

§ 389.33

49 CFR Ch. III (10–1–99 Edition)

(1) Be submitted in duplicate to the Administrator, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590;

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forth the text or substance of the rule or amendment proposed, or specify the rule that the petitioner seeks to have repealed, as the case may be;

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

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

[35 FR 9209, June 12, 1970, as amended at 45 FR 46424, July 10, 1980; 53 FR 2036, Jan. 26, 1988]

§ 389.33 Processing of petition.

(a) Unless the Administrator otherwise specifies, no public hearing, argument, or other proceeding is held directly on a petition before its disposition under this section.

(b) *Grants.* If the Administrator determines that the petition contains adequate justification, he/she initiates rule making action under this Subpart B.

(c) *Denials.* If the Administrator determines that the petition does not justify rule making, he/she denies the petition.

(d) *Notification.* Whenever the Administrator determines that a petition should be granted or denied, the Office of the Chief Counsel prepares a notice of that grant or denial for issuance to the petitioner, and the Administrator issues it to the petitioner.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.35 Petitions for reconsideration.

(a) Any interested person may petition the Administrator for reconsideration of any rule issued under this part. The petition must be in English and submitted in five (5) legible copies to the Administrator, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, and received not later than thirty (30) days after publication of the rule in the FEDERAL REGISTER. Petitions filed after that time will be considered as petitions filed under § 389.31. The petition must contain a brief statement of

the complaint and an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest.

(b) If the petitioner requests the consideration of additional facts, he/she must state the reason they were not presented to the Administrator within the prescribed time.

(c) The Administrator does not consider repetitious petitions.

(d) Unless the Administrator otherwise provides, the filing of a petition under this section does not stay the effectiveness of the rule.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.37 Proceedings on petitions for reconsideration.

The Administrator may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event he/she determines to reconsider any rule, he/she may issue a final decision on reconsideration without further proceedings, or he/she may provide such opportunity to submit comment or information and data as he/she deems appropriate. Whenever the Administrator determines that a petition should be granted or denied, he/she prepares a notice of the grant or denial of a petition for reconsideration, for issuance to the petitioner, and issues it to the petitioner. The Administrator may consolidate petitions relating to the same rule.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

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- 390.407 Driveaway service.

AUTHORITY: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104-88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.48.

SOURCE: 53 FR 18052, May 19, 1988, unless otherwise noted.

### Subpart A—General Applicability and Definitions

#### § 390.1 Purpose.

This part establishes general applicability, definitions, general requirements and information as they pertain to persons subject to this chapter.

#### § 390.3 General applicability.

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

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

(c) The rules in Part 387, Minimum Levels of Financial Responsibility for

Motor Carriers, are applicable to motor carriers as provided in § 387.3 or 387.27 of this subchapter.

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

(e) Knowledge of and compliance with the regulations.

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

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

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

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

(1) All school bus operations as defined in § 390.5;

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

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

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

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

(6) The operation of commercial motor vehicles designed to transport less than 16 passengers (including the driver) until March 6, 2000.

[53 FR 18052, May 19, 1988, as amended at 54 FR 12202, Mar. 24, 1989; 58 FR 33776, June 21, 1993; 59 FR 8752, Feb. 23, 1994; 59 FR 67554, Dec. 29, 1994; 62 FR 1296, Jan. 9, 1997; 63 FR 33276, June 18, 1998; 64 FR 48516, Sept. 3, 1999]

#### § 390.5 Definitions.

Unless specifically defined elsewhere, in this subchapter:

*Accident* means—

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

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

(2) The term accident does not include:

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

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

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

*Business district* means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

*Charter transportation of passengers* means transportation, using a bus, of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin.

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

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

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

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

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

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

*Direct assistance* means transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

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

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

(2) *Exclusions.*

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

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

(iii) Headlamp or taillight damage.

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

*Driveaway-towaway operation* means any operation in which a motor vehicle constitutes the commodity being transported and one or more set of wheels of the motor vehicle being transported are on the surface of the roadway during transportation.

*Driver* means any person who operates any commercial motor vehicle.

*Driving a commercial motor vehicle while under the influence of alcohol* means committing any one or more of the following acts in a CMV: Driving a CMV while the person's alcohol concentration is 0.04 percent or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of §383.51(b)(2)(i)(A) or (B), or §392.5(a)(2).

*Emergency* means any hurricane, tornado, storm (e.g. thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout or other occurrence, natural or man-made, which interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in:

(1) A declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the Regional Director of Motor Carriers for the region in which the occurrence happens; or by other Federal, State or local government officials having authority to declare emergencies, or

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

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

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

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

*Exempt intracity zone* means the geographic area of a municipality or the commercial zone of that municipality described by the FHWA in 49 CFR part 372, subpart B. The descriptions are printed in appendix F to subchapter B of this chapter. The term "exempt intracity zone" does not include any municipality or commercial zone in the State of Hawaii. For purposes of §391.2(d), a driver may be considered to operate a commercial motor vehicle wholly within an exempt intracity zone notwithstanding any common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone.

*Exempt motor carrier* means a person engaged in transportation exempt from economic regulation by the Interstate Commerce Commission (ICC) under 49 U.S.C. 10526. “Exempt motor carriers” are subject to the safety regulations set forth in this subchapter.

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

- (a) Controlled and operated by a farmer as a private motor carrier of property;
- (b) Being used to transport either—
  - (1) Agricultural products, or
  - (2) Farm machinery, farm supplies, or both, to or from a farm;
- (c) Not being used in the operation of a for-hire motor carrier;
- (d) Not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with §177.823 of this subtitle; and
- (e) Being used within 150 air-miles of the farmer’s farm.

*Farmer* means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which—

- (a) Are owned by that person; or
- (b) Are under the direct control of that person.

*Fatality* means any injury which results in the death of a person at the time of the motor vehicle accident or within 30 days of the accident.

*Federal Highway Administrator* means the chief executive of the Federal Highway Administration, an agency within the Department of Transportation.

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

*Gross combination weight rating (GCWR)* means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

*Gross vehicle weight rating (GVWR)* means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

*Hazardous material* means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

*Hazardous substance* means a material, and its mixtures or solutions, that is identified in the appendix to §172.101, List of Hazardous Substances and Reportable Quantities, of this title when offered for transportation in one package, or in one transport motor vehicle if not packaged, and when the quantity of the material therein equals or exceeds the reportable quantity (RQ). This definition does not apply to petroleum products that are lubricants or fuels, or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in §171.8 of this title, based on the reportable quantity (RQ) specified for the materials listed in the appendix to §172.101.

*Hazardous waste* means any material that is subject to the hazardous waste manifest requirements of the EPA specified in 40 CFR part 262 or would be subject to these requirements absent an interim authorization to a State under 40 CFR part 123, subpart F.

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

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

- (1) Between a place in a State and a place outside of such State (including a place outside of the United States);
- (2) Between two places in a State through another State or a place outside of the United States; or
- (3) Between two places in a State as part of trade, traffic, or transportation

originating or terminating outside the State or the United States.

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

*Medical examiner* means a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to perform physical examinations. The term includes but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic.

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

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

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

*Operator* — See driver.

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

*Out-of-service order* means a declaration by an authorized enforcement officer of a Federal, State, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or

a motor carrier operation, is out-of-service pursuant to §§ 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American Uniform Out-of-Service Criteria.

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

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

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

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

*Private motor carrier of passengers (nonbusiness)* means private motor carrier involved in the interstate transportation of passengers that does not otherwise meet the definition of a private motor carrier of passengers (business).

*Radar detector* means any device or mechanism to detect the emission of radio microwaves, laser beams or any other future speed measurement technology employed by enforcement personnel to measure the speed of commercial motor vehicles upon public roads and highways for enforcement purposes. Excluded from this definition are radar detection devices that meet both of the following requirements:

(1) Transported outside the driver's compartment of the commercial motor vehicle. For this purpose, the *driver's* compartment of a passenger-carrying CMV shall include all space designed to

accommodate both the driver and the passengers; and

(2) Completely inaccessible to, inoperable by, and imperceptible to the driver while operating the commercial motor vehicle.

*Regional Director of Motor Carriers* means the Director of the Office of Motor Carriers, Federal Highway Administration, for a given geographical region of the United States.

*Residential district* means the territory adjacent to and including a highway which is not a business district and for a distance of 300 feet or more along the highway is primarily improved with residences.

*School bus* means a passenger motor vehicle which is designed or used to carry more than 10 passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting preprimary, primary, or secondary school students to such schools from home or from such schools to home.

*School bus operation* means the use of a school bus to transport only school children and/or school personnel from home to school and from school to home.

*Secretary* means the Secretary of Transportation.

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

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

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

*Trailer* includes:

(a) *Full trailer* means any motor vehicle other than a pole trailer which is designed to be drawn by another motor vehicle and so constructed that no part of its weight, except for the towing device, rests upon the self-propelled towing motor vehicle. A semitrailer equipped with an auxiliary front axle (converter dolly) shall be considered a full trailer.

(b) *Pole trailer* means any motor vehicle which is designed to be drawn by another motor vehicle and attached to the towing motor vehicle by means of a “reach” or “pole,” or by being “boomed” or otherwise secured to the towing motor vehicle, for transporting long or irregularly shaped loads such as poles, pipes, or structural members, which generally are capable of sustaining themselves as beams between the supporting connections.

(c) *Semitrailer* means any motor vehicle, other than a pole trailer, which is designed to be drawn by another motor vehicle and is constructed so that some part of its weight rests upon the self-propelled towing motor vehicle.

*Truck* means any self-propelled commercial motor vehicle except a truck tractor, designed and/or used for the transportation of property.

*Truck tractor* means a self-propelled commercial motor vehicle designed and/or used primarily for drawing other vehicles.

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

[53 FR 18052, May 19, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 390.5, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### § 390.7 Rules of construction.

(a) In part 325 of subchapter A and in this subchapter, unless the context requires otherwise:

(1) Words imparting the singular include the plural;

(2) Words imparting the plural include the singular;

(3) Words imparting the present tense include the future tense.

(b) In this subchapter the word—

(1) *Officer* includes any person authorized by law to perform the duties of the office;

(2) *Writing* includes printing and typewriting;

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

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

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

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

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(7) *Includes* is used as a word of inclusion, not limitation.

[53 FR 18052, May 19, 1988, as amended at 60 FR 38744, July 28, 1995]

**Subpart B—General Requirements and Information**

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

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

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

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

**§ 390.13 Aiding or abetting violations.**

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

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

(a) A motor carrier shall make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Highway Administration upon request or as part of any inquiry within such time as the request or inquiry may specify. A motor carrier shall give an authorized representative of the Federal Highway Administration all reasonable assistance in the investigation of any accident including providing a full, true and correct answer to any question of the inquiry.

(b) Motor carriers shall maintain for a period of one year after an accident occurs, an accident register containing at least the following information:

(1) A list of accidents containing for each accident:

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

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

(Approved by the Office of Management and Budget under control number 2125-0526)

[58 FR 6729, February 2, 1993, as amended at 60 FR 38744, July 28, 1995; 60 FR 44441, Aug. 28, 1995]

**§§ 390.16-390.17 [Reserved]**

**§ 390.19 Additional equipment and accessories.**

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

[53 FR 18052, May 19, 1988, as amended at 60 FR 38744, July 28, 1995]

**§ 390.21 Marking of commercial motor vehicles.**

(a) *General.* Every self-propelled commercial motor vehicle operated in interstate commerce and subject to the rules of subchapter B of this chapter must be marked as specified in paragraphs (b), (c) and (d) of this section. Self-propelled commercial motor vehicles operated by for-hire motor carriers under authority issued by the Interstate Commercial Commission (ICC) may meet the requirements of this section by complying with the marking requirements set forth in 49 CFR part 390, subpart D.

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

(1) The name or trade name of the motor carrier operating the self-propelled commercial motor vehicle.

(2) The city or community and State (name abbreviated), in which the carrier maintains its principal place of business or in which the commercial motor vehicle is customarily based.

(3) The motor carrier identification number, if issued by the FHWA, preceded by the letters “USDOT”.

(4) If the name of any person other than the operating carrier appears on the commercial motor vehicle operated under its own power, either alone or in combination, the name of the operating carrier shall be followed by the information required by paragraphs (b)(1), (2), and (3) of this section, and be preceded by the words “operated by.”

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

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

(1) Appear on both sides of the self-propelled commercial motor vehicle;

(2) Be in letters that contrast sharply in color with the background on which the letters are placed;

(3) Be readily legible, during daylight hours, from a distance of 50 feet while the commercial motor vehicle is stationary; and

(4) Be kept and maintained in a manner that retains the legibility required by paragraph (c)(3) of this section.

(d) *Construction and durability.* The marking may be painted on the commercial motor vehicle or may consist of a removable device, if that device meets the identification and legibility requirements of this section, and such marking shall be maintained in such a manner as to remain legible as required by this section.

(e) *Rented commercial motor vehicles.* A motor carrier operating a self-propelled commercial motor vehicle under a rental agreement having a term not in excess of 30 calendar days may meet the requirements of this section in either one of two ways:

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

(2) The commercial motor vehicle is marked as set forth below:

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

(ii) The city or community and State (name abbreviated), in which the lessor maintains its principal place of business or in which the commercial motor vehicle is customarily based is displayed in accordance with paragraphs (c) and (d) of this section;

(iii) The lessor’s identification number, issued by the FHWA, preceded by the letters “USDOT” is displayed in accordance with paragraphs (c) and (d) of this section; and

(iv) The rental agreement entered into by the lessor and the renting motor carrier conspicuously contains the following information:

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

(B) The identification number issued the renting motor carrier by the Federal Highway Administration, preceded by the letters “USDOT,” if the motor carrier has been issued such a number. In lieu of the identification number required in this paragraph, the following may be shown:

(1) Information which will indicate if the motor carrier is engaged in “interstate” or “intrastate” commerce; and

(2) Information which will indicate if the renting motor carrier is transporting hazardous materials in the rented commercial motor vehicle;

(C) The sentence: “This lessor cooperates with all federal, state, and local law enforcement officials nationwide to provide the identity of customers who operate this rental commercial motor vehicle;” and

(v) The rental agreement entered into by the lessor and the renting motor carrier is carried on the rental commercial motor vehicle during the full term of the rental agreement.

[53 FR 18052, May 19, 1988; 53 FR 27689, July 22, 1988, as amended at 53 FR 47543, Nov. 23, 1988; 55 FR 6993, Feb. 28, 1990; 57 FR 3142, Jan. 28, 1992; 60 FR 38744, July 28, 1995; 62 FR 49942, Sept. 24, 1997]

#### § 390.23 Relief from regulations.

(a) Parts 390 through 399 of this chapter shall not apply to any motor carrier or driver operating a commercial

motor vehicle to provide emergency relief during an emergency, subject to the following time limits:

(1) *Regional emergencies.* (i) The exemption provided by paragraph (a)(1) of this section is effective only when:

(A) An emergency has been declared by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; or

(B) The Regional Director of Motor Carriers has declared that a regional emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) Except as provided in §390.25, this exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 30 days from the date of the initial declaration of the emergency or the exemption from the regulations by the Regional Director of Motor Carriers, whichever is less.

(2) *Local emergencies.* (i) The exemption provided by paragraph (a)(2) of this section is effective only when:

(A) An emergency has been declared by a Federal, State or local government official having authority to declare an emergency; or

(B) The Regional Director of Motor Carriers has declared that a local emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) This exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 5 days from the date of the initial declaration of the emergency or the exemption from the regulations by the Regional Director of Motor Carriers, whichever is less.

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

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

(b) Upon termination of direct assistance to the regional or local emergency relief effort, the motor carrier or driver is subject to the requirements of parts 390 through 399 of this chapter, with the following exception: A driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with parts 390 through 399 of this chapter. However, a driver who informs the motor carrier that he or she needs immediate rest shall be permitted at least 8 consecutive hours off duty before the driver is required to return to such terminal or location. Having returned to the terminal or other location, the driver must be relieved of all duty and responsibilities. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches such driver or commercial motor vehicle to another location to begin operations in commerce.

(c) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to a regional or local emergency relief effort, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive in commerce until:

(1) The driver has met the requirements of §395.3(a) of this chapter; and

(2) The driver has had at least 24 consecutive hours off-duty when:

(A) The driver has been on duty for more than 60 hours in any 7 consecutive days at the time the driver is relieved of all duty if the employing motor carrier does not operate every day in the week, or

(B) The driver has been on duty for more than 70 hours in any 8 consecutive days at the time the driver is relieved of all duty if the employing motor carrier operates every day in the week.

[57 FR 33647, July 30, 1992, as amended at 60 FR 38744, July 28, 1995]

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

The Regional Director of Motor Carriers may extend the 30-day time period of the exemption contained in

**§ 390.25**

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§ 390.23(a)(1), but not the 5-day time period contained in § 390.23(a)(2) or the 24-hour period contained in § 390.23(a)(3). Any motor carrier or driver seeking to extend the 30-day limit shall obtain approval from the Regional Director of Motor Carriers in the region in which the motor carrier's principal place of business is located before the expiration of the 30-day period. The motor carrier or driver shall give full details of the additional relief requested. The Regional Director of Motor Carriers

shall determine if such relief is necessary taking into account both the severity of the ongoing emergency and the nature of the relief services to be provided by the carrier or driver. If the Regional Director of Motor Carriers approves an extension of the exemption, he or she shall establish a new time limit and place on the motor carrier or driver any other restrictions deemed necessary.

[57 FR 33647, July 30, 1992]

**390.27 Locations of regional offices of motor carriers.**

Region No.	Territory included	Location of regional office
1 .....	Connecticut, Maine, Massachusetts, New Jersey, New Hampshire, New York, Rhode Island, Vermont, Puerto Rico, and the Virgin Islands. That part of Canada east of Highways 19 and 8 from Port Burwell to Goderich, thence a straight line running north through Tobermory and Sudbury, and thence due north to the Canadian border.	Leo W. O'Brien Federal Office Building, Clinton & Pearl Streets, Room 737, Albany, NY 12207-2334.
3 .....	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia .....	City Crescent Building, #10 South Howard Street, Suite 4000, Baltimore, MD 21201-2819.
4 .....	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee .....	1720 Peachtree Road, NW., Suite 200, Atlanta, GA 30367-2349.
5 .....	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. That part of Canada west of Highways 19 and 8 from Port Burwell to Goderich, thence a straight line running north through Tobermory and Sudbury, and thence due north to the Canadian border, and east of the boundary between the Provinces of Ontario and Manitoba to Hudson Bay and thence a straight line north to the Canadian border.	19900 Governors Drive, Suite 210, Olympia Fields, IL 60461-1021.
6 .....	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. All of Mexico, except the States of Baja California and Sonora and the Territory of Baja California Sur., Mexico. All nations south of Mexico.	Room 8A00, Federal Building, 819 Taylor Street, P.O. Box 902003, Fort Worth, TX 76102.
7 .....	Iowa, Kansas, Missouri, and Nebraska .....	6301 Rockhill Road, P.O. Box 419715, Kansas City, MO 64141-6715.
8 .....	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. That part of Canada west of the boundary between the Provinces of Ontario and Manitoba to Hudson Bay and thence a straight line due north to the Canadian border, and east of Highway 95 from Kingsgate to Blaeberry and thence a straight line due north to the Canadian border.	555 Zang Street, room 190, Lakewood, CO 80228-1014.
9 .....	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Mariana Islands. The States of Baja California and Sonora, Mexico, and the Territory of Baja California Sur., Mexico.	201 Mission Street, Suite 2100, San Francisco, CA 94105.
10 .....	Alaska, Idaho, Oregon and Washington. That part of Canada west of Highway 95 from Kingsgate to Blaeberry and thence a straight line due north to the Canadian border, and all the Province of British Columbia.	KOIN Center, suite 600, 222 SW Columbia Street, Portland, OR 97201-2491.

[61 FR 9566, Mar. 8, 1996]

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

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

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

[63 FR 33276, June 18, 1998]

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

(a) All records and documents required to be maintained under this subchapter must be preserved in their original form for the periods specified, unless the records and documents are suitably photographed and the microfilm is retained in lieu of the original record for the required retention period.

(b) To be acceptable in lieu of original records, photographic copies of records must meet the following minimum requirements:

(1) Photographic copies shall be no less readily accessible than the original record or document as normally filed or preserved would be and suitable means or facilities shall be available to locate, identify, read, and reproduce such photographic copies.

(2) Any significant characteristic, feature or other attribute of the original record or document, which photography in black and white will not preserve, shall be clearly indicated before the photograph is made.

(3) The reverse side of printed forms need not be copied if nothing has been added to the printed matter common to

all such forms, but an identified specimen of each form shall be on the film for reference.

(4) Film used for photographing copies shall be of permanent record-type meeting in all respects the minimum specifications of the National Bureau of Standards, and all processes recommended by the manufacturer shall be observed to protect it from deterioration or accidental destruction.

(5) Each roll of film shall include a microfilm of a certificate or certificates stating that the photographs are direct or facsimile reproductions of the original records. Such certificate(s) shall be executed by a person or persons having personal knowledge of the material covered thereby.

(c) All records and documents required to be maintained under this subchapter may be destroyed after they have been suitably photographed for preservation.

(d) *Exception.* All records except those requiring a signature may be maintained through the use of computer technology provided the motor carrier can produce, upon demand, a computer printout of the required data.

**§ 390.33 Commercial motor vehicles used for purposes other than defined.**

Whenever a commercial motor vehicle of one type is used to perform the functions normally performed by a commercial motor vehicle of another type, the requirements of this subchapter and part 325 of subchapter A shall apply to the commercial motor vehicle and to its operation in the same manner as though the commercial motor vehicle were actually a commercial motor vehicle of the latter type. *Example:* If a commercial motor vehicle other than a bus is used to perform the functions normally performed by a bus, the regulations pertaining to buses and to the transportation of passengers shall apply to that commercial motor vehicle.

[53 FR 18052, May 19, 1988, as amended at 60 FR 38744, July 28, 1995]

**§ 390.35 Certificates, reports, and records: Falsification, reproduction, or alteration.**

No motor carrier, its agents, officers, representatives, or employees shall make or cause to make—

(a) A fraudulent or intentionally false statement on any application, certificate, report, or record required by part 325 of subchapter A or this subchapter;

(b) A fraudulent or intentionally false entry on any application, certificate, report, or record required to be used, completed, or retained, to comply with any requirement of this subchapter or part 325 of subchapter A; or

(c) A reproduction, for fraudulent purposes, of any application, certificate, report, or record required by this subchapter or part 325 of subchapter A.

**§ 390.37 Violation and penalty.**

Any person who violates the rules set forth in this subchapter or part 325 of subchapter A may be subject to civil or criminal penalties.

**Subpart C [Reserved]**

**Subpart D—Identification of Vehicles**

AUTHORITY: 49 U.S.C. 10922, 10530, and 11106; 5 U.S.C. 553.

SOURCE: 55 FR 11199, Mar. 27, 1990, unless otherwise noted. Redesignated at 61 FR 54710, Oct. 21, 1996.

**§ 390.401 Applicability.**

These rules govern all for-hire motor carriers except those providing:

(a) Joint, through, regular-route passenger service under continuing lease or interchange arrangements, if the vehicle owner's name and "MC" number are displayed as prescribed at § 390.403, and if the carriers have filed with the Commission's appropriate Regional Director(s) and posted in each terminal and ticket agency on the involved routes a published schedule showing the points between which each joint carrier assumes control and responsibility for the vehicle's operation; and

(b) Nonscheduled, charter, luxury-type passenger service using limousine-

type vehicles with a capacity of six or fewer passengers.

[55 FR 11199, Mar. 27, 1990. Redesignated at 61 FR 54710, Oct. 21, 1996; 62 FR 49942, Sept. 24, 1997]

**§ 390.403 Method of identification.**

Each vehicle operated under its own power shall display on both sides the name (or trade name) and "MC" number(s) of the carrier under whose authority the vehicle is being operated. The "MC" number(s) shall be in the following form: "I.C.C. MC-\_\_\_\_\_ " but shall not include any sub numbers. The name of any other person operating the vehicle shall appear on the vehicle following the words "operated by" in addition to the other information required by this section. Additional identification may be displayed if consistent with these rules.

**§ 390.405 Size, shape, and color.**

The name(s) and number(s) prescribed above shall be displayed, by removable device if desired, in letters and figures in sharp color contrast to their background, and they shall be of a size, shape, and color readily legible in daylight from a distance of 50 feet while the vehicle is stationary.

**§ 390.407 Driveaway service.**

In driveaway service, a removable device may be affixed on both sides or at the rear of the single driven vehicle. In a combination driveaway operation, the device may be affixed on both sides of any one unit or at the rear of the last unit.

**PART 391—QUALIFICATIONS OF DRIVERS**

**Subpart A—General**

Sec.

391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.

391.2 General exemptions.

**Subpart B—Qualification and Disqualification of Drivers**

391.11 General qualifications of drivers.

391.13 Responsibilities of drivers.

391.15 Disqualification of drivers.