

FMCSA Regulatory Guidance

as of 3/1/16

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Part 325

§325.1 Scope of the rules in this part.

Question 1: What noise emission requirements are applicable to auxiliary generators?

Guidance: Auxiliary generators which normally operate only when a Commercial Motor Vehicle (CMV) is stopped or moving at 5 mph or less are “auxiliary equipment” of the kind contemplated by U.S. Environmental Protection Agency and are, therefore, exempt from the noise limits in [Part 325](#). However, noise from generators that run while the CMV is moving at higher speeds would be measured as part of total vehicle noise.

Question 2: Do refrigeration units on tractor-trailer combinations fall within the exemption listed in [part 325, subpart A](#) of the Federal Motor Carrier Safety Regulations?

Guidance: No.

Part 367

§367.20 Fees under the Unified Carrier Registration Plan and Agreement for Each Registration Year.

Question 1: Do the fees set by this section apply to registration years beginning after December 31, 2009?

Guidance: Yes. The States participating in the Unified Carrier Registration Plan and Agreement may assess and collect fees pursuant to the fee schedule set forth in [49 CFR 367.20](#). The statutory amendment of the applicable definition of commercial motor vehicles in 49 U.S.C. 14504a that applies beginning after December 31, 2009, also governs the application of the fees established by this section.

[75 FR 4306, Jan. 27, 2010]

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

Part 382

§382.103 Applicability.

Question 1: Are intrastate drivers of Commercial Motor Vehicle (CMV)s, who are required to obtain CDLs, required to be alcohol and drug tested by their employer?

Guidance: Yes. The definition of commerce in [382.107](#) is taken from 49 U.S.C. Section 31301 which encompasses interstate, intrastate and foreign commerce.

Question 2: Are students who will be trained to be motor vehicle operators subject to alcohol and drug testing? Are they required to obtain a CDL in order to operate training vehicles provided by the school?

Guidance: Yes. [§382.107](#) includes the following definitions:

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 (CMV)s or assigns persons to operate such a vehicle. The term employer includes an employer's agents, officers and representatives.

Driver means any person who operates a Commercial Motor Vehicle (CMV)s.

Truck and bus driver training schools meet the definition of an employer because they own or lease Commercial Motor Vehicle (CMV)s and assign students to operate them at appropriate points in their training. Similarly, students who actually operate CMVs to complete their course work qualify as drivers.

The CDL regulations provide that "no person shall operate" a Commercial Motor Vehicle (CMV)s before passing the written and driving tests required for that vehicle ([49 CFR 383.23\(a\)\(1\)](#)). Virtually all of the vehicles used for training purposes meet the definition of a CMV, and student drivers must therefore obtain a CDL.

Question 3: Are [part 382](#) alcohol and drug testing requirements applicable to firefighters in a State which gives them the option of obtaining a CDL or a non-commercial class A or B license restricted to operating fire equipment only?

Guidance: No. The applicability of [part 382](#) is coextensive with [part 383](#)—the general CDL requirements. Only those persons required to obtain a CDL under Federal law and who actually perform safety-sensitive duties, are required to be tested for drugs and alcohol.

The FHWA, exercising its waiver authority, granted the States the option of waiving firefighters from CDL requirements. A State which gives fire fighters the choice of obtaining either a CDL or a non-commercial license has exercised the option not to require CDLs. Therefore, because a CDL is not required, by extension [part 382](#) is not applicable.

A firefighter in the State would not be required under Federal law to be tested for drugs and alcohol regardless of the type of license which the employer required as a condition of employment or the driver actually obtained. It is the Federal requirement to obtain a CDL, nonexistent in the State, that entails drug and alcohol testing, not the fact of actually holding a CDL.

Question 4: An employer or State government agency requires CDLs for drivers of motor vehicles: (1) with a GVWR of 26,000 pounds or less; (2) with a GCWR of 26,000 pounds or less inclusive of a towed unit with a GVWR of 10,000 pounds or less; (3) designed to transport 15 or less passengers, including the driver; or (4) which transport HM, but are not required to be placarded under 49 CFR part 172, subpart F. Are such drivers required by [part 382](#) to be tested for the use of alcohol or controlled substances?

Guidance: No. [Part 382](#) requires or authorizes drug and alcohol testing only of those drivers required by part 383 to obtain a CDL. Since the vehicles described above do not meet the definition of a Commercial Motor Vehicle (CMV)s in part 383, their drivers are not required by Federal regulations to have a CDL.

Question 5: Are Alaskan drivers with a CDL who operate Commercial Motor Vehicle (CMV)s and have been waived from certain CDL requirements subject to controlled substances and alcohol testing?

Guidance: Yes. Alaskan drivers with a CDL who operate Commercial Motor Vehicle (CMV)s are subject to controlled substances and alcohol testing because they have licenses marked either "commercial driver's license" or "CDL." The waived drivers are only exempted from the knowledge and skills tests, and the photograph on license requirements.

Question 6: Do the Federal Highway Administration (FHWA)'s alcohol and controlled substances testing regulations apply to employers and drivers in U.S. territories or possessions such as Puerto Rico and Guam?

Guidance: No. The rule by definition applies only to employers and drivers domiciled in the 50 states and the District of Columbia.

Question 7: Which drivers are to be included in a alcohol and controlled substances testing program under the Federal Highway Administration (FHWA)'s rule?

Guidance: Any person who operates a Commercial Motor Vehicle (CMV)s, as defined in [§382.107](#), in intrastate or interstate commerce and is subject to the CDL requirement of [49 CFR part 383](#).

Question 8: Is a foreign resident driver operating between the U.S. and a foreign country from a U.S. terminal for a U.S.-based employer subject to the Federal Highway Administration (FHWA) alcohol and controlled substances testing regulations?

Guidance: Yes. A driver operating for a U.S.-based employer is subject to part 382.

Question 9: What alcohol and drug testing provisions apply to foreign drivers employed by foreign motor carriers?

Guidance: Foreign employers are subject to the alcohol and drug testing requirements in [part 382](#) (see [§382.103](#)). All provisions of the rules will be applicable while drivers are operating in the U.S. Foreign drivers may also be subject to State laws, such as probable cause testing by law enforcement officers.

***Question 10:** Are volunteer drivers subject to alcohol and drug testing?

Guidance: Yes. The applicability of [Part 382](#) is coextensive with [Part 383](#). The definition of "driver" in [§382.107](#) and the definition of "employee" in [§383.5](#) both include "any" operator or person who operates a commercial motor vehicle. There is no exception for volunteer drivers. They are included in the scope and intent of the definition of "commerce" (in both [§382.107](#) and [§383.5](#)), because their functions "affect trade, traffic, and transportation." The question of whether or not they are compensated is irrelevant.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§382.105 Testing procedures.

Question 1: What does a Breath Alcohol Technician (BAT) do when a test involves an independent, self-employed owner-operator with a confirmed alcohol concentration of 0.02 or greater, to notify a company representative as required by §40.65(i)?

Guidance: The independent, self-employed owner-operator will be notified by the BAT immediately and the owner-operator's certification in Step 4 notes that the self-employed owner-operator has been notified. No further notification is necessary. The Breath Alcohol Technician (BAT) will provide copies 1 and 2 to the self-employed owner-operator directly.

Question 2: A driver does not have a photo identification card. Must an employer representative identify the driver in the presence of the Breath Alcohol Technician (BAT)/urine specimen collector or may the employer representative identify the driver via a telephone conversation?

Guidance: Those subject to [part 382](#) are subject first, generally, to [part 383](#). [Part 383](#) requires all States, with an exception in Alaska for a very small group of individuals, to provide a CDL = Commercial Driver's License document to the individual that includes, among other things: the full name, signature,

and mailing address of the person to whom such license is issued; physical and other information to identify and describe the person including date of birth (month, day, and year), sex, and height; and, a color photograph of the person. Except in these rare Alaskan instances, the Federal Highway Administration (FHWA) fully expects most employer's to require the driver to present the CDL document to the Breath Alcohol Technician (BAT) or urine collector.

A driver subject to alcohol and drug testing should be able to provide the Commercial Driver's License (CDL) document. In those rare instances that the CDL or other form of photo identification is not produced for verification, an employer representative must be contacted and must provide identification. The Federal Highway Administration (FHWA) will allow employer representatives to identify drivers in any way that the employer believes will positively identify the driver.

Question 3: Will foreign drug testing laboratories need to be certified by the National Institute on Drug Abuse (NIDA)? Will they need to be certified by the Department of Health and Human Services (DHHS)?

Guidance: The NIDA, an agency of the DHHS, no longer administers the workplace drug testing laboratory certification program. This program is now administered by the DHHS' Substance Abuse and Mental Health Services Administration. All motor carriers are required to use DHHS-certified laboratories for analysis of alcohol and controlled substances tests as neither Mexico nor Canada has an equivalent laboratory certification program.

Question 4: Particularly in light of the coverage of Canadian and Mexican employees, how should Medical Review Officer (MRO)s deal, in the verification process, with claims of the use of foreign prescriptions or over-the-counter medication?

Guidance: Possession or use of controlled substances are prohibited when operating a Commercial Motor Vehicle (CMV) under the Federal Highway Administration (FHWA) regulations regardless of the source of the substance. A limited exception exists for a substance's use in accordance with instructions provided by a licensed medical practitioner who knows that the individual is a CMV driver who operates CMVs in a safety-sensitive job and has provided instructions to the CMV driver that the use of the substance will not affect the CMV driver's ability to safely operate a CMV (see §[382.213](#), [391.41\(b\)\(12\)](#), and [392.4\(c\)](#)). Individuals entering the United States must properly declare controlled substances with the U.S. Customs Service. 21 CFR 1311.27

The Federal Highway Administration (FHWA) expects Medical Review Officer (MRO)s to properly investigate the facts concerning a Commercial Motor Vehicle (CMV) driver's claim that a positive controlled substance test result was caused by a prescription written by a knowledgeable, licensed medical practitioner or the use of an over-the-counter substance that was obtained in a foreign country without a prescription. This investigation should be documented in the MRO's files.

If the Commercial Motor Vehicle (CMV) driver lawfully obtained a substance in a foreign country without a prescription which is a controlled substance in the United States, the Medical Review Officer (MRO)s must also investigate whether a knowledgeable, licensed medical practitioner provided instructions to the CMV driver that the use of the "over-the-counter" substance would not affect the driver's ability to safely operate a CMV.

Potential violations of [§392.4](#) must be investigated by the law enforcement officer at the time possession or use is discovered to determine whether the exception applies.

§382.107 Definitions.

Question 1: What is an owner-operator?

Guidance: The Federal Highway Administration (FHWA) neither defines the term "owner-operator" nor uses it in regulation. The FHWA regulates "employers" and "drivers." An owner-operator may act as both an employer and a driver at certain times, or as a driver for another employer at other times depending on contractual arrangements and operational structure.

§382.109 Preemption of State and local laws.

Question 1: An employer is required by State or local law, regulation, or order to bargain with unionized employees over discretionary elements of the U.S. Department of Transportation (DOT) alcohol and drug testing regulations (e.g., selection of DHHS-approved laboratories or Medical Review Officer (MRO)s). May the employer defer the 1995 or 1996 implementation dates for testing employees until the collective bargaining process has produced agreement on these discretionary elements, or must the employer implement testing as required by part 382?

Guidance: The Federal Highway Administration (FHWA) provided large employers 45 weeks and small employers 97 weeks collectively to bargain the discretionary elements of the part 382 testing program. An employer must implement alcohol and controlled substances testing in accordance with the schedule in [§382.115](#). If observance of the collective bargaining process would make it impossible for the employer to comply with these deadlines, [§382.109\(a\)\(1\)](#) preempts the State or local bargaining requirement to the extent needed to meet the implementation date.

§382.113 Requirement for notice.

Question 1: Must a notice be given before each test or will a general notice given to drivers suffice?

Guidance: A driver must be notified before submitting to each test that it is required by [part 382](#). This notification can be provided to the driver either verbally or in writing. In addition, the FHWA believes that the use of the DOT Breath Alcohol Testing Form, OMB No. 2105-0529, and the Drug Testing Custody and Control Form, 49 CFR part 40, appendix A, will support the verbal or written notice that the test is being conducted in accordance with Part 382.

§382.115 Starting date for testing programs.

Question 1: In a governmental entity structured into various subunits such as departments, divisions, and offices, how is the number of an employer's drivers determined for purposes of the implementation date of controlled substances and alcohol testing?

Guidance: [Part 382](#) testing applies to governmental entities, including those of the Federal government, the States, and political subdivisions of the States. An employer is defined as any person that owns or leases Commercial Motor Vehicle (CMV)s, or assigns drivers to operate them. Therefore, any governmental entity, or a subunit of it that controls CMVs and the day-to-day operations of its drivers, may be considered the employer for purposes of [part 382](#). For example, a city government divided into various departments, such as parks and public works, could consider the departments as separate employers if the CMV operations are separately controlled. The city also has the option of deeming the city as the employer of all of the drivers of the various departments.

§382.121 Employee admission of alcohol and controlled substances use.

***Question 1:** If an employee admits to alcohol misuse or drug use, when is it appropriate for the employer to apply the exception in [§382.121](#)?

Guidance: In order for the exception in [§382.121](#) to be used, all the provisions and conditions of this section must be met. In this instance, none of the consequences of prohibited conduct would apply, and the employer would not report the admission to any subsequent employers. However, if any of the conditions in [§382.121](#) is absent (for example, if the employer has no existing written policy, or if the driver fails to follow the employer's treatment program), then the exception may not be used, and the driver would be fully subject to all the consequences of prohibited conduct, including referral and treatment in accordance with Part 40 Subpart O, and reporting to subsequent employers in accordance with §40.25 and [§391.23\(e\)](#).

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§382.205 On-duty use.

Question 1: What is meant by the terms "use alcohol" or "alcohol use"? Is observation of use sufficient or is an alcohol test result required?

Guidance: The term “alcohol use” is defined in [§382.107](#). The employer is prohibited in [§382.205](#) from permitting a driver to drive when the employer has actual knowledge of the driver’s use of alcohol, regardless of the level of alcohol in the driver’s body. The form of knowledge is not specified. It may be obtained through observation or other method.

§382.213 Controlled substances use.

Question 1: Must a physician specifically advise that substances in a prescription will not adversely affect the driver’s ability to safely operate a Commercial Motor Vehicle (CMV) or may a pharmacist’s advice or precautions printed on a container suffice for the advice?

Guidance: A physician must specifically advise the driver that the substances in a prescription will not adversely affect the driver’s ability to safely operate a Commercial Motor Vehicle (CMV).

§382.301 Pre-employment testing.

Question 1: What is meant by the phrase, “an employer who uses, but does not employ, a driver * * *”? Describe a situation to which the phrase would apply.

Guidance: This exception was contained in the original drug testing rules and was generally applied to “trip-lease” drivers involved in interstate commerce. A trip-lease driver is generally a driver employed by one motor carrier, but who is temporarily leased to another motor carrier for one or more trips generally for a time period less than 30 days. The phrase would also apply to volunteer organizations that use loaned drivers.

Question 2: Must school bus drivers be pre-employment tested after they return to work after summer vacation in each year in which they do not drive for 30 consecutive days?

Guidance: A school bus driver whom the employer expects to return to duty the next school year does not have to be pre-employment tested so long as the driver has remained in the random selection pool over the summer. There is deemed to be no break in employment if the driver is expected to return in the fall.

On the other hand, if the driver is taken out of all U.S. Department of Transportation (DOT) random pools for more than 30 days, the exception to pre-employment drug testing in [§382.301](#) would be unavailable and a drug test would have to be administered after the summer vacation.

Question 3: Is a pre-employment controlled substances test required if a driver returns to a previous employer after his/her employment had been terminated?

Guidance: Yes. A controlled substances test must be administered any time employment has been terminated for more than 30 days and the exceptions under [§382.301\(c\)](#) were not met.

Question 4: Must all drivers who do not work for an extended period of time (such as layoffs over the winter or summer months) be pre-employment drug tested each season when they return to work?

Guidance: If the driver is considered to be an employee of the company during the extended (layoff) period, a pre-employment test would not be required so long as the driver has been included in the company’s random testing program during the layoff period. However, if the driver was not considered to be an employee of the company at any point during the layoff period, or was not covered by a program, or was not covered for more than 30 days, then a pre-employment test would be required.

Question 5: What must an employer do to avail itself of the exceptions to pre-employment testing listed under [§382.301\(c\)](#)?

Guidance: An employer must meet all requirements in [§382.301\(c\)](#) and [\(d\)](#), including maintaining all required documents. An employer must produce the required documents at the time of the Compliance Review for the exception to apply.

Question 6: May a Commercial Driver’s License (CDL) driving skills test examiner conduct a driving skills test administered in accordance with [49 CFR part 383](#) before a person subject to [part 382](#) is tested for alcohol and controlled substances?

Guidance: Yes. A Commercial Driver's License (CDL) driving skills test examiner, including a third party CDL driving skills test examiner, may administer a driving skills test to a person subject to [part 382](#) without first testing him/her for alcohol and controlled substances. The intent of the CDL driving skills test is to assess a person's ability to operate a commercial motor vehicle during an official government test of their driving skills. However, this guidance does not allow an employer (including a truck or bus driver training school) to use a person as a current company, lease, or student driver prior to obtaining a verified negative test result. An employer must obtain a verified negative controlled substance test result prior to dispatching a driver on his/her first trip.

***Question 7:** A driver has tested positive and completed the referral and evaluation process up to the point of being released by the SAP for a return-to-duty test. The driver no longer works for the employer where he/she tested positive. The driver applies for work with a new employer. Must the new employer conduct two separate controlled substances tests (one pre-employment and one return-to-duty), or will one test suffice for both purposes?

Guidance: An individual, who has complied with the education/treatment process as required under 49 CFR Part 40, Subpart O, but has not submitted to a return-to-duty test, and is seeking employment with a new employer, a single test will suffice to meet the requirements of [§382.301](#) and [§382.309](#) only when the new employer would be required to conduct both tests on the same day.

***Question 8:** May an employer conduct a road test administered in accordance with [49 CFR §391.31](#) prior to driver-applicant subject to [49 CFR §382](#) submits to a pre-employment controlled substances test?

Guidance: Yes. An employer may administer a road test to a prospective driver subject to [Part 382](#) without first testing him/her for controlled substances. The intent of the road test is to effectively evaluate the driver's ability to operate a commercial motor vehicle (CMV). This guidance does not allow the motor carrier to dispatch the prospective driver on his/her first trip prior to obtaining a verified negative test result.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§382.303 Post-accident testing.

Question 1: Why does the Federal Highway Administration (FHWA) allow post-accident tests done by Federal, State or local law enforcement agencies to substitute for a [§382.303](#) test even though the FHWA does not allow a Federal, State or local law enforcement agency test to substitute for a pre-employment, random, reasonable suspicion, return-to-duty, or follow-up test? Will such substitutions be allowed in the future?

Guidance: A highway accident is generally investigated by a Federal, State, or local law enforcement agency that may determine that probable cause exists to conduct alcohol or controlled substances testing of a surviving driver. The Federal Highway Administration (FHWA) believes that testing done by such agencies will be done to document an investigation for a charge of driving under the influence of a substance and should be allowed to substitute for a FHWA-required test. The FHWA expects this provision to be used rarely.

The Federal Highway Administration (FHWA) is required by statute to provide certain protection for drivers who are tested for alcohol and controlled substances. The FHWA believes that law enforcement agencies investigating accidents will provide similar protection based on the local court's prior action in such types of testing.

The Federal Highway Administration (FHWA) will not allow a similar approach for law enforcement agencies to conduct testing for the other types of testing. A law enforcement agency, however, may act as a consortium to provide any testing in accordance with parts 40 and [382](#).

Question 2: May an employer allow a driver, subject to post-accident controlled substances testing, to continue to drive pending receipt of the results of the controlled substances test?

Guidance: Yes. A driver may continue to drive, so long as no other restrictions are imposed by [§382.307](#) or by law enforcement officials.

Question 3: A commercial motor vehicle operator is involved in an accident in which an individual is injured but does not die from the injuries until a later date. The commercial motor vehicle driver does not receive a citation under State or local law for a moving traffic violation arising from the accident. How long after the accident is the employer required to attempt to have the driver subjected to post-accident testing?

Guidance: Each employer is required to test each surviving driver for alcohol and controlled substances as soon as practicable following an accident as required by [§382.303](#). However, if an alcohol test is not administered within 8 hours following the accident, or if a controlled substance test is not administered within 32 hours following the accident, the employer must cease attempts to administer that test. In both cases the employer must prepare and maintain a record stating the reason(s) the test(s) were not promptly administered.

If the fatality occurs following the accident and within the time limits for the required tests, the employer shall attempt to conduct the tests until the respective time limits are reached. The employer is not required to conduct any tests for cases in which the fatality occurs outside of the 8 and 32 hour time limits.

Question 4: What post-accident alcohol and drug testing requirements are there for U.S. employer's drivers involved in an accident occurring outside the U.S.?

Guidance: U.S. employers are responsible for ensuring that drivers who have an accident (as defined in [§390.5](#)) in a foreign country are post-accident alcohol and drug tested in conformance with the requirements of 49 CFR parts 40 and [382](#). If the test(s) cannot be administered within the required 8 or 32 hours, the employer shall prepare and maintain a record stating the reasons the test(s) was not administered (see [§382.303\(b\)\(1\)](#) and [\(b\)\(4\)](#)).

Question 5: What post-accident alcohol and drug testing requirements are there for foreign drivers involved in accidents occurring outside the United States?

Guidance: Post-accident alcohol and drug testing is required for Commercial Motor Vehicle (CMV) accidents occurring within the U.S. and on segments of interstate movements into Canada between the U.S.-Canadian border and the first physical delivery location of a Canadian consignee. The FHWA further believes its regulations require testing for segments of interstate movements out of Canada between the last physical pick-up location of a Canadian consignor and the U.S.-Canadian border. The same would be true for movements between the U.S.-Mexican border and a point in Mexico.

For example, a motor carrier has two shipments on a Commercial Motor Vehicle (CMV) from a shipper in Chicago, Illinois. The first shipment will be delivered to Winnipeg, Manitoba and the second to Lloydminster, Saskatchewan. A driver is required to be post-accident tested for any CMV accident that meets the requirements to conduct [49 CFR 382.303](#) Post-accident testing, that occurs between Chicago, Illinois and Winnipeg, Manitoba (the first delivery point). The Federal Highway Administration (FHWA) would not require a foreign motor carrier to conduct testing of foreign drivers for any accidents between Winnipeg and Lloydminster.

The Federal Highway Administration (FHWA) *does not* believe it has authority over Canadian and Mexican motor carriers that operate within their own countries where the movement does not involve movements into or out of the United States. For example, the FHWA does not believe it has authority to require testing for transportation of freight from Prince George, British Columbia to Red Deer, Alberta that does not traverse the United States.

If the driver is not tested for alcohol and drugs as required by [§382.303](#) and the motor carrier operates in the U.S. during a four-month period of time after the event that triggered the requirement for such a test, the motor carrier will be in violation of [part 382](#) and may be subject to penalties under [§382.507](#).

§382.305 Random testing.

Question 1: Is a driver who is on-duty, but has not been assigned a driving task, considered to be ready to perform a safety-sensitive function as defined in [§382.107](#) subjecting the driver to random alcohol testing?

Guidance: A driver must be about to perform, or immediately available to perform, a safety-sensitive function to be considered subject to random alcohol testing. A supervisor, mechanic, or clerk, etc., who is on call to perform safety-sensitive functions may be tested at any time they are on call, ready to be dispatched while on-duty.

Question 2: What are the employer's obligations, in terms of random testing, with regard to an employee who does not drive as part of the employee's usual job functions, but who holds a Commercial Driver's License (CDL) and may be called upon at any time, on an occasional or emergency basis, to drive?

Guidance: Such an employee must be in a random testing pool at all times, like a full-time driver. A drug test must be administered each time the employee's name is selected from the pool.

Alcohol testing, however, may only be conducted just before, during, or just after the performance of safety-sensitive functions. A safety-sensitive function as defined in [§382.107](#) means any of those on-duty functions set forth in [§395.2](#) On-Duty time, paragraphs (1) through (7), (generally, driving and related activities). If the employee's name is selected, the employer must wait until the next time the employee is performing safety-sensitive functions, just before the employee is to perform a safety-sensitive function, or just after the employee has ceased performing such functions to administer the alcohol test. If a random selection period expires before the employee performs a safety-sensitive function, no alcohol test should be given, the employee's name should be returned to the pool, and the number of employees subsequently selected should be adjusted accordingly to achieve the required rate.

Question 3: How should a random testing program be structured to account for the schedules of school bus or other drivers employed on a seasonal basis?

Guidance: If no school bus drivers from an employer's random testing pool are used to perform safety sensitive functions during the summer, the employer could choose to make random selections only during the school year. If the employer nevertheless chooses to make selections in the summer, tests may only be administered when the drivers return to duty.

If some drivers continue to perform safety-sensitive functions during the summer, such as driving buses for summer school, an employer could not choose to forego all random selections each summer. Such a practice would compromise the random, unannounced nature of the random testing program. The employer would test all selected drivers actually driving in the summer. With regard to testing drivers not driving during the summer, the employer has two options. One, names of drivers selected who are on summer vacation may be returned to the pool and another selection made. Two, the selected names could be held by the employer and, if the drivers return to perform safety-sensitive functions before the next random selection, the test administered upon the drivers' return.

Finally, it should be noted that reductions in the number of drivers during summer vacations reduces the average number of driving positions over the course of the year, and thus the number of tests which must be administered to meet the minimum random testing rate.

Question 4: Are driver positions that are vacant for a testing cycle to be included in the determination of how many random tests must be conducted?

Guidance: No. The Federal Highway Administration (FHWA) random testing program tests employed or utilized drivers, not positions that are vacant.

Question 5: May an employer use the results of another program in which a driver participates to satisfy random testing requirements if the driver is used by the employer only occasionally?

Guidance: The rules establish an employer-based testing program. Employers remain responsible at all times for ensuring compliance with all of the rules, including random testing, for all drivers which they use, regardless of any utilization of third parties to administer parts of the program. Therefore, to use another's program, an employer must make the other program, by contract, consortium agreement, or

other arrangement, the employer's own program. This would entail, among other things, being held responsible for the other program's compliance, having records forwarded to the employer's principal place of business on 2 days notice, and being notified of and acting upon positive test results.

Question 6: Once an employee is randomly tested during a calendar year, is his/her name removed from the pool of names for the calendar year?

Guidance: No, the names of those tested earlier in the year must be returned to the pool for each new selection. Each driver must be subject to an equal chance of being tested during each selection process.

Question 7: Is it permissible to make random selections by terminals?

Guidance: Yes. If random selection is done based on locations or terminals, a two-stage selection process must be utilized. The first selection would be made by the locations and the second selection would be of those employees at the location(s) selected. The selections must ensure that each employee in the pool has an equal chance of being selected and tested, no matter where the employee is located.

Question 8: When a driver works for two or more employers, in whose random pool must the driver be included?

Guidance: The driver must be in the pool of each employer for which the driver works.

Question 9: After what period of time may an employer remove a casual driver from a random pool?

Guidance: An employer may remove a casual driver, who is not used by the employer, from its random pool when it no longer expects the driver to be used.

Question 10: If an employee is off work due to temporary lay-off, illness, injury or vacation, should that individual's name be removed from the random pool?

Guidance: No. The individual's name should not be removed from the random pool so long as there is a reasonable expectation of the employee's return.

Question 11: Is it necessary for an owner-operator, who is not leased to a motor carrier, to belong to a consortium for random testing purposes?

Guidance: Yes.

Question 12: If an employer joins a consortium, and the consortium is randomly testing at the appropriate rates, will these rates meet the requirements of the alcohol and controlled substances testing for the employer even though the required percent of the employer's drivers were not randomly tested?

Guidance: Yes.

Question 13: Is it permissible to combine the drivers from the subsidiaries of a parent employer into one pool, with the parent employer acting as a consortium?

Guidance: Yes.

Question 14: How should an employer compute the number of random tests to be given to ensure that the appropriate testing rate is achieved given the fluctuations in driver populations and the high turnover rate of drivers?

Guidance: An employer should take into account fluctuations by estimating the number of random tests needed to be performed over the course of the year. If the carrier's driver workforce is expected to be relatively constant (i.e., the total number of driver positions is approximately the same) then the number of tests to be performed in any given year could be determined by multiplying the average number of driver positions by the testing rate.

If there are large fluctuations in the number of driver positions throughout the year without any clear indication of the average number of driver positions, the employer should make a reasonable estimate of the number of positions. After making the estimate, the employer should then be able to determine the number of tests necessary.

Question 15: May an employer or consortium include non-U.S. Department of Transportation (DOT)-covered employees in a random pool with U.S. Department of Transportation (DOT)-covered employees?

Guidance: No.

Question 16: Canadians believe that their laws require employer actions be tied to the nature of the job and the associated safety risk. Canadian employers believe they will have to issue alcohol and drug testing policies that deal with *all* drivers in an identical manner, not just drivers that cross the border into the United States. If a motor carrier wanted to add cross border work to an intra-Canadian driver's duties, and the driver was otherwise qualified under the **FHWA** rules, may the pre-employment test be waived?

Guidance: The Federal Highway Administration (FHWA) has long required, since the beginning of the drug testing program in 1988, that transferring from intrastate work into interstate work requires a "pre-employment" test regardless of what type of testing a State might have required under intrastate laws. This policy also applied to motor carriers that had a pre-employment testing program similar to the Federal Highway Administration (FHWA) requirement. The Federal Highway Administration (FHWA) believes it is reasonable to apply this same interpretation to the first time a Canadian or Mexican driver enters the United States.

This policy was delineated in the *Federal Register* of February 15, 1994 (59 FR 7302, at 7322). The Federal Highway Administration (FHWA) believes motor carriers should separate drivers into intra-Canadian and inter-State groups for their policies and the random selection pools. If a driver in the intra-Canadian group (including the random selection pool) were to take on driving duties into the United States, the driver would be subject to a pre-employment test to take on this driving task. Although the circumstance is not actually a first employment with the motor carrier, such a test would be required because it would be the first time the driver would be subject to [part 382](#).

***Question 17:** May an employer notify a driver of his/her selection for a random controlled substances test while the driver is in an off-duty status?

Guidance: Yes. [Part 382](#) does not prohibit an employer from notifying a driver of his/her selection for a random controlled substances test while the driver is in an off-duty status.

If an employer selects a driver for a random controlled substances test while the driver is in an off-duty status, and then chooses to notify the driver that he/she has been selected while the driver is still off-duty, the employer must ensure that the driver proceeds immediately to a collection site. Immediately, in this context, means that all the driver's actions, after notification, lead to an immediate specimen collection. If the employer's policy or practice is to notify drivers while they are in an off-duty status, the employer should make that policy clear to all drivers so that they are fully informed of their obligation to proceed immediately to a collection site.

If an employer does not want to notify the driver that he/she has been selected for a random controlled substances test while the driver is in an off-duty status, the employer could set aside the driver's name for notification until the driver returns to work, as long as the driver returns to work before the next selection for random testing is made.

Employers should note that regardless of when a driver is notified, the time the driver spends traveling to and from the collection site, and all time associated with providing the specimen, must be recorded as on-duty time for purposes of compliance with the hours-of-service rules.

***Question 18:** Is it permissible to select alternates for the purpose of complying with the Random Testing regulations?

Guidance: Yes, it is permissible to select alternates. However, it is only permissible if the primary driver selected will not be available for testing during the selection period because of long-term absence due to layoff, illness, injury, vacation or other circumstances. In the event the initial driver selected is not available for testing, the employer and/or C/TPA must document the reason why an alternate driver was tested. The documentation must be maintained and readily available when requested by the Secretary of

Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

***Question 19:** A motor carrier uses a consortium/third party administrator (C/TPA) to conduct its random selection of driver names. The C/TPA has many motor carriers in its random selection pool. The C/TPA has set up its random selection program to pick driver names and notifies the motor carrier whose driver the C/TPA has selected. The motor carrier notifies the C/TPA the driver is presently on long-term absence due to layoff, illness, injury, or vacation. The motor carrier also notifies the C/TPA it does not expect the driver to return to duty before the C/TPA's next selection of driver names. The C/TPA then randomly orders and selects a driver's name from the motor carrier that employs the driver who is unavailable rather than selecting the next name on the random selection list. Is this a scientifically valid and impartial method for selecting drivers for random testing in a motor carrier's program?

Guidance: This procedure is a scientifically valid method for selecting driver names. This method is similar to methods used by organizations, including the Department of Labor's Bureau of Labor Statistics, to randomly order, select, and substitute names for sampling with replacement of groups of individual and companies. This procedure has a small degree of theoretical bias for a simple random sampling selection procedure. The theoretical bias, though, is so minimal the FMCSA does not believe the agency should prohibit its use.

This method is useful for operational settings, such as FMCSA's motor carrier random testing program. The method is less impartial toward drivers than other theoretical methods, but maintains a deterrent effect for both motor carriers and drivers. This method should deter motor carriers from claiming drivers are unavailable each time the C/TPA selects one of its drivers, thereby never having its drivers subject to actual random tests.

In addition, employers and C/TPA's should establish operational procedures that will ensure, to the greatest extent possible, that the primary selections for random testing are tested. The operational procedures should include procedures that will ensure the random selection lists are updated in a timely manner. The updates will ensure that drivers who are no longer available to an employer will not be counted in the random selection lists. The operational procedures should also outline the measures for selecting alternates, including documenting the reasons for using an alternate.

***Question 20:** If an employer is subject to random testing for only a partial calendar year, how should the employer determine the number of random tests required during the year to achieve the appropriate testing rate? (Examples: new employers that begin operating midway through the calendar year; employers which merge or split midway through the calendar year; Canadian or Mexican carriers that begin U.S. operations midway through the calendar year.)

Response: The number of random tests required can be computed in the same manner as for any employer that has large fluctuations in the number of driver positions during the year. Use the formulas $T = 50\% \times D/P$ for controlled substance testing and $T = 10\% \times D/P$ for alcohol testing, where T is the number of tests required, D is the total number of drivers subject to testing, and P is the number of selection periods in a full calendar year. For any selection period during which the carrier was not subject to §382.305, simply enter a zero in the driver calculations. Example: A carrier starts operating in August and decides to test quarterly ($P = 4$). It has 16 drivers subject to testing in the third quarter and only 12 drivers subject to testing in the fourth quarter. $D = 0 + 0 + 16 + 12 = 28$. $D/P = 28/4 = 7$. $T = 50\% \text{ of } 7$, or 3.5, which must be rounded up to 4. The carrier must test 4 drivers for controlled substances between its first day of operation in August and the end of the year. Following the requirement to spread testing reasonably throughout the year, two drivers should be tested during the third quarter and two during the fourth quarter.

***Question 21:** If a driver has been notified of his/her selection of random drug and/or alcohol testing and the testing cannot be completed because of "unforeseeable obstacles" at the collection site (i.e. collection site closed, collector unavailable when driver shows up, emergency such as a fire, natural disaster, etc...), what is the carrier's responsibility?

Response: In accordance with [§382.305\(i\)\(3\)](#) and [§382.305\(l\)](#), each driver selected for testing shall be tested during the selection period; and upon notification of selection for random alcohol and/or drug testing proceed to the collection site immediately. In instances of “unforeseeable obstacles” the driver shall immediately contact the employer’s DER for instructions to an alternative collection site. These “unforeseeable obstacles” do not negate the employer’s responsibility of ensuring that the required test be administered.

***Editor’s Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§382.307 Reasonable suspicion testing.

Question 1: May a reasonable suspicion alcohol test be based upon any information or observations of alcohol use or possession, other than a supervisor’s actual knowledge?

Guidance: No. Information conveyed by third parties of a driver’s alcohol use may not be the only determining factor used to conduct a reasonable suspicion test. A reasonable suspicion test may only be conducted when a trained supervisor has observed specific, contemporaneous, articulable appearance, speech, body odor, or behavior indicators of alcohol use.

Question 2: Why does [§382.307\(b\)](#) allow an employer to use indicators of chronic and withdrawal effects of controlled substances in the observations to conduct a controlled substances reasonable suspicion test, but does not allow similar effects of alcohol use to be used for an alcohol reasonable suspicion test?

Guidance: The use of controlled substances by drivers is strictly prohibited. Because controlled substances remain present in the body for a relatively long period, withdrawal effects may indicate that the driver has used drugs in violation of the regulations, and therefore must be given a reasonable suspicion drug test.

Alcohol is generally a legal substance. Only its use or presence in sufficient concentrations while operating a Commercial Motor Vehicle (CMV) is a violation of Federal Highway Administration (FHWA) regulation. Alcohol withdrawal effects, standing alone, do not, therefore, indicate that a driver has used alcohol in violation of the regulations, and would not constitute reasonable suspicion to believe so.

Question 3: A consignee, consignor, or other party is a motor carrier employer for purposes of [49 CFR parts 382](#) through [399](#). They have trained their supervisors in accordance with [49 CFR 382.603](#) to conduct reasonable suspicion training on their own drivers. A driver for another motor carrier employer delivers, picks up, or has some contact with the consignee’s, consignor’s, or other party’s trained supervisor. This supervisor believes there is reasonable suspicion, based on their training, that the driver may have used a controlled substance or alcohol in violation of the regulations. May this trained consignee, consignor, or other party’s supervisor order a reasonable suspicion test of a driver the supervisor does not supervise for the employing/using motor carrier employer?

Guidance: No, the trained supervisor may not order a reasonable suspicion test of a driver the supervisor does not supervise for the employing/using motor carrier employer. Motor carrier employers may not conduct reasonable suspicion testing based “on reports of a third person who has made the observations, because of that person’s possible credibility problems or lack of appropriate training.”

The trained supervisor for the consignee, consignor, or other party may, however, choose to do things not required by regulation, but encouraged by the Federal Highway Administration (FHWA). They may inform the driver that they believe the driver may have violated Federal, State, or local regulations and advise them not to perform additional safety-sensitive work. They may contact the employing/using motor carrier employer to alert them of their reasonable suspicion and request the employing/using motor carrier employer take appropriate action. In addition, they may contact the police to request appropriate action.

Question 4: Are the reasonable suspicion testing and training requirements of §§382.307 and [382.603](#) applicable to an owner-operator who is both an employer and the only employee?

Guidance: No. The requirements of §§382.307 and 382.603 are not applicable to owner-operators in non-supervisory positions. §382.307 requires employers to have a driver submit to an alcohol and/or controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of part 382. Applying §382.307, Reasonable Suspicion Testing, to an owner-operator who is an employer and the only employee contradicts both “reason” and “suspicion” implicit in the title and the purpose of §382.307. A driver who has self-knowledge that he/she has violated the prohibitions of subpart B of part 382 is beyond mere suspicion. Furthermore, §382.603 requires “all persons designated to supervise drivers” to receive training that will enable him/her to determine whether reasonable suspicion exists to require a driver to undergo testing under §382.307. An owner-operator who does not hire or supervise other drivers is not in a supervisory position, no rare they subject to the testing requirements of §382.307. Therefore, such an owner-operator would not be subject to the training requirements of §382.603.

§382.309 Return-to-duty testing.

***Question 1:** A driver has tested positive and completed the referral and evaluation process up to the point of being released by the SAP for a return-to-duty test. The driver no longer works for the employer where he/she tested positive. The driver applies for work with a new employer. Must the new employer conduct two separate controlled substances tests (one pre-employment and one return-to-duty), or will one test suffice for both purposes?

Guidance: An individual, who has complied with the education/treatment process as required under 49 CFR Part 40, Subpart O, but has not submitted to a return-to-duty test, and is seeking employment with a new employer, a single test will suffice to meet the requirements of §382.301 and §382.309 only when the new employer would be required to conduct both tests on the same day.

***Editor’s Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§382.401 Retention of records.

Question 1: Many small school districts are affiliated through service units which are, in essence, a coalition of individual districts. Can these school districts have one common confidant for purposes of receiving results and keeping records?

Guidance: Yes. Employers may use agents to maintain the records, as long as they are in a secure location with controlled access. The employer must also make all records available for inspection at the employer’s principal place of business within two business days after a request has been made by an Federal Highway Administration (FHWA) representative.

§382.403 Reporting of results in a management information system.

Question 1: The Federal Highway Administration (FHWA) regulations are written on an annual calendar year basis. Will foreign motor carriers, using this system, work from July 1 to June 30, or is everything to be managed on a six-month basis for the first year and then fall into annual calendar years subsequently?

Guidance: All motor carriers must manage their programs and report results under §382.403, if requested by Federal Highway Administration (FHWA), on a January 1 to December 31 basis. This means that foreign motor carriers will report July 1 to December 31 results the first applicable year.

§382.405 Access to facilities and records.

Question 1: May employers who are subject to other Federal agencies’ regulations, such as the Nuclear Regulatory Commission, Department of Energy, Department of Defense, etc., allow those agencies to view or have access to test records required to be prepared and maintained by parts 40 and/or 382?

Guidance: Federal agencies, other than those specifically provided for in §382.405, may have access to an employer’s driver test records maintained in accordance with parts 40 or 382 only when a specific, contemporaneous authorization for release of the test records is allowed by the driver.

Question 2: Must a motor carrier respond to a third-party administrator's request (as directed by the specific, written consent of the driver authorizing release of the information on behalf of an entity such as a motor carrier) to release driver information that is contained in records required to be maintained under [§382.401](#)?

Guidance: Yes. However, the third-party administrator must comply with the conditions established concerning confidentiality, test results, and record keeping as stipulated in the "Notice: Guidance on the Role of Consortia and Third-Party Administrators (C/TPA) in U.S. Department of Transportation (DOT) Drug and Alcohol Testing Programs" published on July 25, 1995, in Volume 60, No. 142, in the *Federal Register*. Motor carriers must comply completely with [49 CFR 382.413](#) and [382.405](#) as well as any applicable regulatory guidance. Please note that written consent must be obtained from the employee each time [part 382](#) information is provided to a C/TPA, the consent must be specific to the individual or entity to whom information is being provided, and that blanket or non-specific consents to release information are not allowed.

Question 3: May employers allow unions or the National Labor Relations Board to view or have access to test records required to be prepared and maintained by parts 40 and/or [382](#), such as the list(s) of all employees actually tested?

Guidance: Unions and the National Labor Relations Board may have access to the list(s) of all employees in the random pool or the list(s) of all employees actually tested. The dates of births and SSNs must be removed from these lists prior to release. However, access to the employee's negative or positive test records maintained in accordance with parts 40 or [382](#) can be granted only when a specific, contemporaneous authorization for release of the test records is allowed by the driver.

Question 4: May an employer (motor carrier) disclose information required to be maintained under [49 CFR part 382](#) (pertaining to a driver) to the driver or the decision maker in a lawsuit, grievance, or other proceeding (including, but not limited to, worker's compensation, unemployment compensation) initiated by or on behalf of the driver, without the driver's written consent?

Guidance: Yes, a motor carrier has discretion without the driver's consent as provided by [§382.405\(g\)](#), to disclose information to the driver or the decision maker in a lawsuit, grievance, or other proceeding (including, but not limited to, worker's compensation, unemployment compensation) initiated by or on behalf of the driver concerning prohibited conduct under [49 CFR part 382](#).

Also, an employer (motor carrier) may be required to provide the test result information pursuant to other Federal statutes or an order of a competent Federal jurisdiction, such as an administrative subpoena, as allowed by [§382.405\(a\)](#) without the driver's written consent.

Question 5: What is meant by the term "as required by law" in relation to State or local laws for disclosure of public records relating to a driver's testing information and test results?

Guidance: The term "as required by law" in [§382.405\(a\)](#) means Federal statutes or an order of a competent Federal jurisdiction, such as an administrative subpoena. The Omnibus Transportation Employee Testing Act of 1991, and the implementing regulations in [part 382](#), require that test results and medical information be confidential to the maximum extent possible. (Pub. L. 102-143, Title V, section 5(a)(1), 105 Stat. 959, codified at 49 U.S.C. 31306). In addition, the Act preempts inconsistent State or local government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the regulations issued under the Act.

The FHWA believes the only State and local officials that may have access to the driver's records under [§382.405\(d\)](#) and 49 U.S.C. 31306, without the driver's written consent, are State or local government officials that have regulatory authority over an employer's (motor carrier's) alcohol and drug testing programs for purposes of enforcement of [part 382](#). Such State and local agencies conduct employer (motor carrier) compliance reviews under the FHWA's Motor Carrier Safety Assistance Program (MCSAP) on the FHWA's behalf in accordance with [49 CFR part 350](#).

§382.413 Inquiries for alcohol and controlled substances information from previous employers.

Question 1: What is to be done if a previous employer does not make the records available in spite of the employer's request along with the driver's written consent?

Guidance: Employers must make a reasonable, good faith effort to obtain the information. If a previous employer refuses, in violation of [§382.405](#), to release the information pursuant to the new employer's and driver's request, the new employer should note the attempt to obtain the information and place the note with the driver's other testing information (59 FR 7501, February 14, 1994).

Question 2: Within 14 days of first using a driver to perform safety-sensitive functions, an employer discovers that a driver had a positive controlled substances and/or 0.04 alcohol concentration test result within the previous two years. No records are discovered that the driver was evaluated by an Substance Abuse Professional (SAP) and has been released by an SAP for return to work. The employer removes the driver immediately from the performance of safety-sensitive duties. Is there a violation of the regulations?

Guidance: Based on the scenario as presented, only the driver is in violation of the rules.

Question 3: Must an employer investigate a driver's alcohol and drug testing background prior to January 1, 1995?

Guidance: No. The first implementation date of the part 382 testing programs was January 1, 1995. [§382.413](#) requires subsequent employers to obtain information retained by previous employers that the previous employers generated under a [part 382](#) testing program. Since no employer was allowed to conduct any type of alcohol or drug test under the authority of [part 382](#) prior to January 1, 1995, no tests conducted prior to 1995 are required to be obtained under [§382.413](#). An employer may, however, under its own authority, request that a driver who was subject to [part 391](#) drug testing provide prior testing information.

Question 4: Must a motor carrier respond to a third-party administrator's request (as directed by the specific, written consent of the driver authorizing release of the information on behalf of an entity such as a motor carrier) to release driver information that is contained in records required to be maintained under [§382.401](#)?

Guidance: Yes. However, the third-party administrator must comply with the conditions established concerning confidentiality, test results, and record keeping as stipulated in the "Notice: Guidance on the Role of Consortia and Third-Party Administrators (C/TPA) in U.S. Department of transportation (DOT) Drug and Alcohol Testing Programs" published on July 25, 1995, in Volume 60, No. 142, in the *Federal Register*. Motor carriers must comply completely with §§[382.413](#) and [382.405](#) as well as any applicable regulatory guidance. Please note that written consent must be obtained from the employee each time [part 382](#) information is provided to a C/TPA, that the consent must be specific to the individual or entity to whom information is being provided, and that blanket or non-specific consents to release information are not allowed.

§382.501 Removal from safety-sensitive function.

Question 1: What work may the driver perform for an employer, if a driver violates the prohibitions in [subpart B](#)?

Guidance: A driver who has violated the prohibitions of [subpart B](#) may perform any duties for an employer that are not considered "safety-sensitive functions." This may include handling of materials exclusively in a warehouse, regardless of whether the materials are considered hazardous as long as safety-sensitive functions are not performed. Safety-sensitive functions may not be performed until the individual has been evaluated by an Substance Abuse Professional (SAP), complied with any recommended treatment, has been re-evaluated by an Substance Abuse Professional (SAP), has been allowed by the Substance Abuse Professional (SAP) to return to work and has passed a return to duty test.

§382.503 Required evaluation and testing.

Question 1: If (1) a driver has a verified positive test result for controlled substances or an alcohol concentration of 0.04 or greater and (2) the driver subsequently obtains a verified negative result for controlled substances or a test result of less than 0.04 alcohol concentration without having been

evaluated by a substance abuse professional (SAP), may the motor carrier accept the subsequent test results and ignore the requirement to refer the driver to an SAP for evaluation and possible treatment?

Guidance: No. A motor carrier must have a report from an SAP showing that the driver has been evaluated and may return to work because he or she:

- (1) Does not need treatment;
- (2) Needs part-time outpatient treatment, but may continue to drive while being treated on his or her off duty time; or
- (3) Needed full-time outpatient or inpatient treatment, has received such treatment, and is ready to return to driving.

The driver must also pass a return to duty controlled substances or alcohol test that complies with all of the requirements of parts 40 and 382.

§382.507 Penalties.

Question 1: What is the fine or penalty for employers who refuse or fail to provide [Part 382](#) testing information to a subsequent employer?

Guidance: Title 49 U.S.C. 521(b)(2)(A) provides for civil penalties not to exceed \$500 for each instance of refusing or failing to provide the information required by [§382.405](#). Criminal penalties may also be imposed under 49 U.S.C. 521(b)(6).

§382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.

Question 1: If a driver refuses to sign a statement certifying that he or she has received a copy of the educational materials required in §382.601 from their employer, will the *employee* be in violation of [§382.601](#)? May the driver's supervisor sign the certificate of receipt indicating that the employee refused to sign?

Guidance: The *employer* is responsible for ensuring that each driver signs a statement certifying that he or she has received a copy of the materials required in [§382.601](#). The *employer* is required to maintain the original of the signed certificate and may provide a copy to the driver. The employer would be in violation if it uses a driver, who refuses to comply with [§382.601](#), to perform any safety sensitive function, because [§382.601](#) is a requirement placed on the employer. The employee would not be in violation if he or she drove without signing for the receipt of the policy. It is not permissible for the driver's supervisor to sign the certificate of receipt; however, it is advisable for the employer to note the attempt, the refusal, and the consequences of such action. Also, please note that the signing of the policy by the employee is in no way an acknowledgment that the policy itself complies with the regulations.

Question 2: Does [§382.601](#) require employers to provide educational materials and policies and procedures to drivers after the initial distribution of required educational materials?

Guidance: No.

§382.603 Training for supervisors.

Question 1: Does [§382.603](#) require employers to provide recurrent training to supervisory personnel?

Guidance: No.

Question 2: May an employer accept proof of supervisory training for a supervisor from another employer?

Guidance: Yes.

Question 3: Are the reasonable suspicion testing and training requirements of §§382.307 and [382.603](#) applicable to an owner-operator who is both an employer and the only employee?

Guidance: No. The requirements of §§382.307 and [382.603](#) are not applicable to owner-operators in non-supervisory positions. [§382.307](#) requires employers to have a driver submit to an alcohol and/or

controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of [subpart B of part 382](#). Applying [§382.307](#), Reasonable Suspicion Testing, to an owner-operator who is an employer and the only employee contradicts both “reason” and “suspicion” implicit in the title and the purpose of [§382.307](#). A driver who has self-knowledge that he/she has violated the prohibitions of [subpart B of part 382](#) is beyond mere suspicion. Furthermore, [§382.603](#) requires “all persons designated to supervise drivers” to receive training that will enable him/her to determine whether reasonable suspicion exists to require a driver to undergo testing under [§382.307](#). An owner-operator who does not hire or supervise other drivers is not in a supervisory position, no rare they subject to the testing requirements of [§382.307](#). Therefore, such an owner-operator would not be subject to the training requirements of [§382.603](#).

§382.605 Referral, evaluation, and treatment.

Question 1: Must an SAP evaluation be conducted in person or may it be conducted telephonically?

Guidance: Both the initial and follow-up SAP evaluations are clinical processes that must be conducted face-to-face. Body language and appearance offer important physical cues vital to the evaluation process. Tremors, needle marks, dilated pupils, exaggerated movements, yellow eyes, glazed or bloodshot eyes, lack of eye contact, a physical slowdown or hyperactivity, appearance, posture, carriage, and ability to communicate in person are vital components that cannot be determined telephonically. In-person sessions carry with them the added advantage of the SAP's being able to provide immediate attention to individuals who may be a danger to themselves or others.

Question 2: Are employers required to provide intervention and treatment for drivers who have a substance abuse problem or only refer drivers to be evaluated by an SAP?

Guidance: An employer who wants to continue to use or hire a driver who has violated the prohibitions in subpart B in the past must ensure that a driver has complied with any SAP's recommended treatment prior to the driver returning to safety-sensitive functions. However, employers must only refer to an SAP drivers who have tested positive for controlled substances, tested 0.04 or greater alcohol concentration, or have violated other prohibitions in subpart B.

Question 3: Under the DOT rules, must an SAP be certified by the DOT in order to perform SAP functions?

Guidelines: The DOT does not certify, license, or approve individual SAPs. The SAP must be able to demonstrate to the employer qualifications necessary to meet the DOT rule requirements. The DOT rules define the SAP to be a licensed physician (medical doctor or doctor of osteopathy), a licensed or certified psychologist, a licensed or certified social worker, or a licensed or certified employee assistance professional. All must have knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders (the degrees and certificates alone do not confer this knowledge). In addition, alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission, a national organization that imposes qualification standards for treatment of alcohol-related disorders, are included in the SAP definition.

Question 4: Are employers required to refer a discharged employee to an SAP?

Guidance: The rules require an employer to advise the employee, who engages in conduct prohibited under the DOT rules, of the available resources for evaluation and treatment including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs. In the scenario where the employer discharges the employee, that employer would be considered to be in compliance with the rules if it provided the list to the employee and ensured that SAPs on the list were qualified. This employer has no further obligation (e.g., to facilitate referral to the SAP; ensure that the employee receives an SAP evaluation; pay for the evaluation; or seek to obtain, or maintain the SAP evaluation synopsis).

Question 5: How will the SAP evaluation process differ if the employee is discharged by the employer rather than retained following a rule violation?

Guidance: After engaging in prohibited conduct and prior to performing safety-sensitive duties in any DOT regulated industry, the employee must receive a SAP evaluation. And, when assistance with a problem is clinically indicated, the employee must receive that assistance and demonstrate successful compliance with the recommendation as evaluated through an SAP follow-up evaluation.

The SAP process has the potential to be more complicated when the employee is not retained by the employer. In such circumstances, the SAP will likely not have a connection with the employer for whom the employee worked nor have immediate access to the exact nature of the rule violation. In addition, the SAP may have to hold the synopsis of evaluation and recommendation for assistance report until asked by the employee to forward that information to a new employer who wishes to return the individual to safety-sensitive duties. In some cases, the SAP may provide the evaluation, referral to a treatment professional, and the follow-up evaluation before the employee has received an offer of employment. This circumstance may require the SAP to hold all reports until asked by the individual to forward them to the new employer. If the new employer has a designated SAP, that SAP may conduct the follow-up evaluation despite the fact that the employee's SAP has already done so. In other words, a new employer may determine to its own satisfaction (e.g., by having the prospective employee receive a follow-up SAP evaluation utilizing the employer's designated SAP) that the prospective employee has demonstrated successful compliance with recommended treatment.

Question 6: Do community lectures and self-help groups qualify as education and/or treatment?

Guidance: Self-help groups and community lectures qualify as education but do not qualify as treatment. While self-help groups such as Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) are crucial to many employees' recovery process, these efforts are not considered to be treatment programs in and of themselves. However, they can serve as vital adjuncts in support of treatment program efforts. AA and NA programs require a level of anonymity which makes reporting client progress and prognosis for recovery impossible. If the client provides permission, AA and NA sponsors can provide attendance status reports to the SAP. Therefore, if a client is referred to one of these groups or to community lectures as a result of the SAP evaluation, the employee's attendance, when it can be independently validated, can satisfy a SAP recommendation for education as well as a gauge for determining successful compliance with a treatment program when both education and treatment are recommended by the SAP's evaluation.

Question 7: Can an employee who has violated the rules return to safety-sensitive functions prior to receiving an SAP evaluation?

Guidance: The employee is prohibited from performing any DOT regulated safety-sensitive function until being evaluated by the SAP. An employer is prohibited from permitting the employee to engage in safety-sensitive duties until evaluated. If the evaluation reveals that assistance is needed, the employee must receive the assistance, be re-evaluated by the SAP (and determined to have demonstrated successful compliance with the recommendation), and pass a return-to-duty alcohol and/or drug test prior to performing safety-sensitive duties.

Question 8: Can an employer overrule an SAP treatment recommendation?

Guidance: No. If found to need assistance, the employee cannot return to safety-sensitive functions until an SAP's follow-up evaluation determines that the employee has demonstrated successful compliance with the recommended treatment. An employer who returns a worker to safety-sensitive duties when the employee has not complied with the SAP's recommendation is in violation of the DOT rule and is, therefore, subject to a penalty.

Question 9: Is an employer obligated to return an employee to safety-sensitive duty following the SAP's finding during the follow-up evaluation that the employee has demonstrated successful compliance with the treatment recommendation?

Guidance: Demonstrating successful compliance with prescribed treatment and testing negative on the return-to-duty alcohol test and/or drug test, are not guarantees of employment or of return to work in a safety-sensitive position; they are preconditions the employee must meet in order to be considered for hiring or reinstatement to safety-sensitive duties by an employer.

Question 10: Can an employee receive the follow-up from an SAP who did not conduct the initial SAP evaluation?

Guidance: Although it is preferable for the same SAP to conduct both evaluations, this will not be realistic in some situations. For instance, the initial SAP may no longer be in the area, still under contract to the employer, or still hired by the employer to conduct the service. Additionally, the employee may have moved from the area to a new location. In all cases, the employer responsibility is to ensure that both the initial SAP and the follow-up SAP are qualified according to the DOT rules.

Question 11: Who is responsible for reimbursing the SAP for services rendered? Who is responsible for paying for follow-up testing recommended by the SAP?

Guidance: The DOT rules do not affix responsibility for payment for SAP services upon any single party. The DOT has left discussions regarding payment to employer policies and to labor-management agreements. Therefore, in some instances, this issue has become part of labor-management negotiations.

Some employers have hired or contracted staff for the purpose of providing SAP services. For some employees, especially those who have been released following a violation, payment for SAP services will become their responsibility. In any case, the SAP should be suitable to the employer who chooses to return the employee to safety-sensitive functions. Employer policies should address this payment issue.

Regarding follow-up testing recommended by the SAP, when an employer decides to return the employee to safety-sensitive duty, the employer is essentially determining that the costs associated with hiring and training a new employee exceeds the costs associated with conducting follow-up testing of the returning employee. In any case, whether the employer pays or the employee pays, if the employee returns to performance of safety-sensitive functions, the employer must ensure that follow-up testing occurs as required. The employer will be held accountable if the follow-up testing plan is not followed.

Question 12: Can the SAP direct that an employee be tested for both alcohol and drugs for the return-to-duty test and during the follow-up testing program?

Guidance: If the SAP determines that an employee referred for alcohol misuse also uses drugs, or that an employee referred for drugs use also misuses alcohol, the SAP can require that the individual be tested for both substances. The SAP's decision to test for both can be based upon information gathered during the initial evaluation, the SAP's consultation contacts with the treatment program, and/or the information presented during the follow-up evaluation.

Question 13: Can random testing be substituted for required follow-up testing?

Guidance: Follow-up testing is directly related to a rule violation and subsequent return to safety-sensitive duty. Random tests are independent of rule violations. Therefore, the two test types are to be separated—one cannot be substituted for the other or be conducted in lieu of the other. Follow-up testing should be unpredictable, unannounced, and conducted not less than six times throughout the first 12 months after the employee returns to safety-sensitive functions. Follow-up testing can last up to 60 months. An employee subject to follow-up testing will continue to be subject to an employer's random testing program.

Question 14: If a company has several employees in follow-up testing, can those employees be placed into a follow-up random testing pool and selected for follow-up testing on a random basis?

Guidance: Follow-up testing is not to be conducted in a random way. An employee's follow-up testing program is to be individualized and designed to ensure that the employee is tested the appropriate number of times as directed by the SAP. Random testing is neither individualized nor can it ensure that the employee receives the requisite number of tests.

Question 15: What actions are to occur if an employee tests positive while in the follow-up testing program?

Guidance: Employees testing positive while in follow-up testing are subject to the same specific DOT operating administration rules as if they tested positive on the initial test. In addition, the employees are subject to employer policies related to second violations of DOT rules.

Question 16: Can an SAP recommend that six follow-up tests be conducted in less than six months and then be suspended after all six are conducted?

Guidance: Follow-up testing must be conducted a minimum of six times during the first twelve months following the employee's return to safety-sensitive functions. The intent of this requirement is that testing be spread throughout the 12 month period and not be grouped into a shorter interval. When the SAP believes that the employee needs to be tested more frequently during the first months after returning to duty, the SAP may recommend more than the minimum six tests or can direct the employer to conduct more of the six tests during the first months rather than toward the latter months of the year.

Question 17: Can you clarify the DOT's intent with respect to a SAP's determination that an individual needs education?

Guidance: A SAP's decision that an individual needs an education program constitutes a clinically based determination that the individual requires assistance in resolving problems with alcohol misuse and controlled substances use. Therefore, the SAP is prohibited from referring the individual to her or his own practice for this recommended education unless exempted by DOT rules.

Question 18: In rare circumstances, it is necessary to refer an individual immediately for inpatient substance abuse services. May the SAP provide direct treatment services or refer the individual to services provided by a treatment facility with which he or she is affiliated, or must the inpatient provider refer the individual to another provider?

Guidance: SAPs are prohibited from referring an employee to themselves or to any program with which they are financially connected. SAP referrals to treatment programs must not give the impression of a conflict of interest. However, a SAP is not prohibited from referring an employee for assistance through a public agency; the employer or person under contract to provide treatment on behalf of the employer; the sole source of therapeutically appropriate treatment under the employee's health insurance program; or the sole source of therapeutically appropriate reasonably accessible to the employee.

Question 19: What arrangement for SAP services would be acceptable in geographical areas where no qualified SAP is readily available?

Guidance: The driver must be given the names, addresses, and phone numbers of the nearest SAPs. Because evaluation by a qualified SAP rarely takes more than one diagnostic session, the requirement for an in-person evaluation is not unreasonable, even if it must be conducted some distance from the employee's home.

Question 20: May an employee who tests positive be retained in a non-driving capacity?

Guidance: Yes. Before an employee returns to performing safety-sensitive functions, the requirements of [§382.605](#) must be met.

Question 21: Are foreign motor carriers required to have an employee assistance program?

Guidance: No. The employee assistance program was an element of the original FHWA drug testing program under [49 CFR part 391](#), which has been superseded by [49 CFR part 382](#). All motor carriers under [part 382](#) alcohol and drug testing regulations must refer drivers, who operate in the U.S. and violate the FHWA's alcohol and drug testing regulations, to a substance abuse professional.

Subpart B – Prohibitions

***Question 1:** If a urine specimen is collected during a given calendar year (e.g., December 30) and the medical review officer (MRO) makes the final determination the following calendar year (e.g., January 3), for which year is the test result considered to be complete?

Guidance: The Federal Highway Administration considers test results to be complete for the calendar year in which the MRO makes a final determination of the test results, regardless of the date the specimen was collected.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

Subpart B – Prohibitions

Question 1: Does the term, “actual knowledge,” used in the various prohibitions in [subpart B of part 382](#), require direct observation by a supervisor or is it more general?

Guidance: The form of actual knowledge is not specified, but may result from the employer’s direct observation of the employee, the driver’s previous employer(s), the employee’s admission of alcohol use, or other occurrence. (59 FR 7320, February 15, 1994)

Special Topics – Responsibility for Payment for Testing

Question 1: Who is responsible for paying for any testing under the alcohol and drug testing program, the employer or the driver?

Guidance: [Part 382](#) is silent as to the responsibility for paying for testing required under the rule. The employer remains responsible at all times for ensuring compliance with the rule, regardless of who pays for testing.

Special Topics – Multiple Service Providers

Question 1: May an employer use more than one Medical Review Officer (MRO), Breath Alcohol Technician (BAT), or Substance Abuse Professional (SAP)?

Guidance: Yes.

Special Topics – Medical Examiners Acting as MRO

Question 1: A medical examiner conducts a physical examination of a driver ([§391.43](#)) and also acts as the MRO for the driver’s pre-employment controlled substances test. Though the driver is otherwise physically qualified, the medical examiner declines to issue a medical examiner’s certificate because the driver tested positive for controlled substances. What should the medical examiner do when the same driver, under the aegis of a different employer, returns a short period later, is otherwise physically qualified, and tests negative for controlled substances? What, if anything, may the medical examiner reveal to the second employer if he/she declines to issue a certificate to the driver?

Guidance: The driver may be physically unqualified under [§391.41\(b\)\(12\)](#) if the medical examiner determines, based on other evidence besides the drug test, including, but not limited to knowledge of the prior positive test result, that the driver continues to use prohibited drugs ([§391.43 Medical examination; certificate of physical examination](#)). If the medical examiner so determines, a medical examiner’s certificate may not be issued. If the medical examiner determines that the driver does not use prohibited drugs, a medical examiner’s certificate may be issued.

The FHWA does not regulate communications between a medical examiner and employer, other than requiring notification by the MRO to the employer of controlled substances test results under [Part 382](#) [see §382.407(a)]. Though medical examiners must retain the physical examination form, employers are not required to do so. Many employers choose, however, to contract with medical examiners to provide copies of the “long form” to the employers. The FMCSRs leave it solely a matter between the medical examiner and the employer whether the medical examiner merely declines to issue a medical examiner’s certificate or also makes available to the employer the long form, which may include notes on alcohol and controlled substances use.

Special Topics – Biennial (Periodic) Testing Requirements

Question 1: May an employer perform testing beyond that required by the Department of Transportation?

Guidance: An employer may perform any testing provided it is consistent with applicable law and agreements, and is not represented as a Department of Transportation test.

Question 2: Does [part 382](#) require a CMV driver to carry proof of compliance with [part 382](#) and [part 40](#)?

Guidance: No. The drug and alcohol testing is employer-based and proof of compliance must be maintained by the employer. The only certificate that is required to be in the driver’s possession while

operating a CMV is the medical examiner's certificate required in [§391.41\(a\)](#) and, if applicable, a waiver of certain physical defects issued under [§391.49](#).

Part 383

§383.3 Applicability.

Question 1: Are school and church bus drivers required to obtain a CDL?

Guidance: Yes, if they drive vehicles designed to transport 16 or more people.

Question 2: Do mechanics, shop help, and other occasional drivers need a CDL if they are operating a Commercial Motor Vehicle (CMV) or if they only test drive a vehicle?

Guidance: Yes, if the vehicle is operated or test-driven on a public highway.

Question 3: Does [part 383](#) apply to drivers of recreational vehicles?

Guidance: No, if the vehicle is used strictly for non-business purposes.

Question 4: Does [part 383](#) apply to drivers of vehicles used in “van pools”?

Guidance: Yes, if the vehicle is designed to transport 16 or more people.

Question 5: May a person operate a CMV wholly on private property, not open to public travel, without a CDL?

Guidance: Yes.

Question 6: Does off-road motorized construction equipment meet the definitions of “motor vehicle” and “commercial motor vehicle” as used in §§[383.5](#) and [390.5](#)?

Guidance: No. Off-road motorized construction equipment is outside the scope of these definitions: (1) When operated at construction sites; and (2) when operated on a public road open to unrestricted public travel, provided the equipment is not used in furtherance of a transportation purpose. Occasionally driving such equipment on a public road to reach or leave a construction site does not amount to furtherance of a transportation purpose. Since construction equipment is not designed to operate in traffic, it should be accompanied by escort vehicles or in some other way separated from the public traffic. This equipment may also be subject to State or local permit requirements with regard to escort vehicles, special markings, time of day, day of the week, and/or the specific route.

Question 7: What types of equipment are included in the category of off-road motorized construction equipment?

Guidance: The definition of off-road motorized construction equipment is to be narrowly construed and limited to equipment which, by its design and function is obviously not intended for use, nor is it used on a public road in furtherance of a transportation purpose. Examples of such equipment include motor scrapers, backhoes, motor graders, compactors, tractors, trenchers, bulldozers and railroad track maintenance cranes.

Question 8: Do operators of motorized cranes and vehicles used to pump cement at construction sites have to meet the testing and licensing requirements of the CDL program?

Guidance: Yes, because such vehicles are designed to be operated on the public highways and therefore do not qualify as off-road construction equipment. The fact that these vehicles are only driven for limited distances, at less than normal highway speeds and/or incidental to their primary function, does not exempt the operators from the CDL requirements.

Question 9: May a State require persons operating recreational vehicles or other Commercial Motor Vehicle (CMV)s used by family members for non-business purposes to have a CDL?

Guidance: Yes. States may extend the CDL requirements to recreational vehicles.

Question 10: Do drivers of either a tractor trailer or straight truck that is converted into a mobile office need a CDL?

Guidance: Yes, if the vehicle meets the definition of a Commercial Motor Vehicle (CMV)s.

Question 11: Do State motor vehicle inspectors who drive trucks and motor coaches on an infrequent basis and for short distances as part of their job have to obtain a CDL?

Guidance: Yes.

Question 12: Are State, county and municipal workers operating Commercial Motor Vehicle (CMV)s required to obtain CDLs?

Guidance: Yes, unless they are waived by the State under the firefighting and emergency equipment exemption in [§383.3\(d\)](#).

Question 13: Do the regulations require that a person driving an empty school bus from the manufacturer to the local distributor obtain a CDL?

Guidance: Yes. Any driver of a bus that is designed to transport 16 or more persons, or that has a GVWR of 26,001 pounds or more, is required to obtain a CDL in the applicable class with a passenger endorsement.

Question 14: Are employees of any governmental agency who drive emergency response vehicles that transport HM in quantities requiring placarding subject to the CDL regulations?

Guidance: No, as long as the vehicle does not meet the weight/configuration thresholds for Groups A or B (in [§383.91](#)). However, under the HMTUSA of 1990, when a Federal, State or local government agency “offers HM for transportation in commerce or transports HM in furtherance of a commercial enterprise,” its vehicles are subject to the placarding requirements of [part 172, subpart F](#). Vehicles that are controlled and operated by government agencies in the conduct of governmental functions normally are not subject to placarding, since governmental activities usually are not commercial enterprises. Based on the above, local police emergency responders driving a vehicle having a gross vehicle or combination weight rating under 26,001 pounds do not need a CDL, according to the Federal minimum standards, when transporting HM as a function of their agency. The drivers should check with their State licensing agency to determine what class of license the State may require to operate the vehicles.

Question 15: Are public transit employees known as “hostlers,” who maintain and park transit buses on transit system property, subject to CDL requirements?

Guidance: No, unless operating on public roads.

Question 16: Are non-military amphibious landing craft that are usually used in water but occasionally used on a public highway Commercial Motor Vehicle (CMV)s?

Guidance: Yes, if they are designed to transport 16 or more people.

Question 17: Are students who will be trained to be motor vehicle operators subject to alcohol and drug testing? Are they required to obtain a CDL in order to operate training vehicles provided by the school?

Guidance: Yes. [§382.107](#) includes the following definitions:

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 (CMV) or assigns persons to operate such a vehicle. The term employer includes an employer's agents, officers and representatives.

Driver means any person who operates a Commercial Motor Vehicle (CMV). * * *

Truck and bus driver training schools meet the definition of an employer because they own or lease CMVs and assign students to operate them at appropriate points in their training. Similarly, students who actually operate Commercial Motor Vehicle (CMV) to complete their course work qualify as drivers.

The CDL regulations provide that “no person shall operate” a Commercial Motor Vehicle (CMV)s before passing the written and driving tests required for that vehicle ([§383.23\(a\)\(1\)](#)). Virtually all of the vehicles used for training purposes meet the definition of a CMV, and student drivers must therefore obtain a CDL.

Question 18: May States exempt motor carriers which operate wholly in intrastate commerce from the Federal Hazardous Materials Regulations (HMRs), thus exempting from the CDL requirement the driver of an unplaced vehicle with a Gross Vehicle Weight Rating (GVWR) of less than 26,001 pounds?

Guidance: The Federal Hazardous Materials Regulations (HMRs) apply to motor carriers in intrastate commerce only if they transport hazardous wastes, hazardous substances, flammable cryogenic liquids in portable tanks and cargo tanks, and marine pollutants (as those terms are defined in the HMRs) (see 49 CFR 171.1(a)(3)). Such carriers transporting any other cargo are not required to use HM placards, even if the cargo qualifies as hazardous under the Federal HMRs. Unless the vehicles used by these carriers had Gross Vehicle Weight Rating (GVWRs) of 26,001 pounds or more, they would not meet either the placarding or the GVWR test in the jurisdictional definition of a Commercial Motor Vehicle CMV ([§383.5](#)), and the driver would be exempt from the CDL requirements.

However, if the State has adopted the Federal Hazardous Materials Regulations (HMRs), or the placarding requirements of [49 CFR part 172](#), as regulations applicable to intrastate commerce, then the drivers of all vehicles required to use placards must also have CDLs.

If the State promulgates its own rules for the regulation of HM in intrastate commerce, instead of adopting the Federal Hazardous Materials Regulations (HMRs), and those rules are approved by the Federal Highway Administration (FHWA) under [49 CFR 355.21\(c\)\(3\)](#) and paragraph 3(d) of the Tolerance Guidelines (49 CFR part 350, appendix C), the drivers of vehicles with Gross Vehicle Weight Rating (GVWR)s of less than 26,001 pounds transporting such materials in intrastate commerce are required to obtain CDLs only if State law requires the use of placards.

Question 19: Must a civilian operator of a Commercial Motor Vehicle (CMV), as defined in [§383.5](#), who operates wholly within a military facility open to public travel, have a CDL?

Guidance: Yes. The CDL requirement applies to every person who operates a Commercial Motor Vehicle (CMV) in interstate, foreign or intrastate commerce. Driving a CMV on a road, street or way which is open to public travel, even though privately-owned or subject to military control, is *prima facie* evidence of operation in commerce.

Question 20: Does the Federal Highway Administration (FHWA) include the Space Cargo Transportation System (SCTS) off-road motorized military equipment under the definitions of “motor vehicle” and “commercial motor vehicle” as used in [§383.5](#)?

Guidance: No. Although the SCTS has vehicular aspects (it is mechanically propelled on wheels), the SCTS is obviously incompatible with highway traffic and is found only at locations adjacent to military bases in California and Florida, and is operated by skilled technicians. The SCTS is moved to and from its point of manufacture to its launch site by “driving” the “vehicles” short distances on public roads at speeds of five Miles Per Hour (MPH) or less. This is only incidental to their primary functions; the SCTS is not designed to operate in traffic; and its mechanical manipulation often requires a different set of knowledge and skills. In most instances, the SCTS has to be specially marked, escorted, and attended by numerous observers.

Question 21: Are police officers who operate buses and vans which are designed to carry 16 or more persons and are used to transport police officers during demonstrations and other crowd control activities required to obtain a CDL?

Guidance: Yes. The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) applies to anyone who operates a Commercial Motor Vehicle (CMV), including employees of Federal, State and local governments. Crowd control activities do not meet the conditions for a waiver of operators of firefighting and other emergency vehicles in [§383.3\(d\)](#).

Question 22: May fuel be considered “farm supplies” as used in [§383.3\(d\)\(1\)](#)?

Guidance: Yes. The decision to grant the waiver is left to each individual State.

Question 23: Is the transportation of seed-cotton modules from the cotton field to the gin by a module transport vehicle considered a form of custom harvesting activity that may be included under the Farm-Related Service Industries FRSI waiver ([§383.3\(f\)](#))?

Guidance: Yes. The transportation of seed-cotton modules from field to gin may, at the State's discretion, be considered as custom harvesting and therefore eligible for the Farm-Related Service Industries FRSI waiver. However, cotton ginning operations as an industry and, specifically the transport of cotton from the gin, are not eligible activities under the Farm-Related Service Industries FRSI waiver because these activities are not considered appropriate elements of custom harvesting.

Question 24: Does the amendment of the CMVSA by the Motor Carrier Act of 1991 exempt all custom harvesting operations from the CDL requirements or only the operation of combines?

Guidance: Section 4010 of the Motor Carrier Act of 1991 (Title IV of Pub. L. 102-240, 105 Stat 1914, 2156, December 18, 1991) modifies the definition of a "motor vehicle" in 49 U.S.C. 31301(11) by excluding "custom harvesting farm machinery" from the definition. The conference report clarifies the intent of the exclusion by stating: "The substitute[provision] removes custom harvesting farm machinery from the Act. Operators of such machinery are not covered by the Commercial Motor Vehicle Safety Act of 1986. A State, however, may still impose a requirement for a commercial driver's license if it so desires. The change does not apply to vehicles used to transport this type of machinery." (H.R. Conf. Rep. No. 404, 102d Cong., 1st Sess. 449 (1991)).

Therefore, the intent of Congress was only to exempt operators of combines and other equipment used to cut the grain and not the operators of trucks, tractors, trailers, semitrailers or any other CMV.

Question 25: May a State (1) require an applicant for a CDL farmer waiver ([§383.3\(d\)](#)) to take HM training as a condition for being granted a waiver and (2) reduce the 150-mile provision in the waiver to 50 miles if the driver is transporting HM?

Guidance: Yes. The Federal farm waiver is permissive, not mandatory.

Question 26: Do active duty military personnel, not wearing military uniforms, qualify for a waiver from the CDL requirements if the CMVs are rental trucks or leased buses from the General Services Administration?

Guidance: Yes. The drivers in question do not need to be in military uniforms to qualify for the waivers as long as they are on active duty. In regard to the vehicles, they may be owned or operated by the Department of Defense.

Question 27: Are custom harvesters who harvest trees for tree farmers eligible to be considered "custom harvesters" for purposes of the FRSI waiver from selected CDL requirements?

Guidance: If the State considers a firm that harvests trees for tree farmers to be a custom harvesting operation, then its employees could qualify for the FRSI-restricted CDLs, subject to the stringent conditions and limitations of the waiver provisions in [§383.3\(f\)](#).

Question 28: May a farmer who meets all of the conditions for a farm waiver be waived from the CDL requirements when transporting another farmer's products absent any written contract?

Guidance: If a farmer is transporting another farmer's products and being paid for doing so, he or she is acting as a contract carrier and does not meet the conditions for a farm waiver. The existence of a contract, written or verbal, is not relevant to the CDL waiver provisions.

Question 29: May a State exempt commercial motor vehicle drivers employed by a partnership, corporation or an association engaged in farming from the CDL requirements under the farmer waiver ([49 CFR 383.3\(d\)](#)) or is the waiver only available to drivers employed by a family-owned farm?

Guidance: The purpose of the farmer exemption was to give relief to family farms (53 FR 37313, September 26, 1988). The conditions for the waiver were established to ensure that the waiver focused on this type of farm operation. However, "farmer" is defined in [§390.5](#) as "any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which (a) [a]re owned by that person;

or (b) [a]re under the direct control of that person.” Since farming partnerships, corporations and associations are legal “persons,” States may exempt drivers working for these organizations from the CDL requirements, provided they can meet the strict limits imposed by the waiver conditions.

Question 30: May a State exempt commercial motor vehicle drivers employed by farm cooperatives from the commercial driver’s license (CDL) requirements under the farmer waiver ([§383\(d\)](#))?

Guidance: No. The waiver covers only operators of farm vehicles which are controlled and operated by “farmers” as defined in [§390.5](#). The waiver does not extend to ancillary businesses, like cooperatives, that provide farm-related services to members. As stated in the waiver notice (53 FR 37313, September 26, 1988), “[t]he waiver would not be available to operators of farm vehicles who operate over long distances, operate to further a commercial enterprise, or operate under contract or for-hire for farm cooperatives or other farm groups. Such operators drive for a living and do not drive only incidentally to farming.”

Question 31: Is a person who grows sod as a business considered a farmer and eligible for the farmer waiver?

Guidance: Yes, a sod farmer is eligible for the farmer waiver provided the State of licensure recognizes the growing of sod to be a farming activity.

***Question 32:** Do the regulations require that a person driving an empty school bus from the manufacturer to the local distributor obtain a CDL?

Guidance: Yes. Any driver of a bus that is designed to transport 16 or more passengers, or that has a GVWR of 11,794 kilograms (26,001 pounds) is required to obtain a CDL in the applicable class. However, a passenger endorsement is not required.

***Question 33:** Must the driver of an empty tank vehicle that is being transported from the manufacturer to a local distributor or purchaser have a tank endorsement on his or her commercial drivers license (CDL)?

Guidance: Yes. One of the primary objectives of the CDL program is to ensure that drivers are qualified to safely operate the type of vehicle they will be driving. To achieve this objective, the Federal Motor Carrier Safety Regulations (FMCSRs) require a driver to pass a knowledge and skills test for the CMV group they intend to drive. In addition to this requirement, if the driver will be operating double/triple trailers, a tank vehicle, or a CMV used to transport passengers, they must also obtain an appropriate endorsement on their CDL. The specific requirements for the knowledge and skills tests an applicant must meet to obtain a CDL and the various endorsements can be found in [Subpart G of part 383](#) of the FMCSRs.

Question 34: Would a tillerman, a person exercising control over the steerable rear axle(s) on a commercial motor vehicle (CMV), be considered a driver or “* * * person who operates a [CMV] * * *”, ([§ 383.3](#)), and thus subject to applicable commercial driver’s license regulations?

Guidance: A person physically located on the rear of the CMV who controls a steerable rear axle while the CMV is moving at highway speeds would be considered a “* * * person who operates a commercial motor vehicle * * *” ([§ 383.3](#)), and would therefore be subject to the applicable commercial driver’s license regulations in 49 CFR part 383. A person walking beside a CMV or riding in an escort car while controlling a steerable rear axle at slow speeds would not be considered a “* * * person who operates a [CMV] * * *” ([§ 383.3](#)), and therefore would not be subject to applicable commercial driver’s license regulations.

***Editor’s Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§383.5 Definitions.

Question 1: a. Does “designed to transport” as used in the definition of a Commercial Motor Vehicle (CMV) in [§383.5](#) mean original design or current design when a number of seats are removed?

b. If all of the seats except the driver's seat are removed from a vehicle originally designed to transport only passengers to convert it to a cargo-carrying vehicle, does this vehicle meet the definition of a Commercial Motor Vehicle (CMV) in [§383.5](#)?

Guidance: a. “Designed to transport” means the original design. Removal of seats does not change the design capacity of the Commercial Motor Vehicle (CMV).

b. No, unless this modified vehicle has a Gross Vehicle Weight Rating (GVWR) over 26,000 pounds or is used to transport placarded HM.

Question 2: Are rubberized collapsible containers or “bladder bags” attached to a trailer considered a tank vehicle, thus requiring operators to obtain a CDL with a tank vehicle endorsement?

Guidance: Yes.

Question 3: If a vehicle’s Gross Vehicle Weight Rating (GVWR) plate and/or VIN number are missing but its actual gross weight is 26,001 pounds or more, may an enforcement officer use the latter instead of GVWR to determine the applicability of the [Part 383](#)?

Guidance: Yes. The only apparent reason to remove the manufacturer’s Gross Vehicle Weight Rating (GVWR) plate or VIN number is to make it impossible for roadside enforcement officers to determine the applicability of [part 383](#), which has a GVWR threshold of 26,001 pounds. In order to frustrate willful evasion of safety regulations, an officer may therefore presume that a vehicle which does not have a manufacturer’s GVWR plate and/or does not have a VIN number has a GVWR of 26,001 pounds or more if: (1) It has a size and configuration normally associated with vehicles that have a GVWR of 26,001 pounds or more; and (2) It has an actual gross weight of 26,001 pounds or more.

A motor carrier or driver may rebut the presumption by providing the enforcement officer the Gross Vehicle Weight Rating (GVWR) plate, the VIN number or other information of comparable reliability which demonstrates, or allows the officer to determine, that the GVWR of the vehicle is below the jurisdictional weight threshold.

Question 4: If a vehicle with a manufacturer’s Gross Vehicle Weight Rating (GVWR) of less than 26,001 pounds has been structurally modified to carry a heavier load, may an enforcement officer use the higher actual gross weight of the vehicle, instead of the GVWR, to determine the applicability of [part 383](#)?

Guidance: Yes. The motor carrier’s intent to increase the weight rating is shown by the structural modifications. When the vehicle is used to perform functions normally performed by a vehicle with a higher Gross Vehicle Weight Rating (GVWR), [§390.33](#) allows an enforcement officer to treat the actual gross weight as the GVWR of the modified vehicle.

Question 5: When a State agency contracts with private parties for services involving the operation of Commercial Motor Vehicle (CMV)s, is the State agency or contractor considered the employer?

Guidance: If the contractor employs individuals and assigns and monitors their driving tasks, the contractor is considered the employer. If the State agency assigns and monitors driving tasks, then the State agency is the employer for purposes of [part 383](#).

Question 6: A driver operates a tractor of exactly 26,000 pounds Gross Vehicle Weight Rating (GVWR), towing a trailer of exactly 10,000 pounds GVWR, for a GCWR of 36,000 pounds. HM and passengers are not involved. Is it a Commercial Motor Vehicle (CMV)s and does the driver need a CDL?

Guidance: No to both questions. Although the vehicle has a Gross Vehicle Weight Rating (GVWR) of 36,000 pounds, it is not a Commercial Motor Vehicle (CMV) under any part of the definition of that term in [§383.5](#), and a CDL is not federally required.

Question 7: Does the definition of a “commercial motor vehicle” in [§383.5](#) of the CDL requirements include parking lot and/or street sweeping vehicles?

Guidance: If the Gross Vehicle Weight Rating (GVWR) of a parking lot or street sweeping vehicle is 26,001 or more pounds, it is a Commercial Motor Vehicle (CMV) under the CDL regulations.

Question 8: Is an employee of a Federal, State, or local government who operates a Commercial Motor Vehicle (CMV), as defined in [§383.5](#), including an emergency medical vehicle, required to obtain a CDL? If so, why are such drivers considered as operating “in commerce?”

Guidance: Government employees who drive CMVs are generally required to obtain a CDL. However, operators of firefighting and related emergency equipment may be exempt from the CDL requirement [53 FR 37313, September 26, 1988], at a State’s discretion. Drivers of large advanced life support vehicles operated by municipalities would therefore, at a State’s discretion, qualify for the exemption.

Government employees who drive Commercial Motor Vehicle (CMV)s are operating in “commerce,” as defined in [§383.5](#), because they perform functions that affect interstate trade, traffic, or transportation. Nearly all government CMVs are used, directly or indirectly, to facilitate or promote such trade, traffic, and transportation.

Question 9: The definition of a passenger Commercial Motor Vehicle is a vehicle “designed to transport” more than 15 passengers, including the driver. Does that include standing passengers if the vehicle was specifically designed to accommodate standees?

Guidance: No. “Designed to transport” refers only to the number of designated seats; it does not include areas suitable, or even designed, for standing passengers.

Question 10: What is considered a “public road”?

Guidance: A public road is any road under the jurisdiction of a public agency and open to public travel or any road on private property that is open to public travel.

***Question 11:** Must operators of motor graders or motor scrapers obtain a commercial driver’s license (CDL) and be subject to controlled substances and alcohol testing if they operate the equipment on public roads to perform such functions as snow and leaf removal?

If so, is a State that exempts such operations from the CDL requirements of its laws subject to sanctions under [49 CFR Part 384](#)?

Guidance: No.

***Question 12:** A driver operates a combination vehicle with a gross combination weight rating (GCWR) of more than 26,000 pounds. The tractor is towing a semitrailer and a full trailer, each with a gross vehicle weight rating (GVWR) of less than 10,001 pounds. Is this combination a Group A vehicle that requires a driver with a Class A commercial driver’s license (CDL)?

Guidance: Yes. The Gross Vehicle Weight Rating (GVWR) for multiple towed units are added to determine whether the 10,000 pound Gross Vehicle Weight Rating (GVWR) threshold has been met. If the total Gross Vehicle Weight Rating (GVWR) for the two trailers is at least 10,001 pounds, and the tractor’s Gross Vehicle Weight Rating (GVWR) is sufficient to produce a Gross Vehicle Weight Rating (GVWR) of at least 26,001 pounds, the combination is a Group A vehicle requiring a driver with a Class A CDL with a double/triple trailers endorsement. For example, a combination vehicle with a Gross Combination Weight Rating (GCWR) of 36,000 pounds includes a semitrailer and a trailer, each of which has a Gross Vehicle Weight Rating (GVWR) of 6,000 pounds. This is a Group A vehicle having a Gross Combination Weight Rating (GCWR) of 36,000 pounds inclusive of two towed units having a combined Gross Vehicle Weight Rating (GVWR) of 12,000 pounds.

Question 13: On May 9, 2011, FMCSA revised the definition of “tank vehicle” to include any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. Does the new definition include loaded intermediate bulk containers (IBCs) or other tanks temporarily attached to a CMV?

Guidance: Yes. The new definition is intended to cover (1) a vehicle transporting an IBC or other tank used for any liquid or gaseous materials, with an individual rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or chassis; or (2) a vehicle used to transport

multiple IBCs or other tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that are permanently or temporarily attached to the vehicle or the chassis.

Question 14: On May 9, 2011, FMCSA revised the definition of “tank vehicle.” Does the new definition cover the transportation of empty intermediate bulk containers (IBCs) or other tanks, or empty storage tanks?

Guidance: No. The definition of “tank vehicle” does not cover the transportation of empty IBCs or other tanks when these containers are manifested as either empty or as residue on a bill of lading. Furthermore, the definition of tank vehicle does not cover the transportation of empty storage tanks that are not designed for transportation and have a rated capacity of 1,000 gallons or more, that are temporarily attached to a flatbed vehicle.

***Editor’s Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§383.21 Number of drivers’ licenses.

Question 1: Are there any circumstances under which the driver of a Commercial Motor Vehicle (CMV) as defined in [§383.5](#) is allowed to hold more than one driver’s license?

Guidance: Yes. A recipient of a new driver’s license may hold more than one license during the 10 days beginning on the date the person is issued a driver’s license.

Question 2: Is a person from Puerto Rico required to surrender his or her driver’s license in order to obtain a nonresident CDL?

Guidance: Since Puerto Rico and the U.S. Territories are not included in the definition of a State in section 12016 of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (49 U.S.C. §31301(13)), they must be considered foreign countries for purposes of the CDL requirements. Under [part 383](#), a person domiciled in a foreign country is not required to surrender his or her foreign license in order to obtain a nonresident CDL. There are two reasons for permitting this dual licensing to a person domiciled in Puerto Rico: (a) There is no reciprocal agreement with Puerto Rico recognizing its Commercial Motor Vehicle (CMV) testing and licensing standards as equivalent to the standards in [part 383](#) and, (b) the nonresident CDL may not be recognized as a valid license to drive in Puerto Rico.

§383.23 Commercial driver’s license.

Question 1: May a holder of a Commercial Motor Vehicle (CMV) learner’s permit continue to hold his/her basic driver’s license from any State without violating the single-license rule?

Guidance: Yes, since the learner’s permit is not a license.

Question 2: The requirements for States regarding Commercial Motor Vehicle (CMV) learners’ permits in [§383.23](#) appear to be ambiguous. For example, if the CMV learner’s permit is “considered a valid CDL” for instructional purposes, is the State to enter the learner’s permit issuance as a Commercial Driver’s License Information System (CDLIS) transaction?

Guidance: No such requirement currently exists.

Question 3: Is a CDL required for Commercial Motor Vehicle (CMV) operations that occur exclusively in places where the general public is never allowed to operate, such as airport taxiways or other areas restricted from the public?

Guidance: No. Federal Highway Administration (FHWA) regulations would not require a Commercial Motor Vehicle (CMV) driver to obtain a CDL under those circumstances. The Federal rules are minimum standards, however, and State law may require a CDL for operations not covered by [part 383](#).

***Question 4:** The holder of a commercial learner’s permit (CLP) must be “accompanied by the holder of a valid commercial drivers license (CDL).” What is meant by “accompanied?”

Guidance: The holder of a valid CDL must be physically present in the front seat of the vehicle next to the CLP holder and have the CLP holder under observation and direct supervision. The CDL holder must have the proper CDL class and endorsement(s) necessary to operate the CMV.

***Question 5:** May a foreign driver with a temporary work visa obtain a commercial driver's license (CDL) to operate a commercial motor vehicle in the United States?

Guidance: A foreign driver holding a temporary work visa may obtain a nonresident CDL if he or she is domiciled in a foreign jurisdiction that does not test drivers and issue commercial licenses under standards equivalent to those in [subparts F, G, and H](#) of [part 383](#) (see Section [383.23\(b\)](#)). However, drivers from Canada and Mexico with temporary work visas are not eligible for nonresident CDLs because FMCSA has determined that commercial licenses issued by Canadian provinces and territories, and the United Mexican States, are in accordance with the standards established by our rules. Therefore, all Mexican and Canadian drivers must have an appropriate license from their home country. Finally, a foreign driver who is in this country on a temporary work visa may not obtain a resident CDL since he or she is not "domiciled" in a U.S. State, as defined in Section [383.5](#) ("state of domicile").

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§383.31 Notification of convictions for driver violations.

Question 1: Must an operator of a Commercial Motor Vehicle (CMV) (as defined in [§383.5](#)), who holds a CDL, notify his/her current employer of a conviction for violating a State or local (non-parking) traffic law in any type of vehicle, as required by [§383.31\(b\)](#), even though the conviction is under appeal?

Guidance: Yes. The taking of an appeal does not vacate or annul the conviction, nor does it stay the notification requirements of [§383.31](#). The driver must notify his/her employer within 30 days of the date of conviction.

§383.33 Notification of driver's license suspensions.

Question 1: When a driver (a) receives an Administrative Order of Suspension due to a blood alcohol reading in excess of the legal limit with notice that the suspension is not to be effective until 45 days after the notice or after an administrative hearing, and (b)a hearing is subsequently held, in effect suspending the license, what is the effective date of suspension for purposes of notifying the employer under [§383.33](#)?

Guidance: The effective date of the suspension for notification purposes is the day the employee received notice of the suspension.

§383.37 Employer responsibilities.

Question 1: [§383.37\(a\)](#) does not allow employers to knowingly use a driver whose license has been suspended, revoked or canceled. Do motor carriers have latitude in their resulting actions: firing, suspension, layoff, authorized use of unused vacation time during suspension duration, transfer to non driving position for duration of the suspension?

Guidance: Yes. The employer's minimum responsibility is to prohibit operation of a Commercial Motor Vehicle (CMV) by such an employee.

Question 2: a. A motor carrier recently found a driver who had a detectable presence of alcohol, placed him off-duty in accordance with [§392.5](#), and ordered a blood test which disclosed a blood alcohol concentration of 0.05 percent. Is the carrier obligated to place the driver out of service for 24 hours as prescribed by [§392.5\(c\)](#)?

b. Is the carrier obligated to disqualify the driver for a period of one year as prescribed by §[§383.51\(b\)](#) and [391.15\(c\)\(3\)\(i\)](#) of the Federal Motor Carrier Safety Regulations (FMCSRs)?

Guidance: a. Only a State or Federal official can place a driver out of service. Instead, the carrier is obligated to place the driver off-duty and prevent him/her from operating or being in control of a Commercial Motor Vehicle (CMV) until he/she is no longer in violation of [§392.5](#).

b. No. A motor carrier has no authority to disqualify a driver. Disqualification for such an offense only occurs upon a conviction.

Question 3: If an individual driver had two convictions for serious traffic violations while driving a Commercial Motor Vehicle (CMV), and neither Federal Highway Administration (FHWA) nor his/her State licensing agency took any disqualification action, does the motor carrier have any obligation under FHWA regulations to refrain from using this driver for 60 days? If so, when does that time period begin?

Guidance: No. Only the State or the Federal Highway Administration (FHWA) has the authority to take a disqualification action against a driver. The motor carrier's responsibility under [§383.37\(a\)](#) to refrain from using the driver begins when it learns of the disqualification action and continues until the disqualification period set by the State or the FHWA is completed.

Question 4: Is a driver who has a CDL, and has been convicted of a felony, disqualified from operating a Commercial Motor Vehicle (CMV) under the Federal Motor Carrier Safety Regulations (FMCSRs)?

Guidance: Not necessarily. The Federal Motor Carrier Safety Regulations (FMCSRs) do not prohibit a driver who has been convicted of a felony, such as drug dealing, from operating a Commercial Motor Vehicle (CMV) unless the offense involved the use of a CMV. If the offense involved a non-CMV, or was unrelated to motor vehicles, there is no FMCSR prohibition to employment of the person as a driver.

§383.51 Disqualification of drivers.

Question 1: a. If a driver received one “excessive speeding” violation in a CMV and the same violation in his/her personal passenger vehicle, would the driver be disqualified? or,

b. If a driver received two “excessive speeding” violations in his/her personal passenger vehicle, would the driver be disqualified?

Guidance: No, in both cases. Convictions for serious traffic violations, such as excessive speeding, only result in disqualification if the offenses were committed in a CMV—unless the State has stricter regulations.

Question 2: [§383.51](#) of the FMCSRs disqualifies drivers if certain offenses were committed while operating a CMV. Will the States be required to identify on the motor vehicle driver’s record the class of vehicle being operated when a violation occurs?

Guidance: No, only whether or not the violation occurred in a CMV. The only other indication that may be required is if the vehicle was carrying placardable amounts of HM.

Question 3: If a CDL holder commits an offense that would normally be disqualifying, but the CDL holder is driving under the farm waiver, must conviction result in disqualification and action against the CDL holder?

Guidance: Yes. Possession of the CDL means the driver is not operating under the waiver. In addition, the waiver does not absolve the driver from disqualification under [part 391](#).

Question 4: What is meant by leaving the scene of an accident involving a CMV?

Guidance: As used in [part 383](#), the disqualifying offense of “leaving the scene of an accident involving a CMV” is all-inclusive and covers the entire range of situations where the driver of the CMV is required by State law to stop after an accident and either give information to the other party, render aid, or attempt to locate and notify the operator or owner of other vehicles involved in the accident.

Question 5: If a State disqualifies a driver for two serious traffic violations under §383.51(c)(2)(i), and that driver, after being reinstated, commits a third serious violation, what additional period of disqualification must be imposed on that driver?

Guidance: If three years have not elapsed since the original violation, then the driver is now subject to a full 120-day disqualification period.

Question 6: May a State issue a “conditional,” “occupational” or “hardship” license that includes CDL driving privileges when a CDL holder loses driving privileges to operate a private passenger vehicle (non-CMV)?

Guidance: Yes, provided the CDL holder loses his/her driving privileges for operating a non-CMV as the result of a conviction for a disqualifying offense that occurred in a non-CMV. A State is prohibited, however, from issuing any type of license which would give the driver even limited privileges to operate a CMV when the conviction is for a disqualifying offense that occurred in a CMV.

Question 7: What information needs to be contained on a “conditional,” “occupational” or “hardship” license document that includes CDL driving privileges?

Guidance: The same information that is required under [§383.153](#), including an explanation of restrictions of driving privileges.

Question 8: Is a State obligated to grant reciprocity to another State’s “conditional,” “occupational” or “hardship” license that includes CDL driving privileges?

Guidance: Yes, in regard to operating a CMV as stated in [§383.73\(h\)](#).

§383.51 Disqualification of drivers.

Question 1: Are States expected to make major changes to their enforcement procedures in order to apply the alcohol disqualifications in the Federal regulations?

Guidance: No. [§383.51](#) and [392.5](#) do not require any change in a State’s existing procedures for initially stopping vehicles and drivers.

Roadblocks, random testing programs, or other enforcement procedures which have been held unconstitutional in the State or which the State does not wish to implement are not required.

Question 2: Is a driver disqualified for driving a Commercial Motor Vehicle (CMV) while off-duty with a blood alcohol concentration over 0.04 percent?

Guidance: Yes. [§383.51](#) applies to any person who is driving a Commercial Motor Vehicle (CMV), as defined in [§383.5](#), regardless of the person’s duty status under other regulations. Therefore, the driver, if convicted, would be disqualified under [§383.51](#).

Question 3: Does a temporary license issued pursuant to the administrative license revocation (ALR) procedure authorize the continued operation of Commercial Motor Vehicle (CMV)s when the license surrendered is a CDL? Does the acceptance of a temporary driver’s license place the CDL holder in violation of the one driver’s license requirement?

Guidance: The ALR procedure of taking possession of the driver’s CDL and issuing a “temporary license” for individuals who either fail a chemical alcohol test or refuse to take the test is valid under the requirements of [part 383](#). Since the CDL that is being held by the State is still valid until the administrative revocation action is taken, the FHWA would interpret the document given to the driver as a “receipt” for the CDL, not a new “temporary” license. The driver violates no CDL requirements for accepting the receipt which may be used to the extent authorized.

Question 4: Is a driver disqualified under [§383.51](#) if convicted of driving under the influence of alcohol while operating a personal vehicle?

Guidance: The convictions triggering mandatory disqualification under [§383.51](#) all pertain to offenses that occur while the person is driving a Commercial Motor Vehicle (CMV). However, a driver could be disqualified under §383.51(b)(2)(i) if the State has stricter standards which apply to offenses committed in a personal vehicle. (The same principle applies to all other disqualifying offenses listed in [§383.51](#).)

Question 5: Would a driver convicted under a State’s “open container” law be disqualified under the CDL regulations if the violation occurred while he/she was operating a Commercial Motor Vehicle (CMV)?

Guidance: If a conviction under a particular State's "open container law" is a conviction for "driving under the influence" or "driving while intoxicated," and if the person committed the violation while driving a Commercial Motor Vehicle (CMV), then the driver is disqualified for one year under [§383.51](#), assuming it is a first offense.

***Question 6:** Is a driver who possesses a valid commercial driver's license (CDL) issued by their State of residence, but who is suspended by another State for reasons unrelated to the violation of a motor vehicle traffic control law, disqualified from operating a commercial motor vehicle (CMV) in accordance with provisions of the Federal Motor Carrier Safety Regulations?

Guidance: Yes. Currently, both section [383.5](#), which defines the term disqualification as it applies to drivers required to have a CDL, and section [391.15](#), which applies to other CMV drivers subject to Federal Motor Carrier Safety Regulations, include the suspension of a person's license or privilege to drive as an action requiring that person to be disqualified from operating a CMV. Neither of these regulatory provisions limit such suspensions to those imposed by the State where the driver is licensed, nor do these regulations specify the grounds upon which a suspension must be based.

Be advised, however, that the Federal Motor Carrier Safety Administration has proposed in 66 FR 22499, Docket No. FMCSA-00-7382, published May 4, 2001, to limit the basis of the suspension to those resulting from a driving violation. If the rule is finalized, the answer would be no.

***Question 7:** Must the State use the date of conviction, rather than the offense date, to calculate the starting and ending dates for the driver disqualification period specified in [49 CFR 383.51](#)?

Guidance: Yes, the State must use the date of conviction or a later date, rather than the offense date, as the basis for calculating the starting and ending dates for the driver disqualification period. The State may allow the driver additional time after the conviction date to appeal the conviction before the disqualification period begins. The use of the conviction date (or the date when all appeals are exhausted) ensures that the driver receives due process of law but (if the conviction is upheld) still serves the full disqualification period [49 CFR 383.51](#) requires. For example, a driver is cited for a disqualifying offense on May 1 and is convicted of the offense on July 1. If the offense date were used for the starting date of the disqualification, it would shorten the actual disqualification by 2 months. Using the conviction date or a later date when all appeals are exhausted ensures that the driver serves the full disqualification period.

***Question 8:** Must the State use the offense date or the conviction date to determine if two or more serious traffic convictions occurred within a 3-year period?

Guidance: The State must use the offense date to determine if two or more serious traffic convictions fall within the 3-year period specified in [49 CFR 383.51 Table 2](#). If the conviction date were used, delays in bringing a case to trial could push the second conviction outside the 3-year period, thus defeating the purpose of the rule. For example, a driver is cited for a first serious traffic violation on February 1, 2001 and is convicted on March 1, 2001. The driver is cited for a second serious traffic violation on January 15, 2004. The trial is set for February 27, 2004, but the driver asks to have the trial delayed because he has something important to do that day. The new trial date is set for March 15, 2004 and he is convicted of the second violation on this date. If the conviction dates are used, the two offenses are not within three years of each other and no disqualification action is taken on the driver. If the offense dates are used, the driver is disqualified regardless of the conviction date because the offenses for which he was convicted are within three years of each other.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§383.71 Driver application procedures.

Question 1: What must a driver certify if he/she is in interstate commerce but is excepted or exempted from [part 391](#) under the provisions of [parts 390](#) or [391](#)?

Guidance: The State should instruct the driver to certify that he/she is not subject to [part 391](#).

Question 2: Since an applicant is required to turn in his/her current license when issued an FRSI-restricted CDL, should the applicant return to the State exam office and be re-issued the old license when the seasonal validation period expires?

Guidance: No. This approach violates the requirements of part 383 and the FRSI waiver regarding the single-license concept. It violates the waiver requirement that the FRSI-restricted CDL is to have the same renewal cycle as an unrestricted CDL and shall serve as an operator's license for vehicles other than CMVs. The license issued under the waiver is a CDL and must be treated the same as an unrestricted CDL in regard to the driver record being maintained through the CDLIS and subject to all disqualifying conditions for the full renewal cycle. The restriction determining when the driver may use the CDL to operate a CMV should be clearly printed on the license.

Question 3: Do the regulations require that a driver be recertified for the hazardous materials "H" endorsement every two years?

Guidance: No. If the driver wishes to retain an HM endorsement, he/she is required at the time of license renewal to pass the test for such endorsement. The only times a driver may be required to pass the test for such endorsement in a condensed time frame is within the 2 years preceding a license transfer if he/she is transferring a CDL from one State of domicile to a new State of domicile (see [§383.73\(b\)\(4\)](#)), or if the State has exercised its prerogative to establish more stringent requirements.

Question 4: May a CDL driving skills test examiner conduct a driving skills test administered in accordance with [49 CFR part 383](#) before a person subject to [Part 382](#) is tested for alcohol and controlled substances?

Guidance: Yes. A CDL driving skills test examiner, including a third party examiner, may administer a driving skills test to a person subject to [Part 382](#) without first testing him/her for alcohol and controlled substances. The intent of the CDL driving skills test is to assess a person's ability to operate a commercial motor vehicle during an official government test of their driving skills. However, this guidance does not allow an employer (including a truck or bus driver training school) to use a person as a current company, lease, or student driver prior to obtaining a verified negative test result. An employer must obtain a verified negative controlled substance test result prior to dispatching a driver on his/her first trip.

§383.73 State procedures.

Question 1: Does the State have any role in certifying compliance with [§391.11\(b\)\(2\)](#) of the Federal Motor Carrier Safety Regulations (FMCSRs), which requires driver competence in the English language?

Guidance: No. The driver must certify that he or she meets the qualifications of [part 391](#). The State is under no duty to verify the certification by giving exams or tests.

Question 2: Are States required to change their current medical standards for drivers who need CDLs?

Guidance: No, but interstate drivers must continue to meet the Federal standards, while intrastate drivers are subject to the requirements adopted by the State.

Question 3: To what does the phrase "as contained in [§383.51](#)" refer to in [§383.73\(a\)\(3\)](#)?

Guidance: The phrase refers only to the word "disqualification." Thus the State must check the applicant's record to ensure that he/she is not subject to any suspensions, revocations, or cancellations for any reason, and is not subject to any disqualifications under [§383.51](#).

Question 4: Is a State required to refuse a CDL to an applicant if the National Driver Register NDR check shows that he/she had a license suspended, revoked, or canceled within 3 years of the date of the application?

Guidance: Yes, if the person's driving license is currently suspended, revoked, or canceled.

Question 5: Must a new State of record accept the out-of-State driving record on CDL transfer applications and include this record as a permanent part of the new State's file?

Guidance: Yes.

Question 6: What does the term “initial licensure” mean as used in [§383.73](#)?

Guidance: The term “initial licensure” as used in the context of [§383.73](#) is meant to refer to the procedures a State must follow when a person applies for his/her first CDL.

Question 7: May a State allow an applicant to keep his/her current valid State license when issued an Farm-Related Service Industries (FRSI)-restricted CDL?

Guidance: No. That would violate the single-license concept.

Question 8: Does the word "issuing" as used in [§383.73\(a\)](#) include temporary 60-day CDLs as well as permanent CDLs?

Guidance: Yes, the word "issuing" applies to all CDLs whether they are temporary or permanent.

Question 9: When a State chooses to meet the certification requirements of [§383.73 \(a\)\(1\), \(b\)\(1\),\(c\)\(1\) and \(d\)\(1\)](#) by demanding, as part of its licensing process, that a commercial driver maintain with the Department of Motor Vehicles (DMV) currently valid evidence of compliance with the physical qualification standards of [part 391, subpart E](#), may the State suspend, cancel or revoke the driver's CDL if he/she does not maintain such evidence with the DMV?

Guidance: Yes. [§383.73](#) requires a State to obtain from a driver applicant a certification that he/she meets the qualification standards of [part 391](#), including [subpart E](#) (Physical Qualifications and Examinations). A requirement that a driver maintain currently valid evidence of compliance with [subpart E](#) does not conflict with [part 383](#), since the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) made it clear that the DOT was to issue “regulations to establish minimum Federal standards * * *” (49 U.S.C. 31305(a)). A State may therefore demand more information or tests than the Federal CDL regulations require. If a driver fails to comply with State requirements which are not inconsistent with [part 383](#), the State may suspend, cancel or revoke the driver's CDL. This action is not a disqualification for purposes of [§383.51](#), but a withdrawal of the commercial driving privilege.

Question 10: What action should enforcement officers take when a commercial driver's CDL has been declared invalid by the issuing State because of a lapse in the driver's medical certificate?

Guidance: Whatever the reason for the State's decision, a driver with an invalid CDL may not lawfully drive a Commercial Motor Vehicle (CMV).

Question 11: May licensing jurisdictions meet their stewardship requirements for surrendered licenses by physically marking the license in some way as not valid and returning it to a driver as part of the driver's application for a new or renewal of an existing CDL?

Guidance: Yes. Provided the licensing jurisdiction meets the test of guaranteeing that the returned license document cannot possibly be mistaken for a valid document by a casual observer. A document perforated with the word “VOID” conspicuously and unmistakably displayed with holes large enough to be easily distinguished by a casual observer in limited light, which cannot be obscured by the holder of the document, would meet the test of being invalidated.

§383.75 Third party testing.

Question 1: May the CDL knowledge test be administered by a third party?

Guidance: No. The third party testing provision found in [§383.75](#) applies only to the skills portion of the testing procedure. However, if an employee of the State who is authorized to supervise knowledge testing is present during the testing, then the Federal Highway Administration (FHWA) regards it as being administered by the State and not by the third party.

Question 2: Do third party skills test examiners have to meet all the requirements of State-employed examiners—i.e. all the State's qualification and training standards?

Guidance: No. [§383.75\(a\)\(2\)\(iii\)](#) requires third party examiners to meet the same standards as State examiners only “to the extent necessary to conduct skills tests.”

Question 3: Do third-party skills test examiners have to be qualified to administer skills tests in all types of Commercial Motor Vehicle (CMV)s?

Guidance: No.

§383.77 Substitute for driving skills tests.

Question 1: May a State grandfather drivers from skills testing under [§383.77](#)?

Guidance: Yes, provided the applicant meets all the eligibility conditions under [§383.77](#), including current operation of a Commercial Motor Vehicle (CMV) ([§383.77\(b\)\(1\)](#)). Therefore, the pool of applicants eligible for grandfathering is limited to drivers with current Commercial Motor Vehicle (CMV) operating experience under a CDL waiver (e.g., farm, Farm-Related Service Industries (FRSI), firefighting, emergency and military vehicles).

Question 2: May a driver applicant be “grandfathered” from any CDL knowledge test?

Guidance: No. “Grandfathering” of CDL basic or endorsement knowledge testing is not permitted by [part 383](#).

§383.91 Commercial motor vehicle groups.

Question 1: May a State expand a vehicle group to include vehicles that do not meet the Federal definition of the group?

Guidance: Yes, if: a. A person who tests in a vehicle that does not meet the Federal standard for the Group(s) for which the issued CDL would otherwise be valid, is restricted to vehicles not meeting the Federal definition of such Group(s); and b. The restriction is fully explained on the license.

Question 2: Is a driver of a combination vehicle with a Gross Combination Weight Rating (GCWR) of less than 26,001 pounds required to obtain a CDL even if the trailer Gross Vehicle Weight Rating (GVWR) is more than 10,000 pounds?

Guidance: No, because the Gross Combination Weight Rating (GCWR) is less than 26,001 pounds. The driver would need a CDL if the vehicle is transporting HM requiring the vehicle to be placarded or if it is designed to transport 16 or more persons.

Question 3: Can a State which expands the vehicle group descriptions in [§383.91](#) enforce those expansions on out-of-State Commercial Motor Vehicle (CMV) drivers by requiring them to have a CDL?

Guidance: No. They must recognize out-of-State licenses that have been validly issued in accordance with the Federal standards and operative licensing compacts.

Question 4: What Commercial Motor Vehicle (CMV) group are drivers of articulated motor coaches (buses) required to possess?

Guidance: Drivers of articulated motor coaches are required to possess a Class B CDL.

Question 5: Do tow truck operators need CDLs? If so, in what vehicle group(s)?

Guidance: For CDL purposes, the tow truck and its towed vehicle are treated the same as any other powered unit towing a non-powered unit:

—If the Gross Combination Weight Rating (GCWR) of the tow truck and its towed vehicle is 26,001 pounds or more, and the towed vehicle alone exceeds 10,000 pounds Gross Vehicle Weight Rating (GVWR), *then* the driver needs a Group A CDL.

—If the Gross Vehicle Weight Rating (GVWR) of the tow truck alone is 26,001 pounds or more, and the driver either (a) drives the tow truck without a vehicle in tow, or (b) drives the tow truck with a towed vehicle of 10,000 pounds or less Gross Vehicle Weight Rating (GVWR), *then* the driver needs a Group B CDL.

—A driver of a tow truck or towing configuration that does not fit either configuration description above, requires a Group C CDL *only* if he or she tows a vehicle required to be placarded for hazardous materials

on a “subsequent move,” i.e. after the initial movement of the disabled vehicle to the nearest storage or repair facility.

§383.93 Endorsements.

Question 1: Is the HM endorsement needed for operation of State and local government vehicles carrying HM?

Guidance: No.

Question 2: Are drivers of double and triple saddle mount combinations required to have the double/triple trailers endorsement on their CDLs?

Guidance: Yes, if the following conditions apply:

- There is more than one point of articulation in the combination;
- The Gross Combination Weight Rating (GCWR) is 26,001 or more pounds; and
- The combined Gross Vehicle Weight Rating (GVWR) of the vehicle(s) being towed is in excess of 10,000 pounds.

Question 3: Are drivers delivering empty buses in driveaway-towaway operations required to have the passenger endorsement on their CDLs?

Guidance: No.

Question 4: Would the driver in the following scenarios be required to have a CDL with a HM endorsement?

- a. A driver transports 1,000 or more pounds of Division 1.4 (Class C explosive) materials in a vehicle with a Gross Vehicle Weight Rating (GVWR) of less than 26,001 pounds?
- b. A driver transports less than 1,000 pounds of Division 1.4 (Class C explosive) materials in a vehicle with a Gross Vehicle Weight Rating (GVWR) of less than 26,001 pounds?
- c. The driver transports any quantity of Division 1.1,1.2 or1.3 (Class A or B explosive) materials in any vehicle.

Guidance: a. Yes.

b. No.

c. Yes.

Question 5: Do drivers of ready-mix concrete mixers need a tank vehicle endorsement (“N”) on their CDL?

Guidance: No.

Question 6: Does an unattached tote or portable tank with a cargo capacity of 1,000 gallons or more meet the definition of “portable tank” requiring a tank vehicle endorsement on the driver’s CDL?

Guidance: Yes.

Question 7: Must all drivers of vehicles required to be placarded have CDLs containing the HM endorsement?

Guidance: Yes, unless waived.

Question 8: Is a driver who operates a truck tractor pulling a heavy-haul trailer attached to the tractor by means of a “jeep” that meets the definition of a Commercial Motor Vehicle (CMV) under [part 383](#) required to have a CDL with a double/triple trailer endorsement?

Guidance: Yes. The “jeep,” also referred to as a load divider, is a short frame-type trailer complete with upper coupler, fifth wheel and undercarriage assembly and designed in such a manner that when coupled to a semitrailer and tractor it carries a portion of the trailer kingpin load while transferring the remainder to the tractor’s fifth wheel.

Question 9: Do persons transporting battery-powered forklifts need to obtain an HM endorsement?

Guidance: No.

Question 10: Do tow truck operators who hold a CDL require endorsements to tow “endorsable” vehicles?

Guidance: For CDL endorsement purposes, the nature of the tow truck operations determines the need for endorsements:

—*If* the driver’s towing operations are restricted to emergency “first moves” from the site of a breakdown or accident to the nearest appropriate repair facility, *then* no CDL endorsement of any kind is required.

—*If* the driver’s towing operations include any “subsequent moves” from one repair or disposal facility to another, *then* endorsements requisite to the vehicles being towed are required. *Exception:* Tow truck operators need not obtain a passenger endorsement.

***Question 11:** Must a driver have a tank vehicle endorsement to deliver an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer?

Guidance: No. Part of the definition of a “tank vehicle” in [§383.5](#) is “any commercial motor vehicle that is designed to transport any liquid or gaseous materials with in a tank that is either permanently or temporarily attached to the vehicle or the chassis.” A flatbed is not “designed to transport any liquid or gaseous materials” simply because it carries an empty storage tank-readily distinguishable from a transportation tank-secured as cargo in compliance with [Part 393, Subpart I](#).

***Question 12:** Is a person who drives an empty school bus from the manufacturer to the local distributor required to obtain a CDL?

Guidance: Yes. Any driver of a bus that is designed to transport 16 or more passengers or that has a GVWR of 11,794 kilograms (26,001 pounds) or greater is required to obtain a CDL in the applicable class. A passenger endorsement is also required if the bus is designed to transport 16 or more passengers, including the driver.

***Question 13:** Does a driver who operates a straight truck equipped with a pintle hook towing a full trailer (a semitrailer equipped with a converter dolly) need a doubles/triples endorsement on his or her (CDL)?

Guidance: No. This combination is a truck-tractor towing a single trailer. This configuration does not require a driver to have a doubles/triples endorsement on a CDL.

***Question 14:** Are drivers required to have both the “P” passenger and “S” school bus endorsements if they are not transporting students when operating a “school bus,” as defined in [49 CFR §383.5](#)?

Guidance: No. Only drivers actually transporting pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school sponsored events in a school bus are required to have both the “P” and “S” endorsements. Only a “P” endorsement is required by drivers delivering school buses from the manufacturer, by mechanics and other drivers operating empty school buses, and by drivers transporting students and/or adults to and from events that are not sponsored by the school.

Question 15: Is a person who operates a custom motorcoach in commerce with a gross vehicle weight rating or gross vehicle weight greater than 26,001 pounds required to have a passenger endorsement for his or her CDL if the vehicle is designed or used to transport less than 16 passengers, including the driver?

Guidance: Yes. The motorcoach is a Heavy Straight Vehicle (Group B) under 49 CFR 383.91 that is designed to transport passengers in commerce. The driver is, therefore, required by § 383.93(b)(2) to have a passenger endorsement.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§383.95 Air brake restrictions.

Question 1: A driver has a Group B or C CDL valid for air-brake-equipped vehicles. He or she later upgrades to a Group A license by testing in a vehicle that is not equipped with airbrakes. Must the State restrict the upgraded license to non airbrake-equipped vehicles?

Guidance: No, because the airbrake systems on combination versus single vehicles do not differ significantly.

Question 2: May a driver who has an air brake restriction as defined in [§383.95](#) operate a CMV equipped with an air-over-hydraulic brake system?

Guidance: No. Under [§383.95\(b\)](#), the term “air brakes” includes any braking system operating fully or partially on the air brake principle. Air-over-hydraulic brake systems operate partially on the air brake principle and are therefore air brakes for purposes of the CDL regulations. The NHTSA also considers “air over hydraulic” brakes to be air brakes under FMVSS 121.

Question 3: May a State issue a restriction to a driver who passes the air brake knowledge test and the skills test in a vehicle equipped with an air-over-hydraulic brake system that limits the driver to operate only vehicles equipped with an air-over-hydraulic air brake system?

Guidance: Yes. A State may issue the additional restriction, provided it is fully explained on the CDL. This would give a State the option to allow a driver who tests in a vehicle equipped with an air-over-hydraulic brake system (rather than a full air brake system) to operate a vehicle equipped with either a hydraulic or air-over-hydraulic brake system, while restricting them from operating vehicles equipped with a full air brake system.

Question 4: May a driver with an air brake restriction on his or her CDL operate a CMV equipped with a hydraulic braking system that has an air-assisted parking brake release?

Guidance: Yes. The air brake restriction applies only to the principal braking system used to stop the vehicle. [§383.95\(b\)](#) is not applicable to an air-assisted mechanism to release the parking brake.

§383.113 Required skills.

***Question 1:** A driver holding a CDL with an “air brake restriction” wants to operate a commercial motor vehicle of the same vehicle group which is equipped with air brakes. Must the driver retake the complete CDL test, or may the State conduct a partial test to determine the driver’s air brake skills?

Guidance: Since the applicant has already demonstrated the ability to drive a vehicle in a specific vehicle group, the State may conduct a test that includes only the *Air brake knowledge* requirements of §383.111(g) and the *Air brake skills, Pre-trip inspection skills* and *Driving skills* required by [§383.113\(c\)](#). The *Driving skills* test need only demonstrate that the driver can safely and effectively operate the vehicle’s air brakes.

***Question 2:** May a driver use a truck tractor (as defined in [49 CFR 390.5](#)) as a representative vehicle for purposes of completing the skills tests for a Class B commercial driver’s license (CDL)?

Guidance: No. A driver must be tested in a truck or bus (as those terms are defined in [49 CFR 390.5](#)), or other single unit vehicle with a gross vehicle weight rating (GVWR) of 11,794 kilograms (26,001 pounds) or more to satisfy the skills testing requirements for a Class B CDL. A truck tractor is designed to operate with a towed unit(s), typically a semitrailer (as defined in 49 CFR 390.5) and therefore could only be used as a representative vehicle when connected to a semitrailer, for a Class A CDL.

***Editor's Note:** The interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§383.131 Test procedures.

Question 1: Are there any Federal regulations which require the States to retain for a specified period of time the CDL knowledge tests (or the test results) used to test Commercial Motor Vehicle (CMV) drivers?

Guidance: No, there are no Federal regulations regarding such record retention.

§383.133 Testing methods.

Question 1: May States administer the CDL knowledge and endorsement test in foreign languages or in other than a written format?

Guidance: Yes.

Question 2: Do the Federal standards limit the number of times a driver may take a test if he or she fails?

Guidance: The rule does not limit the number of times a driver may take a test.

Question 3: Is a State allowed to provide for an alternative test (e.g., oral) or administer an alternate exam format providing the test meets FHWA requirements?

Guidance: Yes. The knowledge portion of the test may be administered in written form, verbally, in automated formats, or otherwise at the discretion of the State.

§383.153 Information on the document and application.

Question 1: May a State use the residence address as opposed to the mailing address on the CDL?

Guidance: Yes.

Question 2: May a State issue temporary nonphoto CDLs?

Guidance: Yes, as long as:

- a. The State does not liberalize any existing procedures for issuing nonphoto licenses; and
- b. The State does not allow drivers to operate Commercial Motor Vehicle (CMV)s indefinitely without a CDL which meets all the standards of [§383.153](#).

Question 3: May a State choose to implement a driver license system involving multiple part license documents?

Guidance: Yes. A two or more part document, as currently used in some States, is acceptable, provided:

- a. All of the documents must be present to constitute a “license;”
- b. Each document is explicitly “tied” to the other document(s), and to a single driver’s record. Each document must indicate that the driver is licensed as a CMV driver, if that is the case; and
- c. The multipart license document includes all of the data elements specified in [part 383, subpart J](#).

Question 4: If the State restricts the CDL driving privilege, must that restriction be shown on the license?

Guidance: Yes.

Question 5: Is a State required to show the driver’s Social Security Number (SSN) on the CDL?

Guidance: No. [§383.153](#) does not specify the Social Security Number (SSN) as a required element of the CDL document although the regulation does require a driver applicant who is domiciled in the U.S. to provide his or her Social Security Number (SSN) on the CDL application.

Question 6: Is a State prohibited from issuing a CDL to an applicant who, for religious reasons, does not possess an Social Security Number (SSN)?

Guidance: No. The determination of whether a person needs an Social Security Number (SSN) is left up to the Social Security Administration.

Question 7: Is a color-digitized image of a driver acceptable for purposes of a CDL?

Guidance: Yes. The Federal Highway Administration FHWA will accept a color-digitized image of a driver on a CDL in lieu of a color photograph.

***Question 8:** May a State issue a commercial driver's license (CDL) without a color photograph?

Guidance: Yes, if requiring a photograph (whether in color or black and white) would violate a driver's religious beliefs. The issuing State must determine whether a driver's objection to a photograph has a genuine religious basis. In addition, [§383.3\(e\)\(1\)\(iii\)](#) and authorizes Alaska to dispense with a photograph on its CDL.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

Special Topics – Motor Coaches and CDL

Question 1: May a State develop a knowledge test exclusively for motor coach operators which excludes cargo handling and hazardous materials?

Guidance: Yes. A State could develop a basic knowledge test for bus drivers only, by deleting the cargo handling and HM questions from its normal basic knowledge test. In that case, the driver applicant would still need to pass the specialized knowledge and skills tests for the passenger endorsement, and the State would need to restrict the CDL to passenger operations only.

Question 2: What skills test is required for a CDL holder seeking to add a passenger endorsement?

Guidance: If a person already holds a CDL without a passenger endorsement, and subsequently applies for such endorsement, three situations may arise:

- a. The passenger test vehicle is in the same vehicle group as that shown on the CDL. This situation poses no problem since there is no discrepancy.
- b. The passenger test vehicle is in a greater vehicle group than that shown on the preexisting CDL. This is an upgrade situation. The driver and the State must meet the requirements of §§[383.71\(d\)](#) and [383.73\(d\)](#), and the upgraded CDL must show the vehicle group of the passenger test vehicle.
- c. The passenger test vehicle is in a lesser vehicle group than that shown on the preexisting CDL. In this situation, the CDL retains the vehicle group of the preexisting CDL, but also restricts the driver, when engaged in CMV passenger operations, to vehicles in the group in which the passenger skills test was taken, or to a lesser group.

Special Topics – State Reciprocity

Question 1: May a State place an “intrastate only” or similar restriction on the CDL of a driver who certifies that he or she is not subject to [part 391](#)?

Guidance: Yes; however, this restriction would not apply to drivers in interstate commerce who are excepted or exempted from [part 391](#) under the provisions of [parts 390](#) or [391](#).

Question 2: May a State allow a driver possessing an out-of-State CDL containing an intrastate restriction to operate a CMV in their jurisdiction?

Guidance: Yes, provided the driver operates exclusively intrastate.

Question 3: May States choose to interpret “intrastate” in ways that differ from established transportation practice?

Guidance: No. States do not have the discretion to change the Federal definition of either “interstate” or “intrastate” commerce.

Special Topics – International

Question 1: The driver's medical exam is part of the Mexican Licencia Federal. If a roadside inspection reveals that a Mexico-based driver has not had the medical portion of the Licencia Federal re-validated, is the driver considered to be without a valid medical certificate or without a valid license?

Guidance: The Mexican Licencia Federal is issued for a period of 10 years but must be re-validated every 2 years. A condition of re-validation is that the driver must pass a new physical examination. The dates for each re-validation are on the Licencia Federal and must be stamped at the completion of each physical. This constitutes documentation that the driver is medically qualified. Therefore, if the Licencia Federal is not re-validated every 2 years as specified by Mexican law, the driver's license is considered invalid.

Part 384

§384.209 Notification of traffic violations.

Question 1: Must a CDL holder's out-of-State conviction for a traffic violation be included in the driving record of the State of licensure (and thus Commercial Driver's License Information System (CDLIS)), if there are no traffic violation points assigned to the conviction?

Guidance: All out-of-State convictions of a CDL holder for traffic violations committed in any vehicle must be sent to the State of licensure, but only the convictions for offenses specified in 49 Code of Federal Regulations (CFR) [383.51](#) must be included in that State's driving record (and thus Commercial Driver's License Information System (CDLIS)). Assigning points to a conviction is strictly a State decision and has no bearing on the inclusion of the conviction.

The Federal Highway Administration (FHWA) recommends the inclusion by the State of licensure of all convictions of a CDL holder for traffic violations committed in any vehicle, so that the State will have the full driver record available as an aid in making licensing decisions.

Question 2: Must the licensing agency establish a commercial driver record, including a Commercial Driver's License Information System (CDLIS) pointer record, for a person holding a non-commercial license issued by that jurisdiction upon receiving notification of a conviction of any offense committed while (illegally) operating a Commercial Motor Vehicle (CMV)?

Guidance: Yes.

§384.211 Return of old licenses.

Question 1: May licensing jurisdictions meet their stewardship requirements for surrendered licenses by physically marking the license in some way as not valid and returning it to a driver as part of the driver's application for a new or renewal of an existing CDL?

Guidance: Yes. Provided the licensing jurisdiction meets the test of guaranteeing that the returned license document cannot possibly be mistaken for a valid document by a casual observer. A document perforated with the word "VOID" conspicuously and unmistakably displayed with holes large enough to be easily distinguished by a casual observer in limited light, which cannot be obscured by the holder of the document would meet the test of being invalidated.

§384.231 Satisfaction of State disqualification requirement.

***Question 1:** When accepting an applicant transferring from another State whose record reveals a disqualifying conviction for which the originating State did not take disqualifying action, is the transferee State required to take the disqualifying action?

Guidance: Yes. [Sec. 384.206\(a\)\(2\)](#) requires a State, including a transferee State, to check the applicant's driving record for the past 10 years in every State where he/she was licensed. If adverse information is discovered, [§384.206\(b\)](#) requires a State, including a transferee State, to "promptly implement the disqualifications...that are called for in any applicable section(s) of this subpart." [Sec. 384.231\(a\)](#) makes the requirements of [§384.206\(b\)](#) applicable to the "State of licensure" – which includes a transferee State under [§384.206\(a\)\(2\)](#) – and [§384.231\(b\)](#) then requires disqualifying action against a CDL holder who has been convicted of a disqualifying offense, but has not yet served the disqualification.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§385.403 Who must hold a safety permit?

***Question 1:** Is transportation of compressed natural gas (CNG) in a non-liquefied state subject to the HMSP requirements?

Guidance: Although CNG is classified as a Division 2.1 hazardous material, it is not “compressed or refrigerated liquid methane or liquefied gas with a methane content of at least 85 percent” as described in [49 CFR 385.403\(f\)](#). Therefore, the transportation of this material does not require a HMSP.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§385.415 What operational requirements apply to the transportation of a hazardous material for which a permit is required?

***Question 1:** When must a driver transporting a hazardous material described under [§385.403](#) communicate with the motor carrier to comply with the communications plan?

Guidance: The driver must communicate with the motor carrier at the beginning and end of each tour of duty, and at each location where a pick-up or delivery is made.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

Part 386

§386.1 Scope of rules in this part.

Question 1: What is the authority of the RDMC to issue provisions as a part of the terms in a Notice of Abatement, Notice of Assessment, Compliance Order and Consent Order?

Guidance: The Motor Carrier Safety Act of 1984 (MCSA) of 1984 provided the authority to penalize violators of Notices and Orders issued by the Federal Highway Administration (FHWA). Regulations were issued under [part 386](#) which specify these penalties. Notices to Abate and Notices of Assessment/Claim generally deal with specific regulatory requirements. Consent Orders and Compliance Orders often require remedial measures not specifically mentioned in the Federal Motor Carrier Safety Regulations (FMCSRs) since the motor carrier's compliance record often indicates that additional measures are needed to improve safety and compliance with the regulations.

Part 387

§387.1 Purpose and scope.

Question 1: May a State require a higher level of financial responsibility coverage than is required by [part 387](#)?

Guidance: Yes.

§387.3 Applicability.

Question 1: At what Gross Vehicle Weight Rating (GVWR), as assigned by a manufacturer, does the requirement to comply with the financial responsibility regulations begin?

Guidance: Generally, [part 387, subpart A](#) applies if the vehicle has a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or more. [Part 387, subpart A](#), does not apply to the intrastate transportation of nonbulk oil, nonbulk HM, substances or wastes. Motor vehicles used to transport any quantity of Divisions 1.1, 1.2 or 1.3 (explosive) materials, poison gas, or highway route controlled quantity of radioactive materials in interstate or foreign commerce are subject to Federal regulation regardless of the GVWR.

Question 2: Does the Gross Vehicle Weight Rating (GVWR) apply to the power unit only?

Guidance: No.

Question 3: When are tow trucks subject to financial responsibility coverage?

Guidance: For-hire tow trucks with a Gross Vehicle Weight Rating (GVWR) or GCWR of 10,000 pounds or more performing emergency moves in interstate or foreign commerce are required to maintain minimum levels of financial responsibility in the amount of \$750,000. For-hire tow trucks performing secondary moves are required to maintain levels of coverage applicable to the commodity being transported by the vehicle being towed.

Question 4: Are Federal, State or local political subdivisions subject to the financial responsibility regulations?

Guidance: No.

Question 5: Is a motor vehicle owned by an owner-operator, and being dead-headed (returning empty), or a tract or that is being bobtailed (operating without a trailer), subject to the financial responsibility regulations?

Guidance: A motor vehicle deadheading or bobtailing while in the service of a motor carrier would be subject to the financial responsibility regulations.

Question 6: Is a motor carrier transporting mail under contract for the U.S. Postal Service wholly within the boundaries of a single State subject to the minimum levels of financial responsibility requirements of [part 387](#)?

Guidance: Yes. The transportation of U.S. mail is considered to be interstate commerce because of the intermingling of inter-and intrastate mail on every vehicle.

***Question 7:** Are motor carriers transporting HM that are covered under exceptions to the Hazardous Materials Regulations (HMRs) subject to financial responsibility regulations?

Guidance: Yes. Even though an HM may be covered under a packaging, placarding, transportation, or other exception to the Hazardous Materials Regulations (HMRs), if the item meets the definition of a hazardous material per [49 CFR 171.8](#), it is still considered HM for the purposes of [Part 387](#). The motor carrier must still provide for financial responsibility at the appropriate level for the commodity being transported.

***Question 8:** Are motor vehicles being transported considered to be HM for purposes of the financial responsibility requirements, thus requiring the higher limits set forth in the regulations?

Guidance: Yes. Even though vehicles being transported by motor vehicle are subject only to [49 CFR 173.220](#) of the Hazardous Materials Regulations (HMRs), they meet the definition of “Hazardous material” in [49 CFR 171.8](#) because “Vehicle, flammable gas powered” and “Vehicle, flammable liquid powered” are designated as hazardous in [49 CFR 172.101](#) [UN 3166]. For that reason, vehicles transporting other vehicles would have to carry \$1,000,000 of public liability insurance.

Question 9: Is a travel trailer or motor home that has propane cylinders attached subject to [part 387](#) of the Federal Motor Carrier Safety Regulations (FMCSRs)?

Guidance: No. The Federal Highway Administration (FHWA) considers such propane cylinders to be an integral part of the recreational vehicle and not subject to the financial responsibility regulations.

***Editor’s Note:** FMCSA revised this guidance after it was published in the *Federal Register* in April 1997.

§387.5 Definitions.

Question 1: Does the definition of the term “in bulk” include solids as well as liquids even though the definition refers to containment systems with capacities in excess of 3,500 water gallons?

Guidance: Yes, the term “3,500 water gallons” is used as a volumetric value and includes solids as well as liquids.

§387.7 Financial responsibility required.

Question 1: May a large corporation which has many wholly owned subsidiaries have one policy for the parent corporation and maintain the policy and the Form MCS-90 at the corporate headquarters?

Guidance: Generally, the required financial responsibility must be in the exact name of the motor carrier and the proof of that coverage must be maintained at the motor carrier’s principal place of business. A parent corporation may, however, have a single policy of insurance or surety bond covering the parent and its subsidiaries, provided the name of the parent and the name of each subsidiary are listed on the policy or bond. Further, the required proof must have listed thereon the name of the parent and its subsidiaries. A copy of that proof of financial responsibility coverage must be maintained at each motor carrier subsidiary’s principal place of business.

Question 2: What is the definition of “Certificate of Registration” in [§387.7\(b\)\(3\)](#)?

Guidance: “Certificate of Registration” means a document issued by the Federal Highway Administration (FHWA) to all Mexican motor carriers, for-hire as well as private, that allows them to enter the U.S., but restricts them to the commercial zone for a particular border municipality, as previously adopted by the Interstate Commerce Commission Forms (ICC). The border municipality is the Port of Entry wherever the motor carrier’s vehicle enters the U.S.

Question 3: How does a Mexican motor carrier prove that it is complying with [§387.7](#)?

Guidance: Mexican motor carriers are permitted to obtain trip insurance and are required to carry, on the vehicle, a Form MCS-90 along with an insurance verification document listing the date and time the insurance coverage began and expires.

Question 4: Is the financial responsibility requirement met when an owner-operator (lessor) provides the motor carrier (lessee) a copy of the policy and Form MCS-90 where the carrier is named as an additional insured to the policy (Form MCS-90)?

Guidance: No. The motor carrier has the responsibility to obtain the proper financial responsibility levels.

§387.9 Financial responsibility, minimum levels.

Question 1: Is gasoline listed as a hazardous material, and, if so, what is the minimum level of financial responsibility currently required?

Guidance: Gasoline is a listed hazardous material in the table found at [49 CFR 172.101, §387.9](#) requires for-hire and private motor carriers transporting any quantity of oil in interstate or foreign commerce to have a minimum \$1,000,000 of financial responsibility coverage. The Clean Water Act of 1973, as amended, declares that gasoline is an “oil,” not a “hazardous substance.” The \$1,000,000 coverage also applies to for-hire and private motor carriers transporting gasoline “in-bulk” in intrastate commerce.

Question 2: Is a motor carrier transporting liquefied petroleum gas (LPG) in any quantity required to have \$1,000,000 or \$5,000,000 of financial responsibility coverage?

Guidance: Liquefied petroleum gas (LPG) is a flammable compressed gas. All transportation of LPG in containment systems with capacities in excess of 3,500 water gallons requires \$5 million financial responsibility coverage. Interstate and foreign commerce movements of LPG in containment systems *not* in excess of 3,500 water gallons requires \$1 million coverage. Intrastate movements of LPG in those smaller containment systems are subject *only* to state financial responsibility requirements.

Question 3: What is the definition of a “hopper type” vehicle as indicated in [§387.9](#)?

Guidance: A “hopper type” vehicle is one which is capable of discharging its load through a bottom opening without tilting. This vehicle type would also include belly dump trailers. Rear dump trailers and roll-off containers do not meet the definition of a bottom discharging vehicle.

***Question 4:** What level of insurance is required for a carrier operating a multi-compartment cargo tank that is transporting a hazardous substance, where each compartment is less than 3,500 water gallon capacity, and the total capacity is greater than 3,500 water gallons capacity?

Guidance: \$5,000,000 of insurance is required. The table in [§387.9](#) requires that amount of coverage for hazardous substances transported in “cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons.” The transporting vehicle must have “a gross vehicle weight rating of 10,000 or more pounds.” [Section 171.8 of title 49, C.F.R.](#), defines a “cargo tank motor vehicle” as a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle. Additionally, the use of the plural to describe the tanks and the singular to describe the truck implies that the standard is met if several tanks with a combined capacity of 3,500 water gallons are transported on the same vehicle. This is consistent with the purpose of the financial responsibility requirement — in this case, to protect the public from financial loss following an accidental release of hazardous material—because all of the compartments in a single tank trailer could be damaged in one crash. Here, the compartments on the vehicle have a total capacity of greater than 3,500 water gallons, therefore \$5,000,000 of insurance is required.

***Question 5:** What level of insurance is required for a motor carrier operating a tube trailer where the cylinders are manifolded together. Each separate cylinder has a capacity less than 3,500 water gallons, but the total capacity of all the cylinders on the vehicle is in excess of 3,500 water gallons.

Guidance: \$5,000,000 of insurance is required, for the reasons given above. The table in [§387.9](#) refers to “in bulk Division 2.1 or 2.2 materials.” The definition of in bulk in [§387.5](#) includes “the transportation, as cargo, of property … in containment systems with capacities in excess of 3,500 water gallons.” In this case, a group of cylinders manifolded together qualify as “containment systems.” As in Guidance A, the table describes the vehicle in the singular. As long as the containment systems transported on a single vehicle have a total capacity of at least 3,500 water gallons, \$5,000,000 of insurance is required.

***Editor’s Note:** This interpretation was added after the interpretations were published in the *Federal Register* in April 1997.

§387.11 State authority and designation of agent.

Question 1: How does a Mexican motor carrier demonstrate that its insurance company complies with [§387.11](#)?

Guidance: With a properly executed Form MCS-90 from an insurance company licensed in the U.S.

§387.15 Forms.

Question 1: May the motor carrier meet the financial responsibility requirements by aggregating insurance in layers?

Guidance: Yes. A motor carrier may aggregate coverage, by purchasing insurance in layers with each layer consisting of a separate policy and endorsement. The first layer of coverage is referred to as primary insurance and each additional layer is referred to as excess insurance. Example: ABC Motor Carrier transports Division 1.1 explosive material and is required to maintain \$5 million coverage. ABC Motor Carrier decides to meet this requirement by purchasing a primary insurance policy of \$1 million from insurance company A, an excess policy of \$1 million from insurance company B, and a \$3 million excess policy from insurance company C. Each policy would have a separate endorsement (Form MCS-90). The endorsement provided by insurer A would state “This insurance is primary and the company shall not be liable for amounts in excess of \$1,000,000 for each accident.” The endorsement provided by insurer B would state “This insurance is excess and the company shall not be liable for amounts in excess of \$1 million for each accident in excess of the underlying limit of \$1 million for each accident.” The endorsement provided by insurer C would state “This insurance is excess and the company shall not be liable for amounts in excess of \$3 million for each accident in excess of the underlying limit of \$2 million for each accident.”

Question 2: May the Form MCS-90 required by [part 387](#) for proof of minimum financial responsibility be modified?

Guidance: The prescribed text of the document may not be changed. However, the format (i.e., number of pages, layout of the text, etc.) may be altered.

Question 3: Is the use of a printed or stamped signature on the Form MCS-90 endorsement acceptable?

Guidance: Yes.

Question 4: Must a motor carrier obtain a new Form MCS-90 each year if it retains the same insurance company?

Guidance: If the insurance policy, as identified by the policy number on the Form MCS-90, is still valid upon the renewal of insurance, no new Form MCS-90 is required. If the policy number has changed or the insurance policy has been canceled in accordance with the terms shown on Form MCS-90, then a new Form MCS-90 must be completed and attached to the valid insurance policy.

***Question 5:** Does the term “insured,” as used on Form MCS-90, Endorsement for Motor Carrier Policies of Insurance for Public Liability, or “Principal”, as used on Form MCS-82, Motor Carrier Liability Surety Bond, mean the motor carrier named in the endorsement or surety bond?

Guidance: Yes. Under [49 CFR 387.5](#), “insured and principal” is defined as “the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.” Form MCS-90 and Form MCS-82 are not intended, and do not purport, to require a motor carrier’s insurer or surety to satisfy a judgment against any party other than the carrier named in the endorsement or surety bond or its fiduciary.

***Editor’s Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§387.25 Purpose and scope.

Question 1: May a State require a higher level of financial responsibility coverage than is required by [part 387](#)?

Guidance: Yes.

§387.27 Applicability.

Question 1: Is a nonprofit corporation, providing for-hire interstate transportation of passengers, subject to the minimum levels of financial responsibility for motor carriers of passengers?

Guidance: Yes.

Question 2: What determines the level of coverage required for a passenger carrier: the number of passengers or the number of seats in the vehicle?

Guidance: The level of financial responsibility required is predicated upon the manufacturer's designed seating capacity, not on the number of passengers riding in the vehicle at a particular time. The minimum levels of financial responsibility required for various seating capacities are found in [§387.33](#).

Question 3: Are luxury limousines with a seating capacity of fewer than seven passengers and not operated on a regular route or between specified points exempted under [§387.27\(b\)\(2\)](#)?

Guidance: No. Taxi cab service is highly regulated by local governments, usually conducted in marked vehicles, which makes them readily identifiable to enforcement officials. Limousines are not taxi cabs and are therefore not exempted from the financial responsibility requirements.

Question 4: When must a contract school bus operator comply with [part 387](#)?

Guidance: When the contractor is not engaged in transportation to or from school and the transportation is not organized, sponsored, and paid for by the school district.

Question 5: Does the exemption for the transportation of school children end at the high school level or does it extend to educational institutions beyond high school, for example junior college or college?

Guidance: The exemption does not extend beyond the high school level.

***Question 6:** Do the financial responsibility requirements of [Subpart B of Part 387](#) apply to school buses used by the federal government of Mexico to transport students on field trips to the United States?

Guidance: No. The financial responsibility requirements of Subpart B are only applicable to for-hire motor carriers transporting passengers in interstate or foreign commerce.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§387.31 Financial responsibility required.

Question 1: May a large corporation which has many wholly-owned subsidiaries have one policy of insurance for the parent corporation and maintain the policy and Form MCS-90B at the corporate headquarters?

Guidance: Generally, the required financial responsibility must be in the exact name of the motor carrier and the proof of that coverage must be maintained at the motor carrier's principal place of business. A parent corporation may, however, have a single policy of insurance or surety bond covering the parent and its subsidiaries, provided the name of the parent and the name of each subsidiary are listed on the policy or bond. Further, the required proof must have listed thereon the name of the parent and its subsidiaries. A copy of that proof of financial responsibility coverage must be maintained at each motor carrier subsidiary's principal place of business.

§387.39 Forms.

Question 1: May a motor carrier of passengers meet the financial responsibility requirements by aggregating insurance in layers?

Guidance: Yes. A motor carrier of passengers may aggregate coverage, by purchasing insurance in layers with each layer consisting of a separate policy and endorsement. The first layer of coverage is referred to as primary insurance and each additional layer is referred to as excess insurance. Each policy would have a separate endorsement (Form MCS-90B). The endorsement provided by insurer A would state "This insurance is primary and the company shall not be liable for amounts in excess of \$1,500,000 or \$5,000,000 for each accident." The endorsement provided by insurer B would state "This insurance is excess and the company shall not be liable for amounts in excess of \$1 million for each accident in excess of the underlying limit of \$1,500,000 or \$5,000,000 million for each accident." The endorsement provided by insurer C would state "This insurance is excess and the company shall not be liable for

amounts in excess of \$3 million for each accident in excess of the underlying limit of \$2 million for each accident.”

Question 2: May the Form MCS-90B required by [part 387](#) for proof of minimum financial responsibility be modified?

Guidance: The prescribed text of the document may not be changed. However, the format (i.e., number of pages, layout of the text, etc.) may be altered.

Question 3: Is the use of a facsimile signature (e.g., printed, stamped, autopenned, etc.) on the Form MCS-90B endorsement acceptable?

Guidance: Yes.

***Question 4:** Does the term “insured,” as used on Form MCS-90B, Endorsement for Motor Carrier Policies of Insurance for Public Liability, or “Principal”, as used on Form MCS-82B, Motor Carrier Public Liability Surety Bond, mean the motor carrier named in the endorsement or surety bond?

Guidance: Yes. Under [49 CFR 387.29](#), “insured and principal” is defined as “the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.” Form MCS-90B and Form MCS-82B are not intended, and do not purport, to require a motor carrier’s insurer or surety to satisfy a judgment against any party other than the carrier named in the endorsement or surety bond or its fiduciary.

***Editor’s Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

Part 390

§390.3 General applicability.

Question 1: Does the government exception in [§390.3\(f\)\(2\)](#) apply to motor carriers doing business with the government?

Guidance: No. The exception applies only when the government is the motor carrier.

Question 2: Are the FMCSRs applicable to drivers and CMVs which transport tools, equipment, and supplies across State lines in a CMV?

Guidance: Yes, the FMCSRs are applicable to drivers and CMVs in interstate commerce which transport property. The property in this situation is the tools, equipment and supplies.

Question 3: Are the operations of a church which provides bus tours to the general public for compensation subject to the FMCSRs as a for-hire motor carrier?

Guidance: Yes, the church is a for-hire motor carrier of passengers subject to the FMCSRs.

Question 4: Are the FMCSRs applicable to the rail movement of trailers and inter modal container chassis that previously or subsequently were moved by highway by a motor carrier in interstate commerce?

Guidance: No. They are only subject when being moved as a motor vehicle by highway by a motor carrier.

Question 5: Are personnel involved in road testing CMVs across a State line subject to the FMCSRs?

Guidance: Yes, any driver (including mechanics, technicians, driver trainees and other personnel) operating a CMV in interstate commerce must be in compliance with the FMCSRs.

Question 6: How does one distinguish between intra- and interstate commerce for the purposes of applicability of the FMCSRs?

Guidance: Interstate commerce is determined by the essential character of the movement, manifested by the shipper's fixed and persistent intent at the time of shipment, and is ascertained from all of the facts and circumstances surrounding the transportation. When the intent of the transportation being performed is interstate in nature, even when the route is within the boundaries of a single State, the driver and CMV are subject to the FMCSRs.

Question 7: Are Red Cross vehicles/drivers subject to the FMCSRs?

Guidance: Red Cross vehicles/drivers used to provide emergency relief under the provisions of [§390.23](#) are not subject to the FMCSRs while providing the relief. However, these vehicles/drivers would be subject when operating at other times, provided they are used in interstate commerce and the vehicles meet the definition of a CMV.

Question 8: May a motor carrier require fingerprinting as a pre-employment condition?

Guidance: The FMCSRs do not require or prohibit fingerprinting as a condition of employment. [§390.3\(d\)](#) allows employers to enforce more stringent requirements.

Question 9: Are the FMCSRs applicable to drivers/vehicles operated by a State or local educational institution which is a political subdivision of the State?

Guidance: [§390.3\(f\)\(2\)](#) specifically exempts transportation performed by a State or a political subdivision including any agency of a State or locality from the FMCSRs. The drivers, however, may be subject to the CDL requirements and/or State laws that are similar to the FMCSRs.

Question 10: Are the FMCSRs applicable to drivers/vehicles operated by a transit authority owned and operated by a State or a political subdivision of the State?

Guidance: §390.3(f)(2) specifically exempts transportation performed by the Federal Government, a State, or any political subdivision of a State from the FMCSRs. However, this exemption does not apply to the CDL requirements in part 383. Also, if governmental entities engage in interstate charter transportation of passengers, they must comply with accident report retention requirements of part 390.

Question 11: Is the interstate transportation of students, teachers and parents to school events such as athletic contests and field trips performed by municipalities subject to the FMCSRs? If a fee is charged to defer the municipality's expenses, does this affect the applicability of the regulations?

Guidance: §390.3(f)(2) specifically exempts transportation performed by the Federal Government, a State, or any political subdivision of a State from the FMCSRs. Charging a fee to defer governmental costs does not affect this exemption.

However, this exemption does not apply to the CDL requirements in part 383. Also, if governmental entities engage in interstate charter transportation of passengers, they must comply with accident report retention requirements of part 390.

Question 12: What is the applicability of the FMCSRs to school bus operations performed by Indian Tribal Governments?

Guidance: Transportation performed by the Federal Government, States, or political subdivisions of a State is generally excepted from the FMCSRs. This general exception includes Indian Tribal Governments, which for purposes of §390.3(f) are equivalent to a State governmental entity. When a driver is employed and a bus is operated by the governmental entity, the operation would not be subject to the FMCSRs, with the following exceptions: The requirements of part 383 as they pertain to commercial driver licensing standards are applicable to every driver operating a CMV, and the accident report retention requirements of part 390 are applicable when the governmental entity is performing interstate charter transportation of passengers.

Question 13: A motor carrier dispatches an empty CMV from State A into adjoining State B in order to transport cargo or passengers between two points in State B, and then to return empty to State A. Does the transportation of cargo or passengers within State B constitute interstate commerce?

Guidance: Yes. The courts and the ICC developed a test that clarifies the legal status of intrastate portions of interstate trips. The character of the intrastate leg depends on the shipper's fixed and persistent intent when the transportation began. The fixed and persistent intent in this case was to move property—the vehicle itself—across State lines and between two points in State B where it was used to haul cargo or passengers. The transportation within State B, therefore, constitutes interstate commerce. In some cases the motor carrier may be the shipper.

Question 14: What is the applicability of the FMCSRs to motor carriers owning and operating school buses that contract with a municipality to provide pupil transportation services?

Guidance: For the purposes of the FMCSRs, parts 390-399, "school bus operation" means the use of a school bus to transport school children and/or school personnel from home to school and from school to home. A "school bus" is a passenger motor vehicle designed to carry more than 10 passengers in addition to the driver, and used primarily for school bus operations (see §390.5). School bus operations and transportation performed by government entities are specifically exempted from the FMCSRs under §390.3(f).

However, anyone operating school buses under contract with a school is a for-hire motor carrier. When a nongovernment, for-hire motor carrier transports children to school-related functions other than "school bus operation" such as sporting events, class trips, etc., and operates across State lines, its operation must be conducted in accordance with the FMCSRs. This applies to motor carriers that operate CMVs as defined under part 390 which includes vehicles which have a GVWR of 10,001 pounds or more or are designed or used to carry passengers for compensation, except 6-passenger taxicabs not operating on fixed routes.

In certain instances, carriers providing school bus transportation are not subject to the Bus Regulatory Reform Act of 1982 and the minimum financial responsibility requirements (part 387) issued under this Act. Transportation of school children and teachers that is organized, sponsored, and paid for by the school district is not subject to part 387. Therefore, school bus contractors must comply with the FMCSRs for interstate trips such as sporting events and class trips but are not required by Federal regulations to carry a specific level of insurance coverage.

For those operations provided by school bus contractors that are subject to the FMCSRs, the motor carriers must keep driver and vehicle records as required by the regulations. This would include driver qualifications records ([part 391](#)), driver records of duty status ([part 395](#)), accident report retention ([part 390](#)), and inspection, repair, and maintenance records ([part 396](#)) for the drivers and vehicles that are used on the trips that are subject to the FMCSRs. These records are not required under the FMCSRs for the other vehicles in the motor carrier's fleet that are not subject to the regulations.

Question 15: May drivers be coerced into employing loading or unloading assistance (lumpers)?

Guidance: No. The Motor Carrier Act of 1980 made it illegal to coerce someone into unwanted loading or unloading and require payment for it ([49 U.S.C. 14103](#), previously [49 U.S.C. 11109](#)). The FHWA is responsible for the enforcement of regulations forbidding coercion in the use of lumpers.

Question 16: a. Are vehicles which, in the course of interstate transportation over the highway, are off the highway, loading, unloading or waiting, subject to the FMCSRs during these times?

b. Are vehicles and drivers used wholly within terminals and on premises or plant sites subject to the FMCSRs?

Guidance:

- a. Yes.
- b. No.

Question 17: What protection is afforded a driver for refusing to violate the FMCSRs?

Guidance: Section 405 of the STAA ([49 U.S.C. 31105](#)) states, in part, that no person shall discharge, discipline, or in any manner discriminate against an employee with respect to the employee's compensation, terms, conditions, or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rule, regulation, standard, or order applicable to CMV safety. In such a case, a driver may submit a signed complaint to the Occupational Safety and Health Administration.

Question 18: Are persons who operate CMVs for the personal conveyance of their friends or family members "private motor carriers of passengers (nonbusiness)" as defined in [§390.5](#)?

Guidance: No. Nonbusiness private motor carriers of passengers (PMCPs) *do not* include individuals providing personal conveyance of passengers for recreational purposes. A nonbusiness PMCP must be engaged in some group activity. For example, organizations that are exempt under the Internal Revenue Code (26 U.S.C. 501) and provide transportation for their members would generally be considered nonbusiness PMCPs: Religious, charitable, scientific, and educational organizations, scouting groups, sports clubs, fraternal societies or lodges, etc.

Question 19: "Unless otherwise specifically provided," [§390.3\(f\)\(2\)](#) exempts certain government entities and their drivers from compliance with 49 CFR Chapter III, Subchapter B, i.e., [parts 350-399](#). Which parts are covered by this exemption and which are "otherwise specifically" excluded?

Guidance: Government employers and drivers are exempt from compliance with [parts 325, 385, 387](#), and [390-399](#). However, they must comply with the drug and alcohol testing requirements in [part 382](#) and the CDL requirements in [part 383](#). [Parts 350, 355, 384, 386, 388](#), and [389](#) do not directly regulate CMV operators, public or private, and the question of an exemption therefore does not arise.

Question 20: Do the FMCSRs apply to Indian Tribal Governments?

Guidance: Under [§390.3\(f\)\(2\)](#), transportation performed by the Federal Government, States, or political subdivisions of a State is generally exempt from the FMCSRs. Indian Tribal Governments are considered equivalent to a State governmental entity for purposes of this exemption. Thus, when a driver is employed by and is operating a CMV owned by a governmental entity, neither the driver, the vehicle, nor the entity is subject to the FMCSRs, with the following exceptions:

- (1) The requirements of [part 383](#) relating to CMV driver licensing standards;
- (2) The drug testing requirements in [part 382](#);
- (3) Alcohol testing when an employee is performing, about to perform, or just performed safety-sensitive functions. For the purposes of alcohol testing, safety-sensitive functions are defined in [§382.107](#) as any of those on-duty functions set forth in [§395.2](#) On-Duty time, paragraphs (1) through (6), (generally, driving and related activities) and;
- (4) The accident report retention requirements of [§390.15](#) are applicable when the governmental entity is performing interstate charter transportation of passengers.

Question 21: Does the exemption in [§390.3\(f\)\(3\)](#) for the “occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise” apply to persons who occasionally use CMVs to transport cars, boats, horses, etc., to races, tournaments, shows or similar events, even if prize money is offered at these events?

Guidance: The exemption would apply to this kind of transportation, provided: (1) The underlying activities are not undertaken for profit, i.e., (a) prize money is declared as ordinary income for tax purposes, and (b) the cost of the underlying activities is not deducted as a business expense for tax purposes; and, where relevant; (2) corporate sponsorship is not involved. Drivers must confer with their State of licensure to determine the licensing provisions to which they are subject.

Question 22: If, after December 18, 1995, a Mexico-based driver is found operating beyond the boundaries of the four border States allowed by the North American Free Trade Agreement (NAFTA), is that driver in violation of the FMCSRs? If so, which one?

Guidance: No. Driving beyond the four border States is not, in and of itself, a violation of the FMCSRs.

Question 23: Is transportation within the boundaries of a State between a place in an Indian Reservation and a place outside such reservation interstate commerce?

Guidance: No, such transportation is considered to be intrastate commerce. An Indian reservation is geographically located within the area of a State. Enforcement on Indian reservations is inherently Federal, unless such authority has been granted to the States by Congressional enactment, accepted by the States where appropriate, and consented to by the Indian tribes.

Question 24: To what extent does the FHWA have jurisdiction to regulate the qualifications and hours of service of CMV drivers engaged in interstate or foreign commerce if the drivers only occasionally operate in interstate or foreign commerce?

Guidance: The FHWA published an interpretation in the *Federal Register* on July 23, 1981 (46 FR 37902) on this subject. The FHWA must show that the driver or motor carrier has engaged in interstate or foreign commerce within a reasonable period of time prior to its assertion of jurisdiction under [49 U.S.C. 31136](#) and [31502](#).

The FHWA must show that the driver or motor carrier has actually operated in interstate commerce within a reasonable period of time prior to its assertion of jurisdiction. Mere solicitation of business that would involve operations in interstate commerce is not sufficient to establish jurisdiction. If jurisdiction is claimed over a driver who has not driven in interstate commerce, evidence must be presented that the carrier has operated in interstate commerce and that the driver could reasonably be expected to make one of the carrier's interstate runs. Satisfactory evidence would include, but not be limited to, statements from drivers and carriers and any employment agreements.

Evidence of driving or being available for use in interstate commerce makes the driver subject to the FMCSRs for a 4-month period from the date of the proof. For that period, the motor carrier is also required to comply with those portions of the FMCSRs that deal with drivers, driving, and records related to or generated by drivers, primarily those in [49 CFR parts 387, 391, 392, 395](#) and [396](#). The FHWA believes that the 4-month period is reasonable because it avoids both a week-by-week determination of jurisdiction, which is excessively narrow, and the assertion that a driver who is used or available for use once remains subject to the FMCSRs for an unlimited time, which is overly inclusive.

Editor's Note: The following memorandum was issued February 8, 2000.

Purpose

On July 6, 1999, I issued a memorandum to all field offices concerning the authority of the Office of Motor Carrier and Highway Safety (OMCHS) to regulate the qualifications and maximum hours of service of commercial motor vehicle (CMV) drivers who operate both in interstate and intrastate commerce. Concerns about that memo have been expressed by (1) State agencies uncertain about its implications for the Motor Carrier Safety Assistance Program (MCSAP) (specifically, the tolerance guidelines for States' intrastate hours-of-service regulations); (2) motor carriers trying to determine whether Federal or State safety regulations would apply to intrastate trips made by drivers who also handled interstate runs; and (3) FMCSA field office personnel.

After considering the issues raised by the July memo, I have decided to change the policy of the FMCSA. This memorandum explains when the agency will exercise jurisdiction over intrastate operations of motor carriers and drivers that sometimes operate interstate.

Background

The statutes on which most of the Federal Motor Carrier Safety Regulations (FMCSRs) are based apply only to "interstate commerce." The extent of the jurisdiction conferred by that term has been decided by the Federal courts in a long series of cases. Most of the motor carrier cases analyzing "interstate commerce" involve disputes about overtime pay under the Fair Labor Standards Act (FLSA). The FLSA exempts employers from the requirement to pay over time to any employee "with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service" under the Motor Carrier Act of 1935 (i.e., [49 U.S.C. 31502](#)). Since the 1935 Act applies only to "inter-state commerce," the courts have had to determine whether drivers not currently operating across State lines may nonetheless be subject to the "power" of the Secretary, and thus not entitled to overtime pay.

In 1981 the Federal Highway Administration (FHWA), on behalf of its Bureau of Motor Carrier Safety, published a notice in the Federal Register (46 FR 37902, July 23, 1981) discussing the more important FLSA cases and interpreting its "jurisdiction to regulate the qualifications and maximum hours of service of commercial motor vehicle drivers engaged in interstate or foreign commerce." The notice summarized the conclusions of these cases as follows:

- If in the regular course of employment a driver is, or could be, called upon to transport a shipment in interstate commerce the driver would be subject to the FHWA's jurisdiction under [49 U.S.C.304](#) [i.e., the Motor Carrier Act of 1935, now codified at [49 U.S.C. 31502](#)]. [49 U.S.C. 304](#) provides the authority to regulate the qualifications and maximum hours of service of employees and safety of operation and equipment of common carriers, contract carriers, private carriers of property, and carriers of migrant workers. . . . These cases establish the basic tests for determining whether a driver is subject to Federal jurisdiction under [49 U.S.C. 304](#). They hold that even a minor involvement in interstate commerce as a regular part of an employee's duties will subject that employee to the jurisdiction of the FHWA. In two of the cases mentioned, "Morris v. McComb" [332 U.S. 422, Supreme Court, 1947] and "Starrett v. Bruce" [391 F.2d 320 (10th Cir. 1968)], the courts found jurisdiction over drivers even though those drivers had not driven at all in interstate commerce. The findings of jurisdiction were based on the probability of those drivers being assigned to interstate runs in the regular course of their employment.

The 1981 notice reached the following conclusion:

- The FHWA view is that in order to establish jurisdiction under [49 U.S.C. 304](#) [now [49 U.S.C. 31502](#)] the carrier must be shown to have engaged in interstate commerce within a reasonable period of time prior to the time at which jurisdiction is in question. The carrier's involvement in interstate commerce must be established by some concrete evidence such as an actual trip in interstate commerce or proof, in the case of a "for hire" carrier, that interstate business had been solicited. If jurisdiction is claimed over a driver who has not driven in interstate commerce, evidence must be presented that the carrier has engaged in interstate commerce and that the driver could reasonably have been expected to make one of the carrier's interstate runs. Satisfactory evidence would be statements from drivers and carriers, and any employment agreements.
- Evidence of driving in interstate commerce or being subject to being used in interstate commerce should be accepted as proof that the driver is subject to [49 U.S.C. 304](#) for a 4-month period from the date of the proof. The FHWA believes that the 4-month period is reasonable because it avoids both the too strict week-by-week approach and the situation where a driver could be used or be subject to being used once and remain subject to jurisdiction under [49 U.S.C. 304](#) for an unlimited time.

Although the notice of interpretation was never included in the Code of Federal Regulations, the FHWA summarized it in the Regulatory Guidance for the FMCSRs published on April 4, 1997 (Q. 24 under [Part 390](#), 63 FR 16370, at 16406).

Despite the 1981 and 1997 publications, the Office of Motor Carriers (OMC) and the OMCHS never applied the so-called 4-month rule, or at least not universally. My July 6 memorandum was designed to create a new, consistent policy for OMC. As mentioned above, however, it has created more problems than it resolved. I am therefore issuing this document to establish a new national policy for the FMCSA.

National Policy

Safety is the highest priority of the FMCSA. Enforcement of the hours of service regulations is a critical part of that mandate. Drivers who operate in interstate commerce must be in compliance with [49 C.F.R. Part 395](#) before, during and after interstate trips. Although the case law discussed in the 1981 notice of interpretation clearly supports an assertion of jurisdiction over a driver for four months after a single interstate trip, a 4-month rule is not necessary to prevent fatigue. The rules in [Part 395](#) control hours of service in periods of either 7 consecutive days (if the carrier does not operate every day of the week) or 8 consecutive days (if the carrier operates every day of the week). Because compliance with [Part 395](#) during the 7- or 8-day period before and after an interstate trip will keep driver fatigue within manageable bounds, the FMCSA will replace the 4-month rule with a 14/15-day rule.

1. Any driver who begins a trip in interstate commerce must continue to meet the requirements of [49 CFR 395.3\(a\)](#) and [\(b\)](#) through the end of the next 7 to 8 consecutive days, depending on which rule the motor carrier operates under. The driver must continue to comply with the requirements of [49 CFR Part 395](#), even if he/she operates exclusively in intrastate commerce for the remainder of the 60/70-hour period (i.e. 7-8 day schedule) at the end of the interstate trip. The driver must also continue to comply with the 10- and 15-hour rules as well as the 60- or 70-hour rules for the remainder of that day, and the following 7 days (if the 60-hour rule was applicable) or 8 days (if the 70-hour rule was applicable). A driver who begins a trip in interstate commerce in a CMV must have in his/her possession a copy of records of duty status for the previous 7 consecutive days, as required by [49 CFR 395.8\(k\)\(2\)](#) unless they meet [49 CFR 395.1\(e\)](#), even if the driver operated only in intrastate commerce during that 7-day period. During the 7-day period prior to the interstate trip the driver **may** follow the state regulations applicable to intrastate commerce with regard to the states' CMV driving and on-duty requirements.
2. FMCSA investigators should cite drivers for violations of the 10- or 15-hour rules or the 60- or 70-hour rules that are committed while on the interstate trip or during the 7 or 8 days after completing the interstate trip (depending on which rule the motor carrier operates under). The

driver remains subject to [Part 395](#) for 7 or 8 days after a trip in interstate commerce even if he/she drives only in intrastate commerce for that period. Violations of the policies stated here which are discovered during compliance reviews should be treated like any other violations of the FMCSRs in determining the motor carrier's safety rating and enforcement action may be taken.

3. The MCSAP Tolerance Guidelines in Appendix C to [49 C.F.R. Part 350](#) are unchanged. This policy statement simply clarifies the difference between Paragraphs 2 and 3 of the Guidelines, i.e., between the type of trips subject to Federal jurisdiction, as opposed to those subject only to State jurisdiction.

The FMCSA does not disagree with the legal conclusions the FHWA reached in the 1981 notice of interpretation. However, in the interest of simplicity and work ability, I have decided to replace the so-called 4-month rule with a 14/15-day rule.

***Question 25:** Do the Federal Motor Carrier Safety Regulations apply to transportation performed by the federal government of a foreign country, or by a state, provincial, or territorial government of a foreign country?

Guidance: Yes. Although [§390.3\(f\)\(2\)](#) includes an exception for transportation performed by the Federal government, a State, or any political subdivision of a State, the exceptions are only applicable to government entities in the United States.

***Question 26:** Is the operation of fire trucks and rescue vehicles in interstate commerce by a private firefighting company subject to the FMCSRs when the company provides its services under contract to Federal or State agencies?

Guidance: Generally, [49 CFR parts 390-399](#) (FMCSRs) are not applicable to the operation of fire trucks and rescue vehicles by private contract fire companies while such vehicles are being used in emergency and related operations, i.e., while their personnel are engaged in firefighting or participating in rescue operations, and when their vehicles are returning from the emergency or rescue scene [see [49 CFR 390.3\(f\)\(5\)](#)]. In such cases, private contract fire companies? drivers and vehicles are not subject to most of the safety regulations.

In addition to [49 CFR 390.3\(f\)\(5\)](#), private contract firefighting companies are also exempted by [49 CFR 390.23](#) when providing direct assistance during national, regional or local emergencies. The term "emergency," as used in [§390.23](#), means an occurrence, natural or manmade, that interrupts the delivery of services (such as electricity, medical care, sewer, water, telecommunications, and telecommunications transmissions) or supplies (such as food and fuel), or that otherwise immediately threatens human life or public welfare. The occurrence must result in 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; such as 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. Direct assistance means transportation or other relief services provided by a motor carrier (including a private contract fire company) or its driver(s) incident to the immediate restoration of essential services or essential supplies. Direct assistance does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to human life and property has passed.

With regard to non-emergency and rescue activities, such as training exercises, emergency preparedness drills, or pre-positioning of personnel and equipment prior to an actual emergency, private contract fire companies must comply with the FMCSR while operating commercial motor vehicles in interstate commerce.

***Question 27:** Section [390.3\(f\)\(5\)](#) provides an exemption from the FMCSRs for the operation of fire trucks and rescue vehicles while such vehicles are being used in emergency and related operations. What is meant by the phrase "emergency and related operations"?

Guidance: The term “emergency,” as used in [§390.3\(f\)\(5\)](#), includes any occurrence, natural or manmade, that immediately threatens human life or public welfare, and requires the work of firefighters or rescue personnel to respond to the threat. Such occurrences include, but are not limited to, fires, floods, motor vehicle crashes, and medical emergencies. An emergency, however, need not have been formally declared by a governmental authority in order to utilize this exemption.

The term “related operations” includes driving fire trucks or rescue vehicles to the scene of an emergency, and driving such vehicles while returning from the emergency or rescue scene. “Related operations” does not include the pre-positioning of fire trucks or rescue vehicles in anticipation of emergencies, or the use of such vehicles in training or emergency preparedness exercises.

***Question 28:** Is the operation of motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), in interstate commerce, by private firefighting companies transporting their employees subject to the FMCSRs?

Guidance: No. Although the 9- to 15-passenger vehicles are being operated in interstate commerce, firefighting companies transporting their own employees would be considered private motor carriers of passengers with regard to the operation of these vehicles because the passengers are not being transported for compensation. Vehicles designed or used to transport 9- to 15-passengers, in interstate commerce, but not for compensation, are excluded from the definition of “commercial motor vehicle” found at [49 CFR 390.5](#). Therefore, the FMCSRs are not applicable to the operation of such vehicles, even if the firefighting company operates other vehicles that are subject to the safety regulations.

***Question 29:** [Section 390.3\(f\)\(5\)](#) provides an exemption from the FMCSRs for the operation of fire trucks and rescue vehicles while such vehicles are being used in emergency and related operations.

[Section 390.23](#) provides an exception to most of the FMCSRs for motor carriers providing direct assistance during an emergency. What are the differences between these provisions when they are applied to contract wildfire suppression services?

Guidance: [Section 390.3\(f\)\(5\)](#) provides an exception to all of the requirements in Subchapter B of Chapter III, Title 49 of the

Code of Federal Regulations ([49 CFR Parts 350](#) through [399](#)) for certain operations of fire trucks and rescue vehicles. By contrast the exception provided by [§390.23](#) is limited to all of the requirements in [49 CFR Parts 390](#) through [399](#) and may be used by any motor carrier, including contract wildfire suppression services, providing direct assistance during an emergency, as defined in [49 CFR 390.5](#).

The exception provided by [§390.3\(f\)\(5\)](#) may be used by operators of fire trucks and rescue vehicles while such vehicles are used in emergency and related operations, regardless of whether there is an emergency declaration. The exception provided in [§390.23](#) always requires 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, such as 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.

***Question 30:** [Section 390.3\(f\)\(5\)](#) provides an exemption from the FMCSRs for the operation of fire trucks and rescue vehicles while such vehicles are being used in emergency and related operations. Is this exemption applicable to all fire trucks and rescue vehicles, or is it limited to such vehicles when they are used for emergency and related operations associated with occurrences in or around residential or commercial buildings or structures?

Guidance: [Section 390.3\(f\)\(5\)](#) is applicable to all fire trucks and rescue vehicles while such vehicles are being used in emergency and related operations, regardless of whether the emergency or related operation involves occurrences in or around residential or commercial buildings or structures. For example, [§390.3\(f\)\(5\)](#) is applicable to fire trucks and rescue vehicles used by wildfire suppression services when these vehicles are used in emergency and related operations, regardless of whether there are buildings or structures in the immediate vicinity of the fire suppression activities.

***Question 31:** [Section 390.3\(f\)\(5\)](#) provides an exemption from the FMCSRs for the operation of fire trucks and rescue vehicles while such vehicles are being used in emergency and related operations. What is meant by the phrase “fire trucks and rescue vehicles”?

Guidance: For the purposes of [§390.3\(f\)\(5\)](#), the term “fire trucks and rescue vehicles” should be considered to include a wide range of fire and rescue apparatus used by fire fighters, such as, but not limited to, pumper trucks (which may or may not be equipped with water tanks) and rescue trucks (used to transport a crew and various emergency equipment; they may or may not be equipped with water pumping equipment) used primarily or exclusively for fire and rescue operations.

The term “fire trucks and rescue vehicles” should not be considered to include certain wildfire suppression services support vehicles such as: trucks operated by caterers or other food vendors; cargo tank vehicles and trailers operated by water supply companies; cargo tank vehicles and trailers used to transport fuel for helicopters and auxiliary equipment such as generators; vehicles used to transport tents (or other temporary shelters), portable showers, or portable/mobile restrooms; or, buses designed or used to transport 16 or more passengers, including the driver. Although cargo tank vehicles and trailers operated by water supply companies should not be considered fire trucks or rescue vehicles, wildfire suppression efforts that require significant use of water supply companies are likely to result in the declaration of an emergency, as defined in [49 CFR 390.5](#). If an emergency is declared, all motor carriers, including water supply companies, providing direct assistance (as defined in [49 CFR 390.5](#)) in responding to the emergency would be covered by [§390.23](#), an exception to all of the requirements of [49 CFR Parts 390 through 399](#).

***Editor’s Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§390.5 Definitions.

Question 1: Do the definitions of "farm", "farmer" and "agricultural crops" apply to greenhouse operations?

Guidance: Yes.

Question 2: Is a vehicle used to transport or tow an hydrous ammonia nurse tanks considered a CMV and subject to FMCSRs?

Guidance: Yes, provided the vehicle's GVWR or GCWR meets or exceeds that of a CMV as defined in [§390.5](#) and/or the vehicle transports HM in a quantity that requires placarding.

Question 3: If a vehicle's GVWR plate and/or VIN number are missing but its actual gross weight is 10,001 pounds or more, may an enforcement officer use the latter instead of GVWR to determine the applicability of the FMCSRs?

Guidance: Yes. The only apparent reason to remove the manufacturer's GVWR plate or VIN number is to make it impossible for roadside enforcement officers to determine the applicability of the FMCSRs, which have a GVWR threshold of 10,001 pounds. In order to frustrate willful evasion of safety regulations, an officer may therefore presume that a vehicle which does not have a manufacturer's GVWR plate and/or does not have a VIN number has a GVWR of 10,001 pounds or more if: (1) It has a size and configuration normally associated with vehicles that have a GVWR of 10,001 pounds or more; and (2) It has an actual gross weight of 10,001 pounds or more.

A motor carrier or driver may rebut the presumption by providing the enforcement officer the GVWR plate, the VIN number or other information of comparable reliability which demonstrates, or allows the officer to determine, that the GVWR of the vehicle is below the jurisdictional weight threshold.

Question 4: If a vehicle with a manufacturer's GVWR of less than 10,001 pounds has been structurally modified to carry a heavier load, may an enforcement officer use the higher actual gross weight of the vehicle, instead of the GVWR, to determine the applicability of the FMCSRs?

Guidance: Yes. The motor carrier's intent to increase the weight rating is shown by the structural modifications. When the vehicle is used to perform functions normally performed by a vehicle with a

higher GVWR, [§390.33](#) allows an enforcement officer to treat the actual gross weight as the GVWR of the modified vehicle.

Question 5: A driver used by a motor carrier operates a CMV to and from his/her residence out of State. Is this considered interstate commerce?

Guidance: If the driver is operating a CMV at the direction of the motor carrier, it is considered interstate commerce and is subject to the FMCSRs. If the motor carrier is allowing the driver to use the vehicle for private personal transportation, such transportation is not subject to the FMCSRs.

Question 6: Is transporting an empty CMV across State lines for purposes of repair and maintenance considered interstate commerce?

Guidance: Yes. The FMCSRs are applicable to drivers and CMVs in interstate commerce which transport property. The property in this situation is the empty CMV.

Question 7: Does off-road motorized construction equipment meet the definitions of "motor vehicle" and "commercial motor vehicle" as used in [§§383.5](#) and [390.5](#)?

Guidance: No. Off-road motorized construction equipment is outside the scope of these definitions: (1) When operated at construction sites; and (2) when operated on a public road open to unrestricted public travel, provided the equipment is not used in furtherance of a transportation purpose. Occasionally driving such equipment on a public road to reach or leave a construction site does not amount to furtherance of a transportation purpose. Since construction equipment is not designed to operate in traffic, it should be accompanied by escort vehicles or in some other way separated from the public traffic. This equipment may also be subject to State or local permit requirements with regard to escort vehicles, special markings, time of day, day of the week, and/or the specific route.

Question 8: What types of equipment are included in the category of off-road motorized construction equipment?

Guidance: The definition of off-road motorized construction equipment is to be narrowly construed and limited to equipment which, by its design and function is obviously not intended for use, nor is it used on a public road in furtherance of a transportation purpose. Examples of such equipment include motor scrapers, backhoes, motor graders, compactors, tractors, trenchers, bulldozers and railroad track maintenance cranes.

***Question 9:** Are mobile cranes operating in interstate commerce considered CMVs, and are they subject to the FMCSRs?

Guidance: The definition of CMV encompasses mobile cranes. Unlike the off-road motorized construction equipment discussed in Guidance Questions 7 and 8 above, mobile cranes are readily capable of traveling at highway speeds, over extended distances, and in the mixed traffic of public highways. Although the functions a crane performs are distinct from the transportation provided by a truck, the ready mobility of the crane depends on its permanent integration with a truck chassis. The truck chassis is equipped with wheels, tires, brakes, a suspension system, and other components. The mobile crane itself, like an empty CMV (see Guidance Question 6), is considered property.

[74 FR 43641, Aug. 27, 2009]

Question 10: Does the FHWA define for-hire transportation of passengers the same as the former ICC did?

Guidance: To the extent FHWA's authority stems from 49 U.S.C. 31502 or other sections of Title 49 which are rooted in the Interstate Commerce Act, the FHWA is bound by judicial precedent and legislative history in interpreting that Act, much of which relates to the operations of the former ICC. However, since the MCSA of 1984 re-established the FHWA's jurisdictional authority and resulted in a re-promulgation of the FMCSRs, the FHWA has been establishing its own precedents based on "safety" rather than "economics" as the overriding consideration. This has resulted in some deviation in the definition of terms by the two agencies, e.g., commercial zones, for-hire transportation, etc.

The term "for-hire motor carrier" as defined in part 390 means a person engaged in the transportation of goods or passengers for compensation. The FHWA has determined that any business entity that assesses a fee, monetary or otherwise, directly or indirectly for the transportation of passengers is operating as a for-hire carrier. Thus, the transportation for compensation in interstate commerce of passengers by motor vehicles (except in six-passenger taxicabs operating on fixed routes) in the following operations would typically be subject to all parts of the FMCSRs, including [part 387](#): whitewater river rafters, hotel/motel shuttle transporters, rental car shuttle services, etc. These are examples of for-hire carriage because some fee is charged, usually indirectly in a total package charge or other assessment for transportation performed.

Question 11: A company has a truck with a GVWR under 10,001 pounds towing a trailer with a GVWR under 10,001 pounds. However, the GVWR of the truck added to the GVWR of the trailer is greater than 10,001 pounds. Would the company operating this vehicle in interstate commerce have to comply with the FMCSRs?

Guidance: [§390.5](#) of the FMCSRs includes in the definition of CMV a vehicle with a GVWR or GCWR of 10,001 or more pounds. The section further defines GCWR as the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. Therefore, if the GVWR of the truck added to the GVWR of the trailer exceeds 10,001 pounds, the driver and vehicle are subject to the FMCSRs.

Question 12: A CMV becomes stuck in a median or on a shoulder, and has had no contact with another vehicle, a pedestrian, or a fixed object prior to becoming stuck. If a tow truck is used to pull the CMV back onto the traveled portion of the road, would this be considered an accident?

Guidance: No.

Question 13: To what extent would the wind shield and/or mirrors of a vehicle have to be damaged in order for it to be considered "disabling damage" as used in the definition of an accident in [§390.5](#)?

Guidance: The decision as to whether damage to a windshield and/or mirrors is disabling is left to the discretion of the investigating officer.

Question 14: Is the tillerman who controls the steerable rear axle of a vehicle so equipped a driver subject to the FMCSRs while operating in interstate commerce?

Guidance: Yes. Although the tillerman does not control the vehicle's speed or braking, the rear-axle steering he/she performs is essential to prevent the trailer from off tracking into other lanes or vehicles or off the highway entirely. Because this function is critical to the safe operation of vehicles with steerable rear axles, the tillerman is a driver.

Question 15: Does the definition of a "commercial motor vehicle" in [§390.5](#) of the FMCSRs include parking lot and/or street sweeping vehicles?

Guidance: If the GVWR of a parking lot or street sweeping vehicle is 10,001 or more pounds, and it operates in interstate commerce, it is a CMV.

Question 16: Does a driver leasing company that hires, assigns, trains, and/or supervises drivers for a private or for-hire motor carrier become a motor carrier as defined by [49 CFR 390.5](#)?

Guidance: No.

Question 17: May a motor carrier that employs owner-operators who have their own operating authority issued by the ICC or the Surface Transportation Board transfer the responsibility for compliance with the FMCSRs to the owner-operators?

Guidance: No. The term "employee," as defined in [§390.5](#), specifically includes an independent contractor employed by a motor carrier. The existence of operating authority has no bearing upon the issue. The motor carrier is, therefore, responsible for compliance with the FMCSRs by its driver employees, including those who are owner-operators.

Question 18: Must a person who is injured in an accident and immediately receives treatment away from the scene of the accident be transported in an ambulance?

Guidance: No. Any type of vehicle may be used to transport an injured person from the accident scene to the treatment site.

Question 19: What is the meaning of “immediate” as used in the definition of “accident?”

Guidance: The term “immediate” means without an unreasonable delay. A person immediately receives medical treatment if he or she is transported directly from the scene of an accident to a hospital or other medical facility as soon as it is considered safe and feasible to move the injured person away from the scene of the accident.

Question 20: A person involved in an incident discovers that he or she is injured after leaving the scene of the incident and receives medical attention at that time. Does the incident meet the definition of accident in [49 CFR 390.5](#)?

Guidance: No. The incident does not meet the definition of accident in [49 CFR 390.5](#) because the person did not receive treatment immediately after the incident.

Question 21: Do electronic devices which are advertised as radar jammers meet the definition of a radar detector in [49 CFR 390.5](#)?

Guidance: Devices that are said to reflect incoming energy passively or to transmit steadily on the same frequency as police radar units are not radar detectors because they do not detect radio microwaves. Devices that are said to detect and isolate the incoming signal and then to transmit on the same frequency to interfere with the police unit would qualify as radar detectors.

Question 22: Is a motor vehicle drawing a non-self-propelled mobile home that has one or more set of wheels on the roadway, a driveaway-towaway operation?

Guidance: Yes, if the mobile home is a commodity. For example, the mobile home is transported from the manufacturer to the dealer or from the dealer or other seller to the buyer.

Question 23: Can a truck tractor drawing a trailer be a driveaway-towaway operation?

Guidance: Yes, if the trailer is a commodity. For example, the trailer is transported from the manufacturer to the dealer or from the dealer or other seller to the buyer.

Question 24: Are trailers which are stacked upon each other and drawn by a motor vehicle by attachment to the bottom trailer, a driveaway-towaway operation?

Guidance: No. Only the bottom trailer has one or more sets of wheels on the roadway. The other trailers are cargo.

Question 25: The definition of a passenger CMV is a vehicle “designed to transport” more than 15 passengers, including the driver. Does that include standing passengers if the vehicle was specifically designed to accommodate standees?

Guidance: No. “Designed to transport” refers only to the number of designated seats; it does not include areas suitable, or even designed, for standing passengers.

Question 26: What is considered a “public road”?

Guidance: A public road is any road under the jurisdiction of a public agency and open to public travel or any road on private property that is open to public travel.

***Question 27, revised:** A person is transported to a hospital from the scene of a commercial motor vehicle traffic accident.

In one situation, the person undergoes observation or a “checkup. Is this considered “medical treatment,” making the CMV occurrence an “accident” for purposes of the Federal Motor Carrier Safety Regulations?

In another situation, the person undergoes x-ray examination or is given a prescription, but is released from the facility without being admitted as an inpatient. Is the x-ray or prescription considered “medical treatment,” making the CMV occurrence and “accident” for purposes of the Federal Motor Carrier Safety Regulations?

Guidance: In the first situation, no. A person who does not receive treatment for diagnosed injuries or other medical intervention directly related to the accident, has not received “medical treatment” as that term is used in [§390.5](#).

In the second situation, yes. A person who undergoes x-ray examination (or other imaging, such as computed tomography or CT), or is given prescription medication (or the prescription itself), has received “medical treatment.”

***Question 28, revised:** A driver of a commercial motor vehicle (CMV) is changing lanes. A passenger car driver near the CMV loses control, leaves the roadway, and is involved in an accident. The passenger car must be towed. Is the CMV considered to be “involved” under the definition of “accident” in [§390.5](#)?

Guidance: The CMV would not be considered “involved” unless the police investigation officer determines that the CMV caused or contributed to the accident.

***Question 29:** A corporation (the parent corporation) owns subsidiary corporations that are for-hire motor carriers, each having their own separate operating authorities. The parent corporation does not operate commercial motor vehicles. However, the parent corporation exercises or retains management supervision, including supervision for safety compliance, and provides policy/procedural manuals and driver safety manuals for the subsidiary corporations (forhire motor carriers). Is the parent corporation considered a motor carrier as defined by [49 CFR 390.5](#)?

Guidance: No. A motor carrier is defined in [49 CFR 390.5](#) as 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. As long as the parent corporation does not engage in the transportation of goods or passengers for compensation (i.e., exercising daily control over drivers and equipment; and, in the case of a for-hire motor carrier, soliciting customers, and billing and collecting freight charges), it would not be considered a motor carrier. The exercise of managerial control by the parent corporation by establishing operational policies and procedures, or through other forms of general oversight, does not, in and of itself, make it a motor carrier under FMCSA regulations.

***Question 30:** Does an explosion or fire in a commercial motor vehicle (CMV) that has not collided with other vehicles or stationary objects meet the definition of an “accident” under [§390.5](#)?

Guidance: Fires have been included in the definition of “accidents” since 1962. However, in an effort to simplify the regulatory text, the agency removed the specific references to fires, rollovers, and other noncollision accidents in 1972. As the agency indicated, however, its intent was to include all of these items as accidents (37 FR 18079, September 7, 1972).

A fire or explosion in a CMV operating on a highway in interstate or intrastate commerce would be considered an “accident” if it resulted in a fatality; bodily injuries requiring the victim to be transported immediately to a medical facility away from the scene; or disabling damage requiring the CMV to be towed. A collision is not a pre-requisite to an “accident” under [§390.5](#).

Any CMV fires that meet the accident criteria in [49 CFR 390.5](#) — that is, fires that occur in a commercial motor vehicle in transport on a roadway customarily open to the public which result in a fatality, bodily injury requiring immediate medical attention away from the scene of the accident, or disabling damage requiring a vehicle to be towed — will be considered in the safety fitness determination. As indicated in [Appendix B to 49 CFR Part 385](#), FMCSA will continue to consider preventability when a motor carrier contests a safety rating by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor.

With regard to fires, preventability will be determined according to the following: If a motor carrier, that exercises normal judgment and foresight could have anticipated the possibility of the fire that in fact occurred, and avoided it by taking steps within its control — short of suspending operations — which would not have risked causing another kind of mishap, the fire was preventable.

***Question 31:** What location may a motor carrier designate as its "principal place of business"?

Guidance: In instances where a motor carrier has more than one terminal or office, the regulations do not explicitly place a restriction on which location a motor carrier may designate as its principal place of business. The definition states that such a location is "normally" the carrier's headquarters; the rule does not require motor carriers to use the company's corporate headquarters as its principal place of business. However, motor carriers are limited to using an actual place of business of the motor carrier. Moreover, a motor carrier may designate as its principal place of business only locations that contain offices of the motor carrier's senior-most management executives, management officials or employees responsible for the administration, management and oversight of safety operations and compliance with the FMCSRs and Hazardous Materials Regulations. In determining its principal place of business a motor carrier must consider the following factors: (a) The relative importance of the activities performed at each location, and, if this factor is not determinative, then (b) time spent at each location by motor carrier management or corporate officers.

FMCSA authorized representatives will use the above two factors in determining whether a motor carrier has designated an appropriate location as its principal place of business. In addition, FMCSA may also consider whether the location is operated, controlled or owned by the motor carrier, whether operations relating to the transportation of persons or property regularly take place at the designated location, whether any of the employees of the motor carrier regularly report to the location for duty, whether any leased or owned vehicles of the company are maintained on the premises, and whether any of the records required by parts 382, 387, 390, 391, 395, 396 and 397 are maintained on the premises. In the event a carrier does not designate a qualifying location as its principal place of business, FMCSA may initiate appropriate enforcement action or take action regarding the carrier's USDOT registration.

A motor carrier with multiple business locations may maintain some records at locations of the motor carrier other than, or in addition to, its principal place of business. However, after a request has been made by an FMCSA authorized representative, a motor carrier with multiple business locations must make records required by parts 382, 387, 390, 391, 395, 396 and 397 available for inspection at the principal place of business or other location specified by the special agent or authorized representative within 48 hours. Pursuant to § 390.29, "Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period of time." A motor carrier with a single business location must make records required by parts 382, 387, 390, 391, 395, 396 and 397 available upon request.

A motor carrier may not designate as its principal place of business any location where the motor carrier is not engaged in business operations related to the transportation of persons or property. For example, post office box centers or commercial courier service establishments that receive and hold mail or packages for third party pickup may not be designated a "principal place of business" (other than by the courier service provider itself). A motor carrier may not designate the office of a consultant, service agent, or attorney as the motor carrier's principal place of business if the motor carrier is not engaged in operations related to the transportation of persons or property at that location.

[74 FR 37654, July 29, 2009]

***Question 32:** May a motor carrier with a single business location, including a private residence, designate a different location as its "principal place of business"?

Guidance: No. The definition of "principal place of business" in 49 CFR 390.5 allows a carrier with multiple terminals or offices to designate a single terminal or office as its primary business location for identification purposes. Consistent with this definition, a motor carrier with a single place of business may designate only its actual place of business as the "principal place of business." Notwithstanding this restriction, a motor carrier and an authorized representative of FMCSA may agree that a compliance review or other investigation of a motor carrier will be conducted at a mutually acceptable location other than the motor carrier's principal place of business.

[74 FR 37654, July 29, 2009]

Question 33: Are crashes involving motorists striking attenuator trucks while the impact attenuators or crash cushions are deployed included within the definition of “accident” with regard to the motor carrier responsible for the operation of the attenuator truck?

Guidance: No. Attenuator trucks are highway safety vehicles equipped with an impact attenuating crash cushion intended to reduce the risks of injuries and fatalities resulting from crashes in construction work zones. Because these vehicles are deployed at construction work zones to prevent certain crashes through the use of flashing lights and to reduce the severity of crashes when motorists do not take appropriate action to avoid personnel and objects in the construction zone, it is expected that these vehicles will be struck from time to time while the impact attenuators or crash cushions are deployed. Therefore, such events are not considered accidents and the recordkeeping requirements of 49 CFR 390.15, Assistance in investigations and special studies, are not applicable with regard to the motor carrier responsible for the operation of the attenuator truck. If however, a commercial motor vehicle, as defined in 49 CFR 390.5, strikes an attenuator truck, this event would be considered an accident for the motor carrier responsible for the operation of the vehicle that hits the attenuator truck.

[80 FR 15914, Mar. 26, 2015]

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§390.9 State and local laws, effect on.

Question 1: If an interstate driver gets stopped by a State enforcement officer for an inspection, would the inspecting officer be enforcing the Federal regulations or State regulations?

Guidance: A State enforcement officer can only enforce State laws. However, under the Motor Carrier Safety Assistance Program, quite often State laws are the same as or similar to the FMCSRs.

§390.15 Assistance in investigations and special studies.

Question 1: May a motor carrier create an accident register of its own, or is there a specified form that must be used?

Guidance: There is no specified form. A motor carrier may create or use any accident register as long as it includes the elements required by [§390.15](#).

Question 2: Would the accident report retention requirement in [§390.15\(b\)\(2\)](#) include an “Adjuster’s Report” that is normally considered to be an internal document of an insurance company?

Guidance: No. The intent of [§390.15\(b\)\(2\)](#) is that motor carriers maintain copies of all documents which the motor carrier is required by the insurance company to complete and/or maintain. [§390.15\(b\)\(2\)](#) does not require motor carriers to maintain documents, such as “Adjuster’s Reports,” that are typically internal documents of the insurance company.

Question 3: What types of documents must a motor carrier retain to support its accident register and be in compliance with [§390.15\(b\)?](#)

Guidance: The documents required by [§390.15\(b\)\(2\)](#) include all information about a particular accident generated by a motor carrier or driver to fulfill its accident reporting obligations to State or other governmental entities or that motor carrier’s insurer. The language of paragraph [\(b\)\(2\)](#) does not require a motor carrier to seek out, obtain, and retain copies of accident reports prepared by State investigators or insurers.

***Question 4:** Does a foreign-based motor carrier’s accident register have to include accidents that occur in Canada or Mexico?

Guidance: Motor carriers must record accidents occurring within the U.S. and on segments of interstate movements into Canada between the U.S.-Canadian border and the first physical delivery location of a Canadian consignee. The FHWA further believes its regulations require the documentation of accidents for segments of interstate movements out of Canada between the last physical pick-up location in Canada and the U.S.-Canadian border. The same would be true for movements between the U.S.-Mexican border

and a point in Mexico. However, the FHWA does not have authority over Canadian and Mexican motor carriers that operate within their own countries where the transportation does not involve movements into or out of the United States.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§390.17 General requirements and information

Question 1: Do the Federal Motor Carrier Safety Regulations prohibit "texting" while driving a commercial motor vehicle in interstate commerce?

Guidance: Yes. Although the current safety regulations do not include an explicit prohibition against texting while driving by truck and bus drivers, the general restriction against the use of additional equipment and accessories that decrease the safety of operation of commercial motor vehicles applies to the use of electronic devices for texting. Handheld or other wireless electronic devices that are brought into a CMV are considered "additional equipment and accessories" within the context of § 390.17.

"Texting" is the review of, or preparation and transmission of, typed messages through any such device or the engagement in any form of electronic data retrieval or electronic data communication through any such device. Texting on electronic devices while driving decreases the safety of operation of the commercial vehicles on which the devices are used because the activity involves a combination of visual, cognitive and manual distraction from the driving task. Research has shown that during 6-second intervals immediately preceding safety-critical events (e.g., crashes, near crashes, lane departure), texting drivers took their eyes off the forward roadway an average of 4.6 seconds. Therefore, the use of electronic devices for texting by CMV operators while driving on public roads in interstate commerce decreases safety and is prohibited by [49 CFR 390.17](#).

[75 FR 4306, Jan. 27, 2010]

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§390.21 Marking of CMVs.

Question 1: What markings must be displayed on a CMV when used by two or more motor carriers?

Guidance: The markings of the motor carrier responsible for the operation of the CMV must be displayed at the time of transportation. If 2 or more names are on the vehicle, the name of the operating motor carrier must be preceded by the words "operated by."

§390.23 Relief from regulations.

Question 1: Does [§390.23](#) create an exemption from the FMCSRs each and every time the delivery of electricity is interrupted, no matter how isolated or minor the occurrence?

Guidance: The rule creates an exemption from the FMCSRs when interruptions of electricity are severe enough to trigger a declaration of an emergency by a public official authorized to do so.

An interruption of electricity that does not produce a declaration by a public official is not an emergency for purposes of the regulation and does not exempt a motor carrier or driver from the FMCSRs. A call reporting a downed power line, whether directed to the State police or a public utility company, does not create a declared emergency.

The authority to declare emergencies has been delegated to different officials in the various States. The FHWA has not attempted to list these officials. In order to utilize the exemption provided by [§390.23](#), drivers and motor carriers must therefore ascertain that a declaration of an emergency was made by a State or local official authorized to do so.

Question 2: [§390.23\(a\)](#) provides that [parts 390](#) through [399](#) do not apply to any motor carrier or driver operating a CMV to provide direct assistance in an emergency. Is a motor carrier or driver required to keep a record of the driver's on-duty or driving time while providing relief?

Guidance: No.

Question 3: After providing emergency relief under [§390.23](#), what on-duty hours must a driver use to determine how much off-duty time he/she must have before returning to the service of the employing motor carrier?

Guidance: The driver must total the number of hours worked while the driver actually provided direct assistance to the emergency relief effort.

***Question 4:** Upon termination of direct assistance to a regional or local emergency relief effort, as specified in [§390.23\(a\)](#), may utility company line crews return directly to the motor carrier's terminal or the driver's normal work reporting location without complying with [Parts 390-399](#)?

Guidance: Yes, provided drivers who ask for immediate rest are given 8 consecutive hours off-duty before returning to the terminal or other work reporting location. Because the returning vehicles are transporting only crew members, tools, equipment, or materials not used in the emergency relief effort, they are considered to be "return(ing) empty" for purposes of [§390.23\(b\)](#).

***Question 5:** When an interstate tow truck operator responds to a request for assistance from a Federal, State or local police officer to move wrecked or disabled motor vehicles, what should the Record of Duty Status (RODS) required by [Section 395.8](#) reflect for the time spent in the exempt status?

Guidance: The time spent responding to the police call is exempt under [Section 390.23\(a\)\(3\)](#). The entry on the RODS for the time spent in this activity should be entered as "exempt," or "exempt under [Section 390.23\(a\)\(3\)](#)." Any time logged by the driver while engaged in activities that are NOT exempt must be accounted for on the RODS, but exempt time is not included in the computation of maximum driving time under [Section 395.3](#). Please note that this exemption is only operative during the time that the tow truck operator is providing direct assistance to the emergency, or twenty-four hours from the time of the request, whichever is less. The driver and the motor carrier are also at all times subject to the prohibitions of [Section 392.3](#) pertaining to ill or fatigued drivers. [Section 390.23\(c\)](#) applies to local and regional emergencies, not tow truck emergency operations.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§390.31 Copies of records or documents.

Question 1: May motor carriers use electronic methods to store records or documents to satisfy a document retention requirement in Chapter III of Subtitle B of Title 49, Code of Federal Regulations (49 CFR parts 300–399) ?

Guidance: Yes. Anyone may, but is not required to, use electronic methods to create and store records or documents to satisfy document retention requirements in Chapter III of Subtitle B of Title 49, Code of Federal Regulations (49 parts CFR 300–399). This guidance applies only to documents required to be generated and maintained or exchanged by private parties, regardless of whether FMCSA subsequently requires them to be produced or displayed to FMCSA staff or other parties entitled to access. This guidance does not apply to documents filed directly with FMCSA. The Agency, however, has already established electronic filing methods for certain documents. Interested parties can find out about available filing methods by consulting specific program information on FMCSA's Web site (<http://www.fmcsa.dot.gov>).

Question 2: How much time does a motor carrier have to produce records if the motor carrier maintains all records in an electronic format?

Guidance: A motor carrier must produce records within the time frame FMCSA's regulations require, regardless of whether the motor carrier maintains its records in an electronic or paper format. For example, if Agency rules require that a document be produced upon demand, you must be able to provide the Agency with an accurate copy of your electronic record upon demand. Similarly, if you are a motor carrier with multiple offices and are allowed 48 hours to produce a document in accordance with 49 CFR

390.29, you must be able to provide the Agency with an accurate copy of your electronic record within 48 hours.

***Question 3:** Using record scanning technology, these requirements can be fulfilled. Is my understanding of [§ 390.31\(c\)](#) correct that once qualifying documents have been suitably scanned, original paper documents may be destroyed?

Guidance: Yes, scanned records, which include a verifiable signature, would fulfill the requirements of [§390.31](#) and the original paper documents may be destroyed as stated in [§390.31\(c\)](#).

***Question 4:** If my understanding of [390.31](#) and its associated interpretations is correct, will this negate the necessity to maintain the original road test document as required by [§ 391.31\(g\)\(1\)](#)?

Guidance: Yes, as long as the road test document has been properly scanned.

***Question 5:** What is an electronic signature?

Guidance: An electronic signature is a method of signing an electronic communication that: (1) Identifies and authenticates a particular person as the source of the electronic communication; and (2) indicates such person's approval of the information contained in the electronic communication. An electronic signature may be made using any available technology that otherwise satisfies FMCSA's requirements.

***Question 6:** What is an electronic "captured image" signature and does it qualify as an electronic signature?

Guidance: An electronic "captured image" signature is a scripted name or legal mark that, while conventionally created on paper, may also be created using electronic devices. For example, many supermarkets and package delivery services use electronic captured image technology when they permit customers to sign their names in script using a stylus on an electronic pad. This qualifies as an electronic signature, so long as the signature and its related document are electronically bound and can be reproduced together.

***Question 7:** May anyone use electronic signatures to satisfy a requirement in Chapter III of Subtitle B of Title 49, Code of Federal Regulations (49 CFR parts 300–399) that a party sign or certify a document?

Guidance: Yes. Anyone may, but is not required to, use electronic signatures to satisfy the requirements of Chapter III of Subtitle B of Title 49, Code of Federal Regulations (49 CFR parts 300–399) that he or she sign or certify a document. This guidance applies only to documents requiring signatures that are generated and maintained or exchanged by private parties, regardless of whether the Agency subsequently requires them to be produced or displayed to FMCSA staff or other parties entitled to access. This guidance does not apply to documents filed directly with the Agency. The Agency, however, has already established electronic filing methods for certain documents. Interested parties can find out about available filing methods by consulting specific program information on FMCSA's Web site (<http://www.fmcsa.dot.gov>).

***Question 8:** Are motor carriers and other interested parties required to use electronic methods?

Guidance: No. Interested entities may choose whether or not to use electronic methods or traditional paper methods. Where there are two parties to a transaction, both parties must agree to conduct business using electronic methods.

***Question 9:** Will a document generated using any available electronic method satisfy the requirements of Chapter III of Subtitle B of Title 49, Code of Federal Regulations?

Guidance: No. An electronic document must fulfill the same function as a paper document. Documents generated using electronic methods may be used only if they accurately reflect the information in the record and remain accessible in a form that can be accurately reproduced for later reference. Documents generated using electronic methods will not be considered the legal equivalent of traditional paper documents if they are not capable of being retained and accurately reproduced for reference by any party entitled to access. For example, if FMCSA rules require that a document be produced upon demand, you must be able to provide the Agency with an accurate copy of your electronic record upon demand.

Similarly, if you are a motor carrier with multiple offices and are allowed 48 hours to produce a document in accordance with 49 CFR 390.29, you must be able to provide the Agency with an accurate copy of your electronic record within 48 hours. It would not be sufficient to display the information on your computer terminal in your place of business. You must produce a copy that the Agency can refer to at a later date. Similarly, it would not be sufficient to provide a document with incomplete information or without a signature (whether electronic or handwritten), if required. Your electronic storage system must be capable of transferring a complete, accurate copy of the document to the Agency. Unless the agent requesting the information specifies otherwise, you should be prepared to produce paper copies of the electronically-stored records or documents within the applicable time frame. This means that if you are required to produce documents on demand, those documents may be stored electronically, so long as you can produce them in accordance with the Agency's substantive requirements (e.g., immediately and without risk of losing or altering data). For an electronic document to be the legal equivalent of a paper document, it must be the functional equivalent with respect to integrity, accuracy and accessibility.

***Question 10:** If FMCSA or another agency entitled to access documents requests that I produce a copy of a document or signature, may I produce an electronic copy?

Guidance: Yes, however, you must be able to reproduce or transmit the document so the Agency can refer to it at a later date. The acceptable method of transmission may vary, depending on compatibility with the information systems and how the Agency or other entity entitled to access plans to use the document. Under some circumstances, electronic transfer may be acceptable. In other cases, you may be required to print paper copies of the electronically-stored records or documents. You should be prepared to produce paper copies within the time frame specified in the applicable regulations, unless the particular investigator specifically advises you that he or she is capable of accepting electronically transferred copies.

***Question 11:** May I use electronic methods to generate, sign, maintain and/or exchange any record the FMCSA regulations require without requesting an exemption or obtaining prior permission?

Guidance: You may use electronic methods to generate, sign, maintain and/or exchange any document that is generated and maintained or exchanged by private parties, regardless of whether FMCSA subsequently requires them to be produced or displayed to Agency staff or other parties entitled to access. You do not need to request an exemption or obtain prior permission so long as the electronic record meets all of the regulation's substantive requirements and remains accessible in a form that can be accurately reproduced for later reference. (This does not apply to documents filed directly with the Agency. See Question No. 6.) Examples of documents generated, maintained or exchanged by private parties include, but are not limited to: Employment applications, driver histories and other qualification records, leases formed under 49 CFR part 376, driver-vehicle inspection reports, and records of duty status. These are only examples of documents about which FMCSA received specific questions and is not an exhaustive list of the types of documents that can be generated, signed, maintained or exchanged electronically.

***Question 12:** May I convert a paper document to an electronic document by typing the substantive information on the paper document into an electronic format such as a database?

Guidance: By typing the substantive information from a paper document into an electronic format such as a database, you are creating a new electronic record, not creating an electronic copy of the original. While you may generate and maintain such documents for your own use, they do not take the place of the original documents. To preserve an accurate copy of the original paper document, you must use scanning or other "image capture" technology. See Questions 3 and 4 for additional guidance.

***Question 13:** Is an electronic signature valid if a person only has access to an excerpt or summary at the time he or she signs a document?

Guidance: No. If you only provide an excerpt or summary at the time someone signs a document you may not subsequently attach his or her electronic signature to the complete document.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

Special Topics – Serious Pattern of Violations

Question 1: What constitutes a “serious pattern” of violations?

Guidance: A serious pattern constitutes violations that are both widespread and continuing over a period of time. A serious pattern is more than isolated violations. A serious pattern does not require a specific number of violations.

Part 391

§391.2 General exemptions.

Question 1: Must exempt intracity zone (see [§390.5](#)) drivers comply with the medical requirements of this subpart?

Guidance: No, provided: a. the driver was otherwise qualified and operating in a municipality or exempt intracity zone thereof throughout the 1-year period ending November 18, 1988; and,
b. the driver's medical condition has not substantially worsened since August 23, 1988.

Question 2: What driver qualification requirements must a farm vehicle driver (as defined in [§390.5](#)) comply with in [part 391](#)?

Guidance: Drivers meeting the definition of "farm vehicle driver" who operate straight trucks are exempted from all driver qualification requirements of [part 391](#). All drivers of articulated motor vehicles with a GCWR of 10,001 pounds or more are required to possess a current medical certificate as required in [§§391.41](#) and [391.45](#).

§391.11 General qualifications of drivers.

Question 1: Is there a maximum age limit for driving in interstate commerce?

Guidance: The FMCSRs do not specify any maximum age limit for drivers.

Question 2: Does the age requirement in [§391.11\(b\)\(1\)](#) apply to CMV drivers involved entirely in intrastate commerce?

Guidance: No. Neither the CDL requirements in [part 383](#) nor the FMCSRs in [parts 390-399](#) require drivers engaged purely in intrastate commerce to be 21 years old. The States may set lower age thresholds for intrastate drivers.

Question 3: What effect does the Age Discrimination in Employment Act have on the minimum age requirement for an interstate driver?

Guidance: None. The Age Discrimination in Employment Act, 29 U.S.C. 621-634, recognizes an exception when age is a bona fide occupational qualification. 29 U.S.C. 623(f)(1).

Question 4: May a motor carrier be exempt from driver qualification requirements by hiring a driver leasing company or temporary help service?

Guidance: No. The FMCSRs apply to, and impose responsibilities on, motor carriers and their drivers. The FHWA does not regulate driver leasing companies or temporary help service companies.

Question 5: May a motor carrier lawfully permit a person not yet qualified as a driver in accordance with [§391.11](#) to operate a vehicle in interstate commerce for the purpose of attending a training and indoctrination course in the operation of that specific vehicle?

Guidance: No. If the trip is in interstate commerce, the driver must be fully qualified to operate a CMV.

Question 6: Does the Military Selective Service Act of 1967 require a motor carrier to place a returning veteran in his/her previous position (driving interstate) even though he/she fails to meet minimum physical standards?

Guidance: No. The Act does not require a motor carrier to place a returning veteran who does not meet the minimum physical standards into his/her previous driving position. The returning veteran must meet the physical requirements and obtain a medical examiner's certificate before driving in interstate operations.

Question 7: Would a driver who fails to meet the hearing standard under [49 CFR 391.41\(b\)\(11\)](#) but has obtained an exemption from that requirement, be considered unqualified under the English language proficiency requirement in [49 CFR 391.11\(b\)\(2\)](#) if the driver cannot communicate orally in English?

Guidance: No, if the hearing impaired driver with an exemption is capable of reading and writing in the English language. In that circumstance, the hearing impaired driver satisfies the English language requirement. The absence of an ability to speak in English is not an indication that the individual cannot read and write in English sufficiently to communicate with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.

[79 FR 59140, Oct.1, 2014]

§391.15 Disqualification of drivers

Question 1: May a driver convicted of a disqualifying offense be “disqualified” by a motor carrier?

Guidance: No. Motor carriers have no authority to disqualify drivers. However, a conviction for a disqualifying offense automatically disqualifies a driver from driving for the period specified in the regulations. Thus, so long as a motor carrier knows, or should have known, of a driver’s conviction for a disqualifying offense, it is prohibited from using the driver during the disqualification period.

Question 2: Is a decision of probation before judgment sufficient for disqualification?

Guidance: Yes, provided the State process includes a finding of guilt.

Question 3: Is a driver holding a valid driver’s license from his or her home State but whose privilege to drive in another State has been suspended or revoked, disqualified from driving by [§391.15\(b\)](#)?

Guidance: Yes, the driver would be disqualified from interstate operations until his privileges are restored by the authority that suspended or revoked them, provided the suspension resulted from a driving violation. It is immaterial that he holds a valid license from another State. All licensing actions should be accomplished through the CDLIS or the controlling interstate compact.

Question 4: What are the differences between the disqualification provisions listed in [§383.51](#) and [383.5](#) and those listed in [§391.15](#)?

Guidance: [Part 383](#) disqualifications are applicable generally to drivers who drive CMVs above 26,000 pounds GVWR, regardless of where the CMV is driven in the U.S. [Part 391](#) disqualifications are applicable generally to drivers who drive CMVs above 10,000 pounds GVWR, only when the vehicle is used in interstate commerce in a State, including the District of Columbia.

Question 5: Do the disqualification provisions of [§391.15](#) apply to offenses committed by a driver who is using a company vehicle for personal reasons while off-duty?

Guidance: No. For example, an owner-operator using his own vehicle in an off-duty status, or a driver using a company truck, or tractor for transportation to a motel, restaurant or home, would be outside the scope of this section if he returns to the same terminal from which he went off-duty (see [§383.51](#) for additional information).

Question 6: If a driver has his/her privileges to drive a pleasure vehicle revoked or suspended by State authorities, but his/her privileges to operate a CMV are left intact, would the driver be disqualified under the terms set forth in [§391.15](#)?

Guidance: No. The driver would not be disqualified from operating a CMV.

Question 7: If a driver is convicted of one of the specified offenses in [§391.15\(c\)](#), but is allowed to retain his driver’s license, is he/she still disqualified?

Guidance: Yes. A driver who is convicted of one of the specified offenses in [§391.15\(c\)](#), or has forfeited bond in collateral on account of one of these offenses, and who is allowed to retain his/her driver’s license, is still disqualified. The loss of a driver’s license and convictions of certain offenses in [§391.15\(c\)](#) are entirely separate grounds for disqualification.

Question 8: If a driver has his/her license suspended for driving while under the influence of alcohol, and 2 months later, as a result of this same incident, the driver is convicted of a DWI, must the periods of disqualification be combined since these are both disqualifying offenses?

Guidance: No. Disqualification during the suspension of an operating license continues until the license is restored by the jurisdiction that suspended it. Disqualification for conviction of DWI is for a fixed term. The fact that the driver was already disqualified for driving under the influence of alcohol because of the suspension action may mean that the total time under disqualification for the DWI conviction may exceed the stated term.

Question 9: If a driver commits a felony while operating a CMV but not in the employ of a motor carrier, is the offense disqualifying?

Guidance: No. There are 2 conditions required to be present for a felony conviction to be a disqualifying offense under [§391.15](#): (1) The offense was committed during on-duty time; and (2) the driver was employed by a motor carrier or was engaged in activities that were in furtherance of a commercial enterprise. However, neither of these conditions is a prerequisite for a disqualifying offense under [§383.51](#).

***Question 10:** Is a driver who possesses a valid commercial driver's license (CDL) issued by their State of residence, but who is suspended by another State for reasons unrelated to the violation of a motor vehicle traffic control law, disqualified from operating a commercial motor vehicle (CMV) in accordance with provisions of the Federal Motor Carrier Safety Regulations?

Guidance: Yes. Currently, both [section 383.5](#), which defines the term disqualification as it applies to drivers required to have a CDL, and [section 391.15](#), which applies to other CMV drivers subject to Federal Motor Carrier Safety Regulations, include the suspension of a person's license or privilege to drive as an action requiring that person to be disqualified from operating a CMV. Neither of these regulatory provisions limit such suspensions to those imposed by the State where the driver is licensed, nor do these regulations specify the grounds upon which a suspension must be based.

Be advised, however, that the Federal Motor Carrier Safety Administration has proposed in 66 FR 22499, Docket No. FMCSA-00-7382, published May 4, 2001, to limit the basis of the suspension to those resulting from a driving violation. If the rule is finalized, the answer would be no.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§391.21 Application for employment.

Question 1: If a driver submits an application for employment and has someone else type, write, or print the answers to the questions for him and he signs the application, does this constitute a valid application?

Guidance: Yes. The applicant, by signing the application, certifies that all entries on it and information therein are true and complete to the best of the applicant's knowledge.

Question 2: Is there a prescribed or specified form that must be used when a driver applies for employment, or can a carrier develop its own application?

Guidance: There is no specified form to be used in an application for employment. Carriers may develop their own forms, which may be tailored to their specific needs. The application form must, at the minimum, contain the information specified in [§391.21\(b\)](#).

Question 3: [§391.21\(b\)\(11\)](#) requires that an application for employment contain 10 years of prior employment information on the driver. If a foreign motor carrier's home country requires that an application for employment contain only five years of data, will a foreign carrier need to change its application to collect 10 years of data? Will the foreign carrier be required to go back and collect 10 years of data on its current drivers? What will a U.S. motor carrier who employs foreign drivers be required to do in this regard?

Guidance: A foreign motor carrier would not be required to collect 10 years of prior employment information as long as a foreign driver has an appropriate foreign commercial driver's license, i.e., (1) the Licencia Federal de Conductor (Mexico), or (2) the Canadian National Safety Code commercial driver's license. A U.S. motor carrier, on the other hand, would be required to collect 10 years of prior employment information when hiring foreign drivers. The carrier should also remember to contact the U.S. Immigration and Naturalization Service for their regulations and policies with respect to hiring foreign drivers.

***Question 4:** Must a driver's application for employment include a social security number (SSN), as required by [section 391.21\(b\)\(2\)](#), if the applicant has religious objections to the SSN and the Social Security Administration does not require him or her to hold such a number?

Guidance: No.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§391.23 Investigation and inquiries.

Question 1: When a motor carrier receives a request for driver information from another motor carrier about a former or current driver, is it required to supply the requested information?

Guidance: Generally no. See [§382.405](#), however, for requests pertaining to drug and alcohol records.

***Question 2:** May motor carriers use third parties to ask State agencies for copies of the driving record of driver-applicants?

Guidance: Yes. Driver information services or companies acting as the motor carrier's agent may be used to contact State agencies. However, the motor carrier is responsible for ensuring the information obtained is accurate.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§391.25 Annual inquiry and review of driving record.

Question 1: To what extent must a motor carrier review a driver's overall driving record to comply with the requirements of [§391.25](#)?

Guidance: The motor carrier must consider as much information about the driver's experience as is reasonably available. This would include all known violations, whether or not they are part of an official record maintained by a State, as well as any other information that would indicate the driver has shown a lack of due regard for the safety of the public. Violations of traffic and criminal laws, as well as the driver's involvement in motor vehicle accidents, are such indications and must be considered. A violation of size and weight laws should also be considered.

Question 2: Is a driver service or leasing company that is not a motor carrier permitted to perform annual reviews of driving records ([§391.25](#)) on the drivers it furnishes to motor carriers?

Guidance: The driver service or leasing company may perform annual reviews if designated by a motor carrier to do so.

***Question 3:** May motor carriers use third parties to ask State agencies for copies of driving records to be examined during the carrier's annual review of each driver's record?

Guidance: Yes. Although an examination of the official driving record maintained by the State is not required during the annual review, motor carriers that choose to do so may use third-party agents, such as driver information services or companies, to obtain the information. However, the motor carrier is responsible for ensuring the information is accurate.

***Question 4:** Does the use of a third-party computerized system that provides motor carriers with a complete department of motor vehicle report for every State in which the driver held a commercial motor vehicle operator's license or permit when a driver is enrolled in the system, and then automatically

provides an update anytime the State licensing agency enters new information on the driving record, satisfy the requirements of [§391.25](#)?

Guidance: Yes. Since motor carriers would be provided with complete department of motor vehicle report for every State in which the driver held a commercial motor vehicle operator's license or permit when a driver is enrolled in the system, and the provided with an update any time the State licensing agency enters new information on the driving record, the requirements of [§391.25\(a\)](#) would be satisfied. When the motor carrier manager reviews the information on the driving record, and the License Monitor system records the identity of the manager who conducted the review, the requirements of [§391.25\(b\)](#) and [\(c\)](#) would be satisfied.

With regard to the requirement that the response from each State agency, and a note identifying the person who performed the review, may be maintained in the driver's qualification files, motor carriers may satisfy the record keeping requirement by using computerized records in accordance with [49 CFR 390.31](#). Section allows all records that do not require signatures to be maintained through the use of computer technology provided the motor carrier can produce, upon demand, a computer printout of the required data. Therefore, motor carriers using an automated computer system would not be required to maintain paper copies of the driving records, or a note identifying the person who performed the review, in each individual driver qualification file provided a computer printout can be produced upon demand of a Federal or State enforcement official.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§391.27 Record of violations.

Question 1: Are notifications to a motor carrier by a driver convicted of a driver violation as required by [§383.31](#) to be maintained in the driver's qualification file as part of the supporting documentation or certifications noted in the requirements listed in [§391.27\(d\)](#)?

Guidance: [§391.27\(d\)](#) does not require documentation in the qualification file. However, [§391.51](#) does require that such notifications be maintained in the qualification file.

§391.31 Road test.

Question 1: Are employers still required to administer road tests since all States have implemented CDL skills testing?

Guidance: The employer may accept a CDL in lieu of a road test if the driver is required to successfully complete a road test to obtain a CDL in the State of issuance. However, if the employer intends to assign to the driver a vehicle necessitating the doubles/triples or tank vehicle endorsement, the employer must administer the road test under [§391.31](#) in a representative vehicle.

Question 2: How does a student enrolled in a driver training school comply with the requirement to pass a road test?

Guidance: The road test is administered only after the student has demonstrated a sufficient degree of proficiency on a range or off-road course. A student who passes the road test and is qualified to operate in interstate commerce could cross a State line in the process of receiving training.

Question 3: May a carrier use a blanket certification of road test for specific vehicles (driver's names, etc., left out)?

Guidance: No.

Question 4: May a motor carrier designate another person or organization to administer the road test?

Guidance: Yes. A motor carrier may designate another person or organization to administer the road test as long as the person who administers the road test is competent to evaluate and determine the results of the tests.

§391.33 Equivalent of road test.

***Question 1:** If a driver was grandfathered from the skills test when he or she obtained a CDL, may an employer forego the administration of a road test as required by [§391.31](#)?

Guidance: Yes. While the grandfathered driver has not actually taken the CDL skills test, he or she has met the conditions described in [§383.77](#), that are used as a substitute means of determining the driver's ability to operate the vehicle. Therefore, a grandfathered CDL holder may be treated the same as any other CDL holder in regards to foregoing employer skills testing.

While it is not a requirement for drivers who hold CDL tank vehicle and double/triple trailers endorsements to undergo skills tests, it remains the prerogative of the motor carrier to require and enforce more stringent requirements than the minimum Federal regulations.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§391.41 Physical qualifications for drivers.

Question 1: Who is responsible for ensuring that medical certifications meet the requirements?

Guidance: Medical certification determinations are the responsibility of the medical examiner. The motor carrier has the responsibility to ensure that the medical examiner is informed of the minimum medical requirements and the characteristics of the work to be performed. The motor carrier is also responsible for ensuring that only medically qualified drivers are operating CMVs in interstate commerce.

Question 2: Do the physical qualification requirements of the FMCSRs infringe upon a person's religious beliefs if such beliefs prohibit being examined by a licensed doctor of medicine or osteopathy?

Guidance: No. To determine whether a governmental regulation infringes on a person's right to freely practice his religion, the interest served by the regulation must be balanced against the degree to which a person's rights are adversely affected. *Biklen v. Board of Education*, 333 F. Supp. 902 (N.D.N.Y. 1971) aff'd 406 U.S. 951 (1972).

If there is an important objective being promoted by the requirement and the restriction on religious freedom is reasonably adapted to achieving that objective, the requirement should be upheld. *Burgin v. Henderson*, 536 F.2d 501 (2d. Cir. 1976). Based on the tests developed by the courts and the important objective served, the regulation meets Constitutional standards. It does not deny a driver his First Amendment rights.

Question 3: What are the physical qualification requirements for operating a CMV in interstate commerce?

Guidance: The physical qualification regulations for drivers in interstate commerce are found at [§391.41](#). Instructions to medical examiners performing physical examinations of these drivers are found at [§391.43](#). Interpretive guidelines are distributed upon request.

The qualification standards cover 13 areas which directly relate to the driving function. All but four of the standards require a judgement by the medical examiner. A person's qualification to drive is determined by a medical examiner who is knowledgeable about the driver's functions and whether a particular condition would interfere with the driver's ability to operate a CMV safely. In the case of vision, hearing, insulin-using diabetes, and epilepsy, the current standards are absolute, providing no discretion to the medical examiner.

Question 4: Is a driver who is taking prescription methadone qualified to drive a CMV in interstate commerce?

Guidance: Methadone is a habit-forming narcotic which can produce drug dependence and is not an allowable drug for operators of CMVs.

Question 5: May the medical examiner restrict a driver's duties?

Guidance: No. The only conditions a medical examiner may impose upon a driver otherwise qualified involve the use of corrective lenses or hearing aids, securement of a waiver or limitation of driving to

exempt intracyclic zones (see [§391.43\(g\)](#)). A medical examiner who believes a driver has a condition not specified in [§391.41](#) that would affect his ability to operate a CMV safely should refuse to sign the examiner's certificate.

Question 6: If an interstate driver tests positive for alcohol or controlled substances under [part 382](#), must the driver be medically re-examined and obtain a new medical examiner's certificate to drive again?

Guidance: The driver is not required to be medically re-examined or to obtain a new medical examiner's certificate *provided* the driver is seen by an SAP who evaluates the driver, does not make a clinical diagnosis of alcoholism, and provides the driver with documentation allowing the driver to return to work. However, if the SAP determines that alcoholism exists, the driver is not qualified to drive a CMV in interstate commerce. The ultimate responsibility rests with the motor carrier to ensure the driver is medically qualified and to determine whether a new medical examination should be completed.

Question 7: Are drivers prohibited from using CB radios and earphones?

Guidance: No. CB radios and earphones are not prohibited under the regulations, as long as they do not distract the driver and the driver is capable of complying with [§391.41\(b\)\(11\)](#).

Question 8: Is the use of coumadin, an anticoagulant, an automatic disqualification for drivers operating CMVs in interstate commerce?

Guidance: No. Although the FHWA 1987 "Conference on Cardiac Disorders and Commercial Drivers" recommended that drivers who are taking anticoagulants not be allowed to drive, the agency has not adopted a rule to that effect. The medical examiner and treating specialist may, but are not required to, accept the Conference recommendations. Therefore, the use of coumadin is not an automatic disqualification, but a factor to be considered in determining the driver's physical qualification status.

§391.43 Medical examination; certificate of physical examination.

Question 1: May a motor carrier, for the purposes of [§391.41](#), or a State driver licensing agency, for the purposes of [§383.71](#), accept the results of a medical examination performed by a foreign medical examiner?

Guidance: Yes. Foreign drivers operating in the U.S. with a driver's license recognized as equivalent to the CDL may be medically certified in accordance with the requirements of [part 391, subpart E](#), by a medical examiner in the driver's home country who is licensed, certified, and/or registered to perform physical examinations in that country. *However*, U.S. drivers operating in interstate commerce within the U.S. must be medically certified in accordance with [part 391, subpart E](#), by a medical examiner licensed, certified, and/or registered to perform physical examinations in the U.S.

Question 2: May a urine sample collected for purposes of performing a subpart H test be used to test for diabetes as part of a driver's FHWA-required physical examination?

Guidance: In general, no. However, the DOT has recognized an exception to this general policy whereby, after 60 milliliters of urine have been set aside for subpart H testing, any remaining portion of the sample may be used for other nondrug testing, but only if such other nondrug testing is required by the FHWA ([under part 391, subpart E](#)) such as testing for glucose and protein levels.

Question 3: Is a chest x-ray required under the minimum medical requirements of the FMCSRs?

Guidance: No, but a medical examiner may take an x-ray if appropriate.

Question 4: Does [§391.43](#) of the FMCSRs require that physical examinations of applicants for employment be conducted by medical examiners employed by or designated by the carrier?

Guidance: No.

Question 5: Does a medical certificate displaying a facsimile of a medical examiner's signature meet the "signature of examining health care professional" requirement?

Guidance: Yes.

Question 6: The driver's medical exam is part of the Mexican Licencia Federal. If a roadside inspection reveals that a Mexico-based driver has not had the medical portion of the Licencia Federal re-validated, is the driver considered to be without a valid medical certificate or without a valid license?

Guidance: The Mexican Licencia Federal is issued for a period of 10 years but must be re-validated every 2 years. A condition of re-validation is that the driver must pass a new physical examination. The dates for each re-validation are on the Licencia Federal and must be stamped at the completion of each physical. This constitutes documentation that the driver is medically qualified. Therefore, if the Licencia Federal is not re-validated every 2 years as specified by Mexican law, the driver's license is considered invalid.

***Question 7:** If a motor carriers ends a potential interstate driver to a medical examiner to have both a pre-employment medical examination and a pre-employment controlled substances test performed, how must the medical examiner conduct the medical examination including the certification the driver meets the physical qualifications of [§391.41\(b\)](#)?

Guidance: The medical examiner must complete the physical examination first without collecting the [Part 382](#) controlled substances urine specimen. If the potential driver meets the requirements of [Part 391, Subpart E](#) [especially [§391.41\(b\)](#)] and the medical examiner chooses to certify the potential driver as qualified to operate commercial motor vehicles (CMV) in interstate commerce, the medical examiner may prepare the medical examiner's certificate.

After the medical examiner has completed the medical examiner's certificate and provided a copy to the potential driver and to the motor carrier who will use the potential driver's services, the medical examiner may collect the specimen for the [49 CFR Part 382](#) pre-employment controlled substances test. The motor carrier is held fully responsible for ensuring the potential driver is not used to operate CMVs until the carrier receives a verified negative controlled substances test result from the medical review officer. A Department of Transportation pre-employment controlled substances test is not a medical examination test.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§391.45 Persons who must be medically examined and certified.

Question 1: Is it intended that the words "person" and "driver" be used interchangeably in [§391.45](#)?

Guidance: Yes.

Question 2: Do the FMCSRs require applicants, possessing a current medical certificate, to undergo a new physical examination as a condition of employment?

Guidance: No. However, if a motor carrier accepts such a currently valid certificate from a driver subject to [part 382](#), the driver is subject to additional controlled substance testing requirements unless otherwise excepted in subpart H.

Question 3: Must a driver who is returning from an illness or injury undergo a medical examination even if his current medical certificate has not expired?

Guidance: The FMCSRs do not require an examination in this case unless the injury or illness has impaired the driver's ability to perform his/her normal duties. However, the motor carrier may require a driver returning from any illness or injury to take a physical examination. But, in either case, the motor carrier has the obligation to determine if an injury or illness renders the driver medically unqualified.

§391.47 Resolution of conflicts of medical evaluation.

Question 1: Does the FHWA issue formal medical decisions as to the physical qualifications of drivers on an individual basis?

Guidance: No, except upon request for resolution of a conflict of medical evaluations.

§391.49 Alternative physical qualification standards for the loss or impairment of limbs.

Question 1: Since [49 CFR 391.49](#) does not mandate a Skill Performance Evaluation, does the term “performance standard” mean that the State must give a driving test or other Skill Performance Evaluation to the driver for every waiver issued or does this term mean that, depending upon the medical condition, the State may give some other type of performance test? For example, in the case of a vision waiver, would a vision examination suffice as a performance standard?

Guidance: Under the Tolerance Guidelines, Appendix C, Paragraph 3(j), each State that creates a waiver program for intrastate drivers is responsible for determining what constitutes “sound medical judgment,” as well as determining the performance standard. In the example used above, a vision examination would suffice as a performance standard. It is the responsibility of each State establishing a waiver program to determine what constitutes an appropriate performance standard.

§391.51 General requirements for driver qualification files.

Question 1: When a motor carrier purchases another motor carrier, must the drivers of the acquired motor carrier be requalified by the purchasing motor carrier?

Guidance: No.

Question 2: Is a driver training school required to keep a driver qualification file on each student?

Guidance: Yes, if operating in interstate commerce.

Question 3: Before December 23, 1994, motor carriers were required to maintain documentary evidence that their drivers had completed the written examination specified by 49 CFR 391.35 (Reserved) (1994). The rule removing §391.35 (Reserved) became effective on that date (59 FR 60319, November 23, 1994). Are motor carriers required to maintain such documentary evidence for drivers employed prior to December 23, 1994?

Guidance: No.

Question 4: If a motor carrier maintains complete driver qualification files but cannot produce them at the time of the review or within two business days, is it in violation of [§391.51](#)?

Guidance: Yes. Driver qualification files must be produced on demand. Producing driver qualification files after the completion of the review does not cure a record-keeping violation of [§391.51](#).

Question 5: Must a driver/employee who was employed prior to the deletion of the section of the FMCSRs requiring certain documentary proof of written examination, and who does not have such proof in his driver qualification file, complete the exam?

Guidance: No. The requirement of former 49 CFR 391.35(h) that a driver qualification file contains certain documents substantiating the driver examination may not be the basis of a citation after November 23, 1994, the date on which all requirements pertinent to a driver’s written test were rescinded (59 FR 60319).

§391.63 Multiple-employer drivers.

Question 1: Is a person employed by a nonmotor carrier in his normal duties considered an intermittent, casual, or occasional driver when employed by a motor carrier as a driver on apart-time basis?

Guidance: No. A person who drives for one motor carrier (even if it is only one day per month) would not meet the definition of an intermittent, casual or occasional driver in [§390.5](#) since he/she is employed by only one motor carrier. The motor carrier must fully qualify the driver and maintain a qualification file on the employee as a regularly employed driver.

Question 2: How does [§391.63](#) apply when motor carriers obtain, from a driver leasing service, intermittent, casual, or occasional drivers who are on temporary assignments to multiple motor carriers?

Guidance: If an intermittent, casual, or occasional driver has only been fully qualified by a driver leasing service or similar non-motor carrier entity, and has never been fully qualified by a motor carrier, the first motor carrier employing such a driver must ensure that the driver is fully qualified, and must keep a complete driver qualification file for that driver. It was the intention of §§[391.63](#) and [391.65](#) to require

that a driver, before entering the status of an “intermittent, casual, or occasional” driver, be fully qualified by a motor carrier. In a contractual relationship between a motor carrier and a driver leasing service, this may be accomplished by a motor carrier designating a driver leasing service as its agent to perform the qualification procedures in accordance with [parts 383](#) and [391](#). However, in such a case, the motor carrier will be held liable for any violations of the FMCSRs committed by its agent.

Question 3: Must a motor carrier that employs an intermittent, casual, or occasional driver to operate a CMV, as defined in [§383.5](#), (1) require the driver to prepare and submit an employment application in accordance with [§391.21](#) and (2) conduct the background investigation of the driver’s previous employers required by [§391.23](#)?

Guidance: [§391.63\(a\) \(1\)-\(2\)](#) exempts from compliance with [§§391.21](#) and [391.23](#) motor carriers that use intermittent, casual or occasional drivers to operate CMVs with a gross vehicle (or combination) weight rating (GVWR/GCWR) of 10,001 pounds or more. These exemptions also apply to carriers operating the heavier CMVs subject to [parts 382](#) and [383](#).

However, the more limited driver information and motor carrier investigation required by [parts 382](#) and [383](#) are not covered by [§391.63](#). Therefore, a carrier using intermittent, casual or occasional drivers to operate CMVs with a GVWR/GCWR of 26,001 pounds or more need not require an employment application in accordance with [§391.21](#), but the driver must furnish the information required by [§383.35\(c\)](#). The carrier may conduct a background investigation of the driver’s previous employers ([§383.35\(f\)](#)), and it must investigate his/her previous alcohol and controlled substance test results ([§382.413](#)).

§391.65 Drivers furnished by other motor carriers.

Question 1: May a nonmotor carrier which owns a CMV prepare the qualification certificate provided for in [§391.65](#)?

Guidance: No, only a motor carrier which regularly employs a driver may issue the required certification.

Question 2: May the certificate of qualification as prescribed by [§391.65](#) be incorporated into another carrier’s forms such as a lease and/or interchange agreement?

Guidance: Yes. However, the certificate of qualification must be signed and dated by an officer or authorized employee of the regularly employing carrier.

Question 3: Is a motor carrier required to accept a certificate from the driver’s regularly employing motor carrier certifying that the driver is qualified per [§391.65](#)?

Guidance: No. If the motor carrier chooses not to accept the certificate issued by the regularly employing motor carrier furnishing the driver, the motor carrier must then assume responsibility for assuring itself that the driver is fully qualified in accordance with [part 391](#).

Question 4: If a driver furnished by another motor carrier is in the second carrier’s service for a period of 7 consecutive days or more, may the driver still fall under the exemption in [§391.65](#)?

Guidance: No. The driver becomes a regularly employed driver of the second motor carrier and the exemption in [§391.65](#) is inapplicable.

Part 392

§392.3 Ill or fatigued operator.

Question 1: What protection is afforded a driver for refusing to violate the Federal Motor Carrier Safety Regulations (FMCSRs)?

Guidance: Section 405 of the Surface Transportation Assistance Act of 1982 (STAA) (49 U.S.C. 31105) states, in part, that no person shall discharge, discipline, or in any manner discriminate against an employee with respect to the employee's compensation, terms, conditions, or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rule, regulation, standard, or order applicable to Commercial Motor Vehicle (CMV) safety. In such a case, a driver may submit a signed complaint to the Occupational Safety and Health Administration.

§392.5 Alcohol prohibition.

Question 1: Do possession and use of alcoholic beverages in the passenger area of a motorcoach constitute "possession" of such beverages under [§392.5\(a\)\(3\)](#)?

Guidance: No.

Question 2: Can a motor carrier, which finds a driver with a detectable presence of alcohol, place him/her out of service in accordance with [§392.5](#)?

Guidance: No. The term "out of service" in the context of §392.5 refers to an act by a State or Federal official. However, the motor carrier must prevent the driver from being on-duty or from operating or being in physical control of a Commercial Motor Vehicle (CMV) for at least as long as is necessary to prevent a violation of [§392.5](#).

Question 3: Does the prohibition against carrying alcoholic beverages in [§392.5](#) apply to a driver who uses a company vehicle, for personal reasons, while off-duty?

Guidance: No. For example, an owner-operator using his/her own vehicle in an off-duty status, or a driver using a company truck or tractor for transportation to a motel, restaurant, or home, would normally be outside the scope of this section.

Question 4: Would an alcohol test, performed by an employer pursuant to [49 CFR part 382](#), with a result greater than 0.00 BAC, but less than 0.02 BAC, establish that a driver was in violation of [49 CFR 392.5\(a\)\(2\)](#), having any measured alcohol concentration while on duty?

Guidance: No. The Federal Highway Administration (FHWA) believes that a 0.02 BAC is the lowest level at which a scientifically accurate breath/blood alcohol concentration can be measured in an employer-based test under [part 382](#). The FHWA further believes that this use of a 0.02 BAC standard is consistent with FHWA's long established zero tolerance standard for alcohol. This guidance in no way impedes or precludes any action taken by a law enforcement official because of a finding that a BAC level was less than 0.02 BAC.

§392.6 Schedules to conform with speed limits.

Question 1: How many miles may a driver record on his/her daily record of duty status and still be presumed to be in compliance with the speed limits?

Guidance: Drivers are required to conform to the posted speed limits prescribed by the jurisdictions in or through which the vehicle is being operated. Where the total trip is on highways with a speed limit of 65 mph, trips of 550-600 miles completed in 10 hours are considered questionable and the motor carrier may be asked to document that such trips can be made. Trips of 600 miles or more will be assumed to be incapable of being completed without violations of the speed limits and may be required to be documented. In areas where a 55 mph speed limit is in effect, trips of 450-500 miles are open to question,

and runs of 500 miles or more are considered incapable of being made in compliance with the speed limit and hours of service limitation.

§392.7 Equipment, inspection and use.

Question 1: Must a driver prepare a written report of a pretrip inspection performed under [§392.7](#)?

Guidance: No.

Question 2: Must both drivers of a team operation comply with the provisions of [§392.7](#) before driving?

Guidance: [§392.7](#) states that a driver must be satisfied that the vehicle is in good working order before operating the vehicle. If a driver is satisfied with a co-driver's inspection, or a safety lane inspection, then the requirement of this section will have been met.

§392.9 Inspection of cargo, cargo securement devices and systems.

Question 1: Is a vehicle's cargo compartment considered sealed according to the terms of [§392.9\(b\)\(4\)](#) when it is secured with a padlock, to which the driver holds a key?

Guidance: No. The driver has ready access to the cargo compartment by using the padlock key and would be required to perform the examinations of the cargo and load-securing devices described in [§392.9\(b\)](#).

Question 2: Does the Federal Highway Administration (FHWA) have authority to enforce the safe loading requirements against a shipper that is not the motor carrier?

Guidance: No, unless HM as defined in [§172.101](#) are involved. It is the responsibility of the motor carrier and the driver to ensure that any cargo aboard a vehicle is properly loaded and secured.

Question 3: How may the motor carrier determine safe loading when a shipper has loaded and sealed the trailer?

Guidance: Under these circumstances, a motor carrier may fulfill its responsibilities for proper loading a number of ways. Examples are:

- a. Arrange for supervision of loading to determine compliance; or
- b. Obtain notation on the connecting line freight bill that the lading was properly loaded; or
- c. Obtain approval to break the seal to permit inspection.

Question 4: Is there a requirement that a driver must personally load, block, brace, and tie down the cargo on the property carrying Commercial Motor Vehicle (CMV) he/she drives?

Guidance: No. But the driver is required to be familiar with methods and procedures for securing cargo, and may have to adjust the cargo or load securing devices pursuant to [§392.9\(b\)](#).

§392.10 Railroad grade crossings; stopping required.

***Question 1:** Is [§392.10\(a\)\(4\)](#) applicable to drivers operating cargo tank vehicles that were used to transport hazardous materials for which placarding or marking was required, but are no longer required because the cargo tank has been emptied, or the quantity of the material has been reduced, or the temperature or characteristics of the material have changed?

Guidance: No, provided the cargo tank vehicle no longer displays placards or markings indicating that the vehicle is transporting hazardous materials for which placarding or marking is required, and either: (1) the vehicle has been sufficiently cleaned of residue and purged of vapors; or (2) the vehicle is refilled with a material which is not a hazardous material; or (3) the original material no longer is an elevated temperature material or otherwise is no longer considered hazardous according to the regulations.

Although [§392.10\(a\)\(4\)](#) does not distinguish between loaded and empty cargo tank vehicles, or cargo tank vehicles transporting materials or substances that are not, at the time the vehicle is being driven across the railroad grade crossing, required to be placarded or marked, the Federal Motor Carrier Safety Administration intends that the scope of the regulation be limited to those cases in which the vehicle is placarded or marked.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§392.14 Hazardous conditions; extreme caution.

Question 1: Who makes the determination, the driver or carrier, that conditions are sufficiently dangerous to warrant discontinuing the operation of a Commercial Motor Vehicle (CMV)?

Guidance: Under this section, the driver is clearly responsible for the safe operation of the vehicle and the decision to cease operation because of hazardous conditions.

§392.16 Use of seat belts.

Question 1: May a driver be exempted from wearing seat belts because of a medical condition such as claustrophobia?

Guidance: No.

Question 2: Are motorcoach passengers required to wear seat belts?

Guidance: No.

§392.60 Unauthorized persons not to be transported.

Question 1: Does [§392.60](#) require a driver to carry a copy of the written authorization (required to transport passengers) on board a Commercial Motor Vehicle (CMV)?

Guidance: No, the authorization must be maintained at the carrier's principal place of business. At the discretion of the motor carrier, a driver may also carry a copy of the authorization.

Part 393

§393.11 Lamps and reflective devices.

Question 1: What is the definition of “body” with respect to trucks and trailers?

Guidance: The Federal Motor Carrier Safety Regulations (FMCSRs) do not include a definition of “body.” However, a truck or trailer body generally means the structure or fixture designed to contain, or support, the material or property to be transported on the vehicle.

Question 2: May retroreflective tape be used in place of side reflex reflectors?

Guidance: [§393.26\(b\)](#) cross references Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) (FMVSS) No. 108 (49 CFR 571.108, S5.1.1.4) which allows reflective material to be used for side reflex reflectors under the conditions described below. Retro-reflective tape conforming to Federal specification L-S-300, “Sheeting and Tape, Reflective; Non-exposed Lens, Adhesive Backing,” September 7, 1965, may be used in place of side *reflex reflectors* if this material as used on the vehicle, meets the performance standards in either Table I or Table IA of Society of Automotive Engineers J594f, Reflex Reflectors, January 1977.

Question 3: [§393.11](#), Footnote 5, requires that each converter dolly be equipped with turn signals at the rear if the converter dolly obscures the turn signals at the rear of the towing vehicle when towed singly by another vehicle. Are turn signals required on the rear of the converter dolly when the towing of the unladen dolly prevents other motorists from seeing only a portion of the lenses of the turn signals on the towing vehicle?

Guidance: Yes. Although a portion of the rear turn signal lenses on the towing vehicle may be visible to other drivers, the turn signal generally would not satisfy the visibility requirements of Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) (FMVSS) No. 108 (49 CFR 571.108) if the converter dolly prevents other motorists from seeing the entire lens. The visibility requirements of FMVSS No. 108 help to ensure that other drivers can see the turn signal from a range of positions to the rear of the vehicle. Therefore, turn signals on the towing vehicle are considered to be obscured by the converter dolly if other motorists’ view of the lens is even partially blocked.

Question 4: Does a Commercial Motor Vehicle (CMV) equipped with amber tail lamps in addition to the red tail lamps required to designate the rear of a Commercial Motor Vehicle CMV meet the lighting requirements of [§393.11](#)?

Guidance: No. [§393.11](#) requires that lighting devices on Commercial Motor Vehicle CMVs placed in operation after March 7, 1989, meet the requirements of FMVSS No. 108 in effect at the time of manufacture. The National Highway Traffic Safety Administration (NHTSA) has issued interpretations which indicate that the use of amber tail lamps impairs the effectiveness of the required lighting equipment and as such is prohibited by Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) (FMVSS) No. 108 (S5.1.3). Since National Highway Traffic Safety Administration (NHTSA) does not allow vehicle manufacturers to install amber tail lamps, the Federal Highway Administration (FHWA) has concluded that the use of amber tail lamps on vehicles placed in operation after March 7, 1989, is prohibited by [§393.11](#).

In the case of vehicles placed in operation on or before March 7, 1989, [§393.11](#) requires that vehicles meet *either* the lighting requirements of [part 393](#) or Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) (FMVSS) No. 108 in effect at the time of manufacture. Prior to the December 7, 1988, final rule on [part 393](#) (53 FR 49397), amber tail lamps were prohibited by [§393.25](#). §393.25(e)(3) (in the October 1, 1988 edition of the Code of Federal Regulations) required all rear lamps, with certain exceptions, to be red. Since tail lamps were not included in the exceptions, the use of amber tail lamps was implicitly prohibited. Therefore, a vehicle placed in operation on or before March 7, 1989, must not be equipped with amber tail lamps because the use of

such lamps meets *neither* the lighting requirements of [part 393](#) nor FMVSS No. 108 in effect at the time of manufacture.

§393.17 Lamps and reflectors-combinations in driveaway-towaway operation.

Question 1: What are the lighting requirements when a tow truck is pulling a wrecked or disabled vehicle?

Guidance: A wrecker pulling a vehicle would be considered a driveaway-towaway operation and would have to be equipped with the lighting devices specified in [§393.17](#) when operating in interstate commerce.

§393.24 Requirements for head lamps, auxiliary driving lamps and front fog lamps.

Question 1: Must additional lamps that are not required be operative if all required lamps are operative?

Guidance: No.

§393.25 Requirements for lamps other than head lamps.

Question 1: Are lighting devices on mobile homes/house trailers required to be permanently mounted?

Guidance: No. The movement of mobile homes/house trailers is considered to be a driveaway-towaway operation.

Question 2: Are there any special lighting requirements for large containers?

Guidance: No.

Question 3: What are the lighting requirements when a container assumes the structural requirements of a trailer?

Guidance: All relevant requirements of the regulations must be met by this container/trailer.

§393.28 Wiring systems.

Question 1: Does a frame channel of a Commercial Motor Vehicle (CMV) constitute a protective “sheath or tube” as specified in [§393.28](#)?

Guidance: No. To be acceptable, a sheath or tube must enclose the wires throughout their circumference. In the absence of a sheath or tube, the group of wires must be protected by nonconductive tape, braid, or other covering capable of withstanding severe abrasion.

§§393.31–393.33 [Reserved]

Question 1: Must all trailers be equipped with overload protective devices?

Guidance: No. Trailers do not need overload protective devices when protection of trailer circuits is provided on the towing vehicle. A circuit breaker is required only when the head lamp circuit is protected in common with one or more other circuits. A circuit breaker, if required, must be an automatic reset type.

§393.40 Required brake systems.

Question 1: May a system such as “driveline brakes” be used as an emergency brake provided it complies with the requirements of [§393.52](#)?

Guidance: Yes. Commercial Motor Vehicle CMVs which were not subject to the emergency brake requirements of Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) (FMVSS) Nos. 105 or 121 may use “drive line brakes” provided those vehicles meet the requirements of [§393.52](#).

§393.41 Parking brake system.

Question 1: May the “park” position of a Commercial Motor Vehicle CMV’s transmission be used as a parking brake to comply with the [§393.41](#)?

Guidance: No. The “park” position of the transmission is only a locking device used to lock the transmission.

Question 2: Does [§393.41](#) prohibit air brake systems from being equipped with a means to release the spring brakes for purposes of towing disabled vehicles in emergency situations?

Guidance: No, provided the brakes are designed and maintained so they cannot be released unless adequate energy is available to make immediate reapplication of the brakes when the brake system is operable.

Question 3: Are parking brakes required on every Commercial Motor vehicle CMV manufactured before March 7, 1990?

Guidance: No.

§393.42 Brakes required on all wheels.

Question 1: Do retractable or lift axles have to be equipped with brakes?

Guidance: Yes, when the wheels are in contact with the roadway.

Question 2: Are unladen converter dollies covered by the exemption in [§393.42\(b\)\(3\)](#)?

Guidance: Yes. However, if the converter dolly is laden, the brakes must be operable.

Question 3: [§393.42\(b\)\(3\)](#) of the Federal Motor Carrier Safety Regulations FMCSRs states that any full trailer, any semitrailer, or any pole trailer having a Gross Vehicle Weight Rating (GVWR) of 3,000 pounds or less must be equipped with brakes if the weight of the towed vehicle resting on the towing vehicle exceeds 40 percent of the Gross Vehicle Weight Rating (GVWR) of the towing vehicle. Is the manufacturer of the trailer responsible for ensuring that the trailer is equipped with brakes when required?

Guidance: No. The motor carrier pulling the trailer is responsible for ensuring that the trailer is in compliance with all applicable Federal Motor Carrier Safety Regulations (FMCSRs).

§393.43 Breakaway and emergency braking.

Question 1: Are tractor protection valves required by [§393.43\(b\)](#), or may similar devices be used?

Guidance: No. Similar devices may be used provided the devices meet the performance requirements of [§393.43\(b\)](#).

Question 2: Are all brakes on a trailer required to be applied automatically upon breakaway?

Guidance: Yes.

§393.44 Front brake lines, protection.

Question 1: Does the term “rear wheels” include the tag axle on a bus/motorcoach?

Guidance: Yes. The braking system on a bus/motorcoach must be constructed so that if any brake line to either front wheel is broken, the driver can apply the brakes to all of the wheels on each rear axle.

§393.48 Brakes to be operative.

Question 1: If a Commercial Motor Vehicle CMV manufactured on or after July 25, 1980 (see [§393.42](#)) has brake components on the front axle, and the brakes are not operable, does the vehicle comply with [§393.48](#)?

Guidance: No.

Question 2: If a truck or truck tractor manufactured prior to July 25, 1980, and having 3 or more axles, has inoperative brakes on the front axle or some of the brake components are missing, would the vehicle be in violation of [§393.48](#)?

Guidance: Yes. [§393.48\(a\)](#) requires that all brakes with which the vehicle is equipped must be operable at all times. Although [§393.42\(b\)\(1\)](#) provides an exception to the requirement for brakes on all wheels for trucks and truck tractors with 3 or more axles and manufactured prior to July 25, 1980, the exception does not affect the applicability of [§393.48](#) for those cases in which the vehicle is equipped with inoperative front wheel brakes or only has certain portions of the front wheel brake system (e.g., shoes, linings, chambers, hoses) in place.

Question 3: Are the brakes on a vehicle towed in a driveaway-towaway operation or towed disabled vehicle required to be operable at all times?

Guidance: [§393.48\(c\)](#) provides an exception to the requirement that brakes be operable at all times. This exception covers disabled vehicles being towed and vehicles towed in a driveaway-towaway operation.

The driveaway-towaway exception in [§393.48\(c\)](#) is contingent upon the conditions outlined in [§393.42\(b\)\(2\)](#). Towed vehicles must have brakes as may be necessary to ensure compliance with the performance requirements of [§393.52](#). A motor vehicle towed by means of a tow-bar when any other vehicle is full-mounted on the towed vehicle, or any combination of motor vehicles utilizing 3 or more saddle-mounts, would not be covered under the exception found at [§393.48\(c\)](#).

With regard to the disabled-vehicle provision of [§393.48\(c\)\(1\)](#), the combination vehicle would have to meet the applicable performance requirements of [§393.52](#).

§393.51 Warning signals, air pressure and vacuum gauges.

Question 1: Is the low pressure warning device required to activate before the tractor protection valve?

Guidance: No. [§393.51](#) does not explicitly require the warning device to operate before the protection valve. It is implied that if the operating pressure of the warning device is at least $\frac{1}{2}$ of the governor cut-out pressure, and that pressure is not less than the pressure at which the protection valve (or similar device) activates, the requirements of [§393.51](#) are satisfied.

Question 2: Is the vacuum portion of vacuum-assisted hydraulic brake systems required to have a warning device?

Guidance: No. Only the hydraulic portion of vacuum-assisted hydraulic brake systems is required to have a warning device. Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) (FMVSS) No. 105 does not require a warning device for the vacuum portion of the vacuum-assisted hydraulic brake systems. It is the intention of the Federal Highway Administration (FHWA) that [§393.51](#) be consistent with Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) (FMVSS) No. 105.

Question 3: Are vacuum gauges required on the vacuum portion of vacuum-assisted hydraulic brakes?

Guidance: No. [§393.51\(d\)\(2\)](#) requires only that Commercial Motor Vehicle CMVs with vacuum brakes (not hydraulic brakes applied or assisted by vacuum) be equipped with a vacuum gauge.

Question 4: Is a warning device required in a Commercial Motor Vehicle CMVs with a single hydraulic brake system which uses the driveline parking brake as the emergency brake system?

Guidance: No. Warning devices are not required on such Commercial Motor Vehicle CMVs because the driver will be given ample warning of system failure by the movement and feel of the brake pedal.

Question 5: What difference, if any, is there between a warning device and a warning signal?

Guidance: For purposes of [§393.51](#), the terms may be used interchangeably.

§393.52 Brake performance.

Question 1: May the information in the stopping distance table be used to determine the stopping distances at speeds greater than 20 mph?

Guidance: No, the table is not intended to be used to predict or determine stopping distances at speeds greater than 20 mph.

§393.60 Glazing in specified openings.

Question 1: May windshields and side windows be tinted?

Guidance: Yes, as long as the light transmission is not restricted to less than 70 percent of normal (refer to the American Standards Association publication Z26.1-1966 and Z26.1a-1969).

Question 2: May a decal designed to comply with the periodic inspection documentation requirements of [§396.17](#) be displayed on the windshields or side windows of a Commercial Motor Vehicle CMV?

Guidance: Yes, provided the decal is being used in lieu of an inspection report and is in compliance with [§393.60\(c\)](#).

Question 3: If a crack extended into the thickness of the glass at such an angle as to measure $\frac{1}{4}$ " or more, measuring from the top edge of the crack on the outside surface of the windshield to vertical line drawn through the windshield to the far edge of this angled crack on the inside of the windshield, would this constitute a crack of $\frac{1}{4}$ " or more in width as defined in §393.60(b)(2)?

Guidance: No. The crack, in order to fall outside the exception, would have to be a gap of $\frac{1}{4}$ " or more on the same surface of the windshield.

§393.61 Truck and truck tractor window construction.

Question 1: Do school buses used for purposes other than school bus operations (as defined in [§390.5](#)), have to meet additional emergency exits requirements under [§393.61](#)?

Guidance: Yes. §393.61(b)(2) says that “a bus, including a school bus, manufactured on and after September 1, 1973,” must conform with National Highway Traffic Safety Administration (NHTSA)’s §571.217 (Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) (FMVSS) 217). At the time this provision was adopted, Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) (FMVSS) 217 applied only to other buses and it was optional for school buses. The Federal Highway Administration FHWA inserted the language, “including school buses,” in §393.61(b)(2) to make clear that school buses used in interstate commerce and, therefore, subject to the Federal Motor Carrier Safety Regulations (FMCSRs), were required to comply with the bus exit standards in Standard Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) (FMVSS) 217.

Sec. 393.61(b)(3) regarding push-out windows provides that older buses must conform with the requirements of §§393.61(b) or 571.217. Buses which are subject to §571.217 would follow National Highway Traffic Safety Administration (NHTSA)’s interpretation on push-out windows. Buses which are subject to §393.61(b)(1) of the Federal Motor Carrier Safety Regulations (FMCSRs) are required to have emergency windows that are either push-out windows or that have laminated safety glass that can be pushed out in a manner similar to a push-out window.

Question 2: For emergency exits which consist of laminated safety glass, is the window frame or sash required to move outward from the bus as is the case with push-out windows?

Guidance: No. Laminated safety glass is an alternative to the use of push-out windows for buses manufactured before September 1, 1973. §393.61(c) requires that every glazed opening used to satisfy the emergency exit space requirements, “if not glazed with laminated safety glass, shall have a frame or sash so designed, constructed, and maintained that it will yield outwardly to provide the required free opening. * * *” Laminated safety glass meeting Test No. 25, Egress, American National Standard “Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways,” Z26.1-1966 as supplemented by Z26.1a-1969 (referenced in §§393.61(c) and 393.60(a)) is intended to provide an adequate means of emergency exit on older buses without resorting to push-out windows.

However, buses with a seating capacity of more than 10 people manufactured after September 1, 1973, must have push-out windows that conform to 49 CFR 571.217

Question 3: When calculating the minimum emergency exit space required on school buses used in non-school bus operations, should two or three passengers per bench seat be used in determining the adult seating capacity?

Guidance: The National Highway Traffic Safety Administration (NHTSA) has indicated that “School buses can transport 3 to a seat if the passengers are in grades 1 through 5, and 2 per seat in grades 9 through 12.” (May 9, 1995, 60 FR 24562, 24567) Therefore, for vehicles originally manufactured as

school buses, the total pupil seating capacity provided by the bus manufacturer should be multiplied by $\frac{2}{3}$ to determine the adult seating capacity for the purposes of [§393.61](#). This generally yields the same result as using two adults per bench seat.

Question 4: Do school buses which meet the school bus emergency exit requirements established by the National Highway Traffic Safety Administration (NHTSA)'s November 2, 1992, final rule on Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) FMVSS No. 217 have to be retrofitted with additional emergency exits when used in interstate commerce for non-school bus operations?

Guidance: No. On May 9, 1995, the National Highway Traffic Safety Administration (NHTSA) amended Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) FMVSS No. 217 to permit non-school buses to meet either the current non-school bus emergency exit requirements or the upgraded school bus exit requirements established by the November 2, 1992 (57 FR 49413), final rule which became effective on September 1, 1994. Therefore, school buses which meet the upgraded emergency exit standards meet the requirements of [§393.61](#) without the retrofitting of additional exits.

Question 5: Which edition of Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) FMVSS No. 217 is required to be used in determining the emergency exit space requirements when retrofitting buses?

Guidance: The cross reference to Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) FMVSS No. 217 applies to the requirements in effect at the time of manufacture of the bus. Motor carriers are not, however, prohibited from retrofitting their buses to the most up-to-date requirements in Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) FMVSS No. 217. Therefore, at a minimum, motor carriers must meet the non-school bus emergency exit requirements in effect at the time of manufacture, and have the option of retrofitting their buses to meet the emergency exit requirements established by the November 2, 1992 (57 FR 49413), final rule which became effective on September 1, 1994.

§393.62 Emergency exits for buses.

Question 1: May a bus being operated by a for-hire motor carrier of passengers, under contract with a governmental agency to provide transportation of prisoners in interstate commerce, be allowed to operate with security bars covering the emergency push-out windows and with locked emergency door exits?

Guidance: Yes. Even when the transportation is performed by a contract carrier, the welfare, safety, and security of the prisoners is under the authority of the governmental corrections agency and, thus, the agency may require additional security measures. For these types of operations, a carrier may meet the special security requirements of the governmental corrections agency regarding emergency exits. However, CMVs that have been modified to meet the security requirements of the corrections agency may not be used for other purposes that are subject to the FMCSRs unless they meet the emergency exit requirements.

§393.65 All fuel systems.

Question 1: May a fuel fill pipe opening be placed above the passenger floor level if it is not physically within the passenger compartment?

Guidance: Yes. In addition, the fill pipe may intrude into the passenger compartment as long as the fill pipe opening complies with [§393.65\(b\)\(4\)](#), and the fill pipe is protected by a housing or covering to prevent leakage of fuel or fumes into the passenger compartment.

Question 2: Must a motor vehicle that meets the definition of a "commercial motor vehicle" in [§390.5](#) because it transports hazardous materials in a quantity requiring placarding under the Hazardous Materials Regulations (49 CFR parts 171-180) comply with the fuel system requirements of [Subpart E of](#)

[Part 393](#), even though it has a gross vehicle weight rating (Gross Vehicle Weight Rating (GVWR)) of 10,000 pounds or less?

Guidance: No. Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration) FMVSS No.301 contains fuel system integrity requirements for passenger cars and multipurpose passenger vehicles, trucks, and buses that have a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less and use fuel with a boiling point above 0 deg. Celsius (32 deg. Fahrenheit). [Subpart E of part 393](#) was issued to provide fuel system requirements to cover motor vehicles with a GVWR of 10,001 or more pounds. The fuel systems of placarded motor vehicles with a GVWR of less than 10,001 pounds are adequately addressed by FMVSS No. 301 and compliance with [subpart E of part 393](#) would be redundant. However, commercial motor vehicles that are not covered by FMVSS No. 301 must continue to comply with [subpart E of part 393](#).

§393.67 Liquid fuel tanks.

Question 1: May a properly vented fuel cap be used on a fuel tank equipped with another fuel venting system?

Guidance: Yes (see [§393.3](#)).

Question 2: Do the Federal Motor Carrier Safety Regulations (FMCSRs) specify a particular pressure relief system?

Guidance: No, but the performance standards of [§393.67\(d\)](#) must be met.

Question 3: What standards under the Federal Motor Carrier Safety Regulations (FMCSRs) must be met when a liquid fuel tank is repaired or replaced?

Guidance: A replacement/repaired tank must meet the applicable standards in [§393.67](#).

§393.70 Coupling devices and towing methods, except for driveaway-towaway operations.

Question 1: Is there a minimum number of fasteners required to fasten the upper fifth wheel plate to the frame of a trailer?

Guidance: The Federal Motor Carrier Safety Regulations (FMCSRs) do not specify a minimum number of fasteners. However, the industry recommends that a minimum of ten $\frac{5}{8}$ inch bolts be used. If $\frac{1}{2}$ inch bolts are used, the industry recommends at least 14 bolts. The Commercial Vehicle Safety Alliance (CVSA) has adopted these industry standards as a part of its vehicle out-of-service criteria.

Question 2: When two safety chains are used, must the ultimate combined breaking strength of each chain be equal to the gross weight of the towed vehicle(s) or would the requirements be met if the combined breaking strength of the two chains is equal to the gross weight of the towed vehicle(s)?

Guidance: If the ultimate combined breaking strength of the two chains is equal to the gross weight of the towed vehicle(s), the requirements of [§393.70\(d\)](#) are satisfied. It should be noted that some States may have more stringent requirements for safety chains.

Question 3: [§393.70\(d\)](#) requires that every 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 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. Would the use of a pair of safety chains/cables between the towing vehicle and the front of a fixed-length draw bar, or an extendible draw bar, with a separate pair of safety chains/cables between the end of the draw bar and the front of the towed vehicle meet the requirements of [§393.70\(d\)](#)?

Guidance: Generally, separate safety devices at the front and rear of the draw bar could be used to satisfy the requirements of [§393.70\(d\)](#) provided the safety devices are attached to the draw-bar and the vehicles in a manner that prevents the drawbar from dropping to the ground in the event that it fails or becomes disconnected. Also, the arrangement of the safety device(s) must be such that the vehicles will not separate if the draw bar fails or becomes disconnected.

If the drawbar design is such that bolts, connecting pins, etc., are used to connect structural members of the drawbar, and are located at or near the midpoint of the drawbar (beyond the attachment points for the safety chain at the ends of the draw bar) the safety devices would have to extend from either the frame of the towed or towing vehicle to a point beyond the bolts, connecting pins or similar devices.

In the case of an extendible draw bar or reach, if a separate safety device(s) is used for the front and rear of the drawbar, a means must be provided to ensure that the draw bar will not separate at the movable portion of the drawbar. The use of welded tube stops would satisfy the intent of [§393.70\(d\)](#) if the ultimate strength of the welds exceeds the impact forces associated with the drawbar extending suddenly with a fully loaded trailer attached.

§393.71 Coupling devices and towing methods, driveaway-towaway operations.

Question 1: May a fifth wheel be considered as a coupling device when towing a semi-trailer in a driveaway-towaway operation?

Guidance: Yes. [§393.71\(g\)](#) requires the use of a tow-bar or a saddle-mount. Since a saddle-mount performs the function of a conventional fifth wheel, the use of a fifth wheel is consistent with the requirements of this section.

§393.75 Tires.

Question 1: If a Commercial Motor Vehicle (CMV) has a defective tire, may the driver remove the defective tire from the axle and drive with three tires on an axle instead of four?

Guidance: Yes, provided the weight on all of the remaining tires does not exceed the maximum allowed under [§393.75\(f\)](#).

Question 2: May a Commercial Motor Vehicle (CMV) be operated with tires that carry a greater weight than the weight marked on the side wall of the tires?

Guidance: Yes, but only if the Commercial Motor Vehicle (CMV) is being operated under the terms of a State-issued special permit, and at a reduced speed that is appropriate to compensate for tire loading in excess of the rated capacity.

Question 3: May a vehicle transport HM when equipped with retreaded tires?

Guidance: Yes. The only Commercial Motor Carrier (CMV) that may not utilize retreaded tires is a bus, and then only on its front wheels.

Question 4: May tires be filled with materials other than air (e.g., silicone, polyurethane)?

Guidance: [§393.75](#) does not prohibit the use of tires filled with material other than air. However, [§393.3](#) may prohibit the use of such tires under certain circumstances. Some substances used in place of air in tires may not maintain a constant physical state at different temperatures. While these substances are solid at lower temperatures, the increase in temperature from highway use may result in the substance changing from a solid to a liquid. The use of a substance which could undergo such a change in its physical characteristics is not safe, and is not in compliance with [§393.3](#).

§393.76 Sleeper berths.

Question 1: If a compartment in a Commercial Motor Vehicle (CMV) is no longer used as a sleeper berth, must it be maintained and equipped as a sleeper berth as required in [§393.76](#)?

Guidance: No.

§393.78 Windshield wiping and washing systems.

Question 1: [Removed and Reserved]

§393.81 Horn.

Question 1: Do the Federal Motor Carrier Safety Regulations (FMCSRs) specify what type of horn is to be used on a Commercial Motor Vehicle (CMV)?

Guidance: No.

Question 2: Are there established criteria in the Federal Motor Carrier Safety Regulations (FMCSRs) to determine the minimum sound level of horns on Commercial Motor Vehicle (CMV)s?

Guidance: No.

§393.82 Speedometer.

Question 1: What does the phrase “reasonable accuracy” mean?

Guidance: “Reasonable accuracy” is interpreted to mean accuracy to within plus or minus 5 mph at a speed of 50 mph.

§393.83 Exhaust systems.

Question 1: Is a heat shield mandatory on a vertical exhaust stack?

Guidance: No. However, [§393.83](#) requires the placement of the exhaust system in such a manner as to prevent the burning, charring, or damaging of the electrical wiring, the fuel supply, or any combustible part of the Commercial Motor Vehicle (CMV).

Question 2: Does [§393.83](#) specify the type of exhaust system, vertical or horizontal, to be used on trucks or truck tractors?

Guidance: No.

§393.87 Warning flags on projecting loads.

Question 1: May a triangular-shaped flag or device be used by itself to mark an oversized load?

Guidance: No. However, nothing prohibits using a triangular-shaped flag in conjunction with the prescribed flag.

§393.88 Television receivers.

Question 1: Does [§393.88](#) restrict the use of closed circuit monitor devices being used as a safety viewing system that would eliminate blind-side motor carrier accidents?

Guidance: No. The restriction of this section would not apply because the device cannot receive television broadcasts or be used for the viewing of video tapes.

§393.89 Buses, driveshaft protection.

Question 1: For the purposes of [§393.89](#), would a spline and yoke that is secured by a nut be considered a sliding connection?

Guidance: No. To be considered a sliding connection, the spline must be able to move within the sleeve. When the end of the spline is secured by a nut, it no longer has that freedom.

Question 2: On multiple drive shaft buses, does [§393.89](#) require that all segments of the drive shaft be protected no matter the segments’ length?

Guidance: Yes. Each drive shaft must have one guard or bracket for each end of a shaft which is provided with a sliding connection (spline or other such device).

Question 3: How does an existing pillow bearing (shaft support) on a multiple driveshaft system affect the requirement?

Guidance: It does not affect the requirement. It is part of the requirement.

§393.92 [Reserved]

Question 1: Is a contractor-operated school bus operating in interstate commerce required to have emergency lights over the exit door?

Guidance: Yes. Any bus used in interstate commerce for other than school bus operations, as defined in [§390.5](#), is subject to the Federal Motor Carrier Safety Regulations (FMCSRs).

§393.93 Seats, seat belt assemblies, and seat belt assembly anchorages.

Question 1: If a Commercial Motor Vehicle (CMV), other than a motor coach, is equipped with a passenger seat, is a seat belt required for the passenger seat?

Guidance: Yes.

§393.95 Emergency equipment on all power units.

Question 1: Are pressure gauges the only acceptable means for a visual determination that a fire extinguisher is fully charged?

Guidance: No, as long as there is some means to permit a visual determination that a fire extinguisher is fully charged.

§393.100 Which types of commercial motor vehicles are subject to the cargo securement standards of this subpart, and what general requirements apply?

Question 1: When securing cargo, is the use of a tiedown every 10 linear feet, or fraction thereof, adequate?

Guidance: Yes, as long as the aggregate strength of the tie-downs is equal to the requirements of [§393.102](#), and each article is secured.

Question 2: [Removed and Reserved]

Question 3: Are the requirements of [§393.100](#) the only cargo securement requirements motor carriers must comply with?

Guidance: No. A motor carrier, when transporting cargo, must comply with all the applicable cargo securement requirements of subpart I and [§392.9](#).

Question 4: Do the rules for protection against shifting or falling cargo apply to Commercial Motor Vehicle (CMV)s with enclosed cargo areas?

Guidance: Yes. All Commercial Motor Vehicle (CMV)s transporting cargo must comply with the applicable provisions of [§393.100-393.106](#) (subpart I) to prevent the shifting or falling of cargo aboard the vehicle.

Question 5: [Removed and Reserved]

Question 6: [Removed and Reserved]

§393.102 What are the minimum performance criteria for cargo securement devices and systems?

Question 1: Does [§393.102\(b\)](#) prohibit the use of securement devices for which manufacturing standards have not been incorporated by reference?

Guidance: [§393.102\(b\)](#) requires that chain, wire rope, synthetic webbing, cordage, and steel strapping meet minimum manufacturing standards. It does not, however, prohibit the use of other types of securement devices or establish manufacturing standards for those devices. Therefore, if the securement device(s) has an aggregate working load limit of at least $\frac{1}{2}$ the weight of the article, and the load is secured to prevent it from shifting or falling from the vehicle, [§393.100](#) and [393.102\(b\)](#) would be satisfied.

If the cargo is not firmly braced against a front-end structure that conforms to the requirements of [§393.106](#), the securement system would have to provide protection against longitudinal movement [[§393.104\(a\)](#)]. If the load may shift sideways in transit then [§393.104\(b\)](#) would also be applicable.

Question 2: Does [§393.102\(b\)](#) require that securement devices be marked or labeled with their working load limit or any other information?

Guidance: No. Although [§393.102\(b\)](#) requires chain, wire rope, synthetic webbing, cordage, and steel strapping tiedowns to meet applicable manufacturing standards, it explicitly excludes marking identification provisions of those manufacturing standards. Since [§393.102\(b\)](#) does not establish manufacturing standards or marking requirements for other types of securement devices, such devices are not required to be marked with their working load limit.

§393.106 What are the general requirements for securing articles of cargo?

Question 1: When describing a headerboard or cab protection device, the regulations state that similar devices may be used. What is meant by the term “similar devices”?

Guidance: The term “similar devices” has reference to devices equivalent in strength and function, though not necessarily in appearance and construction, to headerboards.

§393.130 What are the rules for securing heavy vehicles, equipment and machinery?

***Question 1:** If an item of construction equipment which weighs less than 4,536 kg (10,000 lb.) is transported on a flatbed or drop-deck trailer, must the accessory equipment be lowered to the deck of the trailer?

Guidance: No. However, the accessory equipment must be properly secured using locking pins or similar devices in order to prevent either the accessory equipment or the item of construction equipment itself from shifting during transport.

***Question 2:** How should I secure the accessories for an item of construction equipment which weighs 4,536 kg (10,000 lb.) or more, if the accessory devices would extend beyond the width of the trailer if they are lowered to the deck for transport?

Guidance: The accessory devices (plows, trencher bars, and the like) may be transported in a raised position, provided they are designed to be transported in that manner. However, the accessory equipment must be locked in place for transport to ensure that neither the accessories nor the equipment itself shifts during transport.

***Question 3:** A tractor loader-backhoe weighing over 10,000 pounds is being transported on a trailer. The loader and backhoe accessories are each equipped with locking devices or mechanisms that prevent them from moving up and down and from side-to-side while the construction equipment is being transported on the trailer. Must these accessories also be secured to the trailer with chains?

Guidance: No. However, if the construction equipment does not have a means of preventing the loader bucket, backhoe, or similar accessories from moving while it is being transported on the trailer, then a chain would be required to secure those accessories to the trailer.

***Editor’s Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§393.201 Frames.

Question 1: Are cross members of Commercial Motor Vehicle (CMV)s considered part of the frame?

Guidance: Yes.

Question 2: [Removed and Reserved]

Question 3: [Removed and Reserved]

Special Topics – CMV Parts and Accessories

Question 1: Do tires marked “NHS” (not for highway service) mean that highway use is prohibited by [§393.75](#)?

Guidance: No, provided the use of such tires does not decrease the safety of operations (see Periodic Inspection Requirements, Appendix G to subpart B).

Part 395

§395.1 Scope of rules in this part.

Question 1: What hours-of-service regulations apply to drivers operating between the United States and Mexico or between the United States and Canada?

Guidance: When operating Commercial Motor Vehicle (CMV)s, as defined in [§390.5](#) in the United States, all hours-of-service provisions apply to all drivers of Commercial Motor Vehicle (CMV)s, regardless of nationality, point of origin, or where the driving time or on-duty time was accrued.

Question 2: If a driver invokes the exception for adverse driving conditions, does a supervisor need to sign the driver's record of duty status when he/she arrives at the destination?

Guidance: No.

Question 3: May a driver use the adverse driving conditions exception if he/she has accumulated driving time and on-duty (not driving) time, that would put the driver over 15 hours or over 70 hours in 8 consecutive days?

Guidance: No. The adverse driving conditions exception applies only to the 10-hour rule.

Question 4: Are there allowances made in the Federal Motor Carrier Safety Regulations (FMCSRs) for delays caused by loading and unloading?

Guidance: No. Although the regulations do make some allowances for unforeseen contingencies such as in [§395.1\(b\)](#), adverse driving conditions, and [§395.1\(b\)\(2\)](#), emergency conditions, loading and unloading delays are not covered by these sections.

Question 5: How may a driver utilize the adverse driving conditions exception or the emergency conditions exception as found in [§395.1\(b\)](#), to preclude an hours of service violation?

Guidance: An absolute prerequisite for any such claim must be that the trip involved is one which could normally and reasonably have been completed without a violation and that the unforeseen event occurred after the driver began the trip.

Drivers who are dispatched after the motor carrier has been notified or should have known of adverse driving conditions are not eligible for the two hours additional driving time provided for under [§395.1\(b\)](#), adverse driving conditions. The term “in any emergency” shall not be construed as encompassing such situations as a driver’s desire to get home, shippers’ demands, market declines, shortage of drivers, or mechanical failures.

Question 6: What does “servicing” of the field operations of the natural gas and oil industry cover?

Guidance: The “24-hour restart” provision of § 395.1(d)(1) is available to drivers of the broad range of commercial motor vehicles (CMVs) that are being used for direct support of the operation of oil and gas well sites, to include transporting equipment and supplies (including water) to the site and waste or product away from the site, and moving equipment to, from, or between oil and gas well sites. These CMVs do not have to be specially designed for well site use, nor do the drivers require any special training other than in operating the CMV.

[Section 395.1\(d\)](#) applies only to situations involving drilling or the operation of wells. It does not apply to exploration activities.

Question 7: What is considered “oilfield equipment” for the purposes of [395.1\(d\)\(1\)](#)?

Guidance: Oilfield equipment is not specifically defined in this section. However, its meaning is broader than the “specially constructed” commercial motor vehicles referred to in [§395.1\(d\)\(2\)](#), and may encompass a spectrum of equipment ranging from an entire vehicle to hand-held devices.

Question 8: What kinds of oilfield equipment may drivers operate while taking advantage of the special rule of [Section 395.1\(d\)\(2\)](#)?

Guidance: The “waiting time” provision in Section 395.1(d)(2) is available only to operators of those commercial motor vehicles (CMVs) that are (1) specially constructed for use at oil and gas well sites, and (2) for which the operators require extensive training in the operation of the complex equipment, in addition to driving the vehicle. In many instances, the operators spend little time driving these CMVs because “leased drivers” from driveaway services are brought in to move the heavy equipment from one site to another. These operators typically may have long waiting periods at well sites, with few or no functions to perform until their services are needed at an unpredictable point in the drilling process. Because they are not free to leave the site and may be responsible for the equipment, they would normally be considered “on duty” under the definition of that term in § 395.2. Recognizing that these operators, their employers, and the well-site managers do not have the ability to readily schedule or control these driver’s periods of inactivity, Section 395.1(d)(2) provides that the “waiting time” shall not be considered on-duty (i.e., it is off-duty time). During this “waiting time,” the operators may not perform any work-related activity. To do so would place them on duty. Examples of equipment that may qualify the operator/driver for the “waiting time exception” in Section 395.1(d)(2) are vehicles commonly known in oilfield operations as heavy-coil vehicles, missile trailers, nitrogen pumps, wire-line trucks, sand storage trailers, cement pumps, “frac” pumps, blenders, hydration pumps, and separators. This list should only be considered examples and not all-inclusive. Individual equipment must be evaluated against the criteria stated above: (1) Specially constructed for use at oil and gas well sites, and (2) for which the operators require extensive training in the operation of the complex equipment, in addition to driving the vehicle infrequently. Operators of CMVs that are used to transport supplies, equipment, and materials such as sand and water to and from the well sites do not qualify for the “waiting time exception” even if there have been some modifications to the vehicle to transport, load, or unload the materials, and the driver required some minimal additional training in the operation of the vehicle, such as running pumps or controlling the unloading and loading processes. It is recognized that these operators may encounter delays caused by logistical or operational situations, just as other motor carriers experience delays at shipping and receiving facilities. Other methods may be used to mitigate these types of delays, which are not the same types of waiting periods experienced by the CMV operators who do qualify for the waiting time exception.

Question 9: Are drivers required to be dedicated permanently to the oilfield industry, or must they exclusively transport oilfield equipment or service the field operations of the industry only for each eight-day (or shorter) period ended by an off-duty period of 24 or more consecutive hours?

Guidance: A driver must exclusively transport oilfield equipment or service the field operations of the industry for each eight-day (or shorter) period before his/her off-duty period of 24 or more consecutive hours. However, he/she must be in full compliance with the requirements of [395.3\(b\)](#) before driving other commercial motor vehicles not used to service the field operations of the natural gas or oil industry.

Question 10: A driver is used exclusively to transport materials (such as sand or water) which are used exclusively to service the field operations of the natural gas or oil industry. Occasionally, the driver has leftover materials that must be transported back to a motor carrier facility or service depot. Would such a return trip be covered by [§395.1\(d\)\(1\)](#)?

Guidance: Yes. Transporting excess materials back to a facility from the well site is part of the servicing operations. However, such servicing operations are limited to transportation back and forth between the service depot or motor carrier facility and the field site. Transportation of materials from one depot to another, from a railhead to a depot, or from a motor carrier terminal to a depot, is not considered to be in direct support of field operations.

Question 11: May specially trained drivers of specially constructed oil well servicing vehicles cumulate the 8 consecutive hours off duty required by [§395.3](#) by combining off-duty time or sleeper-berth time at a natural gas or oil well site with off-duty time or sleeper-berth time while en route to or from the well?

Guidance: These drivers may cumulate the required 8 consecutive hours off duty by combining two separate periods, each at least 2 hours long, of off-duty time or sleeper-berth time at a natural gas or oil well location with sleeper-berth time in a Commercial Motor Vehicle (CMV) while en route to or from such a location. They may also cumulate the required 8 consecutive hours off duty by combining an off-duty period of at least 2 hours at a well site with: (1) another off-duty period at the well site that, when added to the first such period, equals at least 8 hours, or (2) a period in a sleeper-berth, either at or away from the well site, or in other sleeping accommodations at the well site, that, when added to the first off-duty period, equals at least 8 hours.

However, such drivers may not combine a period of less than 8 hours off duty *away* from a natural gas or oil well site with another period of less than 8 hours off duty *at* such well sites. The special provisions for drivers at well sites are strictly limited to those locations.

The following table indicates what types of off-site and on-site time periods may be combined.

	On Site Off Duty Time	On Site Sleeper Berth	On Site Other Sleeping Accommodation
Away from Site Off Duty Time			
Away from Site Sleeper Berth Time	X Combination must be 8 or more hours	X Combination must be 8 or more hours	X Combination must be 8 or more hours
Away from Site Other Sleeping Accommodation			

Question 12: What constitutes the 100-air-mile radius exemption?

Guidance: The term “air mile” is internationally defined as a “nautical mile” which is equivalent to 6,076 feet or 1,852 meters. Thus, the 100 air miles are equivalent to 115.08 statute miles or 185.2 kilometers.

Question 13: What documentation must a driver claiming the 100-air-mile radius exemption ([§395.1\(e\)](#)) have in his/her possession?

Guidance: None.

Question 14: Must a motor carrier retain 100-air-mile driver time records at its principal place of business?

Guidance: No. However, upon request by an authorized representative of the Federal Highway Administration (FHA) or State official, the records must be produced within a reasonable period of time (2 working days) at the location where the review takes place.

Question 15: May an operation that changes its normal work-reporting location on an intermittent basis utilize the 100-air-mile radius exemption?

Guidance: Yes. However, when the motor carrier changes the normal reporting location to a new reporting location, that trip (from the old location to the new location) must be recorded on the record of duty status because the driver has not returned to his/her normal work reporting location.

Question 16: May a driver use a record of duty status form as a time record to meet the requirement contained in the 100-air-mile radius exemption?

Guidance: Yes, provided the form contains the mandatory information.

Question 17: Is the “mandatory information” referred to in the previous guidance that required of a normal RODS under [section 395.8\(d\)](#) that of the 100-air-mile radius exemption under section 395.1(e)(5)?

Guidance: The “mandatory information” referred to is the time records specified by §395.1(e)(5) which must show: (1) the time the driver reports for duty each day; (2) the total number of hours the driver is on duty each day; (3) the time the driver is released from duty each day; and (4) the total time for the preceding 7 days in accordance with [§395.8\(j\)\(2\)](#) for drivers used for the first time or intermittently.

Using the RODS to comply with §395.1(e)(5) is not prohibited as long as the RODS contains driver identification, the date, the time the driver began work, the time the driver ended work, and the total hours on duty.

Question 18: Must the driver’s name and each date worked appear on the time record prepared to comply with [§395.1\(e\)](#), 100-air-mile radius driver?

Guidance: Yes. The driver’s name or other identification and date worked must be shown on the time record.

Question 19: May drivers who work split shifts take advantage of the 100-air-mile radius exemption found at [§395.1\(e\)](#)?

Guidance: Yes. Drivers who work split shifts may take advantage of the 100-air-mile radius exemption if: 1. The drivers operate within a 100-air-mile radius of their normal work-reporting locations; 2. The drivers return to their work-reporting locations and are released from work at the end of each shift and each shift is less than 12 consecutive hours; 3. The drivers are off-duty for more than 8 consecutive hours before reporting for their first shift of the day and spend less than 12 hours, in the aggregate, on-duty each day; 4. The drivers do not exceed a total of 10 hours driving time and are afforded 8 or more consecutive hours off-duty prior to their first shift of the day; and 5. The employing motor carriers maintain and retain the time records required by 395.1(e)(5).

Question 20: May a driver who is taking advantage of the 100-air-mile radius exemption in [§395.1\(e\)](#) be intermittently off-duty during the period away from the work-reporting location?

Guidance: Yes, a driver may be intermittently off-duty during the period away from the work-reporting location provided the driver meets all requirements for being off-duty. If the driver’s period away from the work-reporting location includes periods of off-duty time, the time record must show both total on-duty time and total off-duty time during his/her tour of duty. In any event, the driver must return to the work-reporting location and be released from work within 12 consecutive hours.

Question 21: When a driver fails to meet the provisions of the 100 air-mile radius exemption ([section 395.1\(e\)](#)), is the driver required to have copies of his/her records of duty status for the previous seven days? Must the driver prepare daily records of duty status for the next seven days?

Guidance: The driver must only have in his/her possession a record of duty status for the day he/she does not qualify for the exemption. A driver must begin to prepare the record of duty status for the day immediately after he/she becomes aware that the terms of the exemption cannot be met. The record of duty status must cover the entire day, even if the driver has to record retroactively changes in status that occurred between the time that the driver reported for duty and the time in which he/she no longer qualified for the 100 air-mile radius exemption. This is the only way to ensure that a driver does not claim the right to drive 10 hours after leaving his/her exempt status, in addition to the hours already driven under the 100 air-mile exemption.

Question 22: A driver returns to his/her normal work reporting location from a location beyond the 100-air-mile radius and goes off duty for 7 hours. May the driver return to duty after being off-duty for 7 hours and utilize the 100-air-mile radius exemption?

Guidance: No. The 7-hour off-duty period has not met the requirement of 8 consecutive hours separating each 12-hour on-duty period. The driver must first accumulate 8 consecutive hours off-duty before operating under the 100 air-mile radius exemption.

Question 23: Is the exemption contained in [§395.1\(f\)](#) concerning department store deliveries during the period from December 10 to December 25 limited to only drivers employed by department stores?

Guidance: No. The exemption applies to all drivers 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 dates specified.

Question 24: May time spent in sleeping facilities being transported as cargo (e.g., boats, campers, travel trailers) be recorded as sleeper berth time?

Guidance: No, it cannot be recorded as sleeper berth time.

Question 25: May sleeper berth time and off-duty periods be combined to meet the 8-hour off-duty requirement?

Guidance: Yes, as long as the 8-hour period is consecutive and not broken by on-duty or driving activities. This does not apply to drivers at natural gas or oil well locations who may separate the periods.

Question 26: May a driver record sleeper berth time as off-duty time on line one of the record of duty status?

Guidance: No. The driver's record of duty status must accurately reflect the driver's activities.

Question 27: After accumulating 8 consecutive hours of off-duty time, a driver spends 2 hours in the sleeper berth. The driver then drives a Commercial Motor Vehicle (CMV) for 10 hours, then spends 6 hours in the sleeper berth. May the driver combine the two sleeper berth periods to meet the required 8 consecutive hours of off-duty time per [§395.1\(h\)](#), then drive for up to 10 more hours?

Guidance: No. The 10 hours of driving time between the first and second sleeper berth periods must be considered in determining the amount of time that the driver may drive after the second sleeper berth period. Sleeper berths are intended to be used between periods of on-duty time. When a driver has already been off duty for more than 8 consecutive hours, and has therefore had adequate opportunity to rest, he/she may not "save" additional hours before going on duty and add them to the next sleeper berth period. In short, a driver must be on duty before he/she begins to accumulate sleeper berth time. The driver in your scenario is operating in violation of the hours of service regulations for the entire second 10-hour driving period until that driver is able to secure at least 8 consecutive hours of off-duty time.

***Question 28:** Does the emergency conditions exception in [49 CFR 395.1\(b\)\(2\)](#) apply to a driver who planned on arriving at a specific rest area to complete his 10 hours driving and found the rest area full, forcing the driver to continue past the ten hours driving looking for another safe parking area?

Guidance: No. The emergency conditions exception does not apply to the driver. It is general knowledge that rest areas have become increasingly crowded for commercial motor vehicle parking, thus, it is incumbent on drivers to look for a parking spot before the last few minutes of a 10 hour driving period. The driver should provide the reason for exceeding the 10 hours driving in the Remarks section of the record of duty status.

***Question 29:** Must a motor carrier that uses a 100-air-mile-radius driver write zero (0) hours on the time record for each day the driver is off duty (not working for the motor carrier)?

Guidance: No. Section 395.1(e)(5) requires a motor carrier to maintain "accurate and true time records" for each driver. These records must show the time the driver goes on and off duty, as well as the total number of hours on duty, each day. The lack of a time record for a 100-air-mile radius driver on any given day is therefore a statement by the motor carrier that the driver was not on duty that day. If an investigator discovers that the driver was in fact on duty, despite the absence of a time record, the motor carrier has violated §395.1(e)(5) because it has not maintained "true and accurate time records."

Appropriate enforcement action may then be taken.

***Question 30:** Does the exception in [§395.1\(k\)](#) for "drivers transporting agricultural commodities or farm supplies for agricultural purposes" cover the transportation of poultry or poultry feed?

Guidance: No. The exception was created by Sec. 345(a)(1) of the National Highway System Designation Act of 1995 [Public Law 104-50, 109 Stat. 568, at 613], which provides in part that the hours of service regulations “shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes...” The terms “agricultural commodities or farm supplies for agricultural purposes” were not defined, but the context clarifies their meaning. Because the statute made the exception available only “during the planting and harvesting seasons” in each State, Congress obviously intended to restrict it to agriculture in the traditional (and etymological) sense, i.e., the cultivation of fields. “Agricultural commodities” therefore means products grown on and harvested from the land, and “farm supplies for agricultural purposes” means products directly related to the growing or harvesting of agricultural commodities.

Drivers transporting livestock or slaughtered animals, or the grain, corn, hay, etc., used to feed animals, may not use the “agricultural operations” exception.

***Question 31:** Does fuel used in the production of agricultural commodities qualify as “farm supplies” under [49 CFR 395.1\(k\)](#)?

Guidance: Fuel qualifies as a farm supply if (1) it is “for agricultural purposes,” e.g. used in tractors or other equipment that cultivate agricultural commodities or trucks that haul them, but not in automobiles, station wagons, SUVs or other vehicles designed primarily to carry passengers, or for residential heating or cooking; (2) it is transported within the planting and harvesting season, as determined by the State, and within a 100 air-mile radius of the distribution point for fuel; (3) the motor carrier is operating in interstate commerce; and (4) the entire fuel load on the vehicle is to be delivered to one or more farms. A carrier may not use the exemption if any portion of the fuel load is to be delivered to a non-farm customer.

***Question 32:** Can a for-hire motor carrier located in Canada transport farm supplies and/or equipment for agricultural purposes to a location in the U.S. without having to comply with [Part 395](#)?

Guidance: Yes, if a Canadian driver meets all of the requirements of the [49 CFR 395.1\(k\)](#) definition of “agricultural operations,” the provisions of [Part 395](#) do not apply so long as the trip occurs only during the official “planting and harvesting season” as designated by each State.

Question 33: If a driver using either short-haul exception in § 395.1(e) finds it necessary to exceed the exception limitations for unforeseen reasons, is the driver in violation of the § 395.3 rest break provision if more than 8 hours have passed without having taken the required rest break?

Guidance: No. A driver using a § 395.1(e) short-haul exception who finds it necessary to exceed the exception limitations for unforeseen reasons, is not in violation of the § 395.3 rest-break requirements if 8 or more hours have passed at the time the driver becomes aware of the inability to use the short-haul exception. The driver should annotate the record-of-duty-status to indicate why the required rest break was not taken earlier, and should take the break at the earliest safe opportunity.

§395.2 Definitions.

Question 1: A company told all of its drivers that it would no longer pay for driving from the last stop to home and that this time should not be shown on the time cards. Is it a violation of the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a Commercial Motor Vehicle (CMV) from the last stop to home and not show that time on the time cards?

Guidance: The Federal Motor Carrier Safety Regulations (FMCSRs) do not address questions of pay. All the time spent operating a Commercial Motor Vehicle (CMV) for, or at the direction of, a motor carrier must be recorded as driving time.

Question 2: What conditions must be met for a Commercial Motor Vehicle (CMV) driver to record meal and other routine stops made during a tour of duty as off-duty time?

Guidance: Drivers may record meal and other routine stops, including a rest break of at least 30 minutes intended to satisfy 49 CFR 395.3(a)(3)(ii), as off-duty time provided:

1. The driver is relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.
2. During the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing.

[FR 78 41853, July 12, 2013]

Question 3: A driver has been given written permission by his/her employer to record meal and other routine stops made during a tour of duty as off-duty time. Is the driver required to record such time as off-duty, or is it the driver's decision whether such time is recorded as off-duty?

Guidance: It is the employer's choice whether the driver shall record stops made during a tour of duty as off-duty time. However, employers may permit drivers to make the decision as to how the time will be recorded.

Question 4: A driver has been given written permission by his/her employer to record meal and other routine stops made during a tour of duty as off-duty time. Is the driver allowed to record his stops during a tour of duty as off-duty time when the Commercial Motor Vehicle (CMV) is laden with HM and the CMV is parked in a truck stop parking lot?

Guidance: Drivers may record meal and other routine stops made during a tour of duty as off-duty time, except when a Commercial Motor Vehicle (CMV) is laden with explosive HM classified as hazard divisions 1.1, 1.2, or 1.3 (formerly Class A or B explosives). In addition, when HM classified under hazard divisions 1.1, 1.2, or 1.3 are on a Commercial Motor Vehicle (CMV), the employer and the driver must comply with [§397.5](#) of the FMCSRs.

Question 5: Do telephone calls to or from the motor carrier that momentarily interrupt a driver's rest period constitute a change of the driver's duty status?

Guidance: Telephone calls of this type do not prevent the driver from obtaining adequate rest. Therefore, the FHWA does not consider these brief telephone calls to be a break in the driver's off duty status.

Question 6: If a driver is required by a motor carrier to carry a pager/beeper to receive notification to contact the motor carrier for a duty assignment, how should this time be recorded?

Guidance: The time is to be recorded as off-duty.

Question 7: May a sleeper berth be used for a period of less than 2 hours' duration?

Guidance: Yes. The sleeper berth may be used for such periods of inactivity. Periods of time of less than 2 hours spent in a sleeper berth may not be used to accumulate the 8 hours of off-duty time required by [§395.3](#) of the Federal Motor Carrier Safety Regulations (FMCSRs).

Question 8: If a "driver trainer" occasionally drives a Commercial Motor Vehicle (CMV), thereby becoming a "driver" (regardless of whether he/she is paid for driving), must the driver record all non driving (training) time as on-duty (not driving)?

Guidance: Yes.

Question 9: A driver drives on streets and highways during the week and jockeys Commercial Motor Vehicles in the yard (private property) on weekends. How is the yard time to be recorded?

Guidance: On-duty (driving).

Question 10: How does compensation relate to on-duty time?

Guidance: The fact that a driver is paid for a period of time does not always establish that the driver was on-duty for the purposes of part 395 during that period of time. A driver may be relieved of duty under certain conditions and still be paid.

Question 11: Must non transportation-related work for a motor carrier be recorded as on-duty time?

Guidance: Yes. All work for a motor carrier, whether compensated or not, must be recorded as on-duty time. The term “work” as used in the definition of “on-duty time” in [§395.2](#) of the Federal Motor Carrier Safety Regulations (FMCSRs) is not limited to driving or other non transportation-related employment.

Question 12: How should time spent in transit on a ferry boat be recorded?

Guidance: Time spent on a ferry by drivers may be recorded as off-duty time if they are completely relieved from work and all responsibility and obligation to the motor carriers for which they drive. This relief must be consistent with existing regulations of the ferry company and the U.S. Coast Guard.

Question 13: What is the duty status of a co-driver (truck) who is riding seated next to the driver?

Guidance: On-duty (not driving).

Question 14: How must a Commercial Motor Vehicle CMV driver driving a non-Commercial Motor Vehicle CMV at the direction of a motor carrier record this time?

Guidance: If Commercial Motor Vehicle CMV drivers operate motor vehicles with Gross Vehicle Weight Rating (GVWR)s of 10,000 pounds or less at the direction of a motor carrier, the Federal Highway Administration (FHWA) requires those drivers to maintain records of duty status and record such time operating as on-duty (not driving).

Question 15: How must the time spent operating a motor vehicle on the rails (roadtrailers) be recorded?

Guidance: On-duty (not driving).

Question 16: Must a driver engaged in union activities affecting the employing motor carrier record such time as on-duty (not driving) time?

Guidance: The union activities of a driver employed by a unionized motor carrier must be recorded as on-duty (not driving) time if the collective bargaining agreement requires the motor carrier to pay the driver for time engaged in such activities. Otherwise these activities may be recorded as off duty time unless they are combined with normal duties performed for the carrier.

Efforts by a driver to organize co-workers employed by a non-unionized motor carrier, either on the carrier’s premises or elsewhere, may be recorded as off duty time unless the organizing activities are combined with normal duties performed for the carrier.

Question 17: How is the 50 percent driving time in the definition of “driver-salesperson” in [§395.2](#) determined?

Guidance: The driving time is determined on a weekly basis. The driver must be employed solely as a driver-salesperson. The driver-salesperson may not participate in any other type of work activity.

Question 18: May a driver change to and from a driver-salesman status at any time?

Guidance: Yes, if the change is made on a weekly basis.

Question 19: May the time a driver spends attending safety meetings, ceremonies, celebrations, or other company-sponsored safety events be recorded as off-duty time?

Guidance: Yes, if attendance is voluntary.

Question 20: How must a driver record time spent on-call awaiting dispatch?

Guidance: The time that a driver is free from obligations to the employer and is able to use that time to secure appropriate rest may be recorded as off-duty time. The fact that a driver must also be available to receive a call in the event the driver is needed at work, even under the threat of discipline for non-availability, does not by itself impair the ability of the driver to use this time for rest.

If the employer generally requires its drivers to be available for call after a mandatory rest period which complies with the regulatory requirement, the time spent standing by for a work-related call, following the required off-duty period, may be properly recorded as off-duty time.

Question 21: How does a driver record the hours spent driving in a school bus operation when he/she also drives a Commercial Motor Vehicle (CMV) for a company subject to the Federal Motor Carrier Safety Regulations (FMCSRs)?

Guidance: If the school bus meets the definition of a Commercial Motor Vehicle (CMV), it must be recorded as driving time.

Question 22: A motor carrier relieves a driver from duty. What is a suitable facility for resting?

Guidance: The only resting facility which the Federal Highway Administration (FHWA) regulates is the sleeper berth. The sleeper berth requirements can be found in [§393.76](#).

Question 23: How many times may a motor carrier relieve a driver from duty within a tour of duty?

Guidance: There is no limitation on the number of times a driver can be relieved from duty during a tour of duty.

Question 24: If a driver is transported by automobile from the point of a breakdown to a terminal, and then dispatched on another run, how is the time spent in the automobile entered on the record of duty status? How is the time entered if the driver goes off-duty once he reaches the terminal?

Guidance: The time spent in the automobile would be on-duty (not driving) if dispatched on another run once he/she reaches the terminal, and off-duty if he/she is given 8 consecutive hours off-duty upon reaching the terminal.

Question 25: When a driver experiences a delay on an impassable highway, should the time he/she is delayed be entered on the record of duty status as driving time or on-duty (not driving)?

Guidance: Delays on impassable highways must be recorded as driving time because [§395.2](#) defines “driving time” as all time spent at the driving controls of a Commercial Motor Vehicle CMV in operation.

Question 26: Is time spent operating controls in a CMV to perform an auxiliary, non-driving function (e.g., lifting a loaded container, compacting waste, etc.) considered driving time? Does the location of the controls have a bearing on the answer?

Guidance: The location of the controls does have a bearing on the answer. [Section 395.2](#) defines “driving time” as all time spent at the driving controls of a Commercial Motor Vehicle CMV in operation. If a driver, seated at the driving controls of the vehicle, is able to simultaneously perform the driving and auxiliary function (for example, one hand on the steering wheel and one hand on a control mechanism), the time spent performing the auxiliary function must be recorded as “driving time.” If a driver, seated at the driving controls of the vehicle, is unable to simultaneously perform the driving and auxiliary function, the time spent performing the auxiliary function may be recorded as “on-duty not driving time.”

Question 27: A motor carrier has full-time drivers who are also volunteer fire fighters. Some of the drivers carry pagers and leave their normal activities only when notified of a fire. Others consistently work 3 to 4 non-consecutive 24-hour shifts at a fire station each month, resting between calls. The drivers receive no monetary compensation for their work. How should the time spent on these activities be logged on the record of duty status when the drivers return to work?

Guidance: When drivers are free from obligations to their employers, that time may be recorded as off-duty time. Drivers who are allowed by the motor carrier to leave their normal activities to fight fires and those who spend full days in a fire station are clearly off duty. Their time should be recorded as such.

***Question 28:** How should time spent at National Guard meetings and training sessions be recorded for the hours of service requirements?

Guidance: A member of a military reserve component, serving in either an inactive duty status, such as weekend drills, or in an active duty status, such as annual training, may log that time as “off-duty time” regardless of whether such duty time is paid or un-paid. This is consistent with the rights and benefit entitlements provided in the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 *et seq.*).

***Question 29:** Although firefighters, emergency medical technicians, paramedics and other public safety professionals are often exempt from the hours-of-service (HOS) regulations under the governmental exception [[49 CFR 390.3\(f\)\(2\)](#)], they sometimes have second jobs with interstate motor carriers for which they are required to comply with the HOS rules. When one of these individuals has a second job with an interstate motor carrier and works a 24-hour shift for the fire/rescue/emergency services department, is all of the time spent during the shift considered on-duty time?

Guidance: No. Fire fighters and other public safety professionals working 24-hour shifts may record time during which they are required or permitted to rest as off-duty time. However, all time that the public safety specialist is required to perform work (e.g., administrative work, cleaning/repairing equipment, operating equipment, etc.) would be considered on-duty time.

***Question 30:** If a driver is required repeatedly to respond to satellite or similar communications received during his or her sleeper berth period, does this activity affect a driver's duty status?

Guidance: Yes. The driver cannot be required to do any work for the motor carrier during sleeper berth time. A driver who is required to access a communications system for the purpose of reading messages from the carrier, responding to certain messages (either verbally or by typing a message), or otherwise acknowledging them, is performing work. For the purpose of this guidance, "repeatedly" means a pattern or series of interruptions that prevent a driver from obtaining restorative sleep during the sleeper berth period.

***Question 31:** If a driver is required repeatedly to respond to satellite or similar communications received during a 10-hour (8-hour for passenger transportation) off-duty period, does this activity affect a driver's duty status?

Guidance: Yes. The driver cannot be required to do any work for the motor carrier during the 10-hour or the 8-hour off-duty period. A driver who is required to access a communications system for the purpose of reading messages from the carrier, responding to certain messages (either verbally or by typing a message), or otherwise acknowledging them, is performing work. For the purpose of this guidance, "repeatedly" means a pattern or series of interruptions that prevent a driver from obtaining restorative sleep during the off-duty period.

***Question 32:** If a driver drives in a non-commercial vehicle to take a physical examination, should the duty status be recorded as on-duty not driving, or as off-duty? Would the answer change if the motor carrier directs the driver to go for the examination?

Guidance: So long as the driver schedules and attends the physical examination at a time of his or her own choosing, the time may be recorded as off-duty. If, however, the motor carrier directs the driver to attend at a specific time, the time is to be recorded as on-duty not driving.

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§395.3 Maximum driving time for property-carrying vehicles.

Question 1: May a motor carrier switch from a 60-hour/7-day limit to a 70-hour/8-day limit or vice versa?

Guidance: Yes. The only restriction regarding the use of the 70-hour/8-day rule is that the motor carrier must have Commercial Motor Vehicle CMVs operating every day of the week. The 70-hour/8-day rule is a permissive provision in that a motor carrier with vehicles operating every day of the week is not required to use the 70-hour/8-day rules for calculating its drivers' hours of service. The motor carrier may, however, assign some or all of its drivers to operate under the 70-hour/8-day rule if it so chooses. The assignment of individual drivers to the 60-hour/7-day or the 70-hour/8-day time rule is left to the discretion of the motor carrier.

Question 2: Does a driver, employed full time by one motor carrier using the 60-hours in 7-days rule, and part-time by another motor carrier using the 70-hours in 8-days rule, have the option of using either rule in computing his hours of service?

Guidance: No. The motor carrier that employs the driver on a full-time basis determines which rule it will use to comply with [§395.3\(b\)](#). The driver does not have the option to select the rule he/she wishes to use.

Question 3: May a carrier which provides occasional, but not regular service on every day of the week, have the option of the 60 hours in 7 days or 70 hours in 8 days with respect to all drivers, during the period in which it operates one or more vehicles on each day of the week?

Guidance: Yes.

Question 4: A Canadian driver is subjected to a log book inspection in the U.S. The driver has logged one or more 13-hour driving periods while in Canada during the previous 7 days, but has complied with all the Federal Motor Carrier Safety Regulations (FMCSRs) while operating in the U.S. Has the driver violated the 10-hour driving requirement in the U.S.?

Guidance: No. Canadian drivers are required to comply with the Federal Motor Carrier Safety Regulations (FMCSRs) only when operating in the U.S.

Question 5: May a driver domiciled in the United States comply with the Canadian hours of service regulations while driving in Canada? If so, would the driving and on-duty time accumulated in Canada be counted toward compliance with one or more of the limits imposed by [Part 395](#) when the driver re-enters the United States?

Guidance: A driver domiciled in the United States may comply with the Canadian hours of service regulations while driving in Canada. Upon re-entering the United States, however, the driver is subject to all of the requirements of [Part 395](#), including the 10- and 15-hour rules, and the 60-or 70-hour rules applicable to the previous 7 or 8 consecutive days.

In other words, a driver who takes full advantage of Canadian law may have to stop driving for a time immediately after returning to the U.S. in order to restore compliance with [Part 395](#). Despite its possible effect on decisions a U.S. driver must make while in Canada, this interpretation does not involve an exercise of extraterritorial jurisdiction.

Question 6: If a motor carrier operates under the 70-hour/8-day rule, does any aspect of the 60-hour rule apply to its operations? If a motor carrier operates under the 60-hour/7-day rule, does any part of the 70-hour rule apply to its operations?

Guidance: If a motor carrier operates 7 days per week and chooses to require all of its drivers to comply with the 70-hour/8-day rule, the 60-hour/7-day rule would not be applicable to these drivers. If this carrier chooses to assign some or all of its drivers to the 60-hour/7-day rule, the 70-hour rule would not be applicable to these drivers. Conversely, if a motor carrier *does not* operate 7 days per week, it *must* operate under the 60-hour/7-day rule and the 70-hour rule would not apply to its operations.

Question 7: What is the liability of a motor carrier for hours of service violations?

Guidance: The carrier is liable for violations of the hours of service regulations if it had or should have had the means by which to detect the violations. Liability under the Federal Motor Carrier Safety Regulations (FMCSRs) does not depend upon actual knowledge of the violations.

Question 8: Are carriers liable for the actions of their employees even though the carrier contends that it did not require or permit the violations to occur?

Guidance: Yes. Carriers are liable for the actions of their employees. Neither intent to commit, nor actual knowledge of, a violation is a necessary element of that liability. Carriers “permit” violations of the hours of service regulations by their employees if they fail to have in place management systems that effectively prevent such violations.

***Question 9:** May time spent in resting or sleeping in motor homes being delivered be recorded as off-duty time?

Guidance: The Federal Highway Administration believes the time drivers spend resting or sleeping in the motor homes while stopped or parked (e.g., at a rest area or parking lot) could be considered off-duty time. Drivers may take at least eight consecutive hours off-duty for the purpose of obtaining restorative

sleep. The driver may also take less than eight hours off-duty and take a nap. This time would not count toward the required eight consecutive hours off-duty. There are certain conditions which must be met in order for this time (less than eight consecutive hours) to qualify as off-duty time.

1. The driver must have been relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.
2. The duration of the driver's relief from duty must be a finite period of time which is of sufficient duration to ensure that the accumulated fatigue resulting from operating a commercial motor vehicle will be significantly reduced.
3. If the driver has been relieved from duty, as noted in (1) above, the duration of the relief from duty must have been made known to the driver prior to the driver's departure in written instructions from the employer. There are no record retention requirements for these instructions onboard a vehicle or at a motor carrier's principal place of business.
4. During the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing and to leave the premises where the vehicle is situated.

***Editor's Note:** The interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§395.8 Driver's record of duty status.

Question 1: How should a change of duty status for a short period of time be shown on the driver's record of duty status?

Guidance: Short periods of time (less than 15 minutes) may be identified by drawing a line from the appropriate on-duty (not driving) or driving line to the remarks section and entering the amount of time, such as "6 minutes," and the geographic location of the duty status change.

Question 2: May a rubber stamp signature be used on a driver's record of duty status?

Guidance: No, a driver's record of duty status must bear the signature of the driver whose time is recorded thereon.

Question 3: If a driver's record of duty status is not signed, may enforcement action be taken on the current day's record if it contains false information?

Guidance: Enforcement action can be taken against the driver even though that record may not be signed. The regulations require the driver to keep the record of duty status current to the time of last change of duty status (whether or not the record has been signed). Also, [§395.8\(e\)](#) states that making false reports shall make the driver and/or the carrier liable to prosecution.

Question 4: Must drivers, alternating between interstate and intrastate commerce, record their intrastate driving time on their record of duty status?

Guidance: Yes, to account for all on-duty time for the prior 7 or 8 days preceding an interstate movement.

Question 5: May a driver, being used for the first time, submit records of duty status for the preceding 7 days in lieu of a signed statement?

Guidance: The carrier may accept true and accurate copies of the driver's record of duty status for the preceding 7 days in lieu of the signed statement required by [§395.8\(j\)\(2\)](#).

Question 6: How should multiple short stops in a town or city be recorded on a record of duty status?

Guidance: All stops made in any one city, town, village or municipality may be computed as one. In such cases the sum of all stops should be shown on a continuous line as on-duty (not driving). The aggregate driving time between such stops should be entered on the record of duty status immediately following the on-duty (not driving) entry. The name of the city, town, village, or municipality, followed by the State

abbreviation where all the stops took place, must appear in the “remarks” section of the record of duty status.

Question 7: Is the Canadian bilingual or any other record of duty status form acceptable in the U.S.?

Guidance: Yes, provided the grid format and specific information required are included.

Question 8: May a motor carrier return a driver’s completed record of duty status to the driver for correction of inaccurate or incomplete entries?

Guidance: Yes, although the regulations do not require a driver to submit “corrected” records of duty status. A driver may submit corrected records of duty status to the motor carrier at any time. It is suggested the carrier mark the second submission “CORRECTED COPY” and staple it to the original submission for the required retention period.

Question 9: May a duplicate copy of a record of duty status be submitted if an original was seized by an enforcement official?

Guidance: A driver must prepare a second original record of duty status to replace any page taken by an enforcement official. The driver should note that the first original had been taken by an enforcement official and the circumstances under which it was taken.

Question 10: What regulation, interpretation, and/or administrative ruling requires a motor carrier to retain supporting documents and what are those documents?

Guidance: [Section 395.8\(k\)\(1\)](#) requires motor carriers to retain all supporting documents at their principal places of business for a period of 6 months from date of receipt.

Supporting documents are the records of the motor carrier which are maintained in the ordinary course of business and used by the motor carrier to verify the information recorded on the driver’s record of duty status. Examples are: bills of lading, carrier pros, freight bills, dispatch records, electronic mobile communication/tracking records, gate record receipts, weight/scale tickets, fuel receipts, fuel billing statements, toll receipts, toll billing statements, port of entry receipts, cash advance receipts, delivery receipts, lumper receipts, interchange and inspection reports, lessor settlement sheets, over/short and damage reports, agricultural inspection reports, driver and vehicle examination reports, crash reports, telephone billing statements, credit card receipts, border crossing reports, custom declarations, traffic citations, and overweight/oversize permits and traffic citations. Supporting documents may include other documents which the motor carrier maintains and can be used to verify information on the driver’s records of duty status. If these records are maintained at locations other than the principal place of business but are not used by the motor carrier for verification purposes, they must be forwarded to the principal place of business upon a request by an authorized representative of the Federal Highway Administration (FHWA) or State official within 2 business days.

[75 FR 32984, June 10, 2010]

Question 11: Is a driver who works for a motor carrier on an occasional basis and who is regularly employed by a non-motor carrier entity required to submit either records of duty status or a signed statement regarding the hours of service for all on-duty time as “on-duty time” as defined by [§395.2](#)?

Guidance: Yes.

Question 12: May a driver use “white-out” liquid paper to correct a record of duty status entry?

Guidance: Any method of correction would be acceptable so long as it does not negate the obligation of the driver to certify by his or her signature that all entries were made by the driver and are true and correct.

Question 13: Are drivers required to draw continuous lines between the off-duty, sleeper berth, driving, and on-duty (not driving) lines on a record of duty status when changing their duty status?

Guidance: No. Under [§395.8\(h\)](#) the Federal Motor Carrier Safety Regulations (FMCSRs) require that continuous lines be drawn between the appropriate time markers within each duty status line, but they do

not require that continuous lines be drawn between the appropriate duty status lines when drivers change their duty status.

Question 14: What documents satisfy the requirement to show a shipping document number on a record of duty status as found in [§395.8\(d\)\(11\)?](#)

Guidance: The following are some of the documents acceptable to satisfy the requirement: shipping manifests, invoices/freight bills, trip reports, charter orders, special order numbers, bus bills or any other document that identifies a particular movement of passengers or cargo.

In the event of multiple shipments, a single document will satisfy the requirement. If a driver is dispatched on a trip, which is subsequently completed, and then is dispatched on another trip on that calendar day, two shipping document numbers or two shippers and commodities must be shown in the remarks section of the record of duty status.

Question 15: If a driver from a foreign country only operates in the U.S. one day a week, is he required to keep a record of duty status for every day?

Guidance: A foreign driver, when in the U.S., must produce a current record of duty status, and sufficient documentation to account for his duty time for the previous 6 days.

Question 16: Are drivers required to include their total on-duty time for the previous 7 to 8 days (as applicable) on the driver's record of duty status?

Guidance: No.

Question 17: Can military time be used on the grid portion of the driver's record of duty status?

Guidance: Yes. The references to 9:00 A.M., 3:00 P.M., etc. in [§395.8\(d\)\(6\)](#) are examples only. Military time is also acceptable.

Question 18: [Section 395.8\(d\)\(4\)](#) requires that the name of the motor carrier be shown on the driver's record of duty status. If a company owns more than one motor carrier subject to the Federal Motor Carrier Safety Regulations (FMCSRs), may the company use logs listing the names of all such motor carrier employers and require the driver to identify the carrier for which he or she drives?

Guidance: Yes, provided three conditions are met. First, the driver must identify his or her motor carrier employer by a method that would be visible on a photocopy of the log. A dark check mark by the carrier's name would be acceptable. However, a colored highlight of the name would not be acceptable, since these colors are often transparent to photocopiers.

Second, the driver may check off the name of the motor carrier employer only if he or she works for a single carrier during the 24 hour period covered by the log.

Third, if the parent company uses Multi day Logs (Form 139 or 139A), the log for each day must list all motor carrier employers and the driver must identify his or her carrier each day.

Question 19: Regulatory guidance issued by the Office of Motor Carriers states that a driver's record-of-duty-status (RODS) may be used as the 100 air-mile radius time record "provided the form contains the mandatory information." Is this "mandatory information" that required of a normal RODS under [section 395.8\(d\)](#) or that of the 100 air-mile radius exemption under section 395.1(e)(5)?

Guidance: The "mandatory information" referred to is the time records specified by §395.1(e)(5) which must show: (1) the time the driver reports for duty each day; (2) the total number of hours the driver is on duty each day; (3) the time the driver is released from duty each day; and (4) the total time for the preceding 7 days in accordance with [§395.8\(j\)\(2\)](#) for drivers used for the first time or intermittently.

Using the RODS to comply with §395.1(e)(5) is not prohibited as long as the RODS contains driver identification, the date, the time the driver began work, the time the driver ended work, and the total hours on duty.

Question 20: When a driver fails to meet the provisions of the 100 air-mile radius exemption ([section 395.1\(e\)](#)), is the driver required to have copies of his/her records of duty status for the previous seven days? Must the driver prepare daily records of duty status for the next seven days?

Guidance: The driver must only have in his/her possession a record of duty status for the day he/she does not qualify for the exemption. The record of duty status must cover the entire day, even if the driver has to record retroactively changes in status that occurred between the time that the driver reported for duty and the time in which he/she no longer qualified for the 100 air-mile radius exemption. This is the only way to ensure that a driver does not claim the right to drive 10 hours after leaving his/her exempt status, in addition to the hours already driven under the 100 air-mile exemption.

Question 21: What is the carrier's liability when its drivers falsify records of duty status?

Guidance: A carrier is liable both for the actions of its drivers in submitting false documents and for its own actions in accepting false documents. Motor carriers have a duty to require drivers to observe the Federal Motor Carrier Safety Regulations (FMCSRs).

Question 22: If a driver logs his/her duty status as "driving" but makes multiple short stops (each less than 15 minutes) for on-duty or off-duty activities, marks a vertical line on the grid for each stop, and records the elapsed time for each in the remarks section of the grid, would the aggregate time spent on those non-driving activities be counted against the 10-hour driving limit?

Guidance: No. On-duty not driving time or off-duty time is not counted against the 10-hour driving limit.

Question 23: When the driver's duty status changes, do [§395.8\(c\)](#) or [395.8\(h\)\(5\)](#) require a description of on-duty not driving activities ("fueling," "pre-trip," "loading," "unloading," etc.) in the remarks section in addition to the name of the nearest city, town or village followed by the State abbreviation?

Guidance: No. Many motor carriers require drivers to identify work performed during a change of duty status. [Part 395](#) neither requires nor prohibits this practice.

Question 24: When must a driver complete the signature/certification of the driver's record of duty status?

Guidance: In general, the driver must sign the record of duty status immediately after all required entries have been made for the 24-hour period. However, if the driver is driving at the end of the 24-hour period, he/she must sign during the next stop. A driver may also sign the record of duty status upon going off duty if he/she expects to remain off duty until the end of the 24-hour period.

Question 25: Is a driver (United States or foreign) required to maintain a record of duty status(log book)in a foreign country before entering the U.S.?

Guidance: No. The Federal Highway Administration FHWA does not require drivers to prepare records of duty status while operating outside the jurisdiction of the United States. *However,* it may be advantageous for any driver (U.S. or foreign) to prepare records of duty status for short-term foreign trips. Upon entering the U.S., each driver must either: (a) Have in his/her possession a record of duty status current on the day of the examination showing the total hours worked for the prior seven consecutive days, including time spent outside the U.S.; or, (b) Demonstrate that he/she is operating as a "100 air-mile (161 air-kilometer) radius driver" under [§395.1\(e\)](#).

Question 26: If a driver is permitted to use a Commercial Motor Vehicle (CMV) for personal reasons, how must the driving time be recorded?

Guidance: When a driver is relieved from work and all responsibility for performing work, time spent traveling from a driver's home to his/her terminal (normal work reporting location), or from a driver's terminal to his/her home, may be considered off-duty time. Similarly, time spent traveling short distances from a driver's en route lodgings (such as en route terminals or motels) to restaurants in the vicinity of such lodgings may be considered off-duty time. The type of conveyance used from the terminal to the driver's home, from the driver's home to the terminal, or to restaurants in the vicinity of en route lodgings would not alter the situation unless the vehicle is laden. A driver may not operate a laden CMV as a personal conveyance. The driver who uses a motor carrier's Commercial Motor Vehicle (CMV) for

transportation home, and is subsequently called by the employing carrier and is then dispatched from home, would be on-duty from the time the driver leaves home.

A driver placed out of service for exceeding the requirements of the hours of service regulations may not drive a Commercial Motor Vehicle (CMV) to any location to obtain rest.

***Question 27:** [Reserved]

***Question 28:** Question 28: May a driver use a computer, tablet, or smartphone (that is not an Automatic On-Board Recording Device) to create, electronically sign, and store the record of duty status (RODS)?

Guidance: Yes. A driver may make manual duty-status entries to a computer, tablet, or smartphone program that is used to generate the graph grid and entries for the record of duty status (RODS) or log book, provided the electronically-generated display (if any) and output includes the minimum information required by [§395.8](#) and is formatted in accordance with that section. The driver must sign the RODS (manually or electronically) at the end of each 24-hour period to certify that all required entries are true and correct.

(A) If electronic signatures are not used:

- The driver must print and manually sign the RODS daily.
- The driver must have in his or her possession the printed and signed RODS for the prior seven consecutive days (if required on those days).
- The driver should be given an opportunity to print and manually sign the current day's RODS at the time of the inspection.

(B) If RODS have been electronically signed:

- At the time of an inspection of records by an enforcement official, the driver may display the current and prior seven days RODS to the official on the device's screen.
- If the enforcement official requests printed copies of the RODS, the driver must be given an opportunity to print the current and prior seven days RODS (if required on those days) at the time of inspection.

[79 FR 39343, July 10, 2014]

***Question 29:** Are drivers who electronically scan a copy of their original record of duty status (RODS) for subsequent submission to the motor carrier required to prepare the RODS in duplicate?

Guidance: No. Although [49 CFR 395.8\(a\)\(1\)](#) states, "Every driver who operates a commercial motor vehicle [in interstate commerce] shall record his/her duty status, in duplicate, for each 24-hour period," the intent of the requirement may be fulfilled through the electronic submission of a scanned image of the original handwritten RODS to the regular employing motor carrier within 13 days following the completion of the form, while the driver retains the original records for the current day and the previous 7 consecutive days. Because existing regulations concerning the preservation of records ([49 CFR 390.31](#)) allow motor carriers to store electronically a scanned image of the original handwritten RODS submitted by drivers and essentially dispose of the original paper document, there is no adverse impact on the enforcement of the HOS regulations, and subsequently no compromise on the application of the safety requirement by allowing the driver to submit a scanned image of the original signed RODS to the regular employing motor carrier within 13 days of the completion of the record. Motor carriers must maintain the scanned image of the signed RODS and all supporting documents for each driver for a period of six months from the date of receipt ([49 CFR 395.8\(k\)](#)).

[75 FR 32861, June 10, 2010]

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

§395.13 Drivers declared out of service.

Question 1: May a driver operate any motor vehicle, at the direction of the motor carrier, after being placed out of service for an hours of service violation?

Guidance: An out of service order issued under [§395.13](#) extends only to the operation of Commercial Motor Vehicle (CMV)s. State procedures may differ.

Question 2: May a driver operating a Commercial Motor Vehicle (CMV) under a lease arrangement with a motor carrier, after being placed out of service for an hours of service violation, cancel the lease and continue to operate the vehicle as a private personal conveyance?

Guidance: No. Cancellation of a lease does not relieve the driver of the responsibility of complying with the out of service order which prohibits the driver from operating a Commercial Motor Vehicle CMV.

§395.15 Automatic on-board recording devices.

Question 1: Must a motor carrier maintain a second (back-up copy) of the electronic hours-of-service files, by month, in a different physical location than where the original data is stored if the motor carrier retains the original hours-of-service printout signed by the driver and provides the driver with a copy?

Guidance: No. By creating and maintaining the signed original record-of-duty status printed from the electronic hours-of-service file, the motor carrier has converted the electronic document into a paper document subject to [§395.8\(k\)](#). That section requires the motor carrier to retain at its principal place of business the records of duty status and supporting documents for a period of 6 months from date of receipt. If the motor carrier did not generate a paper copy of the electronic document and retain a signed original, it would be required to maintain the electronic file and a second (back-up) copy.

Question 2: May a driver who uses an automatic on-board recording device amend his/her record of duty status during a trip?

Guidance: Yes. (1) Within certain limits, a driver must be allowed to review his or her AOBRD records, annotate and correct inaccurate records, enter any missing information, and certify the accuracy of the information.

(2) The AOBRD must retain the original entries, and reflect the date and time of an edit, and name of the person making the edit. If the driver has already "certified" the entries for the duty period, he or she must re-certify the edited version, which must be transmitted to the carrier.

(3) "Driving time" may not be edited except in the case of unidentified or team drivers, and when driving time was assigned to the wrong driver or no driver. Such time may be reassigned to the correct driver.

(4) After reviewing incoming records, drivers' supervisors may request that a driver make edits to correct errors. The driver must accept or reject such requests and the AOBRD must record the transaction. If the driver annotates the record based on the request, he or she must re-submit and re-certify the corrected record."

[80 FR 59665, Oct.2, 2015]

***Question 3:** May an automatic on-board recording device use an algorithm to identify the location of each change in duty status relative to the nearest city, town, or village?

Response: Yes, provided that the accuracy of the algorithm is sufficient to ensure correlation between the driving time and distance data provided through the on-board recorder's integral connection to the vehicle's systems. Furthermore, the description of the location must be of sufficient precision to enable enforcement personnel to quickly determine the geographic location on a standard map or road atlas.

Question 3: May an automatic on-board recording device use an algorithm to identify the location of each change in duty status relative to the nearest city, town, or village?

Response: Yes, provided that the accuracy of the algorithm is sufficient to ensure correlation between the driving time and distance data provided through the on-board recorder's integral connection to the vehicle's systems. Furthermore, the description of the location must be of sufficient precision to enable enforcement personnel to quickly determine the geographic location on a standard map or road atlas.

Question 4: Are automatic on-board recorders (AOBRDs) required to be designed and maintained to prevent team drivers in a non-driving duty status from making updates to their electronic record of duty status while the vehicle is in motion?

Response: No. AOBRDs are required only to prevent updates to the electronic record by the person who is actually driving while the vehicle is in motion. The on-board recorder must be capable of recording separately each driver's duty status when there is a multiple driver operation ([49 CFR 395.15\(i\)\(6\)](#)). Therefore, a system designed and maintained to handle multiple drivers would have a means for drivers to identify themselves and prevent the current driver from making entries on the electronic record (except when registering the time the vehicle crosses a State boundary) until the vehicle is at rest. However, the system may allow a co-driver to log into the system at any time to make updates while the vehicle is in motion.

Question 5: What information is required to be displayed on the AOBRD?

Guidance: (1) [Section 395.15\(i\)\(5\)](#) requires that AOBRDs with electronic displays must be capable 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."

(2) While [§ 395.15\(c\)](#) requires additional information be recorded by the AOBRD, only the specific information listed in [§ 395.15\(i\)\(5\)](#) must be displayed.

(3) The two provisions differ because of the data display limitations of a minimally compliant AOBRD.

[79 FR 26869, May 12, 2014]

Question 6: Must an AOBRD be capable of providing a hardcopy printout?

Guidance: No, the FMCSRs do not require AOBRDs to provide a hardcopy printout for an enforcement official. As long as the information made available for display on the AOBRD meets the requirements of [§ 395.15\(i\)\(5\)](#), the driver and motor carrier are not required to provide additional RODS documentation to an enforcement official at the roadside. However, an enforcement official may request that additional information be provided by email, fax, or similar means within 48 hours for follow-up after the conclusion of the roadside inspection.

[79 FR 26869, May 12, 2014; 80 FR 59665, Oct 02, 2015]

***Editor's Note:** This interpretation was issued after the interpretations were published in the *Federal Register* in April 1997.

Part 396

§396.3 Inspection, repair and maintenance.

Question 1: What is meant by “systematic inspection, repair, and maintenance”?

Guidance: Generally, systematic means a regular or scheduled program to keep vehicles in a safe operating condition. §396.3 does not specify inspection, maintenance, or repair intervals because such intervals are fleet specific and, in some instances, vehicle specific. The inspection, repair, and maintenance intervals are to be determined by the motor carrier. The requirements of §396.11, 396.13, and 396.17 are in addition to the systematic inspection, repair, and maintenance required by §396.3.

Question 2: 396.3(b)(4) refers to a record of tests. What tests are required of push-out windows and emergency door lamps on buses?

Guidance: Generally, inspection of a push-out window would require pushing out the window. However, if the window may be destroyed by pushing out to test its proper functioning, a visual inspection may qualify as a test if the inspector can ascertain the proper functioning of the window without opening it. Checking to ensure that the rubber push-out molding is properly in place and has not deteriorated and that any handles or marking instructions have not been tampered with would meet the test requirement. Inspection of emergency door marking lights would require opening the door to test the lights.

Question 3: Who has the responsibility of inspecting and maintaining leased vehicles and their maintenance records?

Guidance: The motor carrier must either inspect, repair, maintain, and keep suitable records for all vehicles subject to its control for 30 consecutive days or more, or cause another party to perform such activities. The motor carrier is solely responsible for ensuring that the vehicles under its control are in safe operating condition and that defects have been corrected.

Question 4: Is computerized recordkeeping of CMV inspection and maintenance information permissible under §396.3 of the FMCSRs?

Guidance: Yes, if the minimum inspection, repair, and maintenance records required are included in the computer information system and can be reproduced on demand.

Question 5: Where must vehicle inspection and maintenance records be retained if a vehicle is not housed or maintained at a single location?

Guidance: The motor carrier may retain the records at a location of its choice. If the vehicle maintenance records are retained at a location apart from the vehicle, the motor carrier is not relieved of its responsibility for ensuring that the records are current and factual. In all cases, however, upon request of the FHWA the maintenance records must be made available within a reasonable period of time (2 working days).

§396.9 Inspection of motor vehicles in operation.

Question 1: Under what conditions may a vehicle that has been placed “out of service” under §396.3 be moved?

Guidance: The vehicle may be moved by being placed entirely upon another vehicle, towed by a vehicle equipped with a crane or hoist, or driven if the “out of service” condition no longer exists.

Question 2: Is it the intent of §396.9 to allow “out of service” vehicles to be towed?

Guidance: Yes; however, not all out of service vehicles may be towed away from the inspection location. The regulation sets up a flexible situation that will permit the inspecting officer to use his/her best judgment on a case-by-case basis.

§396.11 Driver vehicle inspection report(s).

Question 1: Does [§396.11](#) require the DVIR to be turned in each day by a driver dispatched on a trip of more than one day's duration?

Guidance: A driver must prepare a DVIR at the completion of each day's work and shall submit those reports to the motor carrier upon his/her return to the home terminal. This does not relieve the motor carrier from the responsibility of effecting repairs and certification of any items listed on the DVIR, prepared at the end of each day's work, that would be likely to affect the safety of the operation of the motor vehicle.

Question 2: Does [§396.11](#) require that the power unit and the trailer be inspected?

Guidance: Yes. A driver must be satisfied that both the power unit and the trailer are in safe operating condition before operating the combination.

Question 3: May more than one power unit be included on the DVIR if two or more power units were used by a driver during one day's work?

Guidance: No. A separate DVIR must be prepared for each power unit operated during the day's work.

Question 4: Does [§396.11](#) require a motor carrier to use a specific type of DVIR?

Guidance: A motor carrier may use any type of DVIR as long as the report contains the information and signatures required.

Question 5: Does [§396.11](#) require a separate DVIR for each vehicle and a combination of vehicles or is one report adequate to cover the entire combination?

Guidance: One vehicle inspection report may be used for any combination, provided the defects or deficiencies, if any, are identified for each vehicle and the driver signs the report.

Question 6: Does [§396.11\(c\)](#) require a motor carrier to effect repairs of all items listed on a DVIR prepared by a driver before the vehicle is subsequently driven?

Guidance: The motor carrier must effect repairs of defective or missing parts and accessories listed in Appendix G to the FMCSRs before allowing the vehicle to be driven.

Question 7: What constitutes a "certification" as required by [§396.11\(c\)\(1\)](#) and [\(2\)](#)?

Guidance: A motor carrier or its agent must state, in writing, that certain defects or deficiencies have been corrected or that correction was unnecessary. The declaration must be immediately followed by the signature of the person making it.

Question 8: Who must certify under [§396.11\(c\)](#) that repairs have been made when a motor vehicle is repaired en route by the driver or a commercial repair facility?

Guidance: Either the driver or the commercial repair facility.

Question 9: Must certification for trailer repairs be made?

Guidance: Yes. Certification must be made that all reported defects or deficiencies have been corrected or that correction was unnecessary. The certification need only appear on the carrier's copy of the report if the trailer is separated from the tractor.

Question 10: What responsibility does a vehicle leasing company, engaged in the daily rental of CMVs, have regarding the placement of the DVIR in the power unit?

Guidance: A leasing company has no responsibility to comply with [§396.11](#) unless it is the carrier. It is the responsibility of a motor carrier to comply with [part 396](#) regardless of whether the vehicles are owned or leased.

Question 11: Which carrier is to be provided the original of the DVIR in a trip lease arrangement?

Guidance: The motor carrier controlling the vehicle during the term of the lease (i.e. the lessee) must be given the original of the DVIR. The controlling motor carrier is also responsible for obtaining and retaining records relating to repairs.

Question 12: Must the motor carrier's certification be shown on all copies of the DVIR?

Guidance: Yes.

Question 13: Must a DVIR carried on a power unit during operation cover both the power unit and trailer being operated at the time?

Guidance: No. The DVIR must cover the power unit being operated at the time. The trailer identified on there port may represent one pulled on the preceding trip.

Question 14: In instances where the DVIR has not been prepared or cannot be located, is it permissible under [§396.11](#) for a driver to prepare a DVIR based on a pretrip inspection and a short drive of a motor vehicle?

Guidance: Yes. [§396.11](#) of the FMCSRs places the responsibility on the motor carrier to require its drivers to prepare and submit the DVIR. If, in unusual circumstances, the DVIR has not been prepared or cannot be located the motor carrier may cause a road test and inspection to be performed for safety of operation and the DVIR to be prepared.

Question 15: Is it permissible to use the back of a record of duty status (daily log) as a DVIR?

Guidance: Yes, but the retention requirements of [§396.11](#) and [§395.8](#) must be met.

Question 16: Does [§396.11](#) require that specific parts and accessories that are inspected be identified on the DVIR?

Guidance: No.

Question 17: Is the Ontario pretrip/posttrip inspection report acceptable as a DVIR under [§396.11](#)?

Guidance: Yes, provided the report from the preceding trip is carried on board the motor vehicle while in operation and all entries required by [§396.11](#) and [396.13](#) are contained on the reports.

Question 18: Where must DVIRs be maintained?

Guidance: Since [§396.11](#) is not specific, the DVIRs may be kept at either the motor carrier's principal place of business or the location where the vehicle is housed or maintained.

Question 19: Who is responsible for retaining DVIRs for leased vehicles including those of owner-operators?

Guidance: The motor carrier is responsible for retaining the original copy of each DVIR and the certification of repairs for at least 3 months from the date the report was prepared.

Question 20: Is a multi-day DVIR acceptable under [§396.11](#) and [396.13](#)?

Guidance: Yes, provided all information and certifications required by [§396.11](#) and [396.13](#) are contained on the report.

Question 21: Is a DVIR required by a motor carrier operating only one tractor trailer combination?

Guidance: No. One tractor semitrailer/full trailer combination is considered one motor vehicle. However, a carrier operating a single truck tractor and multiple semitrailers, which are not capable of being operated as one combination unit, would be required to prepare DVIRs.

Question 22: Are motor carriers required to retain the "legible copy" of the last vehicle inspection report (referenced in [§396.11\(c\)\(3\)](#)) which is carried on the power unit?

Guidance: No. The record retention requirement refers only to the original copy retained by the motor carrier.

Question 23: Does the record retention requirement of [§396.11\(c\)\(2\)](#) apply to all DVIRs, or only those reports on which defects or deficiencies have been noted?

Guidance: The record retention requirement applies to all DVIRs.

Question 24: How would the DVIR requirements apply to a driver who works two or more shifts in a single calendar day?

Guidance: [Section 396.11\(a\)](#) requires every driver to prepare a DVIR at the completion of each day's work on each vehicle operated. A driver who operates two or more vehicles in a 24-hour-period must prepare a DVIR at the completion of the tour of duty in each vehicle.

Question 25: [Section 396.11](#) requires the driver, at the completion of each day's work, to prepare a written report on each vehicle operated that day. Does this section require a "post trip inspection" of the kind described in [§396.15](#)?

Guidance: No. However, the written report must include all defects in the parts and accessories listed in [§396.11\(a\)](#) that were discovered by or reported to the driver during that day.

Question 26: Is the motor carrier official or agent who certifies that defects or deficiencies have been corrected or that correction was unnecessary required to be a mechanic or have training concerning commercial motor vehicle maintenance?

Guidance: No. [Section 396.11](#) does not establish minimum qualifications for motor carrier officials or agents who certify that defects or deficiencies on DVIRs are corrected. With the exception of individuals performing the periodic or annual inspection ([§396.19](#)), and motor carrier employees responsible for ensuring that brake-related inspection, repair, or maintenance tasks are performed correctly ([§396.25](#)), [Part 396](#) of the FMCSRs does not establish minimum qualifications for maintenance personnel. Motor carriers, therefore, are not prohibited from having DVIRs certified by company officials or agents who do not have experience repairing or maintaining commercial motor vehicles.

§396.13 Driver inspection.

Question 1: If a Driver Vehicle Inspection Report (DVIR) does not indicate that certain defects have been repaired, and the motor carrier has not certified in writing that such repairs were considered unnecessary, may the driver refuse to operate the motor vehicle?

Guidance: The driver is prohibited from operating the motor vehicle if the motor carrier fails to make that certification. Operation of the vehicle by the driver would cause the driver and the motor carrier to be in violation of [§396.11\(c\)](#) and both would be subject to appropriate penalties. However, a driver may sign the certification of repairs as an agent of the motor carrier if he/she is satisfied that the repairs have been performed.

Question 2: At the end of the day's work and upon completion of the required Driver Vehicle Inspection Report (DVIR), what does the driver do with the copy of the previous Driver Vehicle Inspection Report (DVIR) carried on the power unit?

Guidance: There is no requirement that the driver submit the copy of that previous Driver Vehicle Inspection Report (DVIR) to the motor carrier nor is there a retention requirement for the motor carrier.

§396.17 Periodic inspection.

Question 1: Some of a motor carrier's vehicles are registered in a State with a mandated inspection program which has been determined to be as effective as the Federal periodic inspection program, but these vehicles are not used in that State. Is the motor carrier required to make sure the vehicles are inspected under that State's program in order to meet the Federal periodic inspection requirements?

Guidance: If the State requires all vehicles registered in the State to be inspected through its mandatory program then the motor carrier must go through the State program to satisfy the Federal requirements. If, however, the State inspection program includes an exception or exemption for vehicles which are registered in the State but domiciled outside of the State, then the motor carrier may meet the Federal requirements through a self-inspection, a third party inspection, a Commercial Vehicle Safety Alliance (CVSA) inspection, or a periodic inspection performed in any State with a program that the Federal

Highway Administration (FHWA) determines is comparable to, or as effective as, the [part 396](#) requirements.

Question 2: May the due date for the next inspection satisfy the requirements for the inspection date on the sticker or decal?

Guidance: No. The rule requires that the date of the inspection be included on the report and sticker or decal. This date may consist of a month and a year.

Question 3: Must each vehicle in a combination carry separate periodic inspection documentation?

Guidance: Yes, unless a single document clearly identifies all of the vehicles in the Commercial Motor Vehicle (CMV) combination.

Question 4: Does the sticker have to be located in a specific location on the vehicle?

Guidance: No. The rule does not specify where the sticker, decal or other form of documentation must be located. It is the responsibility of the driver to produce the documentation when requested. Therefore, the driver must know the location of the sticker and ensure that all information on it is legible and current. The driver must also be able to produce the inspection report if that form of documentation is used.

Question 5: Is new equipment required to pass a periodic inspection under [§396.17](#)?

Guidance: Yes, but a dealer who meets the inspection requirements may provide the documentation for the initial periodic inspection.

Question 6: Are the Federal periodic inspection requirements applicable to U.S. Government trailers operated by motor carriers engaged in interstate commerce?

Guidance: Yes. The transportation is not performed by a governmental entity but by a for-hire carrier in interstate commerce.

Question 7: Does a CMV equipped with tires marked “Not for Highway Use” meet the periodic inspection requirements?

Guidance: No. Appendix G to subchapter B—Minimum Periodic Inspection Standards, lists tires so labeled as a defect or deficiency which would prevent a vehicle from passing an inspection.

Question 8: Is a Commercial Motor Vehicle (CMV) subject to a road side inspection by State or Federal inspectors if it displays a periodic inspection decal or other evidence of a periodic inspection being conducted in the past 12 months?

Guidance: Yes. Evidence of a valid periodic inspection only precludes a citation for a violation of [§396.17](#).

Question 9: Is a State required to accept the periodic inspection program of another State having a periodic inspection program meeting minimum Federal Highway Administration (FHWA) standards as contained in appendix G to the Federal Motor Carrier Safety Regulations (FMCSRs)?

Guidance: Yes. Section 210 of the Motor Carrier Safety Act of 1984 (MCSA) (49 U.S.C. 31142) establishes the principle that State inspections meeting federally approved criteria must be recognized by every other State.

Question 10: Do vehicles inspected under a periodic Canadian inspection program comply with the Federal Highway Administration (FHWA) periodic inspection standards?

Guidance: Yes. The Federal Highway Administration (FHWA) has determined that the inspection programs of all of the Canadian Provinces meet or exceed the Federal requirements for a periodic inspection program.

Question 11: Must a specific form be used to record the periodic inspection mandated by [§396.17](#)?

Guidance: No. [Section 396.21](#) does not designate any particular form, decal, or sticker, but does specify the information which must be shown on these documents.

Question 12: May an inspector certify a Commercial Motor Vehicle (CMV) as meeting the periodic inspection standards of [§396.17](#) if he/she cannot see all components required to be inspected under appendix G?

Guidance: No. The affixing of a decal or sticker or preparation of a report as proof of inspection indicates compliance with all requirements of appendix G to [part 396](#).

Question 13: If an inter modal container is attached to a chassis at the time of a periodic inspection, must the container also be inspected to comply with [§396.17](#) inspection requirements?

Guidance: Yes. Safe loading is one of the inspection areas covered under appendix G. If the chassis is loaded at the time of inspection, the method of securement of the container to the chassis must be included in the inspection. Although integral securement devices such as twist locks are not listed in appendix G, the operation of these devices must be included in the inspection without removal of the container.

Question 14: Is it acceptable for the proof of periodic inspection to be written in Spanish?

Guidance: Yes. There is no requirement under [§396.17](#), or appendix G to subchapter B that the proof of periodic inspection be written in English.

§396.19 Inspector qualifications.

Question 1: May an entity other than a motor carrier maintain the evidence of inspector qualifications required by [§396.19\(b\)](#)?

Guidance: Yes. In those cases in which the inspection is performed by a commercial garage or similar facility or a leasing company, the motor carrier may allow the commercial garage or leasing company to maintain a copy of the inspector's qualifications on behalf of the motor carrier. The motor carrier, however, is responsible for obtaining copies of evidence of the inspector's qualifications upon the request of Federal, State, or local officials. If, for whatever reason, the motor carrier is unable to obtain this information from the third party, the motor carrier may be cited for noncompliance with [§396.19](#).

Question 2: Is there a specific form or format to be used in ensuring that inspectors are qualified in accordance with [§396.19](#)?

Guidance: No. [Section 396.19\(b\)](#) requires the motor carrier to retain evidence satisfying the standards without specifying any particular form.

§396.21 Periodic inspection recordkeeping requirements.

Question 1: What recordkeeping requirements under [§396.21](#) is a carrier subject to when it utilizes an FHWA-approved State inspection program?

Guidance: The motor carrier must comply with the record-keeping requirements of the State. The requirements specified in [§396.21 \(a\)](#) and [\(b\)](#) are applicable only in those instances where the motor carrier self-inspects its Commercial Motor Vehicle (CMV)s or has an agent perform the periodic inspection.

§396.23 Equivalent to periodic inspection.

Question 1: Is a Commercial Vehicle Safety Alliance (CVSA) Level I or Level V inspection a “State * * * roadside inspection program” through which a motor carrier may meet the periodic inspection requirements of [§396.17](#)? If so, what evidence of inspection is required?

Guidance: A Commercial Vehicle Safety Alliance (CVSA) Level I or Level V inspection is equivalent to the Federal periodic inspection requirements. A Commercial Motor Vehicle (CMV) that passes such an inspection has therefore met [§396.17](#), unless the vehicle is subject to a mandatory State inspection program that the FHWA has determined is comparable to, or as effective as, the Federal requirements [see [§396.23\(b\)\(1\)](#)]. A Commercial Vehicle Safety Alliance (CVSA) decal displayed on the Commercial Motor Vehicle (CMV), or a copy of the Level I or Level V inspection report maintained in the vehicle, constitutes sufficient evidence of inspection.

§396.25 Qualifications of brake inspectors.

Question 1: Does a CDL with an airbrake endorsement qualify a person as a brake inspector under [§396.25](#)?

Guidance: No.

Question 2: May a driver who does not have the necessary experience perform the adjustment under directions issued by telephone by a qualified inspector?

Guidance: Yes. A driver is permitted to perform brake adjustments at a roadside inspection providing they are done under the supervision of a qualified brake adjuster and the carrier is willing to assume responsibility for the proper adjustment.

Question 3: May a driver or other motor carrier employee be qualified as a brake inspector under [§396.25](#) by way of experience or training to perform brake adjustments without being qualified to perform other brake-related tasks such as the repair or replacement of brake components?

Guidance: Yes. A driver may be qualified by the motor carrier to perform a limited number of tasks in connection with the brake system, e.g., inspect and/or adjust the vehicle's brakes, but not repair them.

Question 4: Would a mechanic who is employed by a leasing company and only works on Commercial Motor Vehicle (CMVs) that the leasing company leases to other motor carriers be required to meet the brake inspector certification requirements?

Guidance: No. The mechanic is not required to meet the certification requirements of [§396.25\(d\)](#) since he/she is not employed by a motor carrier.

Part 397

§397.1 Application of the rules in this part.

Question 1: Who is subject to [part 397](#)?

Guidance: [Part 397](#) applies to motor carriers that transport HM in interstate commerce in types and quantities requiring marking or placarding under [49 CFR 177.823](#). The routing requirements of [part 397](#) establish guidelines State and Indian tribal routing agencies must employ in designating and/or restricting routes for the transportation of HM. Interstate motor carriers transporting HM, in interstate or intrastate commerce, must comply with the designations and restrictions established by the routing agencies.

Question 2: Is the interstate transportation of anhydrous ammonia, in nurse tanks, subject to [part 397](#)?

Guidance: The requirements of [part 397](#) do not apply to the direct application of ammonia to fields from nurse tanks. However, [part 397](#) does apply to the transportation of nurse tanks on public highways, when performed by interstate motor carriers.

§397.5 Attendance and surveillance of motor vehicles.

Question 1: What defines a “public highway” or “shoulder” of a public highway for the purpose of determining violations under [§397.5\(c\)](#)?

Guidance: The applicable engineering/highway design plans.

Question 2: Must a driver of a motor vehicle transporting HM, other than Division 1.1, 1.2, or 1.3 (Class A or B) explosives, always maintain an unobstructed view and be within 100 feet of that vehicle?

Guidance: No. If the vehicle is not located on a public street or highway or on the shoulder of a public highway, then the vehicle need not be within 100 feet of the driver’s unobstructed view, unless it contains Division 1.1, 1.2, or 1.3 (Class A or B) materials.

Question 3: May a motor carrier consider fuel stop operators as “qualified representative(s)” for purposes of the attendance and surveillance requirements of [§397.5](#)?

Guidance: Yes. However, the fuel stop operator must be able to perform the required functions.

Question 4: Who determines what is a “safe haven”?

Guidance: The selection of safe havens is a decision of the “competent government authorities” having jurisdiction over the area. The definition found in [§397.5\(d\)\(3\)](#) is purposely void of any specific guidelines or criteria. A truck stop may be considered a safe haven if it is so designated by local or State governmental authorities.

Question 5: [Section 397.5\(d\)\(3\)](#) describes a safe haven as “* * * 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.” Do guidelines exist for establishing approval criteria for safe havens? Is there a national list of approved safe havens available to the public?

Guidance: The FHWA believes the safe haven concept is becoming increasingly obsolete due to readily available alternatives for providing “attendance at all times” for vehicles laden with explosives. The FHWA is aware of two documents that may be used as resources for establishing approval criteria for safe havens. The first document, *Construction and Maintenance Procedure Recommendations for Proposed Federal Guidelines of Safe Havens for Vehicles Carrying Class A or Class B Explosives* (1985), contains design, construction, and maintenance guidelines. The second document, *Recommended National Criteria for the Establishment and Operation of Safe Havens* (1990), contains recommended national uniform criteria for approval of safe havens and an inventory of all State-approved safe havens in existence at the time of the report. These two documents may be used both as resources for establishing guidelines for safe haven design and construction, and as source documents for finding other materials that may be used toward the same purpose. These two documents are available to the public through the

U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, Virginia 22161 (phone: (703) 487-4650). The NTIS publications database is also accessible on the internet's world wide web at <http://www.fedworld.gov/ntis>.

Question 6: May video monitors be used to satisfy the attendance requirements in [§397.5](#)?

Guidance: The purpose of the attendance requirement is to ensure that motor vehicles containing hazardous materials are attended at all times and that, in the event of an emergency involving the motor vehicle, the attendant is able to respond immediately. The use of video monitors could satisfy the attendance requirements in [§397.5](#), provided the monitors are operable and continuously manned, the attendant is within 30.48 meters (100 feet) of the parked vehicle with an unobstructed view, and the attendant is able to go to the vehicle immediately from the monitoring location.

§397.7 Parking.

Question 1: When is a vehicle considered “parked”?

Guidance: For the purposes of [part 397](#), “parked” means the vehicle is stopped for a purpose unrelated to the driving function, (e.g., fueling, eating, loading, unloading).

Question 2: What constitutes “knowledge and consent of the person in charge,” as used in [§397.7\(a\)\(2\)](#)?

Guidance: In order to satisfy the requirement for “knowledge and consent,” actual notice of “the nature of the hazardous materials the vehicle contains” must be given to the person in charge, and that person must affirmatively agree to allow the vehicle to be parked on the property under his/her control.

Question 3: Is the motor carrier or driver relieved from the requirements of [§397.7\(a\)\(3\)](#) if the person in charge of the private property is notified of the explosive HM contained in the vehicle?

Guidance: No. A vehicle transporting Division 1.1, 1.2, or 1.3 (Class A or B) explosives must meet the 300-foot separation requirement, regardless of any notification made to any person.

Question 4: What is meant by the term “brief periods when necessities of operation require * * *” in [§397.7\(a\)\(3\)](#)?

Guidance: Brief periods of time depend upon the “necessities of operation” in question. Parking a vehicle containing Division 1.1, 1.2, or 1.3 (Class A or B) materials closer than 300 feet to buildings, dwellings, etc. for periods up to 1 hour for a driver to eat would not be permitted under the provisions of [§397.7\(a\)\(3\)](#). Parking at fueling facilities to obtain fuel, oil, etc., or at a carrier’s terminal would be considered necessities of operation.

Question 5: May a safe haven be designated within 300 feet of an area where buildings and other structures are likely to be occupied by large numbers of people?

Guidance: The selection and designation of safe havens are a decision of the “competent government authorities” having jurisdiction over the area.

Question 6: If a motor vehicle is transporting Division 1.1, 1.2, or 1.3 (Class A or B) explosives and is parked in a safe haven, must it be in compliance with the parking requirements of [§397.7](#)?

Guidance: Yes. Safe havens, as outlined in [§397.5](#), relate to attendance and surveillance requirements. The parking restrictions of [§397.7](#) still apply.

Question 7: May a driver transporting Division 1.1, 1.2, or 1.3 (Class A or B) materials park within 100 feet of an eating establishment in order to meet the attendance and surveillance requirements?

Guidance: No, because it will result in a violation of [§397.7\(a\)\(3\)](#).

§397.9 [Removed and Reserved]

Editor's Note: This section was removed from the regulations. Regulatory information related to this interpretation is now contained in [§397.67](#).

Question 1: May a motor vehicle which contains HM use expressways or major thoroughfares to make deliveries within a populated area?

Guidance: Yes, unless otherwise specifically prohibited by State or local authorities. In many instances a more circuitous route may present greater hazards due to increased exposure. However, in those situations where a vehicle is passing through a populated or congested area, use of a beltway or other bypass would be considered the appropriate route, regardless of the additional economic burden.

§397.13 Smoking.

Question 1: May a driver of a Commercial Motor Vehicle (CMV) transporting HM, listed in [§397.13](#), smoke while at the controls or in the sleeper berth of the vehicle?

Guidance: No. All persons are prohibited from smoking or carrying lighted smoking materials at any time while on or within 25 feet of such a vehicle. The word “on” includes any time while in the cab, sleeper berth, etc.

Part 399

§399.207 Truck and truck-tractor access requirements.

Question 1: If a high-profile COE truck or truck-tractor is equipped with a seat on the passenger's side, must steps and handholds be provided for any person entering or exiting on that side of the vehicle?

Guidance: Yes, all high-profile COE trucks and truck tractors shall be equipped on each side of the vehicle where a seat is located, with a sufficient number of steps and handholds to comply with the requirements of [§399.207\(a\)](#).

Question 2: What does the foot accommodation rule mean when it states: "The step need not retain the disc at rest"?

Guidance: The note under [§399.207\(b\)\(4\)](#) states that the disc referred to is a measuring device. The step or rung does not have to be configured in such a manner as to keep the measuring disc from falling off the step or rung.

Question 3: In [§399.207\(b\)\(4\)](#), Illustration III, what does the unshaded area within the disc suggest?

Guidance: The unshaded area illustrates the height of the open area required for a driver to insert his or her foot.

Question 4: May the step be a rung? If so, what minimum diameter must the rung be?

Guidance: Yes, the step may be a rung. There is no minimum requirement for the diameter of a step rung. However, it must meet the performance requirements in [§399.207\(b\)\(5\)](#).