annual medical examination; and

(v) Provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State or local enforcement official.

(b) The provisions of § 391.41(b)(10) do not apply to a driver who was a participant in good standing on March 31, 1996, in a waiver study program concerning the operation of commercial motor vehicles by drivers with visual impairment in one eye; *provided*:

(1) The driver is physically examined every year, including an examination by an ophthalmologist or optometrist attesting to the fact that the driver:

- (i) Is otherwise qualified under § 391.41; and
- (ii) Continues to measure at least 20/40 (Snellen) in the better eye.

(2) The driver provides a copy of the ophthalmologist or optometrist report to the medical examiner at the time of the annual medical examination.

(3) The driver provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized federal, state or local enforcement official.

[61 FR 13346, Mar. 26, 1996]

§ 391.65 Drivers furnished by other motor carriers.

(a) A motor carrier may employ a driver who is not a regularly employed driver of that motor carrier without complying with the generally applicable driver qualification file requirements in this part, if—

- (1) The driver is regularly employed by another motor carrier; and
- (2) The motor carrier which regularly employs the driver certifies that the driver is fully qualified to drive a commercial motor vehicle in a written statement which—
 - (i) Is signed and dated by an officer or authorized employee of the regularly employing carrier;
 - (ii) Contains the driver's name and signature;
 - (iii) Certifies that the driver has been regularly employed as defined in § 390.5;

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(iv) Certifies that the driver is fully qualified to drive a commercial motor vehicle under the rules in part 391 of the Federal Motor Carrier Safety Regulations;

(v) States the expiration date of the driver's medical examiner's certificate;

(vi) Specifies an expiration date for the certificate, which shall be not longer than 2 years or, if earlier, the expiration date of the driver's current medical examiner's certificate; and

(vii) After April 1, 1977, is substantially in accordance with the following form:

(Name of driver)

(SS No.)

(Signature of driver)

I certify that the above named driver, as defined in §390.5 is regularly driving a commercial motor vehicle operated by the below named carrier and is fully qualified under part 391, Federal Motor Carrier Safety Regulations. His/her current medical examiner's certificate expires on _____ (Date)
This certificate expires:

(Date not later than expiration date of medical certificate)
Issued on _____ (date)
Issued by _____
(Name of carrier)
(Address)
(Signature)
(Title)

(b) A motor carrier that obtains a certificate in accordance with paragraph (a)(2) of this section shall:

(1) Contact the motor carrier which certified the driver's qualifications under this section to verify the validity of the certificate. This contact may be made in person, by telephone, or by letter.

(2) Retain a copy of that certificate in its files for three years.

(c) A motor carrier which certifies a driver's qualifications under this section shall be responsible for the accuracy of the certificate. The certificate is no longer valid if the driver leaves the employment of the motor carrier which issued the certificate or is no

longer qualified under the rules in this part.

[41 FR 36656, Aug. 31, 1976, as amended at 53 FR 18057, May 19, 1988; 60 FR 38745, July 28, 1995; 63 FR 33278, June 18, 1998; 67 FR 61824, Oct. 2, 2002]

§ 391.67 Farm vehicle drivers of articulated commercial motor vehicles.

The following rules in this part do not apply to a farm vehicle driver (as defined in §390.5 of this subchapter) who is 18 years of age or older and who drives an articulated commercial motor vehicle:

(a) Section 391.11(b)(1), (b)(6) and (b)(8) (relating to general qualifications of drivers);

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of drivers);

(c) Subpart D (relating to road tests); and

(d) Subpart F (relating to maintenance of files and records).

[63 FR 33278, June 18, 1998]

§ 391.68 Private motor carrier of passengers (nonbusiness).

The following rules in this part do not apply to a private motor carrier of passengers (nonbusiness) and its drivers:

(a) Section 391.11(b)(1), (b)(6) and (b)(8) (relating to general qualifications of drivers);

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers);

(c) So much of §§391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his/her person; and

(d) Subpart F (relating to maintenance of files and records).

[63 FR 33278, June 18, 1998]

§ 391.69 Private motor carrier of passengers (business).

The provisions of §391.21 (relating to applications for employment), §391.23 (relating to investigations and inquiries), and §391.31 (relating to road tests) do not apply to a driver who was a single-employer driver (as defined in §390.5 of this subchapter) of a private

motor carrier of passengers (business) as of July 1, 1994, so long as the driver continues to be a single-employer driver of that motor carrier.

[63 FR 33278, June 18, 1998]

§ 391.71 [Reserved]

**PART 392—DRIVING OF
COMMERCIAL MOTOR VEHICLES**

Subpart A—General

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- 392.1 Scope of the rules in this part.
- 392.2 Applicable operating rules.
- 392.3 Ill or fatigued operator.
- 392.4 Drugs and other substances.
- 392.5 Alcohol prohibition.
- 392.6 Schedules to conform with speed limits.
- 392.7 Equipment, inspection and use.
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- 392.9a Operating authority.

Subpart B—Driving of Commercial Motor Vehicles

- 392.10 Railroad grade crossings; stopping required.
- 392.11 Railroad grade crossings; slowing down required.
- 392.12–392.13 [Reserved]
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- 392.15 [Reserved]
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- 392.18 [Reserved]

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- 392.20–392.21 [Reserved]
- 392.22 Emergency signals; stopped commercial motor vehicles.
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Subpart D—Use of Lighted Lamps and Reflectors

- 392.30–392.32 [Reserved]
- 392.33 Obscured lamps or reflective devices/material.

Subpart E—License Revocation; Duties of Driver

- 392.40–392.41 [Reserved]

Subpart F—Fueling Precautions

- 392.50 Ignition of fuel; prevention.

- 392.51 Reserve fuel; materials of trade.
- 392.52 [Reserved]

Subpart G—Prohibited Practices

- 392.60 Unauthorized persons not to be transported.
- 392.61 [Reserved]
- 392.62 Safe operation, buses.
- 392.63 Towing or pushing loaded buses.
- 392.64 Riding within closed commercial motor vehicles without proper exits.
- 392.65 [Reserved]
- 392.66 Carbon monoxide; use of commercial motor vehicle when detected.
- 392.67 Heater, flame-producing; on commercial motor vehicle in motion.
- 392.68–392.69 [Reserved]
- 392.71 Radar detectors; use and/or possession.

Subpart H—Limiting the Use of Electronic Devices

- 392.80 Prohibition against texting.

AUTHORITY: 49 U.S.C. 13902, 31136, 31151, 31502; and 49 CFR 1.73.

SOURCE: 33 FR 19732, Dec. 25, 1968, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 392 appear at 66 FR 49874, Oct. 1, 2001.

Subpart A—General

§ 392.1 Scope of the rules in this part.

Every motor carrier, its officers, agents, representatives, and employees responsible for the management, maintenance, operation, or driving of commercial motor vehicles, or the hiring, supervising, training, assigning, or dispatching of drivers, shall be instructed in and comply with the rules in this part.

[53 FR 18057, May 19, 1988, as amended at 60 FR 38746, July 28, 1995]

§ 392.2 Applicable operating rules.

Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Motor Carrier Safety Administration regulation must be complied with.

[35 FR 7800, May 21, 1970, as amended at 60 FR 38746, July 28, 1995]

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motor carrier of passengers (business) as of July 1, 1994, so long as the driver continues to be a single-employer driver of that motor carrier.

[63 FR 33278, June 18, 1998]

§ 391.71 [Reserved]

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

Subpart A—General

Sec.

- 392.1 Scope of the rules in this part.
- 392.2 Applicable operating rules.
- 392.3 Ill or fatigued operator.
- 392.4 Drugs and other substances.
- 392.5 Alcohol prohibition.
- 392.6 Schedules to conform with speed limits.
- 392.7 Equipment, inspection and use.
- 392.8 Emergency equipment, inspection, and use.
- 392.9 Inspection of cargo, cargo securement devices and systems.
- 392.9a Operating authority.

Subpart B—Driving of Commercial Motor Vehicles

- 392.10 Railroad grade crossings; stopping required.
- 392.11 Railroad grade crossings; slowing down required.
- 392.12-392.13 [Reserved]
- 392.14 Hazardous conditions; extreme caution.
- 392.15 [Reserved]
- 392.16 Use of seat belts.
- 392.18 [Reserved]

Subpart C—Stopped Commercial Motor Vehicles

- 392.20-392.21 [Reserved]
- 392.22 Emergency signals; stopped commercial motor vehicles.
- 392.24 Emergency signals; flame-producing.
- 392.25 Flame producing devices.

Subpart D—Use of Lighted Lamps and Reflectors

- 392.30-392.32 [Reserved]
- 392.33 Obscured lamps or reflective devices/material.

Subpart E—License Revocation; Duties of Driver

- 392.40-392.41 [Reserved]

Subpart F—Fueling Precautions

- 392.50 Ignition of fuel; prevention.

- 392.51 Reserve fuel; materials of trade.
- 392.52 [Reserved]

Subpart G—Prohibited Practices

- 392.60 Unauthorized persons not to be transported.
- 392.61 [Reserved]
- 392.62 Safe operation, buses.
- 392.63 Towing or pushing loaded buses.
- 392.64 Riding within closed commercial motor vehicles without proper exits.
- 392.65 [Reserved]
- 392.66 Carbon monoxide; use of commercial motor vehicle when detected.
- 392.67 Heater, flame-producing; on commercial motor vehicle in motion.
- 392.68-392.69 [Reserved]
- 392.71 Radar detectors; use and/or possession.

Subpart H—Limiting the Use of Electronic Devices

- 392.80 Prohibition against texting.

AUTHORITY: 49 U.S.C. 13902, 31136, 31151, 31502; and 49 CFR 1.73.

SOURCE: 33 FR 19732, Dec. 25, 1968, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 392 appear at 66 FR 49874, Oct. 1, 2001.

Subpart A—General

§ 392.1 Scope of the rules in this part.

Every motor carrier, its officers, agents, representatives, and employees responsible for the management, maintenance, operation, or driving of commercial motor vehicles, or the hiring, supervising, training, assigning, or dispatching of drivers, shall be instructed in and comply with the rules in this part.

[53 FR 18057, May 19, 1988, as amended at 60 FR 38746, July 28, 1995]

§ 392.2 Applicable operating rules.

Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Motor Carrier Safety Administration regulation must be complied with.

[35 FR 7800, May 21, 1970, as amended at 60 FR 38746, July 28, 1995]

§ 392.3 Ill or fatigued operator.

No driver shall operate a commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a commercial motor vehicle, while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle. However, in a case of grave emergency where the hazard to occupants of the commercial motor vehicle or other users of the highway would be increased by compliance with this section, the driver may continue to operate the commercial motor vehicle to the nearest place at which that hazard is removed.

[35 FR 7800, May 21, 1970, as amended at 60 FR 38746, July 28, 1995]

§ 392.4 Drugs and other substances.

(a) No driver shall be on duty and possess, be under the influence of, or use, any of the following drugs or other substances:

- (1) Any 21 CFR 1308.11 *Schedule I* substance;
- (2) An amphetamine or any formulation thereof (including, but not limited, to "pep pills," and "bennies");
- (3) A narcotic drug or any derivative thereof; or
- (4) Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle.

(b) No motor carrier shall require or permit a driver to violate paragraph (a) of this section.

(c) Paragraphs (a) (2), (3), and (4) do not apply to the possession or use of a substance administered to a driver by or under the instructions of a licensed medical practitioner, as defined in § 382.107 of this subchapter, who has advised the driver that the substance will not affect the driver's ability to safely operate a motor vehicle.

(d) As used in this section, "possession" does not include possession of a substance which is manifested and transported as part of a shipment.

[61 FR 9567, Mar. 8, 1996, as amended at 62 FR 37153, July 11, 1997]

§ 392.5 Alcohol prohibition.

(a) No driver shall—

(1) Use alcohol, as defined in § 382.107 of this subchapter, or be under the influence of alcohol, within 4 hours before going on duty or operating, or having physical control of, a commercial motor vehicle; or

(2) Use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle; or

(3) Be on duty or operate a commercial motor vehicle while the driver possesses wine of not less than one-half of one per centum of alcohol by volume, beer as defined in 26 U.S.C. 5052(a), of the Internal Revenue Code of 1954, and distilled spirits as defined in section 5002(a)(8), of such Code. However, this does not apply to possession of wine, beer, or distilled spirits which are:

- (i) Manifested and transported as part of a shipment; or
- (ii) Possessed or used by bus passengers.

(b) No motor carrier shall require or permit a driver to—

(1) Violate any provision of paragraph (a) of this section; or

(2) Be on duty or operate a commercial motor vehicle if, by the driver's general appearance or conduct or by other substantiating evidence, the driver appears to have used alcohol within the preceding four hours.

(c) Any driver who is found to be in violation of the provisions of paragraph (a) or (b) of this section shall be placed out-of-service immediately for a period of 24 hours.

(1) The 24-hour out-of-service period will commence upon issuance of an out-of-service order.

(2) No driver shall violate the terms of an out-of-service order issued under this section.

(d) Any driver who is issued an out-of-service order under this section shall:

(1) Report such issuance to his/her employer within 24 hours; and

(2) Report such issuance to a State official, designated by the State which issued his/her driver's license, within 30 days unless the driver chooses to request a review of the order. In this

case, the driver shall report the order to the State official within 30 days of an affirmation of the order by either the Division Administrator or State Director for the geographical area or the Administrator.

(e) Any driver who is subject to an out-of-service order under this section may petition for review of that order by submitting a petition for review in writing within 10 days of the issuance of the order to the Division Administrator or State Director for the geographical area in which the order was issued. The Division Administrator or State Director may affirm or reverse the order. Any driver adversely affected by such order of the Regional Director of Motor Carriers may petition the Administrator for review in accordance with 49 CFR 386.13.

(49 U.S.C. 304, 1655; 49 CFR 1.48(b) and 301.60)

[47 FR 47837, Oct. 28, 1982, as amended at 52 FR 27201, July 20, 1987; 59 FR 7515, Feb. 15, 1994; 61 FR 9567, Mar. 8, 1996]

§ 392.6 Schedules to conform with speed limits.

No motor carrier shall schedule a run nor permit nor require the operation of any commercial motor vehicle between points in such period of time as would necessitate the commercial motor vehicle being operated at speeds greater than those prescribed by the jurisdictions in or through which the commercial motor vehicle is being operated.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38746, July 28, 1995]

§ 392.7 Equipment, inspection and use.

(a) No commercial motor vehicle shall be driven unless the driver is satisfied that the following parts and accessories are in good working order, nor shall any driver fail to use or make use of such parts and accessories when and as needed:

Service brakes, including trailer brake connections.
 Parking (hand) brake.
 Steering mechanism.
 Lighting devices and reflectors.
 Tires.
 Horn.
 Windshield wiper or wipers.
 Rear-vision mirror or mirrors.
 Coupling devices.

(b) Drivers preparing to transport intermodal equipment must make an inspection of the following components, and must be satisfied they are in good working order before the equipment is operated over the road. Drivers who operate the equipment over the road shall be deemed to have confirmed the following components were in good working order when the driver accepted the equipment:

- Service brake components that are readily visible to a driver performing as thorough a visual inspection as possible without physically going under the vehicle, and trailer brake connections
- Lighting devices, lamps, markers, and conspicuity marking material
- Wheels, rims, lugs, tires
- Air line connections, hoses, and couplers
- King pin upper coupling device
- Rails or support frames
- Tie down bolsters
- Locking pins, clevises, clamps, or hooks
- Sliders or sliding frame lock

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38746, July 28, 1995; 73 FR 76823, Dec. 17, 2008; 74 FR 68708, Dec. 29, 2009]

§ 392.8 Emergency equipment, inspection and use.

No commercial motor vehicle shall be driven unless the driver thereof is satisfied that the emergency equipment required by § 393.95 of this subchapter is in place and ready for use; nor shall any driver fail to use or make use of such equipment when and as needed.

[49 FR 38290, Sept. 28, 1984, as amended at 60 FR 38746, July 28, 1995]

§ 392.9 Inspection of cargo, cargo securement devices and systems.

(a) *General.* A driver may not operate a commercial motor vehicle and a motor carrier may not require or permit a driver to operate a commercial motor vehicle unless—

(1) The commercial motor vehicle's cargo is properly distributed and adequately secured as specified in §§ 393.100 through 393.136 of this subchapter.

(2) The commercial motor vehicle's tailgate, tailboard, doors, tarpaulins, spare tire and other equipment used in its operation, and the means of fastening the commercial motor vehicle's cargo, are secured; and

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(3) The commercial motor vehicle's cargo or any other object does not obscure the driver's view ahead or to the right or left sides (except for drivers of self-steer dollies), interfere with the free movement of his/her arms or legs, prevent his/her free and ready access to accessories required for emergencies, or prevent the free and ready exit of any person from the commercial motor vehicle's cab or driver's compartment.

(b) *Drivers of trucks and truck tractors.* Except as provided in paragraph (b)(4) of this section, the driver of a truck or truck tractor must—

(1) Assure himself/herself that the provisions of paragraph (a) of this section have been complied with before he/she drives that commercial motor vehicle;

(2) Inspect the cargo and the devices used to secure the cargo within the first 50 miles after beginning a trip and cause any adjustments to be made to the cargo or load securement devices as necessary, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from the commercial motor vehicle; and

(3) Reexamine the commercial motor vehicle's cargo and its load securement devices during the course of transportation and make any necessary adjustment to the cargo or load securement devices, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from, the commercial motor vehicle. Reexamination and any necessary adjustments must be made whenever—

(i) The driver makes a change of his/her duty status; or

(ii) The commercial motor vehicle has been driven for 3 hours; or

(iii) The commercial motor vehicle has been driven for 150 miles, whichever occurs first.

(4) The rules in this paragraph (b) do not apply to the driver of a sealed commercial motor vehicle who has been ordered not to open it to inspect its cargo or to the driver of a commercial motor vehicle that has been loaded in a manner that makes inspection of its cargo impracticable.

[67 FR 61224, Sept. 27, 2002, as amended at 72 FR 55703, Oct. 1, 2007]

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§ 392.9a Operating authority.

(a) *Operating authority required.* A motor vehicle providing transportation requiring operating authority must not be operated—

(1) Without the required operating authority or

(2) Beyond the scope of the operating authority granted.

(b) *Penalties.* Every motor vehicle providing transportation requiring operating authority shall be ordered out of service if it is determined that the motor carrier responsible for the operation of such a vehicle is operating in violation of paragraph (a) of this section. In addition, the motor carrier may be subject to penalties in accordance with 49 U.S.C. 14901.

(c) *Administrative Review.* Upon issuance of the out-of-service order under paragraph (b) of this section, the driver shall comply immediately with such order. Opportunity for review shall be provided in accordance with 5 U.S.C. 554 not later than 10 days after issuance of such order.

[71 FR 50867, Aug. 28, 2006]

Subpart B—Driving of Commercial Motor Vehicles

§ 392.10 Railroad grade crossings; stopping required.

(a) Except as provided in paragraph (b) of this section, the driver of a commercial motor vehicle specified in paragraphs (a) (1) through (6) of this section shall not cross a railroad track or tracks at grade unless he/she first: Stops the commercial motor vehicle within 50 feet of, and not closer than 15 feet to, the tracks; thereafter listens and looks in each direction along the tracks for an approaching train; and ascertains that no train is approaching. When it is safe to do so, the driver may drive the commercial motor vehicle across the tracks in a gear that permits the commercial motor vehicle to complete the crossing without a change of gears. The driver must not shift gears while crossing the tracks.

(1) Every bus transporting passengers,

(2) Every commercial motor vehicle transporting any quantity of a Division 2.3 chlorine.

(3) Every commercial motor vehicle which, in accordance with the regulations of the Department of Transportation, is required to be marked or placarded with one of the following classifications:

- (i) Division 1.1
- (ii) Division 1.2, or Division 1.3
- (iii) Division 2.3 Poison gas
- (iv) Division 4.3
- (v) Class 7
- (vi) Class 3 Flammable
- (vii) Division 5.1
- (viii) Division 2.2
- (ix) Division 2.3 Chlorine
- (x) Division 6.1 Poison
- (xi) Division 2.2 Oxygen
- (xii) Division 2.1
- (xiii) Class 3 Combustible liquid
- (xiv) Division 4.1
- (xv) Division 5.1
- (xvi) Division 5.2
- (xvii) Class 8
- (xviii) Division 1.4

(4) Every cargo tank motor vehicle, whether loaded or empty, used for the transportation of any hazardous material as defined in the Hazardous Materials Regulations of the Department of Transportation, Parts 107 through 180 of this title.

(5) Every cargo tank motor vehicle transporting a commodity which at the time of loading has a temperature above its flashpoint as determined by § 173.120 of this title.

(6) Every cargo tank motor vehicle, whether loaded or empty, transporting any commodity under exemption in accordance with the provisions of subpart B of part 107 of this title.

(b) A stop need not be made at:

(1) A streetcar crossing, or railroad tracks used exclusively for industrial switching purposes, within a business district, as defined in § 390.5 of this chapter.

(2) A railroad grade crossing when a police officer or crossing flagman directs traffic to proceed,

(3) A railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which, under local law, permits the commercial motor vehicle to proceed across the railroad tracks without slowing or stopping.

(4) An abandoned railroad grade crossing which is marked with a sign

indicating that the rail line is abandoned,

(5) An industrial or spur line railroad grade crossing marked with a sign reading "Exempt." Such "Exempt" signs shall be erected only by or with the consent of the appropriate State or local authority.

(Sec. 12, 80 Stat. 931; 49 U.S.C. 1651 note; 49 U.S.C. 304, 1655; 49 CFR 1.48(b) and 301.60)

[33 FR 19732, Dec. 25, 1968, as amended at 35 FR 7801, May 21, 1970; 38 FR 1589, Jan. 16, 1973; 40 FR 44555, Sept. 29, 1975; 45 FR 46424, July 10, 1980; 47 FR 47837, Oct. 28, 1982; 59 FR 63924, Dec. 12, 1994; 60 FR 38746, 38747, July 28, 1995]

§ 392.11 Railroad grade crossings; slowing down required.

Every commercial motor vehicle other than those listed in § 392.10 shall, upon approaching a railroad grade crossing, be driven at a rate of speed which will permit said commercial motor vehicle to be stopped before reaching the nearest rail of such crossing and shall not be driven upon or over such crossing until due caution has been taken to ascertain that the course is clear.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§§ 392.12–392.13 [Reserved]

§ 392.14 Hazardous conditions; extreme caution.

Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated. Whenever compliance with the foregoing provisions of this rule increases hazard to passengers, the commercial motor vehicle may be operated to the nearest point at which the safety of passengers is assured.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.15

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§ 392.15 [Reserved]

§ 392.16 Use of seat belts.

A commercial motor vehicle which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly.

[35 FR 10860, July 3, 1970, as amended at 60 FR 38747, July 28, 1995]

§ 392.18 [Reserved]

Subpart C—Stopped Commercial Motor Vehicles

§§ 392.20–392.21 [Reserved]

§ 392.22 Emergency signals; stopped commercial motor vehicles.

(a) *Hazard warning signal flashers.* Whenever a commercial motor vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway for any cause other than necessary traffic stops, the driver of the stopped commercial motor vehicle shall immediately activate the vehicular hazard warning signal flashers and continue the flashing until the driver places the warning devices required by paragraph (b) of this section. The flashing signals shall be used during the time the warning devices are picked up for storage before movement of the commercial motor vehicle. The flashing lights may be used at other times while a commercial motor vehicle is stopped in addition to, but not in lieu of, the warning devices required by paragraph (b) of this section.

(b) *Placement of warning devices—(1) General rule.* Except as provided in paragraph (b)(2) of this section, whenever a commercial motor vehicle is stopped upon the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall, as soon as possible, but in any event within 10 minutes, place the warning devices required by § 393.95 of this subchapter, in the following manner:

(i) One on the traffic side of and 4 paces (approximately 3 meters or 10 feet) from the stopped commercial motor vehicle in the direction of approaching traffic;

(ii) One at 40 paces (approximately 30 meters or 100 feet) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction of approaching traffic; and

(iii) One at 40 paces (approximately 30 meters or 100 feet) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction away from approaching traffic.

(2) *Special rules—(i) Fusees and liquid-burning flares.* The driver of a commercial motor vehicle equipped with only fusees or liquid-burning flares shall place a lighted fusee or liquid-burning flare at each of the locations specified in paragraph (b)(1) of this section. There shall be at least one lighted fusee or liquid-burning flare at each of the prescribed locations, as long as the commercial motor vehicle is stopped. Before the stopped commercial motor vehicle is moved, the driver shall extinguish and remove each fusee or liquid-burning flare.

(ii) *Daylight hours.* Except as provided in paragraph (b)(2)(iii) of this section, during the period lighted lamps are not required, three bidirectional reflective triangles, or three lighted fusees or liquid-burning flares shall be placed as specified in paragraph (b)(1) of this section within a time of 10 minutes. In the event the driver elects to use only fusees or liquid-burning flares in lieu of bidirectional reflective triangles or red flags, the driver must ensure that at least one fusee or liquid-burning flare remains lighted at each of the prescribed locations as long as the commercial motor vehicle is stopped or parked.

(iii) *Business or residential districts.* The placement of warning devices is not required within the business or residential district of a municipality, except during the time lighted lamps are required and when street or highway lighting is insufficient to make a commercial motor vehicle clearly discernable at a distance of 500 feet to persons on the highway.

(iv) *Hills, curves, and obstructions.* If a commercial motor vehicle is stopped within 500 feet of a curve, crest of a

hill, or other obstruction to view, the driver shall place the warning signal required by paragraph (b)(1) of this section in the direction of the obstruction to view a distance of 100 feet to 500 feet from the stopped commercial motor vehicle so as to afford ample warning to other users of the highway.

(v) *Divided or one-way roads.* If a commercial motor vehicle is stopped upon the traveled portion or the shoulder of a divided or one-way highway, the driver shall place the warning devices required by paragraph (b)(1) of this section, one warning device at a distance of 200 feet and one warning device at a distance of 100 feet in a direction toward approaching traffic in the center of the lane or shoulder occupied by the commercial motor vehicle. He/she shall place one warning device at the traffic side of the commercial motor vehicle within 10 feet of the rear of the commercial motor vehicle.

(vi) *Leaking, flammable material.* If gasoline or any other flammable liquid, or combustible liquid or gas seeps or leaks from a fuel container or a commercial motor vehicle stopped upon a highway, no emergency warning signal producing a flame shall be lighted or placed except at such a distance from any such liquid or gas as will assure the prevention of a fire or explosion.

[37 FR 17175, Aug. 25, 1972, as amended at 40 FR 10685, Mar. 7, 1975; 47 FR 47837, Oct. 28, 1982; 48 FR 57139, Dec. 23, 1983; 59 FR 34711, July 6, 1994; 60 FR 38747, July 28, 1995; 63 FR 33279, June 18, 1998]

§ 392.24 Emergency signals; flame-producing.

No driver shall attach or permit any person to attach a lighted fusee or other flame-producing emergency signal to any part of a commercial motor vehicle.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.25 Flame producing devices.

No driver shall use or permit the use of any flame-producing emergency signal for protecting any commercial motor vehicle transporting Division 1.1, Division 1.2, or Division 1.3 explosives; any cargo tank motor vehicle used for the transportation of any Class 3 or Division 2.1, whether loaded

or empty; or any commercial motor vehicle using compressed gas as a motor fuel. In lieu thereof, emergency reflective triangles, red electric lanterns, or red emergency reflectors shall be used, the placement of which shall be in the same manner as prescribed in § 392.22(b).

[59 FR 63925, Dec. 12, 1994, as amended at 60 FR 38747, July 28, 1995]

Subpart D—Use of Lighted Lamps and Reflectors

§§ 392.30–392.32 [Reserved]

§ 392.33 Obscured lamps or reflective devices/material.

(a) No commercial motor vehicle shall be driven when any of the lamps or reflective devices/material required by subpart B of part 393 of this title are obscured by the tailboard, or by any part of the load or its covering, by dirt, or other added vehicle or work equipment or otherwise.

(b) *Exception.* The conspicuity treatments on the front end protection devices of the trailer may be obscured by part of the load being transported.

[70 FR 48025, Aug. 15, 2005]

Subpart E—License Revocation; Duties of Driver

§§ 392.40–392.41 [Reserved]

Subpart F—Fueling Precautions

§ 392.50 Ignition of fuel; prevention.

No driver or any employee of a motor carrier shall:

(a) Fuel a commercial motor vehicle with the engine running, except when it is necessary to run the engine to fuel the commercial motor vehicle;

(b) Smoke or expose any open flame in the vicinity of a commercial motor vehicle being fueled;

(c) Fuel a commercial motor vehicle unless the nozzle of the fuel hose is continuously in contact with the intake pipe of the fuel tank;

§ 392.51

(d) Permit, insofar as practicable, any other person to engage in such activities as would be likely to result in fire or explosion.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.51 Reserve fuel; materials of trade.

Small amounts of fuel for the operation or maintenance of a commercial motor vehicle (including its auxiliary equipment) may be designated as materials of trade (see 49 CFR 171.8).

(a) The aggregate gross weight of all materials of trade on a motor vehicle may not exceed 200 kg (440 pounds).

(b) Packaging for gasoline must be made of metal or plastic and conform to requirements of 49 CFR Parts 171, 172, 173, and 178 or requirements of the Occupational Safety and Health Administration contained in 29 CFR 1910.106.

(c) For Packing Group II (including gasoline), Packing Group III (including aviation fuel and fuel oil), or ORM-D, the material is limited to 30 kg (66 pounds) or 30 L (8 gallons).

(d) For diesel fuel, the capacity of the package is limited to 450 L (119 gallons).

(e) A Division 2.1 material in a cylinder is limited to a gross weight of 100 kg (220 pounds). (A Division 2.1 material is a flammable gas, including liquefied petroleum gas, butane, propane, liquefied natural gas, and methane).

[63 FR 33279, June 18, 1998]

§ 392.52 [Reserved]

Subpart G—Prohibited Practices

§ 392.60 Unauthorized persons not to be transported.

(a) Unless specifically authorized in writing to do so by the motor carrier under whose authority the commercial motor vehicle is being operated, no driver shall transport any person or permit any person to be transported on any commercial motor vehicle other than a bus. When such authorization is issued, it shall state the name of the person to be transported, the points where the transportation is to begin and end, and the date upon which such

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authority expires. No written authorization, however, shall be necessary for the transportation of:

(1) Employees or other persons assigned to a commercial motor vehicle by a motor carrier;

(2) Any person transported when aid is being rendered in case of an accident or other emergency;

(3) An attendant delegated to care for livestock.

(b) This section shall not apply to the operation of commercial motor vehicles controlled and operated by any farmer and used in the transportation of agricultural commodities or products thereof from his/her farm or in the transportation of supplies to his/her farm.

[60 FR 38747, July 28, 1995]

§ 392.61 [Reserved]

§ 392.62 Safe operation, buses.

No person shall drive a bus and a motor carrier shall not require or permit a person to drive a bus unless—

(a) All standees on the bus are rearward of the standee line or other means prescribed in § 393.90 of this subchapter;

(b) All aisle seats in the bus conform to the requirements of § 393.91 of this subchapter; and

(c) Baggage or freight on the bus is stowed and secured in a manner which assures—

(1) Unrestricted freedom of movement to the driver and his proper operation of the bus;

(2) Unobstructed access to all exits by any occupant of the bus; and

(3) Protection of occupants of the bus against injury resulting from the falling or displacement of articles transported in the bus.

[63 FR 33278, June 18, 1998]

§ 392.63 Towing or pushing loaded buses.

No disabled bus with passengers aboard shall be towed or pushed; nor shall any person use or permit to be used a bus with passengers aboard for the purpose of towing or pushing any disabled motor vehicle, except in such circumstances where the hazard to passengers would be increased by observance of the foregoing provisions of this section, and then only in traveling to

the nearest point where the safety of the passengers is assured.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.64 Riding within closed commercial motor vehicles without proper exits.

No person shall ride within the closed body of any commercial motor vehicle unless there are means on the inside thereof of obtaining exit. Said means shall be in such condition as to permit ready operation by the occupant.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.65 [Reserved]

§ 392.66 Carbon monoxide; use of commercial motor vehicle when detected.

(a) No person shall dispatch or drive any commercial motor vehicle or permit any passengers thereon, when the following conditions are known to exist, until such conditions have been remedied or repaired:

(1) Where an occupant has been affected by carbon monoxide;

(2) Where carbon monoxide has been detected in the interior of the commercial motor vehicle;

(3) When a mechanical condition of the commercial motor vehicle is discovered which would be likely to produce a hazard to the occupants by reason of carbon monoxide.

(b) [Reserved]

[60 FR 38747, July 28, 1995]

§ 392.67 Heater, flame-producing; on commercial motor vehicle in motion.

No open flame heater used in the loading or unloading of the commodity transported shall be in operation while the commercial motor vehicle is in motion.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§§ 392.68–392.69 [Reserved]

§ 392.71 Radar detectors; use and/or possession.

(a) No driver shall use a radar detector in a commercial motor vehicle, or operate a commercial motor vehicle

that is equipped with or contains any radar detector.

(b) No motor carrier shall require or permit a driver to violate paragraph (a) of this section.

[58 FR 67375, Dec. 21, 1993]

Subpart H—Limiting the Use of Electronic Devices

EFFECTIVE DATE NOTE: At 75 FR 59136, Sept. 27, 2010, subpart H was added, effective October 27, 2010.

§ 392.80 Prohibition against texting.

(a) *Prohibition.* No driver shall engage in texting while driving.

(b) *Motor Carriers.* No motor carrier shall allow or require its drivers to engage in texting while driving.

(c) *Definition.* For the purpose of this section only, *driving* means operating a commercial motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver moved the vehicle to the side of, or off, a highway, as defined in 49 CFR 390.5, and halted in a location where the vehicle can safely remain stationary.

(d) *Exceptions.* (1) *School bus operations and vehicles designed or used to transport 9 to 15 passengers, including the driver, not for direct compensation.* The provisions of § 390.3(f)(1) and (6) are not applicable to this section.

(2) *Emergency Use.* Texting while driving is permissible by drivers of a commercial motor vehicle when necessary to communicate with law enforcement officials or other emergency services.

[75 FR 59136, Sept. 27, 2010]

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Subpart A—General

Sec.

393.1 Scope of the rules of this part.

393.3 Additional equipment and accessories.

393.5 Definitions.

393.7 Matter incorporated by reference.

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the nearest point where the safety of the passengers is assured.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.64 Riding within closed commercial motor vehicles without proper exits.

No person shall ride within the closed body of any commercial motor vehicle unless there are means on the inside thereof of obtaining exit. Said means shall be in such condition as to permit ready operation by the occupant.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.65 [Reserved]

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(a) No person shall dispatch or drive any commercial motor vehicle or permit any passengers thereon, when the following conditions are known to exist, until such conditions have been remedied or repaired:

- (1) Where an occupant has been affected by carbon monoxide;
- (2) Where carbon monoxide has been detected in the interior of the commercial motor vehicle;
- (3) When a mechanical condition of the commercial motor vehicle is discovered which would be likely to produce a hazard to the occupants by reason of carbon monoxide.

(b) [Reserved]

[60 FR 38747, July 28, 1995]

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No open flame heater used in the loading or unloading of the commodity transported shall be in operation while the commercial motor vehicle is in motion.

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(a) No driver shall use a radar detector in a commercial motor vehicle, or operate a commercial motor vehicle

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[75 FR 59136, Sept. 27, 2010]

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

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 393.134 What are the rules for securing roll-on/roll-off and hook lift containers?
 393.136 What are the rules for securing large boulders?

Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

- 393.201 Frames.
 393.203 Cab and body components.
 393.205 Wheels.
 393.207 Suspension systems.
 393.209 Steering wheel systems.

AUTHORITY: 49 U.S.C. 322, 31136, 31151 and 31502; sec. 1041(b), Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

SOURCE: 33 FR 19735, Dec. 25, 1968, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 393 appear at 66 FR 49874, Oct. 1, 2001.

Subpart A—General

SOURCE: 53 FR 49384, Dec. 7, 1988, unless otherwise noted.

§ 393.1 Scope of the rules in this part.

(a) The rules in this part establish minimum standards for commercial motor vehicles as defined in § 390.5 of this title. Only motor vehicles (as defined in § 390.5) and combinations of motor vehicles which meet the definition of a commercial motor vehicle are subject to the requirements of this part. All requirements that refer to motor vehicles with a GVWR below 4,536 kg (10,001 pounds) are applicable only when the motor vehicle or combination of motor vehicles meets the

definition of a commercial motor vehicle.

(b)(1) Every motor carrier and its employees must be knowledgeable of and comply with the requirements and specifications of this part.

(2) Every intermodal equipment provider and its employees or agents responsible for the inspection, repair, and maintenance of intermodal equipment interchanged to motor carriers must be knowledgeable of and comply with the applicable requirements and specifications of this part.

(c) No motor carrier may operate a commercial motor vehicle, or cause or permit such vehicle to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

(d) No intermodal equipment provider may operate intermodal equipment, or cause or permit such equipment to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

[70 FR 48025, Aug. 15, 2005, as amended at 73 FR 76823, Dec. 17, 2008]

§ 393.3 Additional equipment and accessories.

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

§ 393.5 Definitions.

As used in this part, the following words and terms are construed to mean:

Aggregate working load limit. The summation of the working load limits or restraining capacity of all devices used to secure an article of cargo on a vehicle.

Agricultural commodity trailer. A trailer that is designed to transport bulk agricultural commodities in off-road harvesting sites and to a processing plant or storage location, as evidenced by skeletal construction that accommodates harvest containers, a maximum length of 28 feet, and an arrangement of air control lines and reservoirs

that minimizes damage in field operations.

Air brake system. A system, including an air-over-hydraulic brake subsystem, that uses air as a medium for transmitting pressure or force from the driver control to the service brake, but does not include a system that uses compressed air or vacuum only to assist the driver in applying muscular force to hydraulic or mechanical components.

Air-over-hydraulic brake subsystem. A subsystem of the air brake system that uses compressed air to transmit a force from the driver control to a hydraulic brake system to actuate the service brakes.

Anchor point. Part of the structure, fitting or attachment on a vehicle or article of cargo to which a tiedown is attached.

Antilock Brake System or ABS means a portion of a service brake system that automatically controls the degree of rotational wheel slip during braking by:

- (1) Sensing the rate of angular rotation of the wheels;
- (2) Transmitting signals regarding the rate of wheel angular rotation to one or more controlling devices which interpret those signals and generate responsive controlling output signals; and
- (3) Transmitting those controlling signals to one or more modulators which adjust brake actuating forces in response to those signals.

Article of cargo. A unit of cargo, other than a liquid, gas, or aggregate that lacks physical structure (e.g., grain, gravel, etc.) including articles grouped together so that they can be handled as a single unit or unitized by wrapping, strapping, banding or edge protection device(s).

Auxiliary driving lamp. A lighting device mounted to provide illumination forward of the vehicle which supplements the upper beam of a standard headlighting system. It is not intended for use alone or with the lower beam of a standard headlamp system.

Bell pipe concrete. Pipe whose flanged end is of larger diameter than its barrel.

Blocking. A structure, device or another substantial article placed against

or around an article of cargo to prevent horizontal movement of the article of cargo.

Boat trailer. A trailer designed with cradle-type mountings to transport a boat and configured to permit launching of the boat from the rear of the trailer.

Bracing. A structure, device, or another substantial article placed against an article of cargo to prevent it from tipping, that may also prevent it from shifting.

Brake. An energy conversion mechanism used to stop, or hold a vehicle stationary.

Brake power assist unit. A device installed in a hydraulic brake system that reduces the operator effort required to actuate the system, but which if inoperative does not prevent the operator from braking the vehicle by a continued application of muscular force on the service brake control.

Brake power unit. A device installed in a brake system that provides the energy required to actuate the brakes, either directly or indirectly through an auxiliary device, with the operator action consisting only of modulating the energy application level.

Brake tubing/hose. Metallic brake tubing, nonmetallic brake tubing and brake hose are conduits or lines used in a brake system to transmit or contain the medium (fluid or vacuum) used to apply the motor vehicle's brakes.

Chassis. The load-supporting frame of a commercial motor vehicle, exclusive of any appurtenances which might be added to accommodate cargo.

Clearance Lamps. Lamps that provide light to the front or rear, mounted on the permanent structure of the vehicle, such that they indicate the overall width of the vehicle.

Container chassis trailer. A semitrailer of skeleton construction limited to a bottom frame, one or more axles, specially built and fitted with locking devices for the transport of intermodal cargo containers, so that when the chassis and container are assembled, the units serve the same function as an over the road trailer.

Converter dolly. A motor vehicle consisting of a chassis equipped with one or more axles, a fifth wheel and/or equivalent mechanism, and drawbar,

the attachment of which converts a semitrailer to a full trailer.

Crib-type log trailer means a trailer equipped with stakes, bunks, a front-end structure, and a rear structure to restrain logs. The stakes prevent movement of the logs from side to side on the vehicle while the front-end and rear structures prevent movement of the logs from front to back on the vehicle.

Curb weight. The weight of a motor vehicle with standard equipment, maximum capacity of fuel, oil, and coolant; and, if so equipped, air conditioning and additional weight of optional engine. Curb weight does not include the driver.

Dunnage. All loose materials used to support and protect cargo.

Dunnage bag. An inflatable bag intended to fill otherwise empty space between articles of cargo, or between articles of cargo and the wall of the vehicle.

Edge protector. A device placed on the exposed edge of an article to distribute tiedown forces over a larger area of cargo than the tiedown itself, to protect the tie-down and/or cargo from damage, and to allow the tiedown to slide freely when being tensioned.

Electric brake system. A system that uses electric current to actuate the service brake.

Emergency brake. A mechanism designed to stop a motor vehicle after a failure of the service brake system.

Emergency brake system. A mechanism designed to stop a vehicle after a single failure occurs in the service brake system of a part designed to contain compressed air or brake fluid or vacuum (except failure of a common valve, manifold brake fluid housing or brake chamber housing).

Fifth wheel. A device mounted on a truck tractor or similar towing vehicle (e.g., converter dolly) which interfaces with and couples to the upper coupler assembly of a semitrailer.

Frame vehicle. A vehicle with skeletal structure fitted with one or more bunk units for transporting logs. A bunk unit consists of U-shaped front and rear bunks that together cradle logs. The bunks are welded, gusseted or otherwise firmly fastened to the vehicle's

main beams, and are an integral part of the vehicle.

Friction mat. A device placed between the deck of a vehicle and article of cargo, or between articles of cargo, intended to provide greater friction than exists naturally between these surfaces.

Front fog lamp. A lighting device whose beam provides downward illumination forward of the vehicle and close to the ground, and is to be used only under conditions of rain, snow, dust, smoke or fog. A pair of fog lamps may be used alone, with parking, tail, side, marker, clearance and identification lamps, or with a lower beam headlamp at the driver's discretion in accordance with state and local use law.

Fuel tank fitting. Any removable device affixed to an opening in the fuel tank with the exception of the filler cap.

g. The acceleration due to gravity, 32.2 ft/sec² (9.81 m/sec²).

Grommet. A device that serves as a support and protection to that which passes through it.

Hazard warning signal. Lamps that flash simultaneously to the front and rear, on both the right and left sides of a commercial motor vehicle, to indicate to an approaching driver the presence of a vehicular hazard.

Head lamps. Lamps used to provide general illumination ahead of a motor vehicle.

Heater. Any device or assembly of devices or appliances used to heat the interior of any motor vehicle. This includes a catalytic heater which must meet the requirements of §177.834(1)(2) of this title when Class 3 (flammable liquid) or Division 2.1 (flammable gas) is transported.

Heavy hauler trailer. A trailer which has one or more of the following characteristics, but which is not a container chassis trailer:

(1) Its brake lines are designed to adapt to separation or extension of the vehicle frame; or

(2) Its body consists only of a platform whose primary cargo-carrying surface is not more than 1,016 mm (40 inches) above the ground in an unloaded condition, except that it may include sides that are designed to be

easily removable and a permanent “front-end structure” as that term is used in § 393.106 of this title.

Hook-lift container. A specialized container, primarily used to contain and transport materials in the waste, recycling, construction/demolition and scrap industries, which is used in conjunction with specialized vehicles, in which the container is loaded and unloaded onto a tilt frame body by an articulating hook-arm.

Hydraulic brake system. A system that uses hydraulic fluid as a medium for transmitting force from a service brake control to the service brake, and that may incorporate a brake power assist unit, or a brake power unit.

Identification lamps. Lamps used to identify certain types of commercial motor vehicles.

Integral securement system. A system on certain roll-on/roll-off containers and hook-lift containers and their related transport vehicles in which compatible front and rear hold down devices are mated to provide securement of the complete vehicle and its articles of cargo.

Lamp. A device used to produce artificial light.

Length of a manufactured home. The largest exterior length in the traveling mode, including any projections which contain interior space. Length does not include bay windows, roof projections, overhangs, or eaves under which there is no interior space, nor does it include drawbars, couplings or hitches.

License plate lamp. A lamp used to illuminate the license plate on the rear of a motor vehicle.

Longwood. All logs that are not shortwood, i.e., are over 4.9 m (16 feet) long. Such logs are usually described as long logs or treelength.

Low chassis vehicle. (1) A trailer or semitrailer manufactured on or after January 26, 1998, having a chassis which extends behind the rearmost point of the rearmost tires and which has a lower rear surface that meets the guard width, height, and rear surface requirements of § 571.224 in effect on the date of manufacture, or a subsequent edition.

(2) A motor vehicle, not described by paragraph (1) of this definition, having a chassis which extends behind the

rearmost point of the rearmost tires and which has a lower rear surface that meets the guard configuration requirements of § 393.86(b)(1).

Manufactured home means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. This term includes all structures which meet the *above* requirements except the size requirements and with respect to which the manufacturer voluntarily files a certification pursuant to 24 CFR 3282.13 and complies with the standards set forth in 24 CFR part 3280.

Metal coil means an article of cargo comprised of elements, mixtures, compounds, or alloys commonly known as metal, metal foil, metal leaf, forged metal, stamped metal, metal wire, metal rod, or metal chain that are packaged as a roll, coil, spool, wind, or wrap, including plastic or rubber coated electrical wire and communications cable

Multi-piece windshield. A windshield consisting of two or more windshield glazing surface areas.

Parking brake system. A mechanism designed to prevent the movement of a stationary motor vehicle.

Play. Any free movement of components.

Pulpwood trailer. A trailer or semitrailer that is designed exclusively for harvesting logs or pulpwood and constructed with a skeletal frame with no means for attachment of a solid bed, body, or container.

Rail vehicle. A vehicle whose skeletal structure is fitted with stakes at the

front and rear to contain logs loaded crosswise.

Rear extremity. The rearmost point on a motor vehicle that falls above a horizontal plane located 560 mm (22 inches) above the ground and below a horizontal plane located 1,900 mm (75 inches) above the ground when the motor vehicle is stopped on level ground; unloaded; its fuel tanks are full; the tires (and air suspension, if so equipped) are inflated in accordance with the manufacturer's recommendations; and the motor vehicle's cargo doors, tailgate, or other permanent structures are positioned as they normally are when the vehicle is in motion. Nonstructural protrusions such as taillamps, rubber bumpers, hinges and latches are excluded from the determination of the rearmost point.

Reflective material. A material conforming to Federal Specification L-S-300, "Sheeting and Tape, Reflective; Non-exposed Lens, Adhesive Backing," (September 7, 1965) meeting the performance standard in either Table 1 or Table 1A of SAE Standard J594f, "Reflex Reflectors" (January, 1977).

Reflex reflector. A device which is used on a vehicle to give an indication to an approaching driver by reflected lighted from the lamps on the approaching vehicle.

Saddle-mount. A device, designed and constructed as to be readily demountable, used in driveaway-towaway operations to perform the functions of a conventional fifth wheel:

(1) Upper-half. *Upper-half* of a "saddle-mount" means that part of the device which is securely attached to the towed vehicle and maintains a fixed position relative thereto, but does not include the "king-pin;"

(2) Lower-half. *Lower-half* of a "saddle-mount" means that part of the device which is securely attached to the towing vehicle and maintains a fixed position relative thereto but does not include the "king-pin;" and

(3) King-pin. *King-pin* means that device which is used to connect the "upper-half" to the "lower-half" in such manner as to permit relative movement in a horizontal plane between the towed and towing vehicles.

Service brake system. A primary brake system used for slowing and stopping a vehicle.

Shoring bar. A device placed transversely between the walls of a vehicle and cargo to prevent cargo from tipping or shifting.

Shortwood. All logs typically up to 4.9 m (16 feet) long. Such logs are often described as cut-up logs, cut-to-length logs, bolts or pulpwood. Shortwood may be loaded lengthwise or crosswise, though that loaded crosswise is usually no more than 2.6 m (102 inches) long.

Sided vehicle. A vehicle whose cargo compartment is enclosed on all four sides by walls of sufficient strength to contain articles of cargo, where the walls may include latched openings for loading and unloading, and includes vans, dump bodies, and a sided intermodal container carried by a vehicle.

Side extremity. The outermost point on a side of the motor vehicle that is above a horizontal plane located 560 mm (22 inches) above the ground, below a horizontal plane located 1,900 mm (75 inches) above the ground, and between a transverse vertical plane tangent to the rear extremity of the vehicle and a transverse vertical plane located 305 mm (12 inches) forward of that plane when the vehicle is unloaded; its fuel tanks are full; and the tires (and air suspension, if so equipped) are inflated in accordance with the manufacturer's recommendations. Non-structural protrusions such as taillights, hinges and latches are excluded from the determination of the outermost point.

Side marker lamp (Intermediate). A lamp mounted on the side, on the permanent structure of the motor vehicle that provides light to the side to indicate the approximate middle of the vehicle, when the motor vehicle is 9.14 meters (30 feet) or more in length.

Side marker lamps. Lamps mounted on the side, on the permanent structure of the motor vehicle as near as practicable to the front and rear of the vehicle, that provide light to the side to indicate the overall length of the motor vehicle.

Special purpose vehicle. (1) A trailer or semitrailer manufactured on or after January 26, 1998, having work-performing equipment that, while the motor vehicle is in transit, resides in

or moves through the area that could be occupied by the horizontal member of the rear impact guard, as defined by the guard width, height and rear surface requirements of § 571.224 (paragraphs S5.1.1 through S5.1.3), in effect on the date of manufacture, or a subsequent edition.

(2) A motor vehicle, not described by paragraph (1) of this definition, having work-performing equipment that, while the motor vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear impact guard, as defined by the guard width, height and rear surface requirements of § 393.86(b)(1).

Split service brake system. A brake system consisting of two or more subsystems actuated by a single control designed so that a leakage-type failure of a pressure component in a single subsystem (except structural failure of a housing that is common to two or more subsystems) shall not impair the operation of any other subsystem.

Steering wheel lash. The condition in which the steering wheel may be turned through some part of a revolution without associated movement of the front wheels.

Stop lamps. Lamps shown to the rear of a motor vehicle to indicate that the service brake system is engaged.

Surge brake. A self-contained, permanently closed hydraulic brake system for trailers that relies on inertial forces, developed in response to the braking action of the towing vehicle, applied to a hydraulic device mounted on or connected to the tongue of the trailer, to slow down or stop the towed vehicle.

Tail lamps. Lamps used to designate the rear of a motor vehicle.

Tiedown. A combination of securing devices which forms an assembly that attaches articles of cargo to, or restrains articles of cargo on, a vehicle or trailer, and is attached to anchor point(s).

Tow bar. A strut or column-like device temporarily attached between the rear of a towing vehicle and the front of the vehicle being towed.

Tractor-pole trailer. A combination vehicle that carries logs lengthwise so that they form the body of the vehicle.

The logs are supported by a bunk located on the rear of the tractor, and another bunk on the skeletal trailer. The tractor bunk may rotate about a vertical axis, and the trailer may have a fixed, scoping, or cabled reach, or other mechanical freedom, to allow it to turn.

Trailer kingpin. A pin (with a flange on its lower end) which extends vertically from the front of the underside of a semitrailer and which locks into a fifth wheel.

Turn signals. Lamps used to indicate a change in direction by emitting a flashing light on the side of a motor vehicle towards which a turn will be made.

Upper coupler assembly. A structure consisting of an upper coupler plate, king-pin and supporting framework which interfaces with and couples to a fifth wheel.

Upper coupler plate. A plate structure through which the king-pin neck and collar extend. The bottom surface of the plate contacts the fifth wheel when coupled.

Vacuum brake system. A system that uses a vacuum and atmospheric pressure for transmitting a force from the driver control to the service brake, not including a system that uses vacuum only to assist the driver in applying muscular force to hydraulic or mechanical components.

Void filler. Material used to fill a space between articles of cargo and the structure of the vehicle that has sufficient strength to prevent movement of the articles of cargo.

Well. The depression formed between two cylindrical articles of cargo when they are laid with their eyes horizontal and parallel against each other.

Wheels back vehicle. (1) A trailer or semitrailer manufactured on or after January 26, 1998, whose rearmost axle is permanently fixed and is located such that the rearmost surface of the tires (of the size recommended by the vehicle manufacturer for the rear axle) is not more than 305 mm (12 inches) forward of the transverse vertical plane tangent to the rear extremity of the vehicle.

(2) A motor vehicle, not described by paragraph (1) of this definition, whose rearmost axle is permanently fixed and

is located such that the rearmost surface of the tires (of the size recommended by the vehicle manufacturer for the rear axle) is not more than 610 mm (24 inches) forward of the transverse vertical plane tangent to the rear extremity of the vehicle.

Width of a manufactured home. The largest exterior width in the traveling mode, including any projections which contain interior space. Width does not include bay windows, roof projections, overhangs, or eaves under which there is no interior space.

Windshield. The principal forward facing glazed surface provided for forward vision in operating a motor vehicle.

Working load limit (WLL). The maximum load that may be applied to a component of a cargo securement system during normal service, usually assigned by the manufacturer of the component.

[53 FR 49384, Dec. 7, 1988, as amended at 63 FR 8339, Feb. 18, 1998; 63 FR 24465, May 4, 1998; 64 FR 47707, Sept. 1, 1999; 67 FR 61224, Sept. 27, 2002; 68 FR 56208, Sept. 30, 2003; 70 FR 48026, Aug. 15, 2005; 71 FR 35832, June 22, 2006; 72 FR 9870, Mar. 6, 2007]

§ 393.7 Matter incorporated by reference.

(a) *Incorporation by reference.* Part 393 includes references to certain matter or materials, as listed in paragraph (b) of this section. The text of the materials is not included in the regulations contained in part 393. The materials are hereby made a part of the regulations in part 393. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

(b) *Matter or materials referenced in part 393.* The matter or materials listed in this paragraph are incorporated by reference in the corresponding sections noted.

(1) Auxiliary Upper Beam Lamps, Society of Automotive Engineers (SAE)

J581, July 2004, incorporation by reference approved for § 393.24(b).

(2) Front Fog Lamp, SAE J583, August 2004, incorporation by reference approved for § 393.24(b).

(3) Stop Lamps for Use on Motor Vehicles Less Than 2032 mm in Overall Width, SAE J586, March 2000, incorporation by reference approved for § 393.25(c).

(4) Stop Lamps and Front- and Rear-Turn Signal Lamps for Use on Motor Vehicles 2032 mm or more in Overall Width, SAE J2261, January 2002, incorporated by reference approved for § 393.25 (c).

(5) Tail Lamps (Rear Position Lamps) for Use on Motor Vehicles Less Than 2032 mm in Overall Width, SAE J585, March 2000, incorporation by reference approved for § 393.25(c).

(6) Tail Lamps (Rear Position Lamps) for Use on Vehicles 2032 mm or More in Overall Width, SAE J2040, March 2002, incorporation by reference approved for § 393.25(c).

(7) Turn Signal Lamps for Use on Motor Vehicles Less Than 2032 mm in Overall Width, SAE J588, March 2000, incorporation by reference approved for § 393.25(c).

(8) Sidemarker Lamps for Use on Road Vehicles Less Than 2032 mm in Overall Width, SAE J592, August 2000, incorporation by reference approved for § 393.25(c).

(9) Directional Flashing Optical Warning Devices for Authorized Emergency, Maintenance, and Service Vehicles, SAE J595, January 2005, incorporation by reference approved for § 393.25(e).

(10) Optical Warning Devices for Authorized Emergency, Maintenance, and Service Vehicles, SAE J845, May 1997, incorporation by reference approved for § 393.25(e).

(11) Gaseous Discharge Warning Lamp for Authorized Emergency, Maintenance, and Service Vehicles, SAE J1318, May 1998, incorporation by reference approved for § 393.25(e).

(12) Reflex Reflectors, SAE J594, December 2003, incorporation by reference approved for § 393.26(c).

(13) Standard Specification for Retroreflective Sheeting for Traffic Control, American Society of Testing and Materials, ASTM D 4956-04, 2004,

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incorporation by reference approved for § 393.26(c).

(14) Automobile, Truck, Truck-Tractor, Trailer, and Motor Coach Wiring, SAE J1292, October 1981, incorporated by reference approved for § 393.28.

(15) Long Stroke Air Brake Actuator Marking, SAE J1817, July 2001, incorporation by reference approved for § 393.47(e).

(16) American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways-Safety Standard, SAE Z26.1-1996, August 1997, incorporation by reference approved for § 393.62(d).

(17) Specification for Sound Level Meters, American National Standards Institute, S1.4-1983, incorporation by reference approved for § 393.94(c).

(18) Standard Specification for Strapping, Flat Steel and Seals, American Society for Testing and Materials (ASTM), D3953-97, February 1998, incorporation by reference approved for § 393.104(e).

(19) Welded Steel Chain Specifications, National Association of Chain Manufacturers, September 28, 2005, incorporation by reference approved for § 393.104(e).

(20) Recommended Standard Specification for Synthetic Web Tiedowns, Web Sling and Tiedown Association, WSTDAT-1, 1998, incorporation by reference approved for § 393.104(e).

(21) Wire Rope Users Manual, 2nd Edition, Wire Rope Technical Board November 1985, incorporation by reference approved for § 393.104(e).

(22) Cordage Institute rope standards approved for incorporation into § 393.104(e):

(i) PETRS-2, Polyester Fiber Rope, 3-Strand and 8-Strand Constructions, January 1993;

(ii) PPRS-2, Polypropylene Fiber Rope, 3-Strand and 8-Strand Constructions, August 1992;

(iii) CRS-1, Polyester/Polypropylene Composite Rope Specifications, Three-Strand and Eight-Strand Standard Construction, May 1979;

(iv) NRS-1, Nylon Rope Specifications, Three-Strand and Eight-Strand Standard Construction, May 1979; and

(v) C-1, Double Braided Nylon Rope Specifications DBN, January 1984.

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(c) *Availability.* The materials incorporated by reference are available as follows:

(1) Standards of the Underwriters Laboratories, Inc. Information and copies may be obtained by writing to: Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(2) Specifications of the American Society for Testing and Materials. Information and copies may be obtained by writing to: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959.

(3) Specifications of the National Association of Chain Manufacturers. Information and copies may be obtained by writing to: National Association of Chain Manufacturers, P.O. Box 22681, Lehigh Valley, Pennsylvania 18002-2681.

(4) Specifications of the Web Sling and Tiedown Association. Information and copies may be obtained by writing to: Web Sling and Tiedown Association, Inc., 5024-R Campbell Boulevard, Baltimore, Maryland 21236-5974.

(5) Manuals of the Wire Rope Technical Board. Information and copies may be obtained by writing to: Wire Rope Technical Committee, P.O. Box 849, Stevensville, Maryland 21666.

(6) Standards of the Cordage Institute. Information and copies may be obtained by writing to: Cordage Institute, 350 Lincoln Street, # 115, Hingham, Massachusetts 02043.

(7) Standards of the Society of Automotive Engineers (SAE). Information and copies may be obtained by writing to: Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, Pennsylvania 15096.

(8) Standards of the American National Standards Institute (ANSI). Information and copies may be obtained by writing to: American National Standards Institute, 25 West 43rd Street, New York, New York 10036.

(9) [Reserved].

(10) All of the materials incorporated by reference are available for inspection at:

(i) Federal Motor Carrier Safety Administration, Office of Bus and Truck Standards and Operations (MC-PS), 1200 New Jersey Ave., SE., Washington, DC 20590-0001; and

(ii) The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

[67 FR 61225, Sept. 27, 2002, as amended at 70 FR 48027, Aug. 15, 2005; 71 FR 35832, June 22, 2006; 72 FR 55703, Oct. 1, 2007]

Subpart B—Lamps, Reflective Devices, and Electrical Wiring

§ 393.9 Lamps operable, prohibition of obstructions of lamps and reflectors.

(a) All lamps required by this subpart shall be capable of being operated at all times. This paragraph shall not be construed to require that any auxiliary or additional lamp be capable of operating at all times.

(b) Lamps and reflective devices/material required by this subpart must not be obscured by the tailboard, or by any part of the load, or its covering by dirt, or other added vehicle or work equipment, or otherwise. Exception: The conspicuity treatments on the front end protection devices may be obscured by part of the load being transported.

[70 FR 48027, Aug. 15, 2005]

§ 393.11 Lamps and reflective devices.

(a)(1) *Lamps and reflex reflectors.* Table 1 specifies the requirements for lamps, reflective devices and associated equipment by the type of commercial motor vehicle. The diagrams in this section illustrate the position of the lamps, reflective devices and associated equipment specified in Table 1. All commercial motor vehicles manufactured on or after December 25, 1968, must, at a minimum, meet the applicable requirements of 49 CFR 571.108 (FMVSS No. 108) in effect at the time of manufacture of the vehicle. Com-

mercial motor vehicles manufactured before December 25, 1968, must, at a minimum, meet the requirements of subpart B of part 393 in effect at the time of manufacture.

(2) *Exceptions:* Pole trailers and trailer converter dollies must meet the part 393 requirements for lamps, reflective devices and electrical equipment in effect at the time of manufacture. Trailers which are equipped with conspicuity material which meets the requirements of § 393.11(b) are not required to be equipped with the reflex reflectors listed in Table 1 if—

(i) The conspicuity material is placed at the locations where reflex reflectors are required by Table 1; and

(ii) The conspicuity material when installed on the motor vehicle meets the visibility requirements for the reflex reflectors.

(b) *Conspicuity Systems.* Each trailer of 2,032 mm (80 inches) or more overall width, and with a GVWR over 4,536 kg (10,000 pounds), manufactured on or after December 1, 1993, except pole trailers and trailers designed exclusively for living or office use, shall be equipped with either retroreflective sheeting that meets the requirements of FMVSS No. 108 (S5.7.1), reflex reflectors that meet the requirements of FMVSS No. 108 (S5.7.2), or a combination of retroreflective sheeting and reflex reflectors that meet the requirements of FMVSS No. 108 (S5.7.3). The conspicuity system shall be installed and located as specified in FMVSS No. 108 [S5.7.1.4 (for retroreflective sheeting), S5.7.2.2 (for reflex reflectors), S5.7.3 (for a combination of sheeting and reflectors)] and have certification and markings as required by S5.7.1.5 (for retroreflective tape) and S5.7.2.3 (for reflex reflectors).

(c) *Prohibition on the use of amber stop lamps and tail lamps.* No commercial motor vehicle may be equipped with an amber stop lamp, a tail lamp, or other lamp which is optically combined with an amber stop lamp or tail lamp.

TABLE 1 OF § 393.11—REQUIRED LAMPS AND REFLECTORS ON COMMERCIAL MOTOR VEHICLES

Item on the vehicle	Quantity	Color	Location	Position	Height above the road surface in millimeters (mm) (with English units in parenthesis) measured from the center of the lamp at curb weight	Vehicles for which the devices are required
Headlamps	2	White	Front	On the front at the same height, with an equal number at each side of the vertical center line as far apart as practicable.	Not less than 559 mm (22 inches) nor more than 1,372 mm (54 inches).	A, B, C
Turn signal (front). See footnotes #2 and 12.	2	Amber	At or near the front.	One on each side of the vertical centerline at the same height and as far apart as practicable.	Not less than 381 mm (15 inches) nor more than 2,108 mm (83 inches).	A, B, C
Identification lamps (front). See footnote #1.	3	Amber	Front	As close as practicable to the top of the vehicle, at the same height, and as close as practicable to the vertical centerline of the vehicle (or the vertical centerline of the cab where different from the centerline of the vehicle) with lamp centers spaced not less than 152 mm (6 inches) or more than 305 mm (12 inches) apart. Alternatively, the front lamps may be located as close as practicable to the top of the cab.	All three on the same level as close as practicable to the top of the motor vehicle.	B, C
Tail lamps. See footnotes #5 and 11	2	Red	Rear	One lamp on each side of the vertical centerline at the same height and as far apart as practicable.	Both on the same level between 381 mm (15 inches) and 1,829 mm (72 inches).	A, B, C, D, E, F, G, H

TABLE 1 OF § 393.11—REQUIRED LAMPS AND REFLECTORS ON COMMERCIAL MOTOR VEHICLES

Item on the vehicle	Quantity	Color	Location	Position	Height above the road surface in millimeters (mm) (with English units in parentheses) measured from the center of the lamp at curb weight	Vehicles for which the devices are required
Stop lamps. See footnotes #5 and 13	2	Red	Rear	One lamp on each side of the vertical centerline at the same height and as far apart as practicable.	Both on the same level between 381 mm (15 inches) and 1,829 mm (72 inches).	A, B, C, D, E, F, G
Clearance lamps. See footnotes #8, 9, 10, 15 & 17.	2	Amber	One on each side of the front of the vehicle.	One on each side of the vertical centerline to indicate overall width.	Both on the same level as high as practicable.	B, C, D, G, H
Reflex reflector, intermediate (side)	2	Red	One on each side of the rear of the vehicle.	One on each side of the vertical centerline to indicate overall width.	Both on the same level as high as practicable.	B, D, G, H
Reflex reflector, intermediate (side)	2	Amber	One on each side.	At or near the midpoint between the front and rear side marker lamps, if the length of the vehicle is more than 9,144 mm (30 feet).	Between 381 mm (15 inches) and 1,524 (60 inches).	A, B, D, F, G
Reflex reflector (rear). See footnotes #5, 6, and 8.	2	Red	Rear	One on each side of the vertical centerline, as far apart as practicable and at the same height.	Both on the same level, between 381 mm (15 inches) and 1,524 mm (60 inches).	A, B, C, D, E, F, G
Reflex reflector (rear side)	2	Red	One on each side (rear).	As far to the rear as practicable.	Both on the same level, between 381 mm (15 inches) and 1,524 mm (60 inches).	A, B, D, F, G
Reflex reflector (front side). See footnote #16.	2	Amber	One on each side (front).	As far to the front as practicable.	Between 381 mm (15 inches) and 1,524 mm (60 inches).	A, B, C, D, F, G
License plate lamp (rear). See footnote #11.	1	White	At rear license plate to illuminate the plate from the top or sides.		No requirements	A, B, C, D, F, G
Side marker lamp (front). See footnote #16.	2	Amber	One on each side.	As far to the front as practicable.	Not less than 381 mm (15 inches).	A, B, C, D, F

TABLE 1 OF § 393.11—REQUIRED LAMPS AND REFLECTORS ON COMMERCIAL MOTOR VEHICLES—Continued

Item on the vehicle	Quantity	Color	Location	Position	Height above the road surface in millimeters (mm) (with English units in parenthesis) measured from the center of the lamp at curb weight	Vehicles for which the devices are required
Side marker lamp intermediate	2	Amber	One on each side.	At or near the midpoint between the front and rear side marker lamps, if the length of the vehicle is more than 9,144 mm (30 feet).	Not less than 381 mm (15 inches).	A, B, D, F, G
Side marker lamp (rear). See footnotes #4 and 8.	2	Red	One on each side.	As far to the rear as practicable.	Not less than 381 mm (15 inches), and on the rear of trailers not more than 1,524 mm (60 inches).	A, B, D, F, G
Turn signal (rear). See footnotes #5 and 12.	2	Amber or red	Rear	One lamp on each side of the vertical centerline as far apart as practicable.	Both on the same level, between 381 mm (15 inches) and 2,108 mm (83 inches).	A, B, C, D, E, F, G
Identification lamp (rear). See footnotes #3, 7, and 15.	3	Red	Rear	One as close as practicable to the vertical centerline. One on each side with lamp centers spaced not less than 152 mm (6 inches) or more than 305 mm (12 inches) apart.	All three on the same level as close as practicable to the top of the vehicle.	B, D, G
Vehicular hazard warning signal flasher lamps. See footnotes #5 and 12.	2	Amber	Front	One lamp on each side of the vertical centerline, as far apart as practicable.	Both on the same level, between 381 mm (15 inches) and 2,108 mm (83 inches).	A, B, C
	2	Amber or red	Rear	One lamp on each side of the vertical centerline, as far apart as practicable.	Both on the same level, between 381 mm (15 inches) and 2,108 mm (83 inches).	A, B, C, D, E, F, G
Backup lamp. See footnote #14	1 or 2	White	Rear	Rear	No requirement	A, B, C
	2	Amber or white	Front	One lamp on each side of the vertical centerline, as far apart as practicable.	Both on the same level, between 381 mm (15 inches) and 2,108 mm (83 inches).	A

Legend: Types of commercial motor vehicles shown in the last column of Table 1.
 A. Buses and trucks less than 2,032 mm (80 inches) in overall width.
 B. Buses and trucks 2,032 mm (80 inches) or more in overall width.

- C. Truck tractors.
 D. Semitrailers and full trailers 2,032 mm (80 inches) or more in overall width except converter dollies.
 E. Converter dolly.
 F. Semitrailers and full trailers less than 2,032 mm (80 inches) in overall width.
 G. Pole trailers.
 H. Projecting loads.
- Note:** Lamps and reflectors may be combined as permitted by § 393.22 and S5.4 of 49 CFR 571.108, Equipment combinations.
- Footnote—1** Identification lamps may be mounted on the vertical centerline of the cab where different from the centerline of the vehicle, except where the cab is not more than 42 inches wide at the front roofline, then a single lamp at the center of the cab shall be deemed to comply with the requirements for identification lamps. No part of the identification lamps or their mountings may extend below the top of the vehicle windshield.
- Footnote—2** Unless the turn signals on the front are so constructed (double-faced) and located as to be visible to passing drivers, two turn signals are required on the rear of the truck tractor, one at each side as far apart as practicable.
- Footnote—3** The identification lamps need not be visible or lighted if obscured by a vehicle in the same combination.
- Footnote—4** Any semitrailer or full trailer manufactured on or after March 1, 1979, shall be equipped with rear side-marker lamps at a height of not less than 381 mm (15 inches), and on the rear of trailers not more than 1,524 mm (60 inches) above the road surface, as measured from the center of the lamp on the vehicle at curb weight.
- Footnote—5** Each converter dolly, when towed singly by another vehicle and not as part of a full trailer, shall be equipped with one stop lamp, one tail lamp, and two reflectors (one on each side of the vertical centerline as far apart as practicable) on the rear. Each converter dolly shall be equipped with rear turn signals and vehicular hazard warning signal flasher lamps when towed singly by another vehicle and not as part of a full trailer, if the converter dolly obscures the turn signals at the rear of the towing vehicle.
- Footnote—6** Pole trailers shall be equipped with two reflex reflectors on the rear, one on each side of the vertical centerline as far apart as practicable, to indicate the extreme width of the trailer.
- Footnote—7** Pole trailers, when towed by motor vehicles with rear identification lamps meeting the requirements of § 393.11 and mounted at a height greater than the load being transported on the pole trailer, are not required to have rear identification lamps.
- Footnote—8** Pole trailers shall have on the rear most support for the load: (1) two front clearance lamps, one on each side of the vehicle, both on the same level and as high as practicable to indicate the overall width of the pole trailer; (2) two rear clearance lamps, one on each side of the vehicle, both on the same level and as high as practicable to indicate the overall width of the pole trailer; (3) two rear side marker lamps, one on each side of the vehicle, both on the same level, not less than 375 mm (15 inches) above the road surface to indicate maximum width of the pole trailer, and (5) one red reflector on each side of the rear most support for the load. Lamps and reflectors may be combined as allowed in § 393.22.
- Footnote—9** Any motor vehicle transporting a load which extends more than 102 mm (4 inches) beyond the overall width of the motor vehicle shall be equipped with the following lamps in addition to other lamps when operated during the hours when headlamps are required to be used.
- (1) The foremost edge of that portion of the load which projects beyond the side of the vehicle shall be marked (at its outermost extremity) with an amber lamp visible from the front and side.
 - (2) The rearmost edge of that portion of the load which projects beyond the side of the vehicle shall be marked (at its outermost extremity) with a red lamp visible from the rear and side.
 - (3) If the projecting load does not measure more than 914 mm (3 feet) from front to rear, it shall be marked with an amber lamp visible from the front, both sides, and rear, except that if the projection is located at or near the rear it shall be marked by a red lamp visible from front, side, and rear.
- Footnote—10** Projections extending more than 1,219 mm (4 feet) beyond the body, shall have these projections marked as follows when the vehicle is operated during the hours when headlamps are required to be used:
- (1) On each side of the projecting load, one red side marker lamp, visible from the side, located so as to indicate maximum overhang.
 - (2) On the rear of the projecting load, two red lamps, visible from the rear, one at each side; and two red reflectors visible from the rear, one at each side, located so as to indicate maximum width.
- Footnote—11** To be illuminated when tractor headlamps are illuminated.
- Footnote—12** Every bus, truck, and truck tractor shall be equipped with a signaling system that, in addition to signaling turning movements, shall have a switch or combination of switches that will cause the two front turn signals and the two rear signals to flash simultaneously as a vehicular traffic signal warning, required by § 392-22(a). The system shall be capable of flashing simultaneously with the ignition of the vehicle on or off.
- Footnote—13** To be actuated upon application of service brakes.
- Footnote—14** Backup lamp required to operate when bus, truck, or truck tractor is in reverse.
- Footnote—15**
- (1) For the purposes of Section 393.11, the term "overall width" refers to the nominal design dimension of the widest part of the vehicle, exclusive of the signal lamps, marker lamps, outside rearview mirrors, flexible tender extensions, and mud flaps.
 - (2) Clearance lamps may be mounted at a location other than on the front and rear if necessary to indicate the overall width of a vehicle, or for protection from damage during normal operation of the vehicle.
 - (3) On a trailer, the front clearance lamps may be mounted at a height below the extreme height if mounting at the extreme height results in the lamps failing to mark the overall width of the trailer.

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- (4) On a truck tractor, clearance lamps mounted on the cab may be located to indicate the width of the cab, rather than the width of the vehicle.
 - (5) When the rear identification lamps are mounted at the extreme height of a vehicle, rear clearance lamps are not required to be located as close as practicable to the top of the vehicle.
- Footnote—16** A trailer subject to this part that is less than 1829 mm (6 feet) in overall length, including the trailer tongue, need not be equipped with front side marker lamps and front side reflex reflectors.
- Footnote—17** A boat trailer subject to this part whose overall width is 2032 mm (80 inches) or more need not be equipped with both front and rear clearance lamps provided an amber (front) and red (rear) clearance lamp is located at or near the midpoint on each side so as to indicate its extreme width.

Figure 1 - Truck Tractor Illustration for § 393.11

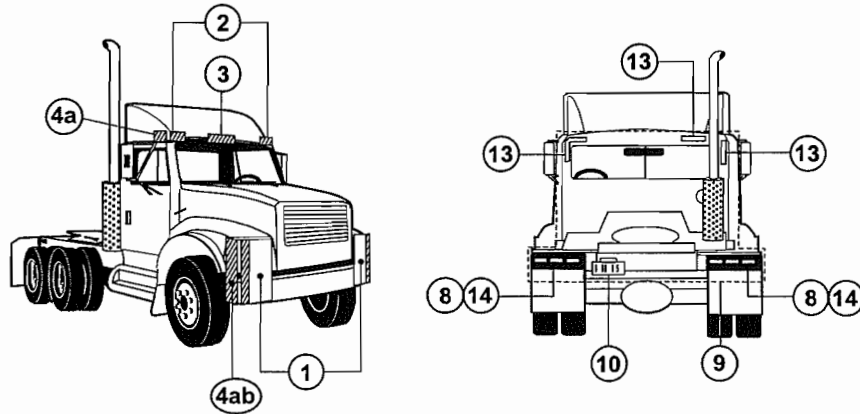


Figure 2 - Straight Truck Illustration for § 393.11

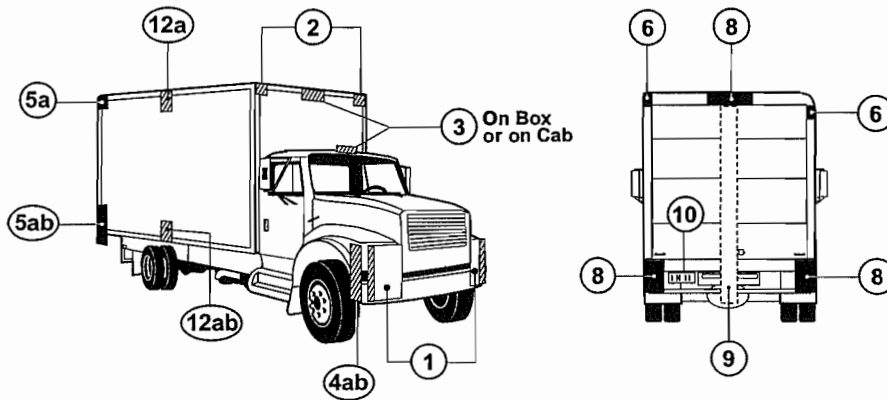


Figure 3 - Straight Truck Illustration for § 393.11

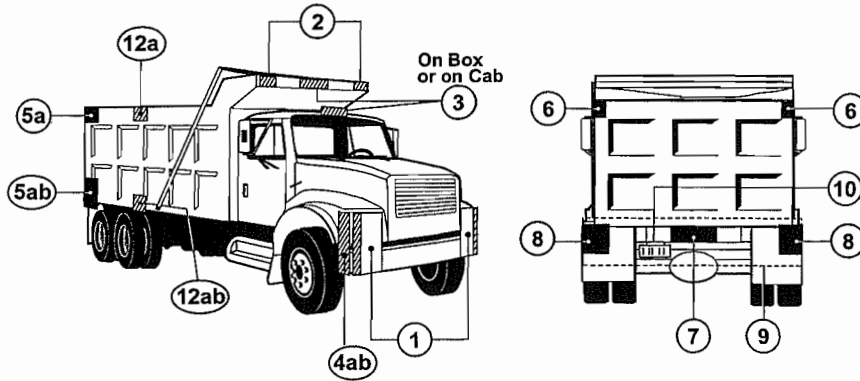


Figure 4 - Straight Truck Illustration for § 393.11

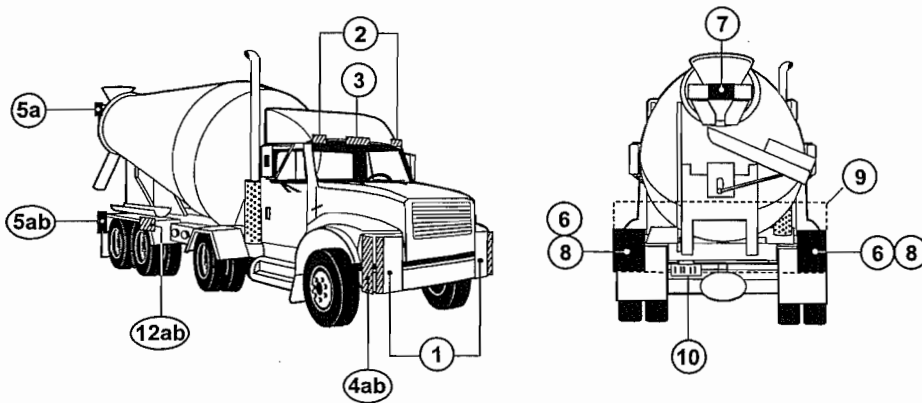


Figure 5 - Straight Truck Illustration for § 393.11

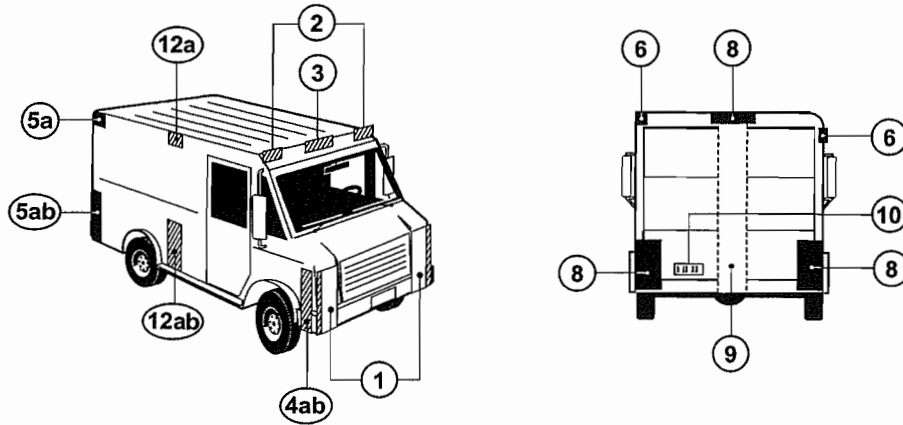


Figure 6 - Straight Truck Illustration for § 393.11

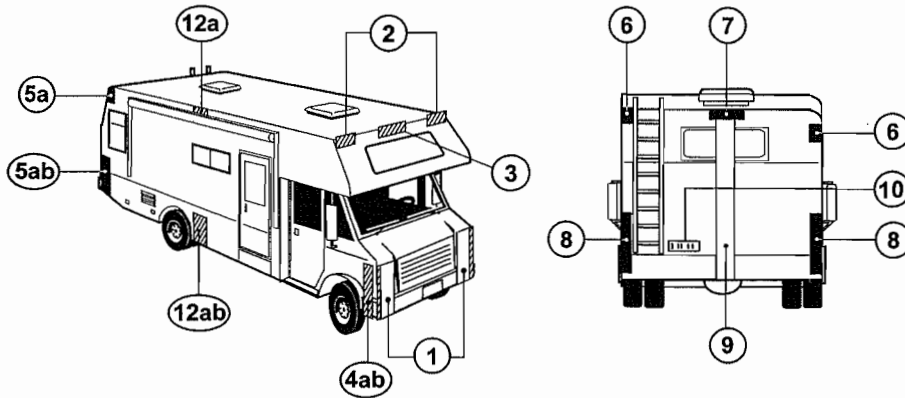
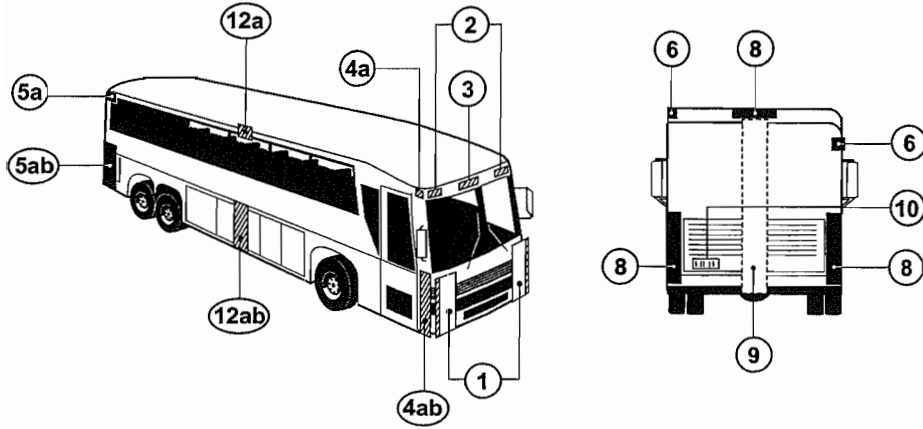


Figure 7 - Bus Illustration for § 393.11



**LEGEND FOR FIGURES 1 THROUGH 7 - 49 CFR 393.11
TRUCK & BUS VEHICLE ILLUSTRATIONS
(DOES NOT APPLY TO FIGURES 8 THROUGH 18 FOR TRAILERS)**

Area	Equipment
①	Headlamps - Lower Beam
	Headlamps - Upper Beam
	Parking Lamps - Attention: <i>Required only on vehicles less than 2032mm wide</i>
	Front Turn Signal/Hazard Warning Lamps
②	Front Clearance Lamps - Attention: <i>Required for vehicles 2032mm wide or wider</i>
③	Front Identification Lamps (ID)
④a	Front Side Marker Lamps
④b	Front Side Reflex Reflectors
⑤a	Rear Side Marker Lamps - <i>Not required on Truck Tractors</i>
⑤b	Rear Side Reflex Reflectors - <i>Not required on Truck Tractors</i>
⑥	Rear Clearance Lamps Attention: <i>Required for vehicles 2032mm wide or wider, but not required on Truck Tractors</i>
⑦	Rear Identification Lamps (ID) Attention: <i>Required for vehicles 2032mm wide or wider, but not required on Truck Tractors</i>
⑧	Tail Lamps
	Stop Lamps
	Rear Turn Signal/Hazard Warning Lamps
	Rear Reflex Reflectors
⑨	Backup Lamp
⑩	License Plate Lamp
⑪	Center High Mounted Stop Lamp Attention: <i>Required for vehicles less than 2032mm wide and 4536kg</i>

ADDITIONAL EQUIPMENT FOR SPECIFIC TRUCKS AND BUS VEHICLES

Area	Equipment
⑫a	Intermediate Side Marker Lamps
⑫b	Intermediate Side Reflex Reflectors

TRUCK TRACTORS

DESCRIPTION	
Area	Conspicuity Treatment
⑬	Rear Upper Body Marking
⑭	Rear Marking

Figure 8 - Semi-Trailer Illustration for § 393.11

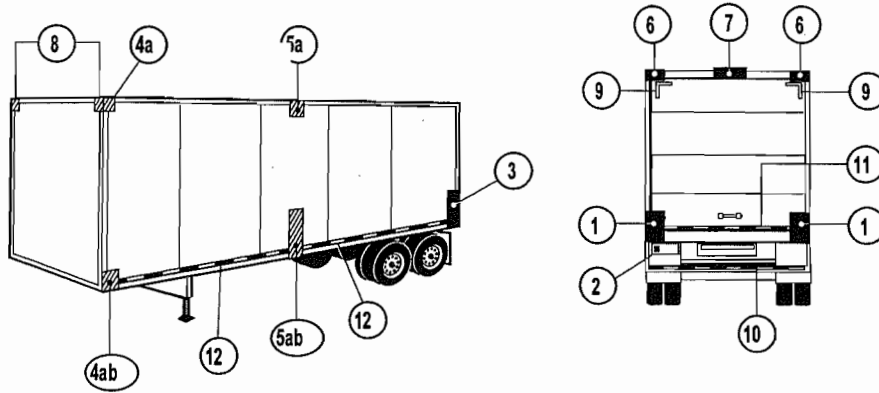


Figure 9 - Semi-Trailer Illustration for § 393.11

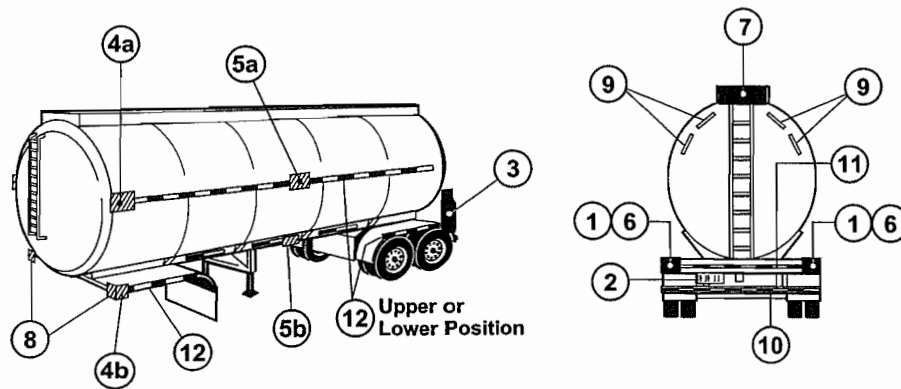


Figure 10 - Semi-Trailer Illustration for § 393.11

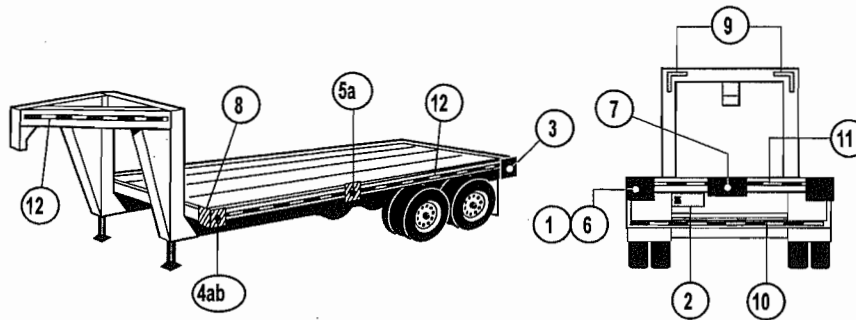
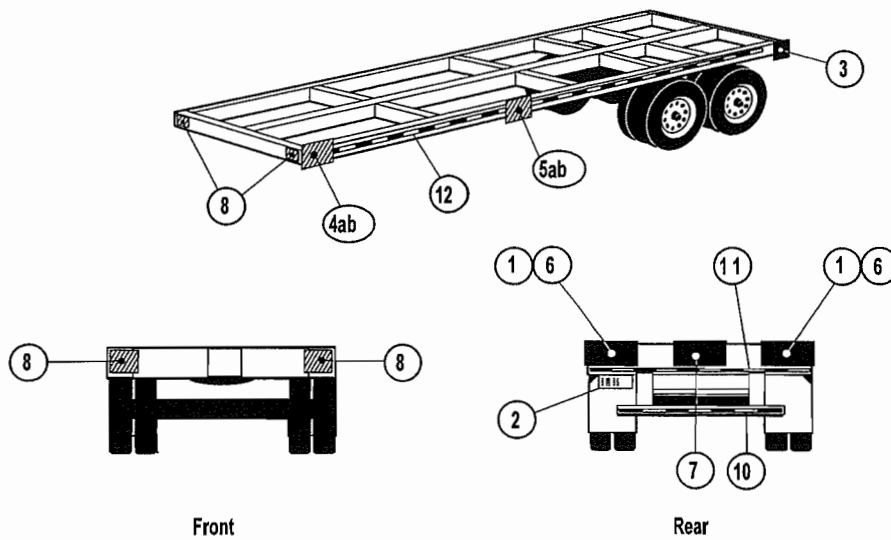


Figure 11 - Container Chassis Illustration for § 393.11



**Figure 12 - Pole Trailer Illustration for § 393.11
- All Vehicle Widths**

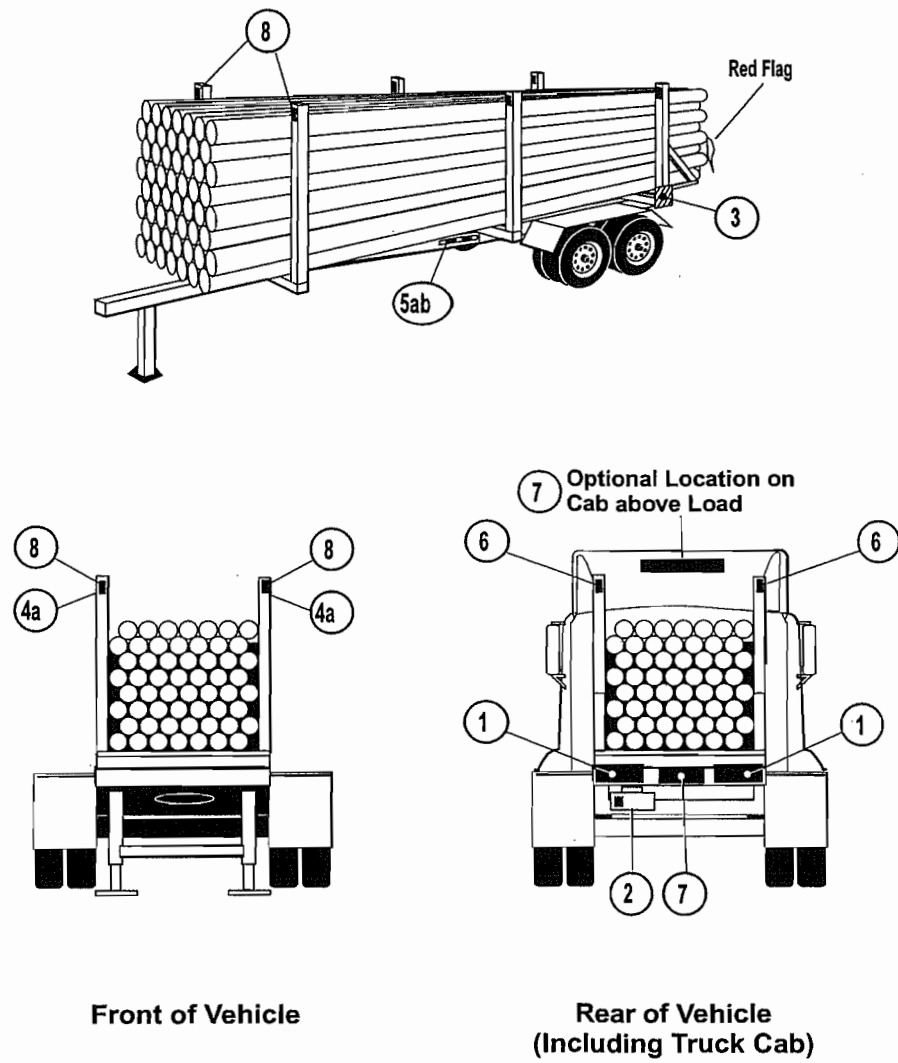
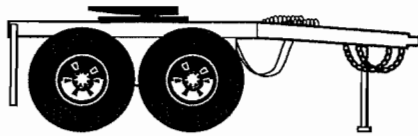
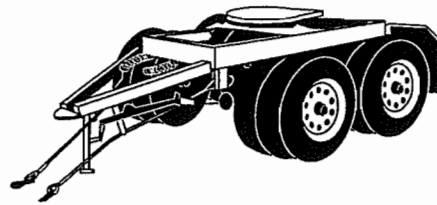
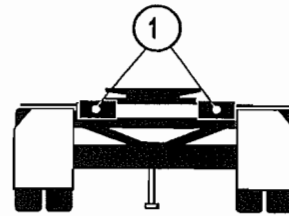


Figure 13 - Converter Dolly Illustration for § 393.11



Side View of Dolly



Rear

Figure 14 - Semi-Trailer Illustration for § 393.11

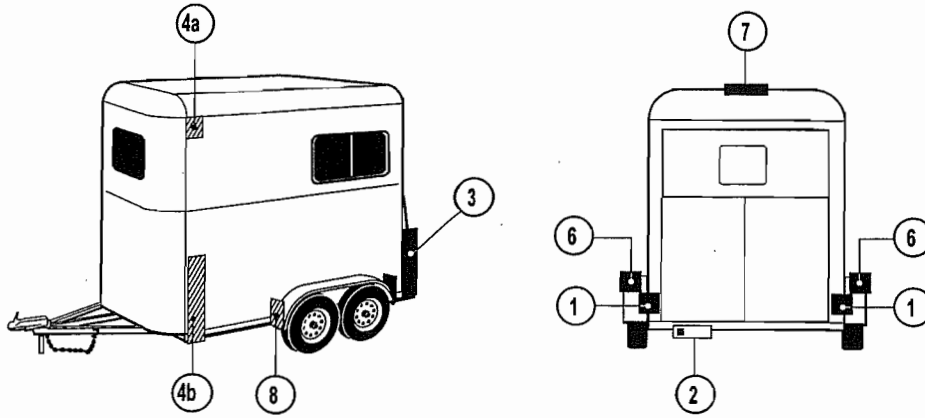


Figure 15 - Semi-Trailer Illustration for § 393.11

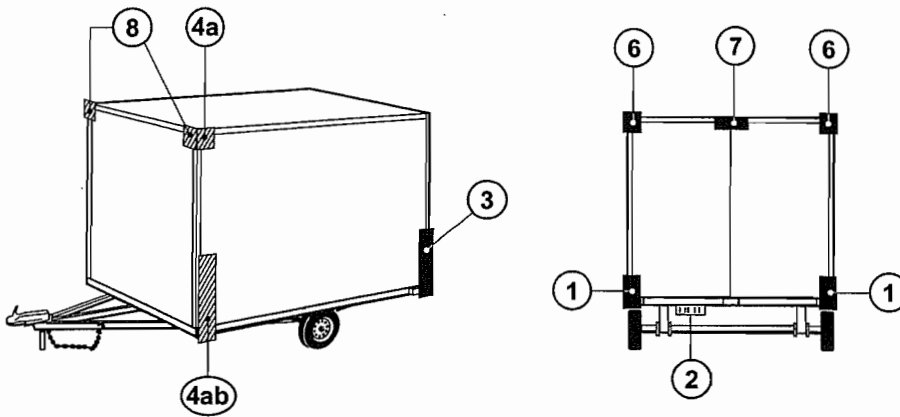


Figure 16 - Semi-Trailer Illustration for § 393.11

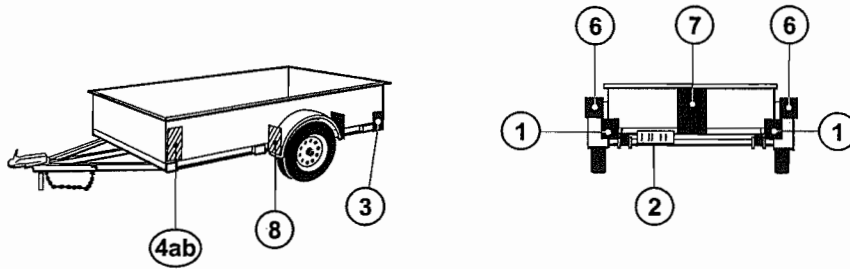


Figure 17 - Semi-Trailer Illustration for § 393.11

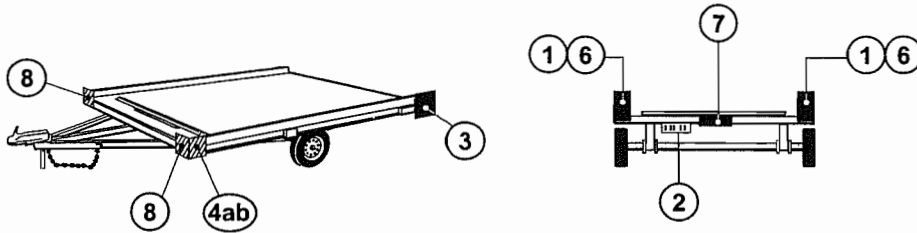
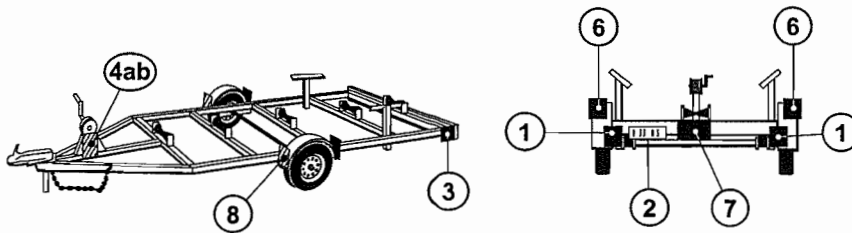


Figure 18 - Semi-Trailer Illustration for § 393.11



**LEGEND FOR FIGURES 8 THROUGH 18 - 49 CFR 393.11
TRAILER ILLUSTRATIONS**

(DOES NOT APPLY TO FIGURES 1 THROUGH 7 FOR TRUCKS & BUSES)

Area	Equipment
1	Tail Lamps
	Stop Lamps
	Rear Turn Signal Lamps
	Rear Reflex Reflectors
2	License Plate Lamp (s)
3	Rear Side Marker Lamps
	Rear Side Reflex Reflectors
4a	Front Side Marker Lamps
4b	Front Side Reflex Reflectors

**ADDITIONAL EQUIPMENT FOR TRAILERS EXCEEDING THE
FOLLOWING PARAMETERS**

LENGTH 9.1 m (30 ft.) OR LONGER

Area	Equipment
5a	Intermediate Side Marker Lamps
5b	Intermediate Side Reflex Reflectors

WIDTH 2.032 m (80 in.) OR WIDER

Area	Equipment
6	Rear Clearance Lamps
7	Rear Identification Lamps
8	Front Clearance Lamps

**WIDTH 2.032 m (80 in.) OR WIDER AND GVWR 4,536 kg (10,000 lb.)
OR MORE**

Area	DESCRIPTION
Area	Conspicuity Treatment
9	Rear Upper Body Marking
10	Bumper Bar Marking
11	Rear Lower Body Marking
12	Side Marking

[70 FR 48027, Aug. 15, 2005, as amended at 72 FR 32014, June 11, 2007; 72 FR 33562, June 18, 2007]

§ 393.13 Retroreflective sheeting and reflex reflectors, requirements for semitrailers and trailers manufactured before December 1, 1993.

(a) *Applicability.* All trailers and semitrailers manufactured prior to December 1, 1993, which have an overall width of 2,032 mm (80 inches) or more and a gross vehicle weight rating of 4,536 kg (10,001 pounds) or more, except trailers that are manufactured exclusively for use as offices or dwellings, pole trailers (as defined in § 390.5 of this subchapter), and trailers transported in a driveaway-towaway operation, must be equipped with retroreflective sheeting or an array of reflex reflectors that meet the requirements of this section. Motor carriers operating trailers, other than container chassis (as defined in § 393.5), have until June 1, 2001, to comply with the requirements of this section. Motor carriers operating container chassis have until December 1, 2001, to comply with the requirements of this section.

(b) *Retroreflective sheeting and reflex reflectors.* Motor carriers are encouraged to retrofit their trailers with a conspicuity system that meets all of the requirements applicable to trailers manufactured on or after December 1, 1993, including the use of retroreflective sheeting or reflex reflectors in a red and white pattern (see Federal Motor Vehicle Safety Standard No. 108 (49 CFR 571.108), S5.7, *Conspicuity systems*). Motor carriers which do not retrofit their trailers to meet the requirements of FMVSS No. 108, for example by using an alternative color pattern, must comply with the remainder of this paragraph and with paragraph (c) or (d) of this section. Retroreflective sheeting or reflex reflectors in colors or color combinations other than red and white may be used on the sides or lower rear area of the semitrailer or trailer until June 1, 2009. The alternate color or color combination must be uniform along the sides and lower rear area of the trailer. The retroreflective sheeting or reflex reflectors on the upper rear area of the trailer must be white and conform to the requirements of FMVSS No. 108 (S5.7). Red retroreflective sheeting or reflex reflectors shall not be used along the sides of the trailer unless it is used

as part of a red and white pattern. Retroreflective sheeting shall have a width of at least 50 mm (2 inches).

(c) *Locations for retroreflective sheeting*—(1) *Sides.* Retroreflective sheeting shall be applied to each side of the trailer or semitrailer. Each strip of retroreflective sheeting shall be positioned as horizontally as practicable, beginning and ending as close to the front and rear as practicable. The strip need not be continuous but the sum of the length of all of the segments shall be at least half of the length of the trailer and the spaces between the segments of the strip shall be distributed as evenly as practicable. The centerline for each strip of retroreflective sheeting shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area. If necessary to clear rivet heads or other similar obstructions, 50 mm (2 inches) wide retroreflective sheeting may be separated into two 25 mm (1 inch) wide strips of the same length and color, separated by a space of not more than 25 mm (1 inch).

(2) *Lower rear area.* The rear of each trailer and semitrailer must be equipped with retroreflective sheeting. Each strip of retroreflective sheeting shall be positioned as horizontally as practicable, extending across the full width of the trailer, beginning and ending as close to the extreme edges as practicable. The centerline for each of the strips of retroreflective sheeting shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area.

(3) *Upper rear area.* Two pairs of white strips of retroreflective sheeting, each pair consisting of strips 300 mm (12 inches) long, must be positioned horizontally and vertically on the right and left upper corners of the rear of the body of each trailer and semitrailer, as close as practicable to the top of the trailer and as far apart as practicable. If the perimeter of the body, as viewed from the rear, is not square or rectangular, the strips may be applied along the perimeter, as close as practicable to the uppermost and outermost areas

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of the rear of the body on the left and right sides.

(d) *Locations for reflex reflectors*—(1) *Sides*. Reflex reflectors shall be applied to each side of the trailer or semitrailer. Each array of reflex reflectors shall be positioned as horizontally as practicable, beginning and ending as close to the front and rear as practicable. The array need not be continuous but the sum of the length of all of the array segments shall be at least half of the length of the trailer and the spaces between the segments of the strip shall be distributed as evenly as practicable. The centerline for each array of reflex reflectors shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area. The center of each reflector shall not be more than 100 mm (4 inches) from the center of each adjacent reflector in the segment of the array. If reflex reflectors are arranged in an alternating color pattern, the length of reflectors of the first color shall be as close as practicable to the length of the reflectors of the second color.

(2) *Lower rear area*. The rear of each trailer and semitrailer must be equipped with reflex reflectors. Each array of reflex reflectors shall be positioned as horizontally as practicable, extending across the full width of the trailer, beginning and ending as close to the extreme edges as practicable. The centerline for each array of reflex reflectors shall be between 375 mm (15 inches) and 1,525 mm (60 inches) above the road surface when measured with the trailer empty or unladen, or as close as practicable to this area. The center of each reflector shall not be more than 100 mm (4 inches) from the center of each adjacent reflector in the segment of the array.

(3) *Upper rear area*. Two pairs of white reflex reflector arrays, each pair at least 300 mm (12 inches) long, must be positioned horizontally and vertically on the right and left upper corners of the rear of the body of each trailer and semitrailer, as close as practicable to the top of the trailer and as far apart as practicable. If the perimeter of the body, as viewed from the rear, is not square or rectangular, the arrays may

be applied along the perimeter, as close as practicable to the uppermost and outermost areas of the rear of the body on the left and right sides. The center of each reflector shall not be more than 100 mm (4 inches) from the center of each adjacent reflector in the segment of the array.

[64 FR 15605, Mar. 31, 1999, as amended at 66 FR 30339, June 6, 2001]

§ 393.17 Lamps and reflectors—combinations in driveaway-towaway operation.

A combination of motor vehicles engaged in driveaway-towaway operation must be equipped with operative lamps and reflectors conforming to the rules in this section.

(a) The towing vehicle must be equipped as follows:

(1) On the front, there must be at least two headlamps, an equal number at each side, two turn signals, one at each side, and two clearance lamps, one at each side.

(2) On each side, there must be at least one side-marker lamp, located near the front of the vehicle.

(3) On the rear, there must be at least two tail lamps, one at each side, and two stop lamps, one at each side.

(b) Except as provided in paragraph (c) of this section, the rearmost towed vehicle of the combination (including the towed vehicle or a tow-bar combination, the towed vehicle of a single saddle-mount combination, and the rearmost towed vehicle of a double or triple saddle-mount combination) or, in the case of a vehicle full-mounted on a saddle-mount vehicle, either the full-mounted vehicle or the rearmost saddle-mounted vehicle must be equipped as follows:

(1) On each side, there must be at least one side-marker lamp, located near the rear of the vehicle.

(2) On the rear, there must be at least two tail lamps, two stop lamps, two turn signals, two clearance lamps, and two reflectors, one of each type at each side. In addition, if any vehicle in the combination is 80 inches or more in overall width, there must be three identification lamps on the rear.

(c) If the towed vehicle in a combination is a mobile structure trailer, it must be equipped in accordance with

the following lighting devices. For the purposes of this part, *mobile structure trailer* means a trailer that has a roof and walls, is at least 10 feet wide, and can be used off road for dwelling or commercial purposes.

(1) When the vehicle is operated in accordance with the terms of a special permit prohibiting operation during the times when lighted lamps are required under § 392.30, it must have on the rear—

(i) Two stop lamps, one on each side of the vertical centerline, at the same height, and as far apart as practicable;

(ii) Two tail lamps, one on each side of the vertical centerline, at the same height, and as far apart as practicable;

(iii) Two red reflex reflectors, one on each side of the vertical centerline, at

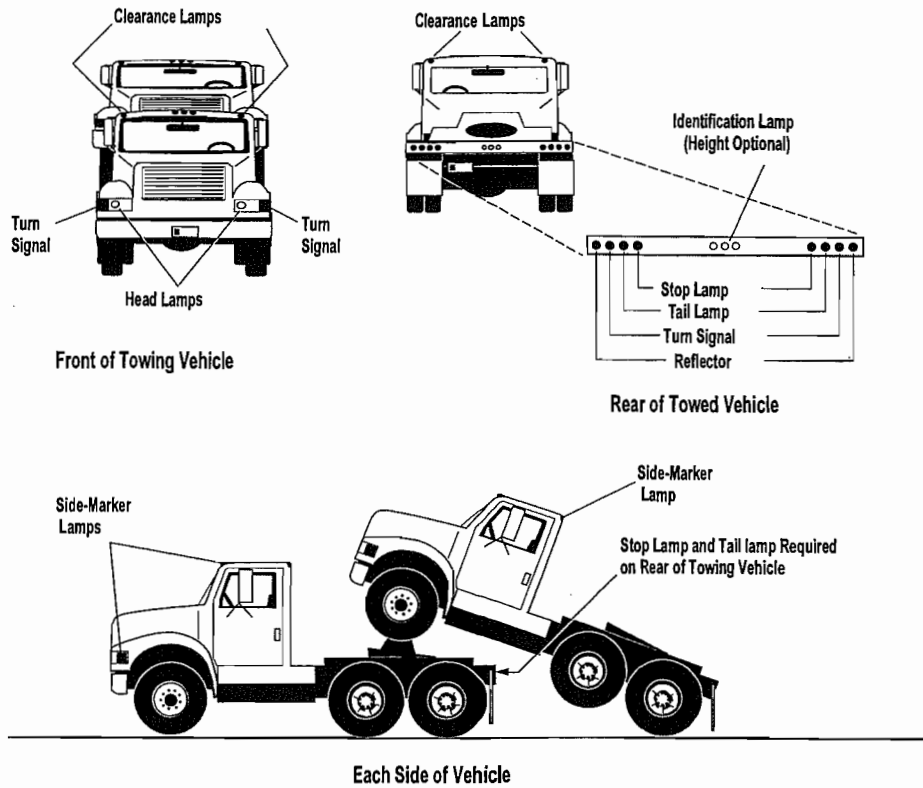
the same height, and as far apart as practicable; and

(iv) Two turn signal lamps, one on each side of the vertical centerline, at the same height, and as far apart as practicable.

(2) At all other times, the vehicle must be equipped as specified in paragraph (b) of this section.

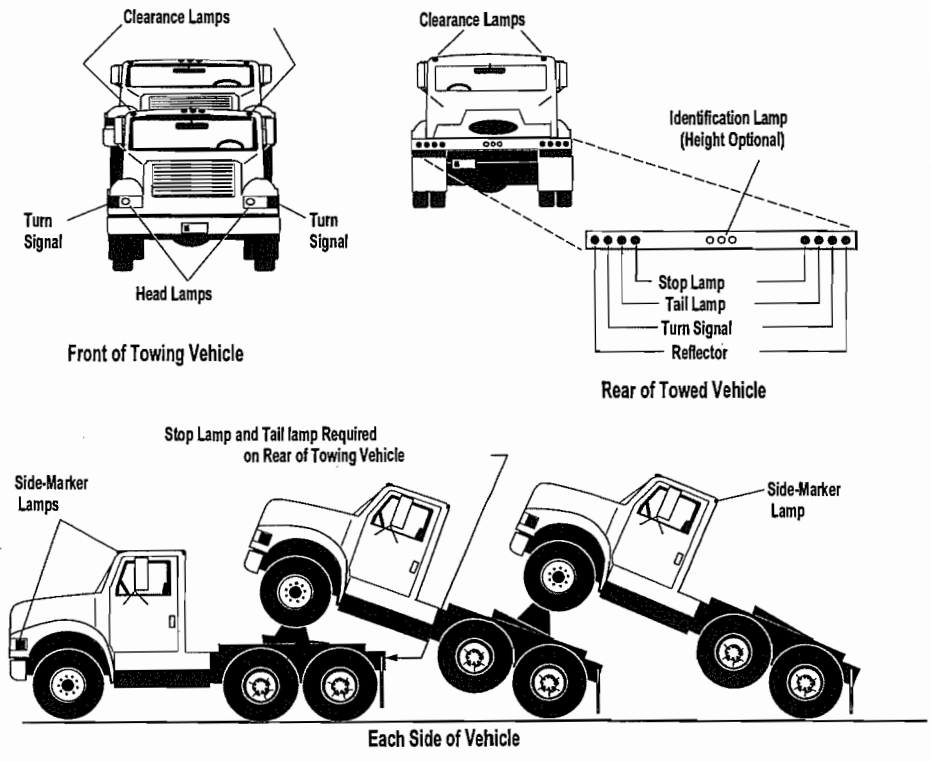
(d) An intermediate towed vehicle in a combination consisting of more than two vehicles (including the first saddle-mounted vehicle of a double saddle-mount combination and the first and second saddle-mount vehicles of a triple saddle-mount combination) must have one side-marker lamp on each side, located near the rear of the vehicle.

**Figure 19 - Single-Saddle-Mount Diagram
to Illustrate § 393.17**



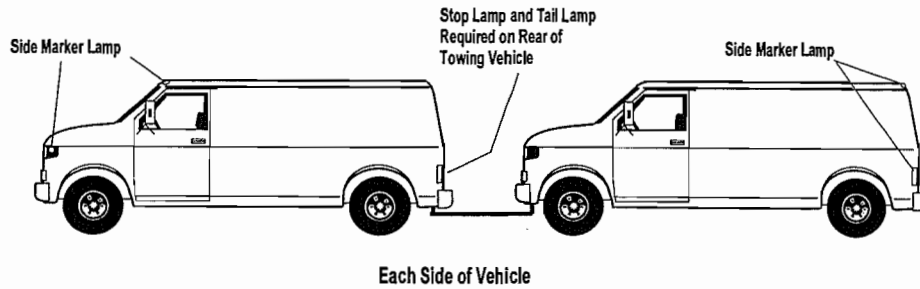
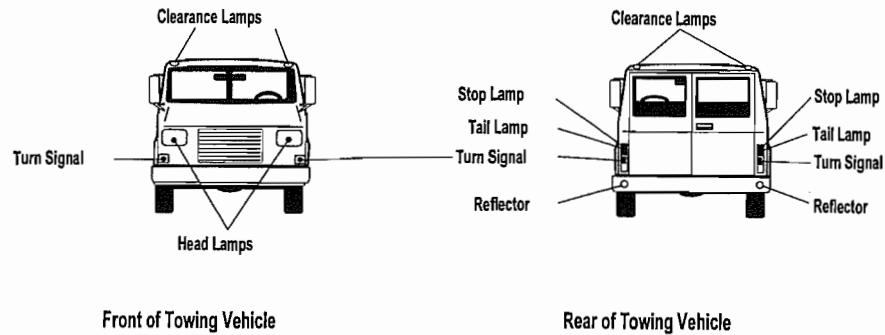
Lamps may be combined as permitted by § 393.22. The color of exterior lighting devices and reflectors shall conform to requirements of § 393.11

Figure 20 - Double-Saddle-Mount Diagram to Illustrate § 393.17



Lamps may be combined as permitted by § 393.22. The color of exterior lighting devices and reflectors shall conform to requirements of § 393.11

Figure 21 - Tow-bar Diagram to Illustrate § 393.17



Lamps may be combined as permitted by § 393.22. The color of exterior lighting devices and reflectors shall conform to requirements of § 393.11

(49 U.S.C. 304, 1655; 49 CFR 1.48(b) and 301.60)

[40 FR 36126, Aug. 19, 1975, as amended at 47 FR 47837, Oct. 28, 1982; 70 FR 48044, Aug. 15, 2005]

§ 393.19 Hazard warning signals.

The hazard warning signal operating unit on each commercial motor vehicle shall operate independently of the ignition or equivalent switch, and when activated, cause all turn signals required by § 393.11 to flash simultaneously.

[70 FR 48046, Aug. 15, 2005]

§ 393.20 [Reserved]

§ 393.22 Combination of lighting devices and reflectors.

(a) *Permitted combinations.* Except as provided in paragraph (b) of this section, two or more lighting devices and

reflectors (whether or not required by the rules in this part) may be combined optically if—

(1) Each required lighting device and reflector conforms to the applicable rules in this part; and

(2) Neither the mounting nor the use of a nonrequired lighting device or reflector impairs the effectiveness of a required lighting device or reflector or causes that device or reflector to be inconsistent with the applicable rules in this part.

(b) *Prohibited combinations.* (1) A turn signal lamp must not be combined optically with either a head lamp or other

lighting device or combination of lighting devices that produces a greater intensity of light than the turn signal lamp.

(2) A turn signal lamp must not be combined optically with a stop lamp unless the stop lamp function is always deactivated when the turn signal function is activated.

(3) A clearance lamp must not be combined optically with a tail lamp or identification lamp.

[39 FR 26908, July 24, 1974]

§ 393.23 Power supply for lamps.

All required lamps must be powered by the electrical system of the motor vehicle with the exception of battery powered lamps used on projecting loads.

[70 FR 48046, Aug. 15, 2005]

§ 393.24 Requirements for head lamps, auxiliary driving lamps and front fog lamps.

(a) *Headlamps.* Every bus, truck and truck tractor shall be equipped with headlamps as required by §393.11(a). The headlamps shall provide an upper and lower beam distribution of light, selectable at the driver's will and be steady-burning. The headlamps shall be marked in accordance with FMVSS No. 108. Auxiliary driving lamps and/or front fog lamps may not be used to satisfy the requirements of this paragraph.

(b) *Auxiliary driving lamps and front fog lamps.* Commercial motor vehicles may be equipped with auxiliary driving lamps and/or front fog lamps for use in conjunction with, but not in lieu of the required headlamps. Auxiliary driving lamps shall meet SAE Standard J581 Auxiliary Upper Beam Lamps, July 2004, and front fog lamps shall meet SAE Standard J583 Front Fog Lamp, August 2004. (See §393.7 for information on the incorporation by reference and availability of these documents.)

(c) *Mounting.* Headlamps shall be mounted and aimable in accordance with FMVSS No. 108. Auxiliary driving lamps and front fog lamps shall be mounted so that the beams are aimable and the mounting shall prevent the aim of the lighting device from being

disturbed while the vehicle is operating on public roads.

(d) *Aiming.* Headlamps, auxiliary driving lamps and front fog lamps shall be aimed to meet the aiming specifications in FMVSS No. 108 (49 CFR 571.108), SAE J581, and SAE J583, respectively.

[70 FR 48046, Aug. 15, 2005]

§ 393.25 Requirements for lamps other than head lamps.

(a) *Mounting.* All lamps shall be securely mounted on a rigid part of the vehicle. Temporary lamps must be securely mounted to the load and are not required to be mounted to a permanent part of the vehicle.

(b) *Visibility.* Each lamp shall be located so that it meets the visibility requirements specified by FMVSS No. 108 in effect at the time of manufacture of the vehicle. Vehicles which were not subject to FMVSS No. 108 at the time of manufacture shall have each lamp located so that it meets the visibility requirements specified in the SAE standards listed in paragraph (c) of this section. If motor vehicle equipment (*e.g.*, mirrors, snow plows, wrecker booms, backhoes, and winches) prevents compliance with this paragraph by any required lamp, an auxiliary lamp or device meeting the requirements of this paragraph shall be provided. This shall not be construed to apply to lamps on one unit which are obscured by another unit of a combination of vehicles.

(c) *Specifications.* All required lamps (except marker lamps on projecting loads, lamps which are temporarily attached to vehicles transported in driveaway-towaway operations, and lamps on converter dollies and pole trailers) on vehicles manufactured on or after December 25, 1968, shall, at a minimum, meet the applicable requirements of FMVSS No. 108 in effect on the date of manufacture of the vehicle. Marker lamps on projecting loads, all lamps which are temporarily attached to vehicles transported in driveaway-towaway operations, and all lamps on converter dollies and pole trailers must meet the following applicable SAE standards: J586—Stop Lamps for Use on Motor Vehicles Less Than 2032 mm in Overall Width, March 2000; J2261 Stop

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Lamps and Front- and Rear-Turn Signal Lamps for Use on Motor Vehicles 2032 mm or More in Overall Width, January 2002; J585—Tail Lamps (Rear Position Lamps) for Use on Motor Vehicles Less Than 2032 mm in Overall Width, March 2000; J588—Turn Signal Lamps for Use on Motor Vehicles Less Than 2032 mm in Overall Width, March 2000; J2040—Tail Lamps (Rear Position Lamps) for Use on Vehicles 2032 mm or More in Overall Width, March 2002; J592—Sidemarker Lamps for Use on Road Vehicles Less Than 2032 mm in Overall Width, August 2000. (See § 393.7 for information on the incorporation by reference and availability of these documents.)

(d) (Reserved)

(e) *Lamps to be steady-burning.* All exterior lamps (both required lamps and any additional lamps) shall be steady-burning with the exception of turn signal lamps; hazard warning signal lamps; school bus warning lamps; amber warning lamps or flashing warning lamps on tow trucks and commercial motor vehicles transporting oversized loads; and warning lamps on emergency and service vehicles authorized by State or local authorities. Lamps combined into the same shell or housing with a turn signal are not required to be steady burning while the turn signal is in use. Amber warning lamps must meet SAE J845—Optical Warning Devices for Authorized Emergency, Maintenance and Service Vehicles, May 1997. Amber flashing warning lamps must meet SAE J595—Directional Flashing Optical Warning Devices for Authorized Emergency, Maintenance and Service Vehicles, January 2005. Amber gaseous discharge warning lamps must meet SAE J1318 Gaseous Discharge Warning Lamp for Authorized Emergency, Maintenance, and Service Vehicles, May 1998. (See § 393.7(b) for information on the incorporation by reference and availability of these documents.)

(f) *Stop lamp operation.* The stop lamps on each vehicle shall be activated upon application of the service brakes. The stop lamps are not required to be activated when the emergency feature of the trailer brakes is used or when the stop lamp is optically

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combined with the turn signal and the turn signal is in use.

[70 FR 48047, Aug. 15, 2005]

§ 393.26 Requirements for reflectors.

(a) *Mounting.* Reflex reflectors shall be mounted at the locations required by § 393.11. In the case of motor vehicles so constructed that requirement for a 381 mm (15-inch) minimum height above the road surface is not practical, the reflectors shall be mounted as close as practicable to the required mounting height range. All permanent reflex reflectors shall be securely mounted on a rigid part of the vehicle. Temporary reflectors on projecting loads must be securely mounted to the load and are not required to be permanently mounted to a part of the vehicle. Temporary reflex reflectors on vehicles transported in driveaway-towaway operations must be firmly attached.

(b) *Specifications.* All required reflex reflectors (except reflex reflectors on projecting loads, vehicles transported in a driveaway-towaway operation, converter dollies and pole trailers) on vehicles manufactured on or after December 25, 1968, shall meet the applicable requirements of FMVSS No. 108 in effect on the date of manufacture of the vehicle. Reflex reflectors on projecting loads, vehicles transported in a driveaway-towaway operation, and all reflex reflectors on converter dollies and pole trailers must conform to SAE J594—Reflex Reflectors, December 2003.

(c) *Substitute material for side reflex reflectors.* Reflective material conforming to ASTM D 4956–04, Standard Specification for Retroreflective Sheeting for Traffic Control, may be used in lieu of reflex reflectors if the material as used on the vehicle, meets the performance standards in either Table I of SAE J594 or Table IA of SAE J594—Reflex Reflectors, December 2003. (See § 393.7(b) for information on the incorporation by reference and availability of these documents.)

(d) *Use of additional retroreflective surfaces.* Additional retroreflective surfaces may be used in conjunction with, but not in lieu of the reflex reflectors required in subpart B of part 393, and the substitute material for side reflex reflectors allowed by paragraph (c) of this section, provided:

(1) Designs do not resemble traffic control signs, lights, or devices, except that straight edge striping resembling a barricade pattern may be used.

(2) Designs do not tend to distort the length and/or width of the motor vehicle.

(3) Such surfaces shall be at least 3 inches from any required lamp or reflector unless of the same color as such lamp or reflector.

(4) No red color shall be used on the front of any motor vehicle, except for display of markings or placards required by § 177.823 of this title.

(5) Retroreflective license plates required by State or local authorities may be used.

[33 FR 19735, Dec. 25, 1968, as amended at 35 FR 3167, Feb. 19, 1970; 53 FR 49397, Dec. 7, 1988; 70 FR 48047, Aug. 15, 2005]

§ 393.27 [Reserved]

§ 393.28 Wiring systems.

Electrical wiring shall be installed and maintained to conform to SAE J1292—Automobile, Truck, Truck-Tractor, Trailer, and Motor Coach Wiring, October 1981, except the jumper cable plug and receptacle need not conform to SAE J560. The reference to SAE J1292 shall not be construed to require circuit protection on trailers. (See § 393.7(b) for information on the incorporation by reference and availability of this document.)

[70 FR 48047, Aug. 15, 2005]

§ 393.29 [Reserved]

§ 393.30 Battery installation.

Every storage battery on every vehicle, unless located in the engine compartment, shall be covered by a fixed part of the motor vehicle or protected by a removable cover or enclosure. Removable covers or enclosures shall be substantial and shall be securely latched or fastened. The storage battery compartment and adjacent metal parts which might corrode by reason of battery leakage shall be painted or coated with an acid-resisting paint or coating and shall have openings to provide ample battery ventilation and drainage. Wherever the cable to the starting motor passes through a metal compartment, the cable shall be pro-

tected against grounding by an acid and waterproof insulating bushing. Wherever a battery and a fuel tank are both placed under the driver's seat, they shall be partitioned from each other, and each compartment shall be provided with an independent cover, ventilation, and drainage.

§§ 393.31–393.33 [Reserved]

Subpart C—Brakes

§ 393.40 Required brake systems.

(a) Each commercial motor vehicle must have brakes adequate to stop and hold the vehicle or combination of motor vehicles. Each commercial motor vehicle must meet the applicable service, parking, and emergency brake system requirements provided in this section.

(b) *Service brakes*—(1) *Hydraulic brake systems.* Motor vehicles equipped with hydraulic brake systems and manufactured on or after September 2, 1983, must, at a minimum, have a service brake system that meets the requirements of FMVSS No. 105 in effect on the date of manufacture. Motor vehicles which were not subject to FMVSS No. 105 on the date of manufacture must have a service brake system that meets the applicable requirements of §§ 393.42, 393.48, 393.49, 393.51, and 393.52 of this subpart.

(2) *Air brake systems.* Buses, trucks and truck-tractors equipped with air brake systems and manufactured on or after March 1, 1975, and trailers manufactured on or after January 1, 1975, must, at a minimum, have a service brake system that meets the requirements of FMVSS No. 121 in effect on the date of manufacture. Motor vehicles which were not subject to FMVSS No. 121 on the date of manufacture must have a service brake system that meets the applicable requirements of §§ 393.42, 393.48, 393.49, 393.51, and 393.52 of this subpart.

(3) *Vacuum brake systems.* Motor vehicles equipped with vacuum brake systems must have a service brake system that meets the applicable requirements of §§ 393.42, 393.48, 393.49, 393.51, and 393.52 of this subpart.

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(4) *Electric brake systems.* Motor vehicles equipped with electric brake systems must have a service brake system that meets the applicable requirements of §§ 393.42, 393.48, 393.49 and 393.52 of this subpart.

(5) *Surge brake systems.* Motor vehicles equipped with surge brake systems must have a service brake system that meets the applicable requirements of §§ 393.42, 393.48, 393.49, and 393.52 of this subpart.

(c) *Parking brakes.* Each commercial motor vehicle must be equipped with a parking brake system that meets the applicable requirements of § 393.41.

(d) *Emergency brakes—partial failure of service brakes—(1) Hydraulic brake systems.* Motor vehicles manufactured on or after September 2, 1983, and equipped with a split service brake system must, at a minimum, meet the partial failure requirements of FMVSS No. 105 in effect on the date of manufacture.

(2) *Air brake systems.* Buses, trucks and truck tractors manufactured on or after March 1, 1975, and trailers manufactured on or after January 1, 1975, must be equipped with an emergency brake system which, at a minimum, meets the requirements of FMVSS No. 121 in effect on the date of manufacture.

(3) *Vehicles not subject to FMVSS Nos. 105 and 121 on the date of manufacture.* Buses, trucks and truck tractors not subject to FMVSS Nos. 105 or 121 on the date of manufacture must meet the requirements of § 393.40(e). Trailers not subject to FMVSS No. 121 at the time of manufacture must meet the requirements of § 393.43.

(e) *Emergency brakes, vehicles manufactured on or after July 1, 1973.* (1) A bus, truck, truck tractor, or a combination of motor vehicles manufactured on or after July 1, 1973, and not covered under paragraphs (d)(1) or (d)(2) of this section, must have an emergency brake system which consists of emergency features of the service brake system or an emergency system separate from the service brake system. The emergency brake system must meet the applicable requirements of §§ 393.43 and 393.52.

(2) A control by which the driver applies the emergency brake system must

be located so that the driver can operate it from the normal seating position while restrained by any seat belts with which the vehicle is equipped. The emergency brake control may be combined with either the service brake control or the parking brake control. However, all three controls may not be combined.

(f) *Interconnected systems.* (1) If the brake systems required by § 393.40(a) are interconnected in any way, they must be designed, constructed, and maintained so that in the event of a failure of any part of the operating mechanism of one or more of the systems (except the service brake actuation pedal or valve), the motor vehicle will have operative brakes and, for vehicles manufactured on or after July 1, 1973, be capable of meeting the requirements of § 393.52(b).

(2) A motor vehicle to which the requirements of FMVSS No. 105 (S5.1.2), dealing with partial failure of the service brake, applied at the time of manufacture meets the requirements of § 393.40(f)(1) if the motor vehicle is maintained in conformity with FMVSS No. 105 and the motor vehicle is capable of meeting the requirements of § 393.52(b), except in the case of a structural failure of the brake master cylinder body.

(3) A bus is considered to meet the requirements of § 393.40(f)(1) if it meets the requirements of § 393.44 and § 393.52(b).

[70 FR 48048, Aug. 15, 2005, as amended at 72 FR 9870, Mar. 6, 2007]

§ 393.41 Parking brake system.

(a) *Hydraulic-braked vehicles manufactured on or after September 2, 1983.* Each truck and bus (other than a school bus) with a GVWR of 4,536 kg (10,000 pounds) or less which is subject to this part and school buses with a GVWR greater than 4,536 kg (10,000 pounds) shall be equipped with a parking brake system as required by FMVSS No. 571.105 (S5.2) in effect at the time of manufacture. The parking brake shall be capable of holding the vehicle or combination of vehicles stationary under any condition of loading in which it is found on a public road (free of ice and snow). Hydraulic-braked vehicles which were not

subject to the parking brake requirements of FMVSS No. 571.105 (S5.2) must be equipped with a parking brake system that meets the requirements of paragraph (c) of this section.

(b) *Air-braked power units manufactured on or after March 1, 1975, and air-braked trailers manufactured on or after January 1, 1975.* Each air-braked bus, truck and truck tractor manufactured on and after March 1, 1975, and each air-braked trailer except an agricultural commodity trailer, converter dolly, heavy hauler trailer or pulpwood trailer, shall be equipped with a parking brake system as required by FMVSS No. 121 (S5.6) in effect at the time of manufacture. The parking brake shall be capable of holding the vehicle or combination of vehicles stationary under any condition of loading in which it is found on a public road (free of ice and snow). An agricultural commodity trailer, heavy hauler or pulpwood trailer shall carry sufficient chocking blocks to prevent movement when parked.

(c) *Vehicles not subject to FMVSS Nos. 105 and 121 on the date of manufacture.*

(1) Each singly driven motor vehicle not subject to parking brake requirements of FMVSS Nos. 105 or 121 at the time of manufacturer, and every combination of motor vehicles must be equipped with a parking brake system adequate to hold the vehicle or combination on any grade on which it is operated, under any condition of loading in which it is found on a public road (free of ice and snow).

(2) The parking brake system shall, at all times, be capable of being applied by either the driver's muscular effort or by spring action. If other energy is used to apply the parking brake, there must be an accumulation of that energy isolated from any common source and used exclusively for the operation of the parking brake.

Exception: This paragraph shall not be applicable to air-applied, mechanically-held parking brake systems which meet the parking brake requirements of FMVSS No. 121 (S5.6).

(3) The parking brake system shall be held in the applied position by energy other than fluid pressure, air pressure, or electric energy. The parking brake system shall not be capable of being re-

leased unless adequate energy is available to immediately reapply the parking brake with the required effectiveness.

[70 FR 48048, Aug. 15, 2005]

§ 393.42 Brakes required on all wheels.

(a) Every commercial motor vehicle shall be equipped with brakes acting on all wheels.

(b) *Exception.* (1) Trucks or truck tractors having three or more axles and manufactured before July 25, 1980, are not required to have brakes on the front wheels. However, these vehicles must meet the requirements of § 393.52.

(2) Motor vehicles being towed in a driveaway-towaway operation are not required to have operative brakes provided the combination of vehicles meets the requirements of § 393.52. This exception is not applicable to:

(i) Any motor vehicle towed by means of a tow-bar when another motor vehicle is full-mounted on the towed vehicle; and

(ii) Any combination of motor vehicles utilizing three or more saddle-mounts.

(3) Any semitrailer or pole trailer (laden or unladen) with a gross weight of 1,361 kg (3,000 pounds) or less which is subject to this part is not required to be equipped with brakes if the axle weight of the towed vehicle does not exceed 40 percent of the sum of the axle weights of the towing vehicle.

(4) Any full trailer or four-wheel pole trailer (laden or unladen) with a gross weight of 1,361 kg (3,000 pounds) or less which is subject to this part is not required to be equipped with brakes if the sum of the axle weights of the towed vehicle does not exceed 40 percent of the sum of the axle weights of the towing vehicle.

(5) Brakes are not required on the steering axle of a three-axle dolly which is steered by a co-driver.

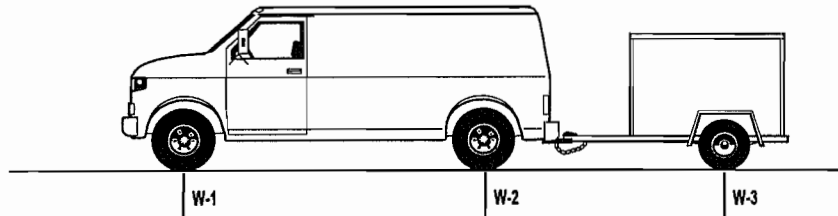
(6) Loaded housemoving dollies, specialized trailers and dollies used to transport industrial furnaces, reactors, and similar motor vehicles are not required to be equipped with brakes, provided the speed at which the combination of vehicles will be operated does not exceed 32 km/hour (20 mph) and brakes on the combination of vehicles

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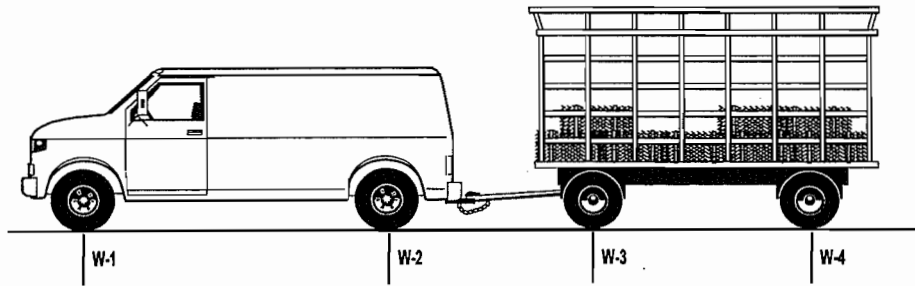
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are capable of stopping the combination within 12.2 meters (40 feet) from the speed at which the vehicle is being operated or 32 km/hour (20 mph), whichever is less.

Figure 22 - Illustrations of Brake Requirements for Light-Duty Trailers in § 393.42



(Semitrailer or 2-wheel pole trailer of 1,360 kilograms (3,000 pounds) gross weight or less must be equipped with brakes if W-3 is greater than 40 percent of the sum of W-1 and W-2.)



(Full trailer or 4-wheel pole trailer of 1,360 kilograms (3,000 pounds) gross weight or less must be equipped with brakes if the sum of W-3 and W-4 is greater than 40 percent of the sum of W-1 and W-2.)

[52 FR 2803, Jan. 27, 1987, as amended at 53 FR 49398, Dec. 7, 1988; 54 FR 48617, Nov. 24, 1989; 59 FR 25574, May 17, 1994; 61 FR 1843, Jan. 24, 1996; 70 FR 48049, Aug. 15, 2005]

§ 393.43 Breakaway and emergency braking.

(a) *Towing vehicle protection system.* Every motor vehicle, if used to tow a trailer equipped with brakes, shall be equipped with a means for providing that in the case of a breakaway of the trailer, the service brakes on the towing vehicle will be capable of stopping the towing vehicle. For air braked tow-

ing units, the tractor protection valve or similar device shall operate automatically when the air pressure on the towing vehicle is between 138 kPa and 310 kPa (20 psi and 45 psi).

(b) *Emergency brake requirements, air brakes.* Every truck or truck tractor equipped with air brakes, when used for towing other vehicles equipped with air brakes, shall be equipped with two

means of activating the emergency features of the trailer brakes. One of these means shall operate automatically in the event of reduction of the towing vehicle air supply to a fixed pressure which shall not be lower than 20 pounds per square inch nor higher than 45 pounds per square inch. The other means shall be a manually controlled device readily operable by a person seated in the driving seat. Its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and manual means required by this section may be, but are not required to be, separate.

(c) *Emergency brake requirements, vacuum brakes.* Every truck tractor and truck when used for towing other vehicles equipped with vacuum brakes, shall have, in addition to the single control required by § 393.49 to operate all brakes of the combination, a second manual control device which can be used to operate the brakes on the towed vehicles in emergencies. Such second control shall be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure on which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required by this rule to provide modulated or graduated braking.

(d) *Breakaway braking requirements for trailers.* Every trailer required to be equipped with brakes shall have brakes which apply automatically and immediately upon breakaway from the towing vehicle. With the exception of trailers having three or more axles, all brakes with which the trailer is required to be equipped must be applied upon breakaway from the towing vehicle. The brakes must remain in the applied position for at least 15 minutes.

(e) *Emergency valves.* Air brake systems installed on towed vehicles shall be so designed, by the use of "no-bleed-back" relay emergency valves or equivalent devices, that the supply reservoir used to provide air for brakes shall be safeguarded against backflow of air to

the towing vehicle upon reduction of the towing vehicle air pressure.

(f) *Exception.* The requirements of paragraphs (b), (c) and (d) of this section shall not be applicable to commercial motor vehicles being transported in driveaway-towaway operations.

[53 FR 49384, Dec. 7, 1988, as amended at 70 FR 48050, Aug. 15, 2005]

§ 393.44 Front brake lines, protection.

On every bus, if equipped with air brakes, the braking system shall be so constructed that in the event any brake line to any of the front wheels is broken, the driver can apply the brakes on the rear wheels despite such breakage. The means used to apply the brakes may be located forward of the driver's seat as long as it can be operated manually by the driver when the driver is properly restrained by any seat belt assembly provided for use. Every bus shall meet this requirement or comply with the regulations in effect at the time of its manufacture.

[53 FR 49400, Dec. 7, 1988]

§ 393.45 Brake tubing and hoses; hose assemblies and end fittings.

(a) *General construction requirements for tubing and hoses, assemblies, and end fittings.* All brake tubing and hoses, brake hose assemblies, and brake hose end fittings must meet the applicable requirements of FMVSS No. 106 (49 CFR 571.106).

(b) *Brake tubing and hose installation.* Brake tubing and hose must—

(1) Be long and flexible enough to accommodate without damage all normal motions of the parts to which it is attached;

(2) Be secured against chaffing, kinking, or other mechanical damage; and

(3) Be installed in a manner that prevents it from contacting the vehicle's exhaust system or any other source of high temperatures.

(c) *Nonmetallic brake tubing.* Coiled nonmetallic brake tubing may be used for connections between towed and towing motor vehicles or between the frame of a towed vehicle and the unsprung subframe of an adjustable axle of the motor vehicle if—

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(1) The coiled tubing has a straight segment (pigtail) at each end that is at least 51 mm (2 inches) in length and is encased in a spring guard or similar device which prevents the tubing from kinking at the fitting at which it is attached to the vehicle; and

(2) The spring guard or similar device has at least 51 mm (2 inches) of closed coils or similar surface at its interface with the fitting and extends at least 38 mm (1½ inches) into the coiled segment of the tubing from its straight segment.

(d) *Brake tubing and hose connections.* All connections for air, vacuum, or hydraulic braking systems shall be installed so as to ensure an attachment free of leaks, constrictions or other conditions which would adversely affect the performance of the brake system.

[70 FR 48050, Aug. 15, 2005]

§ 393.46 [Reserved]

§ 393.47 Brake actuators, slack adjusters, linings/pads and drums/rotors.

(a) *General requirements.* Brake components must be constructed, installed and maintained to prevent excessive fading and grabbing. The means of attachment and physical characteristics must provide for safe and reliable stopping of the commercial motor vehicle.

(b) *Brake chambers.* The service brake chambers and spring brake chambers on each end of an axle must be the same size.

(c) *Slack adjusters.* The effective length of the slack adjuster on each end of an axle must be the same.

(d) *Linings and pads.* The thickness of the brake linings or pads shall meet the applicable requirements of this paragraph—

(1) *Steering axle brakes.* The brake lining/pad thickness on the steering axle of a truck, truck-tractor or bus shall not be less than 4.8 mm (¾ inch) at the shoe center for a shoe with a continuous strip of lining; less than 6.4 mm (¼ inch) at the shoe center for a shoe with two pads; or worn to the wear indicator if the lining is so marked, for air drum brakes. The steering axle brake lining/pad thickness shall not be less than 3.2 mm (⅜ inch) for air disc brakes, or 1.6 mm (⅙ inch) or less for

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hydraulic disc, drum and electric brakes.

(2) *Non-steering axle brakes.* An air braked commercial motor vehicle shall not be operated with brake lining/pad thickness less than 6.4 mm (¼ inch) or to the wear indicator if the lining is so marked (measured at the shoe center for drum brakes); or less than 3.2 mm (⅙ inch) for disc brakes. Hydraulic or electric braked commercial motor vehicles shall not be operated with a lining/pad thickness less than 1.6 mm (⅙ inch) (measured at the shoe center) for disc or drum brakes.

(e) *Clamp and roto-chamber brake actuator readjustment limits.* The pushrod travel for clamp and roto-chamber type actuators must be less than 80 percent of the rated strokes listed in SAE J1817—Long Stroke Air Brake Actuator Marking, July 2001 (See § 393.7 (b) for information on incorporation by reference and availability of this document), or 80 percent of the rated stroke marked on the brake chamber by the chamber manufacturer, or the readjustment limit marked on the brake chamber by the chamber manufacturer. The pushrod travel for Type 16 and 20 long stroke clamp type brake actuators must be less than 51 mm (2 inches) or 80 percent of the rated stroke marked on the brake chamber by the chamber manufacturer, or the readjustment limit marked on the brake chamber by the chamber manufacturer.

(f) *Wedge brake adjustment.* The movement of the scribe mark on the lining shall not exceed 1.6 mm (⅙ inch).

(g) *Drums and rotors.* The thickness of the drums or rotors shall not be less than the limits established by the brake drum or rotor manufacturer.

[70 FR 48051, Aug. 15, 2005]

§ 393.48 Brakes to be operative.

(a) *General rule.* Except as provided in paragraphs (b), (c), and (d) of this section, all brakes with which a motor vehicle is equipped must at all times be capable of operating.

(b) *Devices to reduce or remove front-wheel braking effort.* A commercial motor vehicle may be equipped with a device to reduce the front wheel braking effort (or in the case of a three-axle truck or truck tractor manufactured before March 1, 1975, a device to remove

the front-wheel braking effort) if that device meets the applicable requirements of paragraphs (b)(1) and (2) of this section.

(1) *Manually operated devices.* Manually operated devices to reduce or remove front-wheel braking effort may only be used on buses, trucks, and truck tractors manufactured before March 1, 1975. Such devices must not be used unless the vehicle is being operated under adverse conditions such as wet, snowy, or icy roads.

(2) *Automatic devices.* Automatic devices must not reduce the front-wheel braking force by more than 50 percent of the braking force available when the automatic device is disconnected (regardless of whether or not an antilock system failure has occurred on any axle). The device must not be operable by the driver except upon application of the control that activates the braking system. The device must not be operable when the brake control application pressure exceeds 85 psig (for vehicles equipped with air brakes) or 85 percent of the maximum system pressure (for vehicles which are not equipped with air brakes).

(c) *Exception.* Paragraph (a) of this section does not apply to—

(1) A towed vehicle with disabling damage as defined in § 390.5;

(2) A vehicle which is towed in a driveaway-towaway operation and is included in the exemption to the requirement for brakes on all wheels, § 393.42(b);

(3) Unladen converter dollies with a gross weight of 1,361 kg (3,000 lbs) or less, and manufactured prior to March 1, 1998;

(4) The steering axle of a three-axle dolly which is steered by a co-driver;

(5) Loaded house moving dollies, specialized trailers and dollies used to transport industrial furnaces, reactors, and similar motor vehicles provided the speed at which the combination of vehicles will be operated does not exceed 32 km/hour (20 mph) and brakes on the combination of vehicles are capable of stopping the combination within 12.2 meters (40 feet) from the speed at which the vehicle is being operated or 32 km/hour (20 mph), whichever is less.

(6) Raised lift axles. Brakes on lift axles need not be capable of being oper-

ated while the lift axle is raised. However, brakes on lift axles must be capable of being applied whenever the lift axle is lowered and the tires contact the roadway.

(d) *Surge brakes.* (1) Surge brakes are allowed on:

(i) Any trailer with a gross vehicle weight rating (GVWR) of 12,000 pounds or less, when its GVWR does not exceed 1.75 times the GVWR of the towing vehicle; and

(ii) Any trailer with a GVWR greater than 12,000 pounds, but less than 20,001 pounds, when its GVWR does not exceed 1.25 times the GVWR of the towing vehicle.

(2) The gross vehicle weight (GVW) of a trailer equipped with surge brakes may be used instead of its GVWR to calculate compliance with the weight ratios specified in paragraph (d)(1) of this section when the trailer manufacturer's GVWR label is missing.

(3) The GVW of a trailer equipped with surge brakes must be used to calculate compliance with the weight ratios specified in paragraph (d)(1) of this section when the trailer's GVW exceeds its GVWR.

(4) The surge brakes must meet the requirements of § 393.40.

[70 FR 48051, Aug. 15, 2005, as amended at 72 FR 9870, Mar. 6, 2007]

§ 393.49 Control valves for brakes.

(a) *General rule.* Except as provided in paragraphs (b) and (c) of this section, every motor vehicle manufactured after June 30, 1953, which is equipped with power brakes, must have the braking system so arranged that one application valve must when activated cause all of the service brakes on the motor vehicle or combination motor vehicle to operate. This requirement must not be construed to prohibit motor vehicles from being equipped with an additional valve to be used to operate the brakes on a trailer or trailers or as required for busses in § 393.44.

(b) *Driveaway-Towaway Exception.* This section is not applicable to driveaway-towaway operations unless the brakes on such operations are designed to be operated by a single valve.

(c) *Surge brake exception.* This requirement is not applicable to trailers

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equipped with surge brakes that satisfy the conditions specified in § 393.48(d).

[72 FR 9871, Mar. 6, 2007]

§ 393.50 Reservoirs required.

(a) *Reservoir capacity for air-braked power units manufactured on or after March 1, 1975, and air-braked trailers manufactured on or after January 1, 1975.* Buses, trucks, and truck-tractors manufactured on or after March 1, 1975, and air-braked trailers manufactured on or after January 1, 1975, must meet the reservoir requirements of FMVSS No. 121, S5.1.2, in effect on the date of manufacture.

(b) *Reservoir capacity for air-braked vehicles not subject to FMVSS No. 121 on the date of manufacture and all vacuum braked vehicles.* Each motor vehicle using air or vacuum braking must have either reserve capacity, or a reservoir, that would enable the driver to make a full service brake application with the engine stopped without depleting the air pressure or vacuum below 70 percent of that indicated by the air or vacuum gauge immediately before the brake application is made. For the purposes of this paragraph, a full service brake application means depressing the brake pedal or treadle valve to the limit of its travel.

(c) *Safeguarding of air and vacuum.* Each service reservoir system on a motor vehicle shall be protected against a loss of air pressure or vacuum due to a failure or leakage in the system between the service reservoir and the source of air pressure or vacuum, by check valves or equivalent devices whose proper functioning can be checked without disconnecting any air or vacuum line, or fitting.

(d) *Drain valves for air braked vehicles.* Each reservoir must have a condensate drain valve that can be manually operated. Automatic condensate drain valves may be used provided (1) they may be operated manually, or (2) a manual means of draining the reservoirs is retained.

[70 FR 48052, Aug. 15, 2005]

§ 393.51 Warning signals, air pressure and vacuum gauges.

(a) *General Rule.* Every bus, truck and truck tractor, except as provided in

paragraph (f), must be equipped with a signal that provides a warning to the driver when a failure occurs in the vehicle's service brake system. The warning signal must meet the applicable requirements of paragraphs (b), (c), (d) or (e) of this section.

(b) *Hydraulic brakes.* Vehicles manufactured on or after September 1, 1975, must meet the brake system indicator lamp requirements of FMVSS No. 571.105 (S5.3) applicable to the vehicle on the date of manufacture. Vehicles manufactured on or after July 1, 1973 but before September 1, 1975, or to which FMVSS No. 571.105 was not applicable on the date of manufacture, must have a warning signal which operates before or upon application of the brakes in the event of a hydraulic-type complete failure of a partial system. The signal must be either visible within the driver's forward field of view or audible. The signal must be continuous. (NOTE: FMVSS No. 105 was applicable to trucks and buses from September 1, 1975 to October 12, 1976, and from September 1, 1983, to the present. FMVSS No. 105 was not applicable to trucks and buses manufactured between October 12, 1976, and September 1, 1983. Motor carriers have the option of equipping those vehicles to meet either the indicator lamp requirements of FMVSS No. 105, or the indicator lamp requirements specified in this paragraph for vehicles which were not subject to FMVSS No. 105 on the date of manufacture.)

(c) *Air brakes.* A commercial motor vehicle (regardless of the date of manufacture) equipped with service brakes activated by compressed air (air brakes) or a commercial motor vehicle towing a vehicle with service brakes activated by compressed air (air brakes) must be equipped with a pressure gauge and a warning signal. Trucks, truck tractors, and buses manufactured on or after March 1, 1975, must, at a minimum, have a pressure gauge and a warning signal which meets the requirements of FMVSS No. 121 (S5.1.4 for the pressure gauge and S5.1.5 for the warning signal) applicable to the vehicle on the date of manufacture of the vehicle. Power units to

which FMVSS No. 571.121 was not applicable on the date of manufacture of the vehicle must be equipped with—

(1) A pressure gauge, visible to a person seated in the normal driving position, which indicates the air pressure (in kilopascals (kPa) or pounds per square inch (psi)) available for braking; and

(2) A warning signal that is audible or visible to a person in the normal driving position and provides a continuous warning to the driver whenever the air pressure in the service reservoir system is at 379 kPa (55 psi) and below, or one-half of the compressor governor cutout pressure, whichever is less.

(d) *Vacuum brakes.* A commercial motor vehicle (regardless of the date it was manufactured) having service brakes activated by vacuum or a vehicle towing a vehicle having service brakes activated by vacuum must be equipped with—

(1) A vacuum gauge, visible to a person seated in the normal driving position, which indicates the vacuum (in millimeters or inches of mercury) available for braking; and

(2) A warning signal that is audible or visible to a person in the normal driving position and provides a continuous warning to the driver whenever the vacuum in the vehicle's supply reservoir is less than 203 mm (8 inches) of mercury.

(e) *Hydraulic brakes applied or assisted by air or vacuum.* Each vehicle equipped with hydraulically activated service brakes which are applied or assisted by compressed air or vacuum, and to which FMVSS No. 105 was not applicable on the date of manufacture, must be equipped with a warning signal that conforms to paragraph (b) of this section for the hydraulic portion of the system; paragraph (c) of this section for the air assist/air applied portion; or paragraph (d) of this section for the vacuum assist/vacuum applied portion. This paragraph shall not be construed as requiring air pressure gauges or vacuum gauges, only warning signals.

(f) *Exceptions.* The rules in paragraphs (c), (d) and (e) of this section do not apply to property carrying commercial motor vehicles which have less than three axles and (1) were manufactured before July 1, 1973, and (2) have a

manufacturer's gross vehicle weight rating less than 4,536 kg (10,001 pounds).

[70 FR 48052, Aug. 15, 2005]

§ 393.52 Brake performance.

(a) Upon application of its service brakes, a motor vehicle or combination of motor vehicles must under any condition of loading in which it is found on a public highway, be capable of—

(1) Developing a braking force at least equal to the percentage of its gross weight specified in the table in paragraph (d) of this section;

(2) Decelerating to a stop from 20 miles per hour at not less than the rate specified in the table in paragraph (d) of this section; and

(3) Stopping from 20 miles per hour in a distance, measured from the point at which movement of the service brake pedal or control begins, that is not greater than the distance specified in the table in paragraph (d) of this section; or, for motor vehicles or motor vehicle combinations that have a GVWR or GVW greater than 4,536 kg (10,000 pounds),

(4) Developing only the braking force specified in paragraph (a)(1) of this section and the stopping distance specified in paragraph (a)(3) of this section, if braking force is measured by a performance-based brake tester which meets the requirements of functional specifications for performance-based brake testers for commercial motor vehicles, where braking force is the sum of the braking force at each wheel of the vehicle or vehicle combination as a percentage of gross vehicle or combination weight.

(b) Upon application of its emergency brake system and with no other brake system applied, a motor vehicle or combination of motor vehicles must, under any condition of loading in which it is found on a public highway, be capable of stopping from 20 miles per hour in a distance, measured from the point at which movement of the emergency brake control begins, that is not greater than the distance specified in the table in paragraph (d) of this section.

(c) Conformity to the stopping-distance requirements of paragraphs (a) and (b) of this section shall be determined under the following conditions:

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(1) Any test must be made with the vehicle on a hard surface that is substantially level, dry, smooth, and free of loose material.

(2) The vehicle must be in the center of a 12-foot-wide lane when the test begins and must not deviate from that lane during the test.

(d) Vehicle brake performance table:

Type of motor vehicle	Service brake systems			Emergency brake systems
	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Application and braking distance in feet from initial speed at 20 mph	
A. Passenger-carrying vehicles:				
(1) Vehicles with a seating capacity of 10 persons or less, including driver, and built on a passenger car chassis	65.2	21	20	54
(2) Vehicles with a seating capacity of more than 10 persons, including driver, and built on a passenger car chassis; vehicles built on a truck or bus chassis and having a manufacturer's GVWR of 10,000 pounds or less	52.8 43.5	17 14	25 35	66 85
(3) All other passenger-carrying vehicles				
B. Property-carrying vehicles:				
(1) Single unit vehicles having a manufacturer's GVWR of 10,000 pounds or less	52.8	17	25	66
(2) Single unit vehicles having a manufacturer's GVWR of more than 10,000 pounds, except truck trailers. Combinations of a 2-axle towing vehicle and trailer having a GVWR of 3,000 pounds or less. All combinations of 2 or less vehicles in drive-away or tow-away operation	43.5 43.5	14 14	35 40	85 90
(3) All other property-carrying vehicles and combinations of property-carrying vehicles				

Notes: (a) There is a definite mathematical relationship between the figures in columns 2 and 3. If the decelerations set forth in column 3 are divided by 32.2 feet per-second per-second, the figures in column 2 will be obtained. (For example, 21 divided by 32.2 equals 65.2 percent.) Column 2 is included in the tabulation because certain brake testing devices utilize this factor.

(b) The decelerations specified in column 3 are an indication of the effectiveness of the basic brakes, and as measured in practical brake testing are the maximum decelerations attained over the entire period of the stop. These decelerations as measured in brake tests cannot be used to compute the values in column 4 because the deceleration is not sustained at the same rate the deceleration to decrease after reaching a maximum. The added distance that results because maximum deceleration is not sustained is included in the figures in column 4 but is not indicated by the usual brake-testing devices for checking deceleration.

(c) The distances in column 4, and the decelerations in column 3, are not directly related. "Brake-system application and braking distance in feet" (column 4) is a definite measure of the overall effectiveness of the braking system, being the distance traveled between the point at which the driver starts to move the braking controls and the point at which the vehicle comes to rest. It includes distance traveled while the brakes are being applied and distance traveled while the brakes are retarding the vehicle.

(d) The distance traveled during the period of brake-system application and brake-force buildup varies with vehicle type, being negligible for many passenger cars and greatest for combinations of commercial vehicles. This fact accounts for the variation from 20 to 40 feet in the values in column 4 for the various classes of vehicles.

(e) The terms "GVWR" and "GVW" refer to the manufacturer's gross vehicle weight rating and the actual gross vehicle weight, respectively.

[36 FR 20298, Oct. 20, 1971, as amended at 37 FR 5251, Mar. 11, 1972; 37 FR 11386, June 7, 1972; 68 FR 51777, Aug. 9, 2002]

§ 393.53 Automatic brake adjusters and brake adjustment indicators.

(a) *Automatic brake adjusters (hydraulic brake systems)*. Each commercial motor vehicle manufactured on or after October 20, 1993, and equipped with a hydraulic brake system, shall meet the automatic brake adjustment system requirements of Federal Motor Vehicle Safety Standard No. 105 (49 CFR 571.105, S5.1) applicable to the vehicle at the time it was manufactured.

(b) *Automatic brake adjusters (air brake systems)*. Each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system shall meet the automatic brake adjustment system requirements of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121, S5.1.8) applicable to the vehicle at the time it was manufactured.

(c) *Brake adjustment indicator (air brake systems)*. On each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system which contains an external automatic adjustment mechanism and an exposed pushrod, the condition of service brake under-adjustment shall be displayed by a brake adjustment indicator conforming to the requirements of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121, S5.1.8) applicable to the vehicle at the time it was manufactured.

[60 FR 46245, Sept. 6, 1995]

§ 393.55 Antilock brake systems.

(a) *Hydraulic brake systems*. Each truck and bus manufactured on or after March 1, 1999 (except trucks and buses engaged in driveaway-towaway operations), and equipped with a hydraulic brake system, shall be equipped with an antilock brake system that meets the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 105 (49 CFR 571.105, S5.5).

(b) *ABS malfunction indicators for hydraulic braked vehicles*. Each hydraulic braked vehicle subject to the requirements of paragraph (a) of this section shall be equipped with an ABS malfunction indicator system that meets the requirements of FMVSS No. 105 (49 CFR 571.105, S5.3).

(c) *Air brake systems*. (1) Each truck tractor manufactured on or after March 1, 1997 (except truck tractors engaged in driveaway-towaway operations), shall be equipped with an antilock brake system that meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.1(b)).

(2) Each air braked commercial motor vehicle other than a truck tractor, manufactured on or after March 1, 1998 (except commercial motor vehicles engaged in driveaway-towaway operations), shall be equipped with an antilock brake system that meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.1(a) for trucks and buses, S5.2.3 for semitrailers, converter dollies and full trailers).

(d) *ABS malfunction circuits and signals for air braked vehicles*. (1) Each truck tractor manufactured on or after March 1, 1997, and each single-unit air braked vehicle manufactured on or after March 1, 1998, subject to the requirements of paragraph (c) of this section, shall be equipped with an electrical circuit that is capable of signaling a malfunction that affects the generation or transmission of response or control signals to the vehicle's antilock brake system (49 CFR 571.121, S5.1.6.2(a)).

(2) Each truck tractor manufactured on or after March 1, 2001, and each single-unit vehicle that is equipped to tow another air-braked vehicle, subject to the requirements of paragraph (c) of this section, shall be equipped with an electrical circuit that is capable of transmitting a malfunction signal from the antilock brake system(s) on the towed vehicle(s) to the trailer ABS malfunction lamp in the cab of the towing vehicle, and shall have the means for connection of the electrical circuit to the towed vehicle. The ABS malfunction circuit and signal shall meet the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.2(b)).

(3) Each semitrailer, trailer converter dolly, and full trailer manufactured on or after March 1, 2001, and subject to the requirements of paragraph (c)(2) of this section, shall be equipped with an electrical circuit that is capable of signaling a malfunction in the trailer's antilock brake system,

and shall have the means for connection of this ABS malfunction circuit to the towing vehicle. In addition, each trailer manufactured on or after March 1, 2001, subject to the requirements of paragraph (c)(2) of this section, that is designed to tow another air-brake equipped trailer shall be capable of transmitting a malfunction signal from the antilock brake system(s) of the trailer(s) it tows to the vehicle in front of the trailer. The ABS malfunction circuit and signal shall meet the requirements of FMVSS No. 121 (49 CFR 571.121, S5.2.3.2).

(e) *Exterior ABS malfunction indicator lamps for trailers.* Each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998 and before March 1, 2009, and subject to the requirements of paragraph (c)(2) of this section, shall be equipped with an ABS malfunction indicator lamp which meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.2.3.3).

[63 FR 24465, May 4, 1998]

EFFECTIVE DATE NOTE: At 75 FR 57396, Sept. 21, 2010, § 393.55 was amended by revising paragraph (e), effective November 22, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 393.55 Antilock brake systems.

* * * * *

(e) *Exterior ABS malfunction indicator lamps for trailers.* Each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998, and subject to the requirements of paragraph (c)(2) of this section, shall be equipped with an ABS malfunction indicator lamp which meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.2.3.3).

Subpart D—Glazing and Window Construction

§ 393.60 Glazing in specified openings.

(a) *Glazing material.* Glazing material used in windshields, windows, and doors on a motor vehicle manufactured on or after December 25, 1968, shall at a minimum meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 205 in effect on the date of manufacture of the motor vehicle. The glazing material shall be marked

in accordance with FMVSS No. 205 (49 CFR 571.205, S6).

(b) *Windshields required.* Each bus, truck and truck-tractor shall be equipped with a windshield. Each windshield or portion of a multi-piece windshield shall be mounted using the full periphery of the glazing material.

(c) *Windshield condition.* With the exception of the conditions listed in paragraphs (c)(1), (c)(2), and (c)(3) of this section, each windshield shall be free of discoloration or damage in the area extending upward from the height of the top of the steering wheel (excluding a 51 mm (2 inch) border at the top of the windshield) and extending from a 25 mm (1 inch) border at each side of the windshield or windshield panel. *Exceptions:*

(1) Coloring or tinting which meets the requirements of paragraph (d) of this section;

(2) Any crack that is not intersected by any other cracks;

(3) Any damaged area which can be covered by a disc 19 mm (¾ inch) in diameter if not closer than 76 mm (3 inches) to any other similarly damaged area.

(d) *Coloring or tinting of windshields and windows.* Coloring or tinting of windshields and the windows to the immediate right and left of the driver is allowed, provided the parallel luminous transmittance through the colored or tinted glazing is not less than 70 percent of the light at normal incidence in those portions of the windshield or windows which are marked as having a parallel luminous transmittance of not less than 70 percent. The transmittance restriction does not apply to other windows on the commercial motor vehicle.

(e) *Prohibition on obstructions to the driver's field of view—(1) Devices mounted at the top of the windshield.* Antennas, transponders, and similar devices must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals.

(2) *Decals and stickers mounted on the windshield.* Commercial Vehicle Safety Alliance (CVSA) inspection decals, and stickers and/or decals required under

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Federal or State laws may be placed at the bottom or sides of the windshield provided such decals or stickers do not extend more than 115 mm (4½ inches) from the bottom of the windshield and are located outside the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs or signals.

[63 FR 1387, Jan. 9, 1998]

§ 393.61 Truck and truck tractor window construction.

Each truck and truck tractor (except trucks engaged in armored car service) shall have at least one window on each side of the driver's compartment. Each window must have a minimum area of 1,290 cm² (200 in²) formed by a rectangle 33 cm by 45 cm (13 inches by 17¾ inches). The maximum radius of the corner arcs shall not exceed 152 mm (6 inches). The long axis of the rectangle shall not make an angle of more than 45 degrees with the surface on which the unladen vehicle stands. If the cab is designed with a folding door or doors or with clear openings where doors or windows are customarily located, no windows shall be required in those locations.

[70 FR 48052, Aug. 15, 2005]

§ 393.62 Emergency exits for buses.

(a) *Buses manufactured on or after September 1, 1994.* Each bus with a GVWR of 4,536 kg (10,000 pounds) or less must meet the emergency exit requirements of FMVSS No. 217 (S5.2.2.3) in effect on the date of manufacture. Each bus with a GVWR of more than 4,536 kg (10,000 pounds) must have emergency exits which meet the applicable emergency exit requirements of FMVSS No. 217 (S5.2.2 or S5.2.3) in effect on the date of manufacture.

(b) *Buses manufactured on or after September 1, 1973, but before September 1, 1994.* (1) Each bus (including a school bus used in interstate commerce for non-school bus operations) with a GVWR of more than 4,536 kg (10,000 lbs) must meet the requirements of FMVSS No. 217, S5.2.2 in effect on the date of manufacture.

(2) Each bus (including a school bus used in interstate commerce for non-school bus operations) with a GVWR of

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4,536 kg (10,000 lbs) or less must meet the requirements of FMVSS No. 217, S5.2.2.3 in effect on the date of manufacture.

(c) *Buses manufactured before September 1, 1973.* For each seated passenger space provided, inclusive of the driver there shall be at least 432 cm² (67 square inches) of glazing if such glazing is not contained in a push-out window; or, at least 432 cm² (67 square inches) of free opening resulting from opening of a push-out type window. No area shall be included in this minimum prescribed area unless it will provide an unobstructed opening of at least 1,290 cm² (200 in²) formed by a rectangle 33 cm by 45 cm (13 inches by 17¾ inches). The maximum radius of the corner arcs shall not exceed 152 mm (6 inches). The long axis of the rectangle shall not make an angle of more than 45 degrees with the surface on which the unladen vehicle stands. The area shall be measured either by removal of the glazing if not of the push-out type, or of the movable sash if of the push-out type. The exit must comply with paragraph (d) of this section. Each side of the bus must have at least 40 percent of emergency exit space required by this paragraph.

(d) *Laminated safety glass/push-out window requirements for buses manufactured before September 1, 1973.* Emergency exit space used to satisfy the requirements of paragraph (c) of this section must have laminated safety glass or push-out windows designed and maintained to yield outward to provide a free opening.

(1) *Safety glass.* Laminated safety glass must meet Test No. 25, Egress, of American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways—Safety Standards ANSI/SAE Z26.1/96, August 1997. (See § 393.7 (b) for information on incorporation by reference and availability of this document.)

(2) *Push-out windows.* Each push-out window shall be releasable by operating no more than two mechanisms and allow manual release of the exit by a single occupant. For mechanisms which require rotary or straight (parallel to the undisturbed exit surface) motions to operate the exit, no more than 89 Newtons (20 pounds) of force

shall be required to release the exit. For exits which require a straight motion perpendicular to the undisturbed exit surface, no more than 267 Newtons (60 pounds) shall be required to release the exit.

(e) *Emergency exit identification.* Each bus and each school bus used in interstate commerce for non-school bus operations, manufactured on or after September 1, 1973, shall meet the applicable emergency exit identification or marking requirements of FMVSS No. 217, S5.5, in effect on the date of manufacture. The emergency exits and doors on all buses (including school buses used in interstate commerce for non-school bus operations) must be marked "Emergency Exit" or "Emergency Door" followed by concise operating instructions describing each motion necessary to unlatch or open the exit located within 152 mm (6 inches) of the release mechanism.

(f) *Exception for the transportation of prisoners.* The requirements of this section do not apply to buses used exclusively for the transportation of prisoners.

[70 FR 48052, Aug. 15, 2005]

§ 393.63 [Reserved]

Subpart E—Fuel Systems

AUTHORITY: Sec. 204, Interstate Commerce Act, as amended, 49 U.S.C. 304; sec. 6, Department of Transportation Act, 49 U.S.C. 1655; delegation of authority at 49 CFR 1.48 and 389.4.

§ 393.65 All fuel systems.

(a) *Application of the rules in this section.* The rules in this section apply to systems for containing and supplying fuel for the operation of motor vehicles or for the operation of auxiliary equipment installed on, or used in connection with, motor vehicles.

(b) *Location.* Each fuel system must be located on the motor vehicle so that—

(1) No part of the system extends beyond the widest part of the vehicle;

(2) No part of a fuel tank is forward of the front axle of a power unit;

(3) Fuel spilled vertically from a fuel tank while it is being filled will not contact any part of the exhaust or elec-

trical systems of the vehicle, except the fuel level indicator assembly;

(4) Fill pipe openings are located outside the vehicle's passenger compartment and its cargo compartment;

(5) A fuel line does not extend between a towed vehicle and the vehicle that is towing it while the combination of vehicles is in motion; and

(6) No part of the fuel system of a bus manufactured on or after January 1, 1973, is located within or above the passenger compartment.

(c) *Fuel tank installation.* Each fuel tank must be securely attached to the motor vehicle in a workmanlike manner.

(d) *Gravity or syphon feed prohibited.* A fuel system must not supply fuel by gravity or syphon feed directly to the carburetor or injector.

(e) *Selection control valve location.* If a fuel system includes a selection control valve which is operable by the driver to regulate the flow of fuel from two or more fuel tanks, the valve must be installed so that either—

(1) The driver may operate it while watching the roadway and without leaving his/her driving position; or

(2) The driver must stop the vehicle and leave his/her seat in order to operate the valve.

(f) *Fuel lines.* A fuel line which is not completely enclosed in a protective housing must not extend more than 2 inches below the fuel tank or its sump. Diesel fuel crossover, return, and withdrawal lines which extend below the bottom of the tank or sump must be protected against damage from impact. Every fuel line must be—

(1) Long enough and flexible enough to accommodate normal movements of the parts to which it is attached without incurring damage; and

(2) Secured against chafing, kinking, or other causes of mechanical damage.

(g) *Excess flow valve.* When pressure devices are used to force fuel from a fuel tank, a device which prevents the flow of fuel from the fuel tank if the fuel feed line is broken must be installed in the fuel system.

[36 FR 15445, Aug. 14, 1971, as amended at 37 FR 4341, Mar. 2, 1972; 37 FR 28752, Dec. 29, 1972]

§ 393.67 Liquid fuel tanks.

(a) *Application of the rules in this section.* The rules in this section apply to tanks containing or supplying fuel for the operation of commercial motor vehicles or for the operation of auxiliary equipment installed on, or used in connection with commercial motor vehicles.

(1) A liquid fuel tank manufactured on or after January 1, 1973, and a side-mounted gasoline tank must conform to all rules in this section.

(2) A diesel fuel tank manufactured before January 1, 1973, and mounted on a bus must conform to the rules in paragraphs (c)(7)(iii) and (d)(2) of this section.

(3) A diesel fuel tank manufactured before January 1, 1973, and mounted on a vehicle other than a bus must conform to the rules in paragraph (c)(7)(iii) of this section.

(4) A gasoline tank, other than a side-mounted gasoline tank, manufactured before January 1, 1973, and mounted on a bus must conform to the rules in paragraphs (c) (1) through (10) and (d)(2) of this section.

(5) A gasoline tank, other than a side-mounted gasoline tank, manufactured before January 1, 1973, and mounted on a vehicle other than a bus must conform to the rules in paragraphs (c) (1) through (10), inclusive, of this section.

(6) Private motor carrier of passengers. Motor carriers engaged in the private transportation of passengers may continue to operate a commercial motor vehicle which was not subject to this section or 49 CFR 571.301 at the time of its manufacture, provided the fuel tank of such vehicle is maintained to the original manufacturer's standards.

(7) Motor vehicles that meet the fuel system integrity requirements of 49 CFR 571.301 are exempt from the requirements of this subpart, as they apply to the vehicle's fueling system.

(b) *Definitions.* As used in this section—

(1) The term *liquid fuel tank* means a fuel tank designed to contain a fuel that is liquid at normal atmospheric pressures and temperatures.

(2) A *side-mounted* fuel tank is a liquid fuel tank which—

(i) If mounted on a truck tractor, extends outboard of the vehicle frame and outside of the plan view outline of the cab; or

(ii) If mounted on a truck, extends outboard of a line parallel to the longitudinal centerline of the truck and tangent to the outboard side of a front tire in a straight ahead position. In determining whether a fuel tank on a truck or truck tractor is side-mounted, the fill pipe is not considered a part of the tank.

(c) *Construction of liquid fuel tanks—*

(1) *Joints.* Joints of a fuel tank body must be closed by arc-, gas-, seam-, or spot-welding, by brazing, by silver soldering, or by techniques which provide heat resistance and mechanical securement at least equal to those specifically named. Joints must not be closed solely by crimping or by soldering with a lead-based or other soft solder.

(2) *Fittings.* The fuel tank body must have flanges or spuds suitable for the installation of all fittings.

(3) *Threads.* The threads of all fittings must be Dryseal American Standard Taper Pipe Thread or Dryseal SAE Short Taper Pipe Thread, specified in Society of Automotive Engineers Standard J476, as contained in the 1971 edition of the "SAE Handbook," except that straight (nontapered) threads may be used on fittings having integral flanges and using gaskets for sealing. At least four full threads must be in engagement in each fitting.

(4) *Drains and bottom fittings.* (i) Drains or other bottom fittings must not extend more than three-fourths of an inch below the lowest part of the fuel tank or sump.

(ii) Drains or other bottom fittings must be protected against damage from impact.

(iii) If a fuel tank has drains the drain fittings must permit substantially complete drainage of the tank.

(iv) Drains or other bottom fittings must be installed in a flange or spud designed to accommodate it.

(5) *Fuel withdrawal fittings.* Except for diesel fuel tanks, the fittings through which fuel is withdrawn from a fuel tank must be located above the normal level of fuel in the tank when the tank is full.

(6) [Reserved]

(7) *Fill pipe.* (i) Each fill pipe must be designed and constructed to minimize the risk of fuel spillage during fueling operations and when the vehicle is involved in a crash.

(ii) For diesel-fueled vehicles, the fill pipe and vents of a fuel tank having a capacity of more than 94.75 L (25 gallons) of fuel must permit filling the tank with fuel at a rate of at least 75.8 L/m (20 gallons per minute) without fuel spillage.

(iii) For gasoline- and methanol-fueled vehicles with a GVWR of 3,744 kg (8,500 pounds) or less, the vehicle must permit filling the tank with fuel dispensed at the applicable fill rate required by the regulations of the Environmental Protection Agency under 40 CFR 80.22.

(iv) For gasoline- and methanol-fueled vehicles with a GVWR of 14,000 pounds (6,400 kg) or less, the vehicle must comply with the applicable fuel-spitback prevention and onboard refueling vapor recovery regulations of the Environmental Protection Agency under 40 CFR part 86.

(v) Each fill pipe must be fitted with a cap that can be fastened securely over the opening in the fill pipe. Screw threads or a bayonet-type point are methods of conforming to the requirements of paragraph (c) of this section.

(8) *Safety venting system.* A liquid fuel tank with a capacity of more than 25 gallons of fuel must have a venting system which, in the event the tank is subjected to fire, will prevent internal tank pressure from rupturing the tank's body, seams, or bottom opening (if any).

(9) *Pressure resistance.* The body and fittings of a liquid fuel tank with a capacity of more than 25 gallons of fuel must be capable of withstanding an internal hydrostatic pressure equal to 150 percent of the maximum internal pressure reached in the tank during the safety venting systems test specified in paragraph (d)(1) of this section.

(10) *Air vent.* Each fuel tank must be equipped with a nonspill air vent (such as a ball check). The air vent may be combined with the fill-pipe cap or safety vent, or it may be a separate unit installed on the fuel tank.

(11) *Markings.* If the body of a fuel tank is readily visible when the tank is

installed on the vehicle, the tank must be plainly marked with its liquid capacity. The tank must also be plainly marked with a warning against filling it to more than 95 percent of its liquid capacity.

(12) *Overfill restriction.* A liquid fuel tank manufactured on or after January 1, 1973, must be designed and constructed so that—

(i) The tank cannot be filled, in a normal filling operation, with a quantity of fuel that exceeds 95 percent of the tank's liquid capacity; and

(ii) When the tank is filled, normal expansion of the fuel will not cause fuel spillage.

(d) *Liquid fuel tank tests.* Each liquid fuel tank must be capable of passing the tests specified in paragraphs (d)(1) and (2) of this section. The specified tests are a measure of performance only. Alternative procedures which assure that equipment meets the required performance standards may be used.

(1) *Safety venting system test—(i) Procedure.* Fill the tank three-fourths full with fuel, seal the fuel feed outlet, and invert the tank. When the fuel temperature is between 50 °F. and 80 °F., apply an enveloping flame to the tank so that the temperature of the fuel rises at a rate of not less than 6 °F. and not more than 8 °F. per minute.

(ii) *Required performance.* The safety venting system required by paragraph (c)(8) of this section must activate before the internal pressure in the tank exceeds 50 pounds per square inch, gauge, and the internal pressure must not thereafter exceed the pressure at which the system activated by more than five pounds per square inch despite any further increase in the temperature of the fuel.

(2) *Leakage test—(i) Procedure.* Fill the tank to capacity with fuel having a temperature between 50 °F. and 80 °F. With the fill-pipe cap installed, turn the tank through an angle of 150° in any direction about any axis from its normal position.

(ii) *Required performance.* Neither the tank nor any fitting may leak more than a total of one ounce by weight of fuel per minute in any position the tank assumes during the test.

(e) *Side-mounted liquid fuel tank tests.* Each side-mounted liquid fuel tank must be capable of passing the tests specified in paragraphs (e)(1) and (2) of this section and the test specified in paragraphs (d)(1) and (2) of this section. The specified tests are a measure of performance only. Alternative procedures which assure that equipment meets the required performance criteria may be used.

(1) *Drop test*—(i) *Procedure.* Fill the tank with a quantity of water having a weight equal to the weight of the maximum fuel load of the tank and drop the tank 30 feet onto an unyielding surface so that it lands squarely on one corner.

(ii) *Required performance.* Neither the tank nor any fitting may leak more than a total of 1 ounce by weight of water per minute.

(2) *Fill-pipe test*—(i) *Procedure.* Fill the tank with a quantity of water having a weight equal to the weight of the maximum fuel load of the tank and drop the tank 10 feet onto an unyielding surface so that it lands squarely on its fill-pipe.

(ii) *Required performance.* Neither the tank nor any fitting may leak more than a total of 1 ounce by weight of water per minute.

(f) *Certification and markings.* Each liquid fuel tank shall be legibly and permanently marked by the manufacturer with the following minimum information:

(1) The month and year of manufacture,

(2) The manufacturer's name on tanks manufactured on and after July 1, 1989, and means of identifying the facility at which the tank was manufactured, and

(3) A certificate that it conforms to the rules in this section applicable to the tank. The certificate must be in the form set forth in either of the following:

(i) If a tank conforms to all rules in this section pertaining to side-mounted fuel tanks: "Meets all FMCSA side-mounted tank requirements."

(ii) If a tank conforms to all rules in this section pertaining to tanks which are not side-mounted fuel tanks: "Meets all FMCSA requirements for non-side-mounted fuel tanks."

(iii) The form of certificate specified in paragraph (f)(3) (i) or (ii) of this section may be used on a liquid fuel tank manufactured before July 11, 1973, but it is not mandatory for liquid fuel tanks manufactured before March 7, 1989. The form of certification manufactured on or before March 7, 1989, must meet the requirements in effect at the time of manufacture.

(4) *Exception.* The following previously exempted vehicles are not required to carry the certification and marking specified in paragraphs (f)(1) through (3) of this section:

(i) Ford vehicles with GVWR over 10,000 pounds identified as follows: The vehicle identification numbers (VINs) contain A, K, L, M, N, W, or X in the fourth position.

(ii) GM G-Vans (Chevrolet Express and GMC Savanna) and full-sized C/K trucks (Chevrolet Silverado and GMC Sierra) with GVWR over 10,000 pounds identified as follows: The VINs contain either a "J" or a "K" in the fourth position. In addition, the seventh position of the VINs on the G-Van will contain a "1."

[36 FR 15445, Aug. 14, 1971, as amended at 37 FR 4341, Mar. 2, 1972; 37 FR 28753, Dec. 29, 1972; 45 FR 46424, July 10, 1980; 53 FR 49400, Dec. 7, 1988; 59 FR 8753, Feb. 23, 1994; 69 FR 31305, June 3, 2004; 70 FR 48053, Aug. 15, 2005]

§ 393.68 Compressed natural gas fuel containers.

(a) *Applicability.* The rules in this section apply to compressed natural gas (CNG) fuel containers used for supplying fuel for the operation of commercial motor vehicles or for the operation of auxiliary equipment installed on, or used in connection with commercial motor vehicles.

(b) *CNG containers manufactured on or after March 26, 1995.* Any motor vehicle manufactured on or after March 26, 1995, and equipped with a CNG fuel tank must meet the CNG container requirements of FMVSS No. 304 (49 CFR 571.304) in effect at the time of manufacture of the vehicle.

(c) *Labeling.* Each CNG fuel container shall be permanently labeled in accordance with the requirements of FMVSS No. 304, S7.4.

[70 FR 48053, Aug. 15, 2005]

§ 393.69 Liquefied petroleum gas systems.

(a) A fuel system that uses liquefied petroleum gas as a fuel for the operation of a motor vehicle or for the operation of auxiliary equipment installed on, or used in connection with, a motor vehicle must conform to the "Standards for the Storage and Handling of Liquefied Petroleum Gases" of the National Fire Protection Association, Battery March Park, Quincy, MA 02269, as follows:

(1) A fuel system installed before December 31, 1962, must conform to the 1951 edition of the Standards.

(2) A fuel system installed on or after December 31, 1962, and before January 1, 1973, must conform to Division IV of the June 1959 edition of the Standards.

(3) A fuel system installed on or after January 1, 1973, and providing fuel for propulsion of the motor vehicle must conform to Division IV of the 1969 edition of the Standards.

(4) A fuel system installed on or after January 1, 1973, and providing fuel for the operation of auxiliary equipment must conform to Division VII of the 1969 edition of the Standards.

(b) When the rules in this section require a fuel system to conform to a specific edition of the Standards, the fuel system may conform to the applicable provisions in a later edition of the Standards specified in this section.

(c) The tank of a fuel system must be marked to indicate that the system conforms to the Standards.

[36 FR 15445, Aug. 14, 1971, as amended at 37 FR 4342, Mar. 2, 1972; 41 FR 53031, Dec. 3, 1976; 53 FR 49400, Dec. 7, 1988]

Subpart F—Coupling Devices and Towing Methods**§ 393.70 Coupling devices and towing methods, except for driveaway-towaway operations.**

(a) *Tracking.* When two or more vehicles are operated in combination, the coupling devices connecting the vehicles shall be designed, constructed, and installed, and the vehicles shall be designed and constructed, so that when the combination is operated in a straight line on a level, smooth, paved surface, the path of the towed vehicle

will not deviate more than 3 inches to either side of the path of the vehicle that tows it.

(b) *Fifth wheel assemblies*—(1) *Mounting*—(i) *Lower half.* The lower half of a fifth wheel mounted on a truck tractor or converter dolly must be secured to the frame of that vehicle with properly designed brackets, mounting plates or angles and properly tightened bolts of adequate size and grade, or devices that provide equivalent security. The installation shall not cause cracking, warping, or deformation of the frame. The installation must include a device for positively preventing the lower half of the fifth wheel from shifting on the frame to which it is attached.

(ii) *Upper half.* The upper half of a fifth wheel must be fastened to the motor vehicle with at least the same security required for the installation of the lower half on a truck tractor or converter dolly.

(2) *Locking.* Every fifth wheel assembly must have a locking mechanism. The locking mechanism, and any adapter used in conjunction with it, must prevent separation of the upper and lower halves of the fifth wheel assembly unless a positive manual release is activated. The release may be located so that the driver can operate it from the cab. If a motor vehicle has a fifth wheel designed and constructed to be readily separable, the fifth wheel locking devices shall apply automatically on coupling.

(3) *Location.* The lower half of a fifth wheel shall be located so that, regardless of the condition of loading, the relationship between the kingpin and the rear axle or axles of the towing motor vehicle will properly distribute the gross weight of both the towed and towing vehicles on the axles of those vehicles, will not unduly interfere with the steering, braking, and other maneuvering of the towing vehicle, and will not otherwise contribute to unsafe operation of the vehicles comprising the combination. The upper half of a fifth wheel shall be located so that the weight of the vehicles is properly distributed on their axles and the combination of vehicles will operate safely during normal operation.

(c) *Towing of full trailers.* A full trailer must be equipped with a tow-bar and

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a means of attaching the tow-bar to the towing and towed vehicles. The tow-bar and the means of attaching it must—

(1) Be structurally adequate for the weight being drawn;

(2) Be properly and securely mounted;

(3) Provide for adequate articulation at the connection without excessive slack at that location; and

(4) Be provided with a locking device that prevents accidental separation of the towed and towing vehicles. The mounting of the trailer hitch (pintle hook or equivalent mechanism) on the towing vehicle must include reinforcement or bracing of the frame sufficient to produce strength and rigidity of the frame to prevent its undue distortion.

(d) *Safety devices in case of tow-bar failure or disconnection.* Every full trailer and every converter dolly used to convert a semitrailer to a full trailer must be coupled to the frame, or an extension of the frame, of the motor vehicle which tows it with one or more safety devices to prevent the towed vehicle from breaking loose in the event the tow-bar fails or becomes disconnected. The safety device must meet the following requirements:

(1) The safety device must not be attached to the pintle hook or any other device on the towing vehicle to which the tow-bar is attached. However, if the pintle hook or other device was manufactured prior to July 1, 1973, the safety device may be attached to the towing vehicle at a place on a pintle hook forging or casting if that place is independent of the pintle hook.

(2) The safety device must have no more slack than is necessary to permit the vehicles to be turned properly.

(3) The safety device, and the means of attaching it to the vehicles, must have an ultimate strength of not less than the gross weight of the vehicle or vehicles being towed.

(4) The safety device must be connected to the towed and towing vehicles and to the tow-bar in a manner which prevents the tow-bar from dropping to the ground in the event it fails or becomes disconnected.

(5) Except as provided in paragraph (d)(6) of this section, if the safety device consists of safety chains or cables,

the towed vehicle must be equipped with either two safety chains or cables or with a bridle arrangement of a single chain or cable attached to its frame or axle at two points as far apart as the configuration of the frame or axle permits. The safety chains or cables shall be either two separate pieces, each equipped with a hook or other means for attachment to the towing vehicle, or a single piece leading along each side of the tow-bar from the two points of attachment on the towed vehicle and arranged into a bridle with a single means of attachment to be connected to the towing vehicle. When a single length of cable is used, a thimble and twin-base cable clamps shall be used to form the forward bridle eye. The hook or other means of attachment to the towing vehicle shall be secured to the chains or cables in a fixed position.

(6) If the towed vehicle is a converter dolly with a solid tongue and without a hinged tow-bar or other swivel between the fifth wheel mounting and the attachment point of the tongue eye or other hitch device—

(i) Safety chains or cables, when used as the safety device for that vehicle, may consist of either two chains or cables or a single chain or cable used alone;

(ii) A single safety device, including a single chain or cable used alone as the safety device, must be in line with the centerline of the trailer tongue; and

(iii) The device may be attached to the converter dolly at any point to the rear of the attachment point of the tongue eye or other hitch device.

(7) Safety devices other than safety chains or cables must provide strength, security of attachment, and directional stability equal to, or greater than, safety chains or cables installed in accordance with paragraphs (d) (5) and (6) of this section.

(8)(i) When two safety devices, including two safety chains or cables, are used and are attached to the towing vehicle at separate points, the points of attachment on the towing vehicle shall be located equally distant from, and on opposite sides of, the longitudinal centerline of the towing vehicle.

(ii) Where two chains or cables are attached to the same point on the towing vehicle, and where a bridle or a single chain or cable is used, the point of attachment must be on the longitudinal centerline or within 152 mm (6 inches) to the right of the longitudinal centerline of the towing vehicle.

(iii) A single safety device, other than a chain or cable, must also be attached to the towing vehicle at a point on the longitudinal centerline or within 152 mm (6 inches) to the right of the longitudinal centerline of the towing vehicle.

[37 FR 21439, Oct. 11, 1972, as amended at 70 FR 48053, Aug. 15, 2005]

§ 393.71 Coupling devices and towing methods, driveaway-towaway operations.

(a) *Number in combination.* (1) No more than three saddle-mounts may be used in any combination.

(2) No more than one tow-bar or ball-and-socket type coupling device may be used in any combination.

(3) When motor vehicles are towed by means of triple saddle-mounts, the towed vehicles shall have brakes acting on all wheels which are in contact with the roadway.

(b) *Carrying vehicles on towing vehicle.* (1) When adequately and securely attached by means equivalent in security to that provided in paragraph (j)(2) of this section, a motor vehicle or motor vehicles may be full-mounted on the structure of a towing vehicle engaged in any driveaway-towaway operation.

(2) No motor vehicle or motor vehicles may be full-mounted on a towing vehicle unless the relationship of such full-mounted vehicles to the rear axle or axles results in proper distribution of the total gross weight of the vehicles and does not unduly interfere with the steering, braking, or maneuvering of the towing vehicle, or otherwise contribute to the unsafe operation of the vehicles comprising the combination.

(3) Saddle-mounted vehicles must be arranged such that the gross weight of the vehicles is properly distributed to prevent undue interference with the steering, braking, or maneuvering of the combination of vehicles.

(c) *Carrying vehicles on towed vehicles.* (1) When adequately and securely at-

tached by means equivalent in security to that provided in paragraph (j)(2) of this section, a motor vehicle or motor vehicles may be full-mounted on the structure of towed vehicles engaged in any driveaway-towaway operation.

(2) No motor vehicle shall be full-mounted on a motor vehicle towed by means of a tow-bar unless the towed vehicle is equipped with brakes and is provided with means for effective application of brakes acting on all wheels and is towed on its own wheels.

(3) No motor vehicle or motor vehicles shall be full-mounted on a motor vehicle towed by means of a saddle-mount unless the center line of the kingpin or equivalent means of attachment of such towed vehicle shall be so located on the towing vehicle that the relationship to the rear axle or axles results in proper distribution of the total gross weight of the vehicles and does not unduly interfere with the steering, braking, or maneuvering of the towing vehicle or otherwise contribute to the unsafe operation of vehicles comprising the combination; and unless a perpendicular to the ground from the center of gravity of the full-mounted vehicles lies forward of the center line of the rear axle of the saddle-mounted vehicle.

(4) If a motor vehicle towed by means of a double saddle-mount has any vehicle full-mounted on it, such saddle-mounted vehicle shall at all times while so loaded have effective brakes acting on those wheels which are in contact with the roadway.

(d) *Bumper tow-bars on heavy vehicles prohibited.* Tow-bars of the type which depend upon the bumpers as a means of transmitting forces between the vehicles shall not be used to tow a motor vehicle weighing more than 5,000 pounds.

(e) *Front wheels of saddle-mounted vehicles restrained.* A motor vehicle towed by means of a saddle-mount shall have the motion of the front wheels restrained if under any condition of turning of such wheels they will project beyond the widest part of either the towed or towing vehicle.

(f) *Vehicles to be towed in forward position.* Unless the steering mechanism is adequately locked in a straight-forward position, all motor vehicles towed

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by means of a saddle-mount shall be towed with the front end mounted on the towing vehicle.

(g) *Means required for towing.* No motor vehicles or combination of motor vehicles shall be towed in driveaway-towaway operations by means other than a tow-bar, ball-and-socket type coupling device, saddle-mount connections which meet the requirements of this section, or in the case of a semi-trailer equipped with an upper coupler assembly, a fifth-wheel meeting the requirements of § 393.70.

(h) *Requirements for tow-bars.* Tow-bars shall comply with the following requirements:

(1) *Tow-bars, structural adequacy and mounting.* Every tow-bar shall be structurally adequate and properly installed and maintained. To insure that it is structurally adequate, it must, at least, meet the requirements of the following table:

Gross weight of towed vehicle (pounds) ¹	Longitudinal strength in tension and compression ²		
	All tow-bars	New tow-bars acquired and used by a motor carrier after Sept. 30, 1948	Strength as a beam (in any direction concentrated load at center) ^{2,3}
	Pounds		
Less than 5,000	3,000	6,500	3,000
5,000 and over .....	.....	.....	.....
Less than 10,000	6,000	(1)	(1)
10,000 and over .....	.....	.....	.....
Less than 15,000	9,000	(1)	(1)

¹ The required strength of tow-bars for towed vehicles of 15,000 pounds and over gross weight and of new tow-bars acquired and used after Sept. 30, 1948, for towed vehicles of 5,000 pounds and over gross weight shall be computed by means of the following formulae: Longitudinal strength=gross weight of towed vehicle × 1.3. Strength as a beam=gross weight of towed vehicle × 0.6.

² In testing, the whole unit shall be tested with all clamps, joints, and pins so mounted and fastened as to approximate conditions of actual operation.

³ This test shall be applicable only to tow-bars which are, in normal operation, subjected to a bending movement such as tow-bars for house trailers.

(2) *Tow-bars, jointed.* The tow-bar shall be so constructed as to freely permit motion in both horizontal and vertical planes between the towed and towing vehicles. The means used to provide the motion shall be such as to prohibit the transmission of stresses under normal operation between the towed and towing vehicles, except along the longitudinal axis of the tongue or tongues.

(3) *Tow-bar fastenings.* The means used to transmit the stresses to the chassis or frames of the towed and towing vehicles may be either temporary structures or bumpers or other integral parts of the vehicles: *Provided, however,* That the means used shall be so constructed, installed, and maintained that when tested as an assembly, failure in such members shall not occur when the weakest new tow-bar which is permissible under paragraph (h)(1) of this section is subjected to the tests given therein.

(4) *Means of adjusting length.* On tow-bars, adjustable as to length, the means used to make such adjustment shall fit tightly and not result in any slackness or permit the tow-bar to bend. With the tow-bar supported rigidly at both ends and with a load of 50 pounds at the center, the sag, measured at the center, in any direction shall not exceed 0.25 inch under any condition of adjustment as to length.

(5) *Method of clamping.* Adequate means shall be provided for securely fastening the tow-bar to the towed and towing vehicles.

(6) *Tow-bar connection to steering mechanism.* The tow-bar shall be provided with suitable means of attachment to and actuation of the steering mechanism, if any, of the towed vehicle. The attachment shall provide for sufficient angularity of movement of the front wheels of the towed vehicle so that it may follow substantially in the path of the towing vehicle without cramping the tow-bar. The tow-bar shall be provided with suitable joints to permit such movement.

(7) *Tracking.* The tow-bar shall be so designed, constructed, maintained, and mounted as to cause the towed vehicle to follow substantially in the path of the towing vehicle. Tow-bars of such design on in our condition as to permit the towed vehicle to deviate more than 3 inches to either side of the path of a towing vehicle moving in a straight line as measured from the center of the towing vehicle are prohibited.

(8) *Passenger car-trailer type couplings.* Trailer couplings used for driveaway-towaway operations of passenger car trailers shall conform to Society of Automotive Engineers Standard No.

J684c, "Trailer Couplings and Hitches—Automotive Type," July 1970.¹

(9) *Marking tow-bars.* Every tow-bar acquired and used in driveaway-towaway operations by a motor carrier shall be plainly marked with the following certification of the manufacturer thereof (or words of equivalent meaning):

This tow-bar complies with the requirements of the Federal Motor Carrier Safety Administration for (maximum gross weight for which tow-bar is manufactured) vehicles. Allowable Maximum Gross Weight _____ Manufactured _____ (month and year) by _____ (name of manufacturer)

Tow-bar certification manufactured before the effective date of this regulation must meet requirements in effect at the time of manufacture.

(10) *Safety devices in case of tow-bar failure or disconnection.* (i) The towed vehicle shall be connected to the towing vehicle by a safety device to prevent the towed vehicle from breaking loose in the event the tow-bar fails or becomes disconnected. When safety chains or cables are used as the safety device for that vehicle, at least two safety chains or cables meeting the requirements of paragraph (h)(10)(ii) of this section shall be used. The tensile strength of the safety device and the means of attachment to the vehicles shall be at least equivalent to the corresponding longitudinal strength for tow-bars required in the table of paragraph (h)(1) of this section. If safety chains or cables are used as the safety device, the required strength shall be the combined strength of the combination of chains and cables.

(ii) If chains or cables are used as the safety device, they shall be crossed and attached to the vehicles near the points of bumper attachments to the chassis of the vehicles. The length of chain used shall be no more than necessary to permit free turning of the vehicles. The chains shall be attached to the tow-bar at the point of crossing or as close to that point as is practicable.

(iii) A safety device other than safety chains or cables must provide strength, security of attachment, and directional

stability equal to, or greater than, that provided by safety chains or cables installed in accordance with paragraph (h)(10)(ii) of this section. A safety device other than safety chains or cables must be designed, constructed, and installed so that, if the tow-bar fails or becomes disconnected, the tow-bar will not drop to the ground.

(i) [Reserved]

(j) *Requirements for upper-half of saddle-mounts.* The upper-half of any saddle-mount shall comply with the following requirements:

(1) *Upper-half connection to towed vehicle.* The upper-half shall be securely attached to the frame or axle of the towed vehicle by means of U-bolts or other means providing at least equivalent security.

(2) *U-bolts or other attachments.* U-bolts used to attach the upper half to the towed vehicle shall be made of steel rod, free of defects, so shaped as to avoid at any point a radius of less than 1 inch: *Provided, however,* That a lesser radius may be utilized if the U-bolt is so fabricated as not to cause more than 5 percent reduction in cross-sectional area at points of curvature, in which latter event the minimum radius shall be one-sixteenth inch. U-bolts shall have a diameter not less than required by the following table:

DIAMETER OF U-BOLTS IN INCHES

Weight in pounds of heaviest towed vehicle	Double or triple saddle-mount			
	Front mount	Middle or front mount	Rear mount	Single saddle-mount ¹
Up to 5,000	0.625	0.5625	0.500	0.500
5,000 and over	0.6875	0.625	0.5625	0.5625

¹The total weight of all the vehicles being towed shall govern. If other devices are used to accomplish the same purposes as U-bolts they shall have at least equivalent strength of U-bolts made of mild steel. Cast iron shall not be used for clamps or any other holding devices.

(3) *U-bolts and points of support, location.* The distance between the most widely separated U-bolts shall not be less than 9 inches. The distance between the widely separated points where the upper-half supports the towed vehicle shall not be less than 9 inches, except that saddle-mounts employing ball and socket joints shall employ a device which clamps the axle of the towed vehicle throughout a length of not less than 5 inches.

¹ See footnote 1 to § 393.24(c).

(4) *Cradle-type upper-halves, specifications.* Upper-halves of the cradle-type using vertical members to restrain the towed vehicle from relative movement in the direction of motion of the vehicles shall be substantially constructed and adequate for the purpose. Such cradle-mounts shall be equipped with at least one bolt or equivalent means to provide against relative vertical movement between the upper-half and the towed vehicle. Bolts, if used, shall be at least one-half inch in diameter. Devices using equivalent means shall have at least equivalent strength. The means used to provide against relative vertical motion between the upper-half and the towed vehicle shall be such as not to permit a relative motion of over one-half inch. The distance between the most widely separated points of support between the upper-half and the towed vehicle shall be at least 9 inches.

(5) *Lateral movement of towed vehicle.*

(i) Towed vehicles having a straight axle or an axle having a drop of less than 3 inches, unless the saddle-mount is constructed in accordance with paragraph (m)(2) of this section, shall be securely fastened by means of chains or cables to the upper-half so as to insure against relative lateral motion between the towed vehicle and the upper-half. The chains or cables shall be at least 3/16-inch diameter and secured by bolts of at least equal diameter.

(ii) Towed vehicles with an axle with a drop of 3 inches or more, or connected by a saddle-mount constructed in accordance with paragraph (m)(2) of this section, need not be restrained by chains or cables provided that the upper-half is so designed as to provide against such relative motion.

(iii) Chains or cables shall not be required if the upper-half is so designed as positively to provide against lateral movement of the axle.

(k) *Requirements for lower half of saddle-mounts.* The lower half of any saddle-mount shall comply with the following requirements:

(1) *U-bolts or other attachments.* U-bolts used to attach the lower half to the towing vehicle shall be made of steel rod, free of defects, so shaped as to avoid at any point a radius of less than 1 inch: *Provided, however,* That a lesser radius may be utilized if the U-

bolt is so fabricated as not to cause more than 5 percent reduction in cross-sectional area at points of curvature, in which latter event the minimum radius shall be one-sixteenth inch. U-bolts shall have a total cross-sectional area not less than as required by the following table:

TOTAL CROSS-SECTIONAL AREA OF U-BOLTS IN SQUARE INCHES

Weight in pounds of heaviest towed vehicle	Double or triple saddle-mount			
	Front mount	Middle or front mount	Rear mount	Single saddle-mount ¹
Up to 5,000	1.2	1.0	0.8	0.8
5,000 and over	1.4	1.2	1.0	1.0

¹ The total weight of all the vehicles being towed shall govern. If other devices are used to accomplish the same purposes as U-bolts they shall have at least equivalent strength of U-bolts made of mild steel. Cast iron shall not be used for clamps or any other holding devices.

(2) *Shifting.* Adequate provision shall be made by design and installation to provide against relative movement between the lower-half and the towing vehicle especially during periods of rapid acceleration and deceleration. To insure against shifting, designs of the tripod type shall be equipped with adequate and securely fastened hold-back chains or similar devices.

(3) *Swaying.* (i) Adequate provision shall be made by design and installation to provide against swaying or lateral movement of the towed vehicle relative to the towing vehicle. To insure against swaying, lower-halves designed with cross-members attached to but separable from vertical members shall have such cross-members fastened to the vertical members by at least two bolts on each side. Such bolts shall be of at least equivalent cross-sectional area as those required for U-bolts for the corresponding saddle-mount as given in the table in paragraph (k)(1) of this section. The minimum distance between the most widely separated points of support of the cross-member by the vertical member shall be three inches as measured in a direction parallel to the longitudinal axis of the towing vehicle.

(ii) The lower-half shall have a bearing surface on the frame of the towing vehicle of such dimensions that the pressure exerted by the lower-half upon the frame of the towing vehicle shall not exceed 200 pounds per square inch

under any conditions of static loading. Hardwood blocks or blocks of other suitable material, such as hard rubber, aluminum or brakelining, if used between the lower half and the frame of the towing vehicle shall be at least ½ inch thick, 3 inches wide, and a combined length of 6 inches.

(iii) Under no condition shall the highest point of support of the towed vehicle by the upper-half be more than 24 inches, measured vertically, above the top of the frame of the towing vehicle, measured at the point where the lower-half rests on the towing vehicle.

(4) *Wood blocks.* (i) Hardwood blocks of good quality may be used to build up the height of the front end of the towed vehicle, provided that the total height of such wood blocks shall not exceed 8 inches and not over two separate pieces are placed upon each other to obtain such height; however, hardwood blocks, not over 4 in number, to a total height not to exceed 14 inches, may be used if the total cross-sectional area of the U-bolts used to attach the lower-half of the towing vehicle is at least 50 percent greater than that required by the table contained in paragraph (k)(1) of this section, or, if other devices are used in lieu of U-bolts, they shall provide for as great a resistance to bending as is provided by the larger U-bolts above prescribed.

(ii) Hardwood blocks must be at least 4 inches in width and the surfaces between blocks or block and lower-half or block and upper-half shall be planed and so installed and maintained as to minimize any tendency of the towed vehicle to sway or rock.

(5) *Cross-member, general requirements.* The cross-member, which is that part

of the lower-half used to distribute the weight of the towed vehicle equally to each member of the frame of the towing vehicle, if used, shall be structurally adequate and properly installed and maintained adequately to perform this function.

(6) *Cross-member, use of wood.* No materials, other than suitable metals, shall be used as the cross-member, and wood may not be used structurally in any manner that will result in its being subject to tensile stresses. Wood may be used in cross-members if supported throughout its length by suitable metal cross-members.

(7) *Lower half strength.* The lower half shall be capable of supporting the loads given in the following table. For the purpose of test, the saddle-mount shall be mounted as normally operated and the load applied through the upper half:

MINIMUM TEST LOAD IN POUNDS

Weight in pounds of heaviest towed vehicle	Double or triple saddle-mount			
	Front mount	Middle or front mount	Rear mount	Single saddle-mount ¹
Up to 5,000	15,000	10,000	5,000	5,000
5,000 and over	30,000	20,000	10,000	10,000

¹ The total weight of all the vehicles being towed shall govern.

(1) *Requirements for kingpins of saddle-mounts.* The kingpin of any saddle-mount shall comply with the following requirements:

(1) *Kingpin size.* (i) Kingpins shall be constructed of steel suitable for the purpose, free of defects, and having a diameter not less than required by the following table:

DIAMETER OF SOLID KINGPIN IN INCHES

Weight in pounds of heaviest towed vehicle	Double or triple saddle-mount							
	Front mount		Middle or front mount		Rear mount		Single saddle-mount ¹	
	Mild steel	H.T.S. ²	Mild steel	H.T.S. ²	Mild steel	H.T.S. ²	Mild steel	H.T.S.
Up to 5,000	1.125	1.000	1.000	0.875	0.875	0.750	0.875	0.750
5,000 and over	1.500	1.125	1.250	1.000	1.000	0.875	1.000	0.875

¹ The total weight of all the vehicles being towed shall govern.

² High-tensile steel is steel having a minimum ultimate strength of 65,000 pounds per square inch.

(ii) If a ball and socket joint is used the neck of the ball shall be at least in place of a kingpin, the diameter of

equal to the diameter of the corresponding solid kingpin given in the above table. If hollow kingpins are used, the metallic cross-sectional area shall be at least equal to the cross-sectional area of the corresponding solid kingpin.

(2) *Kingpin fit.* If a kingpin bushing is not used, the king-pin shall fit snugly into the upper and lower-halves but shall not bind. Those portions of the upper or lower-halves in moving contact with the kingpin shall be smoothly machined with no rough or sharp edges. The bearing surface thus provided shall not be less in depth than the radius of the kingpin.

(3) *Kingpin bushing on saddle-mounts.* The kingpin of all new saddle-mounts acquired and used shall be snugly enclosed in a bushing at least along such length of the kingpin as may be in moving contact with either the upper or lower-halves. The bearing surface thus provided shall not be less in depth than the radius of the kingpin.

(4) *Kingpin to restrain vertical motion.* The kingpin shall be so designed and installed as to restrain the upper-half from moving in a vertical direction relative to the lower-half.

(m) *Additional requirements for saddle-mounts.* Saddle-mounts shall comply with the following requirements:

(1) *Bearing surface between upper and lower-halves.* The upper and lower-halves shall be so constructed and connected that the bearing surface between the two halves shall not be less than 16 square inches under any conditions of angularity between the towing and towed vehicles: *Provided, however,* That saddle-mounts using a ball and socket joint shall have a ball of such dimension that the static bearing load shall not exceed 800 pounds per square inch, based on the projected cross-sectional area of the ball: *And further provided,* That saddle-mounts having the upper-half supported by ball, taper, or roller-bearings shall not have such bearings loaded beyond the limits prescribed for such bearings by the manufacturer thereof. The upper-half shall rest evenly and smoothly upon the lower-half and the contact surfaces shall be lubricated and maintained so that there shall be a minimum of frictional resistance between the parts.

(2) *Saddle-mounts, angularity.* All saddle-mounts acquired and used shall provide for angularity between the towing and towed vehicles due to vertical curvatures of the highway. Such means shall not depend upon either the looseness or deformation of the parts of either the saddle-mount or the vehicles to provide for such angularity.

(3) *Tracking.* The saddle-mount shall be so designed, constructed, maintained, and installed that the towed vehicle or vehicles will follow substantially in the path of the towing vehicle without swerving. Towed vehicles shall not deviate more than 3 inches to either side of the path of the towing vehicle when moving in a straight line.

(4) *Prevention of frame bending.* Where necessary, provision shall be made to prevent the bending of the frame of the towing vehicle by insertion of suitable blocks inside the frame channel to prevent kinking. The saddle-mount shall not be so located as to cause deformation of the frame by reason of cantilever action.

(5) *Extension of frame.* No saddle-mount shall be located at a point to the rear of the frame of a towing vehicle.

(6) *Nuts, secured.* All nuts used on bolts, U-bolts, king-pins, or in any other part of the saddle-mount shall be secured against accidental disconnection by means of cotter-keys, lock-washers, double nuts, safety nuts, or equivalent means. Parts shall be so designed and installed that nuts shall be fully engaged.

(7) *Inspection of all parts.* The saddle-mount shall be so designed that it may be disassembled and each separate part inspected for worn, bent, cracked, broken, or missing parts.

(8) *Saddle-mounts, marking.* Every new saddle-mount acquired and used in driveaway-towaway operations by a motor carrier shall have the upper-half and the lower-half separately marked with the following certification of the manufacturer thereof (or words of equivalent meaning).

This saddle-mount complies with the requirements of the Federal Motor Carrier Safety Administration for vehicles up to 5,000 pounds (or over 5,000 pounds):

Manufactured _____
 (Month and year)
 by _____
 (Name of manufacturer)

(n) *Requirements for devices used to connect motor vehicles or parts of motor vehicles together to form one vehicle*—(1) *Front axle attachment.* The front axle of one motor vehicle intended to be coupled with another vehicle as defined in paragraph (g)(2)(ii) of this section shall be attached with U-bolts meeting the requirements of paragraph (j)(2) of this section.

(2) *Rear axle attachment.* The rear axle of one vehicle shall be coupled to the frame of the other vehicle by means of a connecting device which when in place forms a rectangle. The device shall be composed of two pieces, top and bottom. The device shall be made of 4-inch by ½-inch steel bar bent to shape and shall have the corners reinforced with a plate at least 3 inches by ½ inch by 8 inches long. The device shall be bolted together with ¾-inch bolts and at least three shall be used on each side. Wood may be used as spacers to keep the frames apart and it shall be at least 4 inches square.

(Sec. 12, 80 Stat. 931; 49 U.S.C. 1651 note; section 6 of the Department of Transportation Act, 49 U.S.C. 1655, and the delegations of authority at 49 CFR 1.48 and 389.4)

[33 FR 19735, Dec. 25, 1968, as amended at 35 FR 10907, July 7, 1970; 37 FR 21440, Oct. 11, 1972; 53 FR 49400, Dec. 7, 1988; 70 FR 48054, Aug. 15, 2005]

Subpart G—Miscellaneous Parts and Accessories

§ 393.75 Tires.

(a) No motor vehicle shall be operated on any tire that—

(1) Has body ply or belt material exposed through the tread or sidewall,

(2) Has any tread or sidewall separation,

(3) Is flat or has an audible leak, or

(4) Has a cut to the extent that the ply or belt material is exposed.

(b) Any tire on the front wheels of a bus, truck, or truck tractor shall have a tread groove pattern depth of at least ⅜ of an inch when measured at any point on a major tread groove. The measurements shall not be made where tie bars, humps, or fillets are located.

(c) Except as provided in paragraph (b) of this section, tires shall have a tread groove pattern depth of at least ⅜ of an inch when measured in a major tread groove. The measurement shall not be made where tie bars, humps or fillets are located.

(d) No bus shall be operated with regrooved, recapped or retreaded tires on the front wheels.

(e) A regrooved tire with a load-carrying capacity equal to or greater than 2,232 kg (4,920 pounds) shall not be used on the front wheels of any truck or truck tractor.

(f) *Tire loading restrictions (except on manufactured homes).* No motor vehicle (except manufactured homes, which are governed by paragraph (g) of this section) shall be operated with tires that carry a weight greater than that marked on the sidewall of the tire or, in the absence of such a marking, a weight greater than that specified for the tires in any of the publications of any of the organizations listed in Federal Motor Vehicle Safety Standard No. 119 (49 CFR 571.119, S5.1(b)) unless:

(1) The vehicle is being operated under the terms of a special permit issued by the State; and

(2) The vehicle is being operated at a reduced speed to compensate for the tire loading in excess of the manufacturer's rated capacity for the tire. In no case shall the speed exceed 80 km/hr (50 mph).

(g)(1) *Tire loading restrictions for manufactured homes built before January 1, 2002.* Manufactured homes that are labeled pursuant to 24 CFR 3282.362(c)(2)(i) before January 1, 2002, must not be transported on tires that are loaded more than 18 percent over the load rating marked on the sidewall of the tire or, in the absence of such a marking, more than 18 percent over the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b)). Manufactured homes labeled before January 1, 2002, transported on tires overloaded by 9 percent or more must not be operated at speeds exceeding 80 km/hr (50 mph).

(2) *Tire loading restrictions for manufactured homes built on or after January 1, 2002.* Manufactured homes that are labeled pursuant to 24 CFR

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3282.362(c)(2)(i) on or after January 1, 2002, must not be transported on tires loaded beyond the load rating marked on the sidewall of the tire or, in the absence of such a marking, the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b)).

(h) *Tire inflation pressure.* (1) No motor vehicle shall be operated on a tire which has a cold inflation pressure less than that specified for the load being carried.

(2) If the inflation pressure of the tire has been increased by heat because of the recent operation of the vehicle, the cold inflation pressure shall be estimated by subtracting the inflation buildup factor shown in Table 1 from the measured inflation pressure.

TABLE 1—INFLATION PRESSURE MEASUREMENT CORRECTION FOR HEAT

Average speed of vehicle in the previous hour	Minimum inflation pressure buildup	
	Tires with 1,814 kg (4,000 lbs.) maximum load rating or less	Tires with over 1,814 kg (4,000 lbs.) load rating
66–88.5 km/hr (41–55 mph).	34.5 kPa (5 psi) ...	103.4 kPa (15 psi).

[34 FR 9344, June 13, 1969, as amended at 40 FR 44557, Sept. 29, 1975; 41 FR 36657, Aug. 31, 1976; 44 FR 25455, May 1, 1979; 44 FR 47938, Aug. 16, 1979; 53 FR 18057, May 19, 1988; 53 FR 49401, Dec. 7, 1988; 63 FR 8339, Feb. 18, 1998; 65 FR 70220, Nov. 21, 2000; 66 FR 67694, Dec. 31, 2001; 70 FR 48054, Aug. 15, 2005]

§ 393.76 **Sleeper berths.**

(a) *Dimensions*—(1) *Size.* A sleeper berth must be at least the following size:

Date of installation on motor vehicle	Length measured on centerline of longitudinal axis (inches)	Width measured on centerline of transverse axis (inches)	Height measured from highest point of top of mattress (inches) ¹
Before January 1, 1953	72	18	18
After December 31, 1952, and before October 1, 1975 ...	75	21	21
After September 30, 1975	75	24	24

¹ In the case of a sleeper berth which utilizes an adjustable mechanical suspension system, the required clearance can be measured when the suspension system is adjusted to the height to which it would settle when occupied by a driver.

(2) *Shape.* A sleeper berth installed on a motor vehicle on or after January 1, 1953 must be of generally rectangular shape, except that the horizontal corners and the roof corners may be rounded to radii not exceeding 10½ inches.

(3) *Access.* A sleeper berth must be constructed so that an occupant's ready entrance to, and exit from, the sleeper berth is not unduly hindered.

(b) *Location.* (1) A sleeper berth must not be installed in or on a semitrailer or a full trailer other than a house trailer.

(2) A sleeper berth located within the cargo space of a motor vehicle must be securely compartmentalized from the remainder of the cargo space. A sleeper berth installed on or after January 1, 1953 must be located in the cab or immediately adjacent to the cab and must be securely fixed with relation to the cab.

(c) *Exit from the berth.* (1) Except as provided in paragraph (c)(2) of this section, there must be a direct and ready means of exit from a sleeper berth into the driver's seat or compartment. If the sleeper berth was installed on or after January 1, 1963, the exit must be a doorway or opening at least 18 inches high and 36 inches wide. If the sleeper berth was installed before January 1, 1963, the exit must have sufficient area to contain an ellipse having a major axis of 24 inches and a minor axis of 16 inches.

(2) A sleeper berth installed before January 1, 1953 must either:

(i) Conform to the requirements of paragraph (c)(1) of this section; or

(ii) Have at least two exits, each of which is at least 18 inches high and 21 inches wide, located at opposite ends of the vehicle and useable by the occupant without the assistance of any other person.

(d) *Communication with the driver.* A sleeper berth which is not located within the driver's compartment and has no direct entrance into the driver's compartment must be equipped with a means of communication between the occupant and the driver. The means of communication may consist of a telephone, speaker tube, buzzer, pull cord, or other mechanical or electrical device.

(e) *Equipment.* A sleeper berth must be properly equipped for sleeping. Its equipment must include:

(1) Adequate bedclothing and blankets; and

(2) Either:

(i) Springs and a mattress; or

(ii) An innerspring mattress; or

(iii) A cellular rubber or flexible foam mattress at least four inches thick; or

(iv) A mattress filled with a fluid and of sufficient thickness when filled to prevent "bottoming-out" when occupied while the vehicle is in motion.

(f) *Ventilation.* A sleeper berth must have louvers or other means of providing adequate ventilation. A sleeper berth must be reasonably tight against dust and rain.

(g) *Protection against exhaust and fuel leaks and exhaust heat.* A sleeper berth must be located so that leaks in the vehicle's exhaust system or fuel system do not permit fuel, fuel system gases, or exhaust gases to enter the sleeper berth. A sleeper berth must be located so that it will not be overheated or damaged by reason of its proximity to the vehicle's exhaust system.

(h) *Occupant restraint.* A motor vehicle manufactured on or after July 1, 1971, and equipped with a sleeper berth must be equipped with a means of preventing ejection of the occupant of the sleeper berth during deceleration of the vehicle. The restraint system must be designed, installed, and maintained to withstand a minimum total force of 6,000 pounds applied toward the front of the vehicle and parallel to the longitudinal axis of the vehicle.

[39 FR 14711, Apr. 26, 1974; 39 FR 17233, May 14, 1974, as amended at 53 FR 49401, Dec. 7, 1988]

§ 393.77 Heaters.

On every motor vehicle, every heater shall comply with the following requirements:

(a) *Prohibited types of heaters.* The installation or use of the following types of heaters is prohibited:

(1) *Exhaust heaters.* Any type of exhaust heater in which the engine exhaust gases are conducted into or through any space occupied by persons or any heater which conducts engine compartment air into any such space.

(2) *Unenclosed flame heaters.* Any type of heater employing a flame which is not fully enclosed, except that such heaters are not prohibited when used for heating the cargo of tank motor vehicles.

(3) *Heaters permitting fuel leakage.* Any type of heater from the burner of which there could be spillage or leakage of fuel upon the tilting or overturning of the vehicle in which it is mounted.

(4) *Heaters permitting air contamination.* Any heater taking air, heated or to be heated, from the engine compartment or from direct contact with any portion of the exhaust system; or any heater taking air in ducts from the outside atmosphere to be conveyed through the engine compartment, unless said ducts are so constructed and installed as to prevent contamination of the air so conveyed by exhaust or engine compartment gases.

(5) *Solid fuel heaters except wood charcoal.* Any stove or other heater employing solid fuel except wood charcoal.

(6) *Portable heaters.* Portable heaters shall not be used in any space occupied by persons except the cargo space of motor vehicles which are being loaded or unloaded.

(b) *Heater specifications.* All heaters shall comply with the following specifications:

(1) *Heating elements, protection.* Every heater shall be so located or protected as to prevent contact therewith by occupants, unless the surface temperature of the protecting grilles or of any exposed portions of the heaters, inclusive of exhaust stacks, pipes, or conduits shall be lower than would cause contact burns. Adequate protection shall be afforded against igniting parts of the vehicle or burning occupants by direct radiation. Wood charcoal heaters shall be enclosed within a metal barrel, drum, or similar protective enclosure which enclosure shall be provided with a securely fastened cover.

(2) *Moving parts, guards.* Effective guards shall be provided for the protection of passengers or occupants against injury by fans, belts, or any other moving parts.

(3) *Heaters, secured.* Every heater and every heater enclosure shall be securely fastened to the vehicle in a substantial manner so as to provide

against relative motion within the vehicle during normal usage or in the event the vehicle overturns. Every heater shall be so designed, constructed, and mounted as to minimize the likelihood of disassembly of any of its parts, including exhaust stacks, pipes, or conduits, upon overturn of the vehicle in or on which it is mounted. Wood charcoal heaters shall be secured against relative motion within the enclosure required by paragraph (c)(1) of this section, and the enclosure shall be securely fastened to the motor vehicle.

(4) *Relative motion between fuel tank and heater.* When either in normal operation or in the event of overturn, there is or is likely to be relative motion between the fuel tank for a heater and the heater, or between either of such units and the fuel lines between them, a suitable means shall be provided at the point of greatest relative motion so as to allow this motion without causing failure of the fuel lines.

(5) *Operating controls to be protected.* On every bus designed to transport more than 15 passengers, including the driver, means shall be provided to prevent unauthorized persons from tampering with the operating controls. Such means may include remote control by the driver; installation of controls at inaccessible places; control of adjustments by key or keys; enclosure of controls in a locked space, locking of controls, or other means of accomplishing this purpose.

(6) *Heater hoses.* Hoses for all hot water and steam heater systems shall be specifically designed and constructed for that purpose.

(7) *Electrical apparatus.* Every heater employing any electrical apparatus shall be equipped with electrical conductors, switches, connectors, and other electrical parts of ample current-carrying capacity to provide against overheating; any electric motor employed in any heater shall be of adequate size and so located that it will not be overheated; electrical circuits shall be provided with fuses and/or circuit breakers to provide against electrical overloading; and all electrical conductors employed in or leading to any heater shall be secured against dangling, chafing, and rubbing and shall have suitable protection against

any other condition likely to produce short or open circuits.

NOTE: Electrical parts certified as proper for use by Underwriters' Laboratories, Inc., shall be deemed to comply with the foregoing requirements.

(8) *Storage battery caps.* If a separate storage battery is located within the personnel or cargo space, such battery shall be securely mounted and equipped with nonspill filler caps.

(9) *Combustion heater exhaust construction.* Every heater employing the combustion of oil, gas, liquefied petroleum gas, or any other combustible material shall be provided with substantial means of conducting the products of combustion to the outside of the vehicle: *Provided, however,* That this requirement shall not apply to heaters used solely to heat the cargo space of motor vehicles where such motor vehicles or heaters are equipped with means specifically designed and maintained so that the carbon monoxide concentration will never exceed 0.2 percent in the cargo space. The exhaust pipe, stack, or conduit if required shall be sufficiently substantial and so secured as to provide reasonable assurance against leakage or discharge of products of combustion within the vehicle and, if necessary, shall be so insulated as to make unlikely the burning or charring of parts of the vehicle by radiation or by direct contact. The place of discharge of the products of combustion to the atmosphere and the means of discharge of such products shall be such as to minimize the likelihood of their reentry into the vehicle under all operating conditions.

(10) *Combustion chamber construction.* The design and construction of any combustion-type heater except cargo space heaters permitted by the proviso of paragraph (c)(9) of this section and unenclosed flame heaters used for heating cargo of tank motor vehicles shall be such as to provide against the leakage of products of combustion into air to be heated and circulated. The material employed in combustion chambers shall be such as to provide against leakage because of corrosion, oxidation, or other deterioration. Joints between combustion chambers and the air chambers with which they are in thermal and mechanical contact shall

be so designed and constructed as to prevent leakage between the chambers and the materials employed in such joints shall have melting points substantially higher than the maximum temperatures likely to be attained at the points of jointure.

(11) *Heater fuel tank location.* Every bus designed to transport more than 15 passengers, including the driver, with heaters of the combustion type shall have fuel tanks therefor located outside of and lower than the passenger space. When necessary, suitable protection shall be afforded by shielding or other means against the puncturing of any such tank or its connections by flying stones or other objects.

(12) *Heater, automatic fuel control.* Gravity or siphon feed shall not be permitted for heaters using liquid fuels. Heaters using liquid fuels shall be equipped with automatic means for shutting off the fuel or for reducing such flow of fuel to the smallest practicable magnitude, in the event of overturn of the vehicle. Heaters using liquefied petroleum gas as fuel shall have the fuel line equipped with automatic means at the source of supply for shutting off the fuel in the event of separation, breakage, or disconnection of any of the fuel lines between the supply source and the heater.

(13) *"Tell-tale" indicators.* Heaters subject to paragraph (c)(14) of this section and not provided with automatic controls shall be provided with "tell-tale" means to indicate to the driver that the heater is properly functioning. This requirement shall not apply to heaters used solely for the cargo space in semitrailers or full trailers.

(14) *Shut-off control.* Automatic means, or manual means if the control is readily accessible to the driver without moving from the driver's seat, shall be provided to shut off the fuel and electrical supply in case of failure of the heater to function for any reason, or in case the heater should function improperly or overheat. This requirement shall not apply to wood charcoal heaters or to heaters used solely to heat the contents of cargo tank motor vehicles, but wood charcoal heaters must be provided with a controlled method of regulating the flow of combustion air.

(15) *Certification required.* Every combustion-type heater, except wood charcoal heaters, the date of manufacture of which is subsequent to December 31, 1952, and every wood charcoal heater, the date of manufacture of which is subsequent to September 1, 1953, shall be marked plainly to indicate the type of service for which such heater is designed and with a certification by the manufacturer that the heater meets the applicable requirements for such use. For example, "Meets I.C.C. Bus Heater Requirements," "Meets I.C.C. Flue-Vented Cargo Space Heater Requirements," and after December 31, 1967, such certification shall read "Meets FMCSA Bus Heater Requirements," "Meets FMCSA Flue-Vented Cargo Space Heater Requirements," etc.

(i) *Exception.* The certification for a catalytic heater which is used in transporting flammable liquid or gas shall be as prescribed under §177.834(1) of this title.

[33 FR 19735, Dec. 25, 1968, as amended at 40 FR 51198, Nov. 4, 1975; 53 FR 49401, Dec. 7, 1988]

§ 393.78 Windshield wiping and washing systems.

(a) *Vehicles manufactured on or after December 25, 1968.* Each bus, truck, and truck-tractor manufactured on or after December 25, 1968, must have a windshield wiping system that meets the requirements of FMVSS No. 104 (S4.1) in effect on the date of manufacture. Each of these vehicles must have a windshield washing system that meets the requirements of FMVSS No. 104 (S4.2.2) in effect on the date of manufacture.

(b) *Vehicles manufactured between June 30, 1953, and December 24, 1968.* Each truck, truck-tractor, and bus manufactured between June 30, 1953, and December 24, 1968, shall be equipped with a power-driven windshield wiping system with at least two wiper blades, one on each side of the centerline of the windshield. Motor vehicles which depend upon vacuum to operate the windshield wipers, shall have the wiper system constructed and maintained such that the performance of the wipers will not be adversely affected by a change in the intake manifold pressure.

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(c) *Driveaway-towaway operations.* Windshield wiping and washing systems need not be in working condition while a commercial motor vehicle is being towed in a driveaway-towaway operation.

[70 FR 48054, Aug. 15, 2005]

§ 393.79 Windshield defrosting and defogging systems.

(a) *Vehicles manufactured on or after December 25, 1968.* Each bus, truck, and truck-tractor manufactured on or after December 25, 1968, must have a windshield defrosting and defogging system that meets the requirements of FMVSS No. 103 in effect on the date of manufacture.

(b) *Vehicles manufactured before December 25, 1968.* Each bus, truck, and truck-tractor shall be equipped with a means for preventing the accumulation of ice, snow, frost, or condensation that could obstruct the driver's view through the windshield while the vehicle is being driven.

[70 FR 48054, Aug. 15, 2005]

§ 393.80 Rear-vision mirrors.

(a) Every bus, truck, and truck tractor shall be equipped with two rear-vision mirrors, one at each side, firmly attached to the outside of the motor vehicle, and so located as to reflect to the driver a view of the highway to the rear, along both sides of the vehicle. All such regulated rear-vision mirrors and their replacements shall meet, as a minimum, the requirements of FMVSS No. 111 (49 CFR 571.111) in force at the time the vehicle was manufactured.

(b) *Exceptions.* (1) Mirrors installed on a vehicle manufactured prior to January 1, 1981, may be continued in service, provided that if the mirrors are replaced they shall be replaced with mirrors meeting, as a minimum, the requirements of FMVSS No. 111 (49 CFR 571.111) in force at the time the vehicle was manufactured.

(2) Only one outside mirror shall be required, which shall be on the driver's side, on trucks which are so constructed that the driver has a view to the rear by means of an interior mirror.

(3) In driveway-towaway operations, the driven vehicle shall have at least

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one mirror furnishing a clear view to the rear.

[48 FR 57139, Dec. 28, 1983]

§ 393.81 Horn.

Every bus, truck, truck-tractor, and every driven motor vehicle in driveaway-towaway operations shall be equipped with a horn and actuating elements which shall be in such condition as to give an adequate and reliable warning signal.

§ 393.82 Speedometer.

Each bus, truck, and truck-tractor must be equipped with a speedometer indicating vehicle speed in miles per hour and/or kilometers per hour. The speedometer must be accurate to within plus or minus 8 km/hr (5 mph) at a speed of 80 km/hr (50 mph).

[70 FR 48054, Aug. 15, 2005]

§ 393.83 Exhaust systems.

(a) Every motor vehicle having a device (other than as part of its cargo) capable of expelling harmful combustion fumes shall have a system to direct the discharge of such fumes. No part shall be located where its location would likely result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.

(b) No exhaust system shall discharge to the atmosphere at a location immediately below the fuel tank or the fuel tank filler pipe.

(c) The exhaust system of a bus powered by a gasoline engine shall discharge to the atmosphere at or within 6 inches forward of the rearmost part of the bus.

(d) The exhaust system of a bus using fuels other than gasoline shall discharge to the atmosphere either:

(1) At or within 15 inches forward of the rearmost part of the vehicle; or

(2) To the rear of all doors or windows designed to be open, except windows designed to be opened solely as emergency exits.

(e) The exhaust system of every truck and truck tractor shall discharge to the atmosphere at a location to the rear of the cab or, if the exhaust projects above the cab, at a location near the rear of the cab.

(f) No part of the exhaust system shall be temporarily repaired with wrap or patches.

(g) No part of the exhaust system shall leak or discharge at a point forward of or directly below the driver/sleeper compartment. The exhaust outlet may discharge above the cab/sleeper roofline.

(h) The exhaust system must be securely fastened to the vehicle.

(i) Exhaust systems may use hangers which permit required movement due to expansion and contraction caused by heat of the exhaust and relative motion between engine and chassis of a vehicle.

[53 FR 49401, Dec. 7, 1988]

§ 393.84 Floors.

The flooring in all motor vehicles shall be substantially constructed, free of unnecessary holes and openings, and shall be maintained so as to minimize the entrance of fumes, exhaust gases, or fire. Floors shall not be permeated with oil or other substances likely to cause injury to persons using the floor as a traction surface.

[53 FR 49401, Dec. 7, 1988]

§ 393.85 [Reserved]

§ 393.86 Rear impact guards and rear end protection.

(a)(1) *General requirements for trailers and semitrailers manufactured on or after January 26, 1998.* Each trailer and semitrailer with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or more, and manufactured on or after January 26, 1998, must be equipped with a rear impact guard that meets the requirements of Federal Motor Vehicle Safety Standard No. 223 (49 CFR 571.223) in effect at the time the vehicle was manufactured. When the rear impact guard is installed on the trailer or semitrailer, the vehicle must, at a minimum, meet the requirements of FMVSS No. 224 (49 CFR 571.224) in effect at the time the vehicle was manufactured. The requirements of paragraph (a) of this section do not apply to pole trailers (as defined in §390.5 of this chapter); pulpwood trailers, low chassis vehicles, special purpose vehicles, wheels back vehicles (as defined in

§393.5); and trailers towed in driveaway-towaway operations (as defined in §390.5).

(2) *Impact guard width.* The outermost surfaces of the horizontal member of the guard must extend to within 100 mm (4 inches) of the side extremities of the vehicle. The outermost surface of the horizontal member shall not extend beyond the side extremity of the vehicle.

(3) *Guard height.* The vertical distance between the bottom edge of the horizontal member of the guard and the ground shall not exceed 560 mm (22 inches) at any point across the full width of the member. Guards with rounded corners may curve upward within 255 mm (10 inches) of the longitudinal vertical planes that are tangent to the side extremities of the vehicle.

(4) *Guard rear surface.* At any height 560 mm (22 inches) or more above the ground, the rearmost surface of the horizontal member of the guard must be within 305 mm (12 inches) of the rear extremity of the vehicle. This paragraph shall not be construed to prohibit the rear surface of the guard from extending beyond the rear extremity of the vehicle. Guards with rounded corners may curve forward within 255 mm (10 inches) of the side extremity.

(5) *Cross-sectional vertical height.* The horizontal member of each guard must have a cross sectional vertical height of at least 100 mm (3.94 inches) at any point across the guard width.

(6) *Certification and labeling requirements for rear impact protection guards.* Each rear impact guard used to satisfy the requirements of paragraph (a)(1) of this section must be permanently marked or labeled as required by FMVSS No. 223 (49 CFR 571.223, S5.3). The label must be on the forward-facing surface of the horizontal member of the guard, 305 mm (12 inches) inboard of the right end of the guard. The certification label must contain the following information:

(i) The impact guard manufacturer's name and address;

(ii) The statement "Manufactured in _____" (inserting the month and year that the guard was manufactured); and,

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(iii) The letters "DOT", constituting a certification by the guard manufacturer that the guard conforms to all requirements of FMVSS No. 223.

(b)(1) *Requirements for motor vehicles manufactured after December 31, 1952 (except trailers or semitrailers manufactured on or after January 26, 1998).* Each motor vehicle manufactured after December 31, 1952, (except truck tractors, pole trailers, pulpwood trailers, or vehicles in driveaway-towaway operations) in which the vertical distance between the rear bottom edge of the body (or the chassis assembly if the chassis is the rearmost part of the vehicle) and the ground is greater than 76.2 cm (30 inches) when the motor vehicle is empty, shall be equipped with a rear impact guard(s). The rear impact guard(s) must be installed and maintained in such a manner that:

(i) The vertical distance between the bottom of the guard(s) and the ground does not exceed 76.2 cm (30 inches) when the motor vehicle is empty;

(ii) The maximum lateral distance between the closest points between guards, if more than one is used, does not exceed 61 cm (24 inches);

(iii) The outermost surfaces of the horizontal member of the guard are no more than 45.7 cm (18 inches) from each side extremity of the motor vehicle;

(iv) The impact guard(s) are no more than 61 cm (24 inches) forward of the rear extremity of the motor vehicle.

(2) *Construction and attachment.* The rear impact guard(s) must be substantially constructed and attached by means of bolts, welding, or other comparable means.

(3) *Vehicle components and structures that may be used to satisfy the requirements of paragraph (b) of this section.* Low chassis vehicles, special purpose vehicles, or wheels back vehicles constructed and maintained so that the body, chassis, or other parts of the vehicle provide the rear end protection comparable to impact guard(s) conforming to the requirements of paragraph (b)(1) of this section shall be considered to be in compliance with those requirements.

[64 FR 47708, Sept. 1, 1999, as amended at 67 FR 61824, Oct. 2, 2002]

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§ 393.87 Warning flags on projecting loads.

(a) Any commercial motor vehicle transporting a load which extends beyond the sides by more than 102 mm (4 inches) or more than 1,219 mm (4 feet) beyond the rear must have the extremities of the load marked with red or orange fluorescent warning flags. Each warning flag must be at least 457 mm (18 inches) square.

(b) *Position of flags.* There must be a single flag at the extreme rear if the projecting load is two feet wide or less. Two warning flags are required if the projecting load is wider than two feet. Flags must be located to indicate maximum width of loads which extend beyond the sides and/or rear of the vehicle.

[70 FR 48054, Aug. 15, 2005]

§ 393.88 Television receivers.

Any motor vehicle equipped with a television viewer, screen or other means of visually receiving a television broadcast shall have the viewer or screen located in the motor vehicle at a point to the rear of the back of the driver's seat if such viewer or screen is in the same compartment as the driver and the viewer or screen shall be so located as not to be visible to the driver, while he/she is driving the motor vehicle. The operating controls for the television receiver shall be so located that the driver cannot operate them without leaving the driver's seat.

§ 393.89 Buses, driveshaft protection.

Any driveshaft extending lengthways under the floor of the passenger compartment of a bus shall be protected by means of at least one guard or bracket at that end of the shaft which is provided with a sliding connection (spline or other such device) to prevent the whipping of the shaft in the event of failure thereof or of any of its component parts. A shaft contained within a torque tube shall not require any such device.

[33 FR 19735, Dec. 25, 1968, as amended at 53 FR 49402, Dec. 7, 1988]

§ 393.90 Buses, standee line or bar.

Except as provided below, every bus, which is designed and constructed so as

to allow standees, shall be plainly marked with a line of contrasting color at least 2 inches wide or equipped with some other means so as to indicate to any person that he/she is prohibited from occupying a space forward of a perpendicular plane drawn through the rear of the driver's seat and perpendicular to the longitudinal axis of the bus. Every bus shall have clearly posted at or near the front, a sign with letters at least one-half inch high stating that it is a violation of the Federal Motor Carrier Safety Administration's regulations for a bus to be operated with persons occupying the prohibited area. The requirements of this section shall not apply to any bus being transported in driveaway-towaway operation or to any level of the bus other than the level in which the driver is located nor shall they be construed to prohibit any seated person from occupying permanent seats located in the prohibited area provided such seats are so located that persons sitting therein will not interfere with the driver's safe operation of the bus.

§ 393.91 Buses, aisle seats prohibited.

No bus shall be equipped with aisle seats unless such seats are so designed and installed as to automatically fold and leave a clear aisle when they are unoccupied. No bus shall be operated if any seat therein is not securely fastened to the vehicle.

[53 FR 49402, Dec. 7, 1988]

§ 393.92 [Reserved]

§ 393.93 Seats, seat belt assemblies, and seat belt assembly anchorages.

(a) *Buses*—(1) *Buses manufactured on or after January 1, 1965, and before July 1, 1971.* After June 30, 1972, every bus manufactured on or after January 1, 1965, and before July 1, 1971, must be equipped with a Type 1 or Type 2 seat belt assembly that conforms to Federal Motor Vehicle Safety Standard No. 209¹ (§571.209) installed at the driver's seat and seat belt assembly anchorages

that conform to the location and geometric requirements of Federal Motor Vehicle Safety Standard No. 210¹ (§571.210) for that seat belt assembly.

(2) *Buses manufactured on or after July 1, 1971.* Every bus manufactured on or after July 1, 1971, must conform to the requirements of Federal Motor Vehicle Safety Standard No. 208¹ (§571.208) (relating to installation of seat belt assemblies) and Federal Motor Vehicle Safety Standard No. 210¹ (§571.210) (relating to installation of seat belt assembly anchorages).

(3) *Buses manufactured on or after January 1, 1972.* Every bus manufactured on or after January 1, 1972, must conform to the requirements of Federal Motor Vehicle Safety Standard No. 207¹ (§571.207) (relating to seating systems).

(b) *Trucks and truck tractors*—(1) *Trucks and truck tractors manufactured on and after January 1, 1965, and before July 1, 1971.* Except as provided in paragraph (d) of this section, after June 30, 1972, every truck and truck tractor manufactured on or after January 1, 1965, and before July 1, 1971, must be equipped with a Type 1 or Type 2 seat belt assembly that conforms to Federal Motor Vehicle Safety Standard No. 209 (§571.209) installed at the driver's seat and at the right front outboard seat, if the vehicle has one, and seat belt assembly anchorages that conform to the location and geometric requirements of Federal Motor Vehicle Safety Standard No. 210 (§571.210) for each seat belt assembly that is required by this subparagraph.

(2) *Trucks and truck tractors manufactured on or after July 1, 1971.* Every truck and truck tractor manufactured on or after July 1, 1971, except a truck or truck tractor being transported in driveaway-towaway operation and having an incomplete vehicle seating and cab configuration, must conform to the requirements of Federal Motor Vehicle Safety Standard No. 208¹ (§571.208) (relating to installation of seat belt assemblies) and Federal Motor Vehicle Safety Standard No. 210¹ (§571.210) (relating to installation of seat belt assembly anchorages).

¹Individual copies of Federal Motor Vehicle Safety Standards may be obtained from the National Highway Traffic Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

¹See footnote to § 393.93(a).

(3) *Trucks and truck tractors manufactured on or after January 1, 1972.* Every truck and truck tractor manufactured on or after January 1, 1972, except a truck or truck tractor being transported in driveaway-towaway operation and having an incomplete vehicle seating and cab configuration, must conform to the requirements of Federal Motor Vehicle Safety Standard No. 207¹ (§571.207) (relating to seating systems).

(c) *Effective date of standards.* Whenever paragraph (a) or (b) of this section requires conformity to a Federal Motor Vehicle Safety Standard, the vehicle or equipment must conform to the version of the Standard that is in effect on the date the vehicle is manufactured or on the date the vehicle is modified to conform to the requirements of paragraph (a) or (b) of this section, whichever is later.

(d) Trucks and truck tractors manufactured on or after January 1, 1965, and before July 1, 1971, and operated in the State of Hawaii, must comply with the provisions of paragraph (b) of this section on and after January 1, 1976.

[35 FR 16839, Oct. 30, 1970, as amended at 39 FR 32561, Sept. 9, 1974; 40 FR 32336, Aug. 1, 1975; 72 FR 55703, Oct. 1, 2007]

§ 393.94 Interior noise levels in power units.

(a) *Applicability of this section.* The interior noise level requirements apply to all trucks, truck-tractors, and buses.

(b) *General rule.* The interior sound level at the driver's seating position of a motor vehicle must not exceed 90 dB(A) when measured in accordance with paragraph (c) of this section.

(c) *Test procedure.* (1) Park the vehicle at a location so that no large reflecting surfaces, such as other vehicles, signboards, buildings, or hills, are within 50 feet of the driver's seating position.

(2) Close all vehicle doors, windows, and vents. Turn off all power-operated accessories.

(3) Place the driver in his/her normal seated position at the vehicle's controls. Evacuate all occupants except the driver and the person conducting the test.

(4) The sound level meters used to determine compliance with the requirements of this section must meet the American National Standards Institute "Specification for Sound Level Meters," ANSI S1.4—1983. (See § 393.7(b) for information on the incorporation by reference and availability of this document.)

(5) Locate the microphone, oriented vertically upward, 6 inches to the right of, in the same plane as, and directly in line with, the driver's right ear.

(6) With the vehicle's transmission in neutral gear, accelerate its engine to either its maximum governed engine speed, if it is equipped with an engine governor, or its speed at its maximum rated horsepower, if it is not equipped with an engine governor. Stabilize the engine at that speed.

(7) Observe the A-weighted sound level reading on the meter for the stabilized engine speed condition. Record that reading, if the reading has not been influenced by extraneous noise sources such as motor vehicles operating on adjacent roadways.

(8) Return the vehicle's engine speed to idle and repeat the procedures specified in paragraphs (c) (6) and (7) of this section until two maximum sound levels within 2 dB of each other are recorded. Numerically average those two maximum sound level readings.

(9) The average obtained in accordance with paragraph (c)(8) of this section is the vehicle's interior sound level at the driver's seating position for the purpose of determining whether the vehicle conforms to the rule in paragraph (b) of this section. However, a 2 dB tolerance over the sound level limitation specified in that paragraph is permitted to allow for variations in test conditions and variations in the capabilities of meters.

(10) If the motor vehicle's engine radiator fan drive is equipped with a clutch or similar device that automatically either reduces the rotational speed of the fan or completely disengages the fan from its power source in response to reduced engine cooling loads the vehicle may be parked before testing with its engine running at high idle or any other speed the operator may choose, for sufficient time but not more than 10 minutes, to permit the

engine radiator fan to automatically disengage.

[38 FR 30881, Nov. 8, 1973, as amended at 40 FR 32336, Aug. 1, 1975; 41 FR 28268, July 9, 1976; 70 FR 48054, Aug. 15, 2005]

Subpart H—Emergency Equipment

§ 393.95 Emergency equipment on all power units.

Each truck, truck tractor, and bus (except those towed in driveway-towaway operations) must be equipped as follows:

(a) *Fire extinguishers*—(1) *Minimum ratings.* (i) A power unit that is used to transport hazardous materials in a quantity that requires placarding (See § 177.823 of this title) must be equipped with a fire extinguisher having an Underwriters' Laboratories rating of 10 B:C or more.

(ii) A power unit that is not used to transport hazardous materials must be equipped with either:

(A) A fire extinguisher having an Underwriters' Laboratories rating of 5 B:C or more; or

(B) Two fire extinguishers, each of which has an Underwriters' Laboratories rating of 4 B:C or more.

(2) *Labeling and marking.* Each fire extinguisher required by this section must be labeled or marked by the manufacturer with its Underwriters' Laboratories rating.

(3) *Visual indicators.* The fire extinguisher must be designed, constructed, and maintained to permit visual determination of whether it is fully charged.

(4) *Condition, location, and mounting.* The fire extinguisher(s) must be filled and located so that it is readily accessible for use. The extinguisher(s) must be securely mounted to prevent sliding, rolling, or vertical movement relative to the motor vehicle.

(5) *Extinguishing agents.* The fire extinguisher must use an extinguishing agent that does not need protection from freezing. Extinguishing agents must comply with the toxicity provisions of the Environmental Protection Agency's Significant New Alternatives Policy (SNAP) regulations under 40 CFR Part 82, Subpart G.

(6) *Exception.* This paragraph (a) does not apply to the driven unit in a driveway-towaway operation.

(b) *Spare fuses.* Power units for which fuses are needed to operate any required parts and accessories must have at least one spare fuse for each type/size of fuse needed for those parts and accessories.

(c)–(e) [Reserved]

(f) *Warning devices for stopped vehicles.* Except as provided in paragraph (g) of this section, one of the following options must be used:

(1) Three bidirectional emergency reflective triangles that conform to the requirements of Federal Motor Vehicle Safety Standard No. 125, § 571.125 of this title; or

(2) At least 6 fusees or 3 liquid-burning flares. The vehicle must have as many additional fusees or liquid-burning flares as are necessary to satisfy the requirements of § 392.22.

(3) Other warning devices may be used in addition to, but not in lieu of, the required warning devices, provided those warning devices do not decrease the effectiveness of the required warning devices.

(g) *Restrictions on the use of flame-producing devices.* Liquid-burning flares, fusees, oil lanterns, or any signal produced by a flame shall not be carried on any commercial motor vehicle transporting Division 1.1, 1.2, 1.3 (explosives) hazardous materials; any cargo tank motor vehicle used for the transportation of Division 2.1 (flammable gas) or Class 3 (flammable liquid) hazardous materials whether loaded or empty; or any commercial motor vehicle using compressed gas as a motor fuel.

(h)–(i) [Reserved]

(j) *Requirements for fusees and liquid-burning flares.* Each fusee shall be capable of burning for 30 minutes, and each liquid-burning flare shall contain enough fuel to burn continuously for at least 60 minutes. Fusees and liquid-burning flares shall conform to the requirements of Underwriters Laboratories, Inc., UL No. 912, Highway Emergency Signals, Fourth Edition, July 30, 1979, (with an amendment dated November 9, 1981). (See § 393.7(c) for information on the incorporation by reference and availability of this document.) Each fusee and liquid-burning

flare shall be marked with the UL symbol in accordance with the requirements of UL 912.

(k) *Requirements for red flags.* Red flags shall be not less than 12 inches square, with standards adequate to maintain the flags in an upright position.

(49 U.S.C. 304, 1655; 49 CFR 1.48(b) and 301.60)

[33 FR 19735, Dec. 25, 1968, as amended at 35 FR 13019, Aug. 15, 1970; 35 FR 14619, Sept. 18, 1970; 37 FR 17176, Aug. 25, 1972; 40 FR 10685, Mar. 7, 1975; 41 FR 53031, Dec. 3, 1976; 47 FR 47837, Oct. 28, 1982; 59 FR 34712, July 6, 1994; 67 FR 61225, Sept. 27, 2002; 70 FR 48054, Aug. 15, 2005; 72 FR 44036, Aug. 7, 2007]

Subpart I—Protection Against Shifting and Falling Cargo

SOURCE: 67 FR 61225, Sept. 27, 2002, unless otherwise noted.

§ 393.100 Which types of commercial motor vehicles are subject to the cargo securement standards of this subpart, and what general requirements apply?

(a) *Applicability.* The rules in this subpart are applicable to trucks, truck tractors, semitrailers, full trailers, and pole trailers.

(b) *Prevention against loss of load.* Each commercial motor vehicle must, when transporting cargo on public roads, be loaded and equipped, and the cargo secured, in accordance with this subpart to prevent the cargo from leaking, spilling, blowing or falling from the motor vehicle.

(c) *Prevention against shifting of load.* Cargo must be contained, immobilized or secured in accordance with this subpart to prevent shifting upon or within the vehicle to such an extent that the vehicle's stability or maneuverability is adversely affected.

§ 393.102 What are the minimum performance criteria for cargo securement devices and systems?

(a) *Performance criteria—(1) Breaking strength.* Tiedown assemblies (including chains, wire rope, steel strapping, synthetic webbing, and cordage) and other attachment or fastening devices used to secure articles of cargo to, or in, commercial motor vehicles must be designed, installed, and maintained to en-

sure that the maximum forces acting on the devices or systems do not exceed the manufacturer's breaking strength rating under the following conditions, applied separately:

- (i) 0.8 g deceleration in the forward direction;
- (ii) 0.5 g acceleration in the rearward direction; and
- (iii) 0.5 g acceleration in a lateral direction.

(2) *Working Load limit.* Tiedown assemblies (including chains, wire rope, steel strapping, synthetic webbing, and cordage) and other attachment or fastening devices used to secure articles of cargo to, or in, commercial motor vehicles must be designed, installed, and maintained to ensure that the forces acting on the devices or systems do not exceed the working load limit for the devices under the following conditions, applied separately:

- (i) 0.435 g deceleration in the forward direction;
- (ii) 0.5 g acceleration in the rearward direction; and
- (iii) 0.25 g acceleration in a lateral direction.

(b) *Performance criteria for devices to prevent vertical movement of loads that are not contained within the structure of the vehicle.* Securement systems must provide a downward force equivalent to at least 20 percent of the weight of the article of cargo if the article is not fully contained within the structure of the vehicle. If the article is fully contained within the structure of the vehicle, it may be secured in accordance with Sec. 393.106(b).

(c) *Equivalent means of securement.* The means of securing articles of cargo are considered to meet the performance requirements of this section if the cargo is “

(1) Immobilized, such so that it cannot shift or tip to the extent that the vehicle's stability or maneuverability is adversely affected; or

(2) Transported in a sided vehicle that has walls of adequate strength, such that each article of cargo within the vehicle is in contact with, or sufficiently close to a wall or other articles, so that it cannot shift or tip to the extent that the vehicle's stability or maneuverability is adversely affected; or

(3) Secured in accordance with the applicable requirements of §§393.104 through 393.136.

[71 FR 35832, June 22, 2006]

§ 393.104 What standards must cargo securement devices and systems meet in order to satisfy the requirements of this subpart?

(a) *General.* All devices and systems used to secure cargo to or within a vehicle must be capable of meeting the requirements of §393.102.

(b) *Prohibition on the use of damaged securement devices.* All tiedowns, cargo securement systems, parts and components used to secure cargo must be in proper working order when used to perform that function with no damaged or weakened components, such as, but not limited to, cracks or cuts that will adversely affect their performance for cargo securement purposes, including reducing the working load limit.

(c) *Vehicle structures and anchor points.* Vehicle structures, floors, walls, decks, tiedown anchor points, headerboards, bulkheads, stakes, posts,

and associated mounting pockets used to contain or secure articles of cargo must be strong enough to meet the performance criteria of §393.102, with no damaged or weakened components, such as, but not limited to, cracks or cuts that will adversely affect their performance for cargo securement purposes, including reducing the working load limit.

(d) *Material for dunnage, chocks, cradles, shoring bars, blocking and bracing.* Material used as dunnage or dunnage bags, chocks, cradles, shoring bars, or used for blocking and bracing, must not have damage or defects which would compromise the effectiveness of the securement system.

(e) *Manufacturing standards for tiedown assemblies.* Tiedown assemblies (including chains, wire rope, steel strapping, synthetic webbing, and cordage) and other attachment or fastening devices used to secure articles of cargo to, or in, commercial motor vehicles must conform to the following applicable standards:

An assembly component of . . .	Must conform to . . .
(1) Steel strapping ^{1,2}	Standard Specification for Strapping, Flat Steel and Seals, American Society for Testing and Materials (ASTM) D3953–97, February 1998. ⁴
(2) Chain	National Association of Chain Manufacturers' Welded Steel Chain Specifications, dated September 28, 2005. ⁴
(3) Webbing	Web Sling and Tiedown Association's Recommended Standard Specification for Synthetic Web Tiedowns, WSTDAT-1, 1998. ⁴
(4) Wire rope ³	Wire Rope Technical Board's Wire Rope Users Manual, 2nd Edition, November 1985. ⁴
(5) Cordage	Cordage Institute rope standard: (i) PETHS–2, Polyester Fiber Rope, three-Strand and eight-Strand Constructions, January 1993; ⁴ (ii) PPRS–2, Polypropylene Fiber Rope, three-Strand and eight-Strand Constructions, August 1992; ⁴ (iii) CRS–1, Polyester/Polypropylene Composite Rope Specifications, three-Strand and eight-Strand Standard Construction, May 1979; ⁴ (iv) NRS–1, Nylon Rope Specifications, three-Strand and eight-Strand Standard Construction, May 1979; ⁴ and (v) C–1, Double Braided Nylon Rope Specifications DBN, January 1984. ⁴

¹ Steel strapping not marked by the manufacturer with a working load limit will be considered to have a working load limit equal to one-fourth of the breaking strength listed in ASTM D3953–97.
² Steel strapping 25.4 mm (1 inch) or wider must have at least two pairs of crimps in each seal and, when an end-over-end lap joint is formed, must be sealed with at least two seals.
³ Wire rope which is not marked by the manufacturer with a working load limit shall be considered to have a working load limit equal to one-fourth of the nominal strength listed in the manual.
⁴ See § 393.7 for information on the incorporation by reference and availability of this document.

(f) *Use of tiedowns.* (1) Tiedowns and securing devices must not contain knots.

(2) If a tiedown is repaired, it must be repaired in accordance with the applicable standards in paragraph (e) of this section, or the manufacturer's instructions.

(3) Each tiedown must be attached and secured in a manner that prevents it from becoming loose, unfastening, opening or releasing while the vehicle is in transit.

(4) Edge protection must be used whenever a tiedown would be subject to abrasion or cutting at the point where it touches an article of cargo. The edge protection must resist abrasion, cutting and crushing.

[67 FR 61225, Sept. 27, 2002, as amended at 71 FR 35833, June 22, 2006]

§ 393.106 What are the general requirements for securing articles of cargo?

(a) *Applicability.* The rules in this section are applicable to the transportation of all types of articles of cargo, except commodities in bulk that lack structure or fixed shape (*e.g.*, liquids, gases, grain, liquid concrete, sand, gravel, aggregates) and are transported in a tank, hopper, box, or similar device that forms part of the structure of a commercial motor vehicle. The rules in this section apply to the cargo types covered by the commodity-specific rules of § 393.116 through § 393.136. The commodity-specific rules take precedence over the general requirements of this section when additional requirements are given for a commodity listed in those sections.

(b) *General.* Cargo must be firmly immobilized or secured on or within a vehicle by structures of adequate strength, dunnage or dunnage bags, shoring bars, tiedowns or a combination of these.

(c) *Cargo placement and restraint.* (1) Articles of cargo that are likely to roll must be restrained by chocks, wedges, a cradle or other equivalent means to prevent rolling. The means of preventing rolling must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit.

(2) Articles or cargo placed beside each other and secured by transverse tiedowns must either:

(i) Be placed in direct contact with each other, or

(ii) Be prevented from shifting towards each other while in transit.

(d) *Aggregate working load limit for tiedowns.* The aggregate working load limit of tiedowns used to secure an article or group of articles against movement must be at least one-half times the weight of the article or group of articles. The aggregate working load limit is the sum of:

(1) One-half the working load limit of each tiedown that goes from an anchor point on the vehicle to an anchor point on an article of cargo;

(2) One-half the working load limit of each tiedown that is attached to an anchor point on the vehicle, passes through, over, or around the article of cargo, and is then attached to an anchor point on the same side of the vehicle.

(3) The working load limit for each tiedown that goes from an anchor point on the vehicle, through, over, or around the article of cargo, and then attaches to another anchor point on the other side of the vehicle.

[67 FR 61225, Sept. 27, 2002, as amended at 68 FR 56208, Sept. 30, 2003; 71 FR 35833, June 22, 2006]

§ 393.108 How is the working load limit of a tiedown, or the load restraining value of a friction mat, determined?

(a) The working load limit (WLL) of a tiedown, associated connector or attachment mechanism is the lowest working load limit of any of its components (including tensioner), or the working load limit of the anchor points to which it is attached, whichever is less.

(b) The working load limits of tiedowns may be determined by using either the tiedown manufacturer's markings or by using the tables in this section. The working load limits listed in the tables are to be used when the tiedown material is not marked by the manufacturer with the working load limit. Tiedown materials which are marked by the manufacturer with working load limits that differ from

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the tables, shall be considered to have a working load limit equal to the value for which they are marked.

(c) Synthetic cordage (e.g., nylon, polypropylene, polyester) which is not marked or labeled to enable identification of its composition or working load limit shall be considered to have a working load limit equal to that for polypropylene fiber rope.

(d) Welded steel chain which is not marked or labeled to enable identification of its grade or working load limit shall be considered to have a working load limit equal to that for grade 30 proof coil chain.

(e)(1) Wire rope which is not marked by the manufacturer with a working load limit shall be considered to have a working load limit equal to one-fourth

of the nominal strength listed in the Wire Rope Users Manual.

(2) Wire which is not marked or labeled to enable identification of its construction type shall be considered to have a working load limit equal to that for 6 × 37, fiber core wire rope.

(f) Manila rope which is not marked by the manufacturer with a working load limit shall be considered to have a working load limit based on its diameter as provided in the tables of working load limits.

(g) Friction mats which are not marked or rated by the manufacturer shall be considered to provide resistance to horizontal movement equal to 50 percent of the weight placed on the mat.

TABLES TO § 393.108
[Working Load Limits (WLL), Chain]

Size mm (inches)	WLL in kg (pounds)				
	Grade 30 proof coil	Grade 43 high test	Grade 70 transport	Grade 80 alloy	Grade 100 alloy
1. 7 (1/4)	580 (1,300)	1,180 (2,600)	1,430 (3,150)	1,570 (3,500)	1,950 (4,300)
2. 8 (5/16)	860 (1,900)	1,770 (3,900)	2,130 (4,700)	2,000 (4,500)	2,600 (5,700)
3. 10 (3/8)	1,200 (2,650)	2,450 (5,400)	2,990 (6,600)	3,200 (7,100)	4,000 (8,800)
4. 11 (7/16)	1,680 (3,700)	3,270 (7,200)	3,970 (8,750)		
5. 13 (1/2)	2,030 (4,500)	4,170 (9,200)	5,130 (11,300)	5,400 (12,000)	6,800 (15,000)
6. 16 (5/8)	3,130 (6,900)	5,910 (13,000)	7,170 (15,800)	8,200 (18,100)	10,300 (22,600)
Chain Mark Examples:					
Example 1	3	4	7	8	10
Example 2	30	43	70	80	100
Example 3	300	430	700	800	1000

SYNTHETIC WEBBING

Width mm (inches)	WLL kg (pounds)
45 (1 3/4)	790 (1,750)
50 (2)	910 (2,000)
75 (3)	1,360 (3,000)
100 (4)	1,810 (4,000)

WIRE ROPE (6 × 37, FIBER CORE)

Diameter mm (inches)	WLL kg (pounds)
7 (1/4)	640 (1,400)
8 (5/16)	950 (2,100)
10 (3/8)	1,360 (3,000)
11 (7/16)	1,860 (4,100)
13 (1/2)	2,400 (5,300)
16 (5/8)	3,770 (8,300)
20 (3/4)	4,940 (10,900)
22 (7/8)	7,300 (16,100)
25 (1)	9,480 (20,900)

MANILA ROPE

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	90 (205)

MANILA ROPE—Continued

Diameter mm (inches)	WLL kg (pounds)
11 (7/16)	120 (265)
13 (1/2)	150 (315)
16 (5/8)	210 (465)
20 (3/4)	290 (640)
25 (1)	480 (1,050)

POLYPROPYLENE FIBER ROPE WLL (3-STRAND AND 8-STRAND CONSTRUCTIONS)

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	180 (400)
11 (7/16)	240 (525)
13 (1/2)	280 (625)
16 (5/8)	420 (925)
20 (3/4)	580 (1,275)
25 (1)	950 (2,100)

POLYESTER FIBER ROPE WLL (3-STRAND AND 8-STRAND CONSTRUCTIONS)

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	250 (555)

POLYESTER FIBER ROPE WLL (3-STRAND AND 8-STRAND CONSTRUCTIONS)—Continued

Diameter mm (inches)	WLL kg (pounds)
11 (7/16)	340 (750)
13 (1/2)	440 (960)
16 (5/8)	680 (1,500)
20 (3/4)	850 (1,880)
25 (1)	1,500 (3,300)

NYLON ROPE

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	130 (278)
11 (7/16)	190 (410)
13 (1/2)	240 (525)
16 (5/8)	420 (935)
20 (3/4)	640 (1,420)
25 (1)	1,140 (2,520)

DOUBLE BRAIDED NYLON ROPE

Diameter mm (inches)	WLL kg (pounds)
10 (3/8)	150 (336)
11 (7/16)	230 (502)
13 (1/2)	300 (655)
16 (5/8)	510 (1,130)
20 (3/4)	830 (1,840)
25 (1)	1,470 (3,250)

STEEL STRAPPING

Width x thickness mm (inches)	WLL kg (pounds)
31.7 x .74 (1 1/4 x 0.029)	540 (1,190)
31.7 x .79 (1 1/4 x 0.031)	540 (1,190)
31.7 x .89 (1 1/4 x 0.035)	540 (1,190)
31.7 x 1.12 (1 1/4 x 0.044)	770 (1,690)
31.7 x 1.27 (1 1/4 x 0.05)	770 (1,690)
31.7 x 1.5 (1 1/4 x 0.057)	870 (1,925)
50.8 x 1.12 (2 x 0.044)	1,200 (2,650)
50.8 x 1.27 (2 x 0.05)	1,200 (2,650)

§ 393.110 What else do I have to do to determine the minimum number of tiedowns?

(a) When tiedowns are used as part of a cargo securement system, the minimum number of tiedowns required to secure an article or group of articles against movement depends on the length of the article(s) being secured, and the requirements of paragraphs (b) and (c) of this section. These requirements are in addition to the rules under § 393.106.

(b) When an article is not blocked or positioned to prevent movement in the forward direction by a headerboard, bulkhead, other cargo that is positioned to prevent movement, or other appropriate blocking devices, it must be secured by at least:

(1) One tiedown for articles 5 feet (1.52 meters) or less in length, and 1,100 pounds (500 kg) or less in weight;

(2) Two tiedowns if the article is:

(i) 5 feet (1.52 meters) or less in length and more than 1,100 pounds (500 kg) in weight; or

(ii) Longer than 5 feet (1.52 meters) but less than or equal to 10 feet (3.04 meters) in length, irrespective of the weight.

(3) Two tiedowns if the article is longer than 10 feet (3.04 meters), and one additional tiedown for every 10 feet (3.04 meters) of article length, or fraction thereof, beyond the first 10 feet (3.04 meters) of length.

(c) If an individual article is blocked, braced, or immobilized to prevent movement in the forward direction by a headerboard, bulkhead, other articles which are adequately secured or by an appropriate blocking or immobilization method, it must be secured by at least one tiedown for every 3.04 meters (10 feet) of article length, or fraction thereof.

(d) *Special rule for special purpose vehicles.* The rules in this section do not apply to a vehicle transporting one or more articles of cargo such as, but not limited to, machinery or fabricated structural items (e.g., steel or concrete beams, crane booms, girders, and trusses, etc.) which, because of their design, size, shape, or weight, must be fastened by special methods. However, any article of cargo carried on that vehicle must be securely and adequately fastened to the vehicle.

[67 FR 61225, Sept. 27, 2002, as amended at 71 FR 35833, June 22, 2006]

§ 393.112 Must a tiedown be adjustable?

Each tiedown, or its associated connectors, or its attachment mechanisms must be designed, constructed, and maintained so the driver of an in-transit commercial motor vehicle can tighten them. However, this requirement does not apply to the use of steel strapping.

§ 393.114 What are the requirements for front end structures used as part of a cargo securement system?

(a) *Applicability.* The rules in this section are applicable to commercial

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motor vehicles transporting articles of cargo that are in contact with the front end structure of the vehicle. The front end structure on these cargo-carrying vehicles must meet the performance requirements of this section.

(b) *Height and width.* (1) The front end structure must extend either to a height of 4 feet above the floor of the vehicle or to a height at which it blocks forward movement of any item or article of cargo being carried on the vehicle, whichever is lower.

(2) The front end structure must have a width which is at least equal to the width of the vehicle or which blocks forward movement of any article of cargo being transported on the vehicle, whichever is narrower.

(c) *Strength.* The front end structure must be capable of withstanding the following horizontal forward static load:

(1) For a front end structure less than 6 feet in height, a horizontal forward static load equal to one-half (0.5) of the weight of the articles of cargo being transported on the vehicle uniformly distributed over the entire portion of the front end structure that is within 4 feet above the vehicle's floor or that is at or below a height above the vehicle's floor at which it blocks forward movement of any article of the vehicle's cargo, whichever is less; or

(2) For a front end structure 6 feet in height or higher, a horizontal forward static load equal to four-tenths (0.4) of the weight of the articles of cargo being transported on the vehicle uniformly distributed over the entire front end structure.

(d) *Penetration resistance.* The front end structure must be designed, constructed, and maintained so that it is capable of resisting penetration by any article of cargo that contacts it when the vehicle decelerates at a rate of 20 feet per second, per second. The front end structure must have no aperture large enough to permit any article of cargo in contact with the structure to pass through it.

(e) *Substitute devices.* The requirements of this section may be met by the use of devices performing the same functions as a front end structure, if the devices are at least as strong as, and provide protection against shifting

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articles of cargo at least equal to, a front end structure which conforms to those requirements.

[67 FR 61225, Sept. 27, 2002, as amended at 71 FR 35833, June 22, 2006]

SPECIFIC SECUREMENT REQUIREMENTS BY COMMODITY TYPE

§ 393.116 What are the rules for securing logs?

(a) *Applicability.* The rules in this section are applicable to the transportation of logs with the following exceptions:

(1) Logs that are unitized by banding or other comparable means may be transported in accordance with the general cargo securement rules of §§ 393.100 through 393.114.

(2) Loads that consist of no more than four processed logs may be transported in accordance with the general cargo securement rules of §§ 393.100 through 393.114.

(3) Firewood, stumps, log debris and other such short logs must be transported in a vehicle or container enclosed on both sides, front, and rear and of adequate strength to contain them. Longer logs may also be so loaded.

(b) *Components of a securement system.*

(1) Logs must be transported on a vehicle designed and built, or adapted, for the transportation of logs. Any such vehicle must be fitted with bunks, bolsters, stakes or standards, or other equivalent means, that cradle the logs and prevent them from rolling.

(2) All vehicle components involved in securement of logs must be designed and built to withstand all anticipated operational forces without failure, accidental release or permanent deformation. Stakes or standards that are not permanently attached to the vehicle must be secured in a manner that prevents unintentional separation from the vehicle in transit.

(3) Tiedowns must be used in combination with the stabilization provided by bunks, stakes, and bolsters to secure the load unless the logs:

(i) are transported in a crib-type log trailer (as defined in 49 CFR 393.5), and

(ii) are loaded in compliance with paragraphs (b)(2) and (c) of this section.

(4) The aggregate working load limit for tiedowns used to secure a stack of logs on a frame vehicle, or a flatbed vehicle equipped with bunks, bolsters, or stakes must be at least one-sixth the weight of the stack of logs.

(c) *Use of securement system.* (1) Logs must be solidly packed, and the outer bottom logs must be in contact with and resting solidly against the bunks, bolsters, stakes or standards.

(2) Each outside log on the side of a stack of logs must touch at least two stakes, bunks, bolsters, or standards. If one end does not actually touch a stake, it must rest on other logs in a stable manner and must extend beyond the stake, bunk, bolster or standard.

(3) The center of the highest outside log on each side or end must be below the top of each stake, bunk or standard.

(4) Each log that is not held in place by contact with other logs or the stakes, bunks, or standards must be held in place by a tiedown. Additional tiedowns or securement devices must be used when the condition of the wood results in such low friction between logs that they are likely to slip upon each other.

(d) *Securement of shortwood logs loaded crosswise on frame, rail and flatbed vehicles.* In addition to the requirements of paragraphs (b) and (c) of this section, each stack of logs loaded crosswise must meet the following rules:

(1) In no case may the end of a log in the lower tier extend more than one-third of the log's total length beyond the nearest supporting structure on the vehicle.

(2) When only one stack of shortwood is loaded crosswise, it must be secured with at least two tiedowns. The tiedowns must attach to the vehicle frame at the front and rear of the load, and must cross the load in this direction.

(3) When two tiedowns are used, they must be positioned at approximately one-third and two-thirds of the length of the logs.

(4) A vehicle that is more than 10 meters (33 feet) long must be equipped with center stakes, or comparable devices, to divide it into sections approximately equal in length. Where a vehicle is so divided, each tiedown

must secure the highest log on each side of the center stake, and must be fastened below these logs. It may be fixed at each end and tensioned from the middle, or fixed in the middle and tensioned from each end, or it may pass through a pulley or equivalent device in the middle and be tensioned from one end.

(5) Any structure or stake that is subjected to an upward force when the tiedowns are tensioned must be anchored to resist that force.

(6) If two stacks of shortwood are loaded side-by-side, in addition to meeting the requirements of paragraphs (d)(1) through (d)(5) of this section, they must be loaded so that:

(i) There is no space between the two stacks of logs;

(ii) The outside of each stack is raised at least 2.5 cm (1 in) within 10 cm (4 in) of the end of the logs or the side of the vehicle;

(iii) The highest log is no more than 2.44 m (8 ft) above the deck; and

(iv) At least one tiedown is used lengthwise across each stack of logs.

(e) *Securement of logs loaded lengthwise on flatbed and frame vehicles—(1) Shortwood.* In addition to meeting the requirements of paragraphs (b) and (c) of this section, each stack of shortwood loaded lengthwise on a frame vehicle or on a flatbed must be cradled in a bunk unit or contained by stakes and

(i) Secured to the vehicle by at least two tiedowns, or

(ii) If all the logs in any stack are blocked in the front by a front-end structure strong enough to restrain the load, or by another stack of logs, and blocked in the rear by another stack of logs or vehicle end structure, the stack may be secured with one tiedown. If one tiedown is used, it must be positioned about midway between the stakes, or

(iii) Be bound by at least two tiedown-type devices such as wire rope, used as wrappers that encircle the entire load at locations along the load that provide effective securement. If wrappers are being used to bundle the logs together, the wrappers are not required to be attached to the vehicle.

(2) *Longwood.* Longwood must be cradled in two or more bunks and must either:

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(i) Be secured to the vehicle by at least two tiedowns at locations that provide effective securement, or

(ii) Be bound by at least two tiedown-type devices, such as wire rope, used as wrappers that encircle the entire load at locations along the load that provide effective securement. If a wrapper(s) is being used to bundle the logs together, the wrapper is not required to be attached to the vehicle.

(f) *Securement of logs transported on pole trailers.* (1) The load must be secured by at least one tiedown at each bunk, or alternatively, by at least two tiedowns used as wrappers that encircle the entire load at locations along the load that provide effective securement.

(2) The front and rear wrappers must be at least 3.04 meters (10 feet) apart.

(3) Large diameter single and double log loads must be immobilized with chock blocks or other equivalent means to prevent shifting.

(4) Large diameter logs that rise above bunks must be secured to the underlying load with at least two additional wrappers.

[67 FR 61225, Sept. 27, 2002, as amended at 71 FR 35833, June 22, 2006]

§ 393.118 What are the rules for securing dressed lumber or similar building products?

(a) *Applicability.* The rules in this section apply to the transportation of bundles of dressed lumber, packaged lumber, building products such as plywood, gypsum board or other materials of similar shape. Lumber or building products which are not bundled or packaged must be treated as loose items and transported in accordance with §§ 393.100 through 393.114 of this subpart. For the purpose of this section, "bundle" refers to packages of lumber, building materials or similar products which are unitized for securement as a single article of cargo.

(b) *Positioning of bundles.* Bundles must be placed side by side in direct contact with each other, or a means must be provided to prevent bundles from shifting towards each other.

(c) *Securement of bundles transported using no more than one tier.* Bundles carried on one tier must be secured in ac-

cordance with the general provisions of §§ 393.100 through 393.114.

(d) *Securement of bundles transported using more than one tier.* Bundles carried in more than one tier must be either:

(1) Blocked against lateral movement by stakes on the sides of the vehicle and secured by tiedowns laid out over the top tier, as outlined in the general provisions of §§ 393.100 through 393.114; or

(2) Restrained from lateral movement by blocking or high friction devices between tiers and secured by tiedowns laid out over the top tier, as outlined in the general provisions of §§ 393.100 through 393.114; or

(3) Placed directly on top of other bundles or on spacers and secured in accordance with the following:

(i) The length of spacers between bundles must provide support to all pieces in the bottom row of the bundle.

(ii) The width of individual spacers must be equal to or greater than the height.

(iii) If spacers are comprised of layers of material, the layers must be unitized or fastened together in a manner which ensures that the spacer performs as a single piece of material.

(iv) The arrangement of the tiedowns for the bundles must be:

(A) Secured by tiedowns over the top tier of bundles, in accordance with the general provisions of §§ 393.100 through 393.114 with a minimum of two tiedowns for bundles longer than 1.52 meters (5 ft); and

(B) Secured by tiedowns as follows:

(1) If there are 3 tiers, the middle and top bundles must be secured by tiedowns in accordance with the general provisions of §§ 393.100 through 393.114; or

(2)(i) If there are more than 3 tiers, then one of the middle bundles and the top bundle must be secured by tiedown devices in accordance with the general provision of §§ 393.100 through 393.114, and the maximum height for the middle tier that must be secured may not exceed 6 feet about the deck of the trailer; or

(ii) Otherwise, the second tier from the bottom must be secured in accordance with the general provisions of §§ 393.100 through 393.114; or

(4) Secured by tiedowns over each tier of bundles, in accordance with §§393.100 through 393.114 using a minimum of two tiedowns over each of the top bundles longer than 1.52 meters (5 ft), in all circumstances; or

(5) When loaded in a sided vehicle or container of adequate strength, dressed lumber or similar building products may be secured in accordance with the general provisions of §§393.100 through 393.114.

[67 FR 61225, Sept. 27, 2002, as amended at 71 FR 35834, June 22, 2006]

§ 393.120 What are the rules for securing metal coils?

(a) *Applicability.* The rules in this section apply to the transportation of one or more metal coils which, individually or grouped together, weigh 2268 kg (5000 pounds) or more. Shipments of metal coils that weigh less than 2268 kg (5000 pounds) may be secured in accordance with the provisions of §§393.100 through 393.114.

(b) *Securement of coils transported with eyes vertical on a flatbed vehicle, in a sided vehicle or intermodal container with anchor points—(1) An individual coil.* Each coil must be secured by tiedowns arranged in a manner to prevent the coils from tipping in the forward, rearward, and lateral directions. The restraint system must include the following:

(i) At least one tiedown attached diagonally from the left side of the vehicle or intermodal container (near the forwardmost part of the coil), across the eye of the coil, to the right side of the vehicle or intermodal container (near the rearmost part of the coil);

(ii) At least one tiedown attached diagonally from the right side of the vehicle or intermodal container (near the forwardmost part of the coil), across the eye of the coil, to the left side of the vehicle or intermodal container (near the rearmost part of the coil);

(iii) At least one tiedown attached transversely over the eye of the coil; and

(iv) Either blocking and bracing, friction mats or tiedowns must be used to prevent longitudinal movement in the forward direction.

(2) *Coils grouped in rows.* When coils are grouped and loaded side by side in

a transverse or longitudinal row, the each row of coils must be secured by the following:

(i) At least one tiedown attached to the front of the row of coils, restraining against forward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(ii) At least one tiedown attached to the rear of the row of coils, restraining against rearward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iii) At least one tiedown over the top of each coil or transverse row of coils, restraining against vertical motion. Tiedowns going over the top of a coil(s) must be as close as practicable to the eye of the coil and positioned to prevent the tiedown from slipping or becoming unintentionally unfastened while the vehicle is in transit; and

(iv) Tiedowns must be arranged to prevent shifting or tipping in the forward, rearward and lateral directions.

(c) *Securement of coils transported with eyes crosswise on a flatbed vehicle, in a sided vehicle or intermodal container with anchor points—(1) An individual coil.* Each coil must be secured by the following:

(i) A means (*e.g.*, timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one tiedown through its eye, restricting against forward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container; and

(iii) At least one tiedown through its eye, restricting against rearward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container.

(2) *Prohibition on crossing of tiedowns when coils are transported with eyes crosswise.* Attaching tiedowns diagonally through the eye of a coil to form an X-pattern when viewed from above the vehicle is prohibited.

(d) *Securement of coils transported with eyes lengthwise on a flatbed vehicle, in a sided vehicle or intermodal container with anchor points—(1) An individual coil—option 1.* Each coil must be secured by:

(i) A means (*e.g.*, timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one tiedown attached diagonally through its eye from the left side of the vehicle or intermodal container (near the forward-most part of the coil), to the right side of the vehicle or intermodal container (near the rearmost part of the coil), making an angle no more than 45 degrees, whenever practicable, with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iii) At least one tiedown attached diagonally through its eye, from the right side of the vehicle or intermodal container (near the forward-most part of the coil), to the left side of the vehicle or intermodal container (near the rearmost part of the coil), making an angle no more than 45 degrees, whenever practicable, with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iv) At least one tiedown attached transversely over the top of the coil; and

(v) Either blocking, or friction mats to prevent longitudinal movement.

(2) *An individual coil—option 2.* Each coil must be secured by:

(i) A means (*e.g.*, timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one tiedown attached straight through its eye from the left side of the vehicle or intermodal container (near the forward-most part of the coil), to the left side of the vehicle or intermodal container (near the rearmost part of the coil), and, whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iii) At least one tiedown attached straight through its eye, from the right side of the vehicle or intermodal container (near the forward-most part of the coil), to the right side of the vehicle or intermodal container (near the rearmost part of the coil), and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container;

(iv) At least one tiedown attached transversely over the top of the coil; and

(v) Either blocking or friction mats to prevent longitudinal movement.

(3) *An individual coil—option 3.* Each coil must be secured by:

(i) A means (*e.g.*, timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable

of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one tiedown over the top of the coil, located near the forward-most part of the coil;

(iii) At least one tiedown over the top of the coil located near the rearmost part of the coil; and

(iv) Either blocking or friction mats to prevent longitudinal movement in the forward direction.

(4) *Rows of coils.* Each transverse row of coils having approximately equal outside diameters must be secured with:

(i) A means (*e.g.*, timbers, chocks or wedges, a cradle, etc.) to prevent each coil in the row of coils from rolling. The means of preventing rolling must support each coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(ii) At least one tiedown over the top of each coil or transverse row, located near the forward-most part of the coil;

(iii) At least one tiedown over the top of each coil or transverse row, located near the rearmost part of the coil; and

(iv) Either blocking, bracing or friction mats to prevent longitudinal movement.

(e) *Securement of coils transported in a sided vehicle without anchor points or an intermodal container without anchor points.* Metal coils transported in a vehicle with sides without anchor points or an intermodal container without anchor points must be loaded in a manner to prevent shifting and tipping. The coils may also be secured using a system of blocking and bracing, friction mats, tiedowns, or a combination of

these to prevent any horizontal movement and tipping.

§ 393.122 What are the rules for securing paper rolls?

(a) *Applicability.* The rules in this section apply to shipments of paper rolls which, individually or together, weigh 2268 kg (5000 lb) or more. Shipments of paper rolls that weigh less than 2268 kg (5000 lb), and paper rolls that are unitized on a pallet, may either be secured in accordance with the rules in this section or the requirements of §§ 393.100 through 393.114.

(b) *Securement of paper rolls transported with eyes vertical in a sided vehicle.* (1) Paper rolls must be placed tightly against the walls of the vehicle, other paper rolls, or other cargo, to prevent movement during transit.

(2) If there are not enough paper rolls in the shipment to reach the walls of the vehicle, lateral movement must be prevented by filling the void, blocking, bracing, tiedowns or friction mats. The paper rolls may also be banded together.

(3) When any void behind a group of paper rolls, including that at the rear of the vehicle, exceeds the diameter of the paper rolls, rearward movement must be prevented by friction mats, blocking, bracing, tiedowns, or banding to other rolls.

(4)(i) If a paper roll is not prevented from tipping or falling sideways or rearwards by vehicle structure or other cargo, and its width is more than 2 times its diameter, it must be prevented from tipping or falling by banding it to other rolls, bracing, or tiedowns.

(ii) If the forwardmost roll(s) in a group of paper rolls has a width greater than 1.75 times its diameter and it is not prevented from tipping or falling forwards by vehicle structure or other cargo, then it must be prevented from tipping or falling forwards by banding it to other rolls, bracing, or tiedowns.

(iii) If the forwardmost roll(s) in a group of paper rolls has a width equal to or less than 1.75 times its diameter, and it is restrained against forward movement by friction mat(s) alone, then banding, bracing, or tiedowns are not required to prevent tipping or falling forwards.

(iv) If a paper roll or the forwardmost roll in a group of paper rolls has a width greater than 1.25 times its diameter, and it is not prevented from tipping or falling forwards by vehicle structure or other cargo, and it is not restrained against forward movement by friction mat(s) alone, then it must be prevented from tipping or falling by banding it to other rolls, bracing or tiedowns.

(5) If paper rolls are banded together, the rolls must be placed tightly against each other to form a stable group. The bands must be applied tightly, and must be secured so that they cannot fall off the rolls or to the deck.

(6) A friction mat used to provide the principal securement for a paper roll must protrude from beneath the roll in the direction in which it is providing that securement.

(c) *Securement of split loads of paper rolls transported with eyes vertical in a sided vehicle.* (1) If a paper roll in a split load is not prevented from forward movement by vehicle structure or other cargo, it must be prevented from forward movement by filling the open space, or by blocking, bracing, tiedowns, friction mats, or some combination of these.

(2) A friction mat used to provide the principal securement for a paper roll must protrude from beneath the roll in the direction in which it is providing that securement.

(d) *Securement of stacked loads of paper rolls transported with eyes vertical in a sided vehicle.* (1) Paper rolls must not be loaded on a layer of paper rolls beneath unless the lower layer extends to the front of the vehicle.

(2) Paper rolls in the second and subsequent layers must be prevented from forward, rearward or lateral movement by means as allowed for the bottom layer, or by use of a blocking roll from a lower layer.

(3) The blocking roll must be at least 38 mm (1.5 in) taller than other rolls, or must be raised at least 38 mm (1.5 in) using dunnage.

(4) A roll in the rearmost row of any layer raised using dunnage may not be secured by friction mats alone.

(e) *Securement of paper rolls transported with eyes crosswise in a sided vehicle.* (1) The paper rolls must be pre-

vented from rolling or shifting longitudinally by contact with vehicle structure or other cargo, by chocks, wedges or blocking and bracing of adequate size, or by tiedowns.

(2) Chocks, wedges or blocking must be held securely in place by some means in addition to friction, so they cannot become unintentionally unfastened or loose while the vehicle is in transit.

(3) The rearmost roll must not be secured using the rear doors of the vehicle or intermodal container, or by blocking held in place by those doors.

(4) If there is more than a total of 203 mm (8 in) of space between the ends of a paper roll, or a row of rolls, and the walls of the vehicle, void fillers, blocking, bracing, friction mats, or tiedowns must be used to prevent the roll from shifting towards either wall.

(f) *Securement of stacked loads of paper rolls transported with eyes crosswise in a sided vehicle.* (1) Rolls must not be loaded in a second layer unless the bottom layer extends to the front of the vehicle.

(2) Rolls must not be loaded in a third or higher layer unless all wells in the layer beneath are filled.

(3) The foremost roll in each upper layer, or any roll with an empty well in front of it, must be secured against forward movement by:

(i) Banding it to other rolls, or

(ii) Blocking against an adequately secured eye-vertical blocking roll resting on the floor of the vehicle which is at least 1.5 times taller than the diameter of the roll being blocked, or

(iii) Placing it in a well formed by two rolls on the lower row whose diameter is equal to or greater than that of the roll on the upper row.

(4) The rearmost roll in each upper layer must be secured by banding it to other rolls if it is located in either of the last two wells formed by the rearmost rolls in the layer below.

(5) Rolls must be secured against lateral movement by the same means allowed for the bottom layer when there is more than a total of 203 mm (8 in) of space between the ends of a paper roll, or a row of rolls, and the walls of the vehicle.

(g) *Securement of paper rolls transported with the eyes lengthwise in a sided*

vehicle. (1) Each roll must be prevented from forward movement by contact with vehicle structure, other cargo, blocking or tiedowns.

(2) Each roll must be prevented from rearward movement by contact with other cargo, blocking, friction mats or tiedowns.

(3) The paper rolls must be prevented from rolling or shifting laterally by contact with the wall of the vehicle or other cargo, or by chocks, wedges or blocking of adequate size.

(4) Chocks, wedges or blocking must be held securely in place by some means in addition to friction, so they cannot become unintentionally unfastened or loose while the vehicle is in transit.

(h) *Securement of stacked loads of paper rolls transported with the eyes lengthwise in a sided vehicle.* (1) Rolls must not be loaded in a higher layer if another roll will fit in the layer beneath.

(2) An upper layer must be formed by placing paper rolls in the wells formed by the rolls beneath.

(3) A roll in an upper layer must be secured against forward and rearward movement by any of the means allowed for the bottom layer, by use of a blocking roll, or by banding to other rolls.

(i) *Securement of paper rolls transported on a flatbed vehicle or in a curtain-sided vehicle—*(1) *Paper rolls with eyes vertical or with eyes lengthwise.*

(1) The paper rolls must be loaded and secured as described for a sided vehicle, and the entire load must be secured by tiedowns in accordance with the requirements of §§ 393.100 through 393.114.

(ii) Stacked loads of paper rolls with eyes vertical are prohibited.

(2) *Paper rolls with eyes crosswise.* (i) The paper rolls must be prevented from rolling or shifting longitudinally by contact with vehicle structure or other cargo, by chocks, wedges or blocking and bracing of adequate size, or by tiedowns.

(ii) Chocks, wedges or blocking must be held securely in place by some means in addition to friction so that they cannot become unintentionally unfastened or loose while the vehicle is in transit.

(iii) Tiedowns must be used in accordance with the requirements of

§§ 393.100 through 393.114 to prevent lateral movement.

[67 FR 61225, Sept. 27, 2002, as amended at 71 FR 35834, June 22, 2006]

§ 393.124 What are the rules for securing concrete pipe?

(a) *Applicability.* (1) The rules in this section apply to the transportation of concrete pipe on flatbed trailers and vehicles, and lowboy trailers.

(2) Concrete pipe bundled tightly together into a single rigid article that has no tendency to roll, and concrete pipe loaded in a sided vehicle or container must be secured in accordance with the provisions of §§ 393.100 through 393.114.

(b) *General specifications for tiedowns.* (1) The aggregate working load limit of all tiedowns on any group of pipes must not be less than half the total weight of all the pipes in the group.

(2) A transverse tiedown through a pipe on an upper tier or over longitudinal tiedowns is considered to secure all those pipes beneath on which that tiedown causes pressure.

(c) *Blocking.* (1) Blocking may be one or more pieces placed symmetrically about the center of a pipe.

(2) One piece must extend at least half the distance from the center to each end of the pipe, and two pieces must be placed on the opposite side, one at each end of the pipe.

(3) Blocking must be placed firmly against the pipe, and must be secured to prevent it moving out from under the pipe.

(4) Timber blocking must have minimum dimensions of at least 10 × 15 cm (4 × 6 in).

(d) *Arranging the load—*(1) *Pipe of different diameter.* If pipe of more than one diameter are loaded on a vehicle, groups must be formed that consist of pipe of only one size, and each group must be separately secured.

(2) *Arranging a bottom tier.* The bottom tier must be arranged to cover the full length of the vehicle, or as a partial tier in one group or two groups.

(3) *Arranging an upper tier.* Pipe must be placed only in the wells formed by adjacent pipes in the tier beneath. A third or higher tier must not be started unless all wells in the tier beneath are filled.

(4) *Arranging the top tier.* The top tier must be arranged as a complete tier, a partial tier in one group, or a partial tier in two groups.

(5) *Arranging bell pipe.* (i) Bell pipe must be loaded on at least two longitudinal spacers of sufficient height to ensure that the bell is clear of the deck.

(ii) Bell pipe loaded in one tier must have the bells alternating on opposite sides of the vehicle.

(iii) The ends of consecutive pipe must be staggered, if possible, within the allowable width, otherwise they must be aligned.

(iv) Bell pipe loaded in more than one tier must have the bells of the bottom tier all on the same side of the vehicle.

(v) Pipe in every upper tier must be loaded with bells on the opposite side of the vehicle to the bells of the tier below.

(vi) If the second tier is not complete, pipe in the bottom tier which do not support a pipe above must have their bells alternating on opposite sides of the vehicle.

(a) *Securing pipe with an inside diameter up to 1,143 mm (45 in).* In addition to the requirements of paragraphs (b), (c) and (d) of this section, the following rules must be satisfied:

(1) *Stabilizing the bottom tier.* (i) The bottom tier must be immobilized longitudinally at each end by blocking, vehicle end structure, stakes, a locked pipe unloader, or other equivalent means.

(ii) Other pipe in the bottom tier may also be held in place by blocks and/or wedges; and

(iii) Every pipe in the bottom tier must also be held firmly in contact with the adjacent pipe by tiedowns though the front and rear pipes:

(A) At least one tiedown through the front pipe of the bottom tier must run aft at an angle not more than 45 degrees with the horizontal, whenever practicable.

(B) At least one tiedown through the rear pipe of the bottom tier must run forward at an angle not more than 45 degrees with the horizontal, whenever practicable.

(2) *Use of tiedowns.* (i) Each pipe may be secured individually with tiedowns through the pipe.

(ii) If each pipe is not secured individually with a tiedown, then:

(A) Either one 1/2-inch diameter chain or wire rope, or two 3/8-inch diameter chain or wire rope, must be placed longitudinally over the group of pipes;

(B) One transverse tiedown must be used for every 3.04 m (10 ft) of load length. The transverse tiedowns may be placed through a pipe, or over both longitudinal tiedowns between two pipes on the top tier.

(C) If the first pipe of a group in the top tier is not placed in the first well formed by pipes at the front of the tier beneath, it must be secured by an additional tiedown that runs rearward at an angle not more than 45 degrees to the horizontal, whenever practicable. This tiedown must pass either through the front pipe of the upper tier, or outside it and over both longitudinal tiedowns; and

(D) If the last pipe of a group in the top tier is not placed in the last well formed by pipes at the rear of the tier beneath, it must be secured by an additional tiedown that runs forward at an angle not more than 45 degrees to the horizontal, whenever practicable. This tiedown must pass either through the rear pipe of the upper tier or outside it and over both longitudinal tiedowns.

(f) *Securing large pipe, with an inside diameter over 1143 mm (45 in).* In addition to the requirements of paragraphs (b), (c) and (d) of this section, the following rules must be satisfied:

(1) The front pipe and the rear pipe must be immobilized by blocking, wedges, vehicle end structure, stakes, locked pipe unloader, or other equivalent means.

(2) Each pipe must be secured by tiedowns through the pipe:

(i) At least one tiedown through each pipe in the front half of the load, which includes the middle one if there is an odd number, and must run rearward at an angle not more than 45 degrees with the horizontal, whenever practicable.

(ii) At least one tiedown through each pipe in the rear half of the load, and must run forward at an angle not more than 45 degrees with the horizontal, whenever practicable, to hold each pipe firmly in contact with adjacent pipe; and

(iii) If the front or rear pipe is not also in contact with vehicle end structure, stakes, a locked pipe unloader, or other equivalent means, at least two tiedowns positioned as described in paragraphs (f)(2)(i) and (ii) of this section, must be used through that pipe.

(3) If only one pipe is transported, or if several pipes are transported without contact between other pipes, the requirements in this paragraph apply to each pipe as a single front and rear article.

§ 393.126 What are the rules for securing intermodal containers?

(a) *Applicability.* The rules in this section apply to the transportation of intermodal containers. Cargo contained within an intermodal container must be secured in accordance with the provisions of §§ 393.100 through 393.114 or, if applicable, the commodity specific rules of this part.

(b) *Securement of intermodal containers transported on container chassis vehicle(s).* (1) All lower corners of the intermodal container must be secured to the container chassis with securement devices or integral locking devices that cannot unintentionally become unfastened while the vehicle is in transit.

(2) The securement devices must restrain the container from moving more than 1.27 cm (1/2 in) forward, more than 1.27 cm (1/2 in) aft, more than 1.27 cm (1/2 in) to the right, more than 1.27 cm (1/2 in) to the left, or more than 2.54 cm (1 in) vertically.

(3) The front and rear of the container must be secured independently.

(c) *Securement of loaded intermodal containers transported on vehicles other than container chassis vehicle(s).* (1) All lower corners of the intermodal container must rest upon the vehicle, or the corners must be supported by a structure capable of bearing the weight of the container and that support structure must be independently secured to the motor vehicle.

(2) Each container must be secured to the vehicle by:

(i) Chains, wire ropes or integral devices which are fixed to all lower corners; or

(ii) Crossed chains which are fixed to all upper corners; and,

(3) The front and rear of the container must be secured independently. Each chain, wire rope, or integral locking device must be attached to the container in a manner that prevents it from being unintentionally unfastened while the vehicle is in transit.

(d) *Securement of empty intermodal containers transported on vehicles other than container chassis vehicle(s).* Empty intermodal containers transported on vehicles other than container chassis vehicles do not have to have all lower corners of the intermodal container resting upon the vehicle, or have all lower corners supported by a structure capable of bearing the weight of the empty container, provided:

(1) The empty intermodal container is balanced and positioned on the vehicle in a manner such that the container is stable before the addition of tiedowns or other securement equipment; and,

(2) The amount of overhang for the empty container on the trailer does not exceed five feet on either the front or rear of the trailer;

(3) The empty intermodal container must not interfere with the vehicle's maneuverability; and,

(4) The empty intermodal container is secured to prevent lateral, longitudinal, or vertical shifting.

[67 FR 61225, Sept. 27, 2002, as amended at 71 FR 35834, June 22, 2006]

§ 393.128 What are the rules for securing automobiles, light trucks and vans?

(a) *Applicability.* The rules in this section apply to the transportation of automobiles, light trucks, and vans which individually weigh 4,536 kg. (10,000 lb) or less. Vehicles which individually are heavier than 4,536 kg (10,000 lb) must be secured in accordance with the provisions of § 393.130 of this part.

(b) *Securement of automobiles, light trucks, and vans.* (1) Automobiles, light trucks, and vans must be restrained at both the front and rear to prevent lateral, forward, rearward, and vertical movement using a minimum of two tiedowns.

(2) Tiedowns that are designed to be affixed to the structure of the automobile, light truck, or van must use

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the mounting points on those vehicles that have been specifically designed for that purpose.

(3) Tiedowns that are designed to fit over or around the wheels of an automobile, light truck, or van must provide restraint in the lateral, longitudinal and vertical directions.

(4) Edge protectors are not required for synthetic webbing at points where the webbing comes in contact with the tires.

§ 393.130 What are the rules for securing heavy vehicles, equipment and machinery?

(a) *Applicability.* The rules in this section apply to the transportation of heavy vehicles, equipment and machinery which operate on wheels or tracks, such as front end loaders, bulldozers, tractors, and power shovels and which individually weigh 4,536 kg (10,000 lb.) or more. Vehicles, equipment and machinery which is lighter than 4,536 kg (10,000 lb.) may also be secured in accordance with the provisions of this section, with § 393.128, or in accordance with the provisions of §§ 393.100 through 393.114.

(b) *Preparation of equipment being transported.* (1) Accessory equipment, such as hydraulic shovels, must be completely lowered and secured to the vehicle.

(2) Articulated vehicles shall be restrained in a manner that prevents articulation while in transit.

(c) *Securement of heavy vehicles, equipment or machinery with crawler tracks or wheels.* (1) In addition to the requirements of paragraph (b) of this section, heavy equipment or machinery with crawler tracks or wheels must be restrained against movement in the lateral, forward, rearward, and vertical direction using a minimum of four tiedowns.

(2) Each of the tiedowns must be affixed as close as practicable to the front and rear of the vehicle, or mounting points on the vehicle that have been specifically designed for that purpose.

§ 393.132 What are the rules for securing flattened or crushed vehicles?

(a) *Applicability.* The rules in this section apply to the transportation of ve-

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hicles such as automobiles, light trucks, and vans that have been flattened or crushed.

(b) *Prohibition on the use of synthetic webbing.* The use of synthetic webbing to secure flattened or crushed vehicles is prohibited except that such webbing may be used to connect wire rope or chain to anchor points on the commercial motor vehicle. However, the webbing (regardless of whether edge protection is used) must not come into contact with the flattened or crushed cars.

(c) *Securement of flattened or crushed vehicles.* Flattened or crushed vehicles must be transported on vehicles which have:

(1) Containment walls or comparable means on four sides which extend to the full height of the load and which block against movement of the cargo in the forward, rearward and lateral directions; or

(2)(i) Containment walls or comparable means on three sides which extend to the full height of the load and which block against movement of the cargo in the direction for which there is a containment wall or comparable means, and

(ii) A minimum of two tiedowns are required per vehicle stack; or

(3)(i) Containment walls on two sides which extend to the full height of the load and which block against movement of the cargo in the forward and rearward directions, and

(ii) A minimum of three tiedowns are required per vehicle stack; or

(4) A minimum of four tiedowns per vehicle stack.

(5) In addition to the requirements of paragraphs (c)(2), (3), and (4), the following rules must be satisfied:

(i) Vehicles used to transport flattened or crushed vehicles must be equipped with a means to prevent liquids from leaking from the bottom of the vehicle, and loose parts from falling from the bottom and all four sides of the vehicle extending to the full height of the cargo.

(ii) The means used to contain loose parts may consist of structural walls, sides or sideboards, or suitable covering material, alone or in combinations.

(iii) The use of synthetic material for containment of loose parts is permitted.

[67 FR 61225, Sept. 27, 2002, as amended at 71 FR 35834, June 22, 2006]

§ 393.134 What are the rules for securing roll-on/roll-off or hook lift containers?

(a) *Applicability.* The rules in this section apply to the transportation of roll-on/roll-off or hook lift containers.

(b) *Securement of a roll-on/roll-off and hook lift container.* Each roll-on/roll-off and hook lift container carried on a vehicle which is not equipped with an integral securement system must be:

(1) Blocked against forward movement by the lifting device, stops, a combination of both or other suitable restraint mechanism;

(2) Secured to the front of the vehicle by the lifting device or other suitable restraint against lateral and vertical movement;

(3) Secured to the rear of the vehicle with at least one of the following mechanisms:

(i) One tiedown attached to both the vehicle chassis and the container chassis;

(ii) Two tiedowns installed lengthwise, each securing one side of the container to one of the vehicle's side rails; or

(iii) Two hooks, or an equivalent mechanism, securing both sides of the container to the vehicle chassis at least as effectively as the tiedowns in the two previous items.

(4) The mechanisms used to secure the rear end of a roll-on/roll off or hook lift container must be installed no more than two meters (6 ft 7 in) from the rear of the container.

(5) In the event that one or more of the front stops or lifting devices are missing, damaged or not compatible, additional manually installed tiedowns must be used to secure the container to the vehicle, providing the same level of securement as the missing, damaged or incompatible components.

§ 393.136 What are the rules for securing large boulders?

(a) *Applicability.* (1) The rules in this section are applicable to the transportation of any large piece of natural, ir-

regularly shaped rock weighing in excess of 5,000 kg (11,000 lb.) or with a volume in excess of 2 cubic-meters on an open vehicle, or in a vehicle whose sides are not designed and rated to contain such cargo.

(2) Pieces of rock weighing more than 100 kg (220 lb.), but less than 5,000 kg (11,000 lb.) must be secured, either in accordance with this section, or in accordance with the provisions of §§ 393.100 through 393.114, including:

(i) Rock contained within a vehicle which is designed to carry such cargo; or

(ii) Secured individually by tiedowns, provided each piece can be stabilized and adequately secured.

(3) Rock which has been formed or cut to a shape and which provides a stable base for securement must also be secured, either in accordance with the provisions of this section, or in accordance with the provisions of §§ 393.100 through 393.114.

(b) *General requirements for the positioning of boulders on the vehicle.* (1) Each boulder must be placed with its flattest and/or largest side down.

(2) Each boulder must be supported on at least two pieces of hard wood blocking at least 10 cm × 10 cm (4 inches × 4 inches) side dimensions extending the full width of the boulder.

(3) Hardwood blocking pieces must be placed as symmetrically as possible under the boulder and should support at least three-fourths of the length of the boulder.

(4) If the flattest side of a boulder is rounded or partially rounded, so that the boulder may roll, it must be placed in a crib made of hardwood timber fixed to the deck of the vehicle so that the boulder rests on both the deck and the timber, with at least three well-separated points of contact that prevent its tendency to roll in any direction.

(5) If a boulder is tapered, the narrowest end must point towards the front of the vehicle.

(c) *General tiedown requirements.* (1) Only chain may be used as tiedowns to secure large boulders.

(2) Tiedowns which are in direct contact with the boulder should, where possible, be located in valleys or notches across the top of the boulder,

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and must be arranged to prevent sliding across the rock surface.

(d) *Securement of a cubic shaped boulder.* In addition to the requirements of paragraphs (b) and (c) of this section, the following rules must be satisfied:

(1) Each boulder must be secured individually with at least two chain tiedowns placed transversely across the vehicle.

(2) The aggregate working load limit of the tiedowns must be at least half the weight of the boulder.

(3) The tiedowns must be placed as closely as possible to the wood blocking used to support the boulder.

(e) *Securement of a non-cubic shaped boulder—with a stable base.* In addition to the requirements of paragraphs (b) and (c) of this section, the following rules must be satisfied:

(1) The boulder must be secured individually with at least two chain tiedowns forming an "X" pattern over the boulder.

(2) The aggregate working load limit of the tiedowns must be at least half the weight of the boulder.

(3) The tiedowns must pass over the center of the boulder and must be attached to each other at the intersection by a shackle or other connecting device.

(f) *Securement of a non-cubic shaped boulder—with an unstable base.* In addition to the requirements of paragraphs (b) and (c) of this section, each boulder must be secured by a combination of chain tiedowns as follows:

(1) One chain must surround the top of the boulder (at a point between one-half and two-thirds of its height). The working load limit of the chain must be at least half the weight of the boulder.

(2) Four chains must be attached to the surrounding chain and the vehicle to form a blocking mechanism which prevents any horizontal movement. Each chain must have a working load limit of at least one-fourth the weight of the boulder. Whenever practicable, the angle of the chains must not exceed 45 degrees from the horizontal.

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Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

SOURCE: 53 FR 49402, Dec. 7, 1988, unless otherwise noted.

§ 393.201 Frames.

(a) The frame or chassis of each commercial motor vehicle shall not be cracked, loose, sagging or broken.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame must not be loose, broken, or missing.

(c) The frame rail flanges between the axles shall not be bent, cut or notched, except as specified by the manufacturer.

(d) Parts and accessories shall not be welded to the frame or chassis of a commercial motor vehicle except in accordance with the vehicle manufacturer's recommendations. Any welded repair of the frame must also be in accordance with the vehicle manufacturer's recommendations.

(e) No holes shall be drilled in the top or bottom rail flanges, except as specified by the manufacturer.

[53 FR 49402, Dec. 7, 1988, as amended at 70 FR 48055, Aug. 15, 2005]

§ 393.203 Cab and body components.

(a) The cab compartment doors or door parts used as an entrance or exit shall not be missing or broken. Doors shall not sag so that they cannot be properly opened or closed. No door shall be wired shut or otherwise secured in the closed position so that it cannot be readily opened. EXCEPTION: When the vehicle is loaded with pipe or bar stock that blocks the door and the cab has a roof exit.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame shall not be loose, broken, or missing.

(c) The hood must be securely fastened.

(d) All seats must be securely mounted.

(e) The front bumper must not be missing, loosely attached, or protruding beyond the confines of the vehicle so as to create a hazard.

§ 393.205 Wheels.

- (a) Wheels and rims shall not be cracked or broken.
- (b) Stud or bolt holes on the wheels shall shall not be elongated (out of round).
- (c) Nuts or bolts shall not be missing or loose.

§ 393.207 Suspension systems.

- (a) *Axles.* No axle positioning part shall be cracked, broken, loose or missing. All axles must be in proper alignment.
- (b) *Adjustable axles.* Adjustable axle assemblies shall not have locking pins missing or disengaged.
- (c) *Leaf springs.* No leaf spring shall be cracked, broken, or missing nor shifted out of position.
- (d) *Coil springs.* No coil spring shall be cracked or broken.
- (e) *Torsion bar.* No torsion bar or torsion bar suspension shall be cracked or broken.
- (f) *Air suspensions.* The air pressure regulator valve shall not allow air into the suspension system until at least 55 psi is in the braking system. The vehicle shall be level (not tilting to the left or right). Air leakage shall not be

greater than 3 psi in a 5-minute time period when the vehicle's air pressure gauge shows normal operating pressure.

(g) *Air suspension exhaust controls.* The air suspension exhaust controls must not have the capability to exhaust air from the suspension system of one axle of a two-axle air suspension trailer unless the controls are either located on the trailer, or the power unit and trailer combination are not capable of traveling at a speed greater than 10 miles per hour while the air is exhausted from the suspension system. This paragraph shall not be construed to prohibit—

- (1) Devices that could exhaust air from both axle systems simultaneously; or
- (2) Lift axles on multi-axle units.

[53 FR 49402, Dec. 7, 1988, as amended at 70 FR 48055, Aug. 15, 2005]

§ 393.209 Steering wheel systems.

- (a) The steering wheel shall be secured and must not have any spokes cracked through or missing.
- (b) *Steering wheel lash.* (1) The steering wheel lash shall not exceed the following parameters:

Steering wheel diameter	Manual steering system	Power steering system
406 mm or less (16 inches or less)	51 mm (2 inches)	108 mm (4¼ inches).
457 mm (18 inches)	57 mm (2¼ inches)	121 mm (4¾ inches).
483 mm (19 inches)	60 mm (2⅝ inches)	127 mm (5 inches).
508 mm (20 inches)	64 mm (2½ inches)	133 mm (5¼ inches).
533 mm (21 inches)	67 mm (2⅞ inches)	140 mm (5½ inches).
559 mm (22 inches)	70 mm (2¾ inches)	146 mm (5¾ inches).

(2) For steering wheel diameters not listed in paragraph (b)(1) of this section the steering wheel lash shall not exceed 14 degrees angular rotation for manual steering systems, and 30 degrees angular rotation for power steering systems.

(c) *Steering column.* The steering column must be securely fastened.

(d) *Steering system.* Universal joints and ball-and-socket joints shall not be worn, faulty or repaired by welding. The steering gear box shall not have loose or missing mounting bolts or cracks in the gear box or mounting brackets. The pitman arm on the steering gear output shaft shall not be loose. Steering wheels shall turn freely

through the limit of travel in both directions.

(e) *Power steering systems.* All components of the power system must be in operating condition. No parts shall be loose or broken. Belts shall not be frayed, cracked or slipping. The system shall not leak. The power steering system shall have sufficient fluid in the reservoir.

[53 FR 49402, Dec. 7, 1988, as amended at 70 FR 48055, Aug. 15, 2005]

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PART 395—HOURS OF SERVICE OF DRIVERS

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APPENDIX A TO PART 395—ELECTRONIC ON-BOARD RECORDER PERFORMANCE SPECIFICATIONS

AUTHORITY: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504, and §204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; Sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

SOURCE: 33 FR 19758, Dec. 25, 1968, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 395 appear at 66 FR 49874, Oct. 1, 2001.

§ 395.1 Scope of rules in this part.

(a) *General.* (1) The rules in this part apply to all motor carriers and drivers, except as provided in paragraphs (b) through (q) of this section.

(2) The exceptions from Federal requirements contained in paragraphs (l) and (m) of this section do not preempt State laws and regulations governing the safe operation of commercial motor vehicles.

(b) *Adverse driving conditions.* (1) Except as provided in paragraph (h)(2) of this section, a driver who encounters adverse driving conditions, as defined in §395.2, and cannot, because of those conditions, safely complete the run within the maximum driving time permitted by §395.3(a) or §395.5(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours in order to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle

and security for the commercial motor vehicle and its cargo. However, that driver may not drive or be permitted to drive—

(i) For more than 13 hours in the aggregate following 10 consecutive hours off duty for drivers of property-carrying commercial motor vehicles;

(ii) After the end of the 14th hour since coming on duty following 10 consecutive hours off duty for drivers of property-carrying commercial motor vehicles;

(iii) For more than 12 hours in the aggregate following 8 consecutive hours off duty for drivers of passenger-carrying commercial motor vehicles; or

(iv) After he/she has been on duty 15 hours following 8 consecutive hours off duty for drivers of passenger-carrying commercial motor vehicles.

(2) *Emergency conditions.* In case of any emergency, a driver may complete his/her run without being in violation of the provisions of the regulations in this part, if such run reasonably could have been completed absent the emergency.

(c) *Driver-salesperson.* The provisions of §395.3(b) shall not apply to any driver-salesperson whose total driving time does not exceed 40 hours in any period of 7 consecutive days.

(d) *Oilfield operations.* (1) In the instance of drivers of commercial motor vehicles used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(2) In the case of specially trained drivers of commercial motor vehicles which are specially constructed to service oil wells, on-duty time shall not include waiting time at a natural gas or oil well site; *provided*, that all such time shall be fully and accurately accounted for in records to be maintained by the motor carrier. Such records shall be made available upon request of the Federal Motor Carrier Safety Administration.

(e) *Short-haul operations*—(1) *100 air-mile radius driver*. A driver is exempt from the requirements of § 395.8 if:

(i) The driver operates within a 100 air-mile radius of the normal work reporting location;

(ii) The driver, except a driver-salesperson, returns to the work reporting location and is released from work within 12 consecutive hours;

(iii)(A) A property-carrying commercial motor vehicle driver has at least 10 consecutive hours off duty separating each 12 hours on duty;

(B) A passenger-carrying commercial motor vehicle driver has at least 8 consecutive hours off duty separating each 12 hours on duty;

(iv)(A) A property-carrying commercial motor vehicle driver does not exceed 11 hours maximum driving time following 10 consecutive hours off-duty; or

(B) A passenger-carrying commercial motor vehicle driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty; and

(v) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

(A) The time the driver reports for duty each day;

(B) The total number of hours the driver is on duty each day;

(C) The time the driver is released from duty each day; and

(D) The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

(2) *Operators of property-carrying commercial motor vehicles not requiring a commercial driver's license*. Except as provided in this paragraph, a driver is exempt from the requirements of § 395.3 and § 395.8 and ineligible to use the provisions of § 395.1(e)(1), (g) and (o) if:

(i) The driver operates a property-carrying commercial motor vehicle for which a commercial driver's license is not required under part 383 of this subchapter;

(ii) The driver operates within a 150 air-mile radius of the location where the driver reports to and is released from work, *i.e.*, the normal work reporting location;

(iii) The driver returns to the normal work reporting location at the end of each duty tour;

(iv) The driver has at least 10 consecutive hours off duty separating each on-duty period;

(v) The driver does not drive more than 11 hours following at least 10 consecutive hours off-duty;

(vi) The driver does not drive:

(A) After the 14th hour after coming on duty on 5 days of any period of 7 consecutive days; and

(B) After the 16th hour after coming on duty on 2 days of any period of 7 consecutive days;

(vii) The driver does not drive:

(A) After having been on duty for 60 hours in 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week;

(B) After having been on duty for 70 hours in 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week;

(viii) Any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours.

(ix) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

(A) The time the driver reports for duty each day;

(B) The total number of hours the driver is on duty each day;

(C) The time the driver is released from duty each day;

(D) The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

(f) *Retail store deliveries*. The provisions of § 395.3 (a) and (b) shall not apply with respect to drivers of commercial motor vehicles engaged solely in making local deliveries from retail stores and/or retail catalog businesses to the ultimate consumer, when driving solely within a 100-air mile radius of the driver's work-reporting location, during the period from December 10 to December 25, both inclusive, of each year.

(g) *Sleeper berths*—(1) *Property-carrying commercial motor vehicle*—(i) *In*

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General. A driver who operates a property-carrying commercial motor vehicle equipped with a sleeper berth, as defined in §§ 395.2 and 393.76 of this subchapter,

(A) Must, before driving, accumulate (1) At least 10 consecutive hours off duty;

(2) At least 10 consecutive hours of sleeper-berth time;

(3) A combination of consecutive sleeper-berth and off-duty time amounting to at least 10 hours; or

(4) The equivalent of at least 10 consecutive hours off duty if the driver does not comply with paragraph (g)(1)(i)(A)(1), (2), or (3) of this section;

(B) May not drive more than 11 hours following one of the 10-hour off-duty periods specified in paragraph (g)(1)(i)(A)(1) through (4) of this section; and

(C) May not drive after the 14th hour after coming on duty following one of the 10-hour off-duty periods specified in paragraph (g)(1)(i)(A)(1) through (4) of this section; and

(D) Must exclude from the calculation of the 14-hour limit any sleeper berth period of at least 8 but less than 10 consecutive hours.

(ii) *Specific requirements.* The following rules apply in determining compliance with paragraph (g)(1)(i) of this section:

(A) The term “equivalent of at least 10 consecutive hours off duty” means a period of (1) At least 8 but less than 10 consecutive hours in a sleeper berth, and

(2) A separate period of at least 2 but less than 10 consecutive hours either in the sleeper berth or off duty, or any combination thereof.

(B) Calculation of the 11-hour driving limit includes all driving time; compliance must be re-calculated from the end of the first of the two periods used to comply with paragraph (g)(1)(ii)(A) of this section.

(C) Calculation of the 14-hour limit includes all time except any sleeper-berth period of at least 8 but less than 10 consecutive hours; compliance must be re-calculated from the end of the first of the two periods used to comply with the requirements of paragraph (g)(1)(ii)(A) of this section.

(2) *Specially trained driver of a specially constructed oil well servicing commercial motor vehicle at a natural gas or oil well location.* A specially trained driver who operates a commercial motor vehicle specially constructed to service natural gas or oil wells that is equipped with a sleeper berth, as defined in §§ 395.2 and 393.76 of this subchapter, or who is off duty at a natural gas or oil well location, may accumulate the equivalent of 10 consecutive hours off duty time by taking a combination of at least 10 consecutive hours of off-duty time, sleeper-berth time, or time in other sleeping accommodations at a natural gas or oil well location; or by taking two periods of rest in a sleeper berth, or other sleeping accommodation at a natural gas or oil well location, providing:

(i) Neither rest period is shorter than 2 hours;

(ii) The driving time in the period immediately before and after each rest period, when added together, does not exceed 11 hours;

(iii) The driver does not drive after the 14th hour after coming on duty following 10 hours off duty, where the 14th hour is calculated:

(A) By excluding any sleeper berth or other sleeping accommodation period of at least 2 hours which, when added to a subsequent sleeper berth or other sleeping accommodation period, totals at least 10 hours, and

(B) By including all on-duty time, all off-duty time not spent in the sleeper berth or other sleeping accommodations, all such periods of less than 2 hours, and any period not described in paragraph (g)(2)(iii)(A) of this section; and

(iv) The driver may not return to driving subject to the normal limits under § 395.3 without taking at least 10 consecutive hours off duty, at least 10 consecutive hours in the sleeper berth or other sleeping accommodations, or a combination of at least 10 consecutive hours off duty, sleeper berth time, or time in other sleeping accommodations.

(3) *Passenger-carrying commercial motor vehicles.* A driver who is driving a passenger-carrying commercial motor vehicle that is equipped with a sleeper berth, as defined in §§ 395.2 and 393.76 of

this subchapter, may accumulate the equivalent of 8 consecutive hours of off-duty time by taking a combination of at least 8 consecutive hours off-duty and sleeper berth time; or by taking two periods of rest in the sleeper berth, providing:

(i) Neither rest period is shorter than two hours;

(ii) The driving time in the period immediately before and after each rest period, when added together, does not exceed 10 hours;

(iii) The on-duty time in the period immediately before and after each rest period, when added together, does not include any driving time after the 15th hour; and

(iv) The driver may not return to driving subject to the normal limits under § 395.5 without taking at least 8 consecutive hours off duty, at least 8 consecutive hours in the sleeper berth, or a combination of at least 8 consecutive hours off duty and sleeper berth time.

(h) *State of Alaska*—(1) *Property-carrying commercial motor vehicle*. The provisions of § 395.3(a) and (b) do not apply to any driver who is driving a commercial motor vehicle in the State of Alaska. A driver who is driving a property-carrying commercial motor vehicle in the State of Alaska must not drive or be required or permitted to drive—

(i) More than 15 hours following 10 consecutive hours off duty; or

(ii) After being on duty for 20 hours or more following 10 consecutive hours off duty.

(iii) After having been on duty for 70 hours in any period of 7 consecutive days, if the motor carrier for which the driver drives does not operate every day in the week; or

(iv) After having been on duty for 80 hours in any period of 8 consecutive days, if the motor carrier for which the driver drives operates every day in the week.

(2) *Passenger-carrying commercial motor vehicle*. The provisions of § 395.5 do not apply to any driver who is driving a passenger-carrying commercial motor vehicle in the State of Alaska. A driver who is driving a passenger-carrying commercial motor vehicle in the State of Alaska must not drive or be required or permitted to drive—

(i) More than 15 hours following 8 consecutive hours off duty;

(ii) After being on duty for 20 hours or more following 8 consecutive hours off duty;

(iii) After having been on duty for 70 hours in any period of 7 consecutive days, if the motor carrier for which the driver drives does not operate every day in the week; or

(iv) After having been on duty for 80 hours in any period of 8 consecutive days, if the motor carrier for which the driver drives operates every day in the week.

(3) A driver who is driving a commercial motor vehicle in the State of Alaska and who encounters adverse driving conditions (as defined in § 395.2) may drive and be permitted or required to drive a commercial motor vehicle for the period of time needed to complete the run.

(i) After a property-carrying commercial motor vehicle driver completes the run, that driver must be off duty for at least 10 consecutive hours before he/she drives again; and

(ii) After a passenger-carrying commercial motor vehicle driver completes the run, that driver must be off duty for at least 8 consecutive hours before he/she drives again.

(i) *State of Hawaii*. The rules in § 395.8 do not apply to a driver who drives a commercial motor vehicle in the State of Hawaii, if the motor carrier who employs the driver maintains and retains for a period of 6 months accurate and true records showing—

(1) The total number of hours the driver is on duty each day; and

(2) The time at which the driver reports for, and is released from, duty each day.

(j) *Travel time*—(1) When a property-carrying commercial motor vehicle driver at the direction of the motor carrier is traveling, but not driving or assuming any other responsibility to the carrier, such time must be counted as on-duty time unless the driver is afforded at least 10 consecutive hours off duty when arriving at destination, in which case he/she must be considered off duty for the entire period.

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(2) When a passenger-carrying commercial motor vehicle driver at the direction of the motor carrier is traveling, but not driving or assuming any other responsibility to the carrier, such time must be counted as on-duty time unless the driver is afforded at least 8 consecutive hours off duty when arriving at destination, in which case he/she must be considered off duty for the entire period.

(k) *Agricultural operations.* The provisions of this part shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation:

(1) Is limited to an area within a 100 air-mile radius from the source of the commodities or the distribution point for the farm supplies, and

(2) Is conducted (except in the case of livestock feed transporters) during the planting and harvesting seasons within such State, as determined by the State.

(1) *Ground water well drilling operations.* In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation and operations of a ground water well drilling rig, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(m) Construction materials and equipment. In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation of construction materials and equipment, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(n) *Utility service vehicles.* The provisions of this part shall not apply to a driver of a utility service vehicle as defined in § 395.2.

(o) *Property-carrying driver.* A property-carrying driver is exempt from the requirements of § 395.3(a)(2) if:

(1) The driver has returned to the driver's normal work reporting location and the carrier released the driver from duty at that location for the previous five duty tours the driver has worked;

(2) The driver has returned to the normal work reporting location and the carrier releases the driver from

duty within 16 hours after coming on duty following 10 consecutive hours off duty; and

(3) The driver has not taken this exemption within the previous 6 consecutive days, except when the driver has begun a new 7- or 8-consecutive day period with the beginning of any off-duty period of 34 or more consecutive hours as allowed by § 395.3(c).

(p) *Commercial motor vehicle transportation to or from a motion picture production site.* A driver of a commercial motor vehicle providing transportation of property or passengers to or from a theatrical or television motion picture production site is exempt from the requirements of § 395.3(a) if the driver operates within a 100 air-mile radius of the location where the driver reports to and is released from work, i.e., the normal work-reporting location. With respect to the maximum daily hours of service, such a driver may not drive—

(1) More than 10 hours following 8 consecutive hours off duty;

(2) For any period after having been on duty 15 hours following 8 consecutive hours off duty.

(3) If a driver of a commercial motor vehicle providing transportation of property or passengers to or from a theatrical or television motion picture production site operates beyond a 100 air-mile radius of the normal work-reporting location, the driver is subject to § 395.3(a), and paragraphs (p)(1) and (2) of this section do not apply.

(q) *Transporters of grapes during harvest period in the State of New York.* The provisions of this part shall not apply to drivers transporting grapes if such transportation:

(1) Is within the State of New York;

(2) Is west of Interstate 81;

(3) Is within a 150 air-mile radius of where the grapes were picked or distributed; and

(4) Is during the harvest period as defined by the State of New York. This provision expires September 30, 2009.

[57 FR 33647, July 30, 1992, as amended at 58 FR 33777, June 21, 1993; 60 FR 38748, July 28, 1995; 61 FR 14679, Apr. 3, 1996; 63 FR 33279, June 18, 1998; 68 FR 22515, Apr. 28, 2003; 68 FR 56211, Sept. 30, 2003; 70 FR 50071, Aug. 25, 2005; 72 FR 36790, July 5, 2007; 72 FR 55703, Oct. 1, 2007; 72 FR 71269, Dec. 17, 2007]

§ 395.2 Definitions.

As used in this part, the following words and terms are construed to mean:

Adverse driving conditions means snow, sleet, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun.

Agricultural commodity means any agricultural commodity, nonprocessed food, feed, fiber, or livestock (including livestock as defined in sec. 602 of the Emergency Livestock Feed Assistance Act of 1988 [7 U.S.C. 1471] and insects).

Automatic on-board recording device means an electric, electronic, electromechanical, or mechanical device capable of recording driver's duty status information accurately and automatically as required by §395.15. The device must be integrally synchronized with specific operations of the commercial motor vehicle in which it is installed. At a minimum, the device must record engine use, road speed, miles driven, the date, and time of day.

CD-RW (Compact Disc—Rewritable) means an optical disc digital storage format that allows digital data to be erased and rewritten many times. The technical and physical specifications for CD-RW are described in the document Orange Book Part III: CD-RW, published by Royal Philips Electronics.

CMRS (Commercial Mobile Radio Services) An FCC designation for any carrier or licensee whose wireless network is connected to the public switched telephone network and/or is operated for profit. Another common term for these entities is cellular telephony providers.

Driver-salesperson means any employee who is employed solely as such by a private carrier of property by commercial motor vehicle, who is engaged both in selling goods, services, or the use of goods, and in delivering by commercial motor vehicle the goods sold or provided or upon which the services are performed, who does so entirely within a radius of 100 miles of the point at which he/she reports for

duty, who devotes not more than 50 percent of his/her hours on duty to driving time. The term *selling goods* for purposes of this section shall include in all cases solicitation or obtaining of reorders or new accounts, and may also include other selling or merchandising activities designed to retain the customer or to increase the sale of goods or services, in addition to solicitation or obtaining of reorders or new accounts.

Driving time means all time spent at the driving controls of a commercial motor vehicle in operation.

Eight consecutive days means the period of 8 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

802.11 is a set of communications and product compatibility standards for wireless local area networks (WLAN). The 802.11 standards are also known as WiFi by marketing convention.

Electronic on-board recording device (EOBR) means an electronic device that is capable of recording a driver's hours of service and duty status accurately and automatically and that meets the requirements of §395.16. The device must be integrally synchronized with specific operations of the commercial motor vehicle in which it is installed. The EOBR must record, at minimum, the information listed in §395.16(b).

Farm supplies for agricultural purposes means products directly related to the growing or harvesting of agricultural commodities during the planting and harvesting seasons within each State, as determined by the State, and livestock feed at any time of the year.

Ground water well drilling rig means any vehicle, machine, tractor, trailer, semi-trailer, or specialized mobile equipment propelled or drawn by mechanical power and used on highways to transport water well field operating equipment, including water well drilling and pump service rigs equipped to access ground water.

Integrally synchronized refers to an AOBDR or EOBR that receives and records the engine use status and distance traveled for the purpose of deriving on-duty driving status from a source or sources internal to the CMV.

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Multiple stops means all stops made in any one village, town, or city may be computed as one.

On duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. *On duty time* shall include:

(1) All time at a plant, terminal, facility, or other property of a motor carrier or shipper, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;

(2) All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All driving time as defined in the term *driving time*;

(4) All time, other than *driving time*, in or upon any commercial motor vehicle except time spent resting in a *sleep-er berth*;

(5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded;

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle;

(7) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by part 382 of this subchapter when directed by a motor carrier;

(8) Performing any other work in the capacity, employ, or service of a motor carrier; and

(9) Performing any compensated work for a person who is not a motor carrier.

Seven consecutive days means the period of 7 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

Sleeper berth means a berth conforming to the requirements of § 393.76 of this chapter.

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Transportation of construction materials and equipment means the transportation of construction and pavement materials, construction equipment, and construction maintenance vehicles, by a driver to or from an active construction site (a construction site between mobilization of equipment and materials to the site to the final completion of the construction project) within a 50 air mile radius of the normal work reporting location of the driver. This paragraph does not apply to the transportation of material found by the Secretary to be hazardous under 49 U.S.C. 5103 in a quantity requiring placarding under regulations issued to carry out such section.

Twenty-four-hour period means any 24-consecutive-hour period beginning at the time designated by the motor carrier for the terminal from which the driver is normally dispatched.

USB (Universal Serial Bus) is a serial bus interface standard for connecting electronic devices.

UTC (Coordinated Universal Time) is the international civil time standard, determined by using highly precise atomic clocks. It is the basis for civil standard time in the United States and its territories. UTC time refers to time kept on the Greenwich meridian (longitude zero), which is 5 hours ahead of Eastern Standard Time. UTC times are expressed in terms of a 24-hour clock. Standard time within any U.S. time zone is offset from UTC by a given number of hours determined by the time zone's distance from the Greenwich meridian.

Utility service vehicle means any commercial motor vehicle:

(1) Used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;

(2) While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as

determined by the utility provider); and

(3) Except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

[57 FR 33648, July 30, 1992, as amended at 59 FR 7515, Feb. 15, 1994; 59 FR 60324, Nov. 23, 1994; 60 FR 38748, July 28, 1995; 61 FR 14679, Apr. 3, 1996; 63 FR 33279, June 18, 1998; 72 FR 36790, July 5, 2007; 75 FR 17245, Apr. 5, 2010]

§ 395.3 Maximum driving time for property-carrying vehicles.

Subject to the exceptions and exemptions in § 395.1:

(a) No motor carrier shall permit or require any driver used by it to drive a property-carrying commercial motor vehicle, nor shall any such driver drive a property-carrying commercial motor vehicle:

(1) More than 11 cumulative hours following 10 consecutive hours off-duty;

(2) For any period after the end of the 14th hour after coming on duty following 10 consecutive hours off duty, except when a property-carrying driver complies with the provisions of § 395.1(o) or § 395.1(e)(2).

(b) No motor carrier shall permit or require a driver of a property-carrying commercial motor vehicle to drive, nor shall any driver drive a property-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after—

(1) Having been on duty 60 hours in any period of 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

(c)(1) Any period of 7 consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours; or

(2) Any period of 8 consecutive days may end with the beginning of any off-

duty period of 34 or more consecutive hours.

[70 FR 50073, Aug. 25, 2005, as amended at 72 FR 71270, Dec. 17, 2007]

§ 395.5 Maximum driving time for passenger-carrying vehicles.

Subject to the exceptions and exemptions in § 395.1:

(a) No motor carrier shall permit or require any driver used by it to drive a passenger-carrying commercial motor vehicle, nor shall any such driver drive a passenger-carrying commercial motor vehicle:

(1) More than 10 hours following 8 consecutive hours off duty; or

(2) For any period after having been on duty 15 hours following 8 consecutive hours off duty.

(b) No motor carrier shall permit or require a driver of a passenger-carrying commercial motor vehicle to drive, nor shall any driver drive a passenger-carrying commercial motor vehicle, regardless of the number of motor carriers using the driver's services, for any period after—

(1) Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

[70 FR 50073, Aug. 25, 2005]

§ 395.7 [Reserved]

§ 395.8 Driver's record of duty status.

(a) Except for a private motor carrier of passengers (nonbusiness), every motor carrier shall require every driver used by the motor carrier to record his/her duty status for each 24 hour period using the methods prescribed in either paragraph (a)(1) or (2) of this section.

(1) Every driver who operates a commercial motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period. The duty status time shall be recorded on a specified grid, as shown in paragraph (g) of this section. The grid and the requirements of paragraph (d) of this section may be combined with any company forms. The

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previously approved format of the Daily Log, Form MCS-59 or the Multi-day Log, MCS-139 and 139A, which meets the requirements of this section, may continue to be used.

(2) Every driver operating a commercial motor vehicle equipped with either an automatic on-board recording device meeting the requirements of § 395.15 or an electronic on-board recorder meeting the requirements of § 395.16 must record his or her duty status using the device installed in the vehicle. The requirements of this section shall not apply, except for paragraphs (e) and (k)(1) and (2) of this section.

(b) The duty status shall be recorded as follows:

- (1) "Off duty" or "OFF."
- (2) "Sleeper berth" or "SB" (only if a sleeper berth used).
- (3) "Driving" or "D."
- (4) "On-duty not driving" or "ON."

(c) For each change of duty status (e.g., the place of reporting for work, starting to drive, on-duty not driving and where released from work), the name of the city, town, or village, with State abbreviation, shall be recorded.

NOTE: If a change of duty status occurs at a location other than a city, town, or village, show one of the following: (1) The highway number and nearest milepost followed by the name of the nearest city, town, or village and State abbreviation, (2) the highway number and the name of the service plaza followed by the name of the nearest city, town, or village and State abbreviation, or (3) the highway numbers of the nearest two intersecting roadways followed by the name of the nearest city, town, or village and State abbreviation.

(d) The following information must be included on the form in addition to the grid:

- (1) Date;
- (2) Total miles driving today;
- (3) Truck or tractor and trailer number;
- (4) Name of carrier;
- (5) Driver's signature/certification;
- (6) 24-hour period starting time (e.g. midnight, 9:00 a.m., noon, 3:00 p.m.);
- (7) Main office address;
- (8) Remarks;
- (9) Name of co-driver;
- (10) Total hours (far right edge of grid);
- (11) Shipping document number(s), or name of shipper and commodity;

(e) Failure to complete the record of duty activities of either this section, § 395.15 or § 395.16, failure to preserve a record of such duty activities, or making false reports in connection with such duty activities shall make the driver and/or the carrier liable to prosecution.

(f) The driver's activities shall be recorded in accordance with the following provisions:

(1) *Entries to be current.* Drivers shall keep their records of duty status current to the time shown for the last change of duty status.

(2) *Entries made by driver only.* All entries relating to driver's duty status must be legible and in the driver's own handwriting.

(3) *Date.* The month, day and year for the beginning of each 24-hour period shall be shown on the form containing the driver's duty status record.

(4) *Total miles driving today.* Total mileage driven during the 24-hour period shall be recorded on the form containing the driver's duty status record.

(5) *Commercial motor vehicle identification.* The driver shall show the number assigned by the motor carrier, or the license number and licensing State of each commercial motor vehicle operated during each 24-hour period on his/her record of duty status. The driver of an articulated (combination) commercial motor vehicle shall show the number assigned by the motor carrier, or the license number and licensing State of each motor vehicle used in each commercial motor vehicle combination operated during that 24-hour period on his/her record of duty status.

(6) *Name of motor carrier.* The name(s) of the motor carrier(s) for which work is performed shall be shown on the form containing the driver's record of duty status. When work is performed for more than one motor carrier during the same 24-hour period, the beginning and finishing time, showing a.m. or p.m., worked for each motor carrier shall be shown after each motor carrier's name. Drivers of leased commercial motor vehicles shall show the name of the motor carrier performing the transportation.

(7) *Signature/certification.* The driver shall certify to the correctness of all entries by signing the form containing

the driver's duty status record with his/her legal name or name of record. The driver's signature certifies that all entries required by this section made by the driver are true and correct.

(8) *Time base to be used.* (i) The driver's duty status record shall be prepared, maintained, and submitted using the time standard in effect at the driver's home terminal, for a 24-hour period beginning with the time specified by the motor carrier for that driver's home terminal.

(ii) The term "7 or 8 consecutive days" means the 7 or 8 consecutive 24-hour periods as designated by the carrier for the driver's home terminal.

(iii) The 24-hour period starting time must be identified on the driver's duty status record. One-hour increments must appear on the graph, be identified, and preprinted. The words "Midnight" and "Noon" must appear above or beside the appropriate one-hour increment.

(9) *Main office address.* The motor carrier's main office address shall be shown on the form containing the driver's duty status record.

(10) *Recording days off duty.* Two or more consecutive 24-hour periods off duty may be recorded on one duty status record.

(11) *Total hours.* The total hours in each duty status: ff duty other than in a sleeper berth; off duty in a sleeper berth; driving, and on duty not driving, shall be entered to the right of the grid, the total of such entries shall equal 24 hours.

(12) *Shipping document number(s) or name of shipper and commodity* shall be shown on the driver's record of duty status.

(g) *Graph grid.* The following graph grid must be incorporated into a motor carrier recordkeeping system which must also contain the information required in paragraph (d) of this section.

NOTE: If a change of duty status occurs at a location other than a city, town, or village, show one of the following: (1) The highway number and nearest milepost followed by the name of the nearest city, town, or village and State abbreviation, (2) the highway number and the name of the service plaza followed by the name of the nearest city, town, or village and State abbreviation, or (3) the highway numbers of the nearest two intersecting roadways followed by the name of the nearest city, town, or village and State abbreviation.

(i) *Filing driver's record of duty status.* The driver shall submit or forward by mail the original driver's record of duty status to the regular employing motor carrier within 13 days following the completion of the form.

(j) *Drivers used by more than one motor carrier.* (1) When the services of a driver are used by more than one motor carrier during any 24-hour period in effect at the driver's home terminal, the driver shall submit a copy of the record of duty status to each motor carrier. The record shall include:

- (i) All duty time for the entire 24-hour period;
- (ii) The name of each motor carrier served by the driver during that period; and

(iii) The beginning and finishing time, including a.m. or p.m., worked for each carrier.

(2) Motor carriers, when using a driver for the first time or intermittently, shall obtain from the driver a signed statement giving the total time on duty during the immediately preceding 7 days and the time at which the driver was last relieved from duty prior to beginning work for the motor carriers.

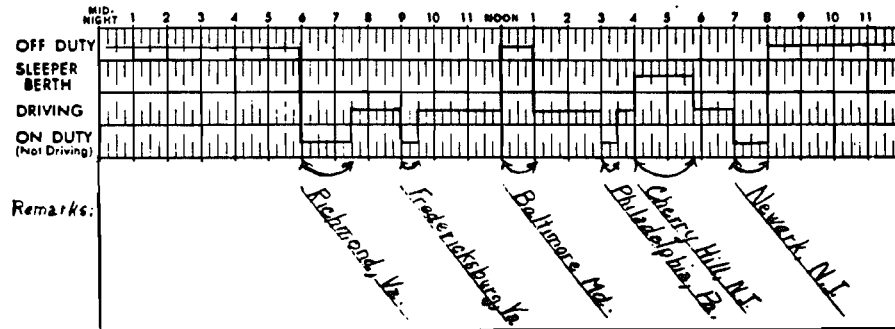
(k) *Retention of driver's record of duty status.* (1) Each motor carrier shall maintain records of duty status and all supporting documents for each driver it employs for a period of six months from the date of receipt.

(2) The driver shall retain a copy of each record of duty status for the previous 7 consecutive days which shall be in his/her possession and available for inspection while on duty.

NOTE: Driver's Record of Duty Status.

The graph grid, when incorporated as part of any form used by a motor carrier, must be of sufficient size to be legible.

The following executed specimen grid illustrates how a driver's duty status should be recorded for a trip from Richmond, Virginia, to Newark, New Jersey. The grid reflects the midnight to midnight 24 hour period.



Graph Grid (Midnight to Midnight Operation)

The driver in this instance reported for duty at the motor carrier's terminal. The driver reported for work at 6 a.m., helped load, checked with dispatch, made a pretrip inspection, and performed other duties until 7:30 a.m. when the driver began driving. At 9 a.m. the driver had a minor accident in Fredericksburg, Virginia, and spent one half hour

handling details with the local police. The driver arrived at the company's Baltimore, Maryland, terminal at noon and went to lunch while minor repairs were made to the tractor. At 1 p.m. the driver resumed the trip and made a delivery in Philadelphia, Pennsylvania, between 3 p.m. and 3:30 p.m. at which time the driver started driving again. Upon arrival at Cherry Hill, New Jersey, at 4 p.m., the driver entered the sleeper berth

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for a rest break until 5:45 p.m. at which time the driver resumed driving again. At 7 p.m. the driver arrived at the company's terminal in Newark, New Jersey. Between 7 p.m. and 8 p.m. the driver prepared the required paperwork including completing the driver's record of duty status, driver vehicle inspection report, insurance report for the Fredericksburg, Virginia accident, checked for the next day's dispatch, etc. At 8 p.m., the driver went off duty.

(Approved by the Office of Management and Budget under control number 2125-0016)

[47 FR 53389, Nov. 26, 1982, as amended at 49 FR 38290, Sept. 28, 1984; 49 FR 46147, Nov. 23, 1984; 51 FR 12622, Apr. 14, 1986; 52 FR 41721, Oct. 30, 1987; 53 FR 18058, May 19, 1988; 53 FR 38670, Sept. 30, 1988; 57 FR 33649, July 30, 1992; 58 FR 33777, June 21, 1993; 59 FR 8753, Feb. 23, 1994; 60 FR 38748, July 28, 1995; 62 FR 16709, Apr. 8, 1997; 63 FR 33279, June 18, 1998; 75 FR 17245, Apr. 5, 2010]

§ 395.10 [Reserved]

§ 395.11 Supporting documents for drivers using EOBRs.

(a) Motor carriers maintaining date, time and location data produced by a § 395.16-compliant EOBR need only maintain additional supporting documents (e.g., driver payroll records, fuel receipts) that provide the ability to verify on-duty not driving activities and off-duty status according to the requirements of § 395.8(k).

(b) This section does not apply to motor carriers and owner-operators that have been issued a remedial directive to install, use, and maintain EOBRs.

[75 FR 17245, Apr. 5, 2010]

§ 395.12 [Reserved]

§ 395.13 Drivers declared out of service.

(a) *Authority to declare drivers out of service.* Every special agent of the Federal Motor Carrier Safety Administration (as defined in appendix B to this subchapter) is authorized to declare a driver out of service and to notify the motor carrier of that declaration, upon finding at the time and place of examination that the driver has violated the out of service criteria as set forth in paragraph (b) of this section.

(b) *Out of service criteria.* (1) No driver shall drive after being on duty in ex-

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cess of the maximum periods permitted by this part.

(2) Every driver required to maintain a record of duty status under § 395.8 must have a record of duty status current on the day of examination and for the prior 7 consecutive days.

(3) *Exception.* A driver failing only to have possession of a record of duty status current on the day of examination and the prior day, but has completed records of duty status up to that time (previous 6 days), will be given the opportunity to make the duty status record current.

(4) No driver shall drive a CMV in violation of § 385.811(d) of this chapter.

(c) *Responsibilities of motor carriers.* (1) No motor carrier shall:

(i) Require or permit a driver who has been declared out of service to operate a commercial motor vehicle until that driver may lawfully do so under the rules in this part.

(ii) Require a driver who has been declared out of service for failure to prepare a record of duty status to operate a commercial motor vehicle until that driver has been off duty for the appropriate number of consecutive hours required by this part and is in compliance with this section. The appropriate consecutive hours off-duty may include sleeper berth time.

(2) A motor carrier shall complete the "Motor Carrier Certification of Action Taken" portion of the form MCS-63 (Driver-Vehicle Examination Report) and deliver the copy of the form either personally or by mail to the Division Administrator or State Director Federal Motor Carrier Safety Administration, at the address specified upon the form within 15 days following the date of examination. If the motor carrier mails the form, delivery is made on the date it is postmarked.

(d) *Responsibilities of the driver.* (1) No driver who has been declared out of service shall operate a commercial motor vehicle until that driver may lawfully do so under the rules of this part.

(2) No driver who has been declared out of service, for failing to prepare a record of duty status, shall operate a commercial motor vehicle until the

driver has been off duty for the appropriate number of consecutive hours required by this part and is in compliance with this section.

(3) A driver to whom a form has been tendered declaring the driver out of service shall within 24 hours thereafter deliver or mail the copy to a person or place designated by motor carrier to receive it.

(4) Section 395.13 does not alter the hazardous materials requirements prescribed in §397.5 pertaining to attendance and surveillance of commercial motor vehicles.

[44 FR 34963, June 18, 1979, as amended at 47 FR 53392, Nov. 26, 1982; 51 FR 12622, Apr. 14, 1986; 53 FR 18058, May 19, 1988; 53 FR 38670, Sept. 30, 1988; 53 FR 47544, Nov. 23, 1988; 60 FR 38748, July 28, 1995; 68 FR 22516, Apr. 28, 2003; 70 FR 50073, Aug. 25, 2005; 75 FR 17245, Apr. 5, 2010]

§ 395.15 Automatic on-board recording devices.

(a) *Applicability and authority to use.* This section applies to automatic on-board recording devices (AOBRDs) used to record drivers' hours of service as specified by part 395.

(1) A motor carrier may require a driver to use an AOBRD to record the driver's hours of service in lieu of complying with the requirements of §395.8 of this part. For commercial motor vehicles manufactured prior to June 4, 2012, manufacturers or motor carriers may install an electronic device to record hours of service if the device meets the requirements of either this section or §395.16.

(2) Every driver required by a motor carrier to use an automatic on-board recording device shall use such device to record the driver's hours of service.

(b) *Information requirements.* (1) Automatic on-board recording devices shall produce, upon demand, a driver's hours of service chart, electronic display, or printout showing the time and sequence of duty status changes including the drivers' starting time at the beginning of each day.

(2) The device shall provide a means whereby authorized Federal, State, or local officials can immediately check the status of a driver's hours of service. This information may be used in conjunction with handwritten or printed

records of duty status, for the previous 7 days.

(3) Support systems used in conjunction with on-board recorders at a driver's home terminal or the motor carrier's principal place of business must be capable of providing authorized Federal, State or local officials with summaries of an individual driver's hours of service records, including the information specified in §395.8(d) of this part. The support systems must also provide information concerning on-board system sensor failures and identification of edited data. Such support systems should meet the information interchange requirements of the American National Standard Code for Information Interchange (ANSI) (EIA RS-232/CCITT V.24 port (National Bureau of Standards "Code for Information Interchange," FIPS PUB 1-1)).

(4) The driver shall have in his/her possession records of duty status for the previous 7 consecutive days available for inspection while on duty. These records shall consist of information stored in and retrievable from the automatic on-board recording device, handwritten records, computer generated records, or any combination thereof.

(5) All hard copies of the driver's record of duty status must be signed by the driver. The driver's signature certifies that the information contained thereon is true and correct.

(c) The duty status and additional information shall be recorded as follows:

- (1) "Off duty" or "OFF", or by an identifiable code or character;
- (2) "Sleeper berth" or "SB" or by an identifiable code or character (only if the sleeper berth is used);
- (3) "Driving" or "D", or by an identifiable code or character; and
- (4) "On-duty not driving" or "ON", or by an identifiable code or character.
- (5) Date;
- (6) Total miles driving today;
- (7) Truck or tractor and trailer number;
- (8) Name of carrier;
- (9) Main office address;
- (10) 24-hour period starting time (e.g., midnight, 9:00 a.m., noon, 3:00 p.m.)
- (11) Name of co-driver;
- (12) Total hours; and

(13) Shipping document number(s), or name of shipper and commodity.

(d) *Location of duty status change.* (1) For each change of duty status (e.g., the place and time of reporting for work, starting to drive, on-duty not driving and where released from work), the name of the city, town, or village, with State abbreviation, shall be recorded.

(2) Motor carriers are permitted to use location codes in lieu of the requirements of paragraph (d)(1) of this section. A list of such codes showing all possible location identifiers shall be carried in the cab of the commercial motor vehicle and available at the motor carrier's principal place of business. Such lists shall be made available to an enforcement official on request.

(e) *Entries made by driver only.* If a driver is required to make written entries relating to the driver's duty status, such entries must be legible and in the driver's own handwriting.

(f) *Reconstruction of records of duty status.* Drivers are required to note any failure of automatic on-board recording devices, and to reconstruct the driver's record of duty status for the current day, and the past 7 days, less any days for which the drivers have records, and to continue to prepare a handwritten record of all subsequent duty status until the device is again operational.

(g) *On-board information.* Each commercial motor vehicle must have on-board the commercial motor vehicle an information packet containing the following items:

(1) An instruction sheet describing in detail how data may be stored and retrieved from an automatic on-board recording system; and

(2) A supply of blank driver's records of duty status graph-grids sufficient to record the driver's duty status and other related information for the duration of the current trip.

(h) *Submission of driver's record of duty status.* (1) The driver shall submit, electronically or by mail, to the employing motor carrier, each record of the driver's duty status within 13 days following the completion of each record;

(2) The driver shall review and verify that all entries are accurate prior to

submission to the employing motor carrier; and

(3) The submission of the record of duty status certifies that all entries made by the driver are true and correct.

(i) *Performance of recorders.* Motor carriers that use automatic on-board recording devices for recording their drivers' records of duty status in lieu of the handwritten record shall ensure that:

(1) A certificate is obtained from the manufacturer certifying that the design of the automatic on-board recorder has been sufficiently tested to meet the requirements of this section and under the conditions it will be used;

(2) The automatic on-board recording device permits duty status to be updated only when the commercial motor vehicle is at rest, except when registering the time a commercial motor vehicle crosses a State boundary;

(3) The automatic on-board recording device and associated support systems are, to the maximum extent practicable, tamperproof and do not permit altering of the information collected concerning the driver's hours of service;

(4) The automatic on-board recording device warns the driver visually and/or audibly that the device has ceased to function. Devices installed and operational as of October 31, 1988, and authorized to be used in lieu of the handwritten record of duty status by the FMCSA are exempted from this requirement.

(5) Automatic on-board recording devices with electronic displays shall have the capability of displaying the following:

(i) Driver's total hours of driving today;

(ii) The total hours on duty today;

(iii) Total miles driving today;

(iv) Total hours on duty for the 7 consecutive day period, including today;

(v) Total hours on duty for the prior 8 consecutive day period, including the present day; and

(vi) The sequential changes in duty status and the times the changes occurred for each driver using the device.

(6) The on-board recorder is capable of recording separately each driver's duty status when there is a multiple-driver operation;

(7) The on-board recording device/system identifies sensor failures and edited data when reproduced in printed form. Devices installed and operational as of October 31, 1988, and authorized to be used in lieu of the handwritten record of duty status by the FMCSA are exempted from this requirement.

(8) The on-board recording device is maintained and recalibrated in accordance with the manufacturer's specifications;

(9) The motor carrier's drivers are adequately trained regarding the proper operation of the device; and

(10) The motor carrier must maintain a second copy (back-up copy) of the electronic hours-of-service files, by month, in a different physical location than where the original data is stored.

(j) *Rescission of authority.* (1) The FMCSA may, after notice and opportunity to reply, order any motor carrier or driver to comply with the requirements of § 395.8 of this part.

(2) The FMCSA may issue such an order if the FMCSA has determined that—

(i) The motor carrier has been issued a conditional or unsatisfactory safety rating by the FMCSA;

(ii) The motor carrier has required or permitted a driver to establish, or the driver has established, a pattern of exceeding the hours of service limitations of this part;

(iii) The motor carrier has required or permitted a driver to fail, or the driver has failed, to accurately and completely record the driver's hours of service as required in this section; or

(iv) The motor carrier or driver has tampered with or otherwise abused the automatic on-board recording device on any commercial motor vehicle.

[53 FR 38670, Sept. 30, 1988, as amended at 60 FR 38748, July 28, 1995; 68 FR 22516, Apr. 28, 2003; 70 FR 50073, Aug. 25, 2005; 75 FR 17245, Apr. 5, 2010]

§ 395.16 Electronic on-board recording devices.

(a) *Applicability and authority to use.* This section applies to electronic on-board recording devices (EOBRs) used

to record the driver's hours of service as specified by part 395. Motor carriers subject to a remedial directive to install, use and maintain EOBRs, issued in accordance with 49 CFR part 385, subpart J, must comply with this section.

(1) A motor carrier may require a driver to use an EOBR to record the driver's hours of service in lieu of complying with the requirements of § 395.8 of this part. For commercial motor vehicles manufactured after June 4, 2012, any electronic device installed in a CMV by a manufacturer or motor carrier to record hours of service must meet the requirements of this section.

(2) Every driver required by a motor carrier to use an EOBR shall use such device to record the driver's hours of service.

(b) *Information to be recorded.* An EOBR must record the following information:

(1) Name of driver and any co-driver(s), and corresponding driver identification information (such as a user ID and password). However, the name of the driver and any co-driver is not required to be transmitted as part of the downloaded file during a roadside inspection.

(2) Duty status.

(3) Date and time.

(4) Location of CMV.

(5) Distance traveled.

(6) Name and USDOT Number of motor carrier.

(7) 24-hour period starting time (e.g., midnight, 9 a.m., noon, 3 p.m.).

(8) The multiday basis (7 or 8 days) used by the motor carrier to compute cumulative duty hours and driving time.

(9) Hours in each duty status for the 24-hour period, and total hours.

(10) Truck or tractor and trailer number.

(11) Shipping document number(s), or name of shipper and commodity.

(c) *Duty status categories.* An EOBR must use the following duty statuses:

(1) "Off duty" or "OFF".

(2) "Sleeper berth" or "SB", to be used only if sleeper berth is used.

(3) "Driving" or "D".

(4) "On-duty not driving" or "ON".

(d) *Duty status defaults.* (1) An EOBR must automatically record driving

time. If the CMV is being used as a personal conveyance, the driver must affirmatively enter an annotation before the CMV begins to move.

(2) When the CMV is stationary for 5 minutes or more, the EOBR must default to on-duty not driving, and the driver must enter the proper duty status.

(3) An EOBR must record the results of power-on self-tests and diagnostic error codes.

(e) *Date and time.* (1) The date and time must be recorded on the EOBR output record as specified under paragraph (i) of this section at each change of duty status, and at intervals of no greater than 60 minutes when the CMV is in motion. The date and time must be displayed on the EOBR's visual output device.

(2) The date and time must be obtained, transmitted, and recorded in such a way that it cannot be altered by a motor carrier, driver, or third party.

(3) The driver's duty status record must be prepared, maintained, and submitted using the time standard in effect at the driver's home terminal, for a 24-hour period beginning with the time specified by the motor carrier for that driver's home terminal.

(4) The time must be coordinated to UTC and the absolute deviation shall not exceed 10 minutes at any time.

(f) *Location.* (1) Information used to determine the location of the CMV must be derived from a source not subject to alteration by the motor carrier or driver.

(2) The location description for the duty status change, and for intervening intervals while the CMV is in motion, must be sufficiently precise to enable Federal, State, and local enforcement personnel to quickly determine the vehicle's geographic location on a standard map or road atlas. The term "sufficiently precise," for purposes of this paragraph means the nearest city, town or village.

(3) When the CMV is in motion, location and time must be recorded at intervals no greater than 60 minutes. This recorded information must be capable of being made available in an output file format as specified in appendix A to this part, but does not need

to be displayed on the EOBR's visual output device.

(4) For each change of duty status (*e.g.*, the place and time of reporting for work, starting to drive, on-duty not driving, and where released from work), the name of the nearest city, town, or village, with State abbreviation, must be recorded.

(5) The EOBR must record location names using codes derived from satellite or terrestrial sources, or a combination of these. The location codes must correspond, at a minimum, to ANSI INCITS 446–2008, "American National Standard for Information Technology—Identifying Attributes for Named Physical and Cultural Geographic Features (Except Roads and Highways) of the United States, Its Territories, Outlying Areas, and Freely Associated Areas and the Waters of the Same to the Limit of the Twelve-Mile Statutory Zone (10/28/2008)," where "GNIS Feature Class" = "Populated Place" (incorporated by reference, *see* § 395.18). (For further information, *see also* the Geographic Names Information System (GNIS) at <http://geonames.usgs.gov/domestic/index.html>).

(g) *Distance traveled.* (1) Distance traveled must use units of miles or kilometers driving during each on-duty driving period and total for each 24-hour period for each driver operating the CMV.

(2) If the EOBR records units of distance in kilometers, it must provide a means to display the equivalent distance in miles.

(3) Distance traveled information obtained from a source internal to the CMV must be accurate to the distance traveled as measured by the CMV's odometer.

(h) *Review of information by driver.* (1) The EOBR must allow for the driver's review of each day's record before the driver submits the record to the motor carrier.

(2) The driver must review the information contained in the EOBR record and affirmatively note the review before submitting the record to the motor carrier.

(3) The driver may annotate only non-driving-status periods and the use of a CMV as a personal conveyance as described in paragraph (d)(1) of this

section. The driver must electronically confirm his or her intention to make any annotations. The annotation must not overwrite the original record.

(4) If the driver makes a written entry on a hardcopy output of an EOBR relating to his or her duty status, the entries must be legible and in the driver's own handwriting.

(i) *Information reporting requirements.*

(1) An EOBR must make it possible for authorized Federal, State, or local officials to immediately check the status of a driver's hours of service.

(2) An EOBR must produce, upon demand, a driver's hours-of-service record in either electronic or printed form. It must also produce a digital file in the format described in appendix A to this part. The record must show the time and sequence of duty status changes including the driver's starting time at the beginning of each day. As an alternative, the EOBR must be able to provide a driver's hours-of-service record as described in paragraph (i)(6) of this section.

(3) This information may be used in conjunction with handwritten or printed records of duty status for the previous 7 days.

(4) Hours-of-service information must be made accessible to authorized Federal, State, or local safety assurance officials for their review without requiring the official to enter in or upon the CMV. The output record must conform to the file format specified in appendix A to this part.

(5) The driver must have in his or her possession records of duty status for the previous 7 consecutive days available for inspection while on duty. These records must consist of information stored in and retrievable from the EOBR, handwritten records, records available from motor carriers' support systems, other printed records, or any combination of these. Electronic records must be capable of one-way transfer through wired and wireless methods to portable computers used by roadside safety assurance officials and must provide files in the format specified in Appendix A to this part. Wired communication information interchange methods must comply with the "Universal Serial Bus Specification (Revision 2.0) incorporated by ref-

erence, *see* § 395.18) and additional specifications in appendix A, paragraph 2.2 to this part. Wireless communication information interchange methods must comply with the requirements of the 802.11g-2003 standard as defined in the 802.11-2007 base standard "IEEE Standard for Information Technology—Telecommunications and information exchange between systems—Local and metropolitan area networks—Specific requirements: Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications" (IEEE Std. 802.11-2007) (incorporated by reference, *see* § 395.18), or CMRS.

(6) Support systems used in conjunction with EOBRs at a driver's home terminal or the motor carrier's principal place of business must be capable of providing authorized Federal, State, or local officials with summaries of an individual driver's hours of service records, including the information specified in § 395.8(d). The support systems must also provide information concerning on-board system sensor failures and identification of amended and edited data. Support systems must provide a file in the format specified in appendix A to this part. The system must also be able to produce a copy of files on portable storage media (CD-RW, USB 2.0 drive) upon request of authorized safety assurance officials. The support system may be maintained by a third-party service provider on behalf of the motor carrier.

(j) *Driver identification.* For the driver to log into the EOBR, the EOBR must require the driver to enter information (such as a user ID and password) that identifies the driver or to provide other information (such as smart cards, biometrics) that identifies the driver.

(k) *Availability of records of duty status.* (1) An EOBR must be capable of producing duty status records for the current day and the previous 7 days from either the information stored in and retrievable from the EOBR or motor carrier support system records, or any combination of these.

(2) If an EOBR fails, the driver must do the following:

(i) Note the failure of the EOBR and inform the motor carrier within 2 days.

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(ii) Reconstruct the record of duty status for the current day and the previous 7 days, less any days for which the driver has records.

(iii) Continue to prepare a handwritten record of all subsequent duty status until the device is again operational.

(iv) A brief (less than 5 minute) loss of connectivity between the EOBR and a location-tracking system or the motor carriers' support system is not considered an EOBR failure for the purpose of this section.

(l) *On-board information.* Each commercial motor vehicle must have on-board the commercial motor vehicle an information packet containing the following items:

(1) An instruction sheet describing how data may be stored and retrieved from the EOBR.

(2) A supply of blank driver's records of duty status graph-grids sufficient to record the driver's duty status and other related information for the duration of the current trip.

(m) *Submission of driver's record of duty status.* (1) The driver must submit electronically, to the employing motor carrier, each record of the driver's duty status.

(2) For motor carriers not subject to the remedies provisions of part 385 subpart J of this chapter, each record must be submitted within 13 days of its completion.

(3) For motor carriers subject to the remedies provisions of part 385 subpart J of this chapter, each record must be submitted within 3 days of its completion.

(4) The driver must review and verify that all entries are accurate prior to submission to the employing motor carrier.

(5) The submission of the record of duty status certifies that all entries made by the driver are true and correct.

(n) *EOBR display requirements.* An EOBR must have the capability of displaying all of the following information:

(1) The driver's name and EOBR login ID number on all EOBR records associated with that driver, including records in which the driver serves as a co-driver.

(2) The driver's total hours of driving during each driving period and the current duty day.

(3) The total hours on duty for the current duty day.

(4) Total miles or kilometers of driving during each driving period and the current duty day.

(5) Total hours on duty and driving time for the prior 7-consecutive-day period, including the current duty day.

(6) Total hours on duty and driving time for the prior 8-consecutive-day period, including the current duty day.

(7) The sequence of duty status for each day, and the time of day and location for each change of duty status, for each driver using the device.

(8) EOBR serial number or other identification, and identification number(s) of vehicle(s) operated that day.

(9) Remarks, including fueling, waypoints, loading and unloading times, unusual situations, or violations.

(10) Driver's override of an automated duty status change to driving if using the vehicle for personal conveyance or for yard movement.

(11) The EOBR may record other data as the motor carrier deems appropriate, including the date and time of crossing a State line for purposes of fuel-tax reporting.

(o) *Performance of recorders.* A motor carrier that uses an EOBR for recording a driver's records of duty status instead of the handwritten record must ensure the EOBR meets the following requirements:

(1) The EOBR must permit the driver to enter information into the EOBR only when the commercial motor vehicle is at rest.

(2) The EOBR and associated support systems must not permit alteration or erasure of the original information collected concerning the driver's hours of service, or alteration of the source data streams used to provide that information.

(3) The EOBR must be able to perform a power-on self-test, as well as a self-test at any point upon request of an authorized safety assurance official. The EOBR must provide an audible and visible signal as to its functional status. It must record the outcome of the self-test and its functional status as a

diagnostic event record in conformance with appendix A to this part.

(4) The EOBR must provide an audible and visible signal to the driver at least 30 minutes in advance of reaching the driving time limit and the on-duty limit for the 24-hour period.

(5) The EOBR must be able to track total weekly on-duty and driving hours over a 7- or 8-day consecutive period. The EOBR must be able to warn a driver at least 30 minutes in advance of reaching the weekly duty-/driving-hour limitation.

(6) The EOBR must warn the driver via an audible and visible signal that the device has ceased to function. "Ceasing to function" for the purpose of this paragraph does not include brief losses of communications signals during such time as, but not limited to, when the vehicle is traveling through a tunnel.

(7) The EOBR must record a code corresponding to the reason it has ceased to function and the date and time of that event.

(8) The audible signal must be capable of being heard and discerned by the driver when seated in the normal driving position, whether the CMV is in motion or parked with the engine operating. The visual signal must be visible to the driver when the driver is seated in the normal driving position.

(9) The EOBR must be capable of recording separately each driver's duty status when there is a multiple-driver operation.

(10) The EOBR device/system must identify sensor failures and edited and annotated data when downloaded or reproduced in printed form.

(11) The EOBR device/system must identify annotations made to all records, the date and time the annotations were made, and the identity of the person making them.

(12) If a driver or any other person annotates a record in an EOBR or an EOBR support system, the annotation must not overwrite the original contents of the record.

(p) *Motor carrier requirements.* (1) The motor carrier must not alter or erase, or permit or require alteration or erasure of, the original information collected concerning the driver's hours of service, the source data streams used

to provide that information, or information contained in its EOBR support systems that use the original information and source data streams.

(2) The motor carrier must ensure the EOBR is calibrated, maintained, and recalibrated in accordance with the manufacturer's specifications; the motor carrier must retain records of these activities.

(3) The motor carrier's drivers and other personnel reviewing and using EOBRs and the information derived from them must be adequately trained regarding the proper operation of the device.

(4) The motor carrier must maintain a second copy (back-up copy) of the electronic hours-of-service files, by month, on a physical device different from that on which the original data are stored.

(5) The motor carrier must review the EOBR records of its drivers for compliance with part 395.

(6) If the motor carrier receives or discovers information concerning the failure of an EOBR, the carrier must document the failure in the hours-of-service record for that driver.

(q) *Manufacturer's self-certification.* (1) The EOBR and EOBR support systems must be certified by the manufacturer as evidence that they have been sufficiently tested to meet the requirements of §395.16 and appendix A to this part under the conditions in which they would be used.

(2) The exterior faceplate of the EOBR must be marked by the manufacturer with the text "USDOT-EOBR" as evidence that the device has been tested and certified as meeting the performance requirements of §395.16 and appendix A to this part.

[75 FR 17245, Apr. 5, 2010]

§ 395.18 Matter incorporated by reference.

(a) *Incorporation by reference.* Certain materials are incorporated by reference in part 395, with the approval of the Director of the Federal Register under 5 U.S.C. 552(a), and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Office of the Federal Register and specified in the regulation is incorporated. To enforce any edition

other than that specified in this section, the Federal Motor Carrier Safety Administration must publish notice of change in the FEDERAL REGISTER and the material must be available to the public. All of the approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. Also, it is available for inspection at the Federal Motor Carrier Safety Administration, Office of Bus and Truck Standards and Operations (MC-PS), 1200 New Jersey Ave., SE., Washington, DC 20590-0001, (202) 366-4325, and is available from the sources listed in paragraphs (b) and (c) of this section.

(b) *Institute of Electrical and Electronic Engineers (IEEE)*. 3 Park Avenue, New York, New York 10016-5997. Web page is <http://www.ieee.org/web/publications/home>; telephone is (800) 678-4333.

(1) “IEEE Standard for Information Technology—Telecommunications and information exchange between systems—Local and metropolitan area networks—Specific requirements: Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications,” IEEE Computer Society, Sponsored by the LAN/MAN Standards Committee: June 12, 2007 (IEEE Std. 802.11-2007). Incorporation by reference approved for § 395.16(i); and appendix A to part 395, paragraph 2.3.

(2) [Reserved]

(c) *Universal Serial Bus Implementers Forum (USBIF)*. 3855 SW. 153rd Drive, Beaverton, Oregon 97006. Web page is <http://www.usb.org>; telephone is (503) 619-0426.

(1) “Universal Serial Bus Specification,” Compaq, Hewlett-Packard, Intel, Lucent, Microsoft, NEC, Philips; April 27, 2000 (Revision 2.0). Incorporation by reference approved for § 395.16(i) and Appendix A to part 395, paragraph 2.2.

(2) [Reserved]

(d) *American National Standards Institute (ANSI)*. 11 West 42nd Street, New York, New York 10036. Web page is

<http://webstore.ansi.org>; telephone is (212) 642-4900.

(1) “ANSI INCITS 446-2008, American National Standard for Information Technology—Identifying Attributes for Named Physical and Cultural Geographic Features (Except Roads and Highways) of the United States, Its Territories, Outlying Areas, and Freely Associated Areas and the Waters of the Same to the Limit of the Twelve-Mile Statutory Zone (10/28/2008),” (ANSI INCITS 446-2008). Incorporation by reference approved for § 395.16(f); appendix A to part 395, paragraph 1.3, Table 2; and appendix A to part 395, paragraph 3.1.1.3. (For further information, see also the Geographic Names Information System (GNIS) at <http://geonames.usgs.gov/domestic/index.html>.)

(2) [Reserved]

[75 FR 17248, Apr. 5, 2010]

APPENDIX A TO PART 395—ELECTRONIC ON-BOARD RECORDER PERFORMANCE SPECIFICATIONS

1. *Data Elements Dictionary for Electronic On-Board Recorders (EOBRs)*

1.1 To facilitate the electronic transfer of records to roadside inspection personnel and compliance review personnel, and provide the ability of various third-party and proprietary EOBR devices to be interoperable, a consistent electronic file format and record layout for the electronic RODS data to be recorded are necessary. This EOBR data elements dictionary provides a standardized and consistent format for EOBR output data.

EOBR Data File Format

1.2 Regardless of the particular electronic file type (such as ASCII or XML) ultimately used for recording the electronic RODS produced by an EOBR, RODS data must be recorded according to a “flat file” database model format. A flat file is a simple database in which all information is stored in a plain text format with one database “record” per line. Each of these data records is divided into “fields” using delimiters (as in a comma-separate-values data file) or based on fixed column positions. Table 1 below presents the general concept of a flat data file consisting of data “fields” (columns) and data “records” (rows).

Table 1: Flat Data File Database Model

FIELDS →

Person First Name	Person Last Name	Driver PIN	Event Date	Event Time	Status Code
William	Smith	978354	20050718	12:11	D
William	Smith	978354	20050718	15:17	SB
William	Smith	978354	20050718	18:53	D
William	Smith	978354	20050718	21:43	ON
William	Smith	978354	20050718	22:14	OFF
William	Smith	978354	20050719	06:25	ON
William	Smith	978354	20050719	06:47	D
William	Smith	978354	20050719	13:32	SB
William	Smith	978354	20050719	15:27	D
William	Smith	978354	20050719	20:04	SB

RECORDS ↓

1.3 The data elements dictionary describes the data fields component of the above framework. Individual data records must be generated and recorded whenever there is a change in driver duty status, an EOBR diagnostic event (such as power-on/off, self test, etc.), or when one or more data fields of an existing data record are later amended. In the last case, the corrected

record must be recorded and noted as "current" in the "Event Status Code" data field, with the original record maintained in its unedited form and noted as "historical" in the "Event Status Code" data field. The EOBR Data Elements Dictionary is described in Table 2. The event codes are listed in Table 3.

TABLE 2—EOBR DATA ELEMENTS DICTIONARY

Data element	Data element definition	Type	Length	Valid values and notes
Driver Identification Data				
Driver First Name	First name of the driver	A	35	See Note 1.
Driver Last Name	Last name, family name, or surname of the driver.	A	35	See Note 1.
Driver PIN/ID	Numeric identification number assigned to a driver by the motor carrier.	A	40	
Vehicle Identification Data				
Tractor Number	Motor carrier assigned identification number for tractor unit.	A	10	
Trailer Number	Motor carrier assigned identification number for trailer.	A	10	
Tractor VIN Number.	Unique vehicle ID number assigned by manufacturer according to US DOT regulations.	A	17	
Co-Driver Data				
Co-Driver First Name.	First name of the co-driver	A	35	See Note 1.
Co-Driver Last Name.	Last name, family name or surname of the co-driver.	A	35	See Note 1.
Co-Driver ID	Numeric identification number assigned to a driver by the motor carrier.	A	40	

TABLE 2—EOBR DATA ELEMENTS DICTIONARY—Continued

Data element	Data element definition	Type	Length	Valid values and notes
Company Identification Data				
Carrier USDOT Number.	USDOT Number of the motor carrier assigned by FMCSA.	N	8	
Carrier Name	Name or trade name of the motor carrier company appearing on the Form MCS-150.	A	120	
Shipment Data				
Shipping Document Number.	Shipping document number	A	40	
Event Data				
Event Sequence ID.	A serial identifier for an event that is unique to a particular vehicle and a particular day.	N	4	0001 through 9999.
Event Status Code	Character codes for the four driver duty status change events, State border crossing event, and diagnostic events.	A	3	OFF = Off Duty SB = Sleeper Berth D = On Duty Driving ON = On Duty Not Driving DG = Diagnostic.
Event Date	The date when an event occurred	N (Date)	8	UTC (universal time) recommended. Format: YYYYMMDD.
Event Time	The time when an event occurred	N (Time)	6	UTC (universal time) recommended. Format: HHMMSS (hours, minutes, seconds).
Event Latitude	Latitude of a location where an event occurred.	N	2,6	Decimal format: XX.XXXXXX.
Event Longitude ...	Longitude of a location where an event occurred.	N	3,6	Decimal format: XXX.XXXXXX.
Place Name	The location codes must correspond, at a minimum, to ANSI INCITS 446–2008, "American National Standard for Information Technology—Identifying Attributes for Named Physical and Cultural Geographic Features (Except Roads and Highways) of the United States, Its Territories, Outlying Areas, and Freely Associated Areas and the Waters of the Same to the Limit of the Twelve-Mile Statutory Zone (10/28/2008)," where "GNIS Feature Class" = "Populated Place" (incorporated by reference, see §395.18). (For further information, see also the Geographic Names Information System (GNIS) at http://geonames.usgs.gov/domestic/index.html .	N	5	Unique within a FIPS state code. Lookup list derived from GNIS.
Place Distance Miles.	Distance in miles to nearest populated place from the location where an event occurred.	N	4	
Total Vehicle Miles	Total vehicle miles (as noted on vehicle odometer or as measured by any other compliant means such as vehicle location system, etc.).	N	7	With total vehicle mileage recorded at the time of each event, vehicle miles traveled while driving, etc., can be computed.
Event Update Status Code.	A status of an event, either Current (the most up-to-date update or edit) or Historical (the original record if the record has subsequently been updated or edited).	A	1	C = Current, H = Historical.
Diagnostic Event Code.	For diagnostic events (events where the "Event Status Code" is noted as "DG"), records the type of diagnostic performed (e.g., power-on, self test, power-off, etc.).	A	2	(See Table 3).
Event Error Code	Error code associated with an event	A	2	(See Table 3).
Event Update Date	The date when an event record was last updated or edited.	N (Date)	8	UTC (universal time) recommended. Format: YYYYMMDD.
Event Update Time.	Then time when an event record was last updated or edited.	N (Time)	6	UTC (universal time) recommended. Format: HHMMSS (hours, minutes, seconds).

TABLE 2—EOBR DATA ELEMENTS DICTIONARY—Continued

Data element	Data element definition	Type	Length	Valid values and notes
Event Update Person ID.	An identifier of the person who last updated or edited a record.	A	40	
Event Update Text	A textual note related to the most recent record update or edit.	A	60	Brief narrative regarding reason for record update or edit.

NOTE 1: This element must not be included in the records downloaded from an EOBR or support system at roadside.

TABLE 3—EOBR DIAGNOSTIC EVENT CODES

Code class	Code	Brief description	Full description
General System Diagnostic	PWR_ON	Power on	EOBR initial power-on.
General System Diagnostic	PWROFF	Power off	EOBR power-off.
General System Diagnostic	TESTOK	test okay	EOBR self test successful.
General System Diagnostic	SERVIC	Service	EOBR Malfunction (return unit to factory for servicing).
General System Diagnostic	MEMERR	memory error	System memory error.
General System Diagnostic	LOWVLT	Low voltage	Low system supply voltage.
General System Diagnostic	BATLOW	battery low	Internal system battery backup low.
General System Diagnostic	CLKERR	clock error	EOBR system clock error (clock not set or defective).
General System Diagnostic	BYPASS	Bypass	EOBR system bypassed (RODS data not collected).
Data Storage Diagnostic	INTFUL	internal memory full	Internal storage memory full (requires download or transfer to external storage).
Data Storage Diagnostic	DATAACC	Data accepted	System accepted driver data entry.
Data Storage Diagnostic	EXTFUL	external memory full.	External memory full (smartcard or other external data storage device full).
Data Storage Diagnostic	EXTERR	external data access error.	Access external storage device failed.
Data Storage Diagnostic	DLOADY	download yes	EOBR data download successful.
Data Storage Diagnostic	DLOADN	download no	Data download rejected (unauthorized request/wrong Password).
Driver Identification Issue	NODRID	no driver ID	No driver information in system and vehicle is in motion.
Driver Identification Issue	PINERR	PIN error	Driver PIN/identification number invalid.
Driver Identification Issue	DRIDRD	Driver ID read	Driver information successfully read from external storage device (transferred to EOBR).
Peripheral Device Issue	DPYERR	display error	EOBR display malfunction.
Peripheral Device Issue	KEYERR	keyboard error	EOBR keyboard/input device malfunction.
External Sensor Issue	NOLTLN	no latitude longitude.	No latitude and longitude from positioning sensor.
External Sensor Issue	NOTSYC	no time synchronization.	Unable to synchronize with external time reference input.
External Sensor Issue	COMERR	communications error.	Unable to communicate with external data link (to home office or wireless service provider).
External Sensor Issue	NO_ECM	no ECM data	No sensory information received from vehicle's Engine Control Module (ECM).
External Sensor Issue	ECM_ID	ECM ID number mismatch.	ECM identification/serial number mismatch (with preprogrammed information).

2. *Communications Standards for the Transmittal of Data Files From Electronic On-Board Recorders (EOBRs)*

2.1 EOBRs must produce and store RODS in accordance with the file format specified in this Appendix and must be capable of a one-way transfer of these records through wired and wireless methods to authorized safety officials upon request.

2.2 *Wired.* EOBRs must be capable of transferring RODS using the “Universal Serial Bus Specification (Revision 2.0)” (incorporated by reference, see §395.18). Each EOBR device must implement a single USB compliant interface featuring a Type A connector. The USB interface must implement the Mass Storage class (08h) for driverless operation.

2.3 *Wireless.* EOBRs must be capable of transferring RODS using one of the following wireless standards:

2.3.1 802.11g–2003 standard as defined in the 802.11–2007 base standard for wireless communication “IEEE Standard for Information Technology—Telecommunications and information exchange between systems—Local and metropolitan area networks—Specific requirements: Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications” (IEEE Std. 802.11–2007) (incorporated by reference, see §395.18).

2.3.2 Commercial Mobile Radio Services (e.g., cellular).

3. *Certification of EOBRs To Assess Conformity With FMCSA Standards*

3.1 The following outcome-based performance requirements must be included in the self-certification testing conducted by EOBR manufacturers:

3.1.1 Location

3.1.1.1 The location description for the duty status change must be sufficiently precise to enable enforcement personnel to quickly determine the vehicle’s geographic location at each change of duty status on a standard map or road atlas.

3.1.1.2 When the CMV is in motion, location and time must be recorded at intervals of no greater than 60 minutes. This recorded information must be available for an audit of EOBR data, but is not required to be displayed on the EOBR’s visual output device.

3.1.1.3 Location codes derived from satellite or terrestrial sources, or a combination thereof must be used. The location codes must correspond, at minimum, to the GNIS maintained by the United States Geological Survey.

3.1.2 Distance traveled

3.1.2.1 Distance traveled may use units of miles or kilometers driving during each on-duty driving period and total for each 24-hour period for each driver operating the CMV.

3.1.2.2 If the EOBR records units of distance in kilometers, it must provide a means to display the equivalent distance in English units.

3.1.2.3 If the EOBR obtains distance-traveled information from a source internal to the CMV, the information must be accurate to the CMV’s odometer.

3.1.3 Date and time

3.1.3.1 The date and time must be reported on the EOBR output record and display for each change of duty status and at such additional entries as specified under “Location.”

3.1.3.2 The date and time must be obtained, transmitted, and recorded in such a way that it cannot be altered by a motor carrier or driver.

3.1.3.3 The time must be coordinated to the Universal Time Clock (UTC) and must not drift more than 60 seconds per month.

3.1.4 File format and communication protocols: The EOBR must produce and transfer a RODS file in the format and communication methods specified in sections 1.0 and 2.0 of this Appendix.

3.1.5 Environment

3.1.5.1 [Reserved]

3.1.5.2 Vibration and shock—The EOBR must meet industry standards for vibration stability and for preventing electrical shocks to device operators.

3.2 The EOBR and EOBR support systems must be certified by the manufacturer as evidence that their design has been sufficiently tested to meet the requirements of §395.16 under the conditions in which they would be used.

3.3 The exterior faceplate of EOBRs must be marked by the manufacturer with the text ‘USDOT–EOBR’ as evidence that the device has been tested and certified as meeting the performance requirements of §395.16.

[75 FR 17248, Apr. 5, 2010, as amended at 75 FR 55491, Sept. 13, 2010]

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

Sec.

- 396.1 Scope.
- 396.3 Inspection, repair, and maintenance.
- 396.5 Lubrication.
- 396.7 Unsafe operations forbidden.
- 396.9 Inspection of motor vehicles in operation.
- 396.11 Inspection of motor vehicles in operation.
- 396.12 Procedures for intermodal equipment providers to accept reports required by §390.42(b) of this chapter.
- 396.13 Driver inspection.
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- 396.19 Inspector qualifications.

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- 396.17 Periodic inspection.
- 396.19 Inspector qualifications.

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396.21 Periodic inspection recordkeeping requirements.

396.23 Equivalent to periodic inspection.

396.25 Qualifications of brake inspectors.

AUTHORITY: 49 U.S.C. 31133, 31136, 31151, and 31502; and 49 CFR 1.73.

SOURCE: 44 FR 38526, July 2, 1979, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 396 appear at 66 FR 49874, Oct. 1, 2001.

§ 396.1 Scope.

(a) Every motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with the inspection or maintenance of commercial motor vehicles must be knowledgeable of and comply with the rules of this part.

(b) Every intermodal equipment provider, its officers, agents, representatives, and employees directly concerned with the inspection or maintenance of intermodal equipment interchanged or offered for interchange to motor carriers must be knowledgeable of and comply with the rules of this part.

[73 FR 76823, Dec. 17, 2008]

§ 396.3 Inspection, repair, and maintenance.

(a) *General.* Every motor carrier and intermodal equipment provider must systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles and intermodal equipment subject to its control.

(1) Parts and accessories shall be in safe and proper operating condition at all times. These include those specified in part 393 of this subchapter and any additional parts and accessories which may affect safety of operation, including but not limited to, frame and frame assemblies, suspension systems, axles and attaching parts, wheels and rims, and steering systems.

(2) Pushout windows, emergency doors, and emergency door marking lights in buses shall be inspected at least every 90 days.

(b) *Required records.* Motor carriers, except for a private motor carrier of passengers (nonbusiness), must maintain, or cause to be maintained, records for each motor vehicle they control for 30 consecutive days. Inter-

modal equipment providers must maintain or cause to be maintained, records for each unit of intermodal equipment they tender or intend to tender to a motor carrier. These records must include:

(1) An identification of the vehicle including company number, if so marked, make, serial number, year, and tire size. In addition, if the motor vehicle is not owned by the motor carrier, the record shall identify the name of the person furnishing the vehicle;

(2) A means to indicate the nature and due date of the various inspection and maintenance operations to be performed;

(3) A record of inspection, repairs, and maintenance indicating their date and nature; and

(4) A record of tests conducted on pushout windows, emergency doors, and emergency door marking lights on buses.

(c) *Record retention.* The records required by this section shall be retained where the vehicle is either housed or maintained for a period of 1 year and for 6 months after the motor vehicle leaves the motor carrier's control.

[44 FR 38526, July 2, 1979, as amended at 48 FR 55868, Dec. 16, 1983; 53 FR 18058, May 19, 1988; 59 FR 8753, Feb. 23, 1994; 59 FR 60324, Nov. 23, 1994; 73 FR 75824, Dec. 17, 2008]

§ 396.5 Lubrication.

Every motor carrier shall ensure that each motor vehicle subject to its control is—

(a) Properly lubricated; and

(b) Free of oil and grease leaks.

§ 396.7 Unsafe operations forbidden.

(a) *General.* A motor vehicle shall not be operated in such a condition as to likely cause an accident or a breakdown of the vehicle.

(b) *Exemption.* Any motor vehicle discovered to be in an unsafe condition while being operated on the highway may be continued in operation only to the nearest place where repairs can safely be effected. Such operation shall be conducted only if it is less hazardous to the public than to permit the vehicle to remain on the highway.

§ 396.9 Inspection of motor vehicles in operation.

(a) *Personnel authorized to perform inspections.* Every special agent of the FMCSA (as defined in appendix B to this subchapter) is authorized to enter upon and perform inspections of a motor carrier's vehicles in operation and intermodal equipment in operation.

(b) *Prescribed inspection report.* The Driver Vehicle Examination Report shall be used to record results of motor vehicle inspections and results of intermodal equipment inspections conducted by authorized FMCSA personnel.

(c) *Motor vehicles declared "out of service."* (1) Authorized personnel shall declare and mark "out of service" any motor vehicle which by reason of its mechanical condition or loading would likely cause an accident or a breakdown. Authorized personnel may declare and mark "out of service" any motor vehicle not in compliance with § 385.811(d). An "Out of Service Vehicle" sticker shall be used to mark vehicles "out of service."

(2) No motor carrier or intermodal equipment provider shall require or permit any person to operate nor shall any person operate any motor vehicle or intermodal equipment declared and marked "out-of-service" until all repairs required by the "out-of-service notice" have been satisfactorily completed. The term *operate* as used in this section shall include towing the vehicle or intermodal equipment, except that vehicles or intermodal equipment marked "out-of-service" may be towed away by means of a vehicle using a crane or hoist. A vehicle combination consisting of an emergency towing vehicle and an "out-of-service" vehicle shall not be operated unless such combination meets the performance requirements of this subchapter except for those conditions noted on the Driver Vehicle Examination Report.

(3) No person shall remove the "Out-of-Service Vehicle" sticker from any motor vehicle or intermodal equipment prior to completion of all repairs required by the "out-of-service notice."

(d) *Motor carrier or intermodal equipment provider disposition.* (1) The driver of any motor vehicle, including a

motor vehicle transporting intermodal equipment, who receives an inspection report shall deliver a copy to both the motor carrier operating the vehicle and the intermodal equipment provider upon his/her arrival at the next terminal or facility. If the driver is not scheduled to arrive at a terminal or facility of the motor carrier operating the vehicle or at a facility of the intermodal equipment provider within 24 hours, the driver shall immediately mail, fax, or otherwise transmit the report to the motor carrier and intermodal equipment provider.

(2) Motor carriers and intermodal equipment providers shall examine the report. Violations or defects noted thereon shall be corrected. Repairs of items of intermodal equipment placed out-of-service are also to be documented in the maintenance records for such equipment.

(3) Within 15 days following the date of the inspection, the motor carrier or intermodal equipment provider shall—

(i) Certify that all violations noted have been corrected by completing the "Signature of Carrier/Intermodal Equipment Provider Official, Title, and Date Signed" portions of the form; and

(ii) Return the completed roadside inspection form to the issuing agency at the address indicated on the form and retain a copy at the motor carrier's principal place of business, at the intermodal equipment provider's principal place of business, or where the vehicle is housed for 12 months from the date of the inspection.

[73 FR 76824, Dec. 17, 2008, as amended at 75 FR 17252, Apr. 5, 2010]

§ 396.11 Driver vehicle inspection report(s).

(a) *Report required—(1) Motor Carriers.* Every motor carrier shall require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work on each vehicle operated, except for intermodal equipment tendered by an intermodal equipment provider. The report shall cover at least the following parts and accessories:

- Service brakes including trailer brake connections
- Parking brake
- Steering mechanism

- Lighting devices and reflectors
- Tires
- Horn
- Windshield wipers
- Rear vision mirrors
- Coupling devices
- Wheels and rims
- Emergency equipment

(2) *Intermodal equipment providers.* Every intermodal equipment provider must have a process to receive driver reports of defects or deficiencies in the intermodal equipment operated. The driver must report on, and the process to receive reports must cover, at least the following parts and accessories:

- Brakes
- Lighting devices, lamps, markers, and conspicuity marking material
- Wheels, rims, lugs, tires
- Air line connections, hoses, and couplers
- King pin upper coupling device
- Rails or support frames
- Tie down bolsters
- Locking pins, clevises, clamps, or hooks
- Sliders or sliding frame lock

(b) *Report content.* The report shall identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate. In all instances, the driver shall sign the report. On two-driver operations, only one driver needs to sign the driver vehicle inspection report, provided both drivers agree as to the defects or deficiencies identified. If a driver operates more than one vehicle during the day, a report shall be prepared for each vehicle operated.

(c) *Corrective action.* Prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would be likely to affect the safety of operation of the vehicle.

(1) Every motor carrier or its agent shall certify on the original driver vehicle inspection report which lists any defect or deficiency that the defect or deficiency has been repaired or that repair is unnecessary before the vehicle is operated again.

(2) Every motor carrier shall maintain the original driver vehicle inspec-

tion report, the certification of repairs, and the certification of the driver's review for three months from the date the written report was prepared.

(d) *Exceptions.* The rules in this section shall not apply to a private motor carrier of passengers (nonbusiness), a driveaway-towaway operation, or any motor carrier operating only one commercial motor vehicle.

[44 FR 38526, July 2, 1979, as amended at 45 FR 46425, July 10, 1980; 53 FR 18058, May 19, 1988; 59 FR 8753, Feb. 23, 1994; 63 FR 33279, June 18, 1998; 73 FR 76824, Dec. 17, 2008; 74 FR 68709, Dec. 29, 2009]

§ 396.12 Procedures for intermodal equipment providers to accept reports required by § 390.42(b) of this chapter.

(a) *System for reports.* Each intermodal equipment provider must establish a system for motor carriers and drivers to report to it any damage, defects, or deficiencies of intermodal equipment discovered by, or reported to, the motor carrier or driver which would—

(1) Affect the safety of operation of the intermodal equipment, or

(2) Result in its mechanical breakdown while transported on public roads.

(b) *Report content.* The system required by paragraph (a) of this section must include documentation of all of the following:

(1) Name of the motor carrier responsible for the operation of the intermodal equipment at the time the damage, defects, or deficiencies were discovered by, or reported to, the driver.

(2) Motor carrier's USDOT number; intermodal equipment provider's USDOT number, and a unique identifying number for the item of intermodal equipment.

(3) Date and time the report was submitted.

(4) All damage, defects, or deficiencies of the intermodal equipment reported to the equipment provider by the motor carrier or its driver. If no defect or deficiency in the intermodal equipment is discovered by the driver, the report shall so indicate.

(5) The signature of the driver who prepared the report.

(c) *Corrective action.* (1) Prior to allowing or permitting a motor carrier to

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transport a piece of intermodal equipment for which a motor carrier or driver has submitted a report about damage, defects or deficiencies, each intermodal equipment provider or its agent must repair the reported damage, defects, or deficiencies that are likely to affect the safety of operation of the vehicle.

(2) Each intermodal equipment provider or its agent must certify on the original driver's report which lists any damage, defects, or deficiencies of the intermodal equipment that the reported damage, defects, or deficiencies have been repaired, or that repair is unnecessary, before the vehicle is operated again.

(d) *Retention period for reports.* Each intermodal equipment provider must maintain all documentation required by this section, including the original driver report and the certification of repairs on all intermodal equipment, for a period of three months from the date that a motor carrier or its driver submits the report to the intermodal equipment provider or its agent.

[73 FR 76824, Dec. 17, 2008, as amended at 74 FR 68709, Dec. 29, 2009]

§ 396.13 Driver inspection.

Before driving a motor vehicle, the driver shall:

(a) Be satisfied that the motor vehicle is in safe operating condition;

(b) Review the last driver vehicle inspection report; and

(c) Sign the report, only if defects or deficiencies were noted by the driver who prepared the report, to acknowledge that the driver has reviewed it and that there is a certification that the required repairs have been performed. The signature requirement does not apply to listed defects on a towed unit which is no longer part of the vehicle combination.

[44 FR 76526, Dec. 27, 1979, as amended at 48 FR 55868, Dec. 16, 1983; 63 FR 33280, June 18, 1998]

§ 396.15 Driveaway-towaway operations and inspections.

(a) *General.* Effective December 7, 1989, every motor carrier, with respect to motor vehicles engaged in driveaway-towaway operations, shall comply with the requirements of this

part. EXCEPTION: Maintenance records required by § 396.3, the vehicle inspection report required by § 396.11, and the periodic inspection required by § 396.17 of this part shall not be required for any vehicle which is part of the shipment being delivered.

(b) *Pre-trip inspection.* Before the beginning of any driveaway-towaway operation of motor vehicles in combination, the motor carrier shall make a careful inspection and test to ascertain that:

(1) The towbar or saddle-mount connections are properly secured to the towed and towing vehicle;

(2) They function adequately without cramping or binding of any of the parts; and

(3) The towed motor vehicle follows substantially in the path of the towing vehicle without whipping or swerving.

(c) *Post-trip inspection.* Motor carriers shall maintain practices to ensure that following completion of any trip in driveaway-towaway operation of motor vehicles in combination, and before they are used again, the towbars and saddle-mounts are disassembled and inspected for worn, bent, cracked, broken, or missing parts. Before reuse, suitable repair or replacement shall be made of any defective parts and the devices shall be properly reassembled.

[44 FR 38526, July 2, 1979, as amended at 53 FR 49410, Dec. 7, 1988; 53 FR 49968, Dec. 12, 1988]

§ 396.17 Periodic inspection.

(a) Every commercial motor vehicle must be inspected as required by this section. The inspection must include, at a minimum, the parts and accessories set forth in appendix G of this subchapter. The term *commercial motor vehicle* includes each vehicle in a combination vehicle. For example, for a tractor semitrailer, full trailer combination, the tractor, semitrailer, and the full trailer (including the converter dolly if so equipped) must each be inspected.

(b) Except as provided in § 396.23 and this paragraph, motor carriers must inspect or cause to be inspected all motor vehicles subject to their control. Intermodal equipment providers must inspect or cause to be inspected intermodal equipment that is interchanged

or intended for interchange to motor carriers in intermodal transportation.

(c) A motor carrier must not use a commercial motor vehicle, and an intermodal equipment provider must not tender equipment to a motor carrier for interchange, unless each component identified in appendix G of this subchapter has passed an inspection in accordance with the terms of this section at least once during the preceding 12 months and documentation of such inspection is on the vehicle. The documentation may be:

(1) The inspection report prepared in accordance with § 396.21(a), or

(2) Other forms of documentation, based on the inspection report (e.g., sticker or decal), which contains the following information:

(i) The date of inspection;

(ii) Name and address of the motor carrier, intermodal equipment provider, or other entity where the inspection report is maintained;

(iii) Information uniquely identifying the vehicle inspected if not clearly marked on the motor vehicle; and

(iv) A certification that the vehicle has passed an inspection in accordance with § 396.17.

(d) A motor carrier may perform the required annual inspection for vehicles under the carrier's control which are not subject to an inspection under § 396.23(b)(1). An intermodal equipment provider may perform the required annual inspection for intermodal equipment interchanged or intended for interchange to motor carriers that are not subject to an inspection under § 396.23(b)(1).

(e) In lieu of the self-inspection provided for in paragraph (d) of this section, a motor carrier or intermodal equipment provider responsible for the inspection may choose to have a commercial garage, fleet leasing company, truck stop, or other similar commercial business perform the inspection as its agent, provided that business operates and maintains facilities appropriate for commercial vehicle inspections and it employs qualified inspectors, as required by § 396.19.

(f) Vehicles passing roadside or periodic inspections performed under the auspices of any State government or equivalent jurisdiction or the FMCSA,

meeting the minimum standards contained in appendix G of this subchapter, will be considered to have met the requirements of an annual inspection for a period of 12 months commencing from the last day of the month in which the inspection was performed. If a vehicle is subject to a mandatory State inspection program, as provided in § 396.23(b)(1), a roadside inspection may only be considered equivalent if it complies with the requirements of that program.

(g) It is the responsibility of the motor carrier or intermodal equipment provider to ensure that all parts and accessories on commercial motor vehicles intended for use in interstate commerce for which they are responsible are maintained at, or promptly repaired to, the minimum standards set forth in appendix G to this subchapter.

(h) Failure to perform properly the annual inspection required by this section shall cause the motor carrier or intermodal equipment provider to be subject to the penalty provisions of 49 U.S.C. 521(b).

[73 FR 76825, Dec. 17, 2008]

§ 396.19 Inspector qualifications.

(a) Motor carriers and intermodal equipment providers must ensure that individuals performing annual inspections under § 396.17(d) or (e) are qualified as follows:

(1) Understand the inspection criteria set forth in part 393 and appendix G of this subchapter and can identify defective components;

(2) Are knowledgeable of and have mastered the methods, procedures, tools and equipment used when performing an inspection; and

(3) Are capable of performing an inspection by reason of experience, training, or both as follows:

(i) Successfully completed a Federal or State-sponsored training program or have a certificate from a State or Canadian Province that qualifies the individuals to perform commercial motor vehicle safety inspections, or

(ii) Have a combination of training or experience totaling at least 1 year. Such training or experience may consist of:

(A) Participation in a commercial motor vehicle manufacturer-sponsored

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training program or similar commercial training program designed to train students in commercial motor vehicle operation and maintenance;

(B) Experience as a mechanic or inspector in a motor carrier or intermodal equipment maintenance program;

(C) Experience as a mechanic or inspector in commercial motor vehicle maintenance at a commercial garage, fleet leasing company, or similar facility; or

(D) Experience as a commercial motor vehicle inspector for a State, Provincial or Federal government.

(b) Motor carriers and intermodal equipment providers must retain evidence of that individual's qualifications under this section. They must retain this evidence for the period during which that individual is performing annual motor vehicle inspections for the motor carrier or intermodal equipment provider, and for one year thereafter. However, motor carriers and intermodal equipment providers do not have to maintain documentation of inspector qualifications for those inspections performed either as part of a State periodic inspection program or at the roadside as part of a random roadside inspection program.

[73 FR 76825, Dec. 17, 2008]

§ 396.21 Periodic inspection record-keeping requirements.

(a) The qualified inspector performing the inspection shall prepare a report that:

(1) Identifies the individual performing the inspection;

(2) Identifies the motor carrier operating the vehicle or intermodal equipment provider intending to interchange the vehicle to a motor carrier;

(3) Identifies the date of the inspection;

(4) Identifies the vehicle inspected;

(5) Identifies the vehicle components inspected and describes the results of the inspection, including the identification of those components not meeting the minimum standards set forth in appendix G to this subchapter; and

(6) Certifies the accuracy and completeness of the inspection as complying with all the requirements of this section.

(b)(1) The original or a copy of the inspection report shall be retained by the motor carrier, intermodal equipment provider, or other entity that is responsible for the inspection for a period of fourteen months from the date of the inspection report. The original or a copy of the inspection report must be retained where the vehicle is either housed or maintained.

(2) The original or a copy of the inspection report must be available for inspection upon demand of an authorized Federal, State or local official.

(3) *Exception.* If the motor carrier operating the commercial motor vehicles did not perform the commercial motor vehicle's last annual inspection, or if an intermodal equipment provider did not itself perform the annual inspection on equipment intended for interchange to a motor carrier, the motor carrier or intermodal equipment provider is responsible for obtaining the original or a copy of the last annual inspection report upon demand of an authorized Federal, State, or local official.

[73 FR 76825, Dec. 17, 2008]

§ 396.23 Equivalent to periodic inspection.

(a) A motor carrier or an intermodal equipment provider may meet the requirements of §396.17 through a State or other jurisdiction's roadside inspection program. The inspection must have been performed during the preceding 12 months. In using the roadside inspection, the motor carrier or intermodal equipment provider would need to retain a copy of an annual inspection report showing that the inspection was performed in accordance with the minimum periodic inspection standards set forth in appendix G to this subchapter. If the motor carrier operating the commercial vehicle is not the party directly responsible for its maintenance, the motor carrier must deliver the roadside inspection report to the responsible party in a timely manner. Before accepting such an inspection report, the motor carrier or intermodal equipment provider must ensure that the report complies with the requirements of §396.21(a).

(b)(1) If a commercial motor vehicle is subject to a mandatory State inspection program which is determined by the Administrator to be as effective as § 396.17, the motor carrier or intermodal equipment provider must meet the requirement of § 396.17 through that State's inspection program. Commercial motor vehicle inspections may be conducted by State personnel, at State authorized commercial facilities, or by the motor carrier or intermodal equipment provider itself under the auspices of a State authorized self-inspection program.

(2) Should the FMCSA determine that a State inspection program, in whole or in part, is not as effective as § 396.17, the motor carrier or intermodal equipment provider must ensure that the periodic inspection required by § 396.17 is performed on all commercial motor vehicles under its control in a manner specified in § 396.17.

[73 FR 76825, Dec. 17, 2008]

§ 396.25 Qualifications of brake inspectors.

(a) Motor carriers and intermodal equipment providers must ensure that all inspections, maintenance, repairs or service to the brakes of its commercial motor vehicles, are performed in compliance with the requirements of this section.

(b) For purposes of this section, *brake inspector* means any employee of a motor carrier or intermodal equipment provider who is responsible for ensuring that all brake inspections, maintenance, service, or repairs to any commercial motor vehicle, subject to the motor carrier's or intermodal equipment provider's control, meet the applicable Federal standards.

(c) No motor carrier or intermodal equipment provider may require or permit any employee who does not meet the minimum brake inspector qualifications of paragraph (d) of this section to be responsible for the inspection, maintenance, service or repairs of any brakes on its commercial motor vehicles.

(d) The motor carrier or intermodal equipment provider must ensure that each brake inspector is qualified as follows:

(1) Understands the brake service or inspection task to be accomplished and can perform that task; and

(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an assigned brake service or inspection task; and

(3) Is capable of performing the assigned brake service or inspection by reason of experience, training, or both as follows:

(i) Has successfully completed an apprenticeship program sponsored by a State, a Canadian Province, a Federal agency or a labor union, or a training program approved by a State, Provincial or Federal agency, or has a certificate from a State or Canadian Province that qualifies the person to perform the assigned brake service or inspection task (including passage of Commercial Driver's License air brake tests in the case of a brake inspection); or

(ii) Has brake-related training or experience or a combination thereof totaling at least one year. Such training or experience may consist of:

(A) Participation in a training program sponsored by a brake or vehicle manufacturer or similar commercial training program designed to train students in brake maintenance or inspection similar to the assigned brake service or inspection tasks; or

(B) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task in a motor carrier or intermodal equipment provider maintenance program; or

(C) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task at a commercial garage, fleet leasing company, or similar facility.

(e) No motor carrier or intermodal equipment provider may employ any person as a brake inspector unless the evidence of the inspector's qualifications, required under this section, is maintained by the motor carrier or intermodal equipment provider at its principal place of business, or at the location at which the brake inspector is employed. The evidence must be maintained for the period during which the

brake inspector is employed in that capacity and for one year thereafter. However, motor carriers and intermodal equipment providers do not have to maintain evidence of qualifications to inspect air brake systems for such inspections performed by persons who have passed the air brake knowledge and skills test for a Commercial Driver's License.

[73 FR 76825, Dec. 17, 2008]

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

Subpart A—General

Sec.

- 397.1 Application of the rules in this part.
- 397.2 Compliance with Federal motor carrier safety regulations.
- 397.3 State and local laws, ordinances, and regulations.
- 397.5 Attendance and surveillance of motor vehicles.
- 397.7 Parking.
- 397.9 [Reserved]
- 397.11 Fires.
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- 397.17 Tires.
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Subpart C—Routing of Non-Radioactive Hazardous Materials

- 397.61 Purpose and scope.
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- 397.67 Motor carrier responsibility for routing.
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Subpart D—Routing of Class 7 (Radioactive) Materials

- 397.101 Requirements for motor carriers and drivers.
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- 397.201 Purpose and scope of the procedures.
- 397.203 Standards for determining preemption.

- 397.205 Preemption application.
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- 397.215 Waiver notice.
- 397.217 Waiver processing.
- 397.219 Waiver determination and order.
- 397.221 Timeliness.
- 397.223 Petition for reconsideration.
- 397.225 Judicial review.

AUTHORITY: 49 U.S.C. 322; 49 CFR 1.73. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.53. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

SOURCE: 36 FR 4876, Mar. 13, 1971, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 397 appear at 66 FR 49874, Oct. 1, 2001.

Subpart A—General

§ 397.1 Application of the rules in this part.

(a) The rules in this part apply to each motor carrier engaged in the transportation of hazardous materials by a motor vehicle which must be marked or placarded in accordance with § 177.823 of this title and to—

(1) Each officer or employee of the motor carrier who performs supervisory duties related to the transportation of hazardous materials; and

(2) Each person who operates or who is in charge of a motor vehicle containing hazardous materials.

(b) Each person designated in paragraph (a) of this section must know and obey the rules in this part.

[36 FR 4876, Mar. 13, 1971, as amended at 36 FR 16067, Aug. 19, 1971; 53 FR 18058, May 19, 1988; 60 FR 38749, July 28, 1995]

§ 397.2 Compliance with Federal motor carrier safety regulations.

A motor carrier or other person to whom this part is applicable must comply with the rules in parts 390 through 397, inclusive, of this subchapter when he/she is transporting hazardous materials by a motor vehicle which must be marked or placarded in accordance with § 177.823 of this title.

[37 FR 18080, Sept. 7, 1972]

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brake inspector is employed in that capacity and for one year thereafter. However, motor carriers and intermodal equipment providers do not have to maintain evidence of qualifications to inspect air brake systems for such inspections performed by persons who have passed the air brake knowledge and skills test for a Commercial Driver's License.

[73 FR 76825, Dec. 17, 2008]

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

Subpart A—General

Sec.

- 397.1 Application of the rules in this part.
- 397.2 Compliance with Federal motor carrier safety regulations.
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- 397.5 Attendance and surveillance of motor vehicles.
- 397.7 Parking.
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Subpart B [Reserved]

Subpart C—Routing of Non-Radioactive Hazardous Materials

- 397.61 Purpose and scope.
- 397.63 Applicability.
- 397.65 Definitions.
- 397.67 Motor carrier responsibility for routing.
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- 397.75 Dispute resolution.
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Subpart D—Routing of Class 7 (Radioactive) Materials

- 397.101 Requirements for motor carriers and drivers.
- 397.103 Requirements for State routing designations.

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- 397.201 Purpose and scope of the procedures.
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- 397.205 Preemption application.
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- 397.217 Waiver processing.
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- 397.223 Petition for reconsideration.
- 397.225 Judicial review.

AUTHORITY: 49 U.S.C. 322; 49 CFR 1.73. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.53. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

SOURCE: 36 FR 4876, Mar. 13, 1971, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 397 appear at 66 FR 49874, Oct. 1, 2001.

Subpart A—General

§ 397.1 Application of the rules in this part.

(a) The rules in this part apply to each motor carrier engaged in the transportation of hazardous materials by a motor vehicle which must be marked or placarded in accordance with § 177.823 of this title and to—

(1) Each officer or employee of the motor carrier who performs supervisory duties related to the transportation of hazardous materials; and

(2) Each person who operates or who is in charge of a motor vehicle containing hazardous materials.

(b) Each person designated in paragraph (a) of this section must know and obey the rules in this part.

[36 FR 4876, Mar. 13, 1971, as amended at 36 FR 16067, Aug. 19, 1971; 53 FR 18058, May 19, 1988; 60 FR 38749, July 28, 1995]

§ 397.2 Compliance with Federal motor carrier safety regulations.

A motor carrier or other person to whom this part is applicable must comply with the rules in parts 390 through 397, inclusive, of this subchapter when he/she is transporting hazardous materials by a motor vehicle which must be marked or placarded in accordance with § 177.823 of this title.

[37 FR 18080, Sept. 7, 1972]

§ 397.3 State and local laws, ordinances, and regulations.

Every motor vehicle containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless they are at variance with specific regulations of the Department of Transportation which are applicable to the operation of that vehicle and which impose a more stringent obligation or restraint.

§ 397.5 Attendance and surveillance of motor vehicles.

(a) Except as provided in paragraph (b) of this section, a motor vehicle which contains a Division 1.1, 1.2, or 1.3 (explosive) material must be attended at all times by its driver or a qualified representative of the motor carrier that operates it.

(b) The rules in paragraph (a) of this section do not apply to a motor vehicle which contains Division 1.1, 1.2, or 1.3 material if all the following conditions exist—

(1) The vehicle is located on the property of a motor carrier, on the property of a shipper or consignee of the explosives, in a safe haven, or, in the case of a vehicle containing 50 pounds or less of a Division 1.1, 1.2, or 1.3 material, on a construction or survey site; and

(2) The lawful bailee of the explosives is aware of the nature of the explosives the vehicle contains and has been instructed in the procedures which must be followed in emergencies; and

(3) The vehicle is within the bailee's unobstructed field of view or is located in a safe haven.

(c) A motor vehicle which contains hazardous materials other than Division 1.1, 1.2, or 1.3, materials, and which is located on a public street or highway, or the shoulder of a public highway, must be attended by its driver. However, the vehicle need not be attended while its driver is performing duties which are incident and necessary to the driver's duties as the operator of the vehicle.

(d) For purposes of this section—

(1) A motor vehicle is attended when the person in charge of the vehicle is on the vehicle, awake, and not in a sleeper berth, or is within 100 feet of

the vehicle and has it within his/her unobstructed field of view.

(2) A qualified representative of a motor carrier is a person who—

(i) Has been designated by the carrier to attend the vehicle;

(ii) Is aware of the nature of the hazardous materials contained in the vehicle he/she attends;

(iii) Has been instructed in the procedures he/she must follow in emergencies; and

(iv) Is authorized to move the vehicle and has the means and ability to do so.

(3) A safe haven in an area specifically approved in writing by local, State, or Federal governmental authorities for the parking of unattended vehicles containing Division 1.1, 1.2, or 1.3 materials.

(e) The rules in this section do not relieve the driver from any obligation imposed by law relating to the placing of warning devices when a motor vehicle is stopped on a public street or highway.

[59 FR 63925, Dec. 12, 1994]

§ 397.7 Parking.

(a) A motor vehicle which contains Division 1.1, 1.2, or 1.3 materials must not be parked under any of the following circumstances—

(1) On or within 5 feet of the traveled portion of a public street or highway;

(2) On private property (including premises of fueling or eating facility) without the knowledge and consent of the person who is in charge of the property and who is aware of the nature of the hazardous materials the vehicle contains; or

(3) Within 300 feet of a bridge, tunnel, dwelling, or place where people work, congregate, or assemble, except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.

(b) A motor vehicle which contains hazardous materials other than Division 1.1, 1.2, or 1.3 materials must not be parked on or within five feet of the traveled portion of public street or highway except for brief periods when the necessities of operation require the

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vehicle to be parked and make it impracticable to park the vehicle in any other place.

[59 FR 63925, Dec. 12, 1994]

§ 397.9 [Reserved]

§ 397.11 Fires.

(a) A motor vehicle containing hazardous materials must not be operated near an open fire unless its driver has first taken precautions to ascertain that the vehicle can safely pass the fire without stopping.

(b) A motor vehicle containing hazardous materials must not be parked within 300 feet of an open fire.

§ 397.13 Smoking.

No person may smoke or carry a lighted cigarette, cigar, or pipe on or within 25 feet of—

(a) A motor vehicle which contains Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2; or

(b) An empty tank motor vehicle which has been used to transport Class 3, flammable materials, or Division 2.1 flammable gases, which when so used, was required to be marked or placarded in accordance with the rules in §177.823 of this title.

[59 FR 63925, Dec. 12, 1994]

§ 397.15 Fueling.

When a motor vehicle which contains hazardous materials is being fueled—

(a) Its engine must not be operating; and

(b) A person must be in control of the fueling process at the point where the fuel tank is filled.

§ 397.17 Tires.

(a) A driver must examine each tire on a motor vehicle at the beginning of each trip and each time the vehicle is parked.

(b) If, as the result of an examination pursuant to paragraph (a) of this section, or otherwise, a tire is found to be flat, leaking, or improperly inflated, the driver must cause the tire to be repaired, replaced, or properly inflated before the vehicle is driven. However, the vehicle may be driven to the near-

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est safe place to perform the required repair, replacement, or inflation.

(c) If, as the result of an examination pursuant to paragraph (a) of this section, or otherwise, a tire is found to be overheated, the driver shall immediately cause the overheated tire to be removed and placed at a safe distance from the vehicle. The driver shall not operate the vehicle until the cause of the overheating is corrected.

(d) Compliance with the rules in this section does not relieve a driver from the duty to comply with the rules in §§ 397.5 and 397.7.

§ 397.19 Instructions and documents.

(a) A motor carrier that transports Division 1.1, 1.2, or 1.3 (explosive) materials must furnish the driver of each motor vehicle in which the explosives are transported with the following documents:

(1) A copy of the rules in this part;

(2) [Reserved]

(3) A document containing instructions on procedures to be followed in the event of accident or delay. The documents must include the names and telephone numbers of persons (including representatives of carriers or shippers) to be contracted, the nature of the explosives being transported, and the precautions to be taken in emergencies such as fires, accidents, or leakages.

(b) A driver who receives documents in accordance with paragraph (a) of this section must sign a receipt for them. The motor carrier shall maintain the receipt for a period of one year from the date of signature.

(c) A driver of a motor vehicle which contains Division 1.1, 1.2, or 1.3 materials must be in possession of, be familiar with, and be in compliance with

(1) The documents specified in paragraph (a) of this section;

(2) The documents specified in §177.817 of this title; and

(3) The written route plan specified in §397.67.

[59 FR 63925, Dec. 12, 1994, as amended at 63 FR 33280, June 18, 1998]

Subpart B [Reserved]

Subpart C—Routing of Non-Radioactive Hazardous Materials

SOURCE: 59 FR 51830, Oct. 12, 1994, unless otherwise noted.

§ 397.61 Purpose and scope.

This subpart contains routing requirements and procedures that States and Indian tribes are required to follow if they establish, maintain, or enforce routing designations over which a non-radioactive hazardous material (NRHM) in a quantity which requires placarding may or may not be transported by a motor vehicle. It also provides regulations for motor carriers transporting placarded or marked NRHM and procedures for dispute resolutions regarding NRHM routing designations.

§ 397.63 Applicability.

The provisions of this subpart apply to any State or Indian tribe that establishes, maintains, or enforces any routing designations over which NRHM may or may not be transported by motor vehicle. They also apply to any motor carrier that transports or causes to be transported placarded or marked NRHM in commerce.

§ 397.65 Definitions.

For purposes of this subpart, the following definitions apply:

Administrator. The Federal Motor Carrier Safety Administrator, who is the chief executive of the Federal Motor Carrier Safety Administration, an agency within the United States Department of Transportation, or his/her designate.

Commerce. Any trade, traffic, or transportation in the United States which:

(1) Is between a place under the jurisdiction of a State or Indian tribe and any place outside of such jurisdiction; or

(2) Is solely within a place under the jurisdiction of a State or Indian tribe but which affects trade, traffic, or transportation described in subparagraph (a).

FMCSA. The Federal Motor Carrier Safety Administration, an agency

within the Department of Transportation.

Hazardous material. A substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, or property when transported in commerce, and which has been so designated.

Indian tribe. Has the same meaning as contained in §4 of the Indian Self-Determination and Education Act, 25 U.S.C. 450b.

Motor carrier. A for-hire motor carrier or a private motor carrier of property. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers.

Motor vehicle. Any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof.

NRHM. A non-radioactive hazardous material transported by motor vehicle in types and quantities which require placarding, pursuant to Table 1 or 2 of 49 CFR 172.504.

Political subdivision. A municipality, public agency or other instrumentality of one or more States, or a public corporation, board, or commission established under the laws of one or more States.

Radioactive material. Any material having a specific activity greater than 0.002 microcuries per gram (uCi/g), as defined in 49 CFR 173.403.

Routing agency. The State highway agency or other State agency designated by the Governor of that State, or an agency designated by an Indian tribe, to supervise, coordinate, and approve the NRHM routing designations for that State or Indian tribe.

Routing designations. Any regulation, limitation, restriction, curfew, time of travel restriction, lane restriction, routing ban, port-of-entry designation, or route weight restriction, applicable to the highway transportation of NRHM over a specific highway route or portion of a route.

Secretary. The Secretary of Transportation.

§ 397.67

State. A State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa or Guam.

§ 397.67 Motor carrier responsibility for routing.

(a) A motor carrier transporting NRHM shall comply with NRHM routing designations of a State or Indian tribe pursuant to this subpart.

(b) A motor carrier carrying hazardous materials required to be placarded or marked in accordance with 49 CFR 177.823 and not subject to a NRHM routing designations pursuant to this subpart, shall operate the vehicle over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys, except where the motor carrier determines that:

(1) There is no practicable alternative;

(2) A reasonable deviation is necessary to reach terminals, points of loading and unloading, facilities for food, fuel, repairs, rest, or a safe haven; or

(3) A reasonable deviation is required by emergency conditions, such as a detour that has been established by a highway authority, or a situation exists where a law enforcement official requires the driver to take an alternative route.

(c) Operating convenience is not a basis for determining whether it is practicable to operate a motor vehicle in accordance with paragraph (b) of this section.

(d) Before a motor carrier requires or permits a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, 1.3, as defined in 49 CFR 173.50 and 173.53 respectively, to be operated, the carrier or its agent shall prepare a written route plan that complies with this section and shall furnish a copy to the driver. However, the driver may prepare the written plan as agent for the motor carrier when the trip begins at a location other than the carrier's terminal.

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§ 397.69 Highway routing designations; preemption.

(a) Any State or Indian tribe that establishes or modifies a highway routing designation over which NRHM may or may not be transported on or after November 14, 1994, and maintains or enforces such designation, shall comply with the highway routing standards set forth in §397.71 of this subpart. For purposes of this subpart, any highway routing designation affecting the highway transportation of NRHM, made by a political subdivision of a State is considered as one made by that State, and all requirements of this subpart apply.

(b) Except as provided in §§397.75 and 397.219, a NRHM route designation made in violation of paragraph (a) of this section is preempted pursuant to section 105(b)(4) of the Hazardous Materials Transportation Act (49 U.S.C. app. 1804(b)(4)). This provision shall become effective after November 14, 1996.

(c) A highway routing designation established by a State, political subdivision, or Indian tribe before November 14, 1994 is subject to preemption in accordance with the preemption standards in paragraphs (a)(1) and (a)(2) of §397.203 of this subpart.

(d) A State, political subdivision, or Indian tribe may petition for a waiver of preemption in accordance with §397.213 of this part.

§ 397.71 Federal standards.

(a) A State or Indian tribe shall comply with the Federal standards under paragraph (b) of this section when establishing, maintaining or enforcing specific NRHM routing designations over which NRHM may or may not be transported.

(b) The Federal standards are as follows:

(1) *Enhancement of public safety.* The State or Indian tribe shall make a finding, supported by the record to be developed in accordance with paragraphs (b)(2)(ii) and (b)(3)(iv) of this section, that any NRHM routing designation enhances public safety in the areas subject to its jurisdiction and in other areas which are directly affected by such highway routing designation. In making such a finding, the State or Indian tribe shall consider:

(i) The factors listed in paragraph (b)(9) of this section; and

(ii) The DOT "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials," DOT/RSPA/OHMT-89-02, July 1989¹ or its most current version; or an equivalent routing analysis which adequately considers overall risk to the public.

(2) *Public participation.* Prior to the establishment of any NRHM routing designation, the State or Indian tribe shall undertake the following actions to ensure participation by the public in the routing process:

(i) The State or Indian tribe shall provide the public with notice of any proposed NRHM routing designation and a 30-day period in which to comment. At any time during this period or following review of the comments received, the State or Indian tribe shall decide whether to hold a public hearing on the proposed NRHM route designation. The public shall be given 30 days prior notice of the public hearing which shall be conducted as described in paragraph (b)(2)(ii) of this section. Notice for both the comment period and the public hearing, if one is held, shall be given by publication in at least two newspapers of general circulation in the affected area or areas and shall contain a complete description of the proposed routing designation, together with the date, time, and location of any public hearings. Notice for both the comment period and any public hearing may also be published in the official register of the State.

(ii) If it is determined that a public hearing is necessary, the State or Indian tribe shall hold at least one public hearing on the record during which the public will be afforded the opportunity to present their views and any information or data related to the proposed NRHM routing designation. The State shall make available to the public, upon payment of prescribed costs, copies of the transcript of the hearing, which shall include all exhibits and documents presented during the hearing or submitted for the record.

¹This document may be obtained from Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(3) *Consultation with others.* Prior to the establishment of any NRHM routing designation, the State or Indian tribe shall provide notice to, and consult with, officials of affected political subdivisions, States and Indian tribes, and any other affected parties. Such actions shall include the following:

(i) At least 60 days prior to establishing a routing designation, the State or Indian tribe shall provide notice, in writing, of the proposed routing designation to officials responsible for highway routing in all other affected States or Indian tribes. A copy of this notice may also be sent to all affected political subdivisions. This notice shall request approval, in writing, by those States or Indian tribes, of the proposed routing designations. If no response is received within 60 days from the day of receipt of the notification of the proposed routing designation, the routing designation shall be considered approved by the affected State or Indian tribe.

(ii) The manner in which consultation under this paragraph is conducted is left to the discretion of the State or Indian tribe.

(iii) The State or Indian tribe shall attempt to resolve any concern or disagreement expressed by any consulted official related to the proposed routing designation.

(iv) The State or Indian tribe shall keep a record of the names and addresses of the officials notified pursuant to this section and of any consultation or meeting conducted with these officials or their representatives. Such record shall describe any concern or disagreement expressed by the officials and any action undertaken to resolve such disagreement or address any concern.

(4) *Through routing.* In establishing any NRHM routing designation, the State or Indian tribe shall ensure through highway routing for the transportation of NRHM between adjacent areas. The term "through highway routing" as used in this paragraph means that the routing designation must ensure continuity of movement so as to not impede or unnecessarily delay the transportation of NRHM. The State or Indian tribe shall utilize the procedures established in paragraphs

(b)(2) and (b)(3) of this section in meeting these requirements. In addition, the State or Indian tribe shall make a finding, supported by a risk analysis conducted in accordance with paragraph (b)(1) of this section, that the routing designation enhances public safety. If the risk analysis shows—

(i) That the current routing presents at least 50 percent more risk to the public than the deviation under the proposed routing designation, then the proposed routing designation may go into effect.

(ii) That the current routing presents a greater risk but less than 50 percent more risk to the public than the deviation under the proposed routing restriction, then the proposed routing restriction made by a State or Indian tribe shall only go into effect if it does not force a deviation of more than 25 miles or result in an increase of more than 25 percent of that part of a trip affected by the deviation, whichever is shorter, from the most direct route through a jurisdiction as compared to the intended deviation.

(iii) That the current route has the same or less risk to the public than the deviation resulting from the proposed routing designation, then the routing designation shall not be allowed.

(5) *Agreement of other States; burden on commerce.* Any NRHM routing designation which affects another State or Indian tribe shall be established, maintained, or enforced only if:

(i) It does not unreasonably burden commerce, and

(ii) It is agreed to by the affected State or Indian tribe within 60 days of receipt of the notice sent pursuant to paragraph (b)(3)(i) of this section, or it is approved by the Administrator pursuant to § 397.75.

(6) *Timeliness.* The establishment of a NRHM routing designation by any State or Indian tribe shall be completed within 18 months of the notice given in either paragraph (b)(2) or (b)(3) of this section, whichever occurs first.

(7) *Reasonable routes to terminals and other facilities.* In establishing or providing for reasonable access to and from designated routes, the State or Indian tribe shall use the shortest practicable route considering the factors listed in paragraph (b)(9) of this

section. In establishing any NRHM routing designation, the State or Indian tribe shall provide reasonable access for motor vehicles transporting NRHM to reach:

(i) Terminals,

(ii) Points of loading, unloading, pickup and delivery, and

(iii) Facilities for food, fuel, repairs, rest, and safe havens.

(8) *Responsibility for local compliance.* The States shall be responsible for ensuring that all of their political subdivisions comply with the provisions of this subpart. The States shall be responsible for resolving all disputes between such political subdivisions within their jurisdictions. If a State or any political subdivision thereof, or an Indian tribe chooses to establish, maintain, or enforce any NRHM routing designation, the Governor, or Indian tribe, shall designate a routing agency for the State or Indian tribe, respectively. The routing agency shall ensure that all NRHM routing designations within its jurisdiction comply with the Federal standards in this section. The State or Indian tribe shall comply with the public information and reporting requirements contained in § 397.73.

(9) *Factors to consider.* In establishing any NRHM routing designation, the State or Indian tribe shall consider the following factors:

(i) *Population density.* The population potentially exposed to a NRHM release shall be estimated from the density of the residents, employees, motorists, and other persons in the area, using United States census tract maps or other reasonable means for determining the population within a potential impact zone along a designated highway route. The impact zone is the potential range of effects in the event of a release. Special populations such as schools, hospitals, prisons, and senior citizen homes shall, among other things, be considered when determining the potential risk to the populations along a highway routing. Consideration shall be given to the amount of time during which an area will experience a heavy population density.

(ii) *Type of highway.* The characteristics of each alternative NRHM highway routing designation shall be compared.

Vehicle weight and size limits, underpass and bridge clearances, roadway geometrics, number of lanes, degree of access control, and median and shoulder structures are examples of characteristics which a State or Indian tribe shall consider.

(iii) *Types and quantities of NRHM.* An examination shall be made of the type and quantity of NRHM normally transported along highway routes which are included in a proposed NRHM routing designation, and consideration shall be given to the relative impact zone and risks of each type and quantity.

(iv) *Emergency response capabilities.* In consultation with the proper fire, law enforcement, and highway safety agencies, consideration shall be given to the emergency response capabilities which may be needed as a result of a NRHM routing designation. The analysis of the emergency response capabilities shall be based upon the proximity of the emergency response facilities and their capabilities to contain and suppress NRHM releases within the impact zones.

(v) *Results of consultation with affected persons.* Consideration shall be given to the comments and concerns of all affected persons and entities provided during public hearings and consultations conducted in accordance with this section.

(vi) *Exposure and other risk factors.* States and Indian tribes shall define the exposure and risk factors associated with any NRHM routing designations. The distance to sensitive areas shall be considered. Sensitive areas include, but are not limited to, homes and commercial buildings; special populations in hospitals, schools, handicapped facilities, prisons and stadiums; water sources such as streams and lakes; and natural areas such as parks, wetlands, and wildlife reserves.

(vii) *Terrain considerations.* Topography along and adjacent to the proposed NRHM routing designation that may affect the potential severity of an accident, the dispersion of the NRHM upon release and the control and clean up of NRHM if released shall be considered.

(viii) *Continuity of routes.* Adjacent jurisdictions shall be consulted to ensure routing continuity for NRHM

across common borders. Deviations from the most direct route shall be minimized.

(ix) *Alternative routes.* Consideration shall be given to the alternative routes to, or resulting from, any NRHM route designation. Alternative routes shall be examined, reviewed, or evaluated to the extent necessary to demonstrate that the most probable alternative routing resulting from a routing designation is safer than the current routing.

(x) *Effects on commerce.* Any NRHM routing designation made in accordance with this subpart shall not create an unreasonable burden upon interstate or intrastate commerce.

(xi) *Delays in transportation.* No NRHM routing designations may create unnecessary delays in the transportation of NRHM.

(xii) *Climatic conditions.* Weather conditions unique to a highway route such as snow, wind, ice, fog, or other climatic conditions that could affect the safety of a route, the dispersion of the NRHM upon release, or increase the difficulty of controlling it and cleaning it up shall be given appropriate consideration.

(xiii) *Congestion and accident history.* Traffic conditions unique to a highway routing such as: traffic congestion; accident experience with motor vehicles, traffic considerations that could affect the potential for an accident, exposure of the public to any release, ability to perform emergency response operations, or the temporary closing of a highway for cleaning up any release shall be given appropriate consideration.

[36 FR 4876, Mar. 13, 1971, as amended at 72 FR 55703, Oct. 1, 2007]

§ 397.73 Public information and reporting requirements.

(a) *Public information.* Information on NRHM routing designations must be made available by the States and Indian tribes to the public in the form of maps, lists, road signs or some combination thereof. If road signs are used, those signs and their placements must

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comply with the provisions of the Manual on Uniform Traffic Control Devices,² published by the FMCSA, particularly the Hazardous Cargo signs identified as R14-2 and R14-3 shown in Section 2B-43 of that Manual.

(b) *Reporting and publishing requirements.* Each State or Indian tribe, through its routing agency, shall provide information identifying all NRHM routing designations which exist within their jurisdictions on November 14, 1994 to the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001 by March 13, 1995. The State or Indian tribe shall include descriptions of these routing designations, along with the dates they were established. This information may also be published in each State's official register of State regulations. Information on any subsequent changes or new NRHM routing designations shall be furnished within 60 days after establishment to the FMCSA. This information will be available from the FMCSA, consolidated by the FMCSA, and published annually in whole or as updates in the FEDERAL REGISTER. Each State may also publish this information in its official register of State regulations.

(Approved by the Office of Management and Budget under control number 2125-0554)

[36 FR 4876, Mar. 13, 1971, as amended at 72 FR 55703, Oct. 1, 2007]

§ 397.75 Dispute resolution.

(a) *Petition.* One or more States or Indian tribes may petition the Administrator to resolve a dispute relating to an agreement on a proposed NRHM routing designation. In resolving a dispute under these provisions, the Administrator will provide the greatest level of safety possible without unreasonably burdening commerce, and ensure compliance with the Federal

standards established at § 397.71 of this subpart.

(b) *Filing.* Each petition for dispute resolution filed under this section must:

(1) Be submitted to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001. Attention: Office of the Chief Counsel (MC-CC).

(2) Identify the State or Indian tribe filing the petition and any other State, political subdivision, or Indian tribe whose NRHM routing designation is the subject of the dispute.

(3) Contain a certification that the petitioner has complied with the notification requirements of paragraph (c) of this section, and include a list of the names and addresses of each State, political subdivision, or Indian tribe official who was notified of the filing of the petition.

(4) Clearly set forth the dispute for which resolution is sought, including a complete description of any disputed NRHM routing designation and an explanation of how the disputed routing designation affects the petitioner or how it impedes through highway routing. If the routing designation being disputed results in alternative routing, then a comparative risk analysis for the designated route and the resulting alternative routing shall be provided.

(5) Describe any actions taken by the State or Indian tribe to resolve the dispute.

(6) Explain the reasons why the petitioner believes that the Administrator should intervene in resolving the dispute.

(7) Describe any proposed actions that the Administrator should take to resolve the dispute and how these actions would provide the greatest level of highway safety without unreasonably burdening commerce and would ensure compliance with the Federal standards established in this subpart.

(c) *Notice.* (1) Any State or Indian tribe that files a petition for dispute resolution under this subpart shall mail a copy of the petition to any affected State, political subdivision, or

²This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 and has Stock No. 050-001-81001-8. It is available for inspection and copying as prescribed in 49 CFR part 7, appendix D. See 23 CFR part 655, subpart F.

Indian tribe, accompanied by a statement that the State, political subdivision, or Indian tribe may submit comments regarding the petition to the Administrator within 45 days.

(2) By serving notice on any other State, political subdivision, or Indian tribe determined by the Administrator to be possibly affected by the issues in dispute or the resolution sought, or by publication in the FEDERAL REGISTER, the Administrator may afford those persons an opportunity to file written comments on the petition.

(3) Any affected State, political subdivision, or Indian tribe submitting written comments to the Administrator with respect to a petition filed under this section shall send a copy of the comments to the petitioner and certify to the Administrator as to having complied with this requirement. The Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

(d) *Court actions.* After a petition for dispute resolution is filed in accordance with this section, no court action may be brought with respect to the subject matter of such dispute until a final decision has been issued by the Administrator or until the last day of the one-year period beginning on the day the Administrator receives the petition, whichever occurs first.

(e) *Hearings; alternative dispute resolution.* Upon receipt of a petition filed pursuant to paragraph (a) of this section, the Administrator may schedule a hearing to attempt to resolve the dispute and, if a hearing is scheduled, will notify all parties to the dispute of the date, time, and place of the hearing. During the hearing the parties may offer any information pertinent to the resolution of the dispute. If an agreement is reached, it may be stipulated by the parties, in writing, and, if the Administrator agrees, made part of the decision in paragraph (f) of this section. If no agreement is reached, the Administrator may take the matter under consideration and announce his or her decision in accordance with paragraph (f) of this section. Nothing in this section shall be construed as prohibiting the parties from settling

the dispute or seeking other methods of alternative dispute resolution prior to the final decision by the Administrator.

(f) *Decision.* The Administrator will issue a decision based on the petition, the written comments submitted by the parties, the record of the hearing, and any other information in the record. The decision will include a written statement setting forth the relevant facts and the legal basis for the decision.

(g) *Record.* The Administrator will serve a copy of the decision upon the petitioner and any other party who participated in the proceedings. A copy of each decision will be placed on file in the public docket. The Administrator may publish the decision or notice of the decision in the FEDERAL REGISTER.

[36 FR 4876, Mar. 13, 1971, as amended at 72 FR 55703, Oct. 1, 2007]

§ 397.77 Judicial review of dispute decision.

Any State or Indian tribe adversely affected by the Administrator's decision under § 397.75 of this subpart may seek review by the appropriate district court of the United States under such proceeding only by filing a petition with such court within 90 days after such decision becomes final.

Subpart D—Routing of Class 7 (Radioactive) Materials

§ 397.101 Requirements for motor carriers and drivers.

(a) Except as provided in paragraph (b) of this section or in circumstances when there is only one practicable highway route available, considering operating necessity and safety, a carrier or any person operating a motor vehicle that contains a Class 7 (radioactive) material, as defined in 49 CFR 172.403, for which placarding is required under 49 CFR part 172 shall:

(1) Ensure that the motor vehicle is operated on routes that minimize radiological risk;

(2) Consider available information on accident rates, transit time, population density and activities, and the time of day and the day of week during which

transportation will occur to determine the level of radiological risk; and

(3) Tell the driver which route to take and that the motor vehicle contains Class 7 (radioactive) materials.

(b) Except as otherwise permitted in this paragraph and in paragraph (f) of this section, a carrier or any person operating a motor vehicle containing a highway route controlled quantity of Class 7 (radioactive) materials, as defined in 49 CFR 173.403(1), shall operate the motor vehicle only over preferred routes.

(1) For purposes of this subpart, a preferred route is an Interstate System highway for which an alternative route is not designated by a State routing agency; a State-designated route selected by a State routing agency pursuant to § 397.103; or both of the above.

(2) The motor carrier or the person operating a motor vehicle containing a highway route controlled quantity of Class 7 (radioactive) materials, as defined in 49 CFR 173.403(1) and (y), shall select routes to reduce time in transit over the preferred route segment of the trip. An Interstate System bypass or Interstate System beltway around a city, when available, shall be used in place of a preferred route through a city, unless a State routing agency has designated an alternative route.

(c) A motor vehicle may be operated over a route, other than a preferred route, only under the following conditions:

(1) The deviation from the preferred route is necessary to pick up or deliver a highway route controlled quantity of Class 7 (radioactive) materials, to make necessary rest, fuel or motor vehicle repair stops, or because emergency conditions make continued use of the preferred route unsafe or impossible;

(2) For pickup and delivery not over preferred routes, the route selected must be the shortest-distance route from the pickup location to the nearest preferred route entry location, and the shortest-distance route to the delivery location from the nearest preferred route exit location. Deviation from the shortest-distance pickup or delivery route is authorized if such deviation:

(i) Is based upon the criteria in paragraph (a) of this section to minimize the radiological risk; and

(ii) Does not exceed the shortest-distance pickup or delivery route by more than 25 miles and does not exceed 5 times the length of the shortest-distance pickup or delivery route.

(iii) Deviations from preferred routes, or pickup or delivery routes other than preferred routes, which are necessary for rest, fuel, or motor vehicle repair stops or because of emergency conditions, shall be made in accordance with the criteria in paragraph (a) of this section to minimize radiological risk, unless due to emergency conditions, time does not permit use of those criteria.

(d) A carrier (or a designated agent) who operates a motor vehicle which contains a package of highway route controlled quantity of Class 7 (radioactive) materials, as defined in 49 CFR 173.403(1), shall prepare a written route plan and supply a copy before departure to the motor vehicle driver and a copy to the shipper (before departure for exclusive use shipments, as defined in 49 CFR 173.403(i), or within fifteen working days following departure for all other shipments). Any variation between the route plan and routes actually used, and the reason for it, shall be reported in an amendment to the route plan delivered to the shipper as soon as practicable but within 30 days following the deviation. The route plan shall contain:

(1) A statement of the origin and destination points, a route selected in compliance with this section, all planned stops, and estimated departure and arrival times; and

(2) Telephone numbers which will access emergency assistance in each State to be entered.

(e) No person may transport a package of highway route controlled quantity of Class 7 (radioactive) materials on a public highway unless:

(1) The driver has received within the two preceding years, written training on:

(i) Requirements in 49 CFR parts 172, 173, and 177 pertaining to the Class 7 (radioactive) materials transported;

(ii) The properties and hazards of the Class 7 (radioactive) materials being transported; and

(iii) Procedures to be followed in case of an accident or other emergency.

(2) The driver has in his or her immediate possession a certificate of training as evidence of training required by this section, and a copy is placed in his or her qualification file (see §391.51 of this subchapter), showing:

(i) The driver's name and operator's license number;

(ii) The dates training was provided;

(iii) The name and address of the person providing the training;

(iv) That the driver has been trained in the hazards and characteristics of highway route controlled quantity of Class 7 (radioactive) materials; and

(v) A statement by the person providing the training that information on the certificate is accurate.

(3) The driver has in his or her immediate possession the route plan required by paragraph (d) of this section and operates the motor vehicle in accordance with the route plan.

(f) A person may transport irradiated reactor fuel only in compliance with a plan if required under 49 CFR 173.22(c) that will ensure the physical security of the material. Variation for security purposes from the requirements of this section is permitted so far as necessary to meet the requirements imposed under such a plan, or otherwise imposed by the U.S. Nuclear Regulatory Commission in 10 CFR part 73.

(g) Except for packages shipped in compliance with the physical security requirements of the U.S. Nuclear Regulatory Commission in 10 CFR part 73, each carrier who accepts for transportation a highway route controlled quantity of Class 7 (radioactive) material (see 49 CFR 173.401(1)), must, within 90 days following the acceptance of the package, file the following information concerning the transportation of each such package with the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001:

(1) The route plan required under paragraph (d) of this section, including all required amendments reflecting the routes actually used;

(2) A statement identifying the names and addresses of the shipper, carrier and consignee; and

(3) A copy of the shipping paper or the description of the Class 7 (radioactive) material in the shipment required by 49 CFR 172.202 and 172.203.

[57 FR 44131, Sept. 24, 1992, as amended at 66 FR 49874, Oct. 1, 2001; 72 FR 55703, Oct. 1, 2007]

§ 397.103 Requirements for State routing designations.

(a) The State routing agency, as defined in §397.201(c), shall select routes to minimize radiological risk using "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials," or an equivalent routing analysis which adequately considers overall risk to the public. Designations must be preceded by substantive consultation with affected local jurisdictions and with any other affected States to ensure consideration of all impacts and continuity of designated routes.

(b) State routing agencies may designate preferred routes as an alternative to, or in addition to, one or more Interstate System highways, including interstate system bypasses, or Interstate System beltways.

(c) A State-designated route is effective when—

(1) The State gives written notice by certified mail, return receipt requested, to the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001. Attention: National Hazardous Materials Route Registry.

(2) Receipt thereof is acknowledged in writing by the FMCSA.

(d) A list of State-designated preferred routes and a copy of the "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials" are available upon request to Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

[57 FR 44131, Sept. 24, 1992, as amended at 66 FR 49874, Oct. 1, 2001; 72 FR 55703, Oct. 1, 2007]

Subpart E—Preemption Procedures

SOURCE: 57 FR 44132, Sept. 24, 1992, unless otherwise noted.

§ 397.201 Purpose and scope of the procedures.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State, political subdivision thereof, or Indian tribe, directly affected by any highway routing designation for hazardous materials may apply to the Administrator for a determination as to whether that highway routing designation is preempted under 49 U.S.C. 5125, or § 397.69 or § 397.203 of this part; and

(2) A State, political subdivision thereof, or Indian tribe may apply to the Administrator for a waiver of preemption with respect to any highway routing designation that the State, political subdivision thereof, or Indian tribe acknowledges to be preempted by 49 U.S.C. 5125, or § 397.69 or § 397.203 of this part, or that has been determined by a court of competent jurisdiction to be so preempted.

(b) Unless otherwise ordered by the Administrator, an application for a preemption determination which includes an application for a waiver of preemption will be treated and processed solely as an application for a preemption determination.

(c) For purposes of this part:

Act means 49 U.S.C. 5101 *et seq.*, formerly known as the Hazardous Materials Transportation Act.

Administrator means the Federal Highway Administrator, who is the chief executive of the Federal Motor Carrier Safety Administration, an agency of the United States Department of Transportation, or his/her designate.

Hazardous material means a substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, or property, when transported in commerce, and which has been so designated.

Indian tribe has the same meaning as contained in section 4 of the Indian

Self-Determination and Education Act, 25 U.S.C. 450b.

Person means an individual, firm, co-partnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include the United States Postal Service.

Political subdivision includes a municipality; a public agency or other instrumentality of one or more States, or a public corporation, board, or commission established under the laws of one or more States.

Routing agency means the State highway agency or other State agency designated by the Governor of a State, or an agency designated by an Indian tribe, to supervise, coordinate, and approve the highway routing designations for that State or Indian tribe. Any highway routing designation made by a political subdivision of a State shall be considered a designation made by that State.

Routing designation includes any regulation, limitation, restriction, curfew, time of travel restriction, lane restriction, routing ban, port-of-entry designation, or route weight restriction applicable to the highway transportation of hazardous materials over a specific highway route or portion of a route.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary.

[57 FR 44132, Sept. 24, 1992, as amended at 59 FR 51834, Oct. 12, 1994]

§ 397.203 Standards for determining preemption.

(a) Any highway routing designation established, maintained, or enforced by a State, political subdivision thereof, or Indian tribe is preempted if—

(1) Compliance with both the highway routing designation and any requirement under the Act or of a regulation issued under the Act is not possible;

(2) The highway routing designation as applied or enforced creates an obstacle to the accomplishment and execution of the Act or the regulations issued under the Act; or

(3) The highway routing designation is preempted pursuant to §397.69(b) of this part.

(b) [Reserved]

[57 FR 44132, Sept. 24, 1992, as amended at 59 FR 51834, Oct. 12, 1994]

§ 397.205 Preemption application.

(a) Any person, including a State, political subdivision thereof, or Indian tribe directly affected by any highway routing designation of another State, political subdivision, or Indian tribe, may apply to the Administrator for a determination of whether that highway routing designation is preempted by the Act or §397.203 of this subpart. The Administrator shall publish notice of the application in the FEDERAL REGISTER.

(b) Each application filed under this section for a determination must:

(1) Be submitted to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001. Attention: Office of the Chief Counsel, Enforcement and Litigation Division (MC-CCE);

(2) Set forth a detailed description of the highway routing designation of the State, political subdivision thereof, or Indian tribe for which the determination is sought;

(3) If applicable, specify the provisions of the Act or the regulations issued under the Act under which the applicant seeks preemption of the highway routing designation of the State, political subdivision thereof, or Indian tribe;

(4) Explain why the applicant believes the highway routing designation of the State, political subdivision thereof, or Indian tribe should or should not be preempted under the standards of §397.203; and

(5) State how the applicant is affected by the highway routing designa-

tion of the State, political subdivision thereof, or Indian tribe.

(c) The filing of an application for a determination under this section does not constitute grounds for noncompliance with any requirement of the Act or any regulation issued under the Act.

(d) Once the Administrator has published notice in the FEDERAL REGISTER of an application received under paragraph (a) of this section, no applicant for such determination may seek relief with respect to the same or substantially the same issue in any court until final action has been taken on the application or until 180 days after filing of the application, whichever occurs first. Nothing in this section shall be construed as prohibiting any person, including a State, political subdivision thereof, or Indian tribe, directly affected by any highway routing designation from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Administrator under paragraph (a) of this section.

[57 FR 44132, Sept. 24, 1992, as amended at 72 FR 55703, Oct. 1, 2007]

§ 397.207 Preemption notice.

(a) If the applicant is other than a State, political subdivision thereof, or Indian tribe, the applicant shall mail a copy of the application to the State, political subdivision thereof, or Indian tribe concerned, accompanied by a statement that comments may be submitted regarding the application to the Administrator within 45 days. The application filed with the Administrator must include a certification that the applicant has complied with this paragraph and must include the names and addresses of each official to whom a copy of the application was sent.

(b) The Administrator may afford interested persons an opportunity to file written comments on the application by serving notice on any persons readily identifiable by the Administrator as persons who will be affected by the ruling sought or by publication in the FEDERAL REGISTER.

(c) Each person submitting written comments to the Administrator with respect to an application filed under this section shall send a copy of the comments to the applicant and certify

to the Administrator that he or she has complied with this requirement. The Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

§ 397.209 Preemption processing.

(a) The Administrator may initiate an investigation of any statement in an application and utilize in his or her evaluation any relevant facts obtained by that investigation. The Administrator may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Administrator may consider any other source of information. The Administrator may convene a hearing or conference, if a hearing or conference will advance the evaluation of the application.

(b) The Administrator may dismiss the application without prejudice if:

- (1) he or she determines that there is insufficient information upon which to base a determination; or
- (2) he or she requests additional information from the applicant and it is not submitted.

§ 397.211 Preemption determination.

(a) Upon consideration of the application and other relevant information received, the Administrator issues a determination.

(b) Notwithstanding that an application for a determination has not been filed under § 397.205, the Administrator, on his or her own initiative, may issue a determination as to whether a particular highway routing designation of a State, political subdivision thereof, or Indian tribe is preempted under the Act or the regulations issued under the Act.

(c) The determination includes a written statement setting forth the relevant facts and the legal basis for the determination, and provides that any person aggrieved thereby may file a petition for reconsideration within 20 days in accordance with § 397.223.

(d) Unless the determination is issued pursuant to paragraph (b) of this section, the Administrator serves a copy

of the determination upon the applicant. In all preemption determinations, the Administrator serves a copy of the determination upon any other person who participated in the proceeding or who is readily identifiable by the Administrator as affected by the determination. A copy of each determination is placed on file in the public docket. The Administrator may publish the determination or notice of the determination in the FEDERAL REGISTER.

(e) If no petition for reconsideration is filed within 20 days in accordance with § 397.223, a determination issued under this section constitutes the final agency decision as to whether a particular highway routing designation of a State, political subdivision thereof, or Indian tribe is preempted under the Act or regulations issued thereunder. The fact that a determination has not been issued under this section with respect to a particular highway routing designation of a State, political subdivision thereof, or Indian tribe carries no implication as to whether the requirement is preempted under the Act or regulations issued thereunder.

§ 397.213 Waiver of preemption application.

(a) Any State, political subdivision thereof, or Indian tribe may apply to the Administrator for a waiver of preemption with respect to any highway routing designation that the State, political subdivision thereof, or Indian tribe acknowledges to be preempted by the Act, § 397.203 of this subpart, or a court of competent jurisdiction. The Administrator may waive preemption with respect to such requirement upon a determination that such requirement—

- (1) Affords an equal or greater level of protection to the public than is afforded by the requirements of the Act or regulations issued under the Act, and
- (2) Does not unreasonably burden commerce.

(b) Each application filed under this section for a waiver of preemption determination must:

- (1) Be submitted to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave.,

SE., Washington, DC 20590-0001. Attention: Office of the Chief Counsel, Enforcement and Litigation Division (MC-CCE);

(2) Set forth a detailed description of the highway routing designation of the State, political subdivision thereof, or Indian tribe for which the determination is being sought;

(3) Include a copy of any relevant court order or determination issued pursuant to § 397.211;

(4) Contain an express acknowledgment by the applicant that the highway routing designation of the State, political subdivision thereof, or Indian tribe is preempted under the Act or the regulations issued under the Act, unless it has been so determined by a court of competent jurisdiction or in a determination issued under this subpart;

(5) Specify each provision of the Act or the regulations issued under the Act that preempts the highway routing designation of the State, political subdivision thereof, or Indian tribe;

(6) State why the applicant believes that the highway routing designation of the State, political subdivision thereof, or Indian tribe affords an equal or greater level of protection to the public than is afforded by the requirements of the Act or the regulations issued under the Act;

(7) State why the applicant believes that the highway routing designation of the State, political subdivision thereof, or Indian tribe does not unreasonably burden commerce; and

(8) Specify what steps the State, political subdivision thereof, or Indian tribe is taking to administer and enforce effectively the preempted requirement.

[57 FR 44132, Sept. 24, 1992, as amended at 72 FR 55703, Oct. 1, 2007]

§ 397.215 Waiver notice.

(a) The applicant State, political subdivision thereof, or Indian tribe shall mail a copy of the application and any subsequent amendments or other documents relating to the application to each person whom the applicant reasonably ascertains will be affected by the determination sought. The copy of the application must be accompanied by a statement that the person may

submit comments regarding the application to the Administrator within 45 days. The application filed with the Administrator must include a certification with the application has complied with this paragraph and must include the names and addresses of each person to whom the application was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the State, political subdivision thereof, or Indian tribe determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application filed with the Administrator a description of the persons or class or classes of persons to whom notice was not sent.

(c) The Administrator may require the applicant to provide notice in addition to that required by paragraphs (a) and (b) of this section, or may determine that the notice required by paragraph (a) of this section is not impracticable, or that notice should be published in the FEDERAL REGISTER.

(d) The Administrator may serve notice on any other persons readily identifiable by the Administrator as persons who will be affected by the determination sought and may afford those persons an opportunity to file written comments on the application.

(e) Any person submitting written comments to the Administrator with respect to an application filed under this section shall send a copy of the comments to the applicant. The person shall certify to the Administrator that he or she has complied with the requirements of this paragraph. The Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

§ 397.217 Waiver processing.

(a) The Administrator may initiate an investigation of any statement in an application and utilize any relevant facts obtained by that investigation. The Administrator may solicit and accept submissions from third persons

relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Administrator may convene a hearing or conference, if a hearing or conference will advance the evaluation of the application.

(b) The Administrator may dismiss the application without prejudice if:

(1) he or she determines that there is insufficient information upon which to base a determination;

(2) Upon his or her request, additional information is not submitted by the applicant; or

(3) The applicant fails to provide the notice required by this subpart.

(c) Except as provided in this subpart, the Administrator will only consider an application for a waiver of preemption determination if:

(1) The applicant expressly acknowledges in its application that the highway routing designation of the State, political subdivision thereof, or Indian tribe for which the determination is sought is preempted by the Act or the regulations thereunder; or

(2) The highway routing designation of the State, political subdivision thereof, or Indian tribe has been determined by a court of competent jurisdiction or in a determination issued pursuant to § 397.211 to be preempted by the Act or the regulations issued thereunder.

(d) When the Administrator has received all substantive information necessary to process an application for a waiver of preemption determination, notice of that fact will be served upon the applicant. Additional notice to all other persons who received notice of the proceeding may be served by publishing a notice in the FEDERAL REGISTER.

§ 397.219 Waiver determination and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the Administrator issues an order setting forth his or her determination.

(b) The Administrator may issue a waiver of preemption order only if he or she finds that the requirement of

the State, political subdivision thereof, or Indian tribe affords the public a level of safety at least equal to that afforded by the requirements of the Act and the regulations issued under the Act and does not unreasonably burden commerce. In determining whether the requirement of the State, political subdivision thereof, or Indian tribe unreasonably burdens commerce, the Administrator may consider the following factors:

(1) The extent to which increased costs and impairment of efficiency result from the highway routing designation of the State, political subdivision thereof, or Indian tribe;

(2) Whether the highway routing designation of the State, political subdivision thereof, or Indian tribe has a rational basis;

(3) Whether the highway routing designation of the State, political subdivision thereof, or Indian tribe achieves its stated purpose; and

(4) Whether there is need for uniformity with regard to the subject concerned and if so, whether the highway routing designation of the State, political subdivision thereof, or Indian tribe competes or conflicts with those of other States, political subdivisions thereof, or Indian tribes.

(c) The order includes a written statement setting forth the relevant facts and the legal basis for the determination, and provides that any person aggrieved by the order may file a petition for reconsideration in accordance with § 397.223.

(d) The Administrator serves a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by the Administrator as one who may be affected by the order. A copy of each order is placed on file in the public docket. The Administrator may publish the order or notice of the order in the FEDERAL REGISTER.

(e) If no petition for reconsideration is filed within 20 days in accordance with § 397.223, an order issued under this section constitutes the final agency decision regarding whether a particular requirement of a State, political subdivision thereof, or Indian tribe

is preempted under the Act or any regulations issued thereunder, or whether preemption is waived.

§ 397.221 Timeliness.

If the Administrator fails to take action on the application within 90 days of serving the notice required by § 397.217(d), the applicant may treat the application as having been denied in all respects.

§ 397.223 Petition for reconsideration.

(a) Any person aggrieved by an order issued under § 397.211 or § 397.219 may file a petition for reconsideration with the Administrator. The petition must be filed within 20 days of service of the determination or order issued under the above sections.

(b) The petition must contain a concise statement of the basis for seeking reconsideration, including any specific factual or legal errors, or material information not previously available.

(c) The petitioner shall mail a copy of the petition to each person who participated, either as an applicant or routing, in the waiver of preemption proceeding, accompanied by a statement that the person may submit comments concerning the petition to the Administrator within 20 days. The petition filed with the Administrator must contain a certification that the petitioner has complied with this paragraph and include the names and addresses of all persons to whom a copy of the petition was sent.

(d) The Administrator's decision under this section constitutes the final agency decision. If no petition for reconsideration is filed under this section, then the determination issued under § 397.211 or § 397.219 becomes the final agency decision at the end of the 20 day period.

§ 397.225 Judicial review.

A party to a proceeding under § 397.205(a), § 397.213(a), or § 397.223(a) may seek review by the appropriate district court of the United States of the decision of the Administrator under such proceeding only by filing a petition with such court within 60 days after the final agency decision.

PART 398—TRANSPORTATION OF MIGRANT WORKERS

Sec.

- 398.1 Definitions.
- 398.2 Applicability.
- 398.3 Qualifications of drivers or operators.
- 398.4 Driving of motor vehicles.
- 398.5 Parts and accessories necessary for safe operation.
- 398.6 Hours of service of drivers; maximum driving time.
- 398.7 Inspection and maintenance of motor vehicles.
- 398.8 Administration inspection of motor vehicles in operation.

AUTHORITY: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104-88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 212, Pub. L. 106-159, 113 Stat. 1748, 1766; and 49 CFR 1.73.

SOURCE: 33 FR 19765, Dec. 25, 1968, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 398 appear at 66 FR 49874, Oct. 1, 2001.

§ 398.1 Definitions.

(a) *Migrant worker*. "Migrant worker" means any individual proceeding to or returning from employment in agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)) or section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)).

(b) *Carrier of migrant workers by motor vehicle*. "Carrier of migrant worker by motor vehicle" means any person, including any "contract carrier by motor vehicle", but not including any "common carrier by motor vehicle", who or which transports in interstate or foreign commerce at any one time three or more migrant workers to or from their employment by any motor vehicle other than a passenger automobile or station wagon, except a migrant worker transporting himself/herself or his/her immediate family.

(c) *Motor carrier*. "Motor carrier" means any carrier of migrant workers by motor vehicle as defined in paragraph (b) of this section.

(d) *Motor vehicle*. "Motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof, determined

