

APPENDIX

McKinney's Education Law § 3635

§ 3635. Transportation. 1. a. Sufficient transportation facilities (including the operation and maintenance of motor vehicles) shall be provided by the school district for all the children residing within the school district to and from the school they legally attend, who are in need of such transportation because of the remoteness of the school to the child or for the promotion of the best interest of such children. Such transportation shall be provided for all children attending grades kindergarten through eight who live more than two miles from the school which they legally attend and for all children attending grades nine through twelve who live more than three miles from the school which they legally attend and shall be provided for each such child up to a distance of fifteen miles, the distances in each case being measured by the nearest available route from home to school. The cost of providing such transportation between two or three miles, as the case may be, and fifteen miles shall be considered for the purposes of this chapter to be a charge upon the district and an ordinary contingent expense of the district. Transportation for a lesser distance than two miles in the case of children attending grades kindergarten through eight or three miles in the case of children attending grades nine through twelve and for a greater distance than fifteen miles may be provided by the district, and, if provided, shall be offered equally to all children in like circumstances residing in the district; provided, however, that this requirement shall not apply to transportation offered pursuant to section thirty-six hundred thirty-five-b of this article.

b. (i) School districts providing transportation to a nonpublic school for pupils living within a specified distance from such school shall designate one or more public schools as centralized pick-up points and shall provide transportation between such points and such nonpublic schools for students residing in the district who live too far from such nonpublic schools to qualify for transportation between home and school. The district shall not be responsible for the provision of transportation for pupils between their home and such pick-up points. The district may provide school bus transportation to a pupil if the residence of the pupil is located on an established route for the transportation of pupils to the centralized pick-up point provided such transportation does not result in additional costs to the district. The cost of providing transportation between such pick-up points and such nonpublic schools shall be an ordinary contingent expense.

(ii) A board of education may, at its discretion, provide transportation for pupils residing within the district to a nonpublic school located more than fifteen miles from the home of any such pupil provided that such transportation has been provided to such nonpublic school pursuant to this subdivision in at least one of the immediately preceding three school years and such transportation is provided from one or more centralized pick-up points designated pursuant to this paragraph and that the distance from such pick-up points to the nonpublic school is not more than fifteen miles. The district shall not be responsible for the provision of transportation for pupils between pupils homes and such pick-up points. The cost of providing transportation between such pick-up points and such nonpublic schools shall be an ordinary contingent expense.

c. The foregoing provisions of this subdivision shall not require transportation to be provided for children residing within a city school district, but if provided by such district pursuant to other provisions of this chapter, such transportation shall be offered equally to all such children in like circumstances; provided further that in city school districts in cities having a population of one hundred twenty-five thousand inhabitants or less such transportation, if

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provided, shall be subject to the mileage limitations prescribed in paragraph a of this subdivision or such greater or lesser limitations as are approved by the board of education prior to July first, nineteen hundred ninety-six or as otherwise authorized in subdivision twelve of section twenty-five hundred three of this chapter. City school districts with a population of more than two hundred twenty-five thousand and less than three hundred thousand, according to the nineteen hundred eighty federal census, which elect to provide transportation shall do so in accord with the grade and distance provisions of this subdivision including transportation outside the city limits.

d. Nothing contained in this subdivision, however, shall be deemed to require a school district to furnish transportation to a child directly to or from his or her home.

e. In lieu of the transportation provided pursuant to the foregoing provisions of this subdivision, a board of education may, at its discretion, provide transportation to any child attending grades kindergarten through eight between the school such child legally attends and before-and/or-after-school child care locations. For the purposes of this subdivision, a before-and/or-after-school child care location shall mean a place, other than the child's home, where care for less than twenty-four hours a day is provided on a regular basis for a child who attends school within the school district, provided that such place is situated within the school district. This definition includes, but is not limited to, a variety of child care services such as day care centers, family day care homes and in-home care by non-relatives. Such transportation may be provided for children attending grades kindergarten through eight where the distance between the school they legally attend and before-and/or-after-school child care locations is more than two miles, and may be provided for up to a distance of fifteen miles, the distance in each case being measured by the nearest available route from before-and/or-after-school child care locations to the school they legally attend, except that transportation for a lesser distance than two miles or a greater distance than fifteen miles may be provided if transportation for such distances is provided to students between home and school. Where a child receives transportation from a before-school child care location to the school he or she legally attends, such child shall be entitled to receive transportation from the school he or she legally attends to his or her home or to an after-school child care location in accordance with this subdivision. Where a child receives transportation from the school he or she legally attends to an after-school child care location, such child shall be entitled to receive transportation from home to the school he or she legally attends in accordance with this subdivision. Transportation may be provided to any child attending grades kindergarten through eight between the school the child legally attends and before-and/or-after-school child care locations upon written request of the parent or legal guardian submitted not later than the first day of April preceding the next school year, provided, however, a parent or guardian of a child not residing in the district on such date shall submit a written request within thirty days after establishing residence in the district and provided further that in order to be considered eligible for such transportation in the nineteen hundred eighty-seven--eighty-eight school year, such request must be submitted by August first, nineteen hundred eighty-seven. The provision of transportation to or from before-and/or-after-school child care locations, if provided, shall be offered equally to all children in like circumstances residing in the district, provided that a board of education furnishing transportation pursuant to this paragraph may limit

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the provision of such transportation to child care locations located within the attendance zone of the school the child attends, and to child day care centers and school age child care programs licensed or registered pursuant to section three hundred ninety of the social services law located anywhere within the school district. The cost of providing such transportation between two or three miles, as the case may be, and fifteen miles shall be considered for the purposes of this chapter to be a charge upon the district. Such substitute transportation expense shall be eligible for state aid in accordance with clause one of paragraph b of subdivision seven of section thirty-six hundred two of this chapter. Nothing in this subdivision shall be construed to impose a duty upon boards of education to provide transportation to or from before-and/or-after-school child care locations. Nothing in this subdivision shall be construed to authorize boards of education to provide to any child transportation between a before-and/or-after-school day care location and that child's home.

f. A board of education may, in its discretion, provide transportation pursuant to this subdivision to a child of less than school age residing within the school district to and from the school which his or her parent legally attends; provided that such child is accompanied by such parent, that such parent is under twenty-one years of age and has not received a high school diploma, and that such transportation is furnished for the purpose of allowing the child to receive child care services and/or attend a nursery school, pre-school, or parenting program. For all purposes under this chapter, a child receiving such transportation shall be deemed a pupil legally attending the school which his or her parent legally attends. The cost of providing such transportation shall be considered for the purposes of this chapter to be a charge upon the district and an ordinary contingent expense of the district. Such transportation expense shall be eligible for state aid in accordance with subparagraph (i) of paragraph b of subdivision seven of section thirty-six hundred two of this article.

2. A parent or guardian of a child residing in any school district, or any representative authorized by such parent or guardian, who desires for a child during the next school year any transportation authorized or directed by this chapter shall submit a written request therefor to the school trustees or board of education of such district not later than the first day of April preceding the next school year, provided, however, that a parent or guardian of a child not residing in the district on such date shall submit a written request within thirty days after establishing residence in the district. No late request of a parent or guardian for transportation shall be denied where a reasonable explanation is provided for the delay. If the voters, school trustees, or board of education fail to provide the transportation authorized or directed by this chapter after receiving such a request, such parent, guardian or representative, or any taxpayer residing in the district, may appeal to the commissioner of education, as provided in section three hundred ten of this chapter. Except as hereinbefore provided, the commissioner of education shall not require that such parent, guardian or representative present a request for such transportation to any meeting of the voters, school trustees or board of education in order to appeal. Upon such appeal, the commissioner of education shall make such order as is required to effect compliance with the provisions of this chapter and this section.

2-a. The superintendent of each city school district, in a city having a population in excess of one million, shall prepare a public school calendar and shall notify officials of nonpublic schools to which transportation has been requested not later than the first day of June

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in each year, of the days on which the public schools will be in session in the following school year. Such school district which provides transportation to nonpublic schools shall provide such transportation for the same number of days as the public schools are open but shall not provide transportation services for more than one hundred eighty days. Officials of each nonpublic school to which transportation is provided by a city school district of a city having a population in excess of one million may notify such district, not later than the first day of July of each school year, of a maximum of five days, exclusive of Saturdays, Sundays or legal holidays upon which public schools are required to be closed, on which the public schools are scheduled to be closed, except that in any year in which the first or last day of Passover and Easter Sunday are separated by more than seven days, such officials may notify the district of a maximum of ten days, but such school district will be required to provide for transportation to such nonpublic school provided that such five or ten additional days, whichever is applicable, are limited to the following: the Tuesday, Wednesday, Thursday and Friday after Labor Day, Rosh Hashanah, Yom Kippur, the week in which public schools are closed for spring recess, December twenty-fourth and the week between Christmas day and New Year's day, the Tuesday, Wednesday, Thursday and Friday after the observance of Washington's birthday, and, in the boroughs of Brooklyn and Queens only, Anniversary Day as designated in section twenty-five hundred eighty-six of this chapter.

5. For the purpose of affording the greatest possible protection to school children, drive-off places on public highways may be designated by the appropriate board of education or district superintendent to permit school busses to be driven off the highway to receive or discharge school children, and the state or municipality having jurisdiction of such highway, is authorized to provide construction and maintenance of such designated drive-offs.

6. In the event that the expenses entailed by the phase-out of omnibuses required by paragraph (k) of subdivision twenty of section three hundred seventy-five of the vehicle and traffic law are not otherwise provided for, such expenses shall be an ordinary contingent expense of a school district.

7. Notwithstanding any other provision of law, rule or regulation, where a child is permitted by a school district or board of education to attend a public school other than the school to which they would normally be assigned, a parent of such child may agree to waive provision of transportation which would otherwise be required under this section and no such transportation shall be required. Any agreement to waive transportation must be renewed annually in writing.

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§ 3209. Education of homeless children. 1. Definitions.

* a. Homeless child. For the purposes of this article, the term "homeless child" shall mean:

(1) a child or youth who lacks a fixed, regular, and adequate nighttime residence, including a child or youth who is:

(i) sharing the housing of other persons due to a loss of housing, economic hardship or a similar reason;

(ii) living in motels, hotels, trailer parks or camping grounds due to the lack of alternative adequate accommodations;

(iii) abandoned in hospitals;

(iv) awaiting foster care placement; or

(v) a migratory child, as defined in subsection two of section thirteen hundred nine of the Elementary and Secondary Education Act of 1965, as amended, who qualifies as homeless under any of the provisions of clauses (i) through (iv) of this subparagraph or subparagraph two of this paragraph; or

(2) a child or youth who has a primary nighttime location that is:

(i) a supervised publicly or privately operated shelter designed to provide temporary living accommodations including, but not limited to, shelters operated or approved by the state or local department of social services, and residential programs for runaway and homeless youth established pursuant to article nineteen-H of the executive law; or

(ii) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, including a child or youth who is living in a car, park, public space, abandoned building, substandard housing, bus or train stations or similar setting.

a-1. Exception. For the purposes of this article the term "homeless child" shall not include a child in a foster care placement or receiving educational services pursuant to subdivision four, five, six, six-a or seven of section thirty-two hundred two of this article or pursuant to article eighty-one, eighty-five, eighty-seven or eighty-eight of this chapter.

* NB Effective until June 30, 2010

* a. Homeless child. For the purposes of this article, the term "homeless child" shall mean:

(1) a child who lacks a fixed, regular, and adequate nighttime residence; or

(2) a child who has a primary nighttime location that is:

(i) a supervised publicly or privately operated shelter designed to provide temporary living accommodations including, but not limited to, shelters operated or approved by the state or local department of social services, and residential programs for runaway and homeless youth established pursuant to article nineteen-H of the executive law; or

(ii) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(3) the term "homeless child" shall not include a child in foster care or receiving educational services pursuant to subdivision four, five, six, six-a or seven of section thirty-two hundred two of this article or pursuant to article eighty-one, eighty-five, eighty-seven or eighty-eight of this chapter.

* NB Effective June 30, 2010

b. Designator. The term "designator" shall mean:

(1) the parent or the person in parental relation to a homeless child; or

(2) the homeless child, if no parent or person in parental relation is available; or

(3) the director of a residential program for runaway and homeless youth established pursuant to article nineteen-H of the executive law,

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in consultation with the homeless child, where such homeless child is living in such program.

c. School district of origin. The term "school district of origin" shall mean the school district within the state of New York in which the homeless child was attending a public school on a tuition-free basis or was entitled to attend when circumstances arose which caused such child to become homeless, which is different from the school district of current location. Whenever the school district of origin is designated pursuant to subdivision two of this section, the child shall be entitled to return to the school building where previously enrolled.

d. School district of current location. The term "school district of current location" shall mean the public school district within the state of New York in which the hotel, motel, shelter or other temporary housing arrangement of a homeless child, or the residential program for runaway and homeless youth, is located, which is different from the school district of origin. Whenever the school district of current location is designated pursuant to subdivision two of this section, the child shall be entitled to attend the school that is zoned for his or her temporary location or any school that nonhomeless students who live in the same attendance zone in which the homeless child or youth is temporarily residing are entitled to attend.

e. Regional placement plan. The term "regional placement plan" shall mean a comprehensive regional approach to the provision of educational placements for homeless children which has been approved by the commissioner.

2. Choice of district.

a. The designator shall have the right to designate one of the following as the school district within which the homeless child shall be entitled to attend upon instruction:

- (1) the school district of current location;
- (2) the school district of origin; or
- (3) a school district participating in a regional placement plan.

b. (1) Notwithstanding any other provision of law to the contrary, where the public school district in which a homeless child is temporarily housed is the same school district the child was attending on a tuition-free basis or was entitled to attend when circumstances arose which caused the child to become homeless, the homeless child shall be entitled to attend the schools of such district without the payment of tuition in accordance with subdivision one of section thirty-two hundred two of this article. Such child may choose to remain in the public school building they previously attended until the end of the school year and for one additional year if that year constitutes the child's terminal year in such building in lieu of the school serving the attendance zone in which the temporary housing facility is located.

(2) Notwithstanding any other provision of law to the contrary, where the public school or school district a homeless child was attending on a tuition-free basis or was entitled to attend when circumstances arose which caused the child to become homeless is located outside the state, the homeless child shall be deemed a resident of the school district in which the hotel, motel, shelter or other temporary housing arrangement of the child is currently located and shall be entitled to attend the schools of such district without payment of tuition in accordance with subdivision one of section thirty-two hundred two of this article. Such district of residence shall not be considered a school district of origin or a school district of current location for purposes of this section.

c. Notwithstanding the provisions of paragraph a of this subdivision, a homeless child who has designated the school district of current

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location as the district of attendance and who has relocated to another temporary housing arrangement outside of such district, or to a different attendance zone or community school district within such district, shall be entitled to continue the prior designation to enable the student to remain in the same school building until the end of the school year and for one additional year if that year constitutes the child's terminal year in such building.

d. Such designation shall be made on forms specified by the commissioner, and shall include the name of the child, the name of the parent or person in parental relation to the child, the name and location of the temporary housing arrangement, the name of the school district of origin, the name of the school district where the child's records are located, the complete address where the family was located at the time circumstances arose which caused such child to become homeless and any other information required by the commissioner. All school districts, temporary housing facilities operated or approved by a local social services district, and residential facilities for runaway and homeless youth shall make such forms available. Where the homeless child is located in a temporary housing facility operated or approved by a local social services district, or a residential facility for runaway and homeless youth, the director of the facility or a person designated by the social services district, shall, within two business days, assist the designator in completing the designation forms and enrolling the homeless child in the designated school district.

e. Upon receipt of the designation form, the designated school district shall immediately:

- (1) admit the homeless child;
- (2) treat the homeless child as a resident for all purposes;
- (3) make a written request to the school district where the child's records are located for a copy of such records; and
- (4) forward the designation form to the commissioner, and the school district of origin where applicable.

f. Within five days of receipt of a request for records pursuant to subparagraph three of paragraph e of this subdivision, the school district shall forward, in a manner consistent with state and federal law, a complete copy of the homeless child's records including, but not limited to, proof of age, academic records, evaluations, immunization records, and guardianship papers, if applicable.

g. The commissioner shall promulgate regulations setting forth the circumstances pursuant to which a change in designation may be made and establishing a procedure for the identification of the school district of origin.

* 2-a. Notwithstanding any other provision of law to the contrary, each local educational agency, as such term is defined in subsection twenty-six of section ninety-one hundred one of the Elementary and Secondary Education Act of 1965, shall designate a local educational agency liaison for homeless children and youths and shall, consistent with the provisions of this section, otherwise comply with the applicable requirements of paragraphs three through seven of subsection (g) of section seven hundred twenty-two of subtitle B of title VII of the McKinney-Vento Assistance Act.

* NB Repealed June 30, 2010

3. Reimbursement.

a. Where either the school district of current location or a school district participating in a regional placement plan is designated as the district in which the homeless child shall attend upon instruction and such homeless child's school district of origin is within New York state, the school district providing instruction shall be eligible for

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reimbursement by the department, as approved by the commissioner, for the direct cost of educational services, not otherwise reimbursed under special federal programs, calculated pursuant to regulations of the commissioner for the period of time for which such services are provided. The claim for such reimbursement shall be in a form prescribed by the commissioner. The educational costs for such children shall not be otherwise aidable or reimbursable.

b. The school district of origin shall reimburse the department for its expenditure for educational services on behalf of a homeless child pursuant to paragraph a of this subdivision in an amount equal to the school district basic contribution, as such term is defined in subdivision eight of section forty-four hundred one of this chapter, pro-rated for the period of time for which such services were provided in the base year by a school district other than the school district of origin. Upon certification by the commissioner, the comptroller shall deduct from any state funds which become due to the school district of origin an amount equal to the reimbursement required to be made by such school district in accordance with this paragraph, and the amount so deducted shall not be included in the operating expense of such district for the purpose of computing the approved operating expense pursuant to paragraph t of subdivision one of section thirty-six hundred two of this chapter.

4. Transportation.

a. A social services district shall provide for the transportation of each homeless child who is eligible for benefits pursuant to section three hundred fifty-j of the social services law, to and from a temporary housing location in which the child was placed by the social services district and the school attended by such child pursuant to this section, if such temporary housing facility is located outside of the designated school district pursuant to paragraph a of subdivision two of this section. A social services district shall be authorized to contract with a board of education or a board of cooperative educational services for the provision of such transportation. This paragraph shall apply to placements made by a social services district without regard to whether a payment is made by the district to the operator of the temporary housing facility.

b. The division for youth, to the extent funds are provided for such purpose, as determined by the director of the budget, shall provide for the transportation of each homeless child who is living in a residential program for runaway and homeless youth established pursuant to article nineteen-H of the executive law, to and from such residential program, and the school attended by such child pursuant to this section, if such temporary housing location is located outside the designated school district. The division for youth or the director of a residential program for runaway and homeless youth shall be authorized to contract with a school district or a board of cooperative educational services for the provision of such transportation.

c. Notwithstanding any other provision of law, any homeless child not entitled to receive transportation pursuant to paragraph a of this subdivision who requires transportation in order to attend a school district designated pursuant to paragraph a of subdivision two of this section outside of the district in which such child is housed, shall be entitled to receive such transportation pursuant to this paragraph. If the designated school district pursuant to paragraph a of subdivision two of this section is the school district of origin or a school district participating in a regional placement plan, such school district shall provide transportation to and from the child's temporary housing location and the school the child legally attends. Such

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transportation shall not be in excess of fifty miles each way except where the commissioner certifies that transportation in excess of fifty miles is in the best interest of the child. Any cost incurred for such transportation that is allowable pursuant to the applicable provision of parts two and three of article seventy-three of this chapter or herein, shall be aidable pursuant to subdivision seven of section thirty-six hundred two of this chapter, provided that the approved transportation expense shall not exceed an amount determined by the commissioner to be the total cost for providing the most cost-effective mode of such transportation in a manner consistent with commissioner's regulations. The commissioner shall promulgate regulations setting forth the circumstances pursuant to which parent accompaniment for transportation may be reimbursable, including but not limited to: the age of the child; the distance of the transportation; the cost-effectiveness of the transportation; and whether the child has a handicapping condition.

d. Notwithstanding any other provision of law, where a homeless child designates the school district of current location as the district the child will attend, such school district shall provide transportation to such child on the same basis as a resident student.

e. Notwithstanding any other provision of law, if a homeless child chooses to remain in the public school building the child previously attended pursuant to subparagraph one of paragraph b of subdivision two of this section or paragraph c of subdivision two of this section the school district shall provide transportation to and from the child's temporary housing location and the school the child legally attends if such temporary housing is located in a different attendance zone or community school district within such district. The cost of such transportation shall be reimbursed in accordance with the provisions of paragraph c of this subdivision.

5. a. By January thirty-first, nineteen hundred ninety-five, the commissioner, the commissioner of social services, and the director of the division for youth shall develop a plan to ensure coordination and access to education for homeless children and shall annually review such plan.

b. The commissioner shall periodically monitor local school districts to ensure their compliance with the provisions of this article, and that such districts review and revise any local regulations, policies, or practices that may act as barriers to the enrollment or attendance of homeless children in school or their receipt of comparable services as defined in Part B of Title VII of the Federal Stewart B. McKinney Act.

c. School districts shall periodically report such information to the commissioner as he or she may require to carry out the purposes of this section.

6. Public welfare officials, except as otherwise provided by law, shall furnish indigent children with suitable clothing, shoes, books, food, transportation and other necessities to enable them to attend upon instruction as required by law. Upon demonstration of need, such necessities shall also include transportation of indigent children for the purposes of evaluations pursuant to section forty-four hundred ten of this chapter and title II-A of article twenty-five of the public health law.

7. The commissioner may promulgate regulations to carry out the purposes of this section.

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4. a. The board of education or the board of trustees of each school district shall provide suitable transportation to and from special classes or programs, with the exception of residential facilities for the care and treatment of children with handicapping conditions under the jurisdiction of an agency of the state other than the state department of education, as specified in subdivisions two and four of section forty-four hundred one of this article.

b. Such board may permit any adult, willing to serve without compensation, to act as an attendant for such children.

c. Such board shall be empowered to contract for transportation services provided pursuant to this subdivision with any municipality, Board of Cooperative Educational Services, public authority or private contractor meeting the school bus provisions outlined in section thirty-six hundred twenty-three of this chapter and the standards and specifications relating thereto.

d. Notwithstanding any other provision of law, such board shall provide suitable transportation up to a distance of fifty miles to and from a nonpublic school which a child with a handicapping condition attends if such child has been so identified by the local committee on special education and such child attends such school for the purpose of receiving services or programs similar to special educational programs recommended for such child by the local committee on special education.

§ 381.505 What are the minimum elements required for a pilot program?

(a) *Safety measures.* Before granting exemptions for a pilot program, the FMCSA will ensure that the safety measures in a pilot program are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved by complying with the regulations.

(b) *Pilot program plan.* Before initiating a pilot program, the FMCSA will ensure that there is a pilot program plan which includes the following elements:

(1) A scheduled duration of three years or less;

(2) A specific data collection and safety analysis plan that identifies a method of comparing the safety performance for motor carriers, CMVs, and drivers operating under the terms and conditions of the pilot program, with the safety performance of motor carriers, CMVs, and drivers that comply with the regulation;

(3) A reasonable number of participants necessary to yield statistically valid findings;

(4) A monitoring plan to ensure that participants comply with the terms and conditions of participation in the pilot program;

(5) Adequate safeguards to protect the health and safety of study participants and the general public; and

(6) A plan to inform the States and the public about the pilot program and to identify approved participants to enforcement personnel and the general public.

§ 381.510 May the FMCSA end a pilot program before its scheduled completion date?

The FMCSA will immediately terminate a pilot program if there is reason to believe the program is not achieving a level of safety that is at least equivalent to the level of safety that would be achieved by complying with the regulations.

§ 381.515 May the FMCSA remove approved participants from a pilot program?

The Administrator will immediately revoke participation in a pilot program of a motor carrier, CMV, or driver for

failure to comply with the terms and conditions of the pilot program, or if continued participation is inconsistent with the goals and objectives of the safety regulations.

§ 381.520 What will the FMCSA do with the results from a pilot program?

At the conclusion of each pilot program, the FMCSA will report to Congress the findings and conclusions of the program and any recommendations it considers appropriate, including suggested amendments to laws and regulations that would enhance motor carrier, CMV, and driver safety and improve compliance with the FMCSRs.

Subpart F—Preemption of State Rules**§ 381.600 Do waivers, exemptions, and pilot programs preempt State laws and regulations?**

Yes. During the time period that a waiver, exemption, or pilot program authorized by this part is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with the waiver, exemption, or pilot program with respect to a person operating under the waiver or exemption or participating in the pilot program.

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING**Subpart A—General**

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AUTHORITY: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; and 49 CFR 1.73.

SOURCE: 66 FR 43103, Aug. 17, 2001, unless otherwise noted.

Subpart A—General

§ 382.101 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

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§ 382.103 Applicability.

(a) This part applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State, and is subject to:

(1) The commercial driver's license requirements of part 383 of this subchapter;

(2) The Licencia Federal de Conductor (Mexico) requirements; or

(3) The commercial drivers license requirements of the Canadian National Safety Code.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of two or more covered employees in the random testing selection pool.

(c) The exceptions contained in § 390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in § 390.3(f) of this subchapter must comply with the requirements of this part, unless otherwise specifically provided in paragraph (d) of this section.

(d) *Exceptions.* This part shall not apply to employers and their drivers:

(1) Required to comply with the alcohol and/or controlled substances testing requirements of part 655 of this title (Federal Transit Administration alcohol and controlled substances testing regulations); or

(2) Who a State must waive from the requirements of part 383 of this subchapter. These individuals include active duty military personnel; members of the reserves; and members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training and national guard military technicians (civilians who are required to wear military uniforms), and active duty U.S. Coast Guard personnel; or

(3) Who a State has, at its discretion, exempted from the requirements of part 383 of this subchapter. These individuals may be:

(i) Operators of a farm vehicle which is:

- (A) Controlled and operated by a farmer;
- (B) Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm;
- (C) Not used in the operations of a common or contract motor carrier; and
- (D) Used within 241 kilometers (150 miles) of the farmer's farm.

(ii) Firefighters or other persons who operate commercial motor vehicles which are necessary for the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals, and are not subject to normal traffic regulation.

§ 382.105 Testing procedures.

Each employer shall ensure that all alcohol or controlled substances testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol or controlled substances testing are made applicable to employers by this part.

§ 382.107 Definitions.

Words or phrases used in this part are defined in §§ 386.2 and 390.5 of this subchapter, and § 40.3 of this title, except as provided in this section—

Actual knowledge for the purpose of subpart B of this part, means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided in § 382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under § 382.307.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

Alcohol use means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

Commerce means:

(1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; and

(2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle—

(1) Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

(2) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation (or confirmatory) drug test means a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

Confirmation (or confirmatory) validity test means a second test performed on a urine specimen to further support a validity test result.

Confirmed drug test means a confirmation test result received by an MRO from a laboratory.

Consortium/Third party administrator (C/TPA) means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for purposes of this part.

Controlled substances mean those substances identified in § 40.85 of this title.

Designated employer representative (DER) is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the company. Service agents cannot serve as DERs.

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) Headlight or taillight damage.

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

DOT Agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR

parts 199, 219, 382, and 655), in accordance with part 40 of this title.

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

Employer means a person or entity employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with this part. The term, as used in this part, means the entity responsible for overall implementation of DOT drug and alcohol program requirements, including individuals employed by the entity who take personnel actions resulting from violations of this part and any applicable DOT agency regulations. Service agents are not employers for the purposes of this part.

Licensed medical practitioner means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this part.

Refuse to submit (to an alcohol or controlled substances test) means that a driver:

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see § 40.61(a) of this title);

(2) Fail to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences (see §40.63(c) of this title) a pre-employment test is not deemed to have refused to test;

(3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations. Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63(c) of this title) for a pre-employment test is not deemed to have refused to test;

(4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen (see §§40.67(1) and 40.69(g) of this title);

(5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2) of this title);

(6) Fail or declines to take a second test the employer or collector has directed the driver to take;

(7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d) of this title. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment;

(8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process); or

(9) Is reported by the MRO as having a verified adulterated or substituted test result.

Safety-sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

(1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;

(2) All time inspecting equipment as required by §§392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All time spent at the driving controls of a commercial motor vehicle in operation;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of §393.76 of this subchapter);

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test (or initial test) means:

(1) In drug testing, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.

(2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Stand-down means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol

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screening tests (including refusals) conducted under this part.

[66 FR 43103, Aug. 17, 2001, as amended at 68 FR 75458, Dec. 31, 2003]

§ 382.109 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public.

§ 382.111 Other requirements imposed by employers.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

§ 382.113 Requirement for notice.

Before performing each alcohol or controlled substances test under this part, each employer shall notify a driver that the alcohol or controlled substances test is required by this part. No employer shall falsely represent that a test is administered under this part.

§ 382.115 Starting date for testing programs.

(a) All domestic-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations.

(b) All foreign-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations in the United States.

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§ 382.117 Public interest exclusion.

No employer shall use the services of a service agent who is subject to public interest exclusion in accordance with 49 CFR part 40, Subpart R.

§ 382.119 Stand-down waiver provision.

(a) Employers are prohibited from standing employees down, except consistent with a waiver from the Federal Motor Carrier Safety Administration as required under this section.

(b) An employer subject to this part who seeks a waiver from the prohibition against standing down an employee before the MRO has completed the verification process shall follow the procedures in 49 CFR 40.21. The employer must send a written request, which includes all of the information required by that section to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(c) The final decision whether to grant or deny the application for a waiver will be made by the Administrator or the Administrator's designee.

(d) After a decision is signed by the Administrator or the Administrator's designee, the employer will be sent a copy of the decision, which will include the terms and conditions for the waiver or the reason for denying the application for a waiver.

(e) Questions regarding waiver applications should be directed to the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

[66 FR 43103, Aug. 17, 2001, as amended at 72 FR 55700, Oct. 1, 2007]

§ 382.121 Employee admission of alcohol and controlled substances use.

(a) Employees who admit to alcohol misuse or controlled substances use are not subject to the referral, evaluation and treatment requirements of this part and part 40 of this title, provided that:

(1) The admission is in accordance with a written employer-established voluntary self-identification program or policy that meets the requirements of paragraph (b) of this section;

(2) The driver does not self-identify in order to avoid testing under the requirements of this part;

(3) The driver makes the admission of alcohol misuse or controlled substances use prior to performing a safety sensitive function (i.e., prior to reporting for duty); and

(4) The driver does not perform a safety sensitive function until the employer is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

(b) A qualified voluntary self-identification program or policy must contain the following elements:

(1) It must prohibit the employer from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters of the program or policy and paragraph (a) of this section;

(2) It must allow the employee sufficient opportunity to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem;

(3) It must permit the employee to return to safety sensitive duties only upon successful completion of an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert, i.e., employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor;

(4) It must ensure that:

(i) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty test with a result indicating an alcohol concentration of less than 0.02; and/or

(ii) Prior to the employee participating in a safety sensitive function, the employee shall undergo a return to duty controlled substance test with a verified negative test result for controlled substances use; and

(5) It may incorporate employee monitoring and include non-DOT follow-up testing.

Subpart B—Prohibitions

§ 382.201 Alcohol concentration.

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.205 On-duty use.

No driver shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.207 Pre-duty use.

No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.

§ 382.209 Use following an accident.

No driver required to take a post-accident alcohol test under § 382.303 shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

§ 382.211 Refusal to submit to a required alcohol or controlled substances test.

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under § 382.303, a random alcohol or controlled substances test required under § 382.305, a reasonable suspicion alcohol or controlled substances test required under § 382.307, or a follow-up alcohol or controlled substances test required under § 382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

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§ 382.213 Controlled substances use.

(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in §382.107, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(b) No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

(c) An employer may require a driver to inform the employer of any therapeutic drug use.

§ 382.215 Controlled substances testing.

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. No employer having actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

Subpart C—Tests Required

§ 382.301 Pre-employment testing.

(a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for controlled substances as a condition prior to being used, unless the employer uses the exception in paragraph (b) of this section. No employer shall allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the employer has received a controlled substances test result from the MRO or C/TPA indicating a verified negative test result for that driver.

(b) An employer is not required to administer a controlled substances test required by paragraph (a) of this section if:

(1) The driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days; and

(2) While participating in that program, either:

(i) Was tested for controlled substances within the past 6 months (from the date of application with the employer), or

(ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and

(3) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.

(c)(1) An employer who exercises the exception in paragraph (b) of this section shall contact the controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:

(i) Name(s) and address(es) of the program(s).

(ii) Verification that the driver participates or participated in the program(s).

(iii) Verification that the program(s) conforms to part 40 of this title.

(iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(v) The date the driver was last tested for controlled substances.

(vi) The results of any tests taken within the previous six months and any other violations of subpart B of this part.

(2) An employer who uses, but does not employ a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (c)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with §382.401. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this part and part 40 of this

title, the employer shall conduct a pre-employment controlled substances test.

(d) An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, it must comply with the following requirements:

(1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).

(3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40 of this title.

(5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

§ 382.303 Post-accident testing.

(a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol for each of its surviving drivers:

(1) Who was performing safety-sensitive functions with respect to the ve-

hicle, if the accident involved the loss of human life; or

(2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

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

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

(b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for controlled substances for each of its surviving drivers:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:

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

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

(c) The following table notes when a post-accident test is required to be conducted by paragraphs (a)(1), (a)(2), (b)(1), and (b)(2) of this section:

TABLE FOR § 382.303(A) AND (B)

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
i. Human fatality	YES	YES
	NO	YES
ii. Bodily injury with immediate medical treatment away from the scene	YES	YES
	NO	NO
iii. Disabling damage to any motor vehicle requiring tow away	YES	YES
	NO	NO

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(d)(1) *Alcohol tests.* If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

(2) *Controlled substance tests.* If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

(e) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(f) An employer shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(g)(1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the employer.

(2) The results of a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the

test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.

(h) *Exception.* This section does not apply to:

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

(2) An occurrence involving only the loading or unloading of cargo; or

(3) An occurrence in the course of the operation of a passenger car or a multi-purpose passenger vehicle (as defined in § 571.3 of this title) by an employer unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with § 177.823 of this title.

§ 382.305 **Random testing.**

(a) Every employer shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.

(b)(1) Except as provided in paragraphs (c) through (e) of this section, the minimum annual percentage rate for random alcohol testing shall be 10 percent of the average number of driver positions.

(2) Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions.

(c) The FMCSA Administrator's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol management information system reports required by § 382.403. In order to ensure reliability of the data, the FMCSA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers,

and may make appropriate modifications in calculating the industry violation rate. In the event of a change in the annual percentage rate, the FMCSA Administrator will publish in the FEDERAL REGISTER the new minimum annual percentage rate for random alcohol testing of drivers. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication in the FEDERAL REGISTER.

(d)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the FMCSA Administrator may lower this rate to 10 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the FMCSA Administrator may lower this rate to 25 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(e)(1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 382.403 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent for all driver positions.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 382.403 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent for all driver positions.

(f) The FMCSA Administrator's decision to increase or decrease the minimum annual percentage rate for controlled substances testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the controlled substances management information system reports required by § 382.403. In order to ensure reliability of the data, the FMCSA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. In the event of a change in the annual percentage rate, the FMCSA Administrator will publish in the FEDERAL REGISTER the new minimum annual percentage rate for controlled substances testing of drivers. The new minimum annual percentage rate for random controlled substances testing will be applicable starting January 1 of the calendar year following publication in the FEDERAL REGISTER.

(g) When the minimum annual percentage rate for random controlled substances testing is 50 percent, the FMCSA Administrator may lower this rate to 25 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the positive rate is less than 1.0 percent.

(h) When the minimum annual percentage rate for random controlled substances testing is 25 percent, and the data received under the reporting requirements of § 382.403 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions.

(i)(1) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers.

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(2) Each driver selected for random alcohol and controlled substances testing under the selection process used, shall have an equal chance of being tested each time selections are made.

(3) Each driver selected for testing shall be tested during the selection period.

(j)(1) To calculate the total number of covered drivers eligible for random testing throughout the year, as an employer, you must add the total number of covered drivers eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered drivers must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., daily, weekly, bi-weekly) you do not need to compute this total number of covered drivers rate more than on a once per month basis.

(2) As an employer, you may use a service agent (e.g., a C/TPA) to perform random selections for you, and your covered drivers may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.

(k)(1) Each employer shall ensure that random alcohol and controlled substances tests conducted under this part are unannounced.

(2) Each employer shall ensure that the dates for administering random alcohol and controlled substances tests conducted under this part are spread reasonably throughout the calendar year.

(l) Each employer shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, the employer shall instead ensure that the driver ceases to perform the safety-sensitive

function and proceeds to the testing site as soon as possible.

(m) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(n) If a given driver is subject to random alcohol or controlled substances testing under the random alcohol or controlled substances testing rules of more than one DOT agency for the same employer, the driver shall be subject to random alcohol and/or controlled substances testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.

(o) If an employer is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

[66 FR 43103, Aug. 17, 2001, as amended at 67 FR 61821, Oct. 2, 2002; 68 FR 75459, Dec. 31, 2003]

§ 382.307 Reasonable suspicion testing.

(a) An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning alcohol. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(b) An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe that the driver has

violated the prohibitions of subpart B of this part concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

(c) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or company official who is trained in accordance with § 382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.

(d) Alcohol testing is authorized by this section only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this part. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(e)(1) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (a) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (a) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as

shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until:

(i) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or

(ii) Twenty four hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this part concerning the use of alcohol.

(3) Except as provided in paragraph (e)(2) of this section, no employer shall take any action under this part against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit an employer with independent authority of this part from taking any action otherwise consistent with law.

(f) A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or company official who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

§ 382.309 Return-to-duty testing.

The requirements for return-to-duty testing must be performed in accordance with 49 CFR part 40, Subpart O.

§ 382.311 Follow-up testing.

The requirements for follow-up testing must be performed in accordance with 49 CFR part 40, Subpart O.

Subpart D—Handling of Test Results, Records Retention, and Confidentiality

§ 382.401 Retention of records.

(a) *General requirement.* Each employer shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.

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(b) *Period of retention.* Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* The following records shall be maintained for a minimum of five years:

(i) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater,

(ii) Records of driver verified positive controlled substances test results,

(iii) Documentation of refusals to take required alcohol and/or controlled substances tests,

(iv) Driver evaluation and referrals,

(v) Calibration documentation,

(vi) Records related to the administration of the alcohol and controlled substances testing programs, and

(vii) A copy of each annual calendar year summary required by § 382.403.

(2) *Two years.* Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).

(3) *One year.* Records of negative and canceled controlled substances test results (as defined in part 40 of this title) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.

(4) *Indefinite period.* Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions.

(c) *Types of records.* The following specific types of records shall be maintained. "Documents generated" are documents that may have to be prepared under a requirement of this part. If the record is required to be prepared, it must be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used;

(ii) Documents relating to the random selection process;

(iii) Calibration documentation for evidential breath testing devices;

(iv) Documentation of breath alcohol technician training;

(v) Documents generated in connection with decisions to administer rea-

sonable suspicion alcohol or controlled substances tests;

(vi) Documents generated in connection with decisions on post-accident tests;

(vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and

(viii) A copy of each annual calendar year summary as required by § 382.403.

(2) Records related to a driver's test results:

(i) The employer's copy of the alcohol test form, including the results of the test;

(ii) The employer's copy of the controlled substances test chain of custody and control form;

(iii) Documents sent by the MRO to the employer, including those required by part 40, subpart G, of this title;

(iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this part;

(v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this part; and

(vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the employer:

(A) Must obtain in connection with the exception contained in § 382.301, and

(B) Must obtain as required by § 382.413.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance; and

(ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.

(5) Records related to education and training:

(i) Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;

(ii) Documentation of compliance with the requirements of §382.601, including the driver's signed receipt of education materials;

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;

(iv) Documentation of training for breath alcohol technicians as required by §40.213(a) of this title; and

(v) Certification that any training conducted under this part complies with the requirements for such training.

(6) Administrative records related to alcohol and controlled substances testing:

(i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third party service providers;

(ii) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s);

(iii) Semi-annual laboratory statistical summaries of urinalysis required by §40.111(a) of this title; and

(iv) The employer's alcohol and controlled substances testing policy and procedures.

(d) *Location of records.* All records required by this part shall be maintained as required by §390.31 of this subchapter and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Motor Carrier Safety Administration.

(e) *OMB control number.* (1) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and have been assigned OMB control number 2126-0012.

(2) The information collection requirements of this part are found in the following sections: Sections 382.105, 382.113, 382.301, 382.303, 382.305, 382.307,

382.401, 382.403, 382.405, 382.409, 382.411, 382.601, 382.603.

[66 FR 43103, Aug. 17, 2001, as amended at 67 FR 61821, Oct. 2, 2002; 68 FR 75459, Dec. 31, 2003]

§ 382.403 Reporting of results in a management information system.

(a) An employer shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(b) If an employer is notified, during the month of January, of a request by the Federal Motor Carrier Safety Administration to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the FMCSA by March 15 of that year. The employer shall ensure that the annual summary report is accurate and received by March 15 at the location that the FMCSA specifies in its request. The employer must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at §40.26 and appendix H to part 40). The employer may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission. For information on the electronic version of the form, see: <http://www.fmcsa.dot.gov/safetyprogs/drugs/engtesting.htm>.

(c) When the report is submitted to the FMCSA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

(d) If you have a covered employee who performs multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for the same employer), count the employee

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only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Employers may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(e) A service agent (e.g., *Consortia/Third party administrator* as defined in 49 CFR 382.107) may prepare the MIS report on behalf of an employer. However, a company official (e.g., *Designated employer representative*) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

[66 FR 43103, Aug. 17, 2001, as amended at 68 FR 75459, Dec. 31, 2003]

§ 382.405 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this section, no employer shall release driver information that is contained in records required to be maintained under § 382.401.

(b) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. The employer shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each employer shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(d) Each employer shall make available copies of all results for employer alcohol and/or controlled substances testing conducted under this part and any other information pertaining to the employer's alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials

with regulatory authority over the employer or any of its drivers.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a driver to the decision maker in a lawsuit, grievance, or administrative proceeding initiated by or on behalf of the individual, and arising from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results) of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver). Additionally, an employer may disclose information in criminal or civil actions in accordance with § 40.323(a)(2) of this title.

(h) An employer shall release information regarding a driver's records as directed by the specific written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's specific written consent as outlined in § 40.321(b) of this title.

§ 382.407 Medical review officer notifications to the employer.

Medical review officers shall report the results of controlled substances tests to employers in accordance with the requirements of part 40, Subpart G, of this title.

§ 382.409 Medical review officer record retention for controlled substances.

(a) A medical review officer or third party administrator shall maintain all

dated records and notifications, identified by individual, for a minimum of five years for verified positive controlled substances test results.

(b) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of one year for negative and canceled controlled substances test results.

(c) No person may obtain the individual controlled substances test results retained by a medical review officer or third party administrator, and no medical review officer or third party administrator shall release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph (c) shall prohibit a medical review officer or third party administrator from releasing, to the employer or to officials of the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances testing program under this part, the information delineated in part 40, Subpart G, of this title.

§ 382.411 Employer notifications.

(a) An employer shall notify a driver of the results of a pre-employment controlled substances test conducted under this part, if the driver requests such results within 60 calendar days of being notified of the disposition of the employment application. An employer shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this part if the test results are verified positive. The employer shall also inform the driver which controlled substance or substances were verified as positive.

(b) The designated employer representative shall make reasonable efforts to contact and request each driver who submitted a specimen under the employer's program, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

(c) The designated employer representative shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 72 hours.

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

Employers shall request alcohol and controlled substances information from previous employers in accordance with the requirements of § 40.25 of this title.

Subpart E—Consequences for Drivers Engaging in Substance Use-Related Conduct

§ 382.501 Removal from safety-sensitive function.

(a) Except as provided in subpart F of this part, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by subpart B of this part or an alcohol or controlled substances rule of another DOT agency.

(b) No employer shall permit any driver to perform safety-sensitive functions; including driving a commercial motor vehicle, if the employer has determined that the driver has violated this section.

(c) For purposes of this subpart, commercial motor vehicle means a commercial motor vehicle in commerce as defined in § 382.107, and a commercial motor vehicle in interstate commerce as defined in part 390 of this subchapter.

§ 382.503 Required evaluation and testing.

No driver who has engaged in conduct prohibited by subpart B of this part shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title. No employer shall permit a driver who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title.

§ 382.505 Other alcohol-related conduct.

(a) No driver tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, including driving a commercial motor vehicle, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

§ 382.507 Penalties.

Any employer or driver who violates the requirements of this part shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b). In addition, any employer or driver who violates the requirements of 49 CFR part 40 shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b).

Subpart F—Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

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

(a) *General requirements.* Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements.

(1) The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this part and to each driver subsequently hired or transferred into a

position requiring driving a commercial motor vehicle.

(2) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the employer to answer driver questions about the materials;

(2) The categories of drivers who are subject to the provisions of this part;

(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;

(4) Specific information concerning driver conduct that is prohibited by this part;

(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under § 382.303(d);

(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by § 382.303(d);

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under part 40, subpart O, of this title;

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

(c) *Optional provision.* The materials supplied to drivers may also include information on additional employer policies with respect to the use of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(d) *Certificate of receipt.* Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

§ 382.603 Training for supervisors.

Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. Recurrent training for supervisory personnel is not required.

§ 382.605 Referral, evaluation, and treatment.

The requirements for referral, evaluation, and treatment must be performed in accordance with 49 CFR part 40, Subpart O.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

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AUTHORITY: 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106-159, 113 Stat. 1766, 1767; sec. 1012(b) of Pub. L. 107-56; 115 Stat. 397; sec. 4140 of Pub. L. 109-59, 119 Stat. 1144, 1726; and 49 CFR 1.73.

SOURCE: 52 FR 20587, June 1, 1987, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 383 appear at 66 FR 49872, Oct. 1, 2001.

Subpart A—General

§ 383.1 Purpose and scope.

(a) The purpose of this part is to help reduce or prevent truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner.

(b) This part:

(1) Prohibits a commercial motor vehicle driver from having more than one commercial motor vehicle driver's license;

(2) Requires a driver to notify the driver's current employer and the driver's State of domicile of certain convictions;

(3) Requires that a driver provide previous employment information when applying for employment as an operator of a commercial motor vehicle;

(4) Prohibits an employer from allowing a person with a suspended license to operate a commercial motor vehicle;

(5) Establishes periods of disqualification and penalties for those persons

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convicted of certain criminal and other offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges;

(6) Establishes testing and licensing requirements for commercial motor vehicle operators;

(7) Requires States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard;

(8) Sets forth commercial motor vehicle groups and endorsements;

(9) Sets forth the knowledge and skills test requirements for the motor vehicle groups and endorsements;

(10) Sets forth the Federal standards for procedures, methods, and minimum passing scores for States and others to use in testing and licensing commercial motor vehicle operators; and

(11) Establishes requirements for the State issued commercial license documentation.

[52 FR 20587, June 1, 1987, as amended at 53 FR 27648, July 21, 1988; 54 FR 40787, Oct. 3, 1989]

§ 383.3 Applicability.

(a) The rules in this part apply to every person who operates a commercial motor vehicle (CMV) in interstate, foreign, or intrastate commerce, to all employers of such persons, and to all States.

(b) The exceptions contained in § 390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in § 390.3(f) must comply with the requirements of this part, unless otherwise provided in this section.

(c) *Exception for certain military drivers.* Each State must exempt from the requirements of this part individuals who operate CMVs for military purposes. This exception is applicable to active duty military personnel; members of the military reserves; member of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty U.S. Coast Guard personnel. This exception is not applicable to U.S. Reserve technicians.

(d) *Exception for farmers, firefighters, emergency response vehicle drivers, and drivers removing snow and ice.* A State may, at its discretion, exempt individuals identified in paragraphs (d)(1), (d)(2), and (d)(3) of this section from the requirements of this part. The use of this waiver is limited to the driver's home State unless there is a reciprocity agreement with adjoining States.

(1) Operators of a farm vehicle which is:

(i) Controlled and operated by a farmer, including operation by employees or family members;

(ii) Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm;

(iii) Not used in the operations of a common or contract motor carrier; and

(iv) Used within 241 kilometers (150 miles) of the farmer's farm.

(2) Firefighters and other persons who operate CMVs which are necessary to the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals and are not subject to normal traffic regulation. These vehicles include fire trucks, hook and ladder trucks, foam or water transport trucks, police SWAT team vehicles, ambulances, or other vehicles that are used in response to emergencies.

(3)(i) A driver, employed by an eligible unit of local government, operating a commercial motor vehicle within the boundaries of that unit for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting, if

(A) The properly licensed employee who ordinarily operates a commercial motor vehicle for these purposes is unable to operate the vehicle; or

(B) The employing governmental entity determines that a snow or ice emergency exists that requires additional assistance.

(ii) This exemption shall not preempt State laws and regulations concerning the safe operation of commercial motor vehicles.

(e) *Restricted commercial drivers license (CDL) for certain drivers in the State of Alaska.* (1) The State of Alaska may, at its discretion, waive only the following requirements of this part and issue a

CDL to each driver that meets the conditions set forth in paragraphs (e) (2) and (3) of this section:

(i) The knowledge tests standards for testing procedures and methods of subpart H, but must continue to administer knowledge tests that fulfill the content requirements of subpart G for *all* applicants;

(ii) All the skills test requirements; and

(iii) The requirement under §383.153(a)(4) to have a photograph on the license document.

(2) Drivers of CMVs in the State of Alaska must operate exclusively over roads that meet *both* of the following criteria to be eligible for the exception in paragraph (e)(1) of this section:

(i) Such roads are not connected by land highway or vehicular way to the land-connected State highway system; and

(ii) Such roads are not connected to any highway or vehicular way with an average daily traffic volume greater than 499.

(3) Any CDL issued under the terms of this paragraph must carry two restrictions:

(i) Holders may not operate CMVs over roads other than those specified in paragraph (e)(2) of this section; and

(ii) The license is not valid for CMV operation outside the State of Alaska.

(f) *Restricted CDL for certain drivers in farm-related service industries.* (1) A State may, at its discretion, waive the required knowledge and skills tests of subpart H of this part and issue restricted CDLs to employees of these designated farm-related service industries:

(i) Agri-chemical businesses;

(ii) Custom harvesters;

(iii) Farm retail outlets and suppliers;

(iv) Livestock feeders.

(2) A restricted CDL issued pursuant to this paragraph shall meet all the requirements of this part, except subpart H of this part. A restricted CDL issued pursuant to this paragraph shall be accorded the same reciprocity as a CDL meeting all of the requirements of this part. The restrictions imposed upon the issuance of this restricted CDL shall not limit a person's use of the

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CDL in a non-CMV during either validated or non-validated periods, nor shall the CDL affect a State's power to administer its driver licensing program for operators of vehicles other than CMVs.

(3) A State issuing a CDL under the terms of this paragraph must restrict issuance as follows:

(i) Applicants must have a good driving record as defined in this paragraph. Drivers who have not held any motor vehicle operator's license for at least one year shall not be eligible for this CDL. Drivers who have between one and two years of driving experience must demonstrate a good driving record for their entire driving history. Drivers with more than two years of driving experience must have a good driving record for the two most recent years. For the purposes of this paragraph, the term *good driving record* means that an applicant:

(A) Has not had more than one license (except in the instances specified in § 383.21);

(B) Has not had *any* license suspended, revoked, or canceled;

(C) Has not had *any* conviction for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b);

(D) Has not had *any* conviction for any type of motor vehicle for serious traffic violations; and

(E) Has not had *any* conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault.

(ii) Restricted CDLs shall have the same renewal cycle as unrestricted CDLs, but shall be limited to the seasonal period or periods as defined by the State of licensure, provided that the total number of calendar days in any 12-month period for which the restricted CDL is valid does not exceed 180. If a State elects to provide for more than one seasonal period, the restricted CDL is valid for commercial motor vehicle operation only during the currently approved season, and must be revalidated for each successive season. Only one seasonal period of validity may appear on the license docu-

ment at a time. The good driving record must be confirmed prior to any renewal or revalidation.

(iii) Restricted CDL holders are limited to operating Group B and C vehicles, as described in subpart F of this part.

(iv) Restricted CDLs shall not be issued with *any* endorsements on the license document. Only the limited tank vehicle and hazardous materials endorsement privileges that the restricted CDL automatically confers and are described in paragraph (f)(3)(v) of this section are permitted.

(v) Restricted CDL holders may not drive vehicles carrying any placardable quantities of hazardous materials, except for diesel fuel in quantities of 3,785 liters (1,000 gallons) or less; liquid fertilizers (i.e., plant nutrients) in vehicles or implements of husbandry in total quantities of 11,355 liters (3,000 gallons) or less; and solid fertilizers (i.e., solid plant nutrients) that are not transported with any organic substance.

(vi) Restricted CDL holders may not hold an unrestricted CDL at the same time.

(vii) Restricted CDL holders may not operate a commercial motor vehicle beyond 241 kilometers (150 miles) from the place of business or the farm currently being served.

(g) *Restricted CDL for certain drivers in the pyrotechnic industry.* (1) A State may, at its discretion, waive the required hazardous materials knowledge tests of subpart H of this part and issue restricted CDLs to part-time drivers operating commercial motor vehicles transporting less than 227 kilograms (500 pounds) of fireworks classified as DOT Class 1.3G explosives.

(2) A State issuing a CDL under the terms of this paragraph must restrict issuance as follows:

(i) The GVWR of the vehicle to be operated must be less than 4,537 kilograms (10,001 pounds);

(ii) If a State believes, at its discretion, that the training required by § 172.704 of this title adequately prepares part-time drivers meeting the other requirements of this paragraph to deal with fireworks and the other potential dangers posed by fireworks transportation and use, the State may

waive the hazardous materials knowledge tests of subpart H of this part. The State may impose any requirements it believes is necessary to ensure itself that a driver is properly trained pursuant to §172.704 of this title.

(iii) A restricted CDL document issued pursuant to this paragraph shall have a statement clearly imprinted on the face of the document that is substantially similar as follows: "For use as a CDL only during the period from June 30 through July 6 for purposes of transporting less than 227 kilograms (500 pounds) of fireworks classified as DOT Class 1.3G explosives in a vehicle with a GVWR of less than 4,537 kilograms (10,001 pounds).

(3) A restricted CDL issued pursuant to this paragraph shall meet all the requirements of this part, except those specifically identified. A restricted CDL issued pursuant to this paragraph shall be accorded the same reciprocity as a CDL meeting all of the requirements of this part. The restrictions imposed upon the issuance of this restricted CDL shall not limit a person's use of the CDL in a non-CMV during either validated or non-validated periods, nor shall the CDL affect a State's power to administer its driver licensing program for operators of vehicles other than CMVs.

(4) Restricted CDLs shall have the same renewal cycle as unrestricted CDLs, but shall be limited to the seasonal period of June 30 through July 6 of each year or a lesser period as defined by the State of licensure.

(5) Persons who operate commercial motor vehicles during the period from July 7 through June 29 for purposes of transporting less than 227 kilograms (500 pounds) of fireworks classified as DOT Class 1.3G explosives in a vehicle with a GVWR of less than 4,537 kilograms (10,001 pounds) and who also operate such vehicles for the same purposes during the period June 30 through July 6 shall not be issued a restricted CDL pursuant to this paragraph.

[61 FR 9564, Mar. 8, 1996, as amended at 61 FR 14679, Apr. 3, 1996; 62 FR 1296, Jan. 9, 1997; 67 FR 49755, July 31, 2002; 67 FR 61821, Oct. 2, 2002]

§ 383.5 Definitions.

As used in this part:

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

Alcohol or alcoholic beverage means: (a) Beer as defined in 26 U.S.C. 5052(a), of the Internal Revenue Code of 1954, (b) wine of not less than one-half of one per centum of alcohol by volume, or (c) distilled spirits as defined in section 5002(a)(8), of such Code.

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

Alien means any person not a citizen or national of the United States.

CDL downgrade means either:

(1) A State allows the driver to change his or her self-certification to interstate, but operating exclusively in transportation or operation excepted from part 391, as provided in §390.3(f), 391.2, 391.68 or 398.3 of this chapter;

(2) A State allows the driver to change his or her self-certification to intrastate only, if the driver qualifies under that State's physical qualification requirements for intrastate only;

(3) A State allows the driver to change his or her certification to intrastate, but operating exclusively in transportation or operations excepted from all or part of the State driver qualification requirements, or

(4) A State removes the CDL privilege from the driver license.

CDLIS driver record means the electronic record of the individual CDL driver's status and history stored by the State-of-Record as part of the Commercial Driver's License Information System (CDLIS) established under 49 U.S.C. 31309.

Commerce means (a) any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and (b) trade, traffic, and transportation in the United States which affects any trade, traffic,

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and transportation described in paragraph (a) of this definition.

Commercial driver's license (CDL) means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR part 383, to an individual which authorizes the individual to operate a class of a commercial motor vehicle.

Commercial driver's license information system (CDLIS) means the CDLIS established by FMCSA pursuant to section 12007 of the Commercial Motor Vehicle Safety Act of 1986.

Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(a) Has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

(b) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); or

(c) Is designed to transport 16 or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of *hazardous materials* as defined in this section.

Controlled substance has the meaning such term has under 21 U.S.C. 802(6) and includes all substances listed on schedules I through V of 21 CFR 1308 (§§ 1308.11 through 1308.15), as they may be amended by the United States Department of Justice.

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

Disqualification means any of the following three actions:

(a) The suspension, revocation, or cancellation of a CDL by the State or jurisdiction of issuance.

(b) Any withdrawal of a person's privileges to drive a CMV by a State or other jurisdiction as the result of a violation of State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

(c) A determination by the FMCSA that a person is not qualified to operate a commercial motor vehicle under part 391 of this chapter.

Driver applicant means an individual who applies to a State to obtain, transfer, upgrade, or renew a CDL.

Driver's license means a license issued by a State or other jurisdiction, to an individual which authorizes the individual to operate a motor vehicle on the highways.

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV—

(a) Driving a CMV while the person's alcohol concentration is 0.04 or more;

(b) Driving under the influence of alcohol, as prescribed by State law; or

(c) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of § 383.51(b) or § 392.5(a)(2) of this subchapter.

Eligible unit of local government means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law which has a total population of 3,000 individuals or less.

Employee means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly employed by or under lease to an employer.

Employer means any person (including the United States, a State, District of Columbia or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns employees to operate such a vehicle.

Endorsement means an authorization to an individual's CDL required to permit the individual to operate certain types of commercial motor vehicles.

Fatality means the death of a person as a result of a motor vehicle accident.

Felony means an offense under State or Federal law that is punishable by death or imprisonment for a term exceeding 1 year.

Foreign means outside the fifty United States and the District of Columbia.

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

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

Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

Imminent hazard means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

Motor vehicle means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, except that such term does not include a vehicle, machine, tractor, trailer, semitrailer operated exclusively on a rail.

Nonresident CDL means a CDL issued by a State under either of the following two conditions:

(a) To an individual domiciled in a foreign country meeting the requirements of § 383.23(b)(1).

(b) To an individual domiciled in another State meeting the requirements of § 383.23(b)(2).

Non-CMV means a motor vehicle or combination of motor vehicles not defined by the term "commercial motor vehicle (CMV)" in this section.

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

Representative vehicle means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate.

School bus means a CMV used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

Serious traffic violation means conviction of any of the following offenses when operating a CMV, except weight, defect and parking violations:

(a) Excessive speeding, involving any single offense for any speed of 15 miles per hour or more above the posted speed limit;

(b) Reckless driving, as defined by State or local law or regulation, including but not limited to offenses of driving a CMV in willful or wanton disregard for the safety of persons or property;

(c) Improper or erratic traffic lane changes;

(d) Following the vehicle ahead too closely;

(e) A violation, arising in connection with a fatal accident, of State or local law relating to motor vehicle traffic control;

(f) Driving a CMV without obtaining a CDL;

(g) Driving a CMV without a CDL in the driver's possession. Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense; or

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(h) Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.

State means a State of the United States and the District of Columbia.

State of domicile means that State where a person has his/her true, fixed, and permanent home and principal residence and to which he/she has the intention of returning whenever he/she is absent.

Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in part 171 of this title. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons.

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

Vehicle means a motor vehicle unless otherwise specified.

Vehicle group means a class or type of vehicle with certain operating characteristics.

[52 FR 20587, June 1, 1987, as amended at 53 FR 27648, July 21, 1988; 53 FR 39050, Oct. 4, 1988; 54 FR 40787, Oct. 3, 1989; 59 FR 26028, May 18, 1994; 61 FR 9566, Mar. 8, 1996; 61 FR 14679, Apr. 3, 1996; 62 FR 37151, July 11, 1997; 67 FR 49756, July 31, 2002; 68 FR 23849, May 5, 2003; 73 FR 73123, Dec. 1, 2008]

§ 383.7 Validity of CDL issued by de-certified State.

A CDL issued by a State prior to the date the State is notified by the Administrator, in accordance with the provisions of § 384.405 of this subchapter, that the State is prohibited from issuing CDLs, will remain valid until its stated expiration date.

[67 FR 49756, July 31, 2002]

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Subpart B—Single License Requirement

§ 383.21 Number of drivers' licenses.

No person who operates a commercial motor vehicle shall at any time have more than one driver's license.

[64 FR 48110, Sept. 2, 1999]

§ 383.23 Commercial driver's license.

(a) *General rule.* (1) Effective April 1, 1992, no person shall operate a commercial motor vehicle unless such person has taken and passed written and driving tests which meet the Federal standards contained in subparts F, G, and H of this part for the commercial motor vehicle that person operates or expects to operate.

(2) Except as provided in paragraph (b) of this section, no person may legally operate a CMV unless such person possesses a CDL which meets the standards contained in subpart J of this part, issued by his/her State or jurisdiction of domicile.

(b) *Exception.* (1) If a CMV operator is not domiciled in a foreign jurisdiction which the Administrator has determined tests drivers and issues CDLs in accordance with, or under standards similar to, the standards contained in subparts F, G, and H of this part, the person may obtain a Nonresident CDL from a State which does comply with the testing and licensing standards contained in such subparts F, G, and H of this part.¹

(2) If an individual is domiciled in a State while that State is prohibited

¹Effective December 29, 1988, the Administrator determined that commercial drivers' licenses issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code are in accordance with the standards of this part. Effective November 21, 1991, the Administrator determined that the new *Licencias Federales de Conductor* issued by the United Mexican States are in accordance with the standards of this part. Therefore, under the single license provision of § 383.21, a driver holding a commercial driver's license issued under the Canadian National Safety Code or a new *Licencia Federal de Conductor* issued by Mexico is prohibited from obtaining nonresident CDL, or any other type of driver's license, from a State or other jurisdiction in the United States.

from issuing CDLs in accordance with § 384.405 of this subchapter, that individual is eligible to obtain a Nonresident CDL from any State that elects to issue a Nonresident CDL and which complies with the testing and licensing standards contained in subparts F, G, and H of this part.

(c) *Learner's permit.* State learners' permits, issued for limited time periods according to State requirements, shall be considered valid commercial drivers' licenses for purposes of behind-the-wheel training on public roads or highways, if the following minimum conditions are met:

(1) The learner's permit holder is at all times accompanied by the holder of a valid CDL;

(2) He/she either holds a valid automobile driver's license, or has passed such vision, sign/symbol, and knowledge tests as the State issuing the learner's permit ordinarily administers to applicants for automotive drivers' licenses; and

(3) He/she does not operate a commercial motor vehicle transporting hazardous materials as defined in § 383.5.

[53 FR 27649, July 21, 1988, as amended at 54 FR 22285, May 23, 1989; 57 FR 31457, July 16, 1992; 67 FR 49756, July 31, 2002; 68 FR 23849, May 5, 2003]

Subpart C—Notification Requirements and Employer Responsibilities

§ 383.31 Notification of convictions for driver violations.

(a) Each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a State or jurisdiction, and who is convicted of violating, in any type of motor vehicle, a State or local law relating to motor vehicle traffic control (other than a parking violation) in a State or jurisdiction other than the one which issued his/her license, shall notify an official designated by the State or jurisdiction which issued such license, of such conviction. The notification must be made within 30 days after the date that the person has been convicted.

(b) Each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a

State or jurisdiction, and who is convicted of violating, in any type of motor vehicle, a State or local law relating to motor vehicle traffic control (other than a parking violation), shall notify his/her current employer of such conviction. The notification must be made within 30 days after the date that the person has been convicted. If the driver is not currently employed, he/she must notify the State or jurisdiction which issued the license according to § 383.31(a).

(c) *Notification.* The notification to the State official and employer must be made in writing and contain the following information:

(1) Driver's full name;

(2) Driver's license number;

(3) Date of conviction;

(4) The specific criminal or other offense(s), serious traffic violation(s), and other violation(s) of State or local law relating to motor vehicle traffic control, for which the person was convicted and any suspension, revocation, or cancellation of certain driving privileges which resulted from such conviction(s);

(5) Indication whether the violation was in a commercial motor vehicle;

(6) Location of offense; and

(7) Driver's signature.

[52 FR 20587, June 1, 1987, as amended at 54 FR 40787, Oct. 3, 1989]

§ 383.33 Notification of driver's license suspensions.

Each employee who has a driver's license suspended, revoked, or canceled by a State or jurisdiction, who loses the right to operate a commercial motor vehicle in a State or jurisdiction for any period, or who is disqualified from operating a commercial motor vehicle for any period, shall notify his/her current employer of such suspension, revocation, cancellation, lost privilege, or disqualification. The notification must be made before the end of the business day following the day the employee received notice of the suspension, revocation, cancellation, lost privilege, or disqualification.

[54 FR 40788, Oct. 3, 1989]

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§ 383.35 Notification of previous employment.

(a) Any person applying for employment as an operator of a commercial motor vehicle shall provide at the time of application for employment, the information specified in paragraph (c) of this section.

(b) All employers shall request the information specified in paragraph (c) of this section from all persons applying for employment as a commercial motor vehicle operator. The request shall be made at the time of application for employment.

(c) The following employment history information for the 10 years preceding the date the application is submitted shall be presented to the prospective employer by the applicant:

(1) A list of the names and addresses of the applicant's previous employers for which the applicant was an operator of a commercial motor vehicle;

(2) The dates the applicant was employed by these employers; and

(3) The reason for leaving such employment.

(d) The applicant shall certify that all information furnished is true and complete.

(e) An employer may require an applicant to provide additional information.

(f) Before an application is submitted, the employer shall inform the applicant that the information he/she provides in accordance with paragraph (c) of this section may be used, and the applicant's previous employers may be contacted for the purpose of investigating the applicant's work history.

§ 383.37 Employer responsibilities.

No employer may knowingly allow, require, permit, or authorize a driver to operate a CMV in the United States:

(a) During any period in which the driver has a CMV driver's license suspended, revoked, or canceled by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV;

(b) During any period in which the driver has more than one CMV driver's license;

(c) During any period in which the driver, or the CMV he or she is driving,

or the motor carrier operation, is subject to an out-of-service order; or

(d) In violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings.

[64 FR 48110, Sept. 2, 1999]

Subpart D—Driver Disqualifications and Penalties

§ 383.51 Disqualification of drivers.

(a) *General.* (1) A driver or holder of a CDL who is disqualified must not drive a CMV.

(2) An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.

(3) A driver is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder of a CDL drives a CMV or non-CMV and is convicted of the violations.

(4) Determining first and subsequent violations. For purposes of determining first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.

(5) Reinstatement after lifetime disqualification. A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to § 383.51) after 10 years if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to § 383.51) must not be reinstated.

(b) *Disqualification for major offenses.* Table 1 to § 383.51 contains a list of the offenses and periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 1 TO § 383.51

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CDL and CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .
(1) Being under the influence of alcohol as prescribed by State law * * *.	1 year	1 year	3 years	Life	Life.
(2) Being under the influence of a controlled substance * * *.	1 year	1 year	3 years	Life	Life.
(3) Having an alcohol concentration of 0.04 or greater while operating a CMV * * *.	1 year	Not applicable ...	3 years	Life	Not applicable.
(4) Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in § 383.72 of this part * * *.	1 year	1 year	3 years	Life	Life.
(5) Leaving the scene of an accident * * *.	1 year	1 year	3 years	Life	Life.
(6) Using the vehicle to commit a felony, other than a felony described in paragraph (b)(9) of this table * * *.	1 year	1 year	3 years	Life	Life.
(7) Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV.	1 year	Not applicable ...	3 years	Life	Not applicable.
(8) Causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.	1 year	Not applicable ...	3 years	Life	Not applicable.
(9) Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance * * *.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.

(c) *Disqualification for serious traffic violations.* Table 2 to § 383.51 contains a list of the offenses and the periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 2 TO § 383.51

If the driver operates a motor vehicle and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .
(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit.	60 days	60 days	120 days	120 days.
(2) driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property.	60 days	60 days	120 days	120 days.
(3) making improper or erratic traffic lane changes.	60 days	60 days	120 days	120 days.
(4) following the vehicle ahead too closely.	60 days	60 days	120 days	120 days.
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident.	60 days	60 days	120 days	120 days.
(6) driving a CMV without obtaining a CDL.	60 days	Not applicable	120 days	Not applicable.
(7) driving a CMV without a CDL in the driver's possession ¹ .	60 days	Not applicable	120 days	Not applicable.
(8) driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.	60 days	Not applicable	120 days	Not applicable.

¹Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense.

(d) *Disqualification for railroad-highway grade crossing offenses.* Table 3 to § 383.51 contains a list of the offenses and the periods for which a driver must

be disqualified, when the driver is operating a CMV at the time of the violation, as follows:

TABLE 3 TO § 383.51

If the driver is convicted of operating a CMV in violation of a Federal, State or local law because . . .	For a first conviction a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(1) The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(2) The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(3) The driver is always required to stop, but fails to stop before driving onto the crossing * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(4) The driver fails to have sufficient space to drive completely through the crossing without stopping * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(5) The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(6) The driver fails to negotiate a crossing because of insufficient undercarriage clearance * * *.	No less than 60 days	No less than 120 days	No less than 1 year.

(e) *Disqualification for violating out-of-service orders.* Table 4 to § 383.51 contains a list of the offenses and periods for which a driver must be disqualified when the driver is operating a CMV at the time of the violation, as follows:

TABLE 4 TO § 383.51

If a driver operates a CMV and is convicted of . . .	For a first conviction while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(1) Violating a driver or vehicle out-of-service order while transporting nonhazardous materials.	No less than 180 days or more than 1 year.	No less than 2 years or more than 5 years.	No less than 3 years or more than 5 years.
(2) Violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under part 172, subpart F of this title, or while operating a vehicle designed to transport 16 or more passengers, including the driver.	No less than 180 days or more than 2 years.	No less than 3 years or more than 5 years.	No less than 3 years or more than 5 years.

[67 FR 49756, July 31, 2002, as amended at 68 FR 4396, Jan. 29, 2003; 72 FR 36787, July 5, 2007]

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§ 383.52 Disqualification of drivers determined to constitute an imminent hazard.

(a) The Assistant Administrator or his/her designee must disqualify from operating a CMV any driver whose driving is determined to constitute an imminent hazard, as defined in § 383.5.

(b) The period of the disqualification may not exceed 30 days unless the FMCSA complies with the provisions of paragraph (c) of this section.

(c) The Assistant Administrator or his/her delegate may provide the driver an opportunity for a hearing after issuing a disqualification for a period of 30 days or less. The Assistant Administrator or his/her delegate must provide the driver notice of a proposed disqualification period of more than 30 days and an opportunity for a hearing to present a defense to the proposed disqualification. A disqualification imposed under this paragraph may not exceed one year in duration. The driver, or a representative on his/her behalf, may file an appeal of the disqualification issued by the Assistant Administrator's delegate with the Assistant Administrator, Adjudications Counsel (MC-CC), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(d) Any disqualification imposed in accordance with the provisions of this section must be transmitted by the FMCSA to the jurisdiction where the driver is licensed and must become a part of the driver's record maintained by that jurisdiction.

(e) A driver who is simultaneously disqualified under this section and under other provisions of this subpart, or under State law or regulation, shall serve those disqualification periods concurrently.

[67 FR 49759, July 31, 2002, as amended at 72 FR 55700, Oct. 1, 2007]

§ 383.53 Penalties.

(a) *General rule.* Any person who violates the rules set forth in subparts B and C of this part may be subject to civil or criminal penalties as provided for in 49 U.S.C. 521(b).

(b) *Special penalties pertaining to violation of out-of-service orders—(1) Driver violations.* A driver who is convicted of violating an out-of-service order shall

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be subject to a civil penalty of not less than \$2,500 for a first conviction and not less than \$5,000 for a second or subsequent conviction, in addition to disqualification under § 383.51(e).

(2) *Employer violations.* An employer who is convicted of a violation of § 383.37(c) shall be subject to a civil penalty of not less than \$2,750 nor more than \$25,000.

(c) *Special penalties pertaining to railroad-highway grade crossing violations.* An employer who is convicted of a violation of § 383.37(d) must be subject to a civil penalty of not more than \$10,000.

[59 FR 26028, May 18, 1994, as amended at 64 FR 48111, Sept. 2, 1999; 67 FR 49759, July 31, 2002; 72 FR 36788, July 5, 2007]

Subpart E—Testing and Licensing Procedures

SOURCE: 53 FR 27649, July 21, 1988, unless otherwise noted.

§ 383.71 Driver application procedures.

(a) *Initial Commercial Driver's License.* Prior to obtaining a CDL, a person must meet the following requirements:

(1)(i) *Initial Commercial Driver's License applications submitted prior to January 30, 2012.* Any person applying for a CDL prior to January 30, 2012 must meet the requirements set forth in paragraphs (a)(2) through (a)(9) of this section, and make the following applicable certification in paragraph (a)(1)(i)(A) or (B) of this section:

(A) A person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to 49 CFR part 391, must certify that he/she meets the qualification requirements contained in part 391 of this title; or

(B) A person who operates or expects to operate entirely in intrastate commerce and is not subject to part 391, is subject to State driver qualification requirements and must certify that he/she is not subject to part 391.

(ii) *Initial Commercial Driver's License applications submitted on or after January 30, 2012.* Any person applying for a CDL on or after January 30, 2012 must meet the requirements set forth in paragraphs (a)(2) through (a)(9), and (h) of this section, and make one of the following applicable certifications in

paragraph (a)(ii)(A) or (B) of this section:

(A) *Non-excepted interstate.* A person must certify that he or she operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR part 391, and is required to obtain a medical examiner's certificate by § 391.45 of this chapter;

(B) *Excepted interstate.* A person must certify that he or she operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 CFR 390.3(f), 391.2, 391.68 or 398.3 from all or parts of the qualification requirements of 49 CFR part 391, and is therefore not required to obtain a medical examiner's certificate by 49 CFR 391.45 of this chapter;

(C) *Non-excepted intrastate.* A person must certify that he or she operates only in intrastate commerce and therefore is subject to State driver qualification requirements; or

(D) *Excepted intrastate.* A person must certify that he or she operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the State driver qualification requirements.

(b) *License transfer.* When applying to transfer a CDL from one State of domicile to a new State domicile, an applicant shall apply for a CDL from the new State of domicile within no more than 30 days after establishing his/her new domicile. The applicant shall:

(1) Provide to the new State of domicile the certifications contained in § 383.71(a) (1) and (6);

(2) Provide to the new State of domicile updated information as specified in subpart J of this part;

(3) If the applicant wishes to retain a hazardous materials endorsement, he/she must comply with the requirements for such endorsement specified in § 383.71(a)(9) and State requirements as specified in § 383.73(b)(4);

(4) Surrender the CDL from the old State of domicile to the new State of domicile; and

(5) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(c) *License renewal.* When applying for a renewal of a CDL, all applicants shall:

(1) Provide certification contained in § 383.71(a)(1);

(2) Provide update information as specified in subpart J of this part; and

(3) If a person wishes to retain a hazardous materials endorsement, he/she must comply with the requirements specified in § 383.71(a)(9) and pass the test specified in § 383.121 for such endorsement.

(4) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(d) *License upgrades.* When applying to operate a commercial motor vehicle in a different group or endorsement from the group or endorsement in which the applicant already has a CDL, all persons shall:

(1) Provide the necessary certifications as specified in § 383.71(a)(1) and (a)(4);

(2) Pass all tests specified in § 383.71(a)(2) and (a)(3) for the new vehicle group and/or different endorsements; and

(3) To obtain a hazardous materials endorsement, comply with the requirements for such endorsement specified in § 383.71(a)(9).

(e) *Nonresident CDL.* When an applicant is domiciled in a foreign jurisdiction, as defined in § 383.5, where the commercial motor vehicle operator testing and licensing standards do not meet the standards contained in subparts G and H of this part, as determined by the Administrator, such applicant shall obtain a Nonresident CDL from a State which meets such standards. Such applicant shall:

(1) Complete the requirements to obtain a CDL contained in § 383.71(a); and

(2) After receipt of the CDL, and for as long as it is valid, notify the State which issued the CDL of any adverse action taken by any jurisdiction or governmental agency, foreign or domestic, against his/her driving privileges. Such adverse actions would include but not be limited to license suspension or revocation, or disqualification from operating a commercial

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motor vehicle for the convictions described in § 383.51. Notifications shall be made within the time periods specified in § 383.33.

(f) If a State uses the alternative method described in § 383.73(i) to achieve the objectives of the certifications in § 383.71(a), then the driver applicant shall satisfy such alternative methods as are applicable to him/her with respect to initial licensing, license transfer, license renewal, and license upgrades.

(g) *Existing CDL holder's self-certification.* Every person who holds a CDL must provide to the State on or after January 30, 2012, but not later than January 30, 2014 the certification contained in § 383.71(a)(1)(ii).

(h) *Medical certification documentation required by the State.* An applicant or CDL holder who certifies to non-excepted, interstate driving operations according to § 383.71(a)(1)(ii)(A) must comply with applicable requirements in paragraphs (h)(1) through (3) of this section:

(1) *New CDL applicants.* After January 30, 2012, a new CDL applicant who certifies that he or she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of a medical examiner's certificate prepared by a medical examiner, as defined in § 390.5 of this chapter, and the State will post a certification status of "certified" on the Commercial Driver's License Information System (CDLIS) driver record for the driver;

(2) *Existing CDL holders.* By January 30, 2014, provide the State with an original or copy (as required by the State) of a current medical examiner's certificate prepared by a medical examiner, as defined in 49 CFR 390.5, and the State will post a certification status of "certified" on CDLIS driver record for the driver. If the non-excepted, interstate CDL holder fails to provide the State with a current medical examiner's certificate, the State will post a certification status of "not-certified" in the CDLIS driver record for the driver, and initiate a CDL downgrade following State procedures in accordance with section 383.73(j)(4); and

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(3) *Maintaining the medical certification status of "certified."* In order to maintain a medical certification status of "certified," after January 30, 2012, a CDL holder who certifies that he or she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of each subsequently issued medical examiner's certificate.

[53 FR 27649, July 21, 1988, as amended at 67 FR 49759, July 31, 2002; 68 FR 23849, May 5, 2003; 73 FR 73123, Dec. 1, 2008]

§ 383.72 Implied consent to alcohol testing.

Any person who holds a CDL is considered to have consented to such testing as is required by any State or jurisdiction in the enforcement of §§ 383.51(b)(2)(i) and 392.5(a)(2) of this chapter. Consent is implied by driving a commercial motor vehicle.

[66 FR 49872, Oct. 1, 2001]

§ 383.73 State procedures.

(a) *Initial licensure.* Prior to issuing a CDL to a person, a State shall:

(1) Require the driver applicant to certify, pass tests, and provide information as described in §§ 383.71(a)(1) through (6);

(2) Check that the vehicle in which the applicant takes his/her test is representative of the vehicle group the applicant has certified that he/she operates or expects to operate;

(3) Initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law, and that the person does not have a driver's license from more than one State or jurisdiction. The record check must include, but is not limited to, the following:

(i) A check of the applicant's driving record as maintained by his/her current State of licensure, if any;

(ii) A check with the CDLIS to determine whether the driver applicant already has been issued a CDL, whether the applicant's license has been suspended, revoked, or canceled, or if the applicant has been disqualified from operating a commercial motor vehicle;

(iii) A check with the National Driver Register (NDR) to determine whether the driver applicant has:

(A) Been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) Had a license (other than CDL) suspended, revoked, or canceled for cause in the 3-year period ending on the date of application; or

(C) Been convicted of any offenses contained in section 205(a)(3) of the National Driver Register Act of 1982 (23 U.S.C. 401 note); and

(iv) A request for the applicant's complete driving record from all States where the applicant was previously licensed over the last 10 years to drive any type of motor vehicle. *Exception:* A State is only required to make the driving record check specified in this paragraph (a)(3) for drivers renewing a CDL for the first time after September 30, 2002, provided a notation is made on the driver's record confirming that the driver record check required by this paragraph (a)(3) has been made and noting the date it was done; and

(v) Beginning January 30, 2012, a check that the medical certification status of a driver that self-certified according to § 383.71(a)(1)(ii)(A) (non-excepted interstate) is "certified;"

(4) Require the driver applicant to surrender his/her driver's license issued by another State, if he/she has moved from another State.

(5) Beginning January 30, 2012, for drivers who certified their type of driving according to § 383.71(a)(1)(ii)(A) (non-excepted interstate) and, if the CDL driver submits a current medical examiner's certificate, provide the driver with a receipt, which is a date-stamped original or copy of the medical examiner's certificate, and post all required information from the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (j) of this section.

(6) For persons applying for a hazardous materials endorsement, require compliance with the standards for such endorsement specified in § 383.71(a)(9).

(b) *License transfers.* Prior to issuing a CDL to a person who has a CDL from another State, a State shall:

(1) Require the driver applicant to make the certifications contained in § 383.71(a);

(2) Complete a check of the driver applicant's record as contained in § 383.73(a)(3);

(3) Request and receive updates of information specified in subpart J of this part;

(4) If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in § 383.71(a)(9) and ensure that the driver has, within the 2 years preceding the transfer, either:

(i) Passed the test for such endorsement specified in § 383.121; or

(ii) Successfully completed a hazardous materials test or training that is given by a third party and that is deemed by the State to substantially cover the same knowledge base as that described in § 383.121;

(5) Obtain the CDL issued by the applicant's previous State of domicile; and

(6)(i) Beginning January 30, 2012, verify from the CDLIS driver record that that the medical certification status of driver is "certified" for those who certified according to § 383.71(a)(1)(ii)(A).

(ii) *Exception.* A driver who certified according to § 383.71(a)(1)(ii)(A) that he or she plans to operate in non-excepted interstate commerce may present a current medical examiner's certificate issued prior to January 30, 2012. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

(c) *License renewals.* Prior to renewing any CDL a State shall:

(1) Require the driver applicant to make the certifications contained in § 383.71(a);

(2) Complete a check of the driver applicant's record as contained in § 383.73(a)(3);

(3) Request and receive updates of information specified in subpart J of this part;

(4) If such applicant wishes to retain a hazardous materials endorsement, require the driver to pass the test specified in § 383.121 and comply with the

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standards specified in §383.71(a)(9) for such endorsement; and

(5)(i) Beginning January 30, 2012, verify from the CDLIS driver record that the medical certification status is "certified" for drivers who self-certified according to §383.71(a)(1)(ii)(A).

(ii) *Exception.* A driver who certified according to §383.71(a)(1)(ii)(A) may present a current medical examiner's certificate issued prior to January 30, 2012. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

(d) *License upgrades.* Prior to issuing an upgrade of a CDL, a State shall:

(1) Require such driver applicant to provide certifications, pass tests, and meet applicable hazardous materials standards specified in §383.71(d);

(2) Complete a check of the driver applicant's record as described in §383.73(a)(3); and

(3)(i) Beginning January 30, 2012, verify from the CDLIS driver record that the medical certification status is "certified" for drivers who self-certified according to §383.71(a)(1)(ii)(A).

(ii) *Exception.* A driver who certified according to §383.71(a)(1)(ii)(A) may present a current medical examiner's certificate issued prior to January 30, 2012. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

(e) *Nonresident CDL.* A State may issue a Nonresident CDL to a person domiciled in a foreign country if the Administrator has determined that the commercial motor vehicle testing and licensing standards in the foreign jurisdiction of domicile do not meet the standards contained in this part. State procedures for the issuance of a nonresident CDL, for any modifications thereto, and for notifications to the CDLIS shall at a minimum be identical to those pertaining to any other CDL, with the following exceptions:

(1) If the applicant is requesting a transfer of his/her Nonresident CDL, the State shall obtain the Nonresident CDL currently held by the applicant and issued by another State;

(2) The State shall add the word "Nonresident" to the face of the CDL, in accordance with §383.153(b); and

(3) The State shall have established, prior to issuing any Nonresident CDL, the practical capability of disqualifying the holder of any Nonresident CDL, by withdrawing, suspending, canceling, and revoking his/her Nonresident CDL as if the Nonresident CDL were a CDL issued to a resident of the State.

(f) *License issuance.* After the State has completed the procedures described in §383.73 (a), (b), (c), (d) or (e), it may issue a CDL to the driver applicant. The State shall notify the operator of the CDLIS of such issuance, transfer, renewal, or upgrade within the 10-day period beginning on the date of license issuance.

(g) *Penalties for false information.* If a State determines, in its check of an applicant's license status and record prior to issuing a CDL, or at any time after the CDL is issued, that the applicant has falsified information contained in subpart J of this part or any of the certifications required in §383.71(a), the State shall at a minimum suspend, cancel, or revoke the person's CDL or his/her pending application, or disqualify the person from operating a commercial motor vehicle for a period of at least 60 consecutive days.

(h) *Reciprocity.* A State shall allow any person who has a valid CDL which is not suspended, revoked, or canceled, and who is not disqualified from operating a commercial motor vehicle, to operate a commercial motor vehicle in the State.

(i) *Alternative procedures.* A State may implement alternative procedures to the certification requirements of §383.71(a) (1), (4), and (6), provided those procedures ensure that the driver meets the requirements of those paragraphs.

(j) *Medical recordkeeping—*(1) Status of *CDL Holder.* Beginning January 30, 2012, for each operator of a commercial motor vehicle required to have a commercial driver's license, the current licensing State must:

(i) Post the driver's self-certification of type of driving under §383.71(a)(1)(ii),

(ii) Retain the original or a copy of the medical certificate of any driver required to provide documentation of physical qualification for 3 years beyond the date the certificate was issued, and

(iii) Post the information from the medical examiner's certificate within 10 business days to the CDLIS driver record, including:

(A) Medical examiner's name;

(B) Medical examiner's telephone number;

(C) Date of medical examiner's certificate issuance;

(D) Medical examiner's license or certificate number and the State that issued it;

(E) Medical examiner's National Registry identification number (if the National Registry of Medical Examiners, mandated by 49 U.S.C. 31149(d), requires one);

(F) The indicator of medical certification status, i.e., "certified" or "not-certified";

(G) Expiration date of the medical examiner's certificate;

(H) Existence of any medical variance on the medical certificate, such as an exemption, Skill Performance Evaluation (SPE) certification, or grandfather provisions;

(I) Any restrictions (e.g., corrective lenses, hearing aid, required to have possession of an exemption letter or SPE certificate while on-duty, etc.); and

(J) Date the medical examiner's certificate information was posted to the CDLIS driver record.

(2) *Status update.* Beginning January 30, 2012, the State must, within 10 calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, update the medical certification status of that driver as "not-certified."

(3) *Variance update.* Beginning January 30, 2012, within 10 calendar days of receiving information from FMCSA regarding issuance or renewal of a medical variance for a driver, the State must update the CDLIS driver record to include the medical variance information provided by FMCSA.

(4) *Downgrade.* (i) Beginning January 30, 2012, if a driver's medical certification or medical variance expires, or

FMCSA notifies the State that a medical variance was removed or rescinded, the State must:

(A) Notify the CDL holder of his or her CDL "not-certified" medical certification status and that the CDL privilege will be removed from the driver license unless the driver submits a current medical certificate and/or medical variance, or changes his or her self-certification to driving only in exempted or intrastate commerce (if permitted by the State);

(B) Initiate established State procedures for downgrading the license. The CDL downgrade must be completed and recorded within 60 days of the driver's medical certification status becoming "not-certified" to operate a CMV.

(ii) Beginning January 30, 2014, if a driver fails to provide the State with the certification contained in § 383.71(a)(1)(ii), or a current medical examiner's certificate if the driver self-certifies according to 383.71(a)(1)(ii)(A) that he or she is operating in non-exempt interstate commerce as required by § 383.71(h), the State must mark that CDLIS driver record as "not-certified" and initiate a CDL downgrade following State procedures in accordance with paragraph (j)(4)(i)(B) of this section.

(5) FMCSA Medical Programs is designated as the keeper of the list of State contacts for receiving medical variance information from FMCSA. Beginning January 30, 2012, States are responsible for insuring their medical variance contact information is always up-to-date with FMCSA's Medical Programs.

[53 FR 27649, July 21, 1988, as amended at 54 FR 40788, Oct. 3, 1989; 67 FR 49760, July 31, 2002; 68 FR 23850, May 5, 2003; 73 FR 73124, Dec. 1, 2008]

§ 383.75 Third party testing.

(a) *Third party tests.* A State may authorize a person (including another State, an employer, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government) to administer the skills tests as specified in subparts G and H of this part, if the following conditions are met:

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(1) The tests given by the third party are the same as those which would otherwise be given by the State; and

(2) The third party as an agreement with the State containing, at a minimum, provisions that:

(i) Allow the FMCSA, or its representative, and the State to conduct random examinations, inspections and audits without prior notice;

(ii) Require the State to conduct on-site inspections at least annually;

(iii) Require that all third party examiners meet the same qualification and training standards as State examiners, to the extent necessary to conduct skills tests in compliance with subparts G and H;

(iv) Require that, at least on an annual basis, State employees take the tests actually administered by the third party as if the State employee were a test applicant, or that States test a sample of drivers who were examined by the third party to compare pass/fail results; and

(v) Reserve unto the State the right to take prompt and appropriate remedial action against the third-party testers in the event that the third-party fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third-party contract.

(b) *Proof of testing by a third party.* A driver applicant who takes and passes driving tests administered by an authorized third party shall provide evidence to the State licensing agency that he/she has successfully passed the driving tests administered by the third party.

§ 383.77 Substitute for driving skills tests.

At the discretion of a State, the driving skill test as specified in § 383.113 may be waived for a CMV operator who is currently licensed at the time of his/her application for a CDL, and substituted with either an applicant's driving record and previous passage of an acceptable skills test, or an applicant's driving record in combination with certain driving experience. The State shall impose conditions and limitations to restrict the applicants from whom a State may accept alternative requirements for the skills test de-

scribed in § 383.113. Such conditions must require at least the following:

(a) An applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she:

(1) Has not had more than one license (except in the instances specified in § 383.21(b));

(2) Has not had any license suspended, revoked, or canceled;

(3) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b);

(4) Has not had more than one conviction for any type of motor vehicle for serious traffic violations; and

(5) Has not had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault; and

(b) An applicant must provide evidence and certify that:

(1) He/she is regularly employed in a job requiring operation of a CMV, and that either:

(2) He/she has previously taken and passed a skills test given by a State with a classified licensing and testing system, and that the test was behind-the-wheel in a representative vehicle for that applicant's driver's license classification; or

(3) He/she has operated, for at least 2 years immediately preceding application for a CDL, a vehicle representative of the commercial motor vehicle the driver applicant operates or expects to operate.

[53 FR 27649, July 21, 1988, as amended at 55 FR 25606, June 22, 1990; 67 FR 49760, July 31, 2002]

Subpart F—Vehicle Groups and Endorsements

SOURCE: 53 FR 27651, July 21, 1988, unless otherwise noted.

§ 383.91 Commercial motor vehicle groups.

(a) Vehicle group descriptions. Each driver applicant must possess and be tested on his/her knowledge and skills, described in subpart G of this part, for

the commercial motor vehicle group(s) for which he/she desires a CDL. The commercial motor vehicle groups are as follows:

(1) **Combination vehicle (Group A)**—Any combination of vehicles with a gross combination weight rating (GCWR) of 11,794 kilograms or more (26,001 pounds or more) provided the GVWR of the vehicle(s) being towed is in excess of 4,536 kilograms (10,000 pounds).

(2) **Heavy Straight Vehicle (Group B)**—Any single vehicle with a GVWR of 11,794 kilograms or more (26,001 pounds or more), or any such vehicle towing a vehicle not in excess of 4,536 kilograms (10,000 pounds) GVWR.

(3) **Small Vehicle (Group C)**—Any single vehicle, or combination of vehicles, that meets neither the definition of Group A nor that of Group B as contained in this section, but that either is designed to transport 16 or more passengers including the driver, or is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

(b) **Representative vehicle.** For purposes of taking the driving test in accordance with § 383.113, a representative vehicle for a given vehicle group contained in § 383.91(a), is any commercial motor vehicle which meets the definition of that vehicle group.

(c) **Relation between vehicle groups.** Each driver applicant who desires to operate in a different commercial motor vehicle group from the one which his/her CDL authorizes shall be required to retake and pass all related tests, except the following:




(1) A driver who has passed the knowledge and skills tests for a combination vehicle (Group A) may operate a heavy straight vehicle (Group B) or a small vehicle (Group C), provided that he/she possesses the requisite endorsement(s); and

(2) A driver who has passed the knowledge and skills tests for a heavy straight vehicle (Group B) may operate any small vehicle (Group C), provided that he/she possesses the requisite endorsement(s).

(d) **Vehicle group illustration.** Figure 1 illustrates typical vehicles within each of the vehicle groups defined in this section.

Figure 1
 VEHICLE GROUPS AS ESTABLISHED BY FHWA (SECTION 383.91)

[Note: Certain types of vehicles, such as passenger and doubles/triples, will require an endorsement. Please consult text for particulars.]

Group:	*Description:
A	Any combination of vehicles with a GCWR of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds. (Holders of a Group A license may, with any appropriate endorsements, operate all vehicles within Groups B and C.)
	Examples include but are not limited to:
	
B	Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. (Holders of a Group B license may, with any appropriate endorsements, operate all vehicles within Group C.)
	Examples include but are not limited to:
	
C	Any single vehicle, or combination of vehicles, that does not meet the definition of Group A or Group B as contained herein, but that either is designed to transport 16 or more passengers including the driver, or is placarded for hazardous materials.
	Examples include but are not limited to:
	

* The representative vehicle for the skills test must meet the written description for that group. The silhouettes typify, but do not fully cover, the types of vehicles falling within each group.

[53 FR 27651, July 21, 1988, as amended at 54 FR 47989, Nov. 20, 1989; 61 FR 9566, Mar. 8, 1996]

§ 383.93 Endorsements.

(a) *General.* In addition to taking and passing the knowledge and skills tests described in subpart G of this part, all persons who operate or expect to operate the type(s) of motor vehicles described in paragraph (b) of this section shall take and pass specialized tests to obtain each endorsement. The State shall issue CDL endorsements only to drivers who successfully complete the tests.

(b) *Endorsement descriptions.* An operator must obtain State-issued endorsements to his/her CDL to operate commercial motor vehicles which are:

- (1) Double/triple trailers;
- (2) Passenger vehicles;
- (3) Tank vehicles;
- (4) Used to transport hazardous materials as defined in § 383.5, or
- (5) School buses.

(c) *Endorsement testing requirements.* The following tests are required for the endorsements contained in paragraph (b) of this section:

- (1) *Double/Triple Trailers*—a knowledge test;
- (2) *Passenger*—a knowledge and a skills test;
- (3) *Tank vehicle*—a knowledge test;
- (4) *Hazardous Materials*—a knowledge test; and
- (5) *School bus*—a knowledge and a skills test.

[53 FR 27651, July 21, 1988, as amended at 67 FR 49760, July 31, 2002; 68 FR 23850, May 5, 2003]

§ 383.95 Restrictions.

(a) *Air brake restrictions.* (1) If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the State must indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.

(2) For the purposes of the skills test and the restriction, air brakes shall include any braking system operating fully or partially on the air brake principle.

(b) *Medical variance restrictions.* If the State is notified according to § 383.73(j)(3) that the driver has been issued a medical variance, the State must indicate the existence of such a medical variance on the CDLIS driver

record and the CDL document, if issued, using the restriction code "V" indicating there is information about a medical variance on the CDLIS driver record. NOTE: In accordance with the agreement between Canada and the United States (see footnote to § 391.41), drivers with a medical variance restriction code on their commercial driver license are restricted from operating a CMV in the other country.

[73 FR 73125, Dec. 1, 2008]

Subpart G—Required Knowledge and Skills

SOURCE: 53 FR 27654, July 21, 1988, unless otherwise noted.

§ 383.110 General requirement.

All drivers of commercial motor vehicles shall have knowledge and skills necessary to operate a commercial motor vehicle safely as contained in this subpart. A sample of the specific types of items which a State may wish to include in the knowledge and skills tests that it administers to CDL applicants is included in the appendix to this subpart G.

§ 383.111 Required knowledge.

All commercial motor vehicle operators must have knowledge of the following general areas:

(a) *Safe operations regulations.* Driver-related elements of the regulations contained in 49 CFR parts 382, 391, 392, 393, 395, 396, and 397, such as: Motor vehicle inspection, repair, and maintenance requirements; procedures for safe vehicle operations; the effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation; the types of motor vehicles and cargoes subject to the requirements; and the effects of alcohol and drug use upon safe commercial motor vehicle operations.

(b) *Commercial motor vehicle safety control systems.* Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions.

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Commercial motor vehicle drivers shall have knowledge on the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.

(c) *Safe vehicle control*—(1) *Control systems* The purpose and function of the controls and instruments commonly found on commercial motor vehicles.

(2) *Basic control*. The proper procedures for performing various basic maneuvers.

(3) *Shifting*. The basic shifting rules and terms, as well as shift patterns and procedures for common transmissions.

(4) *Backing*. The procedures and rules for various backing maneuvers.

(5) *Visual search*. The importance of proper visual search, and proper visual search methods.

(6) *Communication*. The principles and procedures for proper communications and the hazards of failure to signal properly.

(7) *Speed management*. The importance of understanding the effects of speed.

(8) *Space management*. The procedures and techniques for controlling the space around the vehicle.

(9) *Night operation*. Preparations and procedures for night driving.

(10) *Extreme driving conditions*. The basic information on operating in extreme driving conditions and the hazards that are encountered in extreme conditions.

(11) *Hazard perceptions*. The basic information on hazard perception and clues for recognition of hazards.

(12) *Emergency maneuvers*. The basic information concerning when and how to make emergency maneuvers.

(13) *Skid control and recovery*. The information on the causes and major types of skids, as well as the procedures for recovering from skids.

(d) *Relationship of cargo to vehicle control*. The principles and procedures for the proper handling of cargo.

(e) *Vehicle inspections*: The objectives and proper procedures for performing vehicle safety inspections, as follows:

(1) The importance of periodic inspection and repair to vehicle safety.

(2) The effect of undiscovered malfunctions upon safety.

(3) What safety-related parts to look for when inspecting vehicles.

(4) Pre-trip/enroute/post-trip inspection procedures.

(5) Reporting findings.

(f) *Hazardous materials knowledge, such as*: What constitutes hazardous material requiring an endorsement to transport; classes of hazardous materials; labeling/placarding requirements; and the need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes.

(g) *Air brake knowledge as follows*:

(1) Air brake system nomenclature;

(2) The dangers of contaminated air supply;

(3) Implications of severed or disconnected air lines between the power unit and the trailer(s);

(4) Implications of low air pressure readings;

(5) Procedures to conduct safe and accurate pre-trip inspections.

(6) Procedures for conducting enroute and post-trip inspections of air actuated brake systems, including ability to detect defects which may cause the system to fail.

(h) *Operators for the combination vehicle group shall also have knowledge of*:

(1) Coupling and uncoupling—The procedures for proper coupling and uncoupling a tractor to semi-trailer.

(2) Vehicle inspection—The objectives and proper procedures that are *unique* for performing vehicle safety inspections on combination vehicles.

[53 FR 27654, July 21, 1988, as amended at 62 FR 37151, July 11, 1997]

§ 383.113 Required skills.

(a) *Basic vehicle control skills*. All applicants for a CDL must possess and demonstrate basic motor vehicle control skills for each vehicle group which the driver operates or expects to operate. These skills should include the ability to start, to stop, and to move the vehicle forward and backward in a safe manner.

(b) *Safe driving skills*. All applicants for a CDL must possess and demonstrate the safe driving skills for their vehicle group. These skills should include proper visual search methods, appropriate use of signals, speed control for weather and traffic conditions,

and ability to position the motor vehicle correctly when changing lanes or turning.

(c) *Air brake skills.* Except as provided in § 393.95, all applicants shall demonstrate the following skills with respect to inspection and operation of air brakes:

(1) *Pre-trip inspection skills.* Applicants shall demonstrate the skills necessary to conduct a pre-trip inspection which includes the ability to:

(i) Locate and verbally identify air brake operating controls and monitoring devices;

(ii) Determine the motor vehicle's brake system condition for proper adjustments and that air system connections between motor vehicles have been properly made and secured;

(iii) Inspect the low pressure warning device(s) to ensure that they will activate in emergency situations;

(iv) Ascertain, with the engine running, that the system maintains an adequate supply of compressed air;

(v) Determine that required minimum air pressure build up time is within acceptable limits and that required alarms and emergency devices automatically deactivate at the proper pressure level; and

(vi) Operationally check the brake system for proper performance.

(2) *Driving skills.* Applicants shall successfully complete the skills tests contained in § 383.113 in a representative vehicle equipped with air brakes.

(d) *Test area.* Skills tests shall be conducted in on-street conditions or under a combination of on-street and off-street conditions.

(e) *Simulation technology.* A State may utilize simulators to perform skills testing, but under no circumstances as a substitute for the required testing in on-street conditions.

§ 383.115 Requirements for double/triple trailers endorsement.

In order to obtain a Double/Triple Trailers endorsement each applicant must have knowledge covering:

(a) Procedures for assembly and hookup of the units;

(b) Proper placement of heaviest trailer;

(c) Handling and stability characteristics including off-tracking, response

to steering, sensory feedback, braking, oscillatory sway, rollover in steady turns, yaw stability in steady turns; and

(d) Potential problems in traffic operations, including problems the motor vehicle creates for other motorists due to slower speeds on steep grades, longer passing times, possibility for blocking entry of other motor vehicles on freeways, splash and spray impacts, aerodynamic buffeting, view blockages, and lateral placement.

§ 383.117 Requirements for passenger endorsement.

An applicant for the passenger endorsement must satisfy both of the following additional knowledge and skills test requirements.

(a) *Knowledge test.* All applicants for the passenger endorsement must have knowledge covering at least the following topics:

(1) Proper procedures for loading/unloading passengers;

(2) Proper use of emergency exits, including push-out windows;

(3) Proper responses to such emergency situations as fires and unruly passengers;

(4) Proper procedures at railroad crossings and drawbridges; and

(5) Proper braking procedures.

(b) *Skills test.* To obtain a passenger endorsement applicable to a specific vehicle group, an applicant must take his/her skills test in a passenger vehicle satisfying the requirements of that group as defined in § 383.91.

§ 383.119 Requirements for tank vehicle endorsement.

In order to obtain a Tank Vehicle Endorsement, each applicant must have knowledge covering the following:

(a) Causes, prevention, and effects of cargo surge on motor vehicle handling;

(b) Proper braking procedures for the motor vehicle when it is empty, full and partially full;

(c) Differences in handling of baffled/compartmental tank interiors versus non-baffled motor vehicles;

(d) Differences in tank vehicle type and construction;

(e) Differences in cargo surge for liquids of varying product densities;

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(f) Effects of road grade and curvature on motor vehicle handling with filled, half-filled and empty tanks;

(g) Proper use of emergency systems; and

(h) For drivers of DOT specification tank vehicles, retest and marking requirements.

§ 383.121 Requirements for hazardous materials endorsement.

In order to obtain a Hazardous Material Endorsement each applicant must have such knowledge as is required of a driver of a hazardous materials laden vehicle, from information contained in 49 CFR parts 171, 172, 173, 177, 178, and 397 on the following:

(a) Hazardous materials regulations including:

- (1) Hazardous materials table;
- (2) Shipping paper requirements;
- (3) Marking;
- (4) Labeling;
- (5) Placarding requirements;
- (6) Hazardous materials packaging;
- (7) Hazardous materials definitions and preparation;
- (8) Other regulated material (e.g., ORM-D);
- (9) Reporting hazardous materials accidents; and
- (10) Tunnels and railroad crossings.

(b) Hazardous materials handling including:

- (1) Forbidden Materials and Packages;
- (2) Loading and Unloading Materials;
- (3) Cargo Segregation;
- (4) Passenger Carrying Buses and Hazardous Materials;
- (5) Attendance of Motor Vehicles;
- (6) Parking;
- (7) Routes;
- (8) Cargo Tanks; and
- (9) "Safe Havens."

(c) Operation of emergency equipment including:

- (1) Use of equipment to protect the public;
- (2) Special precautions for equipment to be used in fires;
- (3) Special precautions for use of emergency equipment when loading or unloading a hazardous materials laden motor vehicle; and
- (4) Use of emergency equipment for tank vehicles.

(d) Emergency response procedures including:

- (1) Special care and precautions for different types of accidents;
- (2) Special precautions for driving near a fire and carrying hazardous materials, and smoking and carrying hazardous materials;
- (3) Emergency procedures; and
- (4) Existence of special requirements for transporting Class A and B explosives.

§ 383.123 Requirements for a school bus endorsement.

(a) An applicant for a school bus endorsement must satisfy the following three requirements:

(1) Qualify for passenger vehicle endorsement. Pass the knowledge and skills test for obtaining a passenger vehicle endorsement.

(2) Knowledge test. Must have knowledge covering at least the following three topics:

(i) Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights and other warning and passenger safety devices required for school buses by State or Federal law or regulation.

(ii) Emergency exits and procedures for safely evacuating passengers in an emergency.

(iii) State and Federal laws and regulations related to safely traversing highway rail grade crossings.

(3) Skills test. Must take a driving skills test in a school bus of the same vehicle group (see §383.91(a)) as the school bus applicant will drive.

(4) *Exception.* Knowledge and skills tests administered before September 30, 2002 and approved by FMCSA as meeting the requirements of this section, meet the requirements of paragraphs (a)(2) and (a)(3) of this section.

(b) *Substitute for driving skills test.* (1) At the discretion of a State, the driving skills test required in paragraph (a)(3) of this section may be waived for an applicant who is currently licensed, has experience driving a school bus, has a good driving record, and meets the conditions set forth in paragraph (b)(2) of this section.

(2) An applicant must certify and the State must verify that, during the two-

year period immediately prior to applying for the school bus endorsement, the applicant:

(i) Held a valid CDL with a passenger vehicle endorsement to operate a school bus representative of the group he or she will be driving;

(ii) Has not had his or her driver's license or CDL suspended, revoked or canceled or been disqualified from operating a CMV;

(iii) Has not been convicted of any of the disqualifying offenses in §383.51(b) while operating a CMV or of any offense in a non-CMV that would be disqualifying under §383.51(b) if committed in a CMV;

(iv) Has not had more than one conviction of any of the serious traffic violations defined in §383.5, while operating any type motor vehicle;

(v) Has not had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident;

(vi) Has not been convicted of any motor vehicle traffic violation that resulted in an accident; and

(vii) Has been regularly employed as a school bus driver, has operated a school bus representative of the group the applicant seeks to drive, and provides evidence of such employment.

(3) After September 30, 2006, the provisions in paragraph (b) of this section do not apply.

[67 FR 49760, July 31, 2002, as amended at 70 FR 56593, Sept. 28, 2005]

APPENDIX TO SUBPART G OF PART 383—
REQUIRED KNOWLEDGE AND SKILLS—
SAMPLE GUIDELINES

The following is a sample of the specific types of items which a State may wish to include in the knowledge and skills tests that it administers to CDL applicants. This appendix closely follows the framework of §§383.111 and 383.113. It is intended to provide more specific guidance and suggestion to States. Additional detail in this appendix is not binding and States may depart from it at their discretion provided their CDL program tests for the general areas of knowledge and skill specified in §§383.111 and 383.113.

EXAMPLES OF SPECIFIC KNOWLEDGE ELEMENTS

(a) *Safe operations regulations.* Driver-related elements of the following regulations:

(1) Motor vehicle inspection, repair, and maintenance requirements as contained in parts 393 and 396 of this title;

(2) Procedures for safe vehicle operations as contained in part 392 of this title;

(3) The effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation as contained in parts 391, 392, and 395 of this title;

(4) The types of motor vehicles and cargoes subject to the requirements contained in part 397 of this title; and

(5) The effects of alcohol and drug use upon safe commercial motor vehicle operations as contained in parts 391 and 395 of this title.

(b) *Commercial motor vehicle safety control systems.* Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions. Commercial motor vehicle drivers shall have knowledge on the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.

(c) *Safe vehicle control—(1) Control systems.* The purpose and function of the controls and instruments commonly found on commercial motor vehicles.

(2) *Basic control.* The proper procedures for performing various basic maneuvers, including:

(i) Starting, warming up, and shutting down the engine;

(ii) Putting the vehicle in motion and stopping;

(iii) Backing in a straight line; and

(iv) Turning the vehicle, e.g., basic rules, off-tracking, right/left turns and right curves.

(3) *Shifting.* The basic shifting rules and terms, as well as shift patterns and procedures for common transmissions, including:

(i) Key elements of shifting, e.g., controls, when to shift and double clutching;

(ii) Shift patterns and procedures; and

(iii) Consequences of improper shifting.

(4) *Backing.* The procedures and rules for various backing maneuvers, including:

(i) Backing principles and rules; and

(ii) Basic backing maneuvers, e.g., straight-line backing, and backing on a curved path.

(5) *Visual search.* The importance of proper visual search, and proper visual search methods, including:

(i) Seeing ahead and to the sides;

(ii) Use of mirrors; and

(iii) Seeing to the rear.

(6) *Communication.* The principles and procedures for proper communications and the hazards of failure to signal properly, including:

(i) Signaling intent, e.g., signaling when changing speed or direction in traffic;

(ii) Communicating presence, e.g., using horn or lights to signal presence; and
 (iii) Misuse of communications.

(7) *Speed management.* The importance of understanding the effects of speed, including:

- (i) Speed and stopping distance;
- (ii) Speed and surface conditions;
- (iii) Speed and the shape of the road;
- (iv) Speed and visibility; and
- (v) Speed and traffic flow.

(8) *Space management.* The procedures and techniques for controlling the space around the vehicle, including:

- (i) The importance of space management;
- (ii) Space cushions, e.g., controlling space ahead/to the rear;
- (iii) Space to the sides; and
- (iv) Space for traffic gaps.

(9) *Night operation.* Preparations and procedures for night driving, including:

(i) Night driving factors, e.g., driver factors, (vision, glare, fatigue, inexperience), roadway factors, (low illumination, variation in illumination, familiarity with roads, other road users, especially drivers exhibiting erratic or improper driving), vehicle factors (headlights, auxiliary lights, turn signals, windshields and mirrors); and

(ii) Night driving procedures, e.g., preparing to drive at night and driving at night.

(10) *Extreme driving conditions.* The basic information on operating in extreme driving conditions and the hazards that are encountered in extreme conditions, including:

- (i) Adverse weather;
- (ii) Hot weather; and
- (iii) Mountain driving.

(11) *Hazard perceptions.* The basic information on hazard perception and clues for recognition of hazards, including:

- (i) Importance of hazards recognition;
- (ii) Road characteristics; and
- (iii) Road user activities.

(12) *Emergency maneuvers.* The basic information concerning when and how to make emergency maneuvers, including:

- (i) Evasive steering;
- (ii) Emergency stop;
- (iii) Off-road recovery;
- (iv) Brake failure; and
- (v) Blowouts.

(13) *Skid control and recovery.* The information on the causes and major types of skids, as well as the procedures for recovering from skids.

(d) *Relationship of cargo to vehicle control.* The principles and procedures for the proper handling of cargo, including:

(1) The importance of proper cargo handling, e.g., consequences of improperly secured cargo, drivers' responsibilities, Federal/State and local regulations.

(2) Principles of weight distribution.

(3) Principles and methods of cargo securement.

(e) *Vehicle inspections:* The objectives and proper procedures for performing vehicle safety inspections, as follows:

(1) The importance of periodic inspection and repair to vehicle safety and to prevention of enroute breakdowns.

(2) The effect of undiscovered malfunctions upon safety.

(3) What safety-related parts to look for when inspecting vehicles, e.g., fluid leaks, interference with visibility, bad tires, wheel and rim defects, braking system defects, steering system defects, suspension system defects, exhaust system defects, coupling system defects, and cargo problems.

(4) Pre-trip/enroute/post-trip inspection procedures.

(5) Reporting findings.

(f) *Hazardous materials knowledge, as follows:*

(1) What constitutes hazardous material requiring an endorsement to transport; and

(2) Classes of hazardous materials, labeling/placarding requirements, and the need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes.

(g) *Air brake knowledge as follows:*

(1) General air brake system nomenclature;

(2) The dangers of contaminated air (dirt, moisture and oil) supply;

(3) Implications of severed or disconnected air lines between the power unit and the trailer(s);

(4) Implications of low air pressure readings;

(5) Procedures to conduct safe and accurate pre-trip inspections, including knowledge about:

- (i) Automatic fail-safe devices;
- (ii) System monitoring devices; and
- (iii) Low pressure warning alarms.

(6) Procedures for conducting enroute and post-trip inspections of air actuated brake systems, including ability to detect defects which may cause the system to fail, including:

(i) Tests which indicate the amount of air loss from the braking system within a specified period, with and without the engine running; and

(ii) Tests which indicate the pressure levels at which the low air pressure warning devices and the tractor protection valve should activate.

(h) *Operators for the combination vehicle group shall also have knowledge of:*

(1) *Coupling and uncoupling.* The procedures for proper coupling and uncoupling a tractor to semi-trailer.

(2) *Vehicle inspection*—The objectives and proper procedures that are *unique* for performing vehicle safety inspections on combination vehicles.

EXAMPLES OF SPECIFIC SKILLS ELEMENTS

These examples relate to paragraphs (a) and (b) of § 383.113 only.

(a) *Basic vehicle control skills.* All applicants for a CDL must possess and demonstrate the following basic motor vehicle control skills for each vehicle group which the driver operates or expects to operate. These skills shall include:

- (1) Ability to start, warm-up, and shut down the engine;
- (2) Ability to put the motor vehicle in motion and accelerate smoothly, forward and backward;
- (3) Ability to bring the motor vehicle to a smooth stop;
- (4) Ability to back the motor vehicle in a straight line, and check path and clearance while backing;
- (5) Ability to position the motor vehicle to negotiate and then make left and right turns;
- (6) Ability to shift as required and select appropriate gear for speed and highway conditions;
- (7) Ability to back along a curved path; and
- (8) Ability to observe the road and the behavior of other motor vehicles, particularly before changing speed and direction.

(b) *Safe driving skills.* All applicants for a CDL must possess and demonstrate the following safe driving skills for any vehicle group. These skills shall include:

- (1) Ability to use proper visual search methods.
- (2) Ability to signal appropriately when changing speed or direction in traffic.
- (3) Ability to adjust speed to the configuration and condition of the roadway, weather and visibility conditions, traffic conditions, and motor vehicle, cargo and driver conditions;
- (4) Ability to choose a safe gap for changing lanes, passing other vehicles, as well as for crossing or entering traffic;
- (5) Ability to position the motor vehicle correctly before and during a turn to prevent other vehicles from passing on the wrong side as well as to prevent problems caused by off-tracking;
- (6) Ability to maintain a safe following distance depending on the condition of the road, on visibility, and on vehicle weight; and
- (7) Ability to adjust operation of the motor vehicle to prevailing weather conditions including speed selection, braking, direction changes and following distance to maintain control.

Subpart H—Tests

SOURCE: 53 FR 27657, July 21, 1988, unless otherwise noted.

§ 383.131 Test procedures.

(a) *Driver information manuals.* Information on how to obtain a CDL and endorsements shall be included in manuals and made available by States to CDL applicants. All information provided to the applicant shall include the following:

(1) Information on the requirements described in § 383.71, the implied consent to alcohol testing described in § 383.72, the procedures and penalties, contained in § 383.51(b) to which a CDL holder is exposed for refusal to comply with such alcohol testing, State procedures described in § 383.73, and other appropriate driver information contained in subpart E of this part;

(2) Information on vehicle groups and endorsements as specified in subpart F of this part;

(3) The substance of the knowledge and skills which drivers shall have as outlined in subpart G of this part for the different vehicle groups and endorsements;

(4) Details of testing procedures, including the purpose of the tests, how to respond, any time limits for taking the test, and any other special procedures determined by the State of issuance; and

(5) Directions for taking the tests.

(b) *Examiner procedures.* A State shall provide to test examiners details on testing and any other State-imposed requirements in the examiner's manual, and shall ensure that examiners are qualified to administer tests on the basis of training and/or other experience. States shall provide standardized scoring sheets for the skills tests, as well as standardized driving instructions for the applicants. Such examiners' manuals shall contain the following:

(1) Information on driver application procedures contained in § 383.71, State procedures described in § 383.73, and other appropriate driver information contained in subpart E of this part;

(2) Details on information which must be given to the applicant;

(3) Details on how to conduct the tests;

(4) Scoring procedures and minimum passing scores;

(5) Information for selecting driving test routes;

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- (6) List of the skills to be tested;
- (7) Instructions on where and how the skills will be tested;
- (8) How performance of the skills will be scored; and
- (9) Causes for automatic failure of skills tests.

[53 FR 27657, July 21, 1988, as amended at 53 FR 39051, Oct. 4, 1988]

§ 383.133 Testing methods.

(a) All tests shall be constructed in such a way as to determine if the applicant possesses the required knowledge and skills contained in subpart G of this part for the type of motor vehicle or endorsement the applicant wishes to obtain.

(b) States shall develop their own specifications for the tests for each vehicle group and endorsement which must be at least as stringent as the Federal standards.

(c) States shall determine specific methods for scoring the knowledge and skills tests.

(d) Passing scores must meet those standards contained in § 383.135.

(e) Knowledge and skills tests shall be based solely on the information contained in the driver manuals referred to in § 383.131(a).

(f) Each knowledge test shall be valid and reliable so as to assure that driver applicants possess the knowledge required under § 383.111.

(g) Each basic knowledge test, i.e., the test covering the areas referred to in § 383.111 for the applicable vehicle group, shall contain at least 30 items, exclusive of the number of items testing air brake knowledge. Each endorsement knowledge test, and the air brake component of the basic knowledge test as described in § 383.111(g), shall contain a number of questions that is sufficient to test the driver applicant's knowledge of the required subject matter with validity and reliability.

(h) The skills tests shall have administrative procedures, designed to achieve interexaminer reliability, that are sufficient to ensure fairness of pass/fail rates.

§ 383.135 Minimum passing scores.

(a) The driver applicant must correctly answer at least 80 percent of the questions on each knowledge test in

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order to achieve a passing score on such knowledge test.

(b) To achieve a passing score on the skills test, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in § 383.113.

(c) If the driver applicant does not obey traffic laws, or causes an accident during the test, he/she shall automatically fail the test.

(d) The scoring of the basic knowledge and skills tests shall be adjusted as follows to allow for the air brake restriction (§ 383.95):

(1) If the applicant scores less than 80 percent on the air brake component of the basic knowledge test as described in § 383.111(g), the driver will have failed the air brake component and, if the driver is issued a CDL, an air brake restriction shall be indicated on the license; and

(2) If the applicant performs the skills test in a vehicle not equipped with air brakes, the driver will have omitted the air brake component as described in § 383.113(c) and, if the driver is issued a CDL, the air brake restriction shall be indicated on the license.

Subpart I—Requirement for Transportation Security Administration approval of hazardous materials endorsement issuances

§ 383.141 General.

(a) *Applicability date.* Beginning on the date(s) listed in 49 CFR 1572.13(b), this section applies to State agencies responsible for issuing hazardous materials endorsements for a CDL, and applicants for such endorsements.

(b) *Prohibition.* A State may not issue, renew, upgrade, or transfer a hazardous materials endorsement for a CDL to any individual authorizing that individual to operate a commercial motor vehicle transporting a hazardous material in commerce unless the Transportation Security Administration has determined that the individual does not pose a security risk warranting denial of the endorsement.

(c) *Individual notification.* At least 60 days prior to the expiration date of the

CDL or hazardous materials endorsement, a State must notify the holder of a hazardous materials endorsement that the individual must pass a Transportation Security Administration security threat assessment process as part of any application for renewal of the hazardous materials endorsement. The notice must advise a driver that, in order to expedite the security screening process, he or she should file a renewal application as soon as possible, but not later than 30 days before the date of expiration of the endorsement. An individual who does not successfully complete the Transportation Security Administration security threat assessment process referenced in paragraph (b) of this section may not be issued a hazardous materials endorsement.

(d) *Hazardous materials endorsement renewal cycle.* Each State must require that hazardous materials endorsements be renewed every 5 years or less so that individuals are subject to a Transportation Security Administration security screening requirement referenced in paragraph (b) of this section at least every 5 years.

[68 FR 24850, May 5, 2003, as amended at 68 FR 63033, Nov. 7, 2003; 69 FR 51393, Aug. 19, 2004; 70 FR 22271, Apr. 29, 2005]

Subpart J—Commercial Driver's License Document

SOURCE: 53 FR 27657, July 21, 1988, unless otherwise noted.

§ 383.151 General.

The CDL shall be a document that is easy to recognize as a CDL. At a minimum, the document shall contain information specified in § 383.153.

§ 383.153 Information on the document and application.

(a) All CDLs shall contain the following information:

(1) The prominent statement that the license is a "Commercial Driver's License" or "CDL," except as specified in § 383.153(b).

(2) The full name, signature, and mailing address of the person to whom such license is issued;

(3) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height;

(4) Color photograph of the driver;

(5) The driver's State license number;

(6) The name of the State which issued the license;

(7) The date of issuance and the date of expiration of the license;

(8) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:

(i) A for Combination Vehicle;

(ii) B for Heavy Straight Vehicle; and

(iii) C for Small Vehicle.

(9) The endorsement(s) for which the driver has qualified, if any, indicated as follows:

(i) T for double/triple trailers;

(ii) P for passenger;

(iii) N for tank vehicle;

(iv) H for hazardous materials;

(v) X for a combination of tank vehicle and hazardous materials endorsements;

(vi) S for school bus; and

(vii) At the discretion of the State, additional codes for additional groupings of endorsements, as long as each such discretionary code is fully explained on the front or back of the CDL document.

(b) If the CDL is a Nonresident CDL, it shall contain the prominent statement that the license is a "Nonresident Commercial Driver's License" or "Nonresident CDL." The word "Nonresident" must be conspicuously and unmistakably displayed, but may be noncontiguous with the words "Commercial Driver's License" or "CDL."

(c) If the State has issued the applicant an air brake restriction as specified in § 383.95, that restriction must be indicated on the license.

(d) Except in the case of a Nonresident CDL:

(1) A driver applicant must provide his/her Social Security Number on the application of a CDL; and

(2) The State must provide the Social Security Number to the CDLIS.

[53 FR 27657, July 21, 1988, as amended at 67 FR 49760, July 31, 2002]

§ 383.155

§ 383.155 Tamperproofing requirements.

States shall make the CDL tamperproof to the maximum extent practicable. At a minimum, a State shall use the same tamperproof method used for noncommercial drivers' licenses.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

Subpart A—General

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- 384.101 Purpose and scope.
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- 384.226 Prohibition on masking convictions.
- 384.227–384.230 [Reserved]
- 384.231 Satisfaction of State disqualification requirement.
- 384.232 Required timing of record checks.
- 384.233 Background records checks.
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Subpart C—Procedures for Determining State Compliance

- 384.301 Substantial compliance—general requirement.
- 384.303 [Reserved]
- 384.305 State certifications for Federal fiscal years after FY 1994.
- 384.307 FMCSA program reviews of State compliance.
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Subpart D—Consequences of State Noncompliance

- 384.401 Withholding of funds based on non-compliance.
- 384.403 Period of availability; effect of compliance and noncompliance.
- 384.405 Decertification of State CDL program.
- 384.407 Emergency CDL grants.

AUTHORITY: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1753, 1767; and 49 CFR 1.73.

SOURCE: 59 FR 26039, May 18, 1994, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 384 appear at 66 FR 49872, Oct. 1, 2001.

Subpart A—General

§ 384.101 Purpose and scope.

(a) *Purpose.* The purpose of this part is to ensure that the States comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)).

(b) *Scope.* This part:

(1) Includes the minimum standards for the actions States must take to be in substantial compliance with each of the 22 requirements of 49 U.S.C. 31311(a);

(2) Establishes procedures for determinations to be made of such compliance by States; and

(3) Specifies the consequences of State noncompliance.

[62 FR 37152, July 11, 1997]

§ 384.103 Applicability.

The rules in this part apply to all States.

§ 384.105 Definitions.

(a) The definitions in part 383 of this title apply to this part, except where otherwise specifically noted.



Pupil Transportation

New York State Department of Transportation Regulations of the Commissioner Part 191

Child Safety Zones

Section

191.1 Purpose

191.2 Definitions

191.3 Types of safety hazards students may encounter while walking to and from school

191.4 Point determination

191.5 Illustrative examples of various hazards

191.6 Petition for the designation of a child safety zone

191.7 Application for determining a child safety zone

191.8 Analysis sheet for determining a child safety zone

§ 191.1 Purpose.

Historical Note

The Child Safety Transportation Act of 1992 (Chapters 69 and 403 of the Laws of 1992) allows school districts to transport students for distances less than the statutory transportation distance requirements. These guidelines have been developed in consultation with the State Education Department, the Department of Motor Vehicles and the Division of State Police in order to identify conditions under which walking to and from school may endanger the safety of children. Using these guidelines, school districts can authorize the establishment of a child safety zone.

There are three basic types of safety hazards students may encounter while walking to school:

Highways without sidewalks or adequate shoulders,
Highway intersections, and
Highway-railroad grade crossings

The guidelines identify factors for each of these types of hazards. These factors, each with assigned point values, are added together to determine if a hazardous zone exists. If the total points equal or exceed the values as set forth in section 191.4 of this Part, then the school district may choose to create a child safety zone.

Historical Note

Sec. filed Feb. 2, 1993 eff. Feb. 17, 1993.

§ 191.2 Definitions.

Historical Note

The following words and phrases used in this Part are defined as follows:

- (a) Curb. A vertical or sloping member along the edge of a roadway clearly defining the pavement edge.
- (b) Highway. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. For the purposes of this Part, the word

highway is a generic term for parkway, road, street, avenue, drive, boulevard, lane, etc.

(c) Intersection. The area embraced when two or more highways join one another. Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection. There is no differentiation between intersections involving major highways and intersections involving minor highways. Each intersection is evaluated on its own merits by calculating the hazard points from the appropriate chart in section 191.4 of this Part.

(d) Narrow bridge or underpass. A bridge or underpass which, because of significant reduction in pavement widths on or under the structure, requires students to walk on the roadway due to the absence of shoulders or sidewalks. In addition, for a location to be considered as a narrow bridge or underpass, at least one of the following roadway widths shall exist:

(1) two way traffic with a width of less than 18 feet;

(2) two way traffic with a width greater than or equal to 18 feet, but less than the width of the approach roadway;

(3) one way bridge with a width of less than or equal to 10 feet; or

(4) one way bridge with a roadway width less than the width of the approach roadway.

(e) No control. Neither stop signs nor traffic signals are in place that would require vehicles to stop on the roadway which the children are crossing. Yield signs are not considered as stop controls for the purpose of these guidelines.

(f) Number of lanes crossed. The total number of lanes on the roadway being crossed, including through lanes and turning lanes.

(g) Number of tracks. The number of railroad tracks at a railroad crossing. Tracks must be within 100 feet of each other to be considered as part of the same crossing. Crossings with an adult school crossing guard is considered in the same vein as crossing a street with an adult crossing guard. Therefore, no hazard is deemed to exist.

(h) Number of trains. The sum of all freight and passenger trains using a railroad crossing during a one hour interval in the morning and a one hour interval in the afternoon. The one hour intervals should occur during the normal hours students can be expected to walk to and from school. The number of passenger trains using the crossing during the affected hours can usually be obtained from the railroad companies. However, determining the number of freight trains may require a manual count because their schedule is subject to a degree of randomness. Since the number of freight trains using a crossing may vary from day to day, an average count based on five weekdays of observations during the morning and afternoon crossing periods must be made. Switching movements using a crossing can also be considered, but the number used should be an average count based on five weekdays of observations during the morning and afternoon crossing periods.

(i) Pedestrian devices. The presence of traffic control equipment such as pedestrian signal indications and/or pedestrian push buttons for the purpose of controlling pedestrian traffic. Pedestrian indications are traffic signal indications which consist of the illuminated words "WALK" and "DONT WALK". A traffic signal equipped with pedestrian indications may or may not have push buttons to operate the pedestrian signal. The other type of pedestrian device is simply a pedestrian push button attached to a pole or post. When used without pedestrian signal indications, the activated push button provides for additional time so that a pedestrian can cross the street safely. It should be noted that all traffic will not necessarily come to a halt when the indications are displayed. While some traffic signals are equipped with pedestrian indications that provide an exclusive walk phase and no turns on red, others have pedestrian indications which allow traffic and pedestrians to move concurrently. Therefore, it is important to recognize the type of pedestrian indications because they do not all operate in the same manner.

(j) Roadway. The portion of a highway improved, designed, marked, or ordinarily used for vehicular travel, exclusive of the shoulder and slope. In the event a highway includes two or more separate roadways (i.e., divided highway), the term roadway shall refer to any such roadway separately. The median is not considered a part of the roadway.

(k) Shoulder. The portion of a highway contiguous with the roadway. Generally, this is the relatively flat area

between the outer edge of a roadway with no curb and the point where the earth begins sloping either upward or downward, intended for the use by stopped vehicles and for emergency use. It may be paved or unpaved. A shoulder with a width less than five feet is considered a narrow shoulder. For the purposes of this program, a shoulder will be considered to exist if it is visible by means of pavement marking delineation (i.e., a white edgeline) or if the pavement seams or joints makes it appear that a shoulder (usually less than the width of a travel lane) is present.

(l) Sidewalk. The portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians. It may be paved or unpaved.

(m) Speed limit. The legally set maximum speed which vehicles are permitted to travel on a roadway.

(n) Stop sign control. Traffic on the roadway being crossed by the school children is required to stop by a stop sign.

(o) Traffic control signals. Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

(p) Volume of traffic. The volume of traffic on a highway is based on a 15 minute vehicular traffic count including all through and turning vehicles, during a typical morning or afternoon period in which students are walking to or from school. The hourly volume, if known, may be substituted for the 15 minute count by simply dividing the hourly count by four. If traffic counts are conducted for both the morning and afternoon period, then the average of the two volume counts should be used. However, there is no requirement to conduct more than one traffic count for each highway under consideration. The volume of traffic can be classified into the following categories for the purpose of this program:

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Low (L) < 50 vehicles per 15 minute period

Medium (M) 50 to 100 vehicles per 15 minute period

High (H) > 100 vehicles per 15 minute period

A separate count should be made whenever a change in the speed limit occurs or the type of walking facility changes, (i.e., sidewalk to shoulder to no shoulder). In addition, a new traffic count should be made when it is suspected that the volume changes due to the influence of an intersecting highway. It is possible that a stretch of highway may have several segments each with different or similar volume groups.

Historical Note

Sec. filed Feb. 2, 1993 eff. Feb. 17, 1993.

§ 191.3 Types of safety hazards students may encounter while walking to and from school.

Historical Note

A student may encounter three different types of potential hazards while walking to school:

(a) Highways without sidewalks or adequate shoulders. With this type of hazard, a student must be walking either on a narrow shoulder or in the roadway. If a usable sidewalk exists, then the student is expected to use it unless the sidewalk is closed to the public by order of the local municipality. The length of the highway section without sidewalks where children walk on the roadway or on a shoulder within five feet of the roadway is to be measured by any normally accepted method (i.e., use a measuring wheel, measuring tape or scale the distance from a map). For children to be covered by a child safety zone, they must walk the complete length of the section under analysis. When evaluating a subdivision or neighborhood, the district may use the closest residence to the school for which all students in the neighborhood must pass as the point to begin calculations.

If this residence qualifies, all other residences in the neighborhood will also qualify. In order to determine a point value for this type of hazard, the following information must be known:

- (1) facility which the student walks on (i.e., sidewalk, shoulder greater than five feet wide, shoulder less than five feet wide, or roadway);
- (2) 15 minute volume count on the affected roadway during the normal period when students walk to and from school; and
- (3) speed limit on the affected roadway. Determine the type of facility, the volume of traffic, and the speed limit using the definitions for "Curb", "Narrow bridge or underpass", "Roadway", "Shoulder", "Sidewalk", "Speed limit", and "Volume of traffic". Distances should be rounded to the nearest foot. On a roadway without a shoulder for a distance of 397 feet, one point is awarded for the first 300 feet and a second point is awarded for feet 301 through 600.

(b) Highway intersections. With this type of hazard, the student must be crossing a roadway at an intersection or a marked midblock pedestrian crossing. Two roadways may need to be crossed at an intersection. When this occurs, only the most critical roadway (highest points) should be used. The roadways which the student must cross can either be public or private. In the case of a private road, such as an entrance to a shopping center or an industrial plant, the 15-minute volume must be representative of a 15-minute period when the student walks to or from school. Crossing a roadway is not considered a hazard due to the presence of any of the following controls which provide pedestrian protection:

- (1) all way stop signs;
- (2) adult crossing guard; and
- (3) pedestrian bridge or underpass within 500 feet of the crossing which can be utilized instead of crossing the road. Each intersection is considered a separate, distinct hazard. Along a given route, a student may cross four to five intersections. The intersection with the highest point value should be used in the analysis to determine if a CSZ exists because a hazardous intersection must be crossed. If a combination of hazards is to be examined, then the two intersections which have the highest individual point totals may be used. Consequently, the number of qualifying points is higher for multiple hazards than it is for a single hazard. Determine the type of control, the number of lanes of traffic on the roadway being crossed, the volume of traffic, and the speed limit using the definitions for "No control", "Number of lanes crossed", "Speed limit", "Stop sign control", "Traffic control signals" and "Volume of traffic".

(c) Highway-railroad grade crossings. With this type of hazard, the following information must be known:

- (1) number of tracks in use; and
- (2) number of trains using the tracks during the morning and afternoon crossing periods. Determine the number of tracks and trains using the definitions for "Number of tracks" and "Number of trains".

Historical Note

Sec. filed Feb. 2, 1993 eff. Feb. 17, 1993.

§ 191.4 Point determination.

Historical Note

An analysis should be completed for the highway sections containing the types of hazards the student encounters. A route to school can involve walking along one or more highways. As a result, it is not always obvious when a new highway segment should be evaluated, especially when conditions may change along that highway. A new highway segment exists whenever the facility type on which a student must walk changes. There are four different types of facilities:

- (a) sidewalk (any width) or a shoulder \geq five feet wide;
- (b) shoulder $<$ five feet wide;
- (c) roadway with no shoulder; and
- (d) roadway with a narrow bridge or overpass.

In some cases, a highway or several highways with the same type of walking facility, may undergo several changes regarding its volume and/or speed limit. To simplify matters, the average volume and/or speed limit

that occurs in the segment should be used. For example, over a one mile stretch, the following situation occurs for a series of contiguous highways without adequate shoulders (i.e., shoulder < five feet wide):

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+++++++
+++++++
-----+-----+-----+-----+
Point A to B .15 mile Low Volume 40 mph
Point B to C .35 mile Medium Volume 35 mph
Point C to D .50 mile High Volume 30 mph
1.00 mile
    
```

The average speed is 35 mph $[(40 + 35 + 30) / 3]$ and would be used in calculating the point totals. Since the average speed is only required to be determined to the nearest five mph interval, it can be easily calculated as simply a straight, unweighted average of all the speeds. The route used between home and school must avoid hazardous locations when a more reasonable route is available. In addition, the analysis is to be based on conditions that will remain basically unchanged throughout the school year. Section 3635-b(2) specifies that transportation will be provided "on the basis that their most direct walking route to school will traverse a hazardous zone". However, before a CSZ can be established, alternative solutions must be investigated. Sometimes, a hazard can be mitigated by changing the route which the student walks to one that is slightly shorter or longer. Such a route could be deemed more "reasonable" because it avoids the alleged hazards found on the more direct walking route. For routes where a single hazard exists, determine the type of hazard, the number of points produced by the hazard and the highest grade level that would qualify for bus transportation as indicated in the accompanying chart. For routes where several hazards exists, there are two options which can be followed. First, determine the type of hazards that exist and calculate the number of points produced by each hazard. Compare the point totals for each hazard and use the point value of the greatest hazard to determine the highest grade level that would qualify for bus transportation as indicated in the accompanying chart. If an area fails to qualify for a specific grade level, then a combination of hazards should be examined. Determine the types of hazards, the sum of points produced by the two greatest hazards and the highest grade level that would qualify for bus transportation as indicated in the accompanying chart. It should be noted that the two hazards identified may be of the same type or of different types. A school route will be determined to be a hazardous zone for children in certain grades if it produces at least the points indicated in the accompanying chart.

TABLE 1 - NUMBER OF QUALIFYING POINTS REQUIRED

```

-----+-----+
Total number of points required to qualify a student for POINTS
transportation
-----+-----+
A. Grades K - 8 with 1 HAZARD 12
---+-----+-----+
B. Grades K - 8 with 2 Greatest HAZARDS 21
C. Grades 9 - 12 with 1 HAZARD 15
D. Grades 9 - 12 with 2 Greatest HAZARDS 27
    
```

TABLE 2 - HIGHWAYS WITHOUT SIDEWALKS OR ADEQUATE SHOULDERS

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-----+-----+
SITUATION POINTS
-----+-----+
    
```

1. Student walks on a sidewalk, shoulder or roadway with a given length:

-----+-----+

- A. Sidewalk or shoulder \geq 5 feet wide: 0
- B. Shoulder $<$ 5 feet wide: *
 - * 1 point for every 500 ft or fraction thereof; examples:
 - 1 to 500 ft = 1 point, 501 to 1000 ft = 2 points
- C. Roadway with no shoulder: **
 - ** 1 point for every 300 ft or fraction thereof; examples:
 - 1 to 300 ft = 1 point, 301 to 600 ft = 2 points
- D. Roadway with a narrow bridge or overpass: ***
 - *** 1 point for every 25 ft or fraction thereof; examples:
 - 1 to 25 ft = 1 point, 26 to 50 ft = 2 points

2. Student walks on roadway or shoulder $<$ 5 ft wide with 15 minute traffic volumes of:

-----+-----+

- A. Low (L) - less than 50 vehicles 1
- B. Medium (M) - 50 to 100 vehicles 3
- C. High (H) - more than 100 vehicles 5

3. Student walks on roadway or shoulder $<$ 5 ft wide with a speed limit \geq 40 MPH:

-----+-----+

- A. 40 MPH 1
- B. 45 MPH 2
- C. 50 MPH 3
- D. 55 MPH 4

TABLE 3 - HIGHWAY INTERSECTIONS

-----+-----+

SITUATION POINTS

-----+-----+

4. Student crosses a highway intersection with the following degree of traffic control:

-----+-----+

- A. All way stop signs, an adult crossing guard, or a pedestrian bridge/underpass within 500 feet of the crossing
- B. Traffic signal with pedestrian devices 1 per lane (*)
- C. Stop signs, or a traffic signal without 2 per lane pedestrian devices (*)
- D. No traffic control measures 3 per lane (*)

5. Student walks on roadway or shoulder $<$ 5 ft wide with 15 minute traffic volumes of:

-----+-----+

- A. Low (L) - less than 50 vehicles 1
- B. Medium (M) - 50 to 100 vehicles 3
- C. High (H) - more than 100 vehicles 5

6. Student crosses a highway intersection with a speed limit of:

-----+-----+

- A. less than 40 MPH 0
- B. 40 MPH 1
- C. 45 MPH 2
- D. 50 MPH 3
- E. 55 MPH 4

(*)-Up to 4 lanes may be considered
 (*)-Up to 4 lanes may be considered
 (*)-Up to 4 lanes may be considered

TABLE 4 - HIGHWAY - RAILROAD GRADE CROSSINGS

-----+-----+
 SITUATION POINTS
 -----+-----+

7. Student crosses an active railroad crossing during the normal school crossing period:

-----+-----+

- A. 1 or 2 tracks and 0 trains 0
 - 1 train 5
 - 2 trains 9
 - 3 or more trains 13
- B. 3 or more tracks and 0 trains 0
 - 1 train 7
 - 2 trains 11
 - 3 or more trains 15

Historical Note
 Sec. filed Feb. 2, 1993 eff. Feb. 17, 1993.

§ 191.5 Illustrative examples of various hazards.
 Historical Note

(a) Highways without sidewalks or adequate shoulders. A 4th grade child going to an elementary school must walk four feet from the roadway on a shoulder along a two lane road for a distance of 1/2 mile. If the road is posted at 50 mph, with a 15 minute vehicular traffic count of 120, the situation would produce the following points:

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 ++++++
 -----+-----+

HAZARD TYPE - HIGHWAYS WITHOUT SIDEWALKS OR ADEQUATE SHOULDERS

- 1. Shoulder < five feet wide, 1/2 mile 6 points
- 2. 120 vehicles per 15 minutes 5
- 3. 50 mph 3

HAZARD TYPE - HIGHWAY INTERSECTIONS

- 4. Does not cross highway 0
- 5. N/A 0

- 6. N/A 0
- HAZARD TYPE - HIGHWAY - RAILROAD GRADE CROSSINGS
- 7. Does not cross railroad tracks 0
- 14 points

Result: CSZ established for grades K - 8
 No CSZ established for grades 9 - 12
 To establish a CSZ, 12 points are required for a 4th grade student and 15 points for students in grades 9 - 12. The situation meets the criteria for establishing a CSZ for students in grades K - 8 since 14 points were calculated. However, a CSZ is not justified for students in grades 9 - 12.

(b) Highways without sidewalks or adequate shoulders. A family has a 3rd grade child and an 9th grade child going to schools at the same location. They must walk 1050 feet on a two lane roadway posted at 40 mph with no shoulder or sidewalk. Recent traffic counts indicate that 600 vehicles per hour use the roadway during the morning walk to school. Each child would have the following points:

- ++++++
 ++++++
 -----+
- HAZARD TYPE - HIGHWAYS W/O SIDEWALKS OR ADEQUATE SHOULDERS
- 1. No Shoulder, 1050 feet 4 points
 - 2. 600 vph (150 veh per 15 minutes) 5
 - 3. 40 mph 1

- HAZARD TYPE - HIGHWAY INTERSECTIONS
- 4. Does not cross highway 0
 - 5. N/A 0
 - 6. N/A 0

- HAZARD TYPE - HIGHWAY - RAILROAD GRADE CROSSINGS
- 7. Does not cross railroad tracks 0
 - 10 points

Result: No CSZ established for grades K - 8
 No CSZ established for grades 9 - 12
 To establish a CSZ, 12 points are required for a 3rd grade student and 15 points for students in grades 9 - 12. The situation does not meet the criteria for establishing a CSZ for students in grades K - 8 since 10 points were calculated. Also, a CSZ is not justified for students in grades 9 - 12.

(c) Highway intersections. An 8th grade child walking to a middle school on a sidewalk must cross Central Avenue, a four lane highway with a posted speed limit of 45 mph. Traffic is not required to stop on Central Avenue, only on the intersecting side streets. A 15 minute vehicular traffic count generated 200 vehicles on Central Avenue. The child would have the following points:

- ++++++
 ++++++
 -----+
- HAZARD TYPE - HIGHWAYS W/O SIDEWALKS OR ADEQUATE SHOULDERS
- 1. Sidewalk 0 points

- 2. N/A 0
 - 3. N/A 0
 - HAZARD TYPE - HIGHWAY INTERSECTIONS
 - 4. Cross 4 lane roadway w/o traffic control 12
 - 5. 200 vehicles per 15 minutes 5
 - 6. 45 mph traffic on Central Avenue 2
 - HAZARD TYPE - HIGHWAY - RAILROAD GRADE CROSSINGS
 - 7. Does not cross railroad tracks 0
- 19 points

Result: CSZ established for grades K - 8
 CSZ established for grades 9 - 12
 To establish a CSZ, 12 points are required for an 8th grade student and 15 points for students in grades 9 - 12. The situation meets the criteria for establishing a CSZ for students in grades K - 8 since 14 points were calculated. A CSZ is also justified for students in grades 9 - 12.

(d) Highway-railroad crossings. A 5th grade child walking to school on a sidewalk must cross two adjacent railroad tracks. If this location has two trains crossing daily during the one hour period children are going to school and one train crossing daily during the one hour period children are returning from school, there would be a total of three trains, and the situation would produce the following points:

- ++++++
 ++++++
 -----+
- HAZARD TYPE - HIGHWAYS W/O SIDEWALKS OR ADEQUATE SHOULDERS
- 1. Sidewalk 0 points
 - 2. N/A 0
 - 3. N/A 0
 - HAZARD TYPE - HIGHWAY INTERSECTIONS
 - 4. Does not cross highway 0
 - 5. N/A 0
 - 6. N/A 0
 - HAZARD TYPE - HIGHWAY - RAILROAD GRADE CROSSINGS
 - 7. Cross 2 tracks, 3 trains 13
- 13 points

Result: CSZ established for grades K - 8
 No CSZ established for grades 9 - 12
 To establish a CSZ, 12 points are required for an 8th grade student and 15 points for students in grades 9 - 12. The situation meets the criteria for establishing a CSZ for students in grades K - 8 since 13 points were calculated. However, a CSZ is not justified for students in grades 9 - 12.

(e) Combination of two greatest hazards. A sophomore student going to a high school must walk four feet from the roadway on a shoulder along a two lane road for a distance of 1/2mile. The road is posted at 35 mph, with a 15 minute vehicular traffic count of 240. The student must also cross Main Street, a three lane highway with a posted speed limit of 45 mph. Traffic is controlled by a traffic signal with pedestrian indications. A 15 minute vehicular traffic count generated 200 vehicles on Main Street. The situation would produce the following points:

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HAZARD TYPE - HIGHWAYS W/O SIDEWALKS OR ADEQUATE SHOULDERS

- 1. Shoulder < 5 feet wide, 1/2 mile 6 points
 - 2. 240 veh per 15 minutes on two lane road 5
 - 3. 35 mph on two lane roadway 0
- 11 points

HAZARD TYPE - HIGHWAY INTERSECTIONS

- 4. Cross Main Street, 3 lanes, traffic signal with 3 pedestrian indications
 - 5. 200 veh per 15 minutes on Main Street 5
 - 6. 45 mph on Main street 2
- 10 points

HAZARD TYPE - HIGHWAY - RAILROAD GRADE CROSSINGS

- 7. Does not cross railroad tracks 0
- 0 points

Sum of Two Greatest Hazards 21 points

Result: CSZ established for grades K - 8

No CSZ established for grades 9 - 12

To establish a CSZ, 12 points are required for an 8th grade student and 15 points for students in grades 9 - 12. The situation does not meet the criteria for establishing a CSZ based on a single hazard for students in grades K - 8 or grades 9 - 12. However, when the two greatest hazards are combined, the criteria is met for grades K - 8 since 21 points were calculated. However, a CSZ is not justified for students in grades 9 - 12.

(f) Combination of two greatest hazards. A sophomore student going to a high school must walk four feet from the roadway on a shoulder along a two lane road for a distance of .8 mile (4224 feet). The road is posted at 35 mph, with a 15 minute vehicular traffic count of 240. The student must also cross Main Street, a three lane highway with a posted speed limit of 45 mph. Traffic is controlled by a traffic signal without pedestrian indications. A 15 minute vehicular traffic count generated 200 vehicles on Main Street. In addition, the student must cross a highway-railroad grade crossing with one track. This location has one train crossing daily during the one hour period children are going to school and one train crossing daily during the one hour period children are returning from school. Therefore, there would be a total of two trains, and the situation would produce the following points:

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-----+

HAZARD TYPE - HIGHWAYS W/O SIDEWALKS OR ADEQUATE SHOULDERS

- 1. Shoulder < 5 feet wide, .8 mile 9 points
 - 2. 240 veh per 15 minutes on two lane road 5
 - 3. 35 mph on two lane roadway 0
- 14 points

HAZARD TYPE - HIGHWAY INTERSECTIONS

- 4. Cross Main Street, 3 lanes, traffic signal without 6 pedestrian indications
- 5. 200 veh per 15 minutes on Main Street 5

6. 45 mph on Main street 2
13 points

Result: CSZ established for grades K - 8 based on 1 hazard

CSZ established for grades 9 - 12 based on 2 hazards

To establish a CSZ, 12 points are required for students in grades 8 - 12 and 15 points for students in grades 9 - 12. The situation does meet the criteria for establishing a CSZ based on a single hazard for students in grades K - 8 as there are two individual hazards with 13 and 14 points respectively. However, the criteria is not met for students in grades 9 - 12. If the two greatest hazards are combined, the criteria is met for both grades K - 8 and 9 - 12 since 27 points were calculated.

Historical Note

Sec. filed Feb. 2, 1993 eff. Feb. 17, 1993.

§ 191.6 Petition for the designation of a child safety zone.

Historical Note

We the undersigned, request that the Board of Education of the _____ School District review a request for designating _____ between _____ and _____ as a Child Safety Zone.

After receipt of the petition, the Board of Education or Board of Trustees of the affected school district may directly, or by appointment of an advisory committee, make an investigation to determine if such a zone should be established in the district. The investigation shall be made pursuant to the regulations set forth in this Part.

Name Address

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____
- 9. _____
- 10. _____
- 11. _____
- 12. _____
- 13. _____
- 14. _____
- 15. _____
- 16. _____
- 17. _____
- 18. _____
- 19. _____
- 20. _____
- 21. _____
- 22. _____
- 23. _____
- 24. _____
- 25. _____

Page _____ of _____.

Historical Note

Sec. filed Feb. 2, 1993 eff. Feb. 17, 1993.

§ 191.7 Application for determining a child safety zone.

Historical Note

Pursuant to section 3635-b of the Education Law, a petition shall be submitted in order to request that the Board of Education investigate the need to establish a Child Safety Zone for the purpose of transporting students to and from school.

The petition shall contain a minimum of 25 qualified voters of the school district or five percent of the number of voters who voted in the previous annual election of the members of the Board of Education, whichever is greater.

For requests that designates an area/neighborhood, please submit the application as a package for the entire neighborhood or area to be affected. The package shall contain the petition and application for each family requesting transportation.

Name of Parent/Guardian _____
Mailing Address _____
City _____ ZIP Code _____ Telephone # _____

Name of the Student(s) _____
Name of School to Which Qualifying _____
Student(s) is Walking _____
Address of School _____
City _____ ZIP Code _____

On a separate 8 1/2 inch by 11 inch sheet of paper, please provide a map or sketch showing the school route. As a minimum, this map should include the residence where the student(s) reside, location of the school that the student(s) attend, and the route the student(s) travel to and from school. Please indicate all street names and route numbers along the route.

Historical Note

Sec. filed Feb. 2, 1993 eff. Feb. 17, 1993.

§ 191.8 Analysis sheet for determining a child safety zone.

Date: _____ Completed by: _____
Name of School to Which Qualifying _____
Student(s) is Walking: _____
Address of the School: _____
City: _____ State: _____ NY ZIP Code _____

POINT DETERMINATION
HAZARD TYPE - Highways Without Sidewalks or Inadequate Shoulders
1. Location on highway (check one): _____ Points

- on shoulder >= five feet wide or sidewalk
- on shoulder <= five feet wide without a sidewalk
- on roadway with no shoulder
- on roadway at a narrow bridge or overpass
- 2. 15 minute vehicular count on roadway being walked by _____ Points
the students: _____ vehicles
- 3. Speed limit on roadway being walked: _____ mph _____ Points

X. Total Points (Line 1 + Line 2 + Line 3) _____ Points

HAZARD TYPE - Highway Intersections

- 4. Traffic control on roadway being crossed _____ Points
(check one):
Number of lanes of traffic: _____ lanes
- no control
- stop sign or traffic signal w/o ped walk lights
- traffic signal with ped walk lights
- all way stop signs, adult crossing guard, or pedestrian overpass/underpass
- 5. 15 minute vehicular count on roadway being crossed by _____ Points
the students: _____ vehicles
- 6. Speed limit on roadway being crossed: _____ mph _____ Points

Y. Total Points (Line 4 + Line 5 + Line 6) _____ Points

HAZARD TYPE - Highway-Railroad Grade Crossings

- 7. a) Number of tracks crossed: _____ Points
- b) Number of trains daily during school crossing periods: _____

Z. Total Points (Line 7) _____ Points

FINDINGS
FINDINGS

- Single Hazard: (Line X, Y, or Z) _____ Points
_____ Exist for children through grade _____.
_____ Does not exist for any school children.
- Combination of Hazards: (Line X, Y, or Z) _____ Points
(Sum of Two Greatest Hazards)
_____ Exist for children through grade _____.
_____ Does not exist for any school children.

I hereby certify that the results of the analysis are accurate and reflect traffic conditions as of this date for the location under study.

Signature of School Superintendent Date

PART 156**TRANSPORTATION**

(Statutory authority: Education Law, §§ 101, 207, 305[14] [d] as amd. by ch. 552, L. 1995[34]; 1604[23], 1709, 3602[7][a]-[b], [d], 3624, 3625, 3635[4], 3637; Vehicle and Traffic Law, §§ 509-g, 1229-d; L. 1990, ch. 661; L. 1993, ch. 700, § 2; L. 1995, ch. 439; L. 1996, ch. 698; L. 1997, ch. 436, § 1, part A, § 58; L. 2002, chs. 472, 529, 600; L. 2003, ch. 159; L. 2003, ch. 270; L. 2007, ch. 670)

Sec.	
156.1	Applications, contracts, and other information to be filed
156.2	Approval of routes, seating capacities, and computerized bus routing services for State aid purposes
156.3	Safety regulations for school bus drivers, monitors, attendants and pupils
156.4	Bus purchase approval
156.5	Annual extensions of transportation contracts
156.6	Leasing of school buses under emergency conditions
156.7	Calculation of nonallowable pupil deduction
156.8	Regional transportation expenses
156.9	Equipment and other expenses eligible for transportation aid
156.10	Retirement benefits and transportation during the school day eligible for transportation aid
156.11	Appropriate costs for a transportation contract
156.12	Transportation contracts awarded through a request for proposals

§ 156.1 Applications, contracts, and other information to be filed.

(a) Application for the approval of all bus routes and bus capacities, together with transportation contracts, including contracts for the operation of district-owned conveyances and all contracts for the maintenance and/or garaging of district-owned conveyances shall be filed by the superintendent or district superintendent of schools with the Commissioner of Education on forms prescribed by him. In addition thereto, such superintendent or district superintendent of schools shall file with the commissioner the instructions to bidders, bid forms and specifications upon which such contracts were awarded, a summary of bids submitted, a statement of the actions taken to solicit bids, including copies of the advertising required by law, any additional advertising, a list of the potential bidders actively solicited, and such other information as the commissioner may require.

(b) The advertisement for bids for contracts for anticipated transportation needs for the following school year shall be published not later than June 1st, except that the advertisement for bids for contracts for transportation of children with disabilities shall be published not later than July 1st. Any contract awarded as a result of competitive bidding, together with the documents required by the provisions of subdivision (a) of this section, shall be filed with the Commissioner of Education within 30 days following approval of the contract by the board of education or trustee. Contracts which cannot be awarded on or before August 1st, together with other required documents, shall be filed with the commissioner within five days after approval by the board of education or trustee.

(c) Separate contracts shall be awarded for transportation to and from school and for other purposes, including but not limited to field trips and athletic events. The commissioner may grant a waiver of this requirement for contracts or contract extensions covering school years prior to the school year beginning July 1, 1996, provided districts file with the department detailed documentation allocating the total contract expense between to and from school and other purpose transportation services.

(d) Bid specifications shall not include special requirements relating to buses, drivers, maintenance and service facilities, the exclusive use of buses, or any other matter which tends to restrict competitive bidding. The commissioner may authorize special requirements which are essential due to special circumstances. No bid shall be accepted which is contingent on a discount

if one or more other bids are also accepted. No bid may be rejected for failure to meet a specification which unduly restricts competitive bidding.

(e) *[Reserved]*

(f) A board of education or the trustee of a public school district and a contractor shall not materially modify an approved transportation contract except where such modification is necessary to comply with any Federal, State or local law, rule or regulation imposed after the execution of such contract or to enhance pupil safety and/or result in savings consistent with maintaining pupil safety. The school district shall provide satisfactory documentation to the commissioner of the enhancements in pupil safety and/or of any increased savings consistent with maintaining pupil safety that may result from the proposed amendment. Demonstrable enhancements in pupil safety shall include, but not be limited to: installation of stop arms, two-way radios or other communication devices, video cameras, and perimeter motion detector systems. Such amendments shall result in no additional cost to the State, locality, or school district. Amendments will not be approved if the commissioner determines that they violate competitive bidding requirements, violate any provision of law, or fail to increase or maintain the safety of pupil transportation.

Historical Note

Sec. repealed, new filed March 1, 1963; repealed, new added by renum. 156.11, filed Nov. 28, 1977; amds. filed: Dec. 19, 1995; Feb. 13, 1996 eff. March 29, 1996. Amended (b), (c); repealed (e).

§ 156.2 Approval of routes, seating capacities, and computerized bus routing services for State aid purposes.

(a) *Routes.* The mileage to be used for State aid purposes shall be the distance along the highway or highways over which the bus travels, beginning at the schoolhouse where the pupils transported attend and proceeding by the most direct route to convey all the pupils entitled to transportation, and returning to the point of origin; provided that the route may begin at some other point whenever it is established to the satisfaction of the commissioner that the facts warrant. In no event will any route be considered for State aid purposes unless it extends more than a mile and a half from the schoolhouse. No State aid will be available for feeder routes unless the distance traveled is more than one mile.

(b) *Approved seating capacity.* The approved seating capacities shall be determined on the basis of the number of pupils legally entitled to transportation; provided, however, that no district shall be required to obtain another conveyance when the originally approved capacity is no longer required. Standing passengers shall not be carried in excess of 20 percent of the seated capacity.

(c) *Duplication of service.* The Commissioner of Education may disallow capacities and mileage which in his judgment are duplication of service and inconsistent with maximum efficiency. Bus routes shall be so arranged that the maximum number of pupils entitled to transportation can be transported with the minimum number of bus miles and for a cost consistent with adequate service.

(d) *Other transportation.* Nothing herein contained shall prevent trustees and boards of education under rules established by them, from providing transportation in addition to that credited for State aid purposes, provided the same is reasonable and in conformity with the provisions of law, and money is legally available therefor.

(e) *Computerized bus routing services.* (1) For purposes of apportionment for transportation services, pursuant to Education Law, section 3602(7)(b)(iv), *computerized bus routing services* shall mean programming, software development and software acquisition which result in the economical and efficient development of school bus routes meeting the criteria of this section and which have been approved by the commissioner. Programming and software development may be provided either by school district personnel or by contract.

(2) Each school district which seeks an apportionment pursuant to Education Law, section 3602(7)(b)(iv) shall annually prepare and submit to the commissioner for prior approval a contract or plan describing the service.

Historical Note

Sec. amd. filed Nov. 15, 1962; repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, new added by renum. 156.12, filed Nov. 28, 1977; amd. filed May 24, 1982 eff. June 23, 1982.

§ 156.3 Safety regulations for school bus drivers, monitors, attendants and pupils.

(a) *Definitions.* For purposes of this section:

(1) A *school bus driver* shall mean any person who drives a school bus which is owned, leased or contracted for by a public school district, board of cooperative educational services or nonpublic school for the purpose of transporting pupils. However, for the purposes of this section, the following shall not be considered to be school bus drivers:

(i) a driver of a passenger or suburban type vehicle if such driver is a school district employee who is not ordinarily required to transport pupils and is operating such vehicle for the purpose of transporting one or more pupils to a hospital or other medical facility, a physician's office, or home for medical treatment or because of illness;

(ii) a driver of a suburban intercity coach or transit type bus, transporting pupils on trips other than between home and school, such as field trips, athletic trips, and other special transportation services;

(iii) a parent who transports exclusively his or her own children; and

(iv) a volunteer driver for a nonpublic school who transports pupils on other than a regularly established route on an occasional basis.

(2) A *school bus* shall mean every vehicle owned, leased or contracted for by a public school, board of cooperative educational services or a nonpublic school and operated for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities.

(3) A *school bus monitor* shall mean any person employed for the purpose of assisting children to safely embark and disembark from a school bus which is owned, leased or contracted for by a public school district or board of cooperative educational services, and for the purpose of assisting the school bus driver with maintaining proper student behavior on such school bus.

(4) A *school bus attendant* shall mean any person who is employed for the purpose of serving pupils with a disabling condition on a school bus which is owned, leased or contracted for by a public school district or board of cooperative educational services.

(5) A *nonpublic school* shall mean a private or parochial school offering instruction in any or all grades, pre-kindergarten through 12.

(b) *School bus driver and instructor qualifications.* (1) Approval for employment. Approval for employment of a school bus driver shall be in writing on a form prescribed by the Commissioner of Education.

(2) Age. All drivers of school transportation conveyances shall be at least 21 years of age.

(3) Physical fitness. (i) Each driver of a school transportation conveyance shall have the physical and mental ability to operate safely a school transportation conveyance and to satisfactorily perform the other responsibilities of a school bus driver; and shall meet the requirements of section 6.11 of the regulations of the Commissioner of Motor Vehicles (15 NYCRR 6.11) to the extent that such requirements are consistent with the requirements of this subdivision and provided that the vision standards prescribed in section 6.11(b)(10) of the regulations of the Commissioner of Motor Vehicles (15 NYCRR) shall not be waived.

(ii) Each regular or substitute driver of a school bus owned, leased or contracted for by a school district, board of cooperative educational services or a nonpublic school shall be examined by a physician or nurse practitioner to the extent authorized by law and consistent with the written practice agreement pursuant to Education Law, section 6902(3), in accordance with the provisions of this subdivision. The physical examination shall be reported immediately on forms prescribed by the commissioner to the chief school officer of the district. The physical examination shall include, as a minimum, those requirements specified

on the prescribed physical examination report. The examining physician or nurse practitioner shall require the school bus driver to undergo any diagnostic tests that are necessary to determine whether the driver has the physical and mental ability to operate safely a school transportation conveyance. Each school bus driver shall receive an annual physical examination, and each driver who is to be initially employed shall be examined within four weeks prior to the beginning of service. In no case shall the interval between physical examinations exceed a 13-month period.

(iii) Each regular or substitute driver of a school bus owned, leased or contracted for by a school district, board of cooperative educational services or nonpublic school shall pass a physical performance test approved by the commissioner, upon recommendation of an advisory group of certified school bus driver instructors, at least once every two years. Additionally, the test shall be administered to any driver following an absence from service of 60 or more consecutive days from his or her scheduled work duties. In no case shall the interval between physical performance tests exceed 24 months.

(a) Except as provided in clause (d) of this subparagraph, the physical performance test shall be conducted by a certified school bus driver instructor and shall assess the driver/applicant's ability to perform the following functions of a school bus driver: repeatedly open and close a manually operated bus entrance door, climb and descend bus steps, operate hand controls simultaneously and quickly, have quick reaction time from throttle to brake, carry or drag individuals in a bus emergency evacuation, repeatedly depress clutch and/or brake pedals, and exit quickly oneself and students from an emergency door.

(b) A driver/applicant who fails any portion of the physical performance test shall be deemed unqualified to operate a school transportation conveyance until a re-examination is passed. Such driver/applicant may request re-examination which shall be administered no sooner than three days from the prior test. The cost of such re-examination shall be borne by the employer if the driver/applicant passes the re-examination, or the driver/applicant if he or she fails the re-examination.

(c) (1) A school bus driver who is employed by a school district, board of cooperative educational services, or contractor as of September 1, 1997 shall have until July 1, 2000 to take and pass the driver physical performance test. All drivers hired by school districts, boards of cooperative educational services, or contractors after September 1, 1997 shall be required to pass the driver physical performance test before they may transport pupils.

(2) A school bus driver who is employed by a nonpublic school as of January 1, 2005 shall have until January 1, 2008 to take and pass the driver physical performance test. All drivers hired by nonpublic schools after January 1, 2005 shall be required to pass the driver physical performance test before they may transport pupils.

(d) School districts, boards of cooperative educational services, nonpublic schools or transportation contractors may apply to the commissioner for a temporary waiver to permit Department of Motor Vehicles (DMV) certified 19A examiners, employed by that carrier, to administer the physical performance test to school bus drivers employed by that carrier. Such waiver may be granted where it is established that there are insufficient certified school bus driver instructors on staff to administer the test in a timely manner. Upon the issuance of such waiver, a certified school bus driver instructor's physical presence shall not be required during the administration of the test, provided that such testing is conducted under the general supervision of a certified school bus driver instructor who is employed by such board of education, board of cooperative educational services, nonpublic school or transportation contractor. Such certified school bus driver instructor shall instruct the DMV certified 19A examiner in the proper administration of the physical performance test and shall review and approve the test results of all physical performance tests administered by the examiner.

(4) Required licenses and certification. Each driver of a motor vehicle conveying school children shall have the appropriate operator's or commercial driver's license to operate such motor vehicle.

(5) Pre-service, safety training, and refresher training for school bus drivers. (i) Pre-service. Each school bus driver initially employed by a board of education or transportation contractor subsequent to July 1, 1973, or initially employed by a nonpublic school on or after July 1, 2004, shall have received at least two hours of instruction on school bus safety practices. Each driver of a vehicle transporting pupils with disabilities exclusively who is initially employed subsequent to January 1, 1976, or initially employed on or after July 1, 2004 for nonpublic school bus drivers, shall have received an additional hour of instruction concerning the special needs of a pupil with a disability.

(ii) (a) During the first year of employment, each driver initially employed by a board of education, board of cooperative educational services or transportation contractor subsequent to July 1, 1973 shall complete a basic course of instruction in school bus safety practices approved by the commissioner, which shall include two hours of instruction concerning the special needs of a pupil with a disability.

(b) During the first year of employment, each school bus driver initially employed by a nonpublic school on or after July 1, 2005 shall complete a basic course of instruction in school bus safety practices approved by the commissioner, which shall include two hours of instruction concerning the special needs of a pupil with a disability. Each school bus driver initially employed by a nonpublic school on or after July 1, 2004 and on or before June 30, 2005, shall complete such course within the first two years of such employment.

(iii) All school bus drivers shall receive a minimum of two hours of refresher instruction in school bus safety at least two times a year, at sessions conducted between July 1st and the first day of school and between December 1st and March 1st of each school year. Refresher courses for drivers of vehicles transporting pupils with disabilities exclusively shall also include instruction relating to the special needs of a pupil with a disability.

(iv) Occasional drivers for other than regular routes shall not be required to receive the training specified in this paragraph. For the purposes of this paragraph, *occasional driver* shall mean a certified teacher employed by a school district or a board of cooperative educational services, who is not primarily employed on either a full-time or part-time basis as a school bus driver or substitute school bus driver.

(v) Except as otherwise provided in clauses (a) and (b) of this subparagraph, all training required in this subdivision shall be provided by, or under the direct supervision of a school bus driver instructor certified by the commissioner. To qualify for certification as a school bus driver instructor (SBDI), individuals shall successfully complete a school bus driver instructor training and evaluation course taught by a certified master instructor. The course shall be approved by the commissioner upon the recommendation of the commissioner's school bus driver instructor advisory committee, an advisory group consisting of at least seven certified school bus driver instructors appointed annually for such purpose by the commissioner. Each person who applies for admission to this course shall be currently employed by a public school district, board of cooperative educational services, nonpublic school or private contractor who is currently providing pupil transportation services for a public school district, nonpublic school or board of cooperative educational services. The SBDI course shall include but shall not be limited to the following content areas: planning and making presentations including lesson plans and objectives, school bus accident statistics and interpretation, effective communications, and evaluation. Each such person shall possess a high school diploma or equivalent diploma and shall have completed the basic course of instruction in school bus safety practices. In addition, each such person shall have completed the Advanced New York State School Bus Driver Training Course or a Department of Motor Vehicles approved Point/Insurance Reduction Program. To maintain certification, school bus driver instructors shall be required to attend the annual professional development seminar (PDS) approved by the commissioner upon the recommendation of the SBDI advisory committee, and taught by a certified master instructor. The PDS shall provide refresher training for all SBDIs in presentation skills, lesson planning, school bus safety techniques, requirements and statistics. The PDS shall provide SBDIs with training materials for the upcoming school year safety training campaign, including information which shall be conveyed to all school bus drivers in the next two driver refreshers.

(a) A certified school bus driver instructor's physical presence shall not be required during training conducted upon initial employment of a school bus driver by a board of education, board of cooperative educational services or transportation contractor, provided that such training is conducted under the general supervision of such an approved instructor.

(vi) Master instructors shall be certified by the commissioner to conduct training programs for individuals to become certified school bus driver instructors, and work in the development of safety training curricula including the development and delivery of the annual professional development seminar. To qualify as a master instructor, an individual must have been a certified school bus driver instructor for at least five years, have demonstrated the ability to teach others the concepts of the school bus safety training program, and meet such other requirements as may be prescribed by the commissioner including, but not limited to possession of a New York State teaching certificate or employment experience in a pupil transportation position in New York State, and satisfactory completion of a mentor/training program or project.

(6) Character requirement. The driver of a vehicle for the transportation of school children shall be of good moral character and thoroughly reliable. At the time of initial application and at such other times as the superintendent of schools, district superintendent of schools, or nonpublic school chief administrator may determine, each applicant for approval for employment as a school bus driver shall furnish to the superintendent or administrator at least three statements from three different persons who are not related either by blood or marriage to the applicant pertaining to the moral character and to the reliability of the applicant.

(c) *School bus monitor and attendant qualifications.* (1) Approval for employment. Approval for employment as a school bus monitor or attendant shall be in writing on a form prescribed by the Commissioner of Education.

(2) Age. All school bus monitors and attendants shall be at least 19 years of age.

(3) Physical fitness. (i) Each school bus monitor and attendant shall have the physical and mental ability to satisfactorily perform his or her duties.

(ii) Each monitor or attendant may be examined on order of the chief school administrator by a duly licensed physician within two weeks prior to the beginning of such monitor's or attendant's service in each school year. The report of the physician, in writing, shall be considered by the chief school administrator in determining the fitness of the monitor or attendant to carry out his or her functions. The examining physician shall require the monitor or attendant to undergo any diagnostic tests that are necessary to determine the physical and mental ability of the monitor or attendant to perform his or her duties.

(iii) Each school bus monitor or attendant of a school bus owned, leased or contracted for by a school district or board of cooperative educational services shall pass a physical performance test approved by the commissioner at least once every two years. Additionally, the test shall be administered to any monitor or attendant following an absence from service 60 or more consecutive days from his or her schedule work duties. In no case shall the interval between physical performance tests exceed 24 months. Individuals employed by a school district, board of cooperative educational services or contractor as a monitor or attendant on July 1, 2003 shall have until July 1, 2004 to take and pass a physical performance test. Individuals hired as a monitor or attendant after July 1, 2003, must take and pass a physical performance test before they may assume their duties.

(a) Except as provided in clause (b) of this subparagraph, the physical performance test shall be administered by a certified school bus driver instructor and shall assess the school bus monitor or attendant's ability to perform his or her duties including, but not limited to, the following functions: climb and descend the bus steps, carry or drag students in a bus emergency evacuation, and exit quickly oneself from an emergency door.

(b) School districts, boards of cooperative educational services, or transportation contractors may apply to the commissioner for a temporary waiver to permit Department of Motor Vehicles (DMV) certified 19A examiners, employed by that carrier, to adminis-

ter the physical performance test to monitors and attendants employed by that carrier. Such waiver may be granted where it is established that there are insufficient certified school bus driver instructors on staff to administer the test in a timely manner. Upon the issuance of such waiver, a certified school bus driver instructor's physical presence shall not be required during the administration of the test, provided that such testing is conducted under the general supervision of a certified school bus driver instructor who is employed by such board of education, board of cooperative educational services or transportation contractor. Such SBDI shall instruct the DMV certified 19A examiner in the proper administration of the physical performance test and shall review and approve the test results of all physical performance tests administered by the examiner.

(c) A school bus monitor or attendant who fails any portion of the physical performance test shall be deemed unqualified to perform the duties of that position. The monitor or attendant may request a re-examination. The cost of such re-examination shall be borne by the employer if the monitor/attendant passes the re-examination, or by the monitor/attendant if he or she fails the re-examination.

(4) Required certifications. Any person employed by a school district, board of cooperative educational services or pupil transportation contractor as a school bus attendant serving pupils with a disabling condition on January 1, 2004, shall have until July 1, 2004 to obtain training and certification in cardiopulmonary resuscitation where such skills are required as part of the individualized education plan prepared for the student. Any such person hired after January 1, 2004 shall, prior to assuming their duties as a school bus attendant, obtain training and certification in cardiopulmonary resuscitation where such skills are required as part of the individualized education plan prepared for the student. School districts, boards of cooperative educational services or contractors may require monitors or attendants to maintain certification in first aid.

(5) Pre-service, safety training, and refresher training. Except as otherwise provided in this paragraph, each school bus monitor or attendant employed by a board of education, board of cooperative educational services or pupil transportation contractor on July 1, 2003 shall comply with the training requirements of this paragraph no later than July 1, 2004. Individuals hired after July 1, 2003 shall comply with such requirements before assuming their duties on a school bus.

(i) Pre-service instruction. All school bus monitors or attendants shall receive three hours of pre-service instruction as prescribed by the commissioner upon recommendation of the commissioner's school bus driver instructor advisory committee, which shall include, but is not limited to, school bus safety practices, child management techniques, and the proper techniques for assisting children to safely embark and disembark a school bus. In addition to such instruction, any person employed on January 1, 2004 as a school bus monitor, or as a school bus attendant serving pupils with a disabling condition, shall, by July 1, 2004, receive instruction as prescribed by the commissioner upon recommendation of the commissioner's school bus driver instructor advisory committee relating to special needs transportation, including, but not limited to, the proper techniques for assisting disabled students in entering and exiting the school bus. Any person hired after January 1, 2004 shall complete such special needs instruction prior to assuming their duties as a school bus monitor or as a school bus attendant.

(ii) A certified school bus driver instructor's physical presence shall not be required during training conducted upon initial employment of a school bus monitor or attendant by a board of education or transportation contractor, provided that such training is conducted under the general supervision of such certified instructor.

(iii) Specialized training. Each school bus monitor or attendant hired after July 1, 2003 shall complete within their first year of employment basic course of instruction for monitors and attendants. Multiple curricula may be approved for use by the commissioner. Such courses shall provide not less than 10 hours of instruction on a range of topics prescribed by the commissioner upon recommendation of the commissioner's school bus driver instructor advisory committee.

(iv) All school bus monitors and attendants shall receive two two-hour refresher training sessions annually at sessions conducted between July 1st and the first day of school and between December 1st and March 1st of each school year.

(d) *Rules affecting pupils.* (1) Drivers, monitors and attendants shall not allow pupils to enter or leave the bus while it is in motion.

(2) Drivers, monitors and attendants are held responsible for reasonable behavior of pupils in transit.

(3) Drivers, monitors and attendants shall not allow pupils to thrust their heads or arms out of open windows.

(4) The driver of a school bus, when discharging pupils who must cross the highway, shall instruct such pupils to cross the highway at a distance of 10 feet in front of the vehicle so as to be in the vision of the driver. The driver shall also keep such school bus halted with red signal lights flashing until such pupils have reached the opposite side of the highway.

(5) Fuel tanks shall not be filled while pupils are in the bus.

(e) *Driving rules.* (1) Drivers shall be familiar with the Vehicle and Traffic Law, regulations of the Commissioner of Motor Vehicles and regulations of the Commissioner of Education pertaining to pupil transportation.

(2) Drivers shall make a full stop at all railroad crossings and at State highways before crossing except that no stop need be made at any railroad crossing where a police officer or a traffic control signal or sign directs traffic to proceed.

(3) Drivers shall give warning before making a left-hand or right-hand turn.

(4) Drivers, monitors and attendants shall not leave the school bus when children are inside except in case of emergency, and in such case before leaving the bus the driver shall stop the motor, remove the ignition key, and set the parking brake. Monitors or attendants may leave the school bus for the purposes of assisting children to embark or disembark the vehicle and to safely cross the street. Drivers, monitors and attendants shall check the vehicle to insure that no child is left behind on board unattended at the conclusion of the school bus route.

(5) Drivers, monitors and attendants shall not smoke at anytime while within a school bus. Drivers, monitors and attendants shall not eat or drink any liquid, or perform any act or conduct themselves in any manner which may impair the safe operation of a school bus while such vehicle is transporting pupils.

(6) Drivers shall not exceed a maximum speed limit of 55 miles per hour on any road within or outside of New York State while their school bus is being used for the transportation of pupils.

(f) *Drills on school buses.* (1) The drills on school buses required by section 3623 of the Education Law shall include practice and instruction in the location, use and operation of the emergency door, fire extinguishers, first-aid equipment and windows as a means of escape in case of fire or accident. Drills shall also include instruction in safe boarding and exiting procedures with specific emphasis on when and how to approach, board, disembark, and move away from the bus after disembarking. Each drill shall include specific instructions for pupils to advance at least 10 feet in front of the bus before crossing the highway after disembarking. Each drill shall emphasize specific hazards encountered by children during snow, ice, rain, and other inclement weather, including but not necessarily limited to poor driver visibility, reduced vehicular control and reduced hearing. All such drills shall include instruction in the importance of orderly conduct by all school bus passengers with specific emphasis given to student discipline rules and regulations promulgated by each board of education. Such instruction and the conduct of the drills shall be given by a member or members of the teaching or pupil transportation staff. Pupils attending public and nonpublic schools who do not participate in the drills held pursuant to this paragraph shall also be provided drills on school buses, or as an alternative, shall be provided classroom instruction covering the content of such drills.

(2) A minimum of three such drills shall be held on each school bus during the school year, the first to be conducted during the first seven days of school, the second between November 1st and December 31st and the third between March 1st and April 30th.

(3) No drills shall be conducted when buses are on routes.

(4) The school authorities shall certify on the annual report to the State Education Department that their district has complied with this subdivision.

(g) *Instruction on use of seat belts.* In each school district in which pupils are transported on school buses equipped with seat safety belts, such district shall insure that all pupils who are transported on any school bus owned, leased or contracted for by the district or board of cooperative educational services shall receive instruction on the use of seat safety belts. Such instruction shall be provided at least three times each year to both public and nonpublic school pupils who are so transported and shall include, but not be limited to:

- (1) proper fastening and release of seat safety belts;
- (2) acceptable placement of seat safety belts on pupils;
- (3) times at which the seat safety belts should be fastened and released; and
- (4) acceptable placement of the seat safety belts when not in use.

(h) *Idling school buses on school grounds.* (1) General provisions.

(i) Except as provided in paragraph (2) of this subdivision, each school district shall ensure that each driver of a school bus, as defined in Vehicle and Traffic Law, section 142, or other vehicle owned, leased or contracted for by such school district, shall turn off the engine of such school bus or vehicle while waiting for passengers to load or off load on school grounds, or while such vehicle is parked or standing on school grounds or in front of or adjacent to any school.

(ii) School districts shall consider adopting policies which provide for the prompt loading and unloading of individual school buses rather than a policy of waiting for all buses to arrive before loading or unloading.

(2) Exceptions. Notwithstanding the provisions of paragraph (1) of this subdivision and unless otherwise required by State or local law, the idling of a school bus or vehicle engine may be permitted to the extent necessary to achieve the following purposes:

- (i) for mechanical work; or
- (ii) to maintain an appropriate temperature for passenger comfort; or
- (iii) in emergency evacuations where necessary to operate wheelchair lifts.

(3) Driver requirements. Each school district shall ensure that each driver of a school bus shall:

- (i) instruct pupils on the necessity to board the school bus promptly in the afternoon in order to reduce loading time;
- (ii) whenever possible, park the school bus diagonally in school loading areas to minimize the exhaust from adjacent buses that may enter the school bus and school buildings; and
- (iii) turn off the bus engine during sporting or other events.

(4) Notice. Each school district shall annually provide their school personnel, no later than five school days after the start of school, with the notice of the provisions of Education Law, section 3637 and of this section, in a format prescribed and provided by the commissioner to such school districts for dissemination.

(5) Monitoring and reports. Each school district shall periodically but at least semi-annually monitor compliance with the provisions of this subdivision by school bus drivers and drivers of vehicles owned, leased or contracted for by such school district. Each school district shall prepare a written report of such review, which shall describe the actions taken to review compliance and the degree of adherence found with the provisions of this subdivision. Copies of the report shall be retained in the school district's files for a period of six years and made available upon request. The commissioner may also require specific school districts to provide additional information as

necessary to address health concerns related to their compliance with the provisions of this subdivision.

(6) Private vendor transportation contracts. All contracts for pupil transportation services between a school district and a private vendor that are entered into on or after August 21, 2008, shall include a provision requiring such vendor's compliance with the provisions of this subdivision.

Historical Note

Sec. repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, new added by renum. 156.13, filed Nov. 28, 1977; amds. filed: Dec. 17, 1979; Oct. 27, 1980; Sept. 30, 1981; Sept. 24, 1985; Sept. 8, 1986 as emergency measure, expired 60 days after filing; Sept. 30, 1986 as emergency measure; Nov. 25, 1986; amds. filed: Jan. 23, 1990; Sept. 19, 1995 as emergency measure; Nov. 7, 1995; Feb. 13, 1996; March 19, 1996; July 22, 1997; June 17, 2003; Sept. 12, 2003 as emergency measure; Nov. 18, 2003; June 25, 2004 as emergency measure; Sept. 14, 2004 as emergency measure; Sept. 14, 2004; July 1, 2008 as emergency measure; Aug. 4, 2008 eff. Aug. 21, 2008. Added (h).

§ 156.4 Bus purchase approval.

The purchase by a school district of any bus to be used for the transportation of children shall be approved by the Commissioner of Education on forms prescribed by him. Every purchase agreement shall include the clause, "specifications subject to the approval of the Education Department." All school buses must comply with the State Vehicle and Traffic Law and with rules and regulations of the State Department of Transportation. Transportation aid shall not be apportioned on the purchase cost or operating cost of a district-owned school bus unless the school district has obtained the required purchase approval by the commissioner. In no event shall the approval of a school bus purchase be granted where prescribed forms are filed with the State Education Department later than one year from the date on which the bus was purchased. The commissioner may excuse for good cause the failure of a district to request purchase approval within the prescribed period.

Historical Note

Sec. repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, new added by renum. 156.14, filed Nov. 28, 1977 eff. Dec. 12, 1977.

§ 156.5 Annual extensions of transportation contracts.

(a) Annual extensions of contracts shall be prepared on forms prescribed by the commissioner; such extensions shall be filed with and approved by the commissioner and are subject to all laws, rules and regulations pertaining to the filing of transportation contracts.

(b) Only contracts awarded in accordance with the competitive bidding requirements of subdivision 14 of section 305 of the Education Law may be extended.

(c) Annual extensions of fixed-price contracts, contracts based upon unit rates, such as per-bus, per-pupil or per-mile, and contracts based upon a combination of a fixed price and unit rate may provide for increases in such fixed prices and/or unit rates not to exceed the contractual amount paid in the preceding year by more than the increase in the regional consumer price index for the 12-month period ending on May 31st immediately preceding the commencement of the contract extension.

(d) Each district proposing to extend a contract shall maintain for a period of six years after expiration or termination of the contract extension or six years after final payment under the contract extension satisfactory evidence of the increase in the cost of the contractor's operation during the 12-month period immediately preceding the month in which the contract terminates. Upon the request of the commissioner, each district shall file such evidence with the commissioner.

(e) Each district proposing to extend a contract in an amount which is in excess of the maximum increase allowed by use of the consumer price index for the New York, N.Y. - Northern N.J. area, based upon the index for all urban consumers (CPI-U), shall file with the commissioner satisfactory documentation of the actual cost of qualifying criminal history and driver licensing testing fees at-

tributable to special requirements for drivers of school buses pursuant to arts. 19 and 19-A of the Vehicle and Traffic Law.

Historical Note

Sec. repealed, filed March 1, 1963; new filed Oct. 31, 1967; repealed, new added by renum. 156.15, filed Nov. 28, 1977; amds. filed: Sept. 19, 1988; Feb. 13, 1996 eff. March 29, 1996. Amended (d); added (e).

§ 156.6 Leasing of school buses under emergency conditions.

(a) Pursuant to the provisions of section 1709 of the Education Law, school buses may be leased from sources other than a school district, board of cooperative educational services, or county vocational education and extension board under emergency conditions which shall include but not be limited to the following:

- (1) strikes;
- (2) removal of bus from service due to:
 - (i) accident;
 - (ii) mechanical failure; or
 - (iii) fire, theft, vandalism;
- (3) delay in delivery date.

(b) Within 10 days from the date the emergency occurs, a statement explaining the transportation emergency and its estimated duration shall be forwarded to the Commissioner of Education for approval.

(c) Such approval of the commissioner shall be for a period not to exceed 90 days, unless an emergency still exists. In such event, a request setting forth in detail, the reasons for extension of the emergency shall be filed with the commissioner for approval.

Historical Note

Sec. repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, new added by renum. 156.16, filed Nov. 28, 1977 eff. Dec. 12, 1977.

§ 156.7 Calculation of nonallowable pupil deduction.

(a) In those instances in which a school district provides transportation services, by district-owned, leased, or contracted school buses, a nonallowable pupil deduction shall be calculated for purposes of determining aid pursuant to section 3602 of the Education Law, for transportation expenses incurred in the 1990-91 school year and each school year thereafter, pursuant to this paragraph.

(1) The calculation of the nonallowable pupil deduction for each school district shall be as follows: the dollar amount of the district's nonallowable pupil deduction for expenses for transportation services, by district-owned, leased, or contracted school buses, incurred in each of the school years 1987-88, 1988-89, and 1989-90, as audited and confirmed by the Education Department, shall be summed, with such sum divided by the sum of the district's net transportation expenses related to mileage travelled by district-owned, leased, or contracted school buses for the three years, with the result expressed as a decimal to four places without rounding. This nonallowable pupil decimal shall be calculated by the Education Department for each district, and shall be reported to each district by July 1, 1991. Net transportation expense for purposes of this paragraph shall be the total expense attributable to transportation service to and from school and BOCES programs, for which an apportionment is provided pursuant to article 65, 73 or 89 of the Education Law, excluding the expenses attributable to other purpose transportation.

(2) In calculating aid to be paid in each school year commencing in school year 1991-92, the nonallowable pupil decimal calculated in paragraph (1) of this subdivision shall be multiplied by net transportation expense of the base year to determine nonallowable expense. Such nonallowable expense shall be deducted from net transportation expense to determine the allowable transportation expense for transportation aid.

(3) (i) A school district shall provide documentation to the commissioner for the calculation of a new nonallowable pupil decimal at least once every three years, on a schedule prescribed

by the commissioner, using the nonallowable pupil decimal worksheet prescribed by the commissioner; and in addition, a school district shall provide such documentation during any school year in which the district experiences an increase or decrease from the nonallowable pupil decimal previously calculated pursuant to this section, when any one or more of the following conditions apply:

- (a) change in school district transportation eligibility policy;
- (b) school district reorganization with one or more other districts;
- (c) opening of a school building or closing of a building currently used as a school building;
- (d) an error made by either the school district or the Education Department in the calculation of a nonallowable pupil decimal for a prior year; or
- (e) a change in school district transportation policy to provide transportation of eligible children to or from a universal prekindergarten program pursuant to section 3602-3 of the Education Law.

(ii) Upon receipt of such documentation, the commissioner shall calculate a new nonallowable pupil decimal by dividing the total number of pupil miles of transportation services provided to nonallowable pupils on all district-owned, leased, or contracted school buses during the school year reported by the total number of pupil miles of transportation services provided to all pupils on all district-owned, leased, or contracted school buses during such school year, with the result expressed as decimal to four places without rounding. The number of pupil miles of transportation services provided to pupils attending an approved prekindergarten program pursuant to section 3602-e of the Education Law shall be excluded for the purposes of such calculation, provided that the transportation services furnished to such prekindergarten pupils are provided on a space-available basis and do not require, or result in:

- (a) any expansion of approved bus routes or additional trips; or
- (b) any increase in contracted expenditures for transportation expenses; or
- (c) any purchase or lease of additional vehicles.

(iii) The new nonallowable pupil decimal shall be used in calculating transportation aid in each school year after the school year in which such documentation is provided, in lieu of the decimal previously calculated pursuant to this section.

(b) For purposes of calculating transportation aid pursuant to section 3602 of Education Law, for school districts using public service carriers, the deduction for nonallowable pupils shall be the actual expenditures for transporting such pupils.

Historical Note

Sec. repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, filed Nov. 28, 1977; new filed Dec. 17, 1979; repealed, new filed April 30, 1991; amds. filed: Feb. 13, 1996; Dec. 23, 1997 as emergency measure; March 13, 1998 as emergency measure eff. March 17, 1998; March 13, 1998 eff. April 2, 1998. Amended (a)(3).

§ 156.8 Regional transportation expenses.

(a) The proration of expenses for regional or joint transportation services shall be determined according to the provisions of a transportation contract between the board(s) of education and the board(s) of cooperative educational services which participate in such regional or joint transportation.

(b) The proration of expenses for cooperative school bus maintenance shall be determined according to the provisions of a transportation contract between the board(s) of education and the board(s) of cooperative educational services participating in such cooperative school bus maintenance.

(c) The approvable expenditures, for purposes of State aid for transportation, of a school district which provides regional transportation or cooperative school bus maintenance services to one or

more additional school districts, shall not exceed gross expenditures less all sums received from such other district or districts for the provision of such services.

Historical Note

Sec. repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, filed Nov. 28, 1977; new filed Jan. 23, 1980 eff. Feb. 25, 1980.

§ 156.9 Equipment and other expenses eligible for transportation aid.

For purposes of transportation aid payable pursuant to Education Law, section 3602(7)(b), equipment and other expenses shall be approved in accordance with this section.

- (a) Equipment approvable for transportation aid shall include:
- (1) vehicles used to transport pupils on a regular basis and items attached to such vehicles; and
 - (2) items required for the maintenance of such vehicles, whether such items are on or in such vehicles or on or in the garage or facility used to house such vehicles.
- (b) Equipment used for transmission of radio communications within the district transportation program and computer data processing equipment for transportation programs shall be eligible for transportation aid only upon prior written approval of the commissioner. Approval of costs for transmission and computer equipment shall be based upon the commissioner's determination of the extent to which such equipment is used for transportation programs.
- (c) Equipment eligible for aid pursuant to Education Law, section 3602(6), or any other law, shall not be eligible for aid pursuant to Education Law, section 3602(7)(b), and this section.
- (d) Equipment may be approved for aid pursuant to Education Law, section 3602(7)(b), and this section if:
- (1) such school bus and garage equipment contributes to the safety of pupils being transported;
 - (2) the equipment is essential for efficient operation or maintenance of vehicles used for pupil transportation;
 - (3) the equipment is essential for the conservation of energy; or
 - (4) the equipment is required by a State agency pursuant to law or regulation.
- (e) Other expenses eligible for transportation aid shall include those which are specifically necessary for the efficient management and operation of a pupil transportation system, as approved by the commissioner; provided, however, that legal fees shall not be approved.
- (f) Only expenses for the items set forth in this section made after June 30, 1982 and approved by the commissioner will be eligible for transportation aid. No expense that is eligible for aid under any other section of law or regulation shall be eligible for aid under this section.

Historical Note

Sec. repealed, new filed March 1, 1963; repealed, filed Oct. 31, 1967; new filed Nov. 28, 1983 eff. Dec. 21, 1983.

§ 156.10 Retirement benefits and transportation during the school day eligible for transportation aid.

- (a) For purposes of transportation aid payable pursuant to Education Law, section 3602(7)(a), approved retirement expenses shall be determined by multiplying by the ratio of other aidable transportation expenses to total transportation expenses, exclusive of retirement expenses:
- (1) the district share of retirement expense payable to the New York State Teachers' Retirement System in the base year for transportation personnel;
 - (2) the district share of retirement expense payable to the New York State Employees' Retirement System in the base year for transportation personnel;
 - (3) the district share of retirement expense payable to the New York City Teachers' Retirement System in the base year for transportation personnel;
 - (4) the district share of retirement expense payable to the New York City Employees' Retirement System in the base year for transportation personnel; and

(5) the district share of retirement expense payable to the New York City Board of Education Retirement System in the base year for transportation personnel.

(b) No expense that is eligible for aid under subdivision (a) of this section or under Education Law, section 3602(7)(b)(v), concerning transportation during the school day, shall be eligible for aid under any other section of law or regulation.

Historical Note

Sec. repealed, new filed March 1, 1963; amd. filed Sept. 9, 1966; repealed, filed Oct. 31, 1967; new filed May 1, 1984 as emergency measure; made permanent and amd. by order filed June 26, 1984 eff. June 27, 1984.

§ 156.11 Appropriate costs for a transportation contract.

All contracts for the transportation of children authorized pursuant to paragraph (h) of subdivision 25 of section 1709 of the Education Law, and not specifically authorized by any other section of law, shall be subject to a test of "appropriate cost" pursuant to this section.

(a) In determining the appropriate transportation contract cost, the transportation service provider school district shall demonstrate that the contract reflects the true costs that a prudent person would incur in a competitive transportation business by calculating the contract cost based on the appropriate unit cost determined in accordance with subdivision (b) of this section.

(b) An appropriate unit cost for the proposed transportation service shall be determined by dividing the grand total of transportation expenditures for the preceding school year of all regular transportation services provided to students of the district by the service provider school district by the number of vehicles, passengers, miles traveled or other appropriate transportation service units represented by all such transportation services. The proposed transportation contract costs shall satisfy the test of "appropriate cost" required by this section if such proposed transportation contract costs are equal to the product of such resulting, appropriate unit cost and the number of comparable service units to be provided under the proposed contract. The grand total of transportation expenditures used in this calculation shall include all expenses that would be eligible for transportation aid if they were incurred under a transportation contract with a private contractor, including but not limited to the transportation related costs of operation, maintenance and repair of vehicles, fringe benefits, buildings, utilities, depreciation, training, insurance, interest payments, and administration. Written documentation of specific expenditures of the school district included in the grand total of transportation expenditures and the service units used in such calculations shall be retained by the transportation service provider school district for a period of at least three years after the termination of such contracted transportation service and shall be available for public inspection.

(c) This section shall not apply to the transportation of children of school age provided pursuant to provisions of the Education Law other than Education Law, section 1709(25)(h), including but not limited to subdivision 24, paragraph (g) of subdivision 25 or subdivision 27 of section 1709 of the Education Law.

Historical Note

Sec. repealed, new filed March 27, 1973; amd. filed July 1, 1975; renum. 156.1, filed Nov. 28, 1977; new filed: June 28, 1994 as emergency measure; Sept. 27, 1994 as emergency measure eff. Sept. 27, 1994; Sept. 27, 1994 eff. Oct. 13, 1994.

§ 156.12 Transportation contracts awarded through a request for proposals.

(a) Pursuant to the provisions of paragraph (a) of subdivision 14 of section 305 of the Education Law, all contracts for the transportation of pupils which are subject to the competitive bidding requirements of General Municipal Law shall be awarded to the lowest responsible bidder or through an evaluation of proposals submitted in response to a request for proposals by a board of education.

(b) When a board of education elects to award a contract through an evaluation of proposals in response to a request for proposals, such board of education shall evaluate each proposal from a responding contractor in accordance with the following criteria:

- (1) the previous experience of the contractor in transporting pupils;
- (2) the name of each transportation company of which the contractor has been an owner or manager;

- (3) a description of any safety programs implemented by the contractor;
- (4) a record of accidents in motor vehicles under the control of the contractor;
- (5) the driving history of employees of the contractor;
- (6) inspection records and model year of each of the motor vehicles under the control of the contractor;
- (7) maintenance schedules of the motor vehicles under the control of the contractor;
- (8) a financial analysis of the contractor;
- (9) documentation of compliance with motor vehicle insurance requirements; and
- (10) total cost of the proposal.

(c) Any public notice soliciting proposals for transportation services, as well as any instructions provided to potential respondents to a request for proposals pursuant to this section, shall specify all of the criteria to be used in evaluating such proposals and shall specify the weightings that the board of education has assigned to each criterion for the purpose of evaluating proposals submitted in response to the request for proposals. For this purpose no single criterion shall be weighted in excess of 50 percent of the total weight of all of the criteria to be used.

(d) Each district awarding a contract through an evaluation of proposals shall submit such contract to the Commissioner for approval pursuant to the provisions of Education Law, sections 305(14) and 3625, together with satisfactory evidence of the date of the request for such proposals, the forms and instructions used in making such request, the contract specifications, all proposals received, the criteria used in evaluating the proposals, the weights assigned to each criterion, the scores used to assess each category of the criteria, and such other information as the commissioner deems necessary for such approval.

(e) Proposals for contracts for anticipated transportation needs for the following school year shall be requested no later than June 1st, except that proposals for contracts for transportation of children with disabilities shall be requested no later than July 1st of the school year for which such contracts are to be awarded.

(f) Notwithstanding the provisions of subdivision (e) of this section, in the case of an emergency or other unforeseen occurrence or condition affecting transportation services, and requiring immediate action which cannot await responses to a request for proposals, interim contracts may be awarded for a period not to exceed one month, pending the award of a contract for such services in accordance with the provisions of subdivisions (a) through (d) of this section.

(g) Proposals for contracts which cannot be anticipated in accordance with the provisions of subdivision (e) of this section, because of an emergency or other unforeseen occurrence or condition affecting transportation services, shall be requested at least 30 days prior to the beginning date of service.

Historical Note

Sec. amd. filed Oct. 31, 1967; renum. 156.2, filed Nov. 28, 1977; new filed: Dec. 24, 1996 as emergency measure; Feb. 10, 1997; amds. filed: March 18, 1997 as emergency measure; May 6, 1997 eff. May 22, 1997.

amount paid in the preceding year by more than the increase in the regional consumer price index for the 12-month period ending on May 31st immediately preceding the commencement of the contract extension.

(d) Each district proposing to extend a contract shall maintain for a period of six years after expiration or termination of the contract extension or six years after final payment under the contract extension satisfactory evidence of the increase in the cost of the contractor's operation during the 12-month period immediately preceding the month in which the contract terminates. Upon the request of the commissioner, each district shall file such evidence with the commissioner.

(e) Each district proposing to extend a contract in an amount which is in excess of the maximum increase allowed by use of the consumer price index for the New York, N.Y. - Northern N.J. area, based upon the index for all urban consumers (CPI-U), shall file with the commissioner satisfactory documentation of the actual cost of qualifying criminal history and driver licensing testing fees attributable to special requirements for drivers of school buses pursuant to arts. 19 and 19-A of the Vehicle and Traffic Law.

Historical Note

Sec. repealed, filed March 1, 1963; new filed Oct. 31, 1967; repealed, new added by renum. 156.15, filed Nov. 28, 1977; amds. filed: Sept. 19, 1988; Feb. 13, 1996 eff. March 29, 1996. Amended (d); added (e).

§ 156.6 Leasing of school buses under emergency conditions.

(a) Pursuant to the provisions of section 1709 of the Education Law, school buses may be leased from sources other than a school district, board of cooperative educational services, or county vocational education and extension board under emergency conditions which shall include but not be limited to the following:

- (1) strikes;
- (2) removal of bus from service due to:
 - (i) accident;
 - (ii) mechanical failure; or
 - (iii) fire, theft, vandalism;
- (3) delay in delivery date.

(b) Within 10 days from the date the emergency occurs, a statement explaining the transportation emergency and its estimated duration shall be forwarded to the Commissioner of Education for approval.

(c) Such approval of the commissioner shall be for a period not to exceed 90 days, unless an emergency still exists. In such event, a request setting forth in detail, the reasons for extension of the emergency shall be filed with the commissioner for approval.

Historical Note

Sec. repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, new added by renum. 156.16, filed Nov. 28, 1977 eff. Dec. 12, 1977.

§ 156.7 Calculation of nonallowable pupil deduction.

(a) In those instances in which a school district provides transportation services, by district-owned, leased, or contracted school buses, a nonallowable pupil deduction shall be calculated for purposes of determining aid pursuant to section 3602 of the Education Law, for transportation expenses incurred in the 1990-91 school year and each school year thereafter, pursuant to this paragraph.

(1) The calculation of the nonallowable pupil deduction for each school district shall be as follows: the dollar amount of the district's nonallowable pupil deduction for expenses for transportation services, by district-owned, leased, or contracted school buses, incurred in each of the school years 1987-88, 1988-89, and 1989-90, as audited and confirmed by the Education

Department, shall be summed, with such sum divided by the sum of the district's net transportation expenses related to mileage travelled by district-owned, leased, or contracted school buses for the three years, with the result expressed as a decimal to four places without rounding. This nonallowable pupil decimal shall be calculated by the Education Department for each district, and shall be reported to each district by July 1, 1991. Net transportation expense for purposes of this paragraph shall be the total expense attributable to transportation service to and from school and BOCES programs, for which an apportionment is provided pursuant to article 65, 73 or 89 of the Education Law, excluding the expenses attributable to other purpose transportation.

(2) In calculating aid to be paid in each school year commencing in school year 1991-92, the nonallowable pupil decimal calculated in paragraph (1) of this subdivision shall be multiplied by net transportation expense of the base year to determine nonallowable expense. Such nonallowable expense shall be deducted from net transportation expense to determine the allowable transportation expense for transportation aid.

(3) (i) A school district shall provide documentation to the commissioner for the calculation of a new nonallowable pupil decimal at least once every three years, on a schedule prescribed by the commissioner, using the nonallowable pupil decimal worksheet prescribed by the commissioner; and in addition, a school district shall provide such documentation during any school year in which the district experiences an increase or decrease from the nonallowable pupil decimal previously calculated pursuant to this section, when any one or more of the following conditions apply:

- (a) change in school district transportation eligibility policy;
- (b) school district reorganization with one or more other districts;
- (c) opening of a school building or closing of a building currently used as a school building;
- (d) an error made by either the school district or the Education Department in the calculation of a nonallowable pupil decimal for a prior year; or
- (e) a change in school district transportation policy to provide transportation of eligible children to or from a universal prekindergarten program pursuant to section 3602-3 of the Education Law.

(ii) Upon receipt of such documentation, the commissioner shall calculate a new nonallowable pupil decimal by dividing the total number of pupil miles of transportation services provided to nonallowable pupils on all district-owned, leased, or contracted school buses during the school year reported by the total number of pupil miles of transportation services provided to all pupils on all district-owned, leased, or contracted school buses during such school year, with the result expressed as decimal to four places without rounding. The number of pupil miles of transportation services provided to pupils attending an approved prekindergarten program pursuant to section 3602-e of the Education Law shall be excluded for the purposes of such calculation, provided that the transportation services furnished to such prekindergarten pupils are provided on a space-available basis and do not require, or result in:

- (a) any expansion of approved bus routes or additional trips; or
- (b) any increase in contracted expenditures for transportation expenses; or
- (c) any purchase or lease of additional vehicles.

(iii) The new nonallowable pupil decimal shall be used in calculating transportation aid in each school year after the school year in which such documentation is provided, in lieu of the decimal previously calculated pursuant to this section.

(b) For purposes of calculating transportation aid pursuant to section 3602 of Education Law, for school districts using public service carriers, the deduction for nonallowable pupils shall be the actual expenditures for transporting such pupils.

Historical Note

Sec. repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, filed Nov. 28, 1977; new filed Dec. 17, 1979; repealed, new filed April 30, 1991; amds. filed: Feb. 13, 1996; Dec. 23, 1997 as emergency measure; March 13, 1998 as emergency measure eff. March 17, 1998; March 13, 1998 eff. April 2, 1998. Amended (a)(3).

§ 156.8 Regional transportation expenses.

(a) The proration of expenses for regional or joint transportation services shall be determined according to the provisions of a transportation contract between the board(s) of education and the board(s) of cooperative educational services which participate in such regional or joint transportation.

(b) The proration of expenses for cooperative school bus maintenance shall be determined according to the provisions of a transportation contract between the board(s) of education and the board(s) of cooperative educational services participating in such cooperative school bus maintenance.

(c) The approvable expenditures, for purposes of State aid for transportation, of a school district which provides regional transportation or cooperative school bus maintenance services to one or more additional school districts, shall not exceed gross expenditures less all sums received from such other district or districts for the provision of such services.

Historical Note

Sec. repealed, new filed: March 1, 1963; Oct. 31, 1967; repealed, filed Nov. 28, 1977; new filed Jan. 23, 1980 eff. Feb. 25, 1980.

§ 156.9 Equipment and other expenses eligible for transportation aid.

For purposes of transportation aid payable pursuant to Education Law, section 3602(7)(b), equipment and other expenses shall be approved in accordance with this section.

(a) Equipment approvable for transportation aid shall include:

(1) vehicles used to transport pupils on a regular basis and items attached to such vehicles; and

(2) items required for the maintenance of such vehicles, whether such items are on or in such vehicles or on or in the garage or facility used to house such vehicles.

(b) Equipment used for transmission of radio communications within the district transportation program and computer data processing equipment for transportation programs shall be eligible for transportation aid only upon prior written approval of the commissioner. Approval of

costs for transmission and computer equipment shall be based upon the commissioner's determination of the extent to which such equipment is used for transportation programs.

(c) Equipment eligible for aid pursuant to Education Law, section 3602(6), or any other law, shall not be eligible for aid pursuant to Education Law, section 3602(7)(b), and this section.

(d) Equipment may be approved for aid pursuant to Education Law, section 3602(7)(b), and this section if:

- (1) such school bus and garage equipment contributes to the safety of pupils being transported;
- (2) the equipment is essential for efficient operation or maintenance of vehicles used for pupil transportation;
- (3) the equipment is essential for the conservation of energy; or
- (4) the equipment is required by a State agency pursuant to law or regulation.

(e) Other expenses eligible for transportation aid shall include those which are specifically necessary for the efficient management and operation of a pupil transportation system, as approved by the commissioner; provided, however, that legal fees shall not be approved.

(f) Only expenses for the items set forth in this section made after June 30, 1982 and approved by the commissioner will be eligible for transportation aid. No expense that is eligible for aid under any other section of law or regulation shall be eligible for aid under this section.

Historical Note

Sec. repealed, new filed March 1, 1963; repealed, filed Oct. 31, 1967; new filed Nov. 28, 1983 eff. Dec. 21, 1983.

§ 156.10 Retirement benefits and transportation during the school day eligible for transportation aid.

(a) For purposes of transportation aid payable pursuant to Education Law, section 3602(7)(a), approved retirement expenses shall be determined by multiplying by the ratio of other aidable transportation expenses to total transportation expenses, exclusive of retirement expenses:

- (1) the district share of retirement expense payable to the New York State Teachers' Retirement System in the base year for transportation personnel;
- (2) the district share of retirement expense payable to the New York State Employees' Retirement System in the base year for transportation personnel;
- (3) the district share of retirement expense payable to the New York City Teachers' Retirement System in the base year for transportation personnel;
- (4) the district share of retirement expense payable to the New York City Employees' Retirement System in the base year for transportation personnel; and
- (5) the district share of retirement expense payable to the New York City Board of Education Retirement System in the base year for transportation personnel.

(b) No expense that is eligible for aid under subdivision (a) of this section or under Education Law, section 3602(7)(b)(v), concerning transportation during the school day, shall be eligible for aid under any other section of law or regulation.

Historical Note

Sec. repealed, new filed March 1, 1963; amd. filed Sept. 9, 1966; repealed, filed Oct. 31, 1967; new filed May 1, 1984 as emergency measure; made permanent and amd. by order filed June 26, 1984 eff. June 27, 1984.

§ 156.11 Appropriate costs for a transportation contract.

All contracts for the transportation of children authorized pursuant to paragraph (h) of subdivision 25 of section 1709 of the Education Law, and not specifically authorized by any other section of law, shall be subject to a test of "appropriate cost" pursuant to this section.

(a) In determining the appropriate transportation contract cost, the transportation service provider school district shall demonstrate that the contract reflects the true costs that a prudent person would incur in a competitive transportation business by calculating the contract cost based on the appropriate unit cost determined in accordance with subdivision (b) of this section.

(b) An appropriate unit cost for the proposed transportation service shall be determined by dividing the grand total of transportation expenditures for the preceding school year of all regular transportation services provided to students of the district by the service provider school district by the number of vehicles, passengers, miles traveled or other appropriate transportation service units represented by all such transportation services. The proposed transportation contract costs shall satisfy the test of "appropriate cost" required by this section if such proposed transportation contract costs are equal to the product of such resulting, appropriate unit cost and the number of comparable service units to be provided under the proposed contract. The grand total of transportation expenditures used in this calculation shall include all expenses that would be eligible for transportation aid if they were incurred under a transportation contract with a private contractor, including but not limited to the transportation related costs of operation, maintenance and repair of vehicles, fringe benefits, buildings, utilities, depreciation, training, insurance, interest payments, and administration. Written documentation of specific expenditures of the school district included in the grand total of transportation expenditures and the service units used in such calculations shall be retained by the transportation service provider school district for a period of at least three years after the termination of such contracted transportation service and shall be available for public inspection.

(c) This section shall not apply to the transportation of children of school age provided pursuant to provisions of the Education Law other than Education Law, section 1709(25)(h), including but not limited to subdivision 24, paragraph (g) of subdivision 25 or subdivision 27 of section 1709 of the Education Law.

Historical Note

Sec. repealed, new filed March 27, 1973; amd. filed July 1, 1975; renum. 156.1, filed Nov. 28, 1977; new filed: June 28, 1994 as emergency measure; Sept. 27, 1994 as emergency measure eff. Sept. 27, 1994; Sept. 27, 1994 eff. Oct. 13, 1994.

§ 156.12 Transportation contracts awarded through a request for proposals.

(a) Pursuant to the provisions of paragraph (a) of subdivision 14 of section 305 of the Education Law, all contracts for the transportation of pupils which are subject to the competitive bidding requirements of General Municipal Law shall be awarded to the lowest responsible bidder or through an evaluation of proposals submitted in response to a request for proposals by a board of education.

(b) When a board of education elects to award a contract through an evaluation of proposals in response to a request for proposals, such board of education shall evaluate each proposal from a responding contractor in accordance with the following criteria:

- (1) the previous experience of the contractor in transporting pupils;
- (2) the name of each transportation company of which the contractor has been an owner or manager;
- (3) a description of any safety programs implemented by the contractor;
- (4) a record of accidents in motor vehicles under the control of the contractor;
- (5) the driving history of employees of the contractor;
- (6) inspection records and model year of each of the motor vehicles under the control of the contractor;
- (7) maintenance schedules of the motor vehicles under the control of the contractor;
- (8) a financial analysis of the contractor;
- (9) documentation of compliance with motor vehicle insurance requirements; and
- (10) total cost of the proposal.

(c) Any public notice soliciting proposals for transportation services, as well as any instructions provided to potential respondents to a request for proposals pursuant to this section, shall specify all of the criteria to be used in evaluating such proposals and shall specify the weightings that the board of education has assigned to each criterion for the purpose of evaluating proposals submitted in response to the request for proposals. For this purpose no single criterion shall be weighted in excess of 50 percent of the total weight of all of the criteria to be used.

(d) Each district awarding a contract through an evaluation of proposals shall submit such contract to the Commissioner for approval pursuant to the provisions of Education Law, sections 305(14) and 3625, together with satisfactory evidence of the date of the request for such proposals, the forms and instructions used in making such request, the contract specifications, all proposals received, the criteria used in evaluating the proposals, the weights assigned to each criterion, the scores used to assess each category of the criteria, and such other information as the commissioner deems necessary for such approval.

(e) Proposals for contracts for anticipated transportation needs for the following school year shall be requested no later than June 1st, except that proposals for contracts for transportation of children with disabilities shall be requested no later than July 1st of the school year for which such contracts are to be awarded.

(f) Notwithstanding the provisions of subdivision (e) of this section, in the case of an emergency or other unforeseen occurrence or condition affecting transportation services, and requiring immediate action which cannot await responses to a request for proposals, interim contracts may be awarded for a period not to exceed one month, pending the award of a contract for such services in accordance with the provisions of subdivisions (a) through (d) of this section.

(g) Proposals for contracts which cannot be anticipated in accordance with the provisions of subdivision (e) of this section, because of an emergency or other unforeseen occurrence or condition affecting transportation services, shall be requested at least 30 days prior to the beginning date of service.

Historical Note

Sec. amd. filed Oct. 31, 1967; renum. 156.2, filed Nov. 28, 1977; new filed: Dec. 24, 1996 as emergency measure; Feb. 10, 1997; amds. filed: March 18, 1997 as emergency measure; May 6, 1997 eff. May 22, 1997.

§ 156.13

Historical Note

Sec. amds. filed: Jan. 11, 1963; Feb. 27, 1968; June 10, 1968; Nov. 4, 1970; March 27, 1973; Sept. 30, 1975; Oct. 27, 1975; July 30, 1976; March 29, 1977; June 27, 1977; Aug. 2, 1977; Nov. 28, 1977; renum. 156.3, filed Nov. 28, 1977 eff. Dec. 12, 1977.

§ 156.14

Historical Note

Sec. repealed, new filed July 8, 1971; renum. 156.4, filed Nov. 28, 1977 eff. Dec. 12, 1977.

§ 156.15

Historical Note

Sec. filed May 21, 1965; amds. filed: July 8, 1970; Aug. 4 and 6, 1971; renum. 156.5, filed Nov. 28, 1977 eff. Dec. 12, 1977.

§ 156.16

Historical Note

Sec. filed May 21, 1965; renum. 156.6, filed Nov. 28, 1977 eff. Dec. 12, 1977.

