Application No.	Applicant	Parties to exemption
11119–P	Fibre Glass Evercoat Co., Inc., Cincinnati, OH	11119
11119–P	Akzo Coatings, Inc., Norcross, GA	11119
11150–P	Casco Bay Island Transit District, Portland, ME[2]	11150

[1] To authorize party status and modify exemption provided for 10 tank configuration for the shipment of helium which was originally issued on an emergency basis.
[2] To reissue party status originally issued on an emergency basis.

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 10, 1993.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–28238 Filed 11–16–93; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES INFORMATION AGENCY

Privacy Act of 1974; Amendments to the Appendix I—Prefatory Statement of General Routine Uses

AGENCY: United States Information Agency.

ACTION: Amendments to the routine use statement of notice of systems of records adding debt collection use.

SUMMARY: In accordance with the Private Act of 1974, as amended (5 U.S.C. 552a(e)(4)), the United States Information Agency (USIA) is publishing amendments to its Routine Use Statement adding debt collection use. The Debt Collection Act of 1982, as amended (31 U.S.C. 3302, 3701 (1988)), requires agencies to refer commercial and consumer, non-employee, delinquent debt, on a non-exclusive basis, to credit bureaus (referred to as Credit Agencies). Passage of the Cash Management Improvement Act Amendments of 1992 (Pub. L. 102–589), requires agencies to refer non-employee delinquent debt to the Internal Revenue Service for offset of individual tax refunds and/or salaries.

These two new Routine Use statements are necessary for USIA to participate in the Tax Refund Offset Program for the 1994 tax year, as well as eventual salary offset for employees. Collection procedures will use USIA's Accounts Receivable System. The system covers procedures whereby delinquent debts owed to USIA will be referred to credit agencies (4 CFR parts 101–105) that will incorporate account information into its data files, credit reports, and other business information, and procedures whereby delinquent debts owed USIA will further be referred to the Internal Revenue Service (IRS) for collection either by offset against Federal income tax refunds under 31 U.S.C. 3720A, or by salary offset of Federal government employees.

EFFECTIVE DATE: November 17, 1993.

ADDRESSES: 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Lola L. Secora (202) 619–5499.

SUPPLEMENTARY INFORMATION: Agencies must comply with the Debt Collection Act of 1982, as amended, the Federal Claims Collection Standards, OMB Circular A–129 and the Treasury Financial Manual Credit Supplement when reporting information to credit bureaus. Agencies must comply with the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a, Pub. L. 93–579, 88 Stat. 1896), and OMB Guidelines (54 FR 25818, June 19, 1989) on implementation of the requirements of the Computer Matching and Privacy Protection Act (Pub. L. 100–503).

New Routine Use Statements:

* * * * *

16. To Credit Agencies, on a non-exclusive basis, information on its commercial debts as described in the Treasury Financial Manual Credit Supplement. The Credit Agency will incorporate this account information into its data files, credit reports, and other business information products and services. Before furnishing the account information, USIA will verify its accuracy in accordance with its standard procedures for debt verification.

17. To the Internal Revenue Service (IRS), U.S. Postal Service and the Defense Manpower Data Center, Department of Defense, to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debts owned to the U.S. Government under certain programs administered by the United States Information Agency in order to collect the debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, tax refund procedures, or by administrative or salary offset procedures.

To any other Federal agency for the purpose of effecting administrative or salary offset procedures against a person employed by that agency or receiving or eligible to receive some benefit payments from the agency when the United States Information Agency as a creditor has a claim against that person.

Disclosure of information about persons who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debt owned to the U.S. Government under certain programs administered by the United States Information Agency may be made to other Federal agencies, but only to the extent of determining whether the person is employed by that agency and, if so, effecting administrative or salary offset procedures against the person.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–28233 Filed 11–16–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 220

Wednesday, November 17, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 52138, Thursday, November 4, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, November 16, 1993.

CHANGE IN THE MEETING:

Closed Session

The closed portion of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: November 15, 1993.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 93–28408 Filed 11–15–93; 1:04 pm]

BILLING CODE 6750-06-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 15, 22, 29, and December 6, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 15

Wednesday, November 17

9:30 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Final Rule, 10 CFR Parts 30, 40, 50, 70, and 72, "Self-Guarantee as an Additional Financial Assurance Mechanism" (Tentative)

(Contact: Clark Prichard, 301–492–3734)

(Postponed from November 10)

Week of November 22–Tentative

Wednesday, November 24

9:00 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 29—Tentative

Friday, December 3

10:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 6—Tentative

Tuesday, December 7

10:00 a.m.

Periodic Briefing on EEO Program (Public Meeting)

(Contact: Vandy Miller, 301–504–2326)

Thursday, December 9

10:00 a.m.

Briefing on Status of TVA Nuclear Programs (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.

Briefing by Northeast Utilities (Public Meeting)

Friday, December 10

10:00 a.m.

Briefing by IG on Fee Audit (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: November 10, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–28353 Filed 11–15–93; 8:45 am]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 58, No. 220
Wednesday, November 17, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL HOUSING FINANCE BOARD

[No. 93-80]

Pricing of Services

Correction

In notice document 93-27423 beginning on page 59468 in the issue of Tuesday, November 9, 1993, make the following correction:

On page 59468, in the second column, in DATES:, in the last line, "January 10, 1993." should read "January 10, 1994."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-03-5410-11-A004; AZA-28010]

Receipt of Conveyance of Mineral Interest Application

Correction

In notice document 93-18882 beginning on page 42096 in the issue of Friday, August 6, 1993, make the following correction:

On page 42097, in the first column, under parcel 2, the land description for T. 5 N., R. 4 W. is corrected to read "Sec. 33, S½SW¼NW¼SE¼."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-4210-03-03; AZA 28166]

Realty Action; Recreation and Public Purposes Act Classification; Arizona

Correction

In notice document 93-25134 beginning on page 53209 in the issue of Thursday, October 14, 1993, on page 53209, in the third column, in land description T. 17 S., R. 12 E., in Sec. 11, "SE¼" should read "SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-062-04-5440-10-B043, CACA 33071]

Realty Action; Exchange of Public and Private Lands, San Bernardino County, CA

Correction

In notice document 93-26013 beginning on page 54599 in the issue of Friday, October 22, 1993, on page 54599, in the second column, in land description T.16N., R.13E., in Section 12, in the second line, "S½SE¼SE¼SE¼NE¼," should read "S½SE¼SE¼NE¼,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-4210-06; CACA 33164]

Proposed Withdrawal; California

Correction

In notice document 93-25189 beginning on page 53211 in the issue of Thursday, October 14, 1993, make the following corrections:

1. On page 53212, in the first column:

a. In T. 13 N., R. 10 E., in Sec. 30, in the second line, "and 5," should read "and 6,".

b. In T. 14 N., R. 10 E., in Sec. 30, in the second line, "lot 178," should read "lot 18,".

c. In T. 13 N., R. 11 E., in Sec. 4, in the first line, insert "2" after "lot".

d. In T. 14 N., R. 11 E., in Sec. 32, in the first line, "S½N½SE¼," should read "S½N½SE¼;".

e. In the same T. and R., in the same Sec., remove the second line.

f. Under the heading **National Forest System Lands**, in the heading Tahoe and Eldora National Forests, "Eldora" should read "Eldorado".

g. In the first paragraph of text, in the third line, "l,361" should read "1,361", and "served" should read "reserved".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[CGD 93-069]

Measurement of Vessels; Water Ballast Exemption

Correction

In rule document 93-26463 beginning on page 57747 in the issue of Wednesday, October 27, 1993, make the following corrections:

1. On page 57747, in the 3d column, in SUPPLEMENTARY INFORMATION, in the 1st paragraph, in the 16th line from the end, "waster" should read "water".

2. On page 57748, in the first column, in next to last line of the first paragraph, "to benefit" should read "to the benefit".

3. On the same page, in the same column, in the first full paragraph, in the seventh line from the end, "section" should read "sections".

BILLING CODE 1505-01-D

federal register

Wednesday
November 17, 1993

Part II

Department of Transportation

Federal Highway Administration

49 CFR Chapter III

Regulatory Guidance for the Federal Motor Carrier Safety Regulations; Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Chapter III

Regulatory Guidance for the Federal Motor Carrier Safety Regulations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Regulatory guidance.

SUMMARY: This document presents interpretive guidance material for the Federal Motor Carrier Safety Regulations (FMCSRs) now contained in the FHWA's Motor Carrier Regulation Information System (MCREGIS). The FHWA has consolidated previously issued interpretations and regulatory guidance materials and developed concise interpretive guidance in question and answer form for each part of the FMCSRs. These questions and answers are generally applicable to drivers, commercial motor vehicles, and motor carrier operations on a national basis. All prior interpretations and regulatory guidance of the FMCSRs issued previously in the **Federal Register**, as well as FHWA memoranda and letters, may no longer be relied upon as authoritative insofar as they are inconsistent with the guidance published today. Many of the interpretations of the FMCSRs published on November 23, 1977, and the interpretations of the Inspection, Repair, and Maintenance regulations published on July 10, 1980, have been revised. These revisions are reflected in the new questions and answers. Future interpretive guidance will be issued within the MCREGIS which will be kept current in the FHWA's Office of Motor Carrier Standards. The MCREGIS will also be updated periodically and published in the **Federal Register** so that interested parties may have ready reference to official interpretations and guidance regarding the FMCSRs. This guidance will provide the motor carrier industry with a clearer understanding of the applicability of many of the requirements contained in the FMCSRs in particular situations.

EFFECTIVE DATE: November 17, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Osiecki, Office of Motor Carrier Standards, (202) 366–4009, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal legal holidays.

SUPPLEMENTARY INFORMATION: This document contains revised and new regulatory guidance pertaining to Title 49, Code of Federal Regulations (CFR), parts 325, 383, 386, 387, 390 to 393, 395 to 397, and 399 of the FMCSRs. The information published in this document supersedes all previously issued interpretations and regulatory guidance, to the extent they are inconsistent with the guidance published today, including that published on November 23, 1977, at 42 FR 60078, and on July 10, 1980, at 45 FR 46425. In addition, much of the previously issued guidance was issued in the form of letters to individuals and motor carriers. These previous interpretations may no longer be relied upon as authoritative. To the maximum extent possible, those opinions have been incorporated into this document. If an individual or a motor carrier has an interpretive letter issued by the FHWA that is not addressed in this document, a copy of the letter may be sent to the FHWA Office of Motor Carrier Standards at the above address for consideration in a future update of this guidance. Periodic updates of this guidance will be published in future issues of the **Federal Register**.

Members of the motor carrier industry and other interested parties may access the guidance in this document through the FHWA's Electronic Bulletin Board System (FEBBS) using a microcomputer and modem. The FEBBS is a read-only facility. The telephone number for FEBBS is Area Code 202–366–3764. While the system supports 300, 1200, and 2400 baud line speeds, and a variety of terminal types and protocols, setting the modem for 2400 baud, 8 data bits, full duplex, and no parity will give optimal performance. Once a connection has been established and the <R<egistration item completed, callers should go to the C>onferences M>otor Carrier section and select either <M<CREGIS Questions and Answers, or <I<nformation for more detailed help.

For Technical Assistance to gain access to FEBBS, contact: FHWA Computer Help Desk, HMS–40, room 4401, 400 Seventh Street, SW., Washington, DC 20590. (202) 366–1120.

Specific questions addressing any of the interpretive material published in this document may be directed to the contact persons listed above, the FHWA Regional Offices, or the FHWA Division Office in each State.

For ease of reference, the following listing of acronyms used throughout this document is provided:

Appendix G The Minimum Periodic Inspection Standards published as an appendix to the Federal Motor Carrier Safety Regulations
CDL Commercial Driver's License
CDLIS Commercial Driver's License Information System
CFR Code of Federal Regulations
CMV Commercial Motor Vehicle
CMVSA Commercial Motor Vehicle Safety Act of 1986
COE Cab-over-engine truck tractor
CVSA Commercial Vehicle Safety Alliance
DOT U.S. Department of Transportation
DVIR Driver Vehicle Inspection Report
DWI Driving While Intoxicated
EAP Employee Assistance Program
EPA U.S. Environmental Protection Agency
FHWA Federal Highway Administration
FMCSRs Federal Motor Carrier Safety Regulations
FMVSS Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration)
FR Federal Register
FRSI Farm-Related Service Industries
GCWR Gross Combination Weight Rating
GVW Gross Vehicle Weight
GVWR Gross Vehicle Weight Rating
HM Hazardous Materials
HMRs Hazardous Materials Regulations
HMTUSA Hazardous Materials Transportation, Uniform Safety Act of 1990
ICC Interstate Commerce Commission
Form MCS–90 Endorsement(s) for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980 issued by an insurer
MCSA Motor Carrier Safety Act of 1984
MPH Miles Per Hour
MRO Medical Review Officer
NDR National Driver Register
NHTSA National Highway Traffic Safety Administration within DOT
RDMC Regional Director of Motor Carriers
SSN Social Security Number
STAA Surface Transportation Assistance Act of 1982
U.S.C. United States Code

Questions and Answers

Table of Contents

Part 325—Compliance With Interstate Motor Carrier Noise Emission Standards

Sections Interpreted

325.1

Section 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 CMV is stopped or moving at 5 mph or less are "auxiliary equipment" of the kind contemplated by EPA 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 FMCSRs?

Guidance: No.

Part 383—Commercial Driver's License Standards; Requirements and Penalties

Sections Interpreted

383.3 Applicability
383.5 Definitions
383.7 Waiver Provisions
383.21 Number of Drivers' Licenses
383.23 Commercial Driver's License
383.33 Notification of Driver's License Suspensions
383.37 Employer Responsibilities
383.51 Driver Disqualifications—General Questions—
383.51 Driver Disqualifications—Alcohol Questions—
383.71 Driver Application Procedures
383.73 State Procedures
383.75 Third Party Testing
383.77 Substitute for Driving Skills Test
383.91 Vehicle Groups
383.93 Endorsements
383.95 Air Brake Restriction
383.131 Test Procedures
383.133 Testing Methods
383.153 Information on the Document and Application
Special Topics—Motor Coaches and CDL
Special Topics—State Reciprocity

Section 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 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 the FHWA include off-road motorized construction equipment under the definitions of "motor vehicle" and "CMV" as used in §§ 390.5 and 383.5?

Guidance: No, because it is neither used on the highway nor used in the transportation of passengers or property.

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

Guidance: The definition of off-road construction equipment is to be narrowly construed and limited to equipment which, by its design, appearance and function, is obviously not intended for use on a public road. Such equipment would include motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenchers and bulldozers.

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 CMVs 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 CMV.

Question 11: Do State motor vehicle inspectors who drive trucks and motorcoaches 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 CMVs required to obtain CDLs?

Guidance: Yes, unless they are waived by the State under the firefighting and emergency equipment exemption.

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). The HMTUSA of 1990 provides one exception from the need for government-employed CMV drivers to obtain a CDL. Under the HMTUSA of 1990, only when a government agency, Federal, State or local, "offers HM for transportation in commerce or transports HM in furtherance of a commercial enterprise" are its vehicles subject to the placarding requirements of part 172, subpart F. Therefore, vehicles that are controlled and operated by government agencies in the conduct of governmental functions are not subject to placarding. Based on the above stated conditions, 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 CMVs?

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

Section 383.5 Definitions

Question 1: a. Does "designed to transport" as used in the definition of a 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 CMV in § 383.5?

Guidance: a. "Designed to transport" means the original design. Removal of seats does not change the design capacity of the CMV.

b. No, unless this modified vehicle has a 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: a. Who may lawfully change the original GVWR plate by issuing a new GVWR plate to reflect a revised rating due to vehicle modifications?

b. What would be the CDL requirements for the driver of a modified and recertified vehicle?

Guidance: a. Only a manufacturer that is registered with the NHTSA in accordance with 49 CFR 566.5.

b. If under the revised rating, the vehicle still meets the definition of a CMV a CDL would be required.

Question 4: When a State agency contracts with private parties for services involving the operation of CMVs, 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 5: A driver operates a tractor of exactly 26,000 pounds GVWR, towing a trailer of exactly 10,000 pounds GVWR, for a GCWR of 36,000 pounds. Hazardous materials and passengers are not involved. Is it a CMV and does the driver need a CDL?

Guidance: No to both questions. Although the vehicle has a GCWR of 36,000 pounds, it is not a CMV under any part of the definition of that term in § 383.5, and a CDL is not federally required.

Question 6: Can the actual gross weight or registered vehicle weight be used when the GVWR or the GCWR cannot be determined?

Guidance: Yes, the actual gross weight or registered vehicle weight may be used when the GVWR or the GCWR cannot be determined.

Section 383.7 Waiver Provisions

Question 1: Are operators of farm vehicles required to get CDLs?

Guidance: Yes; however, the State may waive the CDL requirements for operators of farm vehicles which are:

a. controlled and operated by a farmer;

b. used to transport either agricultural products, farm machinery, farm supplies or some combination thereof to or from a farm;

c. not used in the operation of a common or contract motor carrier; and

d. used within 150 miles of the person's farm.

"Operated by a farmer" in condition (a) above includes employees or family members of the farmer, as long as the vehicle is controlled by the farmer and conditions (b) through (d) are met.

Question 2: Does the farmer waiver option apply to tree farmers, lumbering operations, livestock operations and nursery operations?

Guidance: Yes, as long as all four of the conditions are met, including control and operation of the vehicle by "a farmer."

Question 3: Is the 150-mile criterion for waivers of farm vehicle operators intended to mean air miles or highway miles?

Guidance: Either, at the State's discretion.

Question 4: If adjoining States adopt different versions of the farm waiver, how would a farmer who lives on the border of these States be affected?

Guidance: It would depend on the agreement between the adjoining States. While there is no Federal requirement to provide reciprocity of a CDL farm waiver as there is for a CDL, reciprocity may be granted between adjoining States. In the absence of an agreement, the farmer would be required to obtain a CDL to drive in the adjoining State.

Question 5: Do drivers of rice and cane mill product vehicles qualify under the Federal farm waiver provisions?

Guidance: No. Mill drivers employed by agricultural processing plants or contract motor carriers do not qualify because the vehicles are not controlled and operated by a farmer.

Question 6: May States grant CDL waivers to drivers of firefighting and other emergency equipment?

Guidance: Yes. The intent of the waiver was to include the drivers of these vehicles that meet the conditions of the waiver, whether or not they are part of a volunteer or paid fire organization, provided the vehicles are equipped with audible and visual signals and are not subject to normal traffic regulation. The decision to grant the waiver and the conditions of the waiver are up to each individual State.

Question 7: a. 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?

b. May the CDL requirements be waived for police officers who operate vehicles that are over 26,000 pounds GVWR and used in SWAT team activities?

Guidance: a. Yes. The CMVSA applies to anyone who operates a 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.

b. Yes, if the vehicle is used in the execution of emergency governmental functions performed under emergency conditions.

Question 8: May fuel be considered "farm supplies" as used in the four conditions for waivers of operators of farm vehicles?

Guidance: Yes, subject to the provisions of 53 FR 37314, September 26, 1988. The decision to grant the waiver is left to each individual State.

Question 9: 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 FRSI waiver?

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

Question 10: Does the Motor Carrier Act of 1991 amendment of Section 12019(5) of the CMVSA of 1986 (CMVSA) exempt all custom harvesting operations from the CDL requirements or only when operating combines?

Guidance: Section 4010 of the Motor Carrier Act of 1991 modifies the definition of a CMV in Section 12019(5) of the CMVSA of 1986 by excluding "custom harvesting farm machinery" from the definition. The conference report clarifies the intent of the exclusion by stating: "The substitute 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, truck-trailers, trailers, semitrailers or any other CMV.

Question 11: Are endorsements permitted on a FRSI-restricted CDL?

Guidance: No, the endorsements mentioned in §§ 383.93 and 383.153 may not appear on an FRSI-restricted CDL.

Question 12: What endorsement privileges, if any, does the FRSI-restricted CDL confer on its holders?

Guidance: The FRSI-restricted CDL automatically confers, without testing and without addition of the endorsement to the license, the following privileges:

a. The tank vehicle ("N") endorsement, in Group B and C vehicles and, for allowable HM, subject to capacity/volume restrictions; and

b. The following commodities under the HM "H" endorsement:

1. Diesel fuel in quantities of 1,000 gallons or less;

2. Liquid fertilizers in vehicles or implements of husbandry with total capacities of 3,000 gallons or less; and

3. Solid fertilizers that are not transported with any organic substance.

c. No other § 383.93 endorsement privileges are obtainable by an FRSI-restricted CDL holder.

Question 13: May the holder of a FRSI-restricted CDL drive vehicles for which a passenger endorsement would be required under part 383?

Guidance: No, the holder of a FRSI-restricted CDL may not drive a CMV designed to transport 16 or more passengers, including the driver.

Question 14: May a State issue a FRSI-restricted CDL that shows more than one season of commercial validity at a time, particularly if the State performs a revalidation on the holder's driving record prior to each of the seasons shown?

Guidance: No, the license document may not show more than one period of seasonal validity at a time, irrespective of any procedures performed by the State.

Question 15: May a person hold an unrestricted CDL and a FRSI-restricted CDL at the same time?

Guidance: No; this would constitute a multiple license as prohibited under § 383.21.

Question 16: May a State (1) require an applicant for a CDL farm waiver 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 17: 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 18: Does the waiver of the CDL requirements for military personnel include National Guard technicians?

Guidance: Yes. The intent of the military waiver was to include National Guard technicians who are civilians and required to wear military uniforms.

Question 19: Does the waiver of the CDL requirements for military personnel include U.S. Army Reserve technicians?

Guidance: No. U.S. Reserve technicians fail to meet either of the conditions that would distinguish them from other civilian drivers who are working for the military. These conditions are that they are required to wear military uniforms or are subject to the code of military justice while in their employment as technicians.

Question 20: Does the waiver of the CDL requirements for non-civilian operators of military equipment include U.S. Coast Guard?

Guidance: Yes. The intent of the waiver was to include all military services and the Coast Guard.

Question 21: 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 notice.

Question 22: 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.

Section 383.21 Number of Drivers' Licenses

Question 1: Are there any circumstances under which the driver of a 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 § 12016 of the CMVSA, they must be considered a foreign country 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 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.

Section 383.23 Commercial Driver's License

Question 1: May a holder of a 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 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 CDLIS transaction?

Guidance: No such requirement currently exists.

Section 383.33 Notification of Driver's License Suspensions

Question 1: When a driver 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 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.

Section 383.37 Employer Responsibilities

Question 1: Section 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 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 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 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 CMV, and neither 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 did that time period begin?

Guidance: No. Only the State or the 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 CMV under the FMCSRs?

Guidance: Not necessarily. The FMCSRs do not prohibit a driver who has been convicted of a felony, such as drug dealing, from operating a 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.

Section 383.51 Driver Disqualifications

General Questions

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: Section 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).

Section 383.51 Driver Disqualifications

Alcohol Questions

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. Sections 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 CMV while off-duty with a blood alcohol concentration over 0.04 percent?

Guidance: Yes. Section 383.51 applies to any person who is driving a 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 CMVs 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 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 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 CMV, then the driver is disqualified for one year under § 383.51, assuming it is a first offense.

Section 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 a 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 a hazardous materials 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.

Section 383.73 State Procedures

Question 1: Does the State have any role in certifying compliance with § 391.11(b)(2) of the 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)?

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 NDR check shows that he/she had a license suspended, revoked, or cancelled within 3 years of the date of the application?

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

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 a FRSI-restricted CDL?

Guidance: No. It 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.

Section 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 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. Section 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 CMVs?

Guidance: No.

Section 383.77 Substitute for Driving Skills Test

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 CMV (§ 383.77(b)(1)). Therefore, the pool of applicants eligible for grandfathering is limited to drivers with current CMV operating experience under a CDL waiver (e.g., farm, 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.

Section 383.91 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 GCWR of less than 26,001 pounds required to obtain a CDL even if the trailer GVWR is more than 10,000 pounds?

Guidance: No, because the 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 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 GMV group are drivers of articulated motorcoaches (buses) required to possess?

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

Section 383.93 Endorsements

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

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 GCWR is 26,001 or more pounds and the GVWR of the vehicles being towed is in excess of 10,000 pounds.

Question 3: Are drivers delivering empty buses required to have the passenger endorsement on their CDLs?

Guidance: Yes.

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

a. A driver transports 1,000 or more pounds of Division 1.4 (Class C explosive) materials in a vehicle with a 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 GVWR of less than 26,0001 pounds?

c. The driver transports any quantity of Division 1.1, 1.2 or 1.3 (Class A or B explosive) materials in any vehicle.

Guidance: a. Yes.

b. No.

c. Yes.

Question 5: Do 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 hazardous materials endorsement?

Guidance: Yes, unless waived.

Question 8: Is a driver who operates a truck tractor pulling a heavy-haul trailer with a "jeep" attached to the front of the trailer that meets the definition of a CMV under part 383 required to have a CDL with a double/triple trailer endorsement?

Guidance: Yes. The "jeep," also referred to as a dolly or load divider, is defined by the FHWA as 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 fifth wheel.

Question 9: Do persons transporting battery-powered fork-lifts need to obtain a hazardous materials endorsement?

Guidance: No.

Section 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 air brakes. Must the State restrict the upgraded license to non-air-brake-equipped vehicles?

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

Section 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 CMV drivers?

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

Section 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 alternate exam formats providing it 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.

Section 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 non-photo CDLs?

Guidance: Yes, as long as—

a. The State does not liberalize any existing procedures for issuing non-photo licenses; and

b. The State does not allow drivers to operate CMVs 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 multi-part 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 SSN on the CDL?

Guidance: No. Section 383.153 does not specify the 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 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 a SSN?

Guidance: No. The determination of whether a person needs a 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 FHWA will accept a color-digitized image of a driver on a CDL in lieu of a color photograph.

Special Topics—Motor Coaches and CDL

Question 1: May a State develop a knowledge test exclusively for motorcoach 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 normative 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? 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.

Part 386—Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings

Sections Interpreted

386.1 Scope of Rules in this Part

Section 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 MCSA of 1984 provided the authority to penalize violators of Notices and Orders issued by the 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 FMCSRs since the motor carrier's compliance record often indicates that additional measures are needed to improve safety and compliance with the regulations. Violations of specific provisions of Consent or Compliance Orders may result in penalties up to $10,000 per day.

Part 387—Minimum Levels of Financial Responsibility for Motor Carriers

Sections Interpreted

Subpart A Motor Carriers of Property
387.1 Purpose and Scope
387.3 Applicability
387.5 Definitions
387.7 Financial Responsibility Required
387.11 State Authority and Designation of Agent
387.15 Forms
Subpart B Motor Carriers of Passengers
387.25 Purpose and Scope
387.27 Applicability
387.31 Financial Responsibility Required
387.39 Forms

Subpart A Motor Carriers of Property

Section 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.

Section 387.3 Applicability

Question 1: At what 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 GVWR of 10,000 pounds or more. Part 387 subpart A does not apply to the intrastate transportation of non-bulk oil, non-bulk hazardous materials, 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 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 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 tractor 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 hazardous materials that are excepted from the HMRs subject to financial responsibility regulations?

Guidance: Yes. Packaging or transportation exceptions in the HMRs do not change the need for financial responsibility at the appropriate level commensurate with the commodity being transported.

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

Guidance: No, while motor vehicles are identified as hazardous materials in the Hazardous Materials Table at § 172.101, motor vehicles, by themselves, are not to be treated as hazardous materials and should be considered non-hazardous property.

Question 9: Is a travel trailer or motor home that has propane cylinders attached subject to part 387 of the FMCSRs?

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

Section 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.

Question 2: 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.

Section 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 ICC to all Mexican motor carriers, for-hire as well as private, that allows them to enter the U.S., but restricts them to the ICC's commercial zone for a particular border municipality. 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.

Section 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.

Section 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 Class A explosives 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 cancelled 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.

Subpart B—Motor Carriers of Passengers

Section 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.

Section 387.27 Applicability

Question 1: Is a non-profit 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.

Section 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.

Section 387.39 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 Class A explosives 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.

Part 390—Federal Motor Carrier Safety Regulations; General

Sections Interpreted

390.3 General Applicability
390.5 Definitions
390.9 State and Local Laws, Effect on
390.15 Assistance in Investigations and Special Studies
390.21 Marking of Commercial Motor Vehicles
390.23 Relief From Hours-of-Service Regulations—Disasters
Section 390.31 Copies of Records or Documents

Section 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 intrastate drivers of an interstate motor carrier subject to the FMCSRs?

Guidance: No, except when carrying hazardous materials.

Question 3: 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 4: 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 (see 58 FR 27328, May 7, 1993).

Question 5: Are the FMCSRs applicable to the rail movement of trailers and intermodal container chassis that previously or subsequently 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 6: 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 7: 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 8: Are Red Cross vehicles/drivers subject to the FMCSRs?

Guidance: Red Cross vehicles/drivers used to provide emergency relief per 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 9: 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. Section 390.3(d) allows employers to enforce more stringent requirements.

Question 10: Are the FMCSRs applicable to drivers/vehicles operated by a State or local educational institution which is a political subdivision of the State?

Guidance: Section 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 11: 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: Section 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 12: 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: Section 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 13: 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 14: 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 15: 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 non-government, 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 to carry more than 15 passengers, including the driver.

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 16: 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. The ICC is responsible for the enforcement of regulations forbidding coercion in the use of lumpers.

Question 17: 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 18: What protection is afforded a driver for refusing to violate the FMCSRs?

Guidance: Section 405 of the STAA (49 U.S.C. App. Section 2305) 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.

Section 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 anhydrous 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 hazardous materials in a quantity that requires placarding.

Question 3: Do modifications to a vehicle that reduce the GVWR below that specified as a CMV render the vehicle and its drivers exempt from the FMCSRs, provided the vehicle does not transport hazardous materials or passengers?

Guidance: No. The applicability of the FMCSRs is based on the GVWR specified by the manufacturer.

Question 4: 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 5: 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 6: Is "off-road" motorized construction equipment, i.e., "motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenchers and bulldozers," subject to the FMCSRs?

Guidance: Such equipment is routinely found at construction sites and is operated by personnel requiring specialized skills. Occasionally, such equipment is moved to or from construction sites by "driving" the "vehicles" short distances on public highways. Their appearance on the highway is only incidental to their primary function, they are not designed to operate in traffic, and their mechanical manipulation often requires a different set of knowledge and skills. The types of construction equipment discussed above do not come within the definition of a "CMV" and hence the operators and equipment are not subject to the FMCSRs.

Question 7: Are mobile cranes operating in interstate commerce subject to the FMCSRs?

Guidance: Yes, the definition of CMV encompasses mobile cranes.

Question 8: Does the FHWA define for-hire transportation of passengers identically as the ICC?

Guidance: To the extent our authority stems from 49 USC § 3102 or other sections of Title 49 which are rooted in the Interstate Commerce Act, we are bound by judicial precedent and legislative history in interpreting that Act, much of which relates to the operations of the ICC. However, since the MCSA of 1984 reestablished our jurisdictional authority and resulted in a repromulgation 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, when operating in interstate commerce, the transportation of passengers in motor vehicles designed to convey more than 15 passengers, including the driver, associated with the following operations would typically be subject to all parts of the FMCSRs, including part 387, since some fee is charged, usually indirectly in a total package charge or other assessment, for transportation performed: Whitewater river rafters, hotel/motel shuttle transporters, rental car shuttle services, etc (see 58 FR 27328, May 7, 1993).

Question 9: 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: Section 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. In the absence of a value specified by the manufacturer, the GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any weight thereon. 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 10: 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 travelled portion of the road, would this be considered an accident?

Guidance: No.

Question 11: To what extent would the windshield 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.

Section 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.

Section 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 for motor carriers to maintain copies of all documents that the motor carrier is required by the insurance company to complete and/or maintain. Section 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.

Section 390.21 Marking of Commercial Motor Vehicles

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."

Section 390.23 Relief From Hours-of-Service Regulations—Disasters

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: Section 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.

Section 390.31 Copies of Records or Documents

Question 1: May records required by the FMCSRs be maintained in an automated format?

Guidance: Yes, provided the motor carrier can produce the information required by the regulations. Documents requiring a signature must be capable of replication (i.e., photocopy, facsimile, etc.) in such form that will provide an opportunity for signature verification upon demand.

Question 2: How long does a motor carrier have to produce records if a motor carrier maintains all records in an automated format?

Guidance: A motor carrier must produce all records maintained in an automated format within 2 working days after the request. Documents requiring a signature must be capable of replication (e.g., photocopy, facsimile, etc.) in such form that will provide an opportunity for signature verification upon demand.

Part 391—Qualification of Drivers

Sections Interpreted

391.2 General Exemptions
391.11 Qualifications of Drivers
391.15 Disqualification of Drivers
391.21 Application for Employment
391.23 Investigation and Inquiries
391.25 Annual Review of Driving Record
391.27 Record of Violations
391.31 Road Test
391.41 Physical Qualifications for Drivers
391.43 Medical Examination; Certificate of Physical Examination
391.45 Persons Who Must Be Medically Examined and Certified
391.47 Resolution of Conflicts of Medical Evaluation
391.51 Driver Qualification Files
391.63 Intermittent, Casual, or Occasional Drivers
391.65 Drivers Furnished By Other Motor Carriers

Section 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 of any GVWR and articulated vehicles rated at 10,000 GVWR and less are exempted from all driver qualification requirements of part 391. All drivers of articulated motor vehicles at 10,001 GVWR or greater are required to possess a current medical certificate as required in §§ 391.41 and 391.45 and a current drug test as required in part 391 subpart H (see § 391.67).

Section 391.11 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 age thresholds for intrastate drivers.

Question 3: What role does the Age Discrimination in Employment Act play in minimum and maximum age of 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: Is there a requirement that a driver must personally load, block, brace, and tie down the cargo on the property carrying CMV he/she drives?

Guidance: No. There is no requirement that the driver must personally secure the cargo, nor is there one prohibiting him/her from doing so. The driver is required to be familiar with methods and procedures for securing cargo in or on the vehicle he/she drives.

Question 7: 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 examiners certificate before driving in interstate operations.

Section 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. The disqualification provisions of § 391.15 do not apply to a driver using a company vehicle, for personal reasons, while off-duty. 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 in tact, 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 two 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 not in the employ of a motor carrier, is it a disqualifying offense?

Guidance: No. There are 2 conditions required to be present for a felony conviction to be a disqualifying offense: (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.

Section 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 it's 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).

Section 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: No.

Section 391.25 Annual 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 exercised 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.

Section 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: Section 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.

Question 2: Must violations of size and weight laws be reported on the annual record of violations the driver furnishes to the carrier every 12 months?

Guidance: Yes.Violations of size and weight laws are considered motor vehicle traffic laws and must be reported to the carrier.

Section 391.31 Road Test

Question 1: Are employers still required to administer road tests since all States have implemented CDL skills testing?

Guidance: Section 391.33(a)(1) allows an employer to accept, in lieu of the road test, a CDL. However, if the employer intends to assign to the driver a vehicle necessitating the doubles/triples or tank vehicle endorsement, the employer still needs to administer the road test under § 391.31 in that type of 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.

Section 391.41 Physical Qualifications for Drivers

Question 1: Who is responsible to insure medical certification requirements are met?

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 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 medical/physical conditions prohibit a driver from being qualified to operate a CMV in interstate commerce?

Guidance: Drivers are prohibited from being qualified if they do not meet the standards for vision, hearing, diabetes, epilepsy, or loss of a limb. The exception to these prohibitions is if the individual has received a waiver from the FHWA.

Question 4: What other medical/physical conditions prohibit a driver from being qualified to operate a CMV in interstate commerce?

Guidance: All other medical conditions listed in § 391.41 render a driver unqualified unless a medical examiner makes a determination that the driver is capable of safely operating a CMV.

Question 5: 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.

Section 391.43 Medical Examination; Certificate of Physical Examination

Question 1: May a motor carrier accept medical examination results conducted under other Federal or State agencies or foreign jurisdiction requirements?

Guidance: Yes, as long as the driver is medically certified in accordance with the procedures in part 391 subpart E.

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 Department 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 non-drug testing, but only if such other non-drug 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.

Section 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 subpart H, 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.

Section 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.

Section 391.51 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, but only when operating in interstate commerce.

Section 391.63 Intermittent, Casual, or Occasional Drivers

Question 1: Is a person employed by a non-motor carrier in his normal duties considered an intermittent, casual or occasional driver when employed by a motor carrier as a driver on a part 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.

Section 391.65 Drivers Furnished by Other Motor Carriers

Question 1: May a non-motor 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 391 Subpart H Controlled Substances Testing Requirements

Sections Interpreted

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Special Topics

Section 391.81 Purpose and Scope

Question 1: May a motor carrier test for additional drugs that are not part of the DOT drug rule?

Guidance: Section 391.81(c) of the FHWA regulation states that a motor carrier may test for additional drugs only as a part of reasonable cause testing and only if approved by the FHWA Administrator under part 40. This section further indicates that such approval will only be granted for a substance for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

Section 391.83 Applicability

Question 1: Do the FHWA's controlled substances testing regulations apply to motor carriers and drivers in Puerto Rico and Guam?

Guidance: No.

Question 2: Which drivers are to be included in a drug testing program under the FHWA's rule?

Guidance: Any person who operates a CMV, as defined in § 391.85, in interstate commerce and is subject to the driver qualification requirements of part 391 is to be included in the program.

Question 3: Is a foreign resident driver operating between the U.S. and a foreign country from a U.S. terminal for a U.S.-based motor carrier subject to the FHWA drug testing regulations?

Guidance: Yes. The driver would not be protected by foreign law since he is operating for a U.S.- based motor carrier and is subject to subpart H.

Question 4: Would a foreign resident driver operating from a foreign terminal of a U.S.-based carrier between a foreign country and the U.S. be subject to the FHWA drug testing regulations?

Guidance: No. The motor carrier that is operating from the foreign terminal would have to comply with the requirements of the foreign government. Therefore, the driver would not be required to comply with the controlled substances testing requirements.

Section 391.87 Notification of Test Results and Recordkeeping

Question 1: Where must the records required by § 391.87(f) be maintained?

Guidance: The driver's qualification file need not be physically one recordkeeping medium such as a file folder, but must be a filing system that is identifiable to a specific individual. Examples would include, in addition to a file folder, an electronic file such as a record on a database program, or a filing system which may contain several physical files each labeled to a specific individual. These records are to be maintained at the carrier's principal place of business, unless they have divided records authority. Participation in a consortium does not relieve a motor carrier of its responsibility to comply with these recordkeeping requirements.

Question 2: May a motor carrier as a member of a consortium satisfy the annual summary requirements by using the aggregate testing information of the consortium?

Guidance: No. A motor carrier's annual summaries must be employer specific.

Question 3: May a motor carrier, as a part of its annual summary, include records of drug tests of employees covered by other U.S. DOT agencies?

Guidance: Yes.

Question 4: What if a motor carrier's MRO refuses to maintain the records required by § 391.87(e) for a 5-year period?

Guidance: The motor carrier must instruct the MRO to maintain the records or the carrier should use the services of another MRO who will maintain the records.

Question 5: When subsidiaries of a parent company join together as a consortium for the purpose of satisfying the FHWA's random drug testing requirements, is it permissible for each subsidiary to use the aggregate testing totals to satisfy the annual summary requirements of § 391.87(h)?

Guidance: No. The annual summary must be specific to each subsidiary.

Question 6: While completing the annual summary required under § 391.87(h), must the motor carrier include the information required by § 391.87(h) (6) and (7) if it is likely that information about an individual's test can be readily inferred?

Guidance: No. If the monthly statistical summaries received from the laboratory or consortium include data from which the existence of these elements can be readily inferred, a motor carrier is not required to complete these items.

Section 391.89 Access to Individual Test Results or Test Findings

Question 1: A driver whose test is returned positive is subsequently terminated by the employer. The driver initiates an unemployment or workers compensation proceeding. May an employer, without a driver's authorization, disclose information to a decision-maker in an unemployment or workers compensation proceeding?

Guidance: An employer may release information concerning a driver's drug test results after these four actions have taken place:

1. The driver initiates a claim for benefits;

2. The adjudicator requests information from the employer concerning the circumstances under which the driver's employment was terminated;

3. The employer responds to the adjudicator that the driver is medically unqualified to operate a CMV in interstate commerce because the driver does not meet the medical qualification standards of part 391, subpart E; and

4. The adjudicator requests the employer to identify which Federal medical qualification standard in subpart E the driver does not meet.

At this point, the employer may release the information that the driver tested positive for controlled substances during a test which was conducted in accordance with U.S. DOT procedures found at 49 CFR part 40.

Section 391.93 Implementation Schedule

Question 1: If a motor carrier commenced operations after 01/01/92, is the carrier entitled to take advantage of the 12-month phase-in period for random testing provided in § 391.93(e)?

Guidance: Yes.

Question 2: What does the phrase "spread reasonably through the 12-month period" in § 391.93(e)(1) mean?

Guidance: The FHWA regulations do not set the number of selection periods a motor carrier must use during the year. The agency believes, however, that larger motor carriers should perform the selection at least four times a year. A small motor carrier which chooses not to belong to or is not able to belong to a consortium may choose to randomly select drivers fewer than four times a year.

Section 391.95 Drug Use Prohibitions

Question 1: What must be done in order to allow a CMV driver who has been tested and confirmed positive for the use of controlled substances to return to driving in interstate commerce?

Guidance: The driver would have to submit to another controlled substances test with a negative result and be medically recertified by a medical examiner. (See § 391.97, Question Number 2 for additional guidance)

Question 2: When a driver tests positive for controlled substances, may that driver be assigned to non-driving duties?

Guidance: Yes. A driver may be assigned non-driving duties until such time as the driver may successfully pass another controlled substances test.

Question 3: If a driver refuses to submit to a controlled substances test, would he/she be considered medically unqualified?

Guidance: Yes. A refusal to test is considered the same as a positive test and the driver is considered medically unqualified.

Section 391.97 Prescribed Drugs

Question 1: May an MRO declare a positive drug test negative without impugning the laboratory or the methods of collection of the specimen?

Guidance: Yes. The MRO's responsibility is to find possible alternative medical explanations for a positive drug test result. When an MRO contacts a driver to discuss a confirmed positive test result, the MRO is attempting to discover whether any medical explanation that the driver may provide could explain why a positive test was obtained. An MRO's decision to change a laboratory-confirmed positive test result to an MRO-verified negative test result does not impugn the laboratory or the collection methods.

Question 2: If a driver tests positive, is the driver required to be medically recertified?

Guidance: Yes. The medical examiner must examine the driver again because of the prior use of drugs and certify that the driver is medically qualified to drive. The complete examination need not always be given. The extent to which the driver must be physically reexamined must be determined by the medical examiner.

Section 391.103 Pre-Employment Testing Requirements

Question 1: Must a motor carrier wait for the results from a pre-employment drug test prior to using a driver in interstate commerce?

Guidance: A driver who is required to submit to a pre-employment controlled substance test may not drive until the subpart H drug test negative results are received by the motor carrier using the driver.

Question 2: Must all drivers who do not work for an extended period of time (such as layoffs over the winter 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 uncovered for more than 30 days, then a pre-employment test would be required.

Section 391.105 Biennial (Periodic) Testing Requirements

Question 1: When may biennial (periodic) testing be discontinued?

Guidance: A motor carrier may discontinue biennial (periodic) testing of a specific driver when that specific driver has had at least one prior biennial, pre-employment or random test and the motor carrier is testing at the 50 percent or higher rate under its random program. A motor carrier that is phasing in random testing during the first 12 months cannot discontinue periodic testing until such time as testing is conducted at the 50 percent annualized rate.

Question 2: Must a drug test which will become a part of the periodic physical examination be administered by the company or may the driver choose a medical practitioner himself?

Guidance: The rule clearly places the responsibility for compliance with the rule on the motor carrier. If the motor carrier decides to have the test performed by another entity, FHWA will continue to look to the motor carrier to ensure that any testing performed complies with the rule.

Question 3: What is the relationship between a medical examination and a periodic drug test?

Guidance: Subpart H testing for controlled substances may be performed as an integral part of the medical examination; as a separate collection activity during the visit to the medical examiner's office; or as a totally separate activity from the medical examination.

If subpart H testing is performed as a part of the medical examination, the medical examiner should receive the results of the test from the MRO or the motor carrier. (A release from the person being tested will be needed in order to obtain the results.) If the results are negative and the driver is otherwise physically qualified, the medical examiner should sign the medical examiner's certificate.

If, however, the medical examiner does not receive the subpart H test results or if the testing is performed as a separate activity from the medical examination (either the specimen is collected during the same visit or as a totally separate activity), the medical examiner should perform the medical examination as has been done in the past and sign the certificate if the driver is physically qualified in accordance with § 391.41. In such cases, the medical examiner should line out the reference to subpart H on the medical examiner's certificate and initial the line out. The motor carrier is responsible to ensure that controlled substances tests are performed when and as required and are documented in the drivers' qualification files. Furthermore, a motor carrier may not use a driver until the motor carrier has received negative results of a controlled substances test for pre-employment or periodic testing if the driver's current medical examiner's certificate has expired.

If a periodic test for controlled substances is performed separately from the medical examination, the test should be performed before the expiration of the driver's medical certificate, but no more than 60 days prior to such expiration, to ensure that the subpart H test results are received before the expiration of the certificate.

Question 4: Does subpart H require a CMV driver be issued and carry a medical examiner's certificate which states the outcome of a controlled substances test performed in accordance with subpart H and part 40?

Guidance: No. 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.

Section 391.109 Random Testing Requirements

Question 1: 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 selected during each selection process.

Question 2: May a motor carrier or consortium include intrastate drivers and other non-covered employees into one random pool?

Guidance: Yes, as long as the motor carrier or consortium can document that it is meeting or exceeding the 50 percent testing rate of U.S. DOT-covered positions.

Question 3: Is it permissible to make random selections by terminals?

Guidance: It would be permissible to use a random selection method that is based on geographic locations or terminals. If random selection is done based on location, a two-stage selection process must be utilized. The first selection would be the location and the second selection would be of employees at that location.

Question 4: When a driver works for two or more different companies in whose random pool must the driver be included?

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

Question 5: After what period of time may a motor carrier remove a casual driver from a random pool?

Guidance: A motor carrier may remove a casual driver, who is not used by the carrier, from its random pool when it no longer expects the driver to be used. The time period should be no longer than one year.

Question 6: If an employee is off work due to a letter of layoff or a long-term illness or injury, should that individual's name be removed from the random pool?

Guidance: No. When the individual is randomly selected for drug testing, the driver's name may be skipped and another driver would be tested. The driver's name would remain in the selection pool for each period the driver is employed by the motor carrier. The driver's test should not be deferred until the driver returns to duty.

Question 7: When a driver is off because of long-term illness, injury or layoff, how will a motor carrier document its random testing program to indicate the driver was included in the random pool?

Guidance: A notation that the driver was in the random pool and that the driver was ill, injured or laid off would suffice.

Question 8: If an employee is on vacation when randomly selected may the collection of the driver's urine be deferred until he returns to work?

Guidance: Yes. The test should be deferred. A motor carrier may collect urine specimens at any time during a selection period. The motor carrier has from the time of selection of the driver's name until the next selection period to require a driver to submit a urine specimen. In many cases, a driver may return from vacation prior to the next selection and would be required to be tested.

Question 9: An employee takes five consecutive weeks of vacation. The motor carrier selects drivers' names 12 times each year. Is the driver considered to be not employed by the carrier for more than thirty days?

Guidance: No. The driver does not leave the motor carrier's employ when on vacation. A selected driver's name may be skipped. Another driver would be selected and the vacationing driver's name would be placed in the pool for the next selection period.

Question 10: Is it necessary for an individual (owner-operator) to belong to a consortium?

Guidance: Owner-operators are required to belong to a consortium.

Question 11: If a motor carrier joins a consortium, and the consortium is randomly testing at the 50 percent rate, will this rate meet the requirement of the controlled substances testing for the motor carrier even though 50 percent of the motor carriers drivers were not randomly tested?

Guidance: Yes.

Question 12: What evidence should a motor carrier maintain to document that a participating consortium is testing according to the rules?

Guidance: Motor carriers are responsible for documenting compliance with subpart H, including that the random testing program in which their drivers participate is testing at the 50 percent rate. Members should obtain a complete and comprehensive description of the procedures to be used by the consortium. With respect to random testing, this description would include: the random testing pool, the method of selection and notification of drivers, the method of collection (at terminal sites, clinics, "on the road", etc.), methods of reporting the results of the tests on an individual basis as well as summary reports to the members. A key issue is the determination and documentation that the consortium is testing at the prescribed rate.

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

Guidance: Yes, if this newly created consortium is testing at the random rate of 50 percent.

Question 14: When must a motor carrier notify a driver who has been selected for random testing, and when must the driver submit the specimen?

Guidance: A driver does not have to be notified immediately after being selected. A motor carrier may notify and test the selected driver any time before the next selection is made. However, the fact that a driver has been selected shall remain confidential until notification.

Motor carriers must ensure a selected driver, once notified, proceeds immediately to a collection site. Immediately, in this context, means that all the driver's actions, after notification, lead to the expeditious submission of the specimen. This ensures that a driver selected for testing will not have an opportunity to do anything which may affect the outcome of the test. Any activity (e.g., loading, unloading, accepting a new dispatch, making a delivery, completing required paperwork, performing vehicle inspections, etc.) which does not directly lead to submitting a specimen should be deferred by the driver until the specimen is collected. There may be a few activities which must be completed by the driver prior to submitting a specimen. Motor carriers should clearly indicate, in their random testing procedures, what these activities are so that there will be no misunderstandings among their drivers.

Motor carriers choosing to notify their drivers while they are "on the road" should establish procedures which will allow drivers to report to a nearby collection facility before continuing their current trip. This may require a driver to detour from a planned route. Notifying drivers at terminals and while they are in heavily populated areas should minimize any negative effect the expedited compliance may have on a motor carrier's operation.

Question 15: How should a motor carrier compute the number of random tests to be given to ensure that the 50 percent testing rate is achieved given the fluctuations in driver populations and in the high turnover rate of drivers?

Guidance: A motor carrier 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 are 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 motor carrier should make a reasonable estimate of the number of positions. After making the estimate, the motor carrier should then be able to determine the number of tests necessary.

Section 391.113 Post-Accident Testing Requirements

Question 1: If a driver receives a citation for a moving violation by mail, more than 32 hours after a recordable accident as defined in § 390.15, is this cause for a post-accident drug test?

Guidance: No. A post-accident controlled substances test should not be initiated after the 32nd hour following a recordable accident.

Question 2: May a driver subject to post-accident drug testing continue to drive pending receipt of the results of the drug test?

Guidance: A driver could continue to drive, if there is no reasonable cause to believe that the driver used drugs in violation of the FHWA's regulations, and there is no other reason to believe that the driver is not qualified or has been disqualified from driving.

Section 391.117 Disqualification

Question 1: Is a driver who tests positive for controlled substances disqualified under § 391.117?

Guidance: In addition to being medically unqualified, a driver who tests positive or refuses to be tested after a fatal accident will be disqualified by issuance of a letter of disqualification for a period of one year.

Section 391.121 EAP Training Program

Question 1: Does § 391.121 require motor carriers to provide recurrent education and training to drivers or supervisory personnel?

Guidance: No. Section 391.121 provides that EAP training for all drivers and supervisory personnel must consist of at least 60 minutes. Such training is to be provided to drivers or supervisors used for the first time by the motor carrier.

Question 2: How does a motor carrier document that an employee has completed an EAP?

Guidance: The company should keep in the employee's file documentation that at least 60 minutes of drug information and training were provided to the employee.

Question 3: May a motor carrier accept proof of EAP training for a driver from another motor carrier?

Guidance: Yes. This information should be transmitted from the company that administered the training directly to the company needing documentation of that program.

Question 4: How soon after being hired does the driver have to complete EAP?

Guidance: The FMCSRs are silent on this issue. However, it is recommended that a newly hired driver undergo the mandatory 60 minutes of drug education and training before beginning work for a company.

Section 391.123 After-Care Monitoring

Question 1: Is a driver who tested positive for drug use required to participate in an after-care monitoring program?

Guidance: Subpart H does not require an after-care monitoring program. However, motor carriers providing employees with after-care monitoring programs are required to have drivers continue in the after-care monitoring program.

Question 2: If a driver tests positive and is retained as an employee, but not as a CMV operator, does § 391.123 still apply to that employee?

Guidance: No. The FMCSRs are only applicable to drivers of CMVs in interstate commerce.

Question 3: If a driver who tested positive, but was no longer subject to § 391.123 due to non-driving duties, decides to bid on a CMV driver position, is this driver subject to § 391.123, based on the prior positive drug test?

Guidance: Yes.

Special Topics—Controlled Substances Testing

Question 1: May a motor carrier use more than one MRO?

Guidance: Yes.

Question 2: Who is responsible for the cost of controlled substances tests, the driver, the owner-operator or the motor carrier?

Guidance: The FHWA leaves these decisions to be made between the drivers, owner-operators and the motor carriers.

Question 3: A medical examiner conducts a medical examination of a driver and also acts as MRO for the driver's pre-employment drug 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 motor carrier, 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 motor carrier 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 evidence other than the drug test, including knowledge of the prior positive test result, that the driver continues to use prohibited drugs. 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 motor carrier, other than requiring notification by the MRO to the carrier of drug test results under subpart H (see § 391.87(a)). Though medical examiners must retain the physical examination form, motor carriers are not required to do so. Many motor carriers choose, however, to contract with medical examiners to provide copies of the "long form" to the carriers. The FMCSRs leave it solely a matter between the medical examiner and the motor carrier whether the medical examiner merely declines to issue a medical examiner's certificate or also makes available to the carrier the long form, which may include notes on drug use.

Part 392—Driving of Motor Vehicles

Sections Interpreted

392.3 Ill or Fatigued Operator
392.5 Intoxicating Beverage
392.6 Schedules to Conform With Speed Limits
392.7 Equipment, Inspection and Use
392.9 Safe Loading
392.14 Hazardous Conditions; Extreme Caution
392.16 Use of Seat Belts
392.42 Notification of License Revocation
392.60 Unauthorized Persons Not To be Transported
392.62 Bus Driver; Distraction

Section 392.3 Ill or Fatigued Operator

Question 1: What protection is afforded a driver for refusing to violate the FMCSRs?

Guidance: Section 405 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. App. Section 2305) 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.

Section 392.5 Intoxicating Beverage

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 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 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 normally be outside the scope of this section.

Section 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 the 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.

Section 392.7 Equipment, Inspection and Use

Question 1: Must a driver prepare a written report of a pre-trip 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: Section 392.7 of the FMCSRs 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.

Section 392.9 Safe Loading

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 FHWA have authority to enforce the safe loading requirements against a shipper that is not the motor carrier?

Guidance: No, unless hazardous materials 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.

Section 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 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.

Section 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.

Section 392.42 Notification of License Revocation

Question 1: If a driver's driving privilege is suspended as a result of a violation committed off-duty, in a personal vehicle, is the driver required to notify the employing motor carrier under the provisions of § 392.42?

Guidance: Yes.

Section 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 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.

Section 392.62 Bus Driver; Distraction

Question 1: Are drivers prohibited by § 392.62 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).

Part 393—Parts and Accessories Necessary for Safe Operation

Sections Interpreted

393.11 Lighting Devices and Reflectors
393.17 Lamps and Reflectors-Combinations in Driveaway-Towaway Operation
393.24 Requirements for Head Lamps and Auxiliary Road Lighting Lamps
393.25 Requirements for Lamps Other Than Head Lamps
393.28 Wiring to be Protected
393.31 Overload Protective Devices
393.40 Required Brake Systems
393.41 Parking Brake Systems
393.42 Brakes Required on All Wheels
393.43 Breakaway and Emergency Braking System
393.44 Front Brake Lines, Protection
393.48 Brakes to be Operative
393.49 Single Valve to Operate All Brakes
393.51 Warning Devices and Gauges
393.52 Brake Performance
393.60 Glazing in Specified Openings
393.61 Window Construction
393.62 Window Obstructions
393.65 All Fuel Systems
393.67 Liquid Fuel Tanks
393.70 Coupling Devices and Towing Methods, Except for Driveaway-Towaway Operations
393.71 Coupling Devices and Towing Methods, Driveaway-Towaway Operations
393.75 Tires
393.76 Sleeper Berths
393.78 Windshield Wipers
393.81 Horn
393.82 Speedometer
393.83 Exhaust System
393.87 Flags on Projecting Loads
393.88 Television Receivers
393.89 Buses, Driveshaft Protection
393.92 Buses, Marking Emergency Doors
393.93 Seats, Seat Belt Assemblies and Seat Belt Assembly Anchorages
393.95 Emergency Equipment on All Power Units
393.100 General Rules for Protection Against Shifting or Falling Cargo
393.102 Securement Systems
393.106 Front-End Structure
393.201 Frames

Special Topics

Section 393.11 Lighting Devices and Reflectors

Question 1: What is the definition of "body" with respect to trucks and trailers?

Guidance: The 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.

Section 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.

Section 393.24 Requirements for Head Lamps and Auxiliary Road Lighting Lamps

Question 1: Must additional lamps that are not required be operative if all required lamps are operative?

Guidance: No.

Section 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.

Section 393.28 Wiring to be Protected

Question 1: Does a frame channel of a 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.

Section 393.31 Overload Protective Devices

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.

Section 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 vehicles which were not subject to the emergency brake requirements of FMVSS Nos. 105 or 121 may use "driveline brakes" provided those vehicles meet the requirements of § 393.52.

Section 393.41 Parking Brake Systems

Question 1: May the "park" position of a 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 CMV manufactured before March 7, 1990?

Guidance: No.

Section 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: How does the term GVW, as used in the diagram in the FMCSRs under § 393.42, relate to the term GVWR used in § 393.42(b)(3)?

Guidance: GVW was originally used to determine whether a CMV was required to be equipped with brakes. In the December 7, 1988, **Federal Register** (53 FR 49380), the term GVWR was erroneously substituted for GVW.

Question 3: 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 4: Is a three-axle steering pole trailer (dolly) required to have operable brakes on the steering axle?

Guidance: Such trailers do not have to have operable brakes on the steering axle, provided the combination of vehicles meets the stopping distance requirements of § 393.52.

Question 5: Section 393.42(b)(3) of the FMCSRs states that any full trailer, any semitrailer, or any pole trailer having a 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 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 FMCSRs.

Section 393.43 Breakaway and Emergency Braking System

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.

Section 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.

Section 393.48 Brakes to be Operative

Question 1: Do surge brakes comply with § 393.48?

Guidance: No. Section 393.48 requires that brakes be operable at all times. Generally, surge brakes are only operative when the vehicle is moving in the forward direction and as such do not comply with § 393.48 (see question number 1 in § 393.49).

Question 2: If a 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.

Section 393.49 Single Valve to Operate All Brakes

Question 1: Does a combination of vehicles using a surge brake to activate the towed vehicle's brakes comply with § 393.49?

Guidance: No. The surge brake cannot keep the trailer brakes in an applied position. Therefore, the brakes on the combination of vehicles are not under the control of a single valve as required by § 393.49 (see question number 1 in § 393.48).

Section 393.51 Warning Devices and Gauges

Question 1: Is the low pressure warning device required to operate before the tractor protection valve?

Guidance: No. Section 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 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. 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 FHWA that § 393.51 be consistent with FMVSS No. 105.

Question 3: Are vacuum gauges required on the vacuum portion of vacuum-assisted hydraulic brakes?

Guidance: No. Section 393.51(d)(2) requires that only 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 CMV 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 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.

Section 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, it is not intended to be used to predict or determine stopping distances at speeds greater than 20 mph.

Section 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 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 ¼″ 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 ¼″ 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 ¼″ or more on the same surface of the windshield.

Section 393.61 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. Section 393.61(b)(2) says that "a bus, including a school bus, manufactured on and after September 1, 1973," (emphasis added) must conform with NHTSA's § 571.217 (FMVSS 217). At the time this provision was adopted, FMVSS 217 applied only to other buses and it was optional for school buses. The 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 FMCSRs, were required to comply with the bus exit standards in Standard FMVSS 217. Section 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 NHTSA's interpretation on push-out windows. Buses which are subject to § 393.61(b)(1) of the 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.

Section 393.62 Window Obstructions

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.

Section 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 or fumes into the passenger compartment.

Section 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 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 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.

Section 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 FMCSRs do not specify a minimum number of fasteners. However, the industry recommends that a minimum of 10 5/8 inch bolts be used. If 1/2 inch bolts are used, the industry recommends at least 14 bolts. The 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.

Section 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. Section 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.

Section 393.75 Tires

Question 1: If a 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 the single remaining tire does not exceed the maximum allowed under § 393.75(f).

Question 2: May a CMV be operated with tires that carry a greater weight than the weight marked on the sidewall of the tires?

Guidance: Yes, but only if the 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 hazardous materials when equipped with retreaded tires?

Guidance: Yes. The only 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: Section 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.

Section 393.76 Sleeper Berths

Question 1: If a compartment in a 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.

Section 393.78 Windshield Wipers

Question 1: Are windshield washer systems required?

Guidance: No, only windshield wipers are required.

Section 393.81 Horn

Question 1: Do the FMCSRs specify what type of horn is to be used on a CMV?

Guidance: No.

Question 2: Are there established criteria in the FMCSRs to determine the minimum sound level of horns on CMVs?

Guidance: No.

Section 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.

Section 393.83 Exhaust System

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 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.

Section 393.87 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.

Section 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.

Section 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 driveshaft buses, does § 393.89 require that all segments of the driveshaft be protected no matter the segments' length?

Guidance: Yes. Each driveshaft 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.

Section 393.92 Buses, Marking Emergency Doors

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 FMCSRs.

Section 393.93 Seats, Seat Belt Assemblies and Seat Belt Assembly Anchorages

Question 1: If a CMV, other than a motorcoach, is equipped with a passenger seat, is a seat belt required for the passenger seat?

Guidance: Yes.

Section 393.95 Emergency Equipment on all Power Units

Question 1: May other warning devices be used in lieu of the devices required by § 393.95?

Guidance: No. However, other additional warning devices may be used in conjunction with the required devices provided those devices do not decrease the effectiveness of the required warning devices.

Question 2: 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.

Section 393.100 General Rules for Protection Against Shifting or Falling Cargo

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 tiedowns is equal to the requirements of § 393.102, and each article is secured.

Question 2: Are CMVs transporting metal objects required to use option C?

Guidance: Only those CMVs which cannot comply with options A, B, or D are required to conform to option C (see § 393.100(c)).

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 CMVs with enclosed cargo areas?

Guidance: Yes. All CMVs 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: May an intermodal container be transported aboard a flatbed or lowboy trailer?

Guidance: Yes, if the flatbed or lowboy trailer is equipped with integral latching devices.

Question 6: How many tiedowns are required for the transportation of logs on pole trailers with trip-bolsters or other stanchions?

Guidance: Section 393.100(b) provides motor carriers with several options for complying with § 393.100. Although option B specifically addresses the use of tiedowns for each 10 linear feet of lading or fraction thereof (with certain exceptions), option D indicates the motor carrier may use "other means * * * which are similar to, and at least as effective * * *" as options A, B, and C. Therefore, the trip-bolsters or other stanchions in conjunction with securement devices meeting the requirements of § 393.102 may (depending on the amount by which the logs exceed the length of the trailer) be used to satisfy option D.

Section 393.102 Securement Systems

Question 1: What is the relationship between the working-load limit of the securement device and the ultimate breaking strength of the same device?

Guidance: The working-load limit, as used in the CVSA/FHWA out of service criteria, is equal to one-third of the ultimate breaking strength of the same device.

Section 393.106 Front-end Structure

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 necessary in appearance and construction as headerboards.

Section 393.201 Frames

Question 1: Are cross members of CMVs considered part of the frame?

Guidance: Yes.

Question 2: Does § 393.201 of the FMCSRs apply to trailers?

Guidance: No. Section 393. 201 is specific to buses, trucks, and truck tractors.

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—Hours of Service of Drivers

Sections Interpreted

395.1 Scope of the Rules in This Part
395.2 Definitions
395.3 Maximum Driving and On-Duty Time
395.8 Drivers's Record of Duty Status
395.13 Drivers Declared Out of Service

Section 395.1 Scope of the Rules in This Part

Question 1: 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 2: 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 3: Are there allowances made in the 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 do not fall within the definition of these sections.

Question 4: 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 5: 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 6: 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/ 1,852 meters. Thus, the 100 air miles are equivalent to 115.08 statute-miles or 185.2 kilometers.

Question 7: What documentation must a driver claiming the 100 air-mile radius exemption (§ 395.1(e)) have in his/her possession?

Guidance: None.

Question 8: 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 FHWA 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 9: How may a driver utilize the adverse driving conditions exception, or the emergency conditions exception as found in § 395.1(b), to preclude an hour 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 10: 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 11: 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 12: When must a driver prepare a record of duty status for a day when the driver exceeds the 100 air-mile radius exemption criteria?

Guidance: 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 100 air-mile radius exemption cannot be met.

Question 13: When a driver fails to meet the provisions of the 100 air-mile radius exemption (§ 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.

Question 14: 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 requirements.

Question 15: 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 16: 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 17: A company prepares and maintains time records for drivers classified as 100 air-mile radius drivers. The drivers usually do not work every day of the week. Does the motor carrier have to maintain time records for the days the drivers do not work?

Guidance: The motor carrier must maintain time records stating that the drivers were off-duty during the days the drivers did not work. However, if the drivers are off consecutive days, the employer may prepare a single time record stating the days each driver was off-duty.

Question 18: 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 19: 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.

Section 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 FMCSRs to operate a CMV from the last stop to home and not show that time on the time cards?

Guidance: The FMCSRs do not address questions of pay. All the time spent operating a 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 CMV driver to record meal and other routine stops made during a tour of duty as off-duty time?

Guidance: 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 CMV 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 on board 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.

Question 3: 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 4: 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 5: 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 FMCSRs.

Question 6: If a "driver trainer" occasionally drives a 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 7: A driver drives on streets and highways during the week and jockeys CMVs in the yard (private property) on weekends. How is the yard time to be recorded?

Guidance: On-duty, driving.

Question 8: If a driver is permitted to use a 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 to and from the driver's work reporting location is considered off-duty time. The type of conveyance used between the terminal and the driver's home, restaurant, etc., would not alter the situation. The driver who uses a motor carrier's CMV for transportation home, and is subsequently called by the employing carrier and is 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 CMV to any location to obtain rest.

Question 9: 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 10: 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 FMCSRs is not limited to driving or other non-transportation-related employment.

Question 11: 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 12: What is the duty status of a co-driver (truck) who is riding seated next to the driver?

Guidance: On-duty (not driving).

Question 13: How must a CMV driver driving a non-CMV at the direction of a motor carrier record this time?

Guidance: If CMV drivers operate motor vehicles with GVWRs of 10,000 pounds or less at the direction of a motor carrier, the FHWA requires those drivers to maintain records of duty status and record such time operating as on-duty (not driving).

Question 14: How must the time spent operating a motor vehicle on the rails (roadrailers) be recorded?

Guidance: On-duty (not driving).

Question 15: Must a driver engaged in union activities affecting the employing motor carrier record such time as on-duty (not driving) time?

Guidance: A driver's union activities which involve the employing motor carrier must be recorded as on-duty (not driving) time.

Question 16: 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 17: May a driver change from and to a driver salesman status at any time?

Guidance: Yes, if the change is made on a weekly basis.

Question 18: Is the time spent by CMV drivers, submitting to random and post-accident drug tests, and time spent traveling to and from collection sites at the direction of the motor carrier, on-duty time within the meaning of § 395.2(a)?

Guidance: The time spent at a collection site, as well as traveling to and from a collection site, at the direction of a motor carrier is considered to be on-duty time.

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 CMV for a company subject to the FMCSRs?

Guidance: If the school bus meets the definition of a 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 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 CMV in operation.

Question 26: 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 27: 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 CMV is laden with hazardous materials 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 CMV is laden with explosive hazardous materials classified as hazard divisions 1.1, 1.2, or 1.3 (formerly Class A or B explosives). In addition, when hazardous materials classified under hazard divisions 1.1, 1.2, or 1.3 are on a CMV, the employer and the driver must comply with § 397.5 of the FMCSRs.

Section 395.3 Maximum Driving and On-Duty Time

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 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 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 FMCSRs only when operating in the U.S.

Section 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 "six 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 seven or eight days preceding an interstate movement.

Question 5: May a driver, being used for the first time, submit records of duty status for the preceding seven 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 seven 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, driver call-in records, gate record receipts, weight/scale tickets, fuel receipts, fuel billing statements, toll receipts, international registration plan receipts, international fuel tax agreement receipts, trip permits, 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, Commercial Vehicle Safety Alliance reports, accident reports, telephone billing statements, credit card receipts, driver fax reports, on-board computer reports, border crossing reports, custom declarations, traffic citations, overweight/oversize reports and citations, and/or other documents directly related to the motor carrier's operation, which are retained by the motor carrier in connection with the operation of its transportation business. 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 FHWA or State official within 2 business days.

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 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 7/8 days (as applicable) on the driver's record of duty status?

Guidance: No.

Section 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 CMVs. State procedures may differ.

Question 2: May a driver operating a 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 CMV.

Part 396—Inspection, Repair and Maintenance

Sections Interpreted

396.1 Scope
396.3 Inspection, Repair, and Maintenance
396.9 Inspection of Motor Vehicles in Operation
396.11 Driver Vehicle Inspection Report(s)
396.13 Driver Inspection
396.17 Periodic Inspection
396.19 Inspector Qualifications
396.21 Periodic Inspection Recordkeeping Requirements
396.25 Qualifications of Brake Inspectors

Section 396.1 Scope

Question 1: What vehicles are subject to part 396?

Guidance: All vehicles falling within the definition of a CMV as defined in § 390.5.

Section 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. Section 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: Section 396.3(b)(5) 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).

Section 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.

Section 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 the report 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 pre-trip inspection and a short drive of a motor vehicle?

Guidance: Yes. Section 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 pre-trip/post-trip 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, 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 semi-trailer/full trailer combination is considered one motor vehicle. However, a carrier operating a single truck tractor and multiple semi-trailers 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.

Section 396.13 Driver Inspection

Question 1: If a 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 DVIR, what does the driver do with the copy of the previous DVIR carried on the power unit?

Guidance: There is no requirement that the driver submit the copy of that previous DVIR to the motor carrier nor is there a retention requirement for the motor carrier.

Section 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: No. Those CMVs that are subject to a mandatory State inspection program may meet the periodic inspection requirements through that State's inspection program. Section 396.17 through 396.23 requirements may be met through a motor carrier self-inspection, a third party inspection, a CVSA inspection, or a periodic inspection performed in any State with a program that FHWA determines as effective as the part 396 requirements. However, compliance with the Federal periodic inspection requirements does not relieve a motor carrier from State registration 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 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 CMV subject to a roadside 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 FHWA standards as contained in Appendix G to the FMCSRs?

Guidance: Yes. Section 210 of the Motor Carrier Safety Act of 1984 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 FHWA periodic inspection standards?

Guidance: Yes. The 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 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 intermodal 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.

Section 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 non-compliance 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.

Section 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 recordkeeping requirements of the State. The requirements specified in § 396.21(a) & (b) are applicable only in those instances where the motor carrier self-inspects its CMVs or has an agent perform the periodic inspection.

Section 396.25 Qualifications of Brake Inspectors

Question 1: Does a CDL with an air brake 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 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—Transportation of Hazardous Materials; Driving and Parking Rules

Sections Interpreted

397.1 Application of the Rules in this Part
397.5 Attendance and Surveillance of Motor Vehicles
397.7 Parking
397.9 Routes
397.13 Smoking

Section 397.1 Application of the Rules in This Part

Question 1: Who is subject to part 397?

Guidance: Part 397 applies to interstate motor carriers that transport hazardous materials in types and quantities requiring marking or placarding under § 177.823. Wholly intrastate operations of an interstate motor carrier, when hauling hazardous materials subject to § 177.823, are subject to this part. Clearly the intrastate operations of an interstate motor carrier are subject to part 397 when § 177.823 is applicable.

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.

Section 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 hazardous materials, 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.

Section 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 hazardous materials 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).

Section 397.9 Routes

Question 1: May a motor vehicle which contains hazardous materials 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.

Section 397.13 Smoking

Question 1: May a driver of a CMV transporting hazardous materials, 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—Employee Safety and Health Standards

Sections Interpreted

399.207 Truck and Truck-Tractor Access Requirements

Section 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).

(5 U.S.C. 553(b); 49 CFR 1.48)

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Rodney E. Slater,

Federal Highway Administrator.

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